



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ROLANDO M. MENDIOLA,  
Petitioner,

G.R. No. 200895

Present:

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

-versus-

COMMERZ TRADING INT'L, INC.,  
Respondent.

Promulgated:

JUL 31 2013 *HR Cabalag for Justice*

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DECISION

CARPIO, J.:

The Case

This petition for review<sup>1</sup> assails the 30 January 2012 Decision<sup>2</sup> of the Court of Appeals in CA-G.R. SP No. 110491. The Court of Appeals reversed the 27 May 2009 Decision<sup>3</sup> of the Regional Trial Court, Branch 255, Las Piñas City, which affirmed the 6 October 2008 Decision<sup>4</sup> of the Metropolitan Trial Court, Branch 79, Las Piñas City, in a collection suit filed by petitioner Rolando M. Mendiola against respondent Commerz Trading Int'l., Inc.

The Facts

Genicon, Inc. (Genicon) is a foreign corporation based in Florida, United States of America, which designs, produces, and distributes "patented surgical instrumentation focused exclusively on laparoscopic surgery."<sup>5</sup> Petitioner, a physician by profession, entered into a contract with Genicon to

<sup>1</sup> Under Rule 45 of the Rules of Court.

<sup>2</sup> *Rollo*, pp. 205-216. Penned by Associate Justice Francisco P. Acosta with Associate Justices Magdangal M. De Leon and Angelita A. Gacutan concurring.

<sup>3</sup> *Id.* at 105-111. Penned by Judge Raul Bautista Villanueva.

<sup>4</sup> *Id.* at 68-72. Penned by Judge Pio M. Pasia.

<sup>5</sup> [http://geniconendo.com/?page\\_id=2](http://geniconendo.com/?page_id=2) (last visited 29 July 2013).

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be its exclusive distributor of Genicon laparoscopic instruments in the Philippines, as evidenced by a Distribution Agreement dated 18 July 2007.<sup>6</sup> Petitioner, in turn, entered into a Memorandum of Agreement (MOA)<sup>7</sup> with respondent to facilitate the marketing and sale of Genicon laparoscopic instruments in the Philippines. Under the MOA, respondent would be compensated for ₱100,000.00 “[f]or the use of [respondent’s] name, office, secretary, invoices, official receipts and facilities x x x for every sale of [a] complete set of Genicon laparoscopic instruments x x x.”<sup>8</sup>

Respondent sent a price quotation to Pampanga Medical Specialist Hospital, Inc. (PMSHI), which thereafter agreed to purchase a Genicon laparoscopic instrument for Two Million Six Hundred Thousand Pesos (₱2,600,000.00). Then, petitioner ordered the laparoscopic instrument from Genicon, which in turn shipped the medical equipment to the Philippines. Respondent undertook the release of the laparoscopic instrument from the Bureau of Customs and subsequently delivered the same to PMSHI.

PMSHI made the following payments to respondent: (1) ₱520,000.00 per PMSHI Check Voucher No. 2448 dated 1 February 2007, and to which respondent issued Official Receipt No. 11148; and (2) ₱2,080,000.00 per PMSHI Check Voucher No. 2419 dated 6 February 2007. From the total amount of ₱2,600,000.00 paid by PMSHI to respondent, the latter’s president Joaquin Ortega deducted ₱100,000.00 as respondent’s compensation for its services pursuant to the MOA. Respondent remitted to petitioner ₱2,430,000.00 only, instead of ₱2,500,000.00.

Despite petitioner’s repeated demands, respondent failed to remit the remaining balance of ₱70,000.00 from the proceeds of the sale of the laparoscopic instrument. Consequently, petitioner filed a collection suit against respondent with the Metropolitan Trial Court, Branch 79, Las Piñas City (MeTC).

In its Answer, respondent countered that petitioner had no cause of action because it did not owe petitioner any amount. Respondent alleged that the case was a pre-emptive measure taken by petitioner in anticipation of the collection suit respondent would file for over payment of the purchase price of the laparoscopic instrument. Respondent claimed that the unremitted amount of ₱70,000.00 represented a portion of the ₱267,857.14 Expanded Value Added Tax (EVAT) which was erroneously and inadvertently credited or remitted by respondent to petitioner’s account.

The MeTC rendered its Decision of 6 October 2008 in favor of petitioner. The MeTC held that “respondent has no right to retain the ₱70,000.00 x x x. [Respondent] had been duly compensated [for] its work

<sup>6</sup> CA *rollo*, pp. 53-64.

<sup>7</sup> Id. at 65-68.

<sup>8</sup> Id. at 65.

done. It is not its duty to pay any government taxes in whatever form because it is clearly a responsibility of the buyer.”<sup>9</sup>

The dispositive portion of the MeTC decision reads:

WHEREFORE, the Court hereby renders judgment in favor of the plaintiff ordering the defendant to pay plaintiff the sum of ₱70,000.00 as actual damages plus 12% per annum beginning June, 2007 until the amount is fully paid. The defendant is also ordered to pay plaintiff reasonable attorney’s fees of ₱20,000.00 and costs of suit.

SO ORDERED.<sup>10</sup>

Respondent appealed to the Regional Trial Court, Branch 255, Las Piñas City (RTC). In its 27 May 2009 Decision, the RTC sustained the MeTC, holding that the MOA is the law between the parties. Under the MOA, “there was no right or authority given to [respondent] to retain a portion of the proceeds of any sale coursed through or obtained by it for taxation purposes.”<sup>11</sup>

The dispositive portion of the RTC decision reads:

WHEREFORE, the foregoing considered, the herein appeal of the defendant-appellant Commerz Trading International, Inc. is DENIED for lack of merit. Accordingly, the DECISION dated 06 October 2008 rendered by the Metropolitan Trial Court of Las Piñas City, Branch 79 in Civil Case No. 7645 is affirmed *in toto*.

SO ORDERED.<sup>12</sup>

Respondent appealed to the Court of Appeals, which reversed the RTC in its Decision of 30 January 2012.

Hence, this petition.

### **The Ruling of the Court of Appeals**

The Court of Appeals reversed the RTC and ruled in favor of respondent. The Court of Appeals found respondent, a VAT-registered entity, as the seller/importer of the laparoscopic instrument and thus, is the person liable for the payment of the VAT. The Court of Appeals held that respondent “made the sale to PMSHI, x x x [and thus] is liable for the payment of EVAT albeit [respondent] is, per the Memorandum of Agreement, only the marketer of the medical product.”<sup>13</sup> Assuming that the

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<sup>9</sup> *Rollo*, p. 71.

<sup>10</sup> *Id.* at 72.

<sup>11</sup> *Id.* at 109.

<sup>12</sup> *Id.* at 111.

<sup>13</sup> *Id.* at 211.

importation of the laparoscopic instrument was the taxable transaction, “it was not disputed x x x that it was [respondent] which arranged the importation of the medical equipment from Genicon in the U.S.A. and undertook the processing and release of the same before the Bureau of Customs.”<sup>14</sup>

The Court of Appeals likewise reversed the RTC’s award of interest and attorney’s fees. The dispositive portion of the Court of Appeals’ decision reads:

WHEREFORE, the instant Petition is GRANTED. The Decision dated 27 May 2009 of the Regional Trial Court is REVERSED and SET ASIDE.

Respondent Rolando M. Mendiola is hereby ORDERED to reimburse the Petitioner the sum of ₱197,857.14 within five (5) days from receipt of finality of this decision. Petitioner is thereafter ORDERED to reflect the reimbursement in its EVAT Return for the current quarter to be submitted to the Bureau of Internal Revenue and pay the same to the latter’s authorized collecting agency immediately within the next monthly pay period as provided under the NIRC.

Petitioner and Respondent are ORDERED to submit their compliance thereto within fifteen (15) days from receipt of finality of this decision.

SO ORDERED.<sup>15</sup>

### **The Issues**

Petitioner raises the following issues:

1. Whether respondent has the right to retain the balance of the proceeds of the sale in the amount of ₱70,000.00; and
2. Whether petitioner is entitled to the award of interest and attorney’s fees.

### **The Ruling of the Court**

We deny the petition.

There is no dispute that the ₱70,000.00 respondent withheld from petitioner formed part of the proceeds of the sale of the Genicon laparoscopic instrument.

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<sup>14</sup> Id. at 212.

<sup>15</sup> Id. at 215.

Respondent, however, claims that the ₱70,000.00 represents a portion of the total VAT due<sup>16</sup> from the Genicon transaction which is allegedly petitioner's obligation under paragraph V of the MOA which states: "All taxes/expenses and expenses related to Genicon transactions shall be the responsibility of [petitioner]." <sup>17</sup>

Basic is the principle that a contract is the law between the parties,<sup>18</sup> and its stipulations are binding on them, unless the contract is contrary to law, morals, good customs, public order or public policy.<sup>19</sup> Indeed, paragraph V of the MOA obligates petitioner to pay the taxes due from the sale of the Genicon laparoscopic instrument. Petitioner admits that he is the one "responsible in the payment of the EVAT and not the respondent, who merely acted as the marketer"<sup>20</sup> of the Genicon laparoscopic instrument. Hence, as between petitioner and respondent, petitioner bears the burden for the payment of VAT.

The question now is whether respondent is authorized under the MOA to withhold a specific amount from the proceeds of the sale of the Genicon laparoscopic instrument as tax due from petitioner.

The MOA is silent on this matter. The MOA does not expressly allow respondent to collect or withhold from petitioner any amount from the sale of the Genicon laparoscopic instrument for taxation purposes.

However, the same agreement (1) allows respondent to issue official receipts on which VAT should have been computed and included in the purchase price, and (2) obligates petitioner to pay any tax due on the sale.

Under the MOA, petitioner requested respondent "to use the [latter's] name, office, secretary, invoice, official receipts and its facilities for the distribution and sale of Genicon products in the Philippines."<sup>21</sup> Petitioner, who is a physician, made such request "solely for ethical and personal reasons."<sup>22</sup> Accommodating and agreeing to petitioner's request, respondent, a VAT-registered entity, issued Official Receipt No. 11148 to evidence the sale of the Genicon laparoscopic instrument to PMSHI, and the payment by the latter of the purchase price. PMSHI, in turn, issued two checks in favor of respondent totaling ₱2,600,000.00.<sup>23</sup>

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<sup>16</sup> Respondent claims that the total tax due is ₱267,857.14 based on the certification issued by its retained accountant. (Id. at 36-37; Answer, paragraph 5)

<sup>17</sup> CA rollo, p. 66.

<sup>18</sup> *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, 25 November 2009, 605 SCRA 370, 380.

<sup>19</sup> Article 1409 of the Civil Code which refers to inexistent and void contracts.

<sup>20</sup> Rollo, p. 20.

<sup>21</sup> CA rollo, p. 65. Second Whereas clause of the MOA.

<sup>22</sup> Id.

<sup>23</sup> As indicated in Check Voucher Nos. 2448 and 2419. Id. at 71-72.

Clearly, based on respondent's records, it would appear that (1) it received P2,600,000.00 from PMSHI, which amount is subject to VAT as found by its external auditor and (2) it is the seller of the Genicon laparoscopic instrument. Therefore, petitioner should pay the VAT due on the sale, which would be computed based on the official receipt issued by respondent. To hold otherwise clearly operates to defraud the government of the correct amount of taxes due on the sale, and contravenes the Civil Code provision mandating "every person x x x [to] act with justice, give everyone his due, and observe honesty and good faith."<sup>24</sup> While by agreement of the parties petitioner bears the economic burden for paying the VAT, the legal liability to pay the same to the BIR falls on respondent.

Thus, since respondent, as the seller on record, will be liable for the payment of the VAT based on the official receipt it issued, we shall allow respondent to retain the P70,000.00 only for the purpose of paying forthwith, if it has not done so yet, this amount to the BIR as the estimated tax due on the subject sale. There remains a dispute on the computation of the correct amount of VAT because respondent allegedly issued an official receipt<sup>25</sup> only in the amount of P520,000.00, instead of the P2,600,000.00 purchase price. Considering this, and the foregoing findings, the BIR must be informed of this Decision for its appropriate action.

We find the resolution of the other issue unnecessary.

**WHEREFORE, we DENY the petition.**

Let a copy of this Decision be forwarded to the Bureau of Internal Revenue for its appropriate action.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

<sup>24</sup> Article 19 (Human Relations).

<sup>25</sup> CA rollo, p. 73.

**WE CONCUR:**

  
**ARTURO D. BRION**  
Associate Justice


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

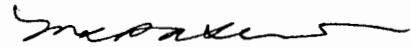
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

Chief Justice