

## **PIO BARRETTO SONS, INC., PETITIONER VS. COMPANIA MARITIMA, RESPONDENT.**

*G.R. No. L-22358. January 29, 1975*

Ponente: ESGUERRA, J.

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### **ESGUERRA, J.:**

Petition for review on certiorari of the decision of the Court of Appeals in its CA-G.R. No. 23367-R which reverses the judgment of the Court of First Instance of Manila, including its resolution denying the petitioner's motion for reconsideration of the decision.

The factual background of the case is as follows:

Petitioner as plaintiff filed a complaint for collection of a sum of money against herein respondent, alleging that during the months of October and November, 1941, the defendant (now respondent) purchased on credit and received from the plaintiff (now petitioner), lumber worth P5,300.55; and on December 4, 1941, the defendant-respondent again purchased on credit and received from the plaintiff-petitioner, lumber worth P453.81, thereby incurring a total indebtedness of P6,054.36 with stipulated interest of 12% per annum, plus attorney's fees.

Respondent as defendant filed its answer denying all the material allegations of the complaint and, by way of counter-claim, prayed that plaintiff-petitioner be ordered to pay the sums of P500.00 as expenses of litigation and P1,500.00 as attorney's fees, plus costs.

Plaintiff-petitioner having filed its answer to the counter-claim of defendant-respondent, the case was heard and the trial court rendered judgment in favor of the plaintiff-petitioner, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered ordering defendant to pay to plaintiff the sum of P6,054.36, with legal interest thereon from the filing of the complaint until fully paid, plus attorney's fees in the amount of P500.00, together with the costs."

Both parties appealed to the Court of Appeals, the plaintiff PIO BARRETTO SONS, INC. assigning the following error:

"The Lower Court erred in holding that the moratorium orders and laws condoned the stipulated interest of 12% per annum on defendant's prewar indebtedness, and in awarding to plaintiff only the legal interest from the filing of the complaint." (pp. 4-5, Brief for the Plaintiff-Appellant)

and defendant COMPANIA MARITIMA making four assignment of errors, to wit:

"I. The Lower Court erred in holding that plaintiff had proven its alleged claims of P5,600.55 and P453.81.

"II. The Lower Court erred in holding that defendant had not paid plaintiff's alleged claim in the amount of P5,600.55.

"III. The Lower Court erred in not holding that the complaint states no cause of action against defendant, and that the alleged cause of action, if any at all, is already barred by the statute of limitation of actions.

"IV. The Lower Court erred in ordering defendant to pay to plaintiff the sum of P6,054.36 plus legal interest thereon from the filing of the complaint until fully paid, plus attorney's fees in the amount of P500.00 together with the costs." (pp. 1-2, Brief for the Defendant-Appellant)

The Court of Appeals reversed the judgment of the trial court and ordered the dismissal of the case on the ground that delivery of the lumber by plaintiff-petitioner to defendant-respondent was not duly proved.

Petitioner's motion for reconsideration of the decision of the Court of Appeals was denied again on the ground of lack of sufficient showing of a valid delivery of the lumber in question by the Barretto Sons, Inc. to the Compania Maritima.

Hence this petition for review on certiorari.

Petitioner maintains that:

I. The Court of Appeals erred in creating and raising, *motu proprio*, for the first time a new issue, that of the question of delivery, upon which the Court of Appeals based its decision reversing the judgment of the trial Court.

II. The Court of Appeals erred in its conclusion drawn from proven facts, and has decided the case in a way not in accordance with law or with the applicable decisions of this Court, and

III. The Court of Appeals erred in that it has so far departed from the accepted and usual course of judicial proceedings. (pp. 1-2, Brief for Petitioner).

Petitioner further asserts that the case having been tried and decided by the trial court on the issue of whether or not there was payment made by respondent Compania Maritima of the lumber covered by Exhs. "A-1" to "A-6" (invoices of petitioner) and Exhs. "B", "B-1" to "B-4" (the counter-receipts issued by the respondent), it is alone on this issue that the Court of Appeals should have decided the case and not on the issue of whether or not there was delivery of the lumber in question.

The principal issue, therefore, before Us is whether or not the Court of Appeals decided the case on a new issue not raised in the pleadings before the lower courts.

We rule that the issue of delivery on which the Court of Appeals based its decision reversing that of the trial court is no new issue at all. For delivery and payment in a contract of sale, or for that matter in quasi-contracts, are so interrelated and intertwined with each other that without delivery of the goods there is no corresponding obligation to pay. The two complement each other. Thus, "by the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing and the other to pay therefor a price certain in money or its equivalent." (Art. 1458, 1st par., new Civil Code). The source of this provision of law is Article 1445 of the old Code, which provides:

"By the contract of purchase and sale one of the contracting parties obligates himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing the same."

