

NESTORIO MEMITA, PETITIONER, VS. RICARDO MASONGSONG, RESPONDENT.

G.R. No. 150912. May 28, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] of the Decision[2] promulgated on 9 August 2001 and of the Resolution[3] promulgated on 22 October 2001 by the Court of Appeals (appellate court) in CA-G.R. CV No. 60555. The Decision dismissed Nestorio Memita's (Memita) appeal and affirmed the Decision[4] dated 30 April 1998 of Branch 50 of the Regional Trial Court of Negros Occidental (trial court), while the Resolution denied Memita's motion for reconsideration.

The trial court ordered Memita to pay Ricardo Masongsong (Masongsong) P603,520.50 with interest at 12% per annum, attorney's fees and costs of litigation.

The Facts

Masongsong, under the business name of RM Integrated Services, was the distributor of San Miguel Foods, Inc.'s Magnolia chicken products. Masongsong supplied Magnolia chicken products on a 25-day payment credit to Memita's Vicor Store in Burgos Public Market, Bacolod City.

On 12 August 1996, Masongsong filed a complaint[5] before the trial court and alleged that from 11 March 1996 to 25 June 1996, Memita's credit on goods purchased already reached the amount of P603,520.50. Masongsong made several demands upon Memita to pay before Masongsong filed the complaint. Masongsong even sent a demand letter to Memita on 25 July 1996, but did not receive any reply. Aside from payment, Masongsong also prayed for the issuance of a writ of attachment against Memita.

On 21 August 1996, the trial court ordered[6] the issuance of a writ of attachment against Memita, taking into account the following: (1) the allegations of the verified complaint; (2) the testimonies of Masongsong and Joel Go, his sales person; and (3) Masongsong's bond. According to the sheriff's return of service[7] dated 16 September 1996, the Provincial Sheriff issued a notice of levy on attachment to the Registrar of the Land Transportation Office and a notice of embargo to the Register of Deeds of Bacolod City.

In his answer,[8] Memita did not deny that he purchased goods on credit from Masongsong. Memita further stated that his refusal to pay was based on the following grounds: (1) questionable deliveries; (2) short deliveries and discrepancies; and (3) possible manipulation of delivery receipts. Memita made a counterclaim and asked for P300,000 in actual damages for the seizure of two of his vehicles; P500,000 as moral damages; at least P200,000 as exemplary damages; and P150,000 as attorney's fees.

Trial proceeded soon thereafter. The trial court found that:

The evidence ineluctably show that the transaction between [Masongsong] and [Memita] is documented by the Sales Invoices annexed as Annexes A to TTT of the Complaint. In his Answer, [Memita] admits the purchases but raised the issue of questionable and short deliveries. [Memita] also speculates that [Masongsong] may have manipulated the receipts.

As stated, the Sales Invoices were attached as annexes to the Complaint but [Memita's] Answer failed to explicitly deny or contest the genuineness and due execution of any of the receipt or of the signature of [Memita] or of his duly authorized representative appearing in the Sales Invoice acknowledging receipt of the goods. It is to be noted that except for two (2) Sales Invoices - Sales Invoice No. 6557 dated June 4, 1996 and Sales Invoice No. 6300 dated May 29, 1996 - all sales invoices bears [sic] the signature of [Memita] or his authorized representative acknowledging receipt of the deliveries.

x x x x

There are Sales Invoices where the signature of [Masongsong's] Salesman, Mr. Joel Go, appears in the portion, "Payment Received by:". Mr. Go explained that these signatures were inadvertently written but that he received no payment as [Memita] always obtains the goods on credit. [Memita] pays only after a period of time and the payment is always in the form of a check.

The Court gives credence to this declaration of Mr. Go as the testimony is credible and was not contradicted. Moreover, [Memita] failed to explicitly raise the defense of payment in his Answer. It is reiterated that the Sales Invoices were attached as annexes to the Complaint and their genuineness and due execution are deemed admitted for failure of [Memita] to deny them under oath.

In his Answer, [Memita] expressly admitted the deliveries of the frozen poultry products made by [Masongsong] and that these deliveries were not paid. [Memita], however, claims that there were short deliveries, questionable deliveries or discrepancies. Implicitly [Memita] admits that the [Masongsong's] claim is substantially correct but there were short deliveries, questionable deliveries or discrepancies.

It is reiterated that all the deliveries are evidenced by Sales Invoices on which the whole of [Masongsong's] claim is based. Defendant failed to point out any particular Sales Invoice which substantiates his claim of short deliveries or questionable deliveries.

It is also reiterated that as [Masongsong] declared, [Memita] belatedly raised the issue of short deliveries and discrepancies after he failed to pay and demands were made on him to pay.

