

HYATT ELEVATORS AND ESCALATORS CORPORATION, PETITIONER, VS. CATHEDRAL HEIGHTS BUILDING COMPLEX ASSOCIATION, INC., RESPONDENT.

G.R. No. 173881. December 01, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the April 20, 2006 Decision[2] and July 31, 2006 Resolution[3] of the Court of Appeals (CA), in CA-G.R. CV No. 80427.

The facts of the case are as follows:

On October 1, 1994, petitioner Hyatt Elevators and Escalators Corporation entered into an "Agreement to Service Elevators" (Service Agreement)[4] with respondent Cathedral Heights Building Complex Association, Inc., where petitioner was contracted to maintain four passenger elevators installed in respondent's building. Under the Service Agreement, the duties and obligations of petitioner included monthly inspection, adjustment and lubrication of machinery, motors, control parts and accessory equipments, including switches and electrical wirings.[5] Section D (2) of the Service Agreement provides that respondent shall pay for the additional charges incurred in connection with the repair and supply of parts.

Petitioner claims that during the period of April 1997 to July 1998 it had incurred expenses amounting to Php 1,161,933.47 in the maintenance and repair of the four elevators as itemized in a statement of account.[6] Petitioner demanded from respondent the payment of the aforesaid amount allegedly through a series of demand letters, the last one sent on July 18, 2000.[7] Respondent, however, refused to pay the amount.

Petitioner filed with the Regional Trial Court (RTC), Branch 100, Quezon City, a Complaint for sum of money against respondent. Said complaint was docketed as Civil Case No. Q-01-43055.

On March 5, 2003, the RTC rendered Judgment[8] ruling in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, JUDGMENT IS HEREBY RENDERED IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT ordering the latter to pay Plaintiff as follows:

- The sum of P1,161,933.27 representing the costs of the elevator parts used, and for services and maintenance, with legal rate of interest from the filing of the complaint;
- The sum of P50,000.00 as attorney's fees;
- The costs of suit.

SO ORDERED.[9]

The RTC held that based on the sales invoices presented by petitioner, a contract of sale of goods was entered into between the parties. Since petitioner was able to fulfill its obligation, the RTC ruled that it was incumbent on respondent to pay for the services rendered. The RTC did not give credence to respondent's claim that the elevator parts were never delivered and that the repairs were questionable, holding that such defense was a mere afterthought and was never raised by respondent against petitioner at an earlier time.

Respondent filed a Motion for Reconsideration.[10] On August 17, 2003, the RTC issued a Resolution[11] denying respondent's motion. Respondent then filed a Notice of Appeal.[12]

On April 20, 2006, the CA rendered a Decision finding merit in respondent's appeal, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant appeal is GRANTED. The Judgment of the Regional Trial Court, Branch 100, Quezon City, dated March 5, 2003, is hereby REVERSED and SET ASIDE. The complaint below is dismissed.

SO ORDERED.[13]

In reversing the RTC, the CA ruled that respondent did not give its consent to the purchase of the spare parts allegedly installed in the defective elevators. Aside from the absence of consent, the CA also held that there was no perfected contract of sale because there was no meeting of minds upon the price. On this note, the CA ruled that the Service Agreement did not give petitioner the unbridled license to purchase and install any spare parts and demand, after the lapse of a considerable length of time, payment of these prices from respondent according to its own dictated price.

Aggrieved, petitioner filed a Motion for Reconsideration,[14] which was, however, denied by the CA in a Resolution dated July 31, 2006.

Hence, herein petition, with petitioner raising a lone issue for this Court's resolution, to wit:

WHETHER OR NOT THERE IS A PERFECTED CONTRACT OF SALE BETWEEN PETITIONER AND RESPONDENT WITH REGARDS TO THE SPARE PARTS DELIVERED AND INSTALLED BY PETITIONER ON THE FOUR ELEVATORS OF RESPONDENT AT ITS HOSPITAL UNDER THE AGREEMENT TO SERVICE ELEVATORS AS TO RENDER RESPONDENT LIABLE FOR THEIR PRICES?[15]

Before anything else, this Court shall address a procedural issue raised by respondent in its Comment[16] that the petition should be denied due course for raising questions of fact.