It is clear that the two elements cannot be dissociated, for "the contract of purchase and sale is, essentially, a bilateral contract, as it gives rise to reciprocal obligations; to wit, on the part of the seller, 'to deliver a determinate thing' and on the part of the buyer, 'to pay a certain price therefor in money or in something representing it.'" (p. 1, Capistrano, *The Law of Purchase and Sale*).

The finding of the Court of Appeals that there was no delivery of the lumber is well founded. As succinctly ruled by said Court:

"That this is basically an action for lumber allegedly bought, received, and not paid for; now just as a seller, in order to recover, must prove not only that he has sold and delivered and has not been paid, so a buyer in order to be condemned to pay must be shown to have bought, received, and not paid. Of course, it is correct to say as plaintiff says that even if there had been no purchase, provided there had been a delivery, it could recover, not on the sale but on the quasi-contract against unjust enrichment, but whether on sale or on quasi-contract, the vital element is delivery; x x x nor should it be said that there was no issue at all between the parties as to the fact of delivery; because that issue was present in the pleadings, not only as can be seen in par. 2 of the answer, but also as can be seen from the fact that plaintiff itself on p. 20 of the tsn. Vol. I, asked its own witness, Roman Legarda So, this question:

'Q.

Was that lumber covered by that invoice duly received and acknowledged by the Compania Maritima?"

and defendant on the other hand spent a good part of its proofs in demonstrating that there had been no delivery, e.g., Vol. II, pp. 132-134; now on the vital point of delivery, it must be remembered that the procedure between the parties as sought to be proved by plaintiff itself thru its witness, Juanito G. Perez, had been as follows:

'A.

Whenever the Compania Maritima orders lumber from our company, the Compania Maritima issues a purchase order to the Pio Barretto Sons, Inc. When this purchase order is received by the Pio Barretto Sons, Inc., the Pio Barretto Sons, Inc. delivers the lumber, as specified in the purchase order. Upon delivery of this lumber, the lumber is covered by invoice of the Pio Barretto, together with the purchase order of the Compania Maritima. Now, when the lumber is received by the Compania Maritima, the Compania Maritima stamps our invoice for the lumber delivered, and the receiving clerk signs the said invoice for the Compania Maritima. Now, after the lumber has been delivered, our delivery man brings back to our office and gives the invoice to me, together with the purchase order. Now, at the end of each week, I prepare the Statement of Accounts to be sent to the Compania Maritima, through our collector, and, in turn, the Accounting Department of the Compania Maritima issues us the kinds of receipts for the invoices, purchase orders, and statements of accounts surrendered to them.' tsn. 76-77, Vol. I;

stated otherwise, first, there was a purchase order by Maritima; 2ndly, there was an invoice by Barretto; 3rdly, there was a delivery unto Maritima; 4thly, there was a delivery of the purchase order and delivery receipt unto Maritima for checking or revision; and since Maritima would because of that retain the purchase orders and delivery receipts, it would issue in exchange its own counter receipt of said documents; and 5thly, after due verification had been made, Maritima would then pay; this procedure should now be correlated to the evidence herein presented; now plaintiff has here presented two sets of documents, A to A-6 and B to B-4; the first set consists of a purchase order, together with the invoices or delivery receipts, A-1 to A-6; and the second set consists of counter-receipts evidencing the fact that Maritima had received, with the exception of that in B-4, certain documents, i.e., purchase orders and delivery receipts from Barretto, "para su revision"; if then the documents would be correlated with the testimonies and the procedure outlined by witness Perez, it will result that as to A to A-6, plaintiff, according to it, had already complied with the purchase order, the sale, and delivery, but that it had not submitted all these to Maritima "para su revision" while as to B to B-4, it had according to it, complied with purchase order (except as to B-4), sale, delivery, and submission "para su revision", but the same had not been as yet checked and verified by Maritima; the question is, has this proof demonstrated plaintiff's cause of action, pursuant to the very procedure by it outlined in its evidence to have been followed between the parties in the course of their commercial transactions?; but how could that be when