To bolster his claim of short deliveries and discrepancies, [Memita] attempted to show to the Court that there were other documents, namely: the Load Order Manifest and the Issue Form wherein the actual deliveries to the defendant are reflected. In so far as the Issue Form is concerned, this document reflects the quantity of goods obtained by [Masongsong] from San Miguel Foods for delivery to [Masongsong's] customers. The Issue Form does not at all show the quantity of goods delivered to each particular customer of [Masongsong]. The Load Order Manifest is [Masongsong's] own document which reflects the quantity of goods to be delivered to the customer. When the goods are actually delivered, a Sales Invoice is prepared wherein the details of the transaction is reflected. It is on this Sales Invoice where [Memita] or his representative affixes his signature acknowledging receipt of the goods. Clearly, the Sales Invoice is the document evidencing the transaction between the parties. Clearly, there was no need for [Masongsong] to preserve the Load Order Manifest as it is a private document and is not the evidence of the transaction between the parties.

[Memita] himself could have taken the witness stand and pointed out the alleged short deliveries and discrepancies. But [Memita] dilly-dallied and took the risky and speculative move of calling and presenting as his witnesses, personnel of the San Miguel Foods, Inc. The testimonies of the two (2) San Miguel officials, namely Mr. Defante and Mr. Reynaldo Geaga, strengthened the claim of [Masongsong] that the Issue Form[s] do not reflect the quantity of frozen foods delivered to [Memita]. Moreover, Mr. Defante categorically declared

that he was not privy to the transaction between [Masongsong] and [Memita] but as Sales Manager, it was his duty to win back the patronage of [Memita]. The only favorable declaration of Mr. Defante for [Memita] is that [Memita] used to be a good customer in the past. This, by itself, however, does not carry much load for [Memita's] cause.

The testimonies of Mr. Defante and Mr. Geaga are credible as they are disinterested witnesses. The testimonies bind [Memita] who presented them. This is fundamental.

The testimony of [Memita's] other witness, Mr. Alberto Valenzuela, a former employee of San Miguel Foods is not of much help to [Memita's] cause. For while Mr. Valenzuela asserts that during his tenure with San Miguel Foods, the Issue Form for the quantity of stocks to be delivered tallies with the Sales Invoice, this situation obtained at the time when [Memita] directly made purchases from San Miguel. He is not in the position to say whether this procedure was adopted by [Masongsong].

Be that as it may, it is quite obvious that the best evidence of the transaction between [Masongsong] and [Memita] is the Sales Invoice for this document reflects the particulars of the transaction between the parties for a specific day. In this document, [Memita] acknowledges receipt of the deliveries made by [Masongsong].

In the course of [Masongsong's] cross-examination, he was confronted with UCPB Check No. 05760 dated July 1, 1996. [Masongsong] admits that he received the check as payment of [Memita] before the filing of the present suit but explained that the payment is for [Memita's] other past account. This claim of [Masongsong] is credible. Moreover, the issue of payments or that the account or portions of it was already paid was not even raised in [Memita's] Answer. In fact, this issue is not one of those submitted for resolution as reflected in the Pre-Trial Order. Finally, the foregoing checks [sic] affirms the claim of [Masongsong] that [Memita] does not pay on delivery of the goods but on [sic] a cumulative manner and with the use of a check.[9]

Memita failed to testify in his own behalf. Memita and his counsel, Atty. Allan L. Zamora (Atty. Zamora), failed to appear for the hearing on 22 January 1998. Atty. Zamora filed an Urgent Motion for Postponement on 21 January 1998 because he had to "proceed to Iloilo City to attend to an urgent personal matter that requires his personal attendance." Furthermore, Atty. Zamora alleged that only minor details were being discussed in the negotiation for the settlement of the collection case.[10] The trial court, however, agreed with the reasons given by Masongsong's counsel, Atty. Vicente Sabornay (Atty. Sabornay). Atty. Sabornay stated that the parties and their counsels expressly agreed in the 9 December 1997 hearing that the setting for 22 January 1998 was intransferrable in character. Moreover, the motion for postponement did not conform to the three-day notice rule. Finally, Atty. Sabornay manifested that Memita's settlement offer was not acceptable to Masongsong. The trial court thus denied the motion for postponement and deemed the case submitted for decision.[11]

Atty. Zamora filed a motion for reconsideration of the 22 January 1998 order. He stated that the "personal matters had something to do with the ailment of his aunt to whom he owed so much for his education"[12] and that "said aunt just died recently." [13]

In an order dated 6 March 1998, the trial court denied the motion for reconsideration. Portions of the trial court's order read:

In his Motion for [R]econsideration, [Memita's] counsel failed to justify his failure to appear in the hearing. Even if it is true that he has to visit a sick aunt in Iloilo, the visit could have been timed late in the day for there are several ferry boats [from Bacolod] going to Iloilo late in the afternoon.

The records disclose that [Memita] had asked for several postponements, specifically on January 17, 1997, January 22, 1997, August 18, 1997, September 17, 1997, December 19, 1997 and lastly January 22, 1998.[14]

The Ruling of the Trial Court

In its decision dated 30 April 1998, the trial court ruled that Masongsong was entitled to the reliefs prayed for in his Complaint. Thus:

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered as follows:

- [Memita] is ordered to pay [Masongsong] the sum of P603,520.50. This amount shall bear interests [sic] at the rate of Twelve (12) per cent per annum reckoned from the time this suit was filed until paid;
- [Memita] is ordered to pay attorney's fees of ten (10) per cent of the foregoing principal amount;
- Defendant is ordered to pay litigation expenses of P5,301.40.[15]

On 19 May 1998, Memita notified the trial court of his desire to file an appeal before the appellate court. In his brief, Memita assigned the following errors of the trial court:

- In denying [Memita] of his right to a day in court and/or right to due process;
- In admitting as evidence the machine copies of the seventy-two (72) pieces [of] sales invoices (Exhibit "A") despite the patent lack of proof of due execution and authenticity; and
- In holding that [Memita] acknowledged receipt of the deliveries made by [Masongsong].[16]

The Ruling of the Appellate Court

The appellate court did not agree with Memita. It upheld the trial court's decision in toto.

The appellate court identified two issues for its resolution: (1) whether Memita was deprived of his right to due process when the trial court denied his motion for postponement; and (2) whether the trial court erred in admitting the sales invoices submitted by Masongsong. In resolving the first issue, the appellate court reiterated Masongsong's argument that the trial court committed no error in denying Memita's motion to postpone the hearing. The appellate court emphasized that due process demands proper obedience to procedural rules. As to the second issue, the appellate court pointed out that Memita failed to explicitly deny or contest the genuineness and due execution of the receipts or any of the signatures on the receipts. The appellate court also stated that Memita failed to discharge the burden of proving his allegations of short or questionable deliveries. The appellate court ruled thus:

IN VIEW OF ALL THE FOREGOING, the instant appeal is ordered DISMISSED and the challenged Decision dated April 30, 1998 is AFFIRMED in toto. Costs against the appellant.

SO ORDERED.[17]

The Issues

Dissatisfied with the appellate court's ruling, Memita filed a petition before this Court and assigned the following as errors of the appellate court:

- [Memita] was denied of his right to a day in court when he was not allowed by the [trial] court to testify.
- [Memita] was denied of his right to due process when he was precluded by the [trial] court from offering his documental [sic] exhibits for admission.
- Rule 8, Section 8 of the Revised Rules of Civil Procedure, relied upon by the Honorable Court of Appeals[,] does not apply because the Answer with Counterclaim of [Memita] was verified and under oath.
- Also, Rule 8, Section 8 of the Revised Rules of Civil Procedure, is inapplicable as petitioner does not appear to be a party to all of the seventy-two (72) sales invoices admitted in evidence by the lower court.

- The seventy-two (72) sales invoices should have been excluded and denied admission for failure of [Masongsong] to prove in the course of the trial their authenticity and due execution.[18]

The Ruling of the Court

The petition has no merit.

Due Process

Memita claims that he was deprived of his right to due process when the trial court denied his motion for postponement. He further asserts that he was not given the opportunity to offer his exhibits.

The essence of due process is that a party is given a reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[19] Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. If the opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.[20]

Before the trial court considered the case submitted for resolution, Memita asked to postpone the hearing six times: on 17 January 1997, 22 January 1997, 18 August 1997, 17 September 1997, 9 December 1997, and lastly 22 January 1998.[21] Memita advanced varying reasons for the postponements: counsel's involvement in a traffic accident;[22] counsel's hearing in another branch of the court;[23] need for further time for finalizing a settlement;[24] counsel's severe migraine brought about by an eye ailment;[25] and counsel's need to personally attend to an urgent matter.[26] Moreover, the trial court, as evidenced by its orders dated 18 August 1997, 15 September 1997, and 9 December 1997,[27] repeatedly stated that it would no longer entertain further postponement because the resolution of the case was much delayed.

A motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted.[28] The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. Indeed, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party.[29]

In *Limpot v. Court of Appeals*,[30] this Court underscored the value of procedural rules, thus:

[P]rocedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights, as in this case. Like all rules, they are required to be followed except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.

Admissibility of the Sales Invoices

In his Answer, Memita admitted that he purchased goods from Masongsong. However, without specifying the date of purchase or the receipt number, Memita denied the quantities and value of the purchases. Memita alleged that there were questionable deliveries and questionable number of kilos per crate. Memita further alleged that he discovered short deliveries and discrepancies. Through these unsubstantiated allegations, Memita concluded that Masongsong might have manipulated the delivery receipts.

