SOCOGEDI SA v. BRALIRWA

[Rwanda SUPREME COURT – R.COM.A0156/11/CS (Mukanyundo, P.J., Havugiyaremye and Mukamulisa, J.) December 7, 2012]

Contract law – Agreement for commercial partnership – Agreement for commercial partnership may be proven by relationships that characterized both parties even when it is unwritten especially that commercial law does not provide that it must be.

Contract law – Damages for termination of the contract – There was no unlawful termination of the contract because it is sufficient for the party who opts to terminate contract of this kind to demonstrate the grounds which drove him/her to do it and it is not a requirement to pay damages at any cost.

Damages – Damages for being dragged into proceedings at appeal level – The respondent cannot be awarded damages based on appeal of the appellant alleging to have been dragged into unnecessary litigations as long as there is no evidence of the vexatious character of the appeal since an appeal by whoever unsatisfied with the ruling is his/her right.

Facts: SOCOGEDI SA (changed to SOCOGEDI Ltd) concluded a partnership contract with BRALIRWA. That agreement was about the commercialisation of beverages. After the written agreement had ended, the activities between them did not stop. Later on, BRALIRWA terminated the contract on the ground that SOCOGEDI had failed to respond to its letter requesting explanations about breach of the terms of the contract that they had concluded.

After termination, SOCOGEDI wrote to BRALIRWA requesting amicable settlement of the matter. After parties failed to reach the compromise, SOCOGEDI sued BRALIRWA before the Commercial High Court stating that BRALIRWA had terminated the contract unlawfully and requested various damages. BRALIRWA replied that the written contract that they had concluded had ended. The Court held that the claim had no merit as the contract had been terminated.

SOCOGEDI appealed to the Supreme Court disputing that it was not satisfied with the ruling of the appealed judgment because it contains contradictions demonstrated by the fact that the court accepted that though the main written contract between SOCOGEDI and BRALIRWA was supposed to expire on 30/04/2010, but thereafter the business relationships between both parties continued as it is emphasised by various activities they took on, while on the other hand it confirmed that the contract had expired. Additionally, the court confirmed that, as far as commercial contracts are concerned, written documents are not necessary for proof.

In regard to these grounds of appeal, BRALIRWA submitted that partnership agreement had expired and there was no clause providing for its renewal without resorting to the conclusion of the new one. It added further that even though both parties had a business relationship after, it cannot be regarded as if it was in connection with the contract; instead, it is a relationship into which any buyer can be with any trader.

Held: 1. Though there was no written agreement after the expiration of the initial written contract, the contents of the correspondences between both parties prove with no doubt that the relationships between them which was even based on the initial written contract continued being in existence especially that the commercial law does not provide that the

commercial agreements must only be in writing. Instead, the essential is evidence proving the commitments of each party and which the latter can prove by all sorts of possible evidence.

2. BRALIRWA did not unlawfully terminate the contract since it demonstrated the grounds of the termination in addition to different disagreements that they had including bad relationship and that in terminating of agreement such that concluded between them, it is sufficient for the party who took the initiative to give explanations thereon and he/she is not bound to pay damages.

3. No damages must be paid by the appellant as long as it is found that it did not drag the other party in unnecessary proceedings since it is his/her rights.

Appeal of SOCOGEDI has merit in part;
Cross appeal has no merit;
They must jointly pay court fees.

No statute and statutory instrument referred to.

No case was referred to.

Authors cited:
P. Fernandez, "contrats commerciaux", disponible sur
http://www.avocat.fernandez.com/contrats commerciaux.php
DIMITRI HOUTCIEFF**,** DROIT DU commerce et des affaires, 2è éd., Sirey, 2008, N°779.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] SOCOGEDI SA (changed to SOCOGEDI Ltd) entered into a partnership contract with BRALIRWA Ltd. The agreement concerned the trade of beverages either alcoholic or non-alcoholic. From that agreement SOCOGEDI announced that though the latest written contract they had entered into was supposed to expire by April 30, 2010, even after that date their partnership continued till BRALIRWA terminated the contract on December 23, 2010 on the ground that SOCOGEDI had not responded to its letter requesting explanations about the non-respect of the terms of the contract. After the termination of the contract SOCOGEDI wrote to BRALIRWA requesting amicable settlement of the matter. After the above request had failed, it made recourse to courts. BRALIRWA presented its defense that it has no obligation towards SOCOGEDI as the partnership agreement had expired on April 30, 2010.

[2] SOCOGIDI sued BRALIRWA in Commercial High Court alleging that it had unlawfully terminated the contract. It requested 860,410,433Frw due to the loss incurred, 15,000,000Frw for damages and 10,000,000Frw for advocate fee. The Court ruled that the claim of SOCOGEDI has no merit on the ground that there was no partnership agreement between it and BRALIRWA as it had been terminated.

