

PHILIP LEE GO AND SPECIFIQUE GARMENTS MANUFACTURING, INC., PETITIONERS, VS. COURT OF APPEALS AND CLOVER MANUFACTURING CORP., RESPONDENTS.*G.R. No. 104609. June 30, 1993*

Ponente: CRUZ, J.

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Five deliveries of denim materials were made by Clover Manufacturing Corporation to Philip Go, president and general manager of Specifique Garments, at the latter's address. The delivery receipts and packing lists, indicated Go as the "customer" and were duly acknowledged by his employees. Of the total purchase of P949,783.22, only the price for the first delivery in the amount of P146,109.50 was paid to Clover. Demand for the balance was made on Go and Specifique but to no avail.

On January 29, 1986, Clover filed a complaint in the Regional Trial Court of Quezon City against the petitioners for the said balance. A writ of preliminary attachment was issued on February 3, 1986, but was lifted on March 18, 1986, after the filing by the defendants of a counterbond.

In their answer to the complaint, the defendants denied ever having transacted with the plaintiff. Go alleged that he had bought the denim materials from William Lim, to whom he had made full payment, in cash for the first delivery and by check subsequently encashed for the next four deliveries.

It is noteworthy that Lim was not impleaded in a third-party complaint. Instead, he testified for the defendants to support their allegations. He affirmed that he bought the denim materials on credit from Clover and thereafter sold them to Go. Go paid him for the materials but he himself was unable to settle his account with Clover. It was for this default that through his brother, Wilson, he entered into an agreement with Joseph Lim, president of Clover, transferring his and his family's shares of stock in Consolidated Aggregates to Clover in payment of his indebtedness. Such shares, he said, were already in the possession of Joseph Lim.

On October 9, 1989, Judge Jose C. de Guzman rendered a decision in favor of the plaintiff, on the principal ground that the delivery receipts and packing lists were in the name of Go as "customer" and were duly accepted by his own employees. The trial court found no evidence to show that the supposed checks were in payment for the denim articles, particularly since their total value did not coincide with the claimed balance. It also dismissed the invoked agreement, holding that William Lim had no authority to transfer his family's shares, let alone the fact that it was never raised in the answer.

On appeal, the decision was affirmed by the respondent court.[1] The Court of Appeals agreed that the cash payment for the first delivery which was duly received by Clover and the alleged checks made in payment for the four other deliveries did not prove that William Lim was the direct buyer of the articles from Clover. It declared that even if the checks issued by Go to Lim may have been encashed, this fact was nevertheless not proof of payment to Clover. The respondent court also rejected the agreement as essentially a contract of pledge that violated Article 2088 of the Civil Code prohibiting the creditor from appropriating or disposing of the thing

pledged.

In this petition for certiorari under Rule 45 of the Rules of Court, the sole issue raised is whether it was Go or William Lim who directly purchased the denim materials from Clover.

This is a factual question. We have consistently stressed in a long line of decisions that the resolution of factual questions is the primary and often the final task of the lower courts. This Court is not a trier of facts. The ascertainment of what actually happened in a controverted situation is the function of the trial court. And its findings thereon are received with much respect, if indeed not considered conclusive, by the appellate court.

The reason for this policy is that this Court is not supposed to re-try every case that comes before it on certiorari. This would not only prolong the judicial process but also unduly impose on this Court, which is burdened enough as it is with its heavily clogged dockets. The only occasion when we may reverse the factual conclusions of the lower court is when it is clearly shown that they were reached arbitrarily or are tainted with grave abuse of discretion.

We do not see such infirmity in the case at bar. On the contrary, we are convinced that the trial and respondent courts did not err in holding that the denim materials were purchased by Go directly from Clover and not from William Lim.

The first thought that occurs to the Court is why, if Go had really paid Lim the full value of the five deliveries, the latter was not impleaded by the plaintiffs in a third-party complaint under Rule 6, Section 12, of the Rules of Court. This rule states:

Sec. 12. Third-party complaint. - A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

The circumstance that Go and Lim might have been close friends (although this is not established in the record) was no impediment to Go's filing the third-party complaint for the protection of his interests. Even if there were such a friendship, the facts disclose that it was betrayed by Lim when he did not remit Go's payment to Clover and thus exposed his friend to the complaint and the attachment of his properties.