The determination of whether there exists a perfected contract of sale is essentially a question of fact. It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the CA by virtue of Rule 45 of the Revised Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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 respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on

record.[17]

The present case falls under the 7[th] exception, as the RTC and the CA arrived at conflicting findings of fact.

Having resolved the procedural aspect, this Court shall now address the substantive issue raised by petitioner. Petitioner contends that the CA erred when it ruled that there was no perfected contract of sale between petitioner and respondent with regard to the spare parts delivered and installed.

It is undisputed that a Service Agreement was entered into by petitioner and respondent where petitioner was commissioned to maintain respondent's four elevators. Embodied in the Service Agreement is a stipulation relating to expenses incurred on top of regular maintenance of the elevators, to wit:

SERVICE AND INSPECTION FEE:

X X X X

(2) In addition to the service fee mentioned in the preceding paragraph under this article, the Customer shall pay whatever additional charges in connection with the repair, supply of parts other than those specifically mentioned in ARTICLE A.2., or servicing of the elevator/s subject of this contract.[18]

Petitioner claims that during the period of April 1997 to July 1998, it had used parts in the maintenance and repair of the four elevators in the total amount of P1,161,933.47 as itemized in a statement of account[19] and supported by sales invoices, delivery receipts, trouble call reports and maintenance and checking reports. Respondent, however, refuses to pay the said amount arguing that petitioner had not complied with the Standard Operating Procedure (SOP) following a breakdown of an elevator.

As testified to by respondent's witness Celestino Aguilar, the SOP following an elevator breakdown is as follows: (a) they (respondent) will notify petitioner's technician; (b) the technician will evaluate the problem and if the problem is manageable the repair was done right there and then; (c) if some parts have to be replaced, petitioner will present the defective parts to the building administrator and a quotation is made; (d) the quotation is then indorsed to respondent's Finance Department; and (e) a purchase order is then prepared and submitted to the Board of Directors for approval.[20]

Based on the foregoing procedure, respondent contends that petitioner had failed to follow the SOP since no purchase orders from respondent's Finance Manager, or Board of Directors relating to the supposed parts used were secured prior to the repairs. Consequently, since the repairs were not authorized, respondent claims that it has no way of verifying whether the parts were actually delivered and installed as alleged by petitioner.

At the outset, this Court observes that the SOP is not embodied in the Service Agreement nor was a document evidencing the same presented in the RTC. The SOP appears, however, to be the industry practice and as such was not contested by petitioner. Nevertheless, petitioner offers an excuse for non-compliance with the SOP on its claim that the SOP was not followed upon the behest and request of respondent.

A perusal of petitioner's petition and evidence in the RTC shows that the main thrust of its case is premised on the following claims: first, that the nature and operations of a hospital necessarily dictate that the elevators are in good running condition at all times; and, second, that there was a verbal agreement between petitioner's service manager and respondent's building engineer that the elevators should be running in good condition at all times and breakdowns should only last one day.

In order to prove its allegations, petitioner presented Wilson Sua, its finance manager, as its sole witness. Sua testified to the procedure followed by petitioner in servicing respondent's elevators, to wit:

Q:

Can you tell us Mr. witness, what is the procedure actually followed whenever there is a need for trouble call maintenance or repair?

A:

The St. Luke's Cathedral's personnel, which includes the administrative officers, the guard on duty, or the receptionist, will call us through the phone if their elevators brake (sic) down.

Q:

Then, what happened?

A:

Immediately, we dispatched our technicians to check the trouble.

Q:

And who were these technicians whom you normally or regularly dispatched to attend to the trouble of the elevators of the defendant?

A:

With regard to this St. Luke's, we dispatched Sunny Jones and Gilbert Cinamin.

Q:

And what happened after dispatching these technicians?

A:

They come back immediately to the office to request the parts needed for the troubleshooting of the elevators.

Q:

Then what happened?

A:

A part will be brought to the project cite and they will install it and note it in the trouble call report and have it received properly by the building guard or the receptionist or by the building engineers, and they will test it for a couple of weeks to determine if the parts are the correct part needed for that elevator and we will secure their approval, thereafter we will issue our invoices and delivery receipts.

Q:

This trouble call reports, are these in writing?

A:

Yes, sir. These are in writing and these are being written within that day.

Q:

Within the day of?

A:

Of the trouble. And have it received by the duly personnel of St. Luke's Cathedral.

Q:

And who prepared this trouble call reports?

A:

The technician who actually checked the elevator.

Q:

When do the parts being installed?

A:

On the same date they brought the parts on the project cite.

Q:

You mentioned sales invoice and delivery receipts. Who prepared these invoice?

A:

Those were prepared by our inventory clerk under my supervision?

Q:

How about the delivery receipts?

A:

Just the same.

Q:

When would the sales invoice be prepared?

A:

After the approval of the building engineer.

Q:

But at the time that the sales invoice and delivery receipts were being prepared after the approval of the building engineer, what happened to the parts? Were they already installed or what?

A:

They were already installed.

Q:

Now, why would the parts be installed before the preparation of the sales invoice and the delivery receipts?

A:

There was an agreement between the building engineer and our service manager that the elevator should be running in good condition at all times, breakdown should be at least one day only. It cannot stop for more than a day.[21]

On cross examination, Sua testified that the procedure was followed on the authority of a verbal agreement between petitioner's service manager and respondent's engineer, thus:

Q:

So, you mean to say that despite the fact that material are expensive you immediately installed these equipments without the prior approval of the board?

A:

There is no need for the approval of the board since there is a verbal agreement between the building engineer and the Hyatt service manager to have the elevator run.

Q:

Aside from the building engineer, there is a building administrator?

A:

No, ma'am. He is already the building administrator and the building engineer. That is engineer Tisor.

Q:

And with regard to the fact that the delivery receipts were acknowledged by the engineer, is that true?

A:

Yes, ma'am.

Q:

You also mentioned earlier that aside from the building engineer, the receptionist and guards are also authorized. Are you sure that they are authorized to receive the delivery receipts?

A:

Yes, ma'am. It was an instruction given by Engineer Tisor, the building engineer and also the building administrator to have it received.

Q:

So, all these agreements are only verbally, it is not in writing?

A:

Yes, ma'am.[22]

In its petition, petitioner claims that because of the special circumstances of the building being a hospital, the procedure actually followed since October 1, 1994 was as follows:

1. Whenever any of the four elevators broke down, the administrative officers, security guard or the receptionist of respondent called petitioner by telephone;
2. Petitioner dispatched immediately a technician to the St. Luke's Cathedral Heights Building to check the trouble;
3. If the breakdown could be repaired without installation of parts, repair was done on the spot;
4. If the repair needed replacement of damaged parts, the technician went back to petitioner's office to get the

necessary replacement parts;

5. The technician then returned to the St. Luke's Cathedral Heights Building and installed the replacement parts and finished the repair;

6. The placement parts, which were installed in the presence of the security guard, building engineers or receptionist of respondents whoever was available, were indicated in the trouble call report or sometimes in the delivery receipt and copy of the said trouble call report or delivery receipt was then given to the blue security guard, building engineers or receptionist, who duly acknowledged the same;

7. Based on the trouble call report or the delivery receipts, which already indicated the replacement parts installed and the services rendered, respondent should prepare the purchase order, but this step was never followed by respondent for whatever reason;

8. In the meantime, the elevator was tested for a couple of weeks to see if the replacement parts were correct and the approval of the building engineers was secured;

9. After the building engineers gave their approval that the replacement parts were correct or after the lapse of two weeks and nothing was heard or no complaint was lodged, then the corresponding sales invoices and delivery receipts, if nothing had been issued yet, were prepared by petitioner and given to respondent, thru its receptionists or security guards;

10. For its purposes, respondent should compare the trouble call reports or delivery receipts which indicated the replacement parts installed or with the sales invoices and delivery receipts to confirm the correctness of the transaction;

11. If respondent had any complaint that the parts were not actually installed or delivered or did not agree with the price of the parts indicated in the sales invoices, then it should bring its complaint or disagreement to the attention of petitioner. In this regard, no complaint or disagreement as to the prices of the spare parts has been lodged by respondent.[23]

In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint.[24] In the case at bar, it is petitioner's burden to prove that it is entitled to its claims during the period in dispute.

This Court finds that the testimony of Sua alone is insufficient to prove the existence of the verbal agreement, especially in view of the fact that respondent insists that the SOP should have been followed. It is an age-old rule in civil cases that one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[25]

The testimony of Sua, at best, only alleges but does not prove the existence of the verbal agreement. It may even be hearsay. It bears stressing, that the agreement was supposedly entered into by petitioner's service manager and respondent's building engineer. It behooves this Court as to why petitioner did not present their service manager and Engineer Tisor, respondent's building engineer, the two individuals who were privy to the transactions and who could ultimately lay the basis for the existence of the alleged verbal agreement. It should have occurred to petitioner during the course of the trial that said testimonies would have proved vital and crucial to its cause. Therefore, absent such testimonies, the existence of the verbal agreement cannot be sustained by this Court.

Moreover, even assuming arguendo, that this Court were to believe the procedure outlined by Sua, his testimony[26]clearly mentions that prior to the preparation of the sales invoices and delivery receipts, the parts delivered and installed must have been accepted by respondent's engineer or building administrator. However,

again, petitioner offered no evidence of such acceptance by respondent's engineer prior to the preparation of the sales invoices and delivery receipts.

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.[27] The absence of any of the essential elements will negate the existence of a perfected contract of sale. In the case at bar, the CA ruled that there was no perfected contract of sale between petitioner and respondent, to wit:

Aside from the absence of consent, there was no perfected contract of sale because there was no meeting of minds upon the price. As the law provides, the fixing of the price can never be left to the discretion of one of the contracting parties. In this case, the absence of agreement as to the price is evidenced by the lack of purchase orders issued by CHBCAI where the quantity, quality and price of the spare parts needed for the repair of the elevators are stated. In these purchase orders, it would show that the quotation of the cost of the spare parts earlier informed by Hyatt is acceptable to CHBCAI. However, as revealed by the records, it was only Hyatt who determined the price, without the acceptance or conformity of CHBCAI. From the moment the determination of the price is left to the judgment of one of the contracting parties, it cannot be said that there has been an arrangement on the price since it is not possible for the other contracting party to agree on something of which he does not know beforehand.[28]

Based on the evidence presented in the RTC, it is clear to this Court that petitioner had failed to secure the necessary purchase orders from respondent's Board of Directors, or Finance Manager, to signify their assent to the price of the parts to be used in the repair of the elevators. In *Boston Bank of the Philippines v. Manalo*, this Court explained that the fixing of the price can never be left to the decision of one of the contracting parties, to wit:

A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale.[30]

There would have been a perfected contract of sale had respondent accepted the price dictated by petitioner even if such assent was given after the services were rendered. There is, however, no proof of such acceptance on the part of respondent and, consequently, no perfected contract of sale between the parties.

The foregoing findings notwithstanding, this Court rules that to deny petitioner's claim would unjustly enrich respondent who had benefited from the repairs of their four elevators.

This Court finds that respondent is also partly to be blamed for allowing petitioner to conduct the repairs without the necessary purchase orders. It would certainly be absurd for respondent to feign knowledge of the repairs, especially since the same were done within their premises and in the presence of their building engineer, clerk and guard on duty. It bears to point out that several repairs were made from 1997 to 1998. During this time, respondent and its employees never once questioned the authority of petitioner to install replacement parts during the repairs. Had they done so, then it would have been likely that things would not have gone out of hand and petitioner would have been reminded to follow the SOP if such was the case.

In addition, a perusal of the testimony of respondent's witness Mr. Perfecto Cruz (Cruz) shows that its security guards were aware of the installation of parts done by petitioner, to wit:

Q:

Mr. witness, is it not a fact that in the trouble call report the parts were already installed by the technician which is indicated in the document marked as Exh. "U?" This was duly acknowledged by your security guard.

A:

Yes, sir.

Q:

And it is not a fact that in this trouble call report, 7 pieces of regenerative resistors were already installed by the technician as admitted by you?

A:

What I know is, that is follow up trouble and not initial. It insisted prior to the servicing.

Q:

It appears, Mr. witness, that there is indicated in the trouble call report duly acknowledged by your security guard, as you admitted, there is already installation of 7 regenerative resistors, correct?

A:

Yes, sir.

Q:

Now, Mr. witness, will you agree with me that these 7 pieces of regenerative resistors were installed even prior to the issuance of the purchase order?

A:

Yes, sir.[31]

Moreover, a review of the trouble call reports, sales invoices and delivery receipts would show that all were signed by respondent's employees. This Court cannot agree with the observation of the CA that the signatures of receipt by the information clerk or the guard on duty on the sales invoices and delivery receipts merely pertain to the physical receipt of the papers and that the same does not indicate that the parts stated were actually delivered and installed. When confronted with Exhibit "U" for example, Cruz admitted that the parts stated in the receipt were already installed.[32] Likewise, on re-cross examination, when confronted with Exhibits "OO" and "SS," Cruz admitted that their employee received the defective parts replaced by petitioner, to wit:

Q:

Mr. Witness, you mentioned the parts that were damaged and replaced were to be surrendered to the defendant, correct?

A:

Yes, sir.

Q:

Have you examined the trouble call report submitted by the plaintiff in this case?

A:

Yes, sir.

Q:

And have you not noticed that in the trouble call report the defective parts replaced were duly turned over by

the plaintiff to the defendant as acknowledged by your security guard?

A:

No, sir.

Q:

So, Mr. witness, I'll just [show] to you this trouble call report dated May 22, 1997. Will you please read the notation here at the back of the acknowledgment receipt of the security guard?

A:

Return defective 1 unit BDC TCB serial number 9546.

Q:

This is exhibit?

A:

Exh. "00."

Q:

Dated?

A:

May 10, 1997.

Q:

Will you please read the words here at the bottom?

A:

All defective parts turn-over to Janet?

Q:

Do you know who is Janet?

A:

The clerk.

Q:

Of the defendant?

A:

Yes, sir.

Q:

This is Exh?

A:

Exh. "SS."

Q:

I am showing to you this trouble call report dated May 16, 1997. Can you please read the written notation above the acknowledgment receipt of the security guard?

A:

Turn-over defective AUR to Janet.

Q:

And this Janet is an employee of the defendant?

A:

Yes, sir.[33]

Lastly, upon inquiry from the presiding judge, Cruz admitted that respondent's information clerk was authorized to accept deliveries and that the parts received were used to repair their elevators, thus:

Q:

What do you think is the import of their signing the delivery receipts? What is the significance since she is your subordinate?

A:

These documents seems not in order because I have noticed and observed that the date of the delivery receipts were made at the time it was signed by the information clerk are too long.

Q:

What are you suggesting? Are you suggesting anomaly by Ivy Gumisad?

A:

No, the delivery.

Q:

But Gumisad, your employee signed these, you're suggesting that she is an anomaly?

A:

The length of time.

Q:

Are you suggesting that she is doing this committing anomaly, irregularly or what? Is she doing dishonesty?

A:

No, your Honor.

Q:

Then what is the business of signing and receiving these when she is your employee? Unless she seek per mind she should not be receiving these? What was her motive of receiving this? You have to convince the Court that there is a reason why, otherwise, you have to pay the contractor. That's what the point there.

A:

Your Honor, she is authorized to accept deliveries.

Q:

These parts which were accepted first receipt costing fifteen thousand (P15,000.00) pesos. Do you have the receipt? The other is twenty-one thousand (P21,000.00) pesos, and the other is fourteen thousand (P 14,000.00) pesos worth of parts, another is three thousand five hundred (P3,500.00) pesos, another is fifty-three thousand (P53,000.00) pesos, another is three thousand five hundred (P3,500.00) pesos. What did you use with these parts.

