

MOF COMPANY, INC., PETITIONER, VS. EDWIN ENRIQUEZ, DOING BUSINESS UNDER THE NAME AND STYLE CRESCENS FOOD PRODUCTS, RESPONDENT.

G.R. No. 149280. May 09, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision,[1] dated July 31, 2001, of the Court of Appeals, which affirmed the award of damages made by the Regional Trial Court, Branch 106, Quezon City to respondent for breach of contract by petitioner.

The antecedent facts are as follows:

Respondent Edwin Enriquez wanted to export cookies, locally known as broas, to the United States. Petitioner MOF Company, Inc. is a domestic corporation engaged in ship brokerage and agency, customs brokerage, air-sea-land forwarding, and other allied businesses.[2] Upon the request of respondent, petitioner sent him a letter,[3] dated July 22, 1988, quoting the cost of shipments of goods from Manila to Washington, U.S.A., including the additional charge for “door-to-door” service. Respondent contacted the forwarding company, in response to which he received a letter,[4] dated June 13, 1989, signed by Minnie C. Almarines,[5] account executive of MOF Company, Inc., giving details of its previous price quotation. Based on the letter, respondent contracted the delivery service of petitioner for its broas export to the U.S.A. Their agreement was that the service charges would be collected from the consignee upon delivery of the goods, although initially they would have to be paid by respondent, to be reimbursed later by petitioner, upon collection of final service fees from the consignee.

The first batch of cargo, consisting of 30 cartons of broas, was picked up at respondent’s office for shipment on June 28, 1989, while the second batch of shipment, consisting of 14 cartons of broas cookies, was picked up on July 5, 1989. Respondent paid the total amount of P4,440.00 as initial service fee to petitioner for the two shipments.

After the export documents had been processed, petitioner delivered the first cargo to Continental Freight Services, Inc. (Continental Freight) for loading on the latter’s vessel. Continental Freight issued Bill of Lading No. MNLNAM06.242[6] under a “freight-collect port-to-door” arrangement to petitioner, which then delivered the bill to respondent. The second cargo delivered by petitioner to Continental Freight was covered by Bill of Lading No. MNLNAM07.266,[7] which contained the same terms and conditions as the first cargo.

Both cargoes failed to reach the consignee in the U.S.A. For this reason, respondent complained to petitioner, which promised to follow up the shipments. As the consignee never received the shipment, respondent filed a complaint for damages against petitioner for breach of contract. The complaint was filed in the Regional Trial Court, Branch 106, Quezon City, which, on August 30, 1996, rendered a decision, the dispositive portion of which reads:

WHEREFORE, by a preponderance of evidence, the Court hereby renders judgment for the plaintiff and against the defendant MOF Company, Inc., for which the said defendant is hereby ordered to pay the plaintiff the following:

- Actual damages of P634,958.15 for the value of broas cookies and unrealized profits suffered by the plaintiff;
- Moral damages of P50,000.00;
- Exemplary damages of P25,000.00;
- Attorney's fees of P20,000.00; and
- Costs.

SO ORDERED.[8]

The Court of Appeals, to which petitioner appealed, rendered a decision on July 31, 2001 affirming in toto the decision of the trial court. Hence, this petition for review on certiorari.

Petitioner contends that:

- THE INSTANT APPEAL FALLS UNDER THE EXCEPTION TO THE RULE THAT THE HONORABLE SUPREME COURT IS NOT A TRIER OF FACTS.
THE FACTUAL FINDINGS OF THE LOWER COURT AND THE COURT OF APPEALS DO NOT CONFORM TO THE EVIDENCE ON RECORD.

THE CONCLUSION OF THE COURT OF APPEALS IS GROUNDED ENTIRELY ON SPECULATIONS, SURMISES AND CONJECTURES.

THE FINDINGS OF THE COURT OF APPEALS IS CONTRARY TO THE ADMISSIONS OF BOTH THE PETITIONER AND RESPONDENT.

- THE CONTRACT TO DELIVER THE "BROAS" TO THE CONSIGNEE WAS BETWEEN RESPONDENT AND CONTINENTAL FREIGHT.

- THE RESPONDENT IS NOT ENTITLED TO THE AWARD OF DAMAGES OF WHATEVER KIND OR NATURE.