[3] SOCOGEDI appealed to the Supreme Court and the screening, the appointed judge found that the appeal should be admitted.

[4] The case hearing was conducted on November 1, 2012 where SOCOGEDI was represented by both Niyomugabo Christophe and Kayiranga Cyrille, the counsels, while BRALIRWA was represented by Mpayimana Isaie alongside Basomingera Alberto, counsels.

II. ANALYSIS OF LEGAL ISSUES

a. Whether the document that SOCOGEDI presents as defence must not be considered.

[5] The defense for BRALIRWA raised an objection that the documents on which SOCOGEDI bases its appeal to this instance which include the ones concerning the bonus that BRALIRWA used to allocate to it; must not be considered because their opponent had denied to submit them and that after the written request of those document was addressed to them, they had denied to respond.

[6] Counsels for SOCOGEDI responded that the documents that BRALIRWA invoked had been debated on since before the Commercial High Court as that very Court had adjourned the hearing so that parties could exchange their submissions and documents they will present in the proceeding. It added that all of that have been done and the hearing in merit resumed whereby BRALIRWA presented its defense against the claim of SOCOGEDI in respect of which it alleged that the objection raised by BRALIRWA has no merit.

[7] The Court finds that as indicated by the case file, during the preliminary hearing of the case dated March 31, 2011, the counsel for BRALIRWA apologized for not having submitted to his opponent the defense submissions explaining that the delay was due to lack of the documents that he was supposed to use and that was supposed to be issued by the white men from BRALIRWA who were unfortunately absent and the Court adjourned the hearing to April 14, 2011 so as to have time to assess the submissions of BRALIRWA that were submitted before it on the day of the hearing.

[8] The hearing was re-opened on April 4, 2011. On that day BRALIRWA raised objections including SOCOGEDI failure to hand evidence that constituting the ground of its claim and this also led to another adjournment to June 16, 2011. On July 29, 2011 the Court issued a verdict on the preliminary hearing about the objection that had been raised by BRALIRWA about the exchange of the documents whereby it ordered that SOCOGEDI must hand to BRALIRWA all set of evidence and another hearing was fixed on October 3, 2011. On that day, the hearing continued and all parties submitted to the Court the grounds of their claims.

[9] In particular, with regard to the objection that BRALIRWA had raised requesting the Court reject the documents that SOCOGEDI presents as a proof of successful partnership between it and BRALIRWA as the latter used to allocate the bonus as well as other evidence, though BRALIRWA pleads that those document must not be considered because they are for the first time presented on this instance; these statements differ from the content of the minute of the hearing dated June 16, 2011 of the Commercial High Court since it indicates that the disputes relating to those document have been debated on before that Court. In addition, though the documents that BRALIRWA denies the acknowledgement were debated on before, they were found from BRALIRWA, therefore it is not comprehensible how it rejects them.

[10] Based on the above explanations, the Court finds that the fact that at this instance, BRALIRWA raised again the objection that it had raised before the Commercial High Court

which even decided on that and the fact that BRALIRWA presented the full defense on all grounds of the claim of SOCOGEDI without lodging an appeal against the first instance decision; this leads to the conclusion that the objection raised as stated above which relates to the request the rejection of the evidence presented by SOCOGEDI lacks merit.

b) Whether the partnership agreement between BRALIRWA and SOCOGEDI was still in force even after April 30, 2010.

[11] Counsels for SOCOGEDI argue that the reason behind their dissatisfaction of the appealed judgment relies on the existence of the contradictions in the appealed judgment whereby in paragraph 13 page 3 the judge conceded that even though the written contract between SOCOGEDI and BRALIRWA was supposed to expire on April 30, 2010, parties continued their mutual activities as stressed by different activities while on paragraph 18 page 6 of the judgment he conceded that the contract had expired at the occurrence of the said date.

[12] They state further that based on article 1 of CCB III which provides for the meaning of the contract, and the law does not set that in commercial contracts, there must at any cost be in a written form. They added that the defense of BRALIRWA that the contract had already taken the end on April 30, 2010 is refuted by their continuous cooperation evidenced by its continual supply of its products to SOCOGEDI as it used to be. They added further that evidence that illustrates that their relationship was maintained is the letter dated May 14, 2010 that BRALIRWA wrote to SOCOGEDI admitting, "in the meantime the terms of the former contact will still be binding as well as the clauses in our letter Div Nº037/com.27/2010 dated March 25, 2010". According to them, the content of that letter proves that the contract did not take the end on April 30, as held by the judge.

[13] They insisted further that another evidence that the contact was still into force is that BRALIRWA conceded that their relationship was good to the extent that it allocated to it a bonus equivalent to 10,360,738Frw and that payment had been already made and that on September 30, 2010 it allowed another bonus for the third term even though it is not yet paid.

