

ACEBEDO OPTICAL CO., INC., PETITIONER, VS. COURT OF APPEALS AND ORAL-B LABORATORIES (PHILIPPINES), INC., RESPONDENTS.

G.R. No. 118833. November 29, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for review under Rule 45 of the Revised Rules of Court seeks to set aside the decision rendered by the Court of Appeals on 17 January 1995 in CA-G.R. CV No. 39299 entitled "Oral-B Laboratories (Philippines), Inc. v. Acebedo Optical Co., Inc." affirming the decision of the Regional Trial Court.

The facts, as summarized by the Court of Appeals and adopted by petitioner, are as follows:

This is an action for collection of sum of money. The relevant antecedents are as follows:

On September 15, 1982, plaintiff Oral-B (Phil.), Inc. and defendant Acebedo Optical, Inc. entered into an Agreement whereby plaintiff will sell and defendant will buy from the former contact lens and contact lens solutions for the period September 15, 1982 until December 31, 1983.

The Agreement provides:

4. The BUYER agrees that eight (8) equal monthly installment postdated checks payable to Cooper Laboratories (Philippines), Inc. will be issued upon delivery covering the invoices.
5. The BUYER agrees that default in payment would give the SELLER the right to hold all deliveries until all accounts are settled.
6. The BUYER agrees that he will abide by the attached warranty program and that the attached warranty program will form part of this agreement.

Accordingly, Acebedo purchased the Oral-B products on account, and issued postdated checks as payment therefor.

On March 30, 1983, the parties entered into another written agreement which expressly superseded the first. The second agreement contained basically the same stipulations, with the added provisions that:

5. The SELLER agrees that BUYER will withhold payment should the SELLER fails to deliver certain Cooper products ordered by BUYER.

xxx.

8. The SELLER agrees to replace contact lens off-powers delivered to Buyer and also to replace contact lens solutions that has expired whilst still in the custody of the BUYER.

Transactions between the parties continued.

On July 31, 1983, upon Oral-B's request, Acebedo confirmed that as of said date, Acebedo's account with Oral-B

totalled P668,673.55.

The transactions between them continued until September 1983. On said month Acebedo ordered a "stop payment" of all its checks to Oral-B. In return, Oral-B withheld the delivery of goods to Acebedo.

Oral-B claims that based on the sales invoices, the amount of the goods delivered to and received by Acebedo totalled P1,903,161.00; and that as of February 29, 1984, Acebedo's unpaid balance totalled P765,664.61, which defendant refused to pay despite demands therefor.

On the other hand, defendant averred that it stopped payment to Oral-B due to (a) non--delivery of pending orders, (b) non-delivery of certain products which were supposed to be given free of charge, and (c) non-replacement of defective goods; that the purchased goods totalled only P1,542,161.00; that deducting from this amount (a) its partial payments to Oral-B, (b) the goods covered by the invoices which Oral-B did not deliver, (c) the free goods which Oral-B should have delivered, and (d) the defective products delivered, then its unpaid balance would only be P185,140.35.

Lastly, defendant claims that as a result of Oral-B's breach of contract, Acebedo did not realize its expected profits of P415,449.50.

During the trial, Acebedo's accountant — Iluminada Penaflorida — testified that its computation was not based on the sales invoices but on the goods actually received by Acebedo. According to her, this was in view of an arrangement between the parties, to wit:

A:

Because there was an arrangement made by Acebedo Optical and Oral-B Coopervision to receive.... the Acebedo Optical has to receive or put the signatures on the invoice without the actual deliveries because of some considerations or arrangement that the Oral... the Coopervision people should meet their quota or another purpose, I do not know (TSN, Feb. 1, 1990, p. 23).

On this matter, Acebedo's President, Felix Acebedo III, testified that:

A:

There was an agreement, that verbal agreement that they want to reach a quota and they will deliver a big bulk of products of Copper Vision but the agreement is that they will only charge the actual delivery but not with the agreement that they will pull out what we do not want.

Q:

And did they pull out stocks in January 1983?

A:

Early of January. (TSN, October 30, 1990, pp. 3-4.)