- THE PETITIONER IS ENTITLED TO ITS COUNTERCLAIMS.[9]

First. Petitioner denies that it entered into a contract with respondent for the "door-to-door" delivery of his goods to the consignee in the U.S.A. It claims that it offered its services to respondent, but the latter allegedly found petitioner's rates too expensive. Petitioner alleges that what it had contracted to render to respondent was only brokerage and forwarding services.[10]

This contention has no basis. To begin, the factual findings of the trial court, which the appellate court affirmed, are fully supported by the evidence on record. It is settled that such findings are binding upon this Court and will not be disturbed on appeal.[11] There are exceptional circumstances when findings of fact of lower courts may be set aside[12] but none of them is present in this case.

Petitioner admits having sent respondent price quotations for its "door-to-door" delivery service to the U.S.A. Indeed, this fact is evidenced by petitioner's letters to respondent dated July 22, 1988 and June 13, 1989.[13] Petitioner's offer was accepted by respondent when he decided to export broas to the U.S.A. in 1989.

Petitioner alleges that the amount (P4,440.00) paid by respondent was the minimum fee, which indicates that what

was contracted was merely brokerage and forwarding services. As found by the trial court, however, the said amount was only the initial charge for brokerage and forwarding fees, which was to be reimbursed by petitioner upon collection of the final service fees for the “door-to-door” delivery from the consignee.[14]

Petitioner claims that, because respondent found its seafreight rates expensive, the latter asked Minnie Almarines, petitioner’s account executive, to send his shipment through another company.[15] This claim is belied by the evidence presented by the parties. Based on the price quotation of petitioner, its rates are as follows:

“LCL SHIPMENTS - SEAFREIGHT

From: MANILA

To : WASHINGTON, U.S.A. US\$140.00/cbm +

P80.00 (LCL charge)

Door-to-Door Service: Additional US\$160.00
(until 5 cbm)”[16]

On the other hand, the rate charged by Continental Freight for the two shipments of broas was US\$350.00/CBM.[17] Hence, contrary to petitioner’s allegation, Continental Freight’s rate was more expensive than that of petitioner. In fact, respondent chose petitioner over other shipping companies precisely because petitioner offered the best terms and conditions, to wit: (1) the goods would be picked up from the shipper’s office or residence; (2) the goods would be delivered within 24 days from pick up; (3) the expenses would be paid for by the consignee upon delivery (freight collect); (4) the consignee would be informed regarding the shipment within two weeks from the pick up of goods from the shipper’s residence or office.[18]

Second. According to petitioner, the contract for delivery of cookies was between respondent and Continental Freight Services, Inc. and that what it did was merely to act as an agent of respondent in dealing with Continental Freight.[19]

We are not convinced. The contract was between respondent and petitioner. It was petitioner which dealt with Continental Freight and not respondent, whose transaction was limited to petitioner. Respondent testified that he never contracted the services of Continental Freight and that it was petitioner which dealt with the latter.[20] Respondent denied he ever authorized petitioner to ship his goods through Continental Freight and claimed that he only came to know about the said arrangement when he was given a copy of the bills of lading issued by Continental Freight.[21] For this reason, according to respondent, when he learned that the shipment never reached the consignee, he contacted petitioner instead of Continental Freight.[22]

Respondent’s testimony was confirmed by Minnie Almarines, petitioner’s account executive, who testified that she contacted Continental Freight regarding the details of the shipment of the cookies. When she was informed by respondent that the broas had not been received by the consignee in the U.S.A., she saw the manager of Continental Freight to follow up the shipments.

The claim of Almarines that she only acted as a representative of respondent as part of her company’s goodwill[23] is hard to believe. There is absolutely no evidence to support this allegation. Moreover, the business which respondent gave to petitioner is so inconsequential to merit the extensive services given free. Indeed, respondent denies he ever authorized petitioner to ship his goods through Continental Freight. Contrary to petitioner’s claim that respondent asked Almarines to ship his goods through Continental Freight because of its lower freight rates, the evidence shows that Continental Freight in fact charged higher rates than petitioner. All these circumstances lead to the conclusion that it was petitioner which engaged the services of Continental Freight for the shipment of respondent’s goods, without the knowledge and consent of respondent and that, as far as the

latter is concerned, his contract for “door-to-door” delivery service to the United States was with petitioner.

Third. With regard to the awards to respondent, we find the award for actual damages to be excessive and that for moral and exemplary damages to be without basis.

