

VIBRAM MANUFACTURING CORPORATION, PETITIONER, VS. MANILA ELECTRIC COMPANY, RESPONDENT.

G.R. NO. 149052. August 09, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari assailing the Decision[1] of the Court of Appeals dated July 6, 2001 in CA-G.R. CV No. 57431, affirming with modification the Decision of the Regional Trial Court, Branch 122, Caloocan City, in Civil Case No. C-16565.

Records disclose the following facts:

Vibram Manufacturing Corporation, petitioner, is engaged in the business of manufacturing shoe parts. It uses electricity in its operations.

Manila Electric Company, respondent, supplies electricity to petitioner.

In a letter[2] dated October 22, 1991, respondent demanded payment of P1,408,268.58 representing petitioner's unregistered electrical consumption from September 18, 1990 to September 17, 1991. Petitioner refused to pay, claiming that the electric meter and its installation are defective.

On December 2, 1991, respondent sent petitioner another demand letter, with a warning that should it refuse to pay, the electric supply to its factory will be discontinued.

Apprehensive of respondent's threat, petitioner filed with the Regional Trial Court, Branch 124, Caloocan City, a complaint for damages with prayer for preliminary and/or mandatory injunction[3] against respondent, docketed as Civil Case No. C-16565.

In an Order[4] dated July 27, 1994, the trial court issued a writ of preliminary prohibitory injunction.

On August 20, 1997, the trial court rendered a Decision,[5] the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the following:

- That the injunction earlier issued by this Court be made permanent;
- That defendant pay the plaintiff the sums of:
 - P50,000.00 as exemplary damages;
 - P100,000.00 as attorney's fees and litigation expenses.

SO ORDERED."

On appeal, the Court of Appeals, in a Decision dated July 6, 2001, affirmed with modification the trial court's judgment, holding that:

"Appellant submits that the trial court erred in holding that the service agreement in issue is in the nature of a contract of adhesion. On the other hand, appellee counters otherwise because appellant MERALCO is a monopoly whose service contracts with its customers are unilaterally drafted and printed in advance by it and the only participation of its customers is simply to sign or adhere thereto.

We agree with appellee. Notably, the controversy as to whether appellant's service agreement is a contract of adhesion had already been judicially resolved. In *Ridjo Tape & Chemical Corp. vs. Court of Appeals* (286 SCRA 544 [1998]), the Supreme Court had the occasion to declare:

x x x

"These types of contracts have been declared to be binding as ordinary contracts because the party adhering thereto is free to reject it in its entirety."

Appellant next argues that the appellee should pay for the electricity actually consumed but not registered due to a defective meter. And the refusal to pay the assessed amount authorizes the appellant to disconnect electric service as stipulated in the contract. Appellee takes exception insisting that it had not committed any fraud, default nor negligence. Instead, it was defendant who had been negligent in failing to inspect and consequently correct any defects on its meters. Moreover, the alleged defect failed to show that the meter did not register the full amount of energy consumed.

Again, We find merit in appellee's contention. In the case at bar, undisputed is the fact that the unregistered electric consumption was mainly caused by mechanical failure or defects in the meter. x x x

Fittingly, the ruling of the Supreme Court in *Ridjo*, supra (involving the same facts and questions) is on all four to the case at hand:

"Corollarily, it must be underscored that MERALCO has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence.

x x x

Accordingly, we are left with no recourse but to conclude that this is a case of negligence on the part of MERALCO for which it must bear the consequences. Its failure to make the necessary repairs and replacement of the defective electric meter installed within the premises of petitioners was obviously the proximate cause of the instant dispute between the parties."

x x x

This brings Us to the final issue of who between the parties should bear the loss for the unrecorded electricity consumed in the instant case. Again, in *Ridjo*, supra, the Supreme Court, to obviate the prospect of unjust enrichment, prescribed the equitable solution where the consumer was ordered to pay for the average consumption equivalent to three (3) months prior to the period of the controversy. Applying the formula in *Ridjo* to the instant case, We find appellee liable for the amount of P352,067.15 x x x.

One last word. We hold that the lower court should not have awarded exemplary damages in favor of appellee. An "award of exemplary damages is not warranted where there is no showing that the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner" (*Xentrex Automotive, Inc. vs. Court of Appeals*, 291

SCRA 66 [1998]). We find no such actuations in this suit.

Likewise, the award for attorney's fees and litigation expenses should be deleted. Well-enshrined is that "an award for attorney's fees must be stated in the text of the court's decision and not in the dispositive portion only" (Consolidated Bank and Trust Corporation (Solidbank) vs. Court of Appeals, 246 SCRA 193 [1995]) and Keng Hua Paper Products, Inc. vs. Court of Appeals, 286 SCRA 257 [1998]). This is also true with the litigation expenses where the body of the decision discussed nothing for its basis.

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby MODIFIED by deleting the awards for exemplary damages, attorney's fees and litigation expenses. However, appellee is ordered to pay MERALCO the amount of P352,067.15, representing its average electric consumption three (3) months prior to the period in controversy. In all other respect, the challenged judgment is AFFIRMED. No costs.

SO ORDERED."

Hence, this petition for review on certiorari.

Petitioner contends that the Appellate Court erred in ordering it to pay P352,067.15 although there is no factual finding as to the amount of electricity it consumed; and in deleting the damages awarded by the trial court in its favor.

For their part, respondent maintains that the Court of Appeals found that petitioner consumed electricity but was not registered due to defective meter. Hence, the payment adjudged is proper.

The above issues obviously involve a review and evaluation of the evidence, which are factual in nature, presented before the trial court. Basic is the rule that factual issues are beyond the province of this Court in a petition for review, for it is not its function to review evidence all over again.[6] Although there are exceptions, petitioner did not show that this case is one of them. Factual findings of the Court of Appeals are binding and conclusive upon this Court and, generally, will not be reviewed on appeal.[7] Its pronouncement in Ocampo vs. Ocampo[8] is squarely in point, thus:

"It is a settled doctrine that in a civil case, final and conclusive are the factual findings of the trial court, if supported by clear and convincing evidence on record. Usually, the Supreme Court does not review those findings-especially when affirmed by the Court of Appeals, as in this case (Philippine National Bank vs. Court of Appeals, 381 Phil. 720; 324 SCRA 714, February 4, 2000; Atillo III vs. Court of Appeals, 334 Phil. 546; 266 SCRA 596, January 23, 1997; Catapusan vs. Court of Appeals, 332 Phil. 586; 264 SCRA 534, November 21, 1996). From the records of the present case, no cogent evidence appears that would impel us to apply the above doctrine differently. The courts below have not overlooked essential facts that, if considered, may produce a different outcome."

WHEREFORE, the instant petition is DENIED. The assailed Decision of the Court of Appeals dated July 6, 2001 in CA-G.R. CV No. 57431 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Carpio Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Martin S. Villarama, Jr. and Sergio L. Pestaño (retired), Rollo at 159-169.

[2] Rollo at 315.

[3] Id. at 41-49.

[4] Id. at 65.

[5] Id. at 66.

[6] Langkaan Realty Development, Inc. vs. United Coconut Planters Bank, 347 SCRA 542, December 8, 2000; Lantin vs. Court of Appeals, 402 SCRA 202, April 30, 2003; Heirs of William Sevilla vs. Sevilla, 402 SCRA 501, April 30, 2003.

[7] Ma. Consolacion Lazaro vs. Hon. Court of Appeals, et al., 372 SCRA 308, December 14, 2001.

[8] 427 SCRA 545, April 14, 2004.

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