[14] Counsels for BRALIRWA replies that as held by the previous Court, the agreement between it and SOCOGEDI ended on April 30, 2010 and there is no clause in which provides that the latter may be extended without the conclusion of the new contract. They further stated that though there might be another commercial relationship that had subsequently existed, it is not related to the contract that they had concluded before. Rather, they articulated, it is simple commercial relationship that may exist between any client and the trader which is different from the commercial partnership which was provided for in contract that came to an end as held by the previous judge.

[15] They further argue that from the time when the partnership agreement between BRALIRWA and SOCOGEDI came into existence, new agreement used to be entered into every year and this was the practice for other traders. They allege however that since SOCOGEDI was characterized by practices of which BRALIRWA was not satisfied, the contract was not renewed as it was the practice for other partners and it led to non-regular contracts while BRALIRWA was inspecting it and seek how to sort out the problem.

[16] They stressed further that in their different correspondences, BRALIRWA has repeatedly showed to SOCOGEDI its breach of business cooperation and that another evidence of SOCOGEDI's struggles is that it is subject of insolvency proceedings. With

regard to the bonus that SOCOGEDI is alleging to have been given, counsels for BRALIRWA replied that it was done before April 30, 2010.

[17] The Court notes that both parties are in agreement with the latest written contract which was supposed to end on April 30, 2010. They disagree on the fact that the partnership agreement was still in effect even if there was no written agreement till BRALIRWA terminated it on December 23, 2010.

[18] Though BRALIRWA argues that the collaboration between it and COCOGEDI after April 30, 2010 was based on temporary activities and not on the written contract that used to bind them, the court finds that there is series of evidence proving that their commercial relationship had never stopped on April 30, 2010 as above highlighted, which differs from the holdings of the previous court. Some of those series of evidence includes:

- In its correspondence dated May 14, 2010 BRALIRWA wrote to SOCOGEDI demonstrating that its objective was "the renewal of the partnership agreement";

- In the very correspondence, BRALIRWA comes back to the discussions that they had on February 25, 2010 whereby it cleared that the new agreement would be containing the terms as agreed on and that would be signed in June 2010. That correspondence further demonstrates that in the meantime, the terms of the previous contract shall apply as well as the terms in the correspondence dated March 25, 2010;

- In the letter as referred to above dated March 25, 2010, that is one month prior to April 30, 2010; concerns the "revision of the agreement between you and BRALIRWA" which related to its collaboration with its clients including SOCOGEDI, and these collaborators were chosen to enhance the running of the business;

- Furthermore, in its letter to SOCOGEDI dated June 23, 2010, BRALIRWA talks about its senior officials' trip in the area where SOCOGEDI distributes BRALIRWA products (those areas include Kamonyi, Gitarama and Ruhango) the points which they were not satisfied on, and the strategy that SOCOGEDI must adopt to put things right;

- Among the notices of BRALIRWA to SOCOGEDI in its letter dated November 9, 2010, included its worry concerning the area of distribution of SOCOGEDI whereby clients have been lamenting of lack of BRALIRWA products. In addition, BRALIRWA requested it comply with the request of BK about the cheques used for payment.

[19] Even though there was no written agreement after April 30, 2010, the Court finds that the content of the correspondences listed above demonstrate without any doubt that the partnership between BRALIRWA and SOCOGEDI had continued and it was based on the terms in the previous contract. In addition, the law does not provide that the commercial agreement must be only proven by written agreement. This assertion corresponds to the opinion of the law scholars who assert that the principle in commercial law is that the written agreement is not a condition in case there is evidence that parties committed themselves to perform obligations and which may be proven by all sorts of possible evidence[1].

[1]See, Pierre FERNANDEZ, Contrats commerciaux, disponible sur http://www.avocat.fernandez.com/contrats commerciaux.php : In commercial law, the principle is that the drafting of a written contract is not required, the contractual relationship from the exchange of consent and can be demonstrated by any means ... .All evidence can be admitted in court : written, witnesses, confessions, indices, assumptions, etc ..." see also Dimitri

c) With regard to whether BRALIRWA had unlawfully terminated the contract and if this is likely to result in the payment of damages.

[20] Counsels for SOCOGEDI argued that after a long time of good commercial relationship between it and BRALIRWA, the latter had unlawfully terminated the contract and that they do not agree on the ground that BRALIRWA pretends that SOCOGEDI had stopped to order the supply of its beverage since it had regularly made "supply order" of the beverage but BRALIRWA denied pretending that their cheques were not initially certified by BK while the latter in its letter to BRALIRWA dated December 21, 2010 was admitting that it would keep its relation with SOCOGEDI (confirmation of financial support for SOCOGEDI). They add that another evidence that the defense of BRALIRWA about the concerns over those cheques is a pretext is that on December 21, it received its cheques equivalent to 60,000,000Frw while they had not been initially certified by BK.