Respondent testified that the price per tin can of broas was P51.00.[24] Since there were 18 cans per carton, the 44 cartons of broas were worth P40,392.00 (44 cartons x 18 x P51.00). This is the amount of actual damages to which petitioner is entitled. The award of P575,518.15 as unrealized profit is based merely on the projection of income prepared by respondent’s accountant Felicisima Saria.[25] The rule is that to be able to recover actual or compensatory damages, the amount of loss must be proven with a reasonable degree of certainty, based on competent proof and on the best evidence obtainable by the injured party.[26]

On the other hand, the award of moral and exemplary damages should be deleted. In view of Art. 2220 of the Civil Code, it has been held that “in culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation.”[27] Since the law presumes good faith, the person claiming moral damages must prove bad faith or ill motive by clear and convincing evidence.[28] The evidence presented by respondent in this case is insufficient to overcome the presumption of good faith in favor of petitioner.

Neither is respondent entitled to exemplary damages. Under Art. 2232, such damages may be awarded in contracts and quasi-contracts if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Respondent has not sufficiently established that petitioner acted in such manner as to warrant the grant of exemplary damages.

Anent the award for attorney’s fees and the cost of litigation in favor of respondent, we are in accord with the trial court and the appellate court that respondent is entitled to an award of these items. Respondent in this case was compelled to litigate and, as a result, incurred expenses in order protect his interests.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with the **MODIFICATION** that the award of actual damages to respondent is reduced to P40,392.00, while the awards for moral and exemplary damages to him are deleted.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Corona, JJ., concur.

De Leon, Jr., J., abroad on official business.

[1] Per Justice Renato C. Dacudao and concurred in by Justices Romeo J. Callejo, Sr. and Perlita J. Tria Tirona.

[2] Petition, p. 3; Rollo, p. 15.

[3] Exh. M.

[4] Exh. B.

[5] Exh. B-2.

[6] Exh. K.

[7] Exh. L.

[8] RTC Decision, pp. 10-11; Rollo, pp. 75-76.

[9] Petition, pp. 5-6; id., pp. 17-18.

[10] Id., pp. 6-17; id., pp. 18-29.

[11] *The International Corporate Bank v. Gueco*, G.R. No. 141968, Feb. 12, 2001; *French Oil Mill Machinery Co., Inc. v. Court of Appeals*, 295 SCRA 462 (1998); *Lagandaon v. Court of Appeals*, 290 SCRA 330 (1998); *Sandoval v. Court of Appeals*, 260 SCRA 283 (1996).

[12] These circumstances are: (1) when the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly absurd, mistaken, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) 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; (8) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; (9) when the findings of fact of the Court of Appeals are contrary to those of the trial court; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record or where the facts set forth by the petitioner are not disputed by the respondent. See *Hemedes v. Court of Appeals*, 316 SCRA 347, 373-374 n. 47 (1999); *Golangco v. Court of Appeals*, 283 SCRA 493, 503-504 n. 20 (1997); *Food Terminal, Inc. v. Court of Appeals* 262 SCRA 339, 343 n. 4 (1996) citing *Verendia v. Court of Appeals*, 217 SCRA 417 (1993).

[13] See Exhs. M and B.

[14] RTC Decision, pp.1-2; Rollo, pp. 66-67.

[15] TSN (Minnie Almarines), pp. 17-18, May 4, 1992.

[16] Exh. B

[17] See Exhs. K and L.

[18] RTC Decision, pp. 1-2; Rollo, pp. 66-67; TSN (Edwin Enriquez), pp. 7-8, Aug. 5, 1991.

[19] Petition, pp. 17-22; Rollo, pp. 29-34.

[20] TSN (Edwin Enriquez), p. 31, Aug. 5, 1991.

[21] Id., pp. 25-27.

[22] TSN (Edwin Enriquez), pp. 35-37, June 27, 1991.

[23] TSN (Minnie Almarines), pp. 15-17, May 4, 1992.

[24] TSN (Edwin Enriquez), p. 33, Aug. 5, 1991.

[25] TSN (Felicisima Saria), pp. 11-13, Sept. 4, 1991; See Exh. I-2.

[26] *Magat v. Court of Appeals*, 337 SCRA 298 (2000); *Integrated Packaging Corporation v. Court of Appeals*, 333 SCRA 170 (2000); *Domel Trading Corporation v. Court of Appeals*, 315 SCRA 13 (1999).

[27] *Francisco v. Ferrer*, G.R. No. 142029, Feb. 28, 2001 citing *Expertravel & Tours, Inc. v. Court of Appeals*, 309 SCRA 141, 145 (1999);

[28] *Estanislao v. Court of Appeals*, G.R. No. 143697, July 31, 2001.

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