precisely because of that practice, it gave unto Maritima the right to first verify; and there is no showing that that had been verified; but let it not be here said that just because Maritima had not yet verified, plaintiff should not be permitted to recover, for that practice must give way to the truth, — as plaintiff contends, — that if it had after all proved delivery, defendant must pay; but has plaintiff proved delivery under the evidence? According to what has been said, plaintiff had, according to it, submitted its documents in B to B-4 for revision; this means to say that it had in its possession and given unto Maritima purchase orders, and delivery receipts, but does this mean that it had proved delivery? Can delivery be proved by the fact that one had in his possession what one had believed to be a delivery receipt and submitted that for verification, without any actual proof of delivery of the article? If that were the case, a litigant would be excused from proving the element most vital to show his cause of action; and a Court of Justice must have to rely on the presumption that just because one had in his possession a "delivery receipt", one had already delivered; but the vice of this argument is that it altogether parts from the basis that the "delivery receipt" thus possessed and surrendered was a genuine delivery receipt, evidencing the fact that buyer had indeed received; but here, there absolutely is no proof of that; what this Court has only seen in the evidence nearest to the required proof is the stamp of Maritima on A-1 to A-6; for as this Court has said, the supposed admission by defendant witness Narvaez that the lumber therein annotated had been "delivered" was clearly and unfortunately, one that could not, — to be fair to the witness. — have been correctly meant to have by him been made, for he was "purchasing agent" only and could not be qualified at all to declare if what he had authorized to be purchased had been thereafter delivered, and the witness had in fact insisted against such alleged delivery to "Posadas", and witness had all the time insisted that only one "J. Leoncio", could receive, and this clarification is indisputably fortified by the very evidence of plaintiff consisting in the purchase order Exh. A, wherein is annotated:

"Not valid unless invoices are receipted and signed by: J. LEONCIO";

which name, "J. Leoncio" had been written precisely by said witness and this must mean that the signature of "Posadas" in A-1 to A-6, by the evidence of plaintiff itself, has been shown to have been unauthorized; and going to the stamp of Maritima on A-1 to A-6, this has to be correlated to the fact that Narvaez has testified that:

"This is our own stamp, but we did not authorize Mr. Posadas to sign for any lumber received." tsn. 134, Vol II;

nor has in fact, in any part of the evidence been shown any proof as even to show the authenticity of said signature "Posadas"; or that said "Posadas" had actually received said lumber; to prove at least that the lumber had been deposited in the compound of Maritima by that "Posadas", for if there had been such proof in the record, if plaintiff had shown evidence of that actual delivery of the lumber into the possession of Maritima, then it would have been the obligation of this Court under the law of quasi-contracts, to grant Barretto its prayer for the value of that; but no, what Barretto has here presented as witnesses were first Roman Legarda So, manager of Barretto, who admitted in cross that:

"Q. With respect to Exhibits A-1 to A-5, you did not have any personal intervention or participation in the preparation in the preparation of these documents?

A. No, sir. I did not have any participation or intervention.

Q. You did not have any personal intervention in the alleged deliveries of these lumber to the Compania Maritima?

A. No, sir, I did not have.

Q.

As a matter of fact, you do not know who put these rubber stamps here and signed at the bottom of these Exhibits A, A-1 to A-5?

A. No, sir, I do not know.", tsn. 57-58, Vol. I;

and then Juanito G. Perez, assistant cashier of Barretto, who admitted in cross that:

"Q. So, you do not know of your own personal knowledge the circumstances or the manner in which these Exhibits A-1 to A-5 were stamped. You do not know of your own personal knowledge?

A.

Well, when it comes to stamping, I do not have any knowledge.", tsn. 35, Vol. I;

under such a status of plaintiff's own proofs, how could it be said that plaintiff had proved its case? And how would it be correctly insisted against this Court that it had disregarded Lower Court's findings contrary to the existing jurisprudence when there was no issue of credibility presented to this Court on which it indeed would have been bound to rely as a rule upon Lower Court's determination; but what had been before this Court was a simple issue of preponderance and it had to make its conclusions based on the documents themselves presented by plaintiff?; it is because of these that this Court is impelled to reiterate that it should rule as it had ruled previously, for litigations can not be determined by possibly correct suppositions, deductions or even presumptions, with no basis in the evidence, for the truth must have to be determined by the hard rules of proof." (pp. 1-7, CA Resolution dated January 8, 1964).

"An examination of said receipts would reveal that they were counter-receipts issued by Cia. Maritima unto Pio Barretto certifying to the fact of having received from Pio Barretto, certain statements, "para su revision", which can only mean not an admission of having received the lumber but only an admission of having received certain statements on claims for lumber allegedly delivered; . . . that plaintiff has the duty to prove its affirmative allegations here of delivery to and failure of defendant to pay, . . . otherwise, the meaning would be that the sending of a statement of account would be an evidence of the admission thereof which it surely is not." (p. 6, CA Decision dated November 18, 1963; p. 27, ROA).

We concur in the foregoing observations and find that the conclusion of the Court of Appeals that plaintiff did not satisfactorily prove delivery of the lumber in question is in accordance with the facts and the law.

WHEREFORE, the judgment appealed from is hereby affirmed without pronouncement as to costs.

Castro, (Chairman), Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

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