The lower court did not believe that Acebedo would accede to this supposed arrangement and that it would sign the sales invoices and delivery receipts even without the actual deliveries. Hence, it held that Acebedo's unpaid balance is P765,664.61, as claimed by Oral-B. However, it held Oral-B liable for the amounts representing the values of unreplaced defective contact lenses and expired solutions, as claimed by Acebedo.[1]

The dispositive portion of the trial court's judgment reads, thus:

WHEREFORE AND IN VIEW OF THE FOREGOING, judgment is hereby rendered:

- a) ordering the defendant Acebedo to pay to plaintiff Oral-B the amount of P765,664.61 with legal interest thereon at the rate of six per cent (6%) per annum from the date of extrajudicial demand on March 16, 1984 until the same is fully paid;
- b) ordering plaintiff Oral-B to reimburse to defendant Acebedo the amounts of P104,875.00 and P910.00 representing the values of unreplaced contact lenses covered by warranties and expired solutions, respectively, with legal interest thereon at the rate of six per cent (6%) per annum from the date of extra-judicial demand in January 1984 until the said amounts are fully paid; and
- c) ordering the defendant to pay the costs.

SO ORDERED.[2]

Petitioner's appeal was, likewise, unsuccessful. On 17 January 1995, the Court of Appeals rendered its assailed decision, the dispositive portion of which states:

WHEREFORE, finding no reversible error, the judgment appealed from is hereby AFFIRMED, with costs against the appellant.

SO ORDERED.[3]

Hence, the present petition for review wherein petitioner raises the following issues:

1. Whether the Court of Appeals has sanctioned an error committed by the trial court in the appreciation of the facts as presented.
2. Whether the Court of Appeals has sanctioned an error committed by the trial court in the application of law on damages by refusing to award actual and moral damages to the herein petitioner despite the finding of fault on the part of the respondent.
3. Whether the Court of Appeals has sanctioned an error committed by the trial court in the interpretation of the effects of the contracts/agreements between petitioner and respondent.
4. Whether the Court of Appeals has sanctioned an error committed by the trial court by refusing to review the findings of facts made by the trial court when the same are palpably erroneous.[4]

We find no merit in the petition.

Petitioner wants us to review, nay, to make a complete overhaul of, the factual findings of the trial court and the Court of Appeals. Thus, we seize this opportunity to reiterate, emphatically, the rule that this Court is not a trier of facts. "It is not (our) function to examine and evaluate the probative value of all evidence presented to the concerned tribunal which formed the basis of its impugned decision, resolution or order." [5]

It is quite clear that under Sec. 2, Rule 45 of the Revised Rules of Court, our jurisdiction is limited to a review of questions of law.[6] Absent a showing that the case falls under any of the exceptions,[7] we adhere to the general rule that the findings of facts of the trial court and the Court of Appeals, supported by substantial evidence in the record, are final and conclusive.[8]

Applying the foregoing principles to the case at bench, we find no cogent reasons to depart from the findings of the Court of Appeals and the Regional Trial Court.

We cannot give credence to the alleged verbal pull--out agreement between petitioner and respondent whereby, to enable respondent to meet its sales quota, it delivered large volumes of Coopervision/Oral-B products to petitioner

with the understanding that petitioner will not be charged for the entire amount thereof. Rather, a huge portion of said products was to be pulled out and only those covered by their written agreement and ordered by petitioner were to be charged to it.[9]

As correctly observed by the Court of Appeals, aside from the self-serving statements of petitioner's witnesses, there was no other proof to establish said arrangement with certainty. The Court of Appeals ruled, thus:

Defendant-appellant Acebedo insists that the sales invoices do not reflect the amount of goods actually delivered by Oral-B and received by the Acebedo, in view of the verbal pull-out arrangement between them.

Proof of this arrangement is its Exhibit "6", the letter written by the Special Account Manager of Oral-B (formerly Cooper Vision) to Acebedo. The letter states:

As agreed all sales invoices on your orders made last October 1982 shall be signed by you for the purpose of protecting you from price changes that may occur within the period stipulated in the agreement. Also, you as President of Acebedo Optical Co., Inc. shall not be held liable for whatever undelivered balance CV products you have deposited in the Cooper Vision warehouse arising from any fortitious events.

Acebedo Optical Co., Inc. shall be liable only for any actual products delivered and duly received by your authorized representative based on the agreement.

Defendant argues that this pull-out arrangement should be considered in light of the good business relationship between the two parties. Further, the fact that the arrangement was not provided in the written agreement does not belie its existence. It must be noted that there were other deviations from the written agreement, to wit:

- a) Instead of eight (8) equal monthly installments of postdated checks, defendant issued weekly postdated checks;
- b) Contrary to the stipulation that defendant shall issue checks upon delivery of products covered in the invoices, defendant was made expressly liable only for products actually delivered and duly received by its duly authorized representative;
- c) Despite the stipulation expressly requiring plaintiff to replace the expired products, plaintiff issued credit memos in the meantime that these products could not yet be replaced.