Go testified that he did not file the third-party complaint because of Lim's assurance that he would settle the account with Clover. Lim in fact subsequently surrendered to Clover his and his family's shares in Consolidated Aggregates in payment of his obligation. But that was one month after Go filed his answer to the complaint that impleaded only him and Specificque. What Go should have done as a cautious businessman was to sue Lim in a third-party complaint and to maintain the suit as long as Lim had not yet complied with his promise.

Our second misgiving is why the petitioners had to buy the denim articles through Lim as middleman and so pay an overprice to him when they could easily have purchased the goods directly from Clover and thus avoided such overprice.

Go said he purchased the denim articles directly from Lim and not Clover because it was Lim who had ties to Clover and could purchase from it on credit. The record shows, however, that the first delivery was fully paid for in cash in the sum of P146,109.50. Moreover, if Go is to be believed, the next four deliveries were also paid for in due time, signifying that he was in a position to buy on credit even without Lim's intercession. Given the petitioners' liquidity, we feel that they could have directly negotiated with Clover for the purchases in question and obtained credit directly from it (as in fact alleged by Clover) instead of buying the goods from Lim at more expense to them.

Go's additional explanation is also not convincing. He said his business was not really denim materials but t-shirts and that he had merely bought the denim materials from Lim when he found he could make a profit by selling them with a mark-up to another trader. That may be believable as far as the first transaction was concerned. But after Go realized he could make more profit with future sales of the same articles, there was no longer any reason for Lim to act as a mere middleman for him. As an experienced businessman, Go would have realized that he could increase his margin by buying the denim materials directly from Clover instead of courting them through Lim, who would naturally want his own share of the profit.

It is true that proof of delivery of goods to a person does not raise the presumption that he bought or ordered the same. In the case at bar, however, the deliveries were made by Clover directly to Go at his address and were accepted by his own employees, who signed the delivery receipts and packing lists where Go was indicated as the "customer."

Go had five opportunities to rectify the inaccuracy, if so it was, but he did nothing. On the contrary, he kept on receiving the deliveries as "customer" without protest and without manifesting to Clover that his obligation to pay for the goods was not to Clover but to William Lim.

The agreement invoked by the petitioners read in full as follows:

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT entered into by and between:

CLOVER MANUFACTURING CORPORATION, a corporation duly organized and existing under the laws of the Philippines, represented herein by its President and General Manager, JOSEPH U. LIM, of legal age, Filipino, married, with residence and office address at No. 28 Quirino Highway, Balintawak, Quezon City, and hereinafter called FIRST PARTY:

- and -

WILLIAM A. LIM, of legal age, with post office address at Baler Street, Quezon City, represented by his brother, WILSON A. LIM, and hereinafter called SECOND PARTY.

W I T N E S S E T H

WHEREAS, the FIRST PARTY maintains that sometime in November, 1985 to December, 1985, it allegedly delivered stretch denims material amounting to P803,673.72 to the SECOND PARTY;

WHEREAS, WILSON A. LIM, represent a group which owns 10% of the capital stock of Consolidated Aggregates Phils., Inc. (CAPI) a corporation duly organized under Philippines laws, which is also valued at P803,673.72;

WHEREAS, the SECOND PARTY without admitting liability and in order to buy peace, offered to pledge said shares of stock as collateral for the payment of the aforementioned materials, which the FIRST PARTY hereby accepts;

NOW, THEREFORE, for and in consideration of the foregoing and the covenant hereunder stated, the parties hereby agree that:

1 - The SECOND PARTY hereby warrants that, upon the signing of this Agreement, the corresponding said 10% of the capital stocks of Consolidated Aggregates Phils., Inc. shall be pledged in favor of the FIRST PARTY to be signed simultaneously upon the signing of this Agreement;

2 - Upon any payment by the SECOND PARTIES of any substantial amount to the FIRST PARTY at any time on or before January 29, 1987, the FIRST PARTY shall release back in favor of the SECOND PARTY the proportionate percentage of stock of Consolidated Aggregates Phils., Inc.;

3 - The pledge of 10% of the capital stocks of Consolidated Aggregates Phils., Inc. by the SECOND PARTY to the FIRST PARTY shall expire on January 29, 1987;

4 - Should the SECOND PARTY fail to pay above obligation on or before January 29, 1987, the shares thus pledged or any portion thereof shall automatically be considered as full payment and settlement of the above obligation or any portion thereof;

5 - That the FIRST PARTY shall not institute and/or initiate any action whatsoever against the SECOND PARTY or against any of its agents or representative from date of signing hereof or up to January 29, 1987, and thereafter, should there be no payment made by the SECOND PARTY as referred to above, the shares of stocks or any portion thereof pledged shall be made to answer and/or satisfy as full payment of the obligation. The FIRST PARTY shall forever not institute or initiate any action whatsoever against the SECOND PARTY or any of its agents or representatives from any liability whether civil, criminal or administrative arising from the alleged transaction.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 22nd day of April, 1986 at Quezon City, Philippines.