[21] Counsels for BRALIRWA responded that the termination of the contract was a result of poor execution by SOCOGEDI and the evidence related to that is a letter that BRALIRWA wrote to it on June 23, 2010 after it had inspected in the area it distributed whereby it showed the mistakes which obstructed the interests of BRALIRWA.

[22] They further submitted that SOCOGEDI must not refer to the bonus it gained because they were allocated before it had changed its poor performance since it had finally stopped ordering BRALIRWA products and that its defense about the cheques must not be considered due to the fact that BRALIRWA asked it to have its cheques be certified by BK as a result of the bank request as expressed in its letter dated December 21, 2010. According to them, this indicates that the bank had no longer trust in SOCOGEDI and indeed, the latter is under insolvency process.

[23] The Court finds that even though both BRALIRWA and SOCOGEDI had been for so long in commercial partnership, their relationship got damaged as indicated by different correspondences that they had been exchanging. For example in the latter dated June 23, 2010 as highlighted above, after visiting the area of the activities of SOCOGEDI, BRALIRWA submitted to the latter the concern about the non-respect of the contract. Furthermore, in its letter of November 9, 2010 BRALIRWA notified SOCOGEDI about the claims of its clientele about the lack of the products of BRALIRWA in the area of activities of SOCOGEDI. That letter requests also SOCOGEDI to come closer to BRALIRWA to avoid another lack of its products.

[24] Moreover, in that aforementioned correspondence, BRALIRWA notified SOCOGEDI of BK request of not accepting their payment cheques prior to its (BK) certification and herewith advised it to comply with this request. This correspond to the content of the letter of BK dated December 21, 2010 as above mentioned whereby the bank, though admitting that it would continue financially supporting SOCODEGI, it had stated that the support was supposed to last for three months while waiting for the renewal of the contract with BRALIRWA. It however stated that it was going to set the new system of monitoring the activities of SOCOGEDI with regard to its cheques which has first to be certified in connection with its stock. Based on the above holdings, though there might be cheques of SOCOGEDI which may have been received by BRALIRWA while they have not been

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HOUTCIEFF, Trade and Business Law, 2nd ed., Sirey, 2008, N°.779, p.318. "Commercial contracts are generally consensual; they are formed by the simple meeting of the offer and acceptance".

certified by BK, this is unlikely to invalidate those instructions about those cheques as highlighted above.

[25] The Court finds that in accordance with explanations above, SOCOGEDI does neither state that it was surprised of contract termination by BRALIRWA nor it deny that the contract termination was lawful so that it can seek reparation while in its letter BRALIRWA notified it of the grounds for the termination of the contract in addition to some other existing problems as underlined. Furthermore, this is in accordance with the opinions of the law scholars that in case of the termination of agreement like that which was between BRALIRWA and SOCOGEDI (distribution agreement) what is essential is that the party which opts to terminate it communicates explanations thereon but is not bound to give damages to the other party at any cost[2].

[26] Given the ground above, the court is of the view that various damages requested by SOCOGEDI should not be awarded.

c. With regard to cross-appeal filed by BRALIRWA

[27] BRALIRWA raised a cross appeal as incidental to the appeal t lodged by SOCOGEDI whereby it requests that damages it was granted by the previous instance should be increased by 500,000Frw for being dragged into unnecessary litigations by SOCOGEDI.

[28] SOCOGEDI responded that the above claimed damages are groundless because it is the one which had unlawfully terminated the contract.

[29] The Court finds that as long as SOCOGEDI was not satisfied with the ruling of the court at first instance, nothing would hinder it from lodging an appeal in exercise of its right and as far as there is no evidence that it dragged BRALIRWA into litigations; damages requested by BRALIRWA on this instance have no merit.

III. THE DECISION OF THE COURT

[30] Holds that appeal of SOCOGEDI has merit in part.

[31] Cross appeal filed by BRALIRWA has no merit.

[32] Orders SOCOGEDI to pay a half (½) of the court fees equivalent to 35,750Frw within eight (8) days, which is 17,875Frw which payment would be followed by government coercion in case of default.

[2]See François COLLARD DUTILLEUL na Philippe DELEBECQUE, Contrats civils et commerciaux, 8è éd., Dalloz, 2007, Nº 929, pp.908-909: "….*Le contractant qui prendrait l'initiative de rompre le contrat devrait avoir à se justifier sans être tenu, bien entendu, d'indemniser automatiquement la victime de la résiliation. Il lui appartiendra simplement de faire état des raisons fondant la cessation des relations contractuelles*".