The first assigned error is without merit. It is Our considered opinion that there was no such pull-out arrangement between the parties.

The reliance on the letter (Exhibit "6") is misplaced: there is nothing in it that points to such an arrangement. As admitted by Felix Acebedo III, the President of Acebedo, the letter does not refer to pull out of stocks. According to him, "this letter only confirms that only actual delivery should be charged to Acebedo." (TSN, October 30, 1990, p. 23.)

In fact, the letter argues against the position of Acebedo considering that there is undeniable evidence that Acebedo's representatives duly received the products written on the sales invoices. On said invoices and delivery receipts, the signatures of Acebedo's representatives appear below on the words "Received the above listed merchandise in good order and condition subject to the terms and conditions printed at the back hereof."

Moreover, it must be remembered that according to Acebedo, the stocks subject of the pull-out arrangement were not ordered by Acebedo but were delivered only for the purpose of making it appear that Oral-B met its sales quota. As the letter specifically refers to sales invoices on "defendant's orders made last October 1982", clearly therefore, the supposed pull-out arrangement is not within the ambit of said letter.

Thus, aside from the self-serving testimonies of Iluminada Penaflorida and Felix Acebedo III, there is no evidence

that such arrangement exists. And even the testimony of Iluminada Penaflorida on this matter is marked by uncertainty, beginning with "I think..." (TSN, Feb. 1, 1990, pp. 36-37) or ending with "I do not know..." (TSN, Feb. 1, 1990, p. 23). Her testimony does not inspire belief.

Likewise, We share the trial court's disbelief that Acebedo would consent to such an arrangement, it not being in accord with ordinary business practice.[10]

And even if such an arrangement exists, as pointed out by private respondent, it was entered into by petitioner with a certain Mr. Eduardo Toral who, being a mere salesman, did not have the authority to bind respondent.[11]

Respondent's witness, Mr. Leonardo Lazaro, a Certified Public Accountant in the employ of respondent company, on cross-examination, testified as follows:

xxx xxx xxx.

Q:

Do you know an office of Cooper Vision by the name of Eduardo Toral?

A:

Yes, he was an employee, a salesman of the company.

Q:

He was known as special account manager of Cooper Vision?

A:

That is a terminology, sometimes he acted as salesman.

Q:

I am showing to you Mr. Witness, a letter dated 23 December 1982, which I represent to you as letter addressed to Acebedo, Attention Mr. Miguel Acebedo, are you familiar with this letter?

A:

I am not familiar.

Q:

You are also not familiar with the signature of Mr. Toral?

A:

In fact this is the first time that I have seen a document written in behalf of Eduardo Toral.

Q:

I am referring you to the second paragraph of this letter, could you read that second paragraph?

ATTY. PARUNGAO:

Objection, the witness stated he is not familiar, so there is no basis for him to read into the record.

xxx xxx xxx.

COURT:

Are you in any way, familiar with the subject matter of that paragraph?

A:

I am very surprise that the writer attempted or has written that letter. As far as I know he was not authorized to bind the company on any agreement. He was just a salesman and he was given that account manager position in the company, I was not aware of that position in the company.[12]

xxx xxx xxx.

Based on the foregoing discussion, there is scant evidence to sufficiently establish the existence of the aforementioned pull-out agreement.

Petitioner should have been more assiduous in its business relations so as to avoid such complications and conflicts.

WHEREFORE, premises considered, the petition for review on certiorari is hereby DISMISSED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] Rollo, pp. 14-16; 32-34.

[2] Id., at 31.

[3] Id., at 39.

[4] Id., at 19-20.

[5] TUPAS/FSM v. Laguesma, et al., 236 SCRA 586 (1994).

[6] Villareal v. CA, 219 SCRA 293 (1993); Cuison v. CA, 227 SCRA 391 (1993); Heirs of Jose Olviga v. CA, 227 SCRA 330 (1993).

[7] Exceptions to the rule of conclusiveness of the findings of fact of the Court of Appeals are: (1) When the conclusion is a finding grounded entirely in speculation, surmise and conjecture; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) When there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of facts are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) When the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. Geronimo vs. Court of Appeals, 224 SCRA 494 (1993).

[8] Tan Chun Suy v. CA, 229 SCRA 151 (1994); Coca-Cola Bottlers Phils., Inc. v. CA, 229 SCRA 533 (1994); Guinsatao v. CA, 218 SCRA 708 (1993).

[9] CA Records, p. 82.

[10] Rollo, pp. 35-36.

[11] CA Records, p. 122.

[12] TSN, 14 March 1988, pp. 38-44.

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