CLOVER MFTG. CORPORATION WILLIAM A. LIM

By: By:

(Sgd.) Illegible (Sgd.) Illegible

JOSEPH U. LIM WILSON A. LIM

Pres. & Gen. Manager

WITNESSES:

(Sgd.) Illegible (Sgd.) Illegible

To begin with, the trial court erred in holding that the said agreement was tardily raised, for the fact is that the petitioners could not have invoked it earlier because it was concluded after the filing of their answer on March 17, 1986. Secondly, it is not necessary here to examine the validity of the agreement as it was presented only to prove that the denim materials delivered to Go were actually purchased by William Lim directly from Clover. The issue is not its legality but its credibility.

Our view is that, valid or not, the agreement is not sufficient evidence of the petitioner's claim that they purchased the denim articles directly from William Lim and not Clover.

We are not satisfied that the agreement necessarily refers to the denim articles delivered by Clover to the petitioners. Clover and Wilson Lim are engaged in the same business and in fact Wilson Lim and Joseph Lim used to be partners in the firm of International Clothiers, Inc. It is not impossible that the agreement refers to other transactions between them and not between Clover and William Lim, especially if it is considered that Joseph Lim denied ever having had any business transaction with William.

The petitioners emphasize the first whereas in the agreement and say it shows that the purchases imputed to them

were actually made by William Lim, which was the reason the latter was willing to transfer his family's shares of stock in payment thereof to Clover. Go claims that the agreed purchase price was P73.00 per meter. This was the price correctly stated in the first delivery receipt, but in the two subsequent receipts the price was increased to P75.00 per meter.

It has not been established that the unit price indicated in the receipts was not the price verbally agreed upon by the parties. The petitioners accepted these prices without objection. Now they say that if these deliveries are computed on the basis of the lower price of P73.00, the total cost will tally with the value of the checks issued by Go to William Tan.

But why should they be so computed, when the recorded unit price for the subsequent deliveries was P75.00? And assuming that the checks were really issued, could they not have been drawn precisely in the total amount of the claimed balance, to give the impression that all the subsequent deliveries had been duly paid for by Go? At any rate, we agree with the lower courts that proof of payment by Go to Lim is not proof of payment to Clover because Go's obligation was directly to Clover and not to Lim.

We are not persuaded that Clover, having received settlement for the alleged indebtedness of William Lim through the transferred shares would still impute the same debt to the petitioner and thus obtain double compensation for the same transaction. The presumption of good faith has not been overcome by the petitioners to show that Clover, in suing them, is seeking to unduly enrich itself at their expense.

The Court cannot overstress the fact that Go should have sued William Lim in a third-party complaint instead of merely using him as a defense witness. Whatever their relations might have been before, Go could not have failed to realize that he was being made to pay the amount of more than three quarters of a million pesos which he says he had already paid to William Lim. His forbearance against Lim is difficult to understand. The only plausible explanation is that, as the private respondent claims, Go had not paid the balance of the purchase price either to Clover or to William Lim.

In light of these findings, the petitioners' claim for damages on the ground that the complaint was intended merely to harass them must be rejected. The prayer for preliminary attachment must also be sustained, especially as the writ was issued on the strength of the apprehension that Go was clandestinely disposing of his properties to evade payment of his indebtedness to the private respondent. The subsequent lifting of the writ upon the filing of a counterbond by the petitioners did not ipso facto make the writ unlawful.

We sustain the finding of the respondent court that the petitioners are liable for the balance of the articles sold by Clover and not to William Lim as the petitioners contend, but directly to the petitioners themselves.

WHEREFORE, the petition is DENIED, with costs against the petitioners. It is so ordered.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Isnani, J., ponente; Benitez & Martinez, JJ., concurring.

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