

SOLAR HARVEST, INC., PETITIONER, VS. DAVAO CORRUGATED CARTON CORPORATION, RESPONDENT.

G.R. No. 176868. July 26, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioner seeks a review of the Court of Appeals (CA) Decision[1] dated September 21, 2006 and Resolution[2] dated February 23, 2007, which denied petitioner's motion for reconsideration. The assailed Decision denied petitioner's claim for reimbursement for the amount it paid to respondent for the manufacture of corrugated carton boxes.

The case arose from the following antecedents:

In the first quarter of 1998, petitioner, Solar Harvest, Inc., entered into an agreement with respondent, Davao Corrugated Carton Corporation, for the purchase of corrugated carton boxes, specifically designed for petitioner's business of exporting fresh bananas, at US\$1.10 each. The agreement was not reduced into writing. To get the production underway, petitioner deposited, on March 31, 1998, US\$40,150.00 in respondent's US Dollar Savings Account with Westmont Bank, as full payment for the ordered boxes.

Despite such payment, petitioner did not receive any boxes from respondent. On January 3, 2001, petitioner wrote a demand letter for reimbursement of the amount paid.[3] On February 19, 2001, respondent replied that the boxes had been completed as early as April 3, 1998 and that petitioner failed to pick them up from the former's warehouse 30 days from completion, as agreed upon. Respondent mentioned that petitioner even placed an additional order of 24,000 boxes, out of which, 14,000 had been manufactured without any advanced payment from petitioner. Respondent then demanded petitioner to remove the boxes from the factory and to pay the balance of US\$15,400.00 for the additional boxes and P132,000.00 as storage fee.

On August 17, 2001, petitioner filed a Complaint for sum of money and damages against respondent. The Complaint averred that the parties agreed that the boxes will be delivered within 30 days from payment but respondent failed to manufacture and deliver the boxes within such time. It further alleged

6. That repeated follow-up was made by the plaintiff for the immediate production of the ordered boxes, but every time, defendant [would] only show samples of boxes and ma[k]e repeated promises to deliver the said ordered boxes.

7. That because of the failure of the defendant to deliver the ordered boxes, plaintiff ