

**FOOD TERMINAL, INC., PETITIONER, VS. HON. REYNALDO B. DAWAY,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 90, QUEZON
CITY AND TAO DEVELOPMENT, INC., RESPONDENTS.**

G.R. No. 157353. December 09, 2004

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in its CA-G.R. SP No. 45589, to wit:

- Decision dated 28 June 2002[1], affirming an earlier Order of the Regional Trial Court at Quezon City which granted the motion for execution thereat filed by herein private respondent against the petitioner; and
- Resolution dated 13 February 2003, denying petitioner's motion for reconsideration of the first.

The factual milieu:

Sometime in early 1984, petitioner Food Terminal Inc. (FTI), a government-owned corporation engaged in the business of providing warehousing and storage services to the public for a fee, and private respondent Tao Development, Inc. (TAO), entered into a contract of storage whereunder TAO deposited at FTI's cold storage export quality onions consisting of 22,716 bags (approximately 567,900 kilos) of yellow granex onions and 2,853 bags (approximately 71,300 kilos) of red creole onions. Unfortunately, an ammonia leak penetrated through FTI's storage facilities and caused damage to TAO's goods, rendering the deposited onions unfit for export.

On November 3, 1998, in the Regional Trial Court of Quezon City, TAO instituted a complaint for damages against FTI.

In a decision dated 16 December 1991, the trial court, finding FTI negligent in the performance of its duties, rendered judgment in favor of TAO. Therefrom, FTI went on appeal to the Court of Appeals. In a decision dated 28 April 1995, the appellate court affirmed with modifications the appealed decision of the trial court, thus:

"WHEREFORE, in view of the foregoing, the decision appealed from is hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, judgment is hereby rendered as follows:

- a) Ordering the defendant Food Terminal, Inc. to pay appellee TAO Development, Inc. the amount of P2,400,168.00 as actual damages representing the loss sustained by the appellee;
- b) Ordering said appellant to pay said appellee the amount of P1,534,005.00 as unearned profits; and
- c) Ordering said appellant to pay said appellee the amount of P100,000.00 as attorney's fees.

The above amounts shall earn interest at the rate of 12% per annum from May 15, 1984 until fully satisfied.

No costs.

SO ORDERED”.[2]

Undaunted, FTI sought further appellate recourse to this Court in G.R. No. 120097, entitled “Food Terminal, Inc. vs. Court of Appeals and Tao Development, Inc.”[3] In a Resolution dated 23 September 1996, this Court affirmed with modification the challenged decision of the Court of Appeals:

“ACCORDINGLY, the appealed decision is hereby AFFIRMED with the following modification:

- a) Ordering petitioner Food Terminal, Inc. to pay private respondent TAO Development, Inc. the amount of P2,400,168.00 as actual damages representing the loss sustained by the private respondent;
- b) Ordering petitioner to pay private respondent the amount of P1,534,005.00 as unearned profits; and
- c) Ordering petitioner to pay private respondent the amount of P100,000.00 as attorney's fees.

These amounts shall earn interest at the rate of SIX PER CENT (6%) per annum from May 15, 1984 until fully satisfied, but before judgment becomes final. From the date of finality of the judgment until the obligation is totally paid, A TWELVE PER CENT (12%) interest, in lieu of the SIX PER CENT (6%) interest, shall be imposed.

SO ORDERED”.[4]

It is not disputed that the aforementioned Resolution of this Court in G.R. No. 120097 became final and executory on January 6, 1997 and a corresponding Entry of Judgment made thereon.[5]

In a letter of February 12, 1997, TAO demanded from FTI payment in satisfaction of the judgment in G.R. No. 120097 in the amount of P7,194,453.60, broken down, as follows:

“P2,400,168.00 - actual damages

1,534,005.00 - unearned profits

100,000.00 - attorney's fees

P4,034,173.00

3,063,282.03 - 6% interest from May 15, 1984 to Jan. 6, 1997

96,998.55 - 12% interest from Jan. 6, to Feb. 15, 1997

P7,194,453.60 .”[6]

In a reply letter of March 7, 1997,[7] FTI disagreed with TAO's foregoing computation and informed the latter that per its (FTI's) own computation, its obligation is less by P46,019.86 than that claimed by TAO. In effect, it is FTI's posture that its liability is only for P7,148,433.72. Percentage wise, the variance is less than one percent or .64 percent.

A new phase of legal battle between the herein parties began when, on May 5, 1997, TAO filed with the trial court a motion for execution, praying for the issuance of a writ of execution against FTI for the total amount of P7,440,729.48.[8]

In an Order dated 27 May 1997,[9] the trial court, noting the absence of any opposition from FTI, granted TAO's motion and accordingly ordered the issuance of the desired writ. FTI filed a motion for reconsideration, contending that it was denied due process because it allegedly did not receive any notice of hearing.[10] In its subsequent Order of 12 August 1997, the trial court denied the motion.[11]

Meanwhile, on August 22, 1997, FTI delivered to TAO a check for P7,148,433.72, which check was admittedly encashed by TAO.