A:

They were used to repair our elevators.

Q:

And these was received by your co-employee, Ivy Gumisad, how could you explain that?

A:

Your Honor, you can see the difference in time as required and the date the delivery receipt was signed by the...

Q:

Correct, but she is your employee here. There is no suggestion of anomaly. You should know what your employee is doing. You should have terminated your employee after the process. What kind of employee are you? You have to convince the Court because we will decide the case in your favor if you are able to convince the Court.

A:

Your Honor, these papers were only presented when they filed claims. There were parts in the document that were presented by the Hyatt Elevators and Escalators Corporation when they are claiming for the repairs.

Q:

Okay, the signature of Gumisad, is it her signature being your employee?

A:

Yes, your Honor. [34]

On a final note, this Court disagrees with the findings of the CA that the claims of petitioner are questionable, because the date of the sales invoice and the date stated in the corresponding delivery receipt are too far apart. It is not an uncommon practice for contractors to deliver materials and to bill the client at a later date, specially since the parties in the present action have an existing Service Agreement.

Withal, it is indisputable that the repairs made on the elevators ultimately redounded to the benefit of respondent for without said repairs, the elevators would not be operational. Under Article 2142 of the Civil Code, such acts "give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another." It would certainly be unjust for respondent to benefit from the repairs done by petitioner only to refuse payment because the papers submitted were not in order.

WHEREFORE, premises considered, the petition is GRANTED. The April 20, 2006 Decision and July 31, 2006

Resolution of the Court of Appeals, in CA-GR. CV No. 80427, are REVERSED and SET ASIDE.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Rollo, pp. 8-22.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Andres B. Reyes, Jr. and Japar B. Dimaampao, concurring; id. at 27-39.

[3] Id. at 41-42.

[4] Id. at 46-49.

[5] Id. at 47.

[6] Id. at 50-51.

[7] Id. at 52.

[8] Id. at 62-64.

[9] Id. at 64.

[10] Records, pp. 141-153.

[11] Id. at 160.

[12] Id. at 164-165.

[13] Rollo, p. 38.

[14] CA rollo, pp. 76-83.

[15] Rollo, p. 15.

[16] Id. at 67-105.

[17] Citibank, N.A. (Formerly First National City Bank) v. Sabeniano, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 409; Herbosa v. Court of Appeals, 425 Phil. 431, 444 (2002).

[18] Rollo, p. 48.

[19] Id. at 50-51.

[20] TSN, March 18, 2002, p. 11.

[21] TSN, January 25, 2002, pp. 7-9. (Emphasis supplied).

[22] Id. at 16-17.

[23] Rollo, pp. 18-19.

[24] Villanueva v. Balaguer, G.R. No. 180197, June 23, 2009, 590 SCRA 661, 670.

[25] Heirs of Cipriano Reyes v. Calumpang, G.R. No.138463, October 30, 2006, 506 SCRA 56, 72.

[26] Q: Then what happened?

A: A part will be brought to the project cite and they will install it and note it in the trouble call report and have it received properly by the building guard or the receptionist or by the building engineers, and they will test it for a couple of weeks to determine if the parts are the correct part needed for that elevator and we will secure their approval, thereafter we will issue our invoices and delivery receipts.

x x x x

Q: How about the delivery receipts?

A: Just the same.

Q: When would the sales invoice be prepared?

A: After the approval of the building engineer. (TSN, January 25, 2002, pp. 7-9) (Emphasis supplied.)

[27] Rollo, p. 20.

[28] Folder of Exhibits, pp. 1-3.

[29] New Civil Code, Art. 1458.

[30] Rollo, pp. 36-37.

[31] G.R. No. 158149, February 9, 2006, 482 SCRA 108.

[32] Id. at 129. (Emphasis supplied.)

[33] Rollo, p. 36.

[34] Id. at 37-38.

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