Memita insists that the trial court should not have admitted the sales invoices attached to Masongsong's complaint. In its decision, the trial court stated that "[Memita] failed to point out any particular Sales Invoice

which substantiates his claim of short deliveries or questionable deliveries." [31] The appellate court reiterated the trial court's position and stated that "[Memita's] Answer failed to explicitly deny or contest the genuineness and due execution of any of the receipts nor any of his signatures or that of his authorized representative appearing therein." [32]

Section 8 of Rule 8 of the 1997 Rules of Civil Procedure reads as follows:

Sec. 8. How to contest such documents. - When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for inspection of the original instrument is refused. (Emphasis added)

Section 10 of the same Rule further describes how a specific denial should be made:

Sec. 10. Specific denial. - A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (Emphasis added)

Memita, in alleging "questionable" and "short" deliveries, in effect alleges that Masongsong committed fraud. As the party invoking fraud, Memita has the burden of proof. Whoever alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and private concerns have been fair and regular. [33]

Memita chose to present evidence which did not "set forth the facts" nor the "substance of the matters upon which he relies to support his denial." Memita chose to present the concepts of the load order manifest and the issue form. He also presented witnesses who are current and former employees of San Miguel Foods, Inc. However, per the explanation of Mr. Alberto Valenzuela, a former issuer/receiver and route salesman of San Miguel Foods, Inc., the load order manifest shows the goods ordered by Masongsong from San Miguel Foods, Inc. But the load order manifest cannot be considered as the only basis of a customer's order as the customer is not precluded from calling up the San Miguel Foods, Inc. office and make additional orders. [34] Mr. Reynaldo Geaga, an employee in charge of the warehouse of San Miguel Foods, Inc., explained that the issue form reflects the quantity of goods actually obtained by Masongsong from San Miguel Foods, Inc. San Miguel Foods, Inc. then uses the issue form as basis for billing Masongsong. [35]

The best evidence of the transaction between Memita and Masongsong are the sales invoices. The sales invoices show that Memita or his representative acknowledged receipt of Masongsong's deliveries without protest. Memita aired his doubts about the amounts only after Masongsong asked him to pay his credit. Moreover, although Memita confronted Masongsong with a check dated 1 July 1996 in the amount of P127,238.40 payable to RM Integrated Services, Masongsong stated that the said amount did not include any transaction in the present case. [36]

Memita's evidence reveal that Memita failed to prove fraud on Masongsong's part. Therefore, the trial court is correct in stating that Memita is liable to Masongsong in the amount of P603,520.50 plus interest of 12% per annum as agreed upon by the parties and as stated in the sales invoices. Memita is further liable for attorney's fees in the amount of 10% of the principal claim and costs of litigation.

WHEREFORE, the petition is DENIED. The Decision dated 9 August 2001 and the Resolution dated 22 October 2001 of the Court of Appeals in CA-G.R. CV No. 60555 are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, and Velasco, Jr., JJ., concur.
Carpio-Morales, J., on official leave.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 30-41. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Martin S. Villarama, Jr. and Sergio L. Pestaño, concurring.

[3] Id. at 42. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Martin S. Villarama, Jr. and Sergio L. Pestaño, concurring.

[4] Id. at 43-58. Penned by Judge Roberto S. Chiongson.

[5] Records, pp. 2-7.

[6] Id. at 93.

[7] Id. at 94.

[8] Id. at 130-134.

[9] Rollo, pp. 52-56.

[10] Records, p. 694.

[11] Id. at 696.

[12] Id. at 697.

[13] Id. at 697-699.

[14] Id. at 700.

[15] Rollo, pp. 57-58.

[16] CA rollo, pp. 29-30.

[17] Rollo, p. 41.

[18] Id. at 14-15.

[19] *Air Phils. Corp. v. International Business Aviation Services Phils.*, G.R. No. 151963, 9 September 2004, 438 SCRA 51.

[20] See *Tiomico v. Court of Appeals*, 363 Phil. 558 (1999).

[21] Records, p. 700.

[22] Id. at 149.

[23] Id. at 151.

- [24] Id. at 539.
- [25] Id. at 541 and 543.
- [26] Id. at 694 and 696.
- [27] Id. at 539, 543, and 614.
- [28] See *China Banking Corp. v. Court of Appeals, et al.*, 162 Phil. 505 (1976).
- [29] See *Gohu v. Spouses Gohu*, 397 Phil. 126 (2000).
- [30] G.R. No. 44642, 20 February 1989, 170 SCRA 367, 377.
- [31] Records, p. 712.
- [32] Rollo, p. 38.
- [33] *Mangahas v. Court of Appeals*, 364 Phil. 13, 21 (1999).
- [34] TSN, 6 June 1997, pp. 15, 35-36.
- [35] TSN, 4 November 1997, p. 43.
- [36] TSN, 31 January 1997, pp. 53-54.

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