Thereafter, FTI filed with the Court of Appeals a petition for certiorari to nullify the trial court's aforesaid orders. In its petition, docketed in said court as CA-G.R. SP NO. 45589, FTI maintained that TAO had acceded to its computation, and presented, in support thereof, an alleged letter dated March 13, 1997 of Alberto Malvar, president of TAO, demanding payment for only P7,148,433.72.[12] On the basis of said letter and the fact that TAO had encashed the FTI check for the same amount, FTI argued that it has satisfied the judgment in G.R. No. 120097. Ergo, so it concludes, the writ of execution issued against it by the trial court should be annulled and set aside.[13]

In the herein assailed Decision dated 28 June 2002 and Resolution dated 13 February 2003, the Court of Appeals respectively dismissed FTI's petition and denied its motion for reconsideration, ruling, inter alia, that petitioner FTI failed to establish the supposed accession of TAO to its computation, and holding that the letter dated March 13, 1997 of Alberto Malvar is a forgery.

Hence, FTI's present recourse on the following assigned errors:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT SUSTAINED PUBLIC RESPONDENT'S HOLDING THAT THE TOTAL OBLIGATION OF PETITIONER TO PRIVATE RESPONDENT AS PER DECISION OF THE HONORABLE SUPREME COURT DATED SEPTEMBER 23, 1996 EXCEEDS P7,148,433.72

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT HOLDING THAT THE DELAY IN THE SATISFACTION OF THE JUDGMENT AWARD WAS CAUSED SOLELY BY PRIVATE RESPONDENT'S UNJUSTIFIED REFUSAL TO ACCEPT PETITIONER'S OFFER/TENDER OF PAYMENT.

III

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN NOT HOLDING THAT PETITIONER IS NOT DELINQUENT IN ITS OBLIGATION AND THAT IT SHOULD BE EXCUSED FROM PAYING THE NECESSARY INTEREST AFTER APRIL 2, 1997.

IV

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN NOT HOLDING THAT THE JUDGMENT AWARD SOUGHT TO BE EXECUTED AGAINST PETITIONER, OR AT LEAST P7,148,433.72 THEREOF, HAD LONG BEEN SETTLED.[14]

We dismiss.

Petitioner maintains that the motion for execution filed by TAO before the trial court should have been denied by said court because it has satisfied the judgment award in G.R. No. 120097. Elaborating thereon, petitioner claims that as early as April 2, 1997, or fifteen (15) days prior to TAO's filing of the motion, it had already informed TAO that it had computed the judgment award to be at only P7,148,433.72, an amount deemed correct and acquiesced in by TAO. And since the latter had already encashed the check issued by the petitioner for the same amount, its obligation in G.R. No. 120097 had thus been complied with.

Simply put, the issue before us is whether or not petitioner's payment of P7,148,433.72 had resulted into the

extinguishment of its obligation to respondent under G.R. No. 120097.

Instructive on the issue thus formulated is Article 1248 of the Civil Code. It provides:

“ART. 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter”.

As borne by the records, petitioner FTI knew very well that respondent TAO was demanding the sum of P7,194,453.60 as payment for its liability under this Court’s Resolution in G.R. No. 120097. Yet, despite such knowledge, petitioner proceeded to offer a lesser amount. Under the aforementioned provision of the Civil Code, respondent TAO is thus justified in its initial refusal to accept petitioner’s offer of only P7,148,433.72. We cannot begrudge TAO for receiving the offered amount after it had filed its motion for execution. As it were, FTI’s offer of P7,148,433.72 opened an opportunity for TAO to receive a huge portion of FTI’s obligation to it. In any event, there was no showing that respondent TAO has ever freed FTI from its obligation after receiving the partial payment.

What is more, it is too late in the day for petitioner to raise at this stage the issue of whether or not respondent had acceded to its own computation of liability under G.R. No. 120097. It is a factual issue which this Court will not resolve, absent any compelling reason therefor, of which we find none in this case. In any event, settled is the rule that pure questions of fact may not be the proper subject of an appeal by certiorari under Rule 45.[15] For sure, even the conclusion of the Court of Appeals that the letter dated March 13, 1997 of TAO’s president, Alberto Malvar, was a forgery may no longer be reexamined by this Court.

WHEREFORE, this petition is DISMISSED and the impugned issuances of the Court of Appeals AFFIRMED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez and Carpio Morales, JJ., concur.
Corona, J., on leave

[1] Penned by Justice Rebecca De Guia-Salvador and concurred in by Justices Godardo A. Jacinto and Eloy R. Bello, Jr.

[2] Rollo, p. 29.

[3] 262 SCRA 339 [1996].

[4] 262 SCRA 339, 344-345 [1996].

[5] Rollo, p. 39.

[6] Petition, Annex “D”; Rollo, p. 41.

[7] Rollo, p. 43.

[8] Rollo, pp. 48-50.

[9] Rollo, pp. 51-52.

[10] Rollo, pp. 53-55.

[11] Rollo, p. 56.

[12] Rollo, p. 44.

[13] Petition in CA-G.R. SP No. 45589; Rollo, pp. 60-74.

[14] Rollo, pp. 6-7.

[15] Inland Trailways Incorporated vs. Court of Appeals, 255 SCRA 178, 181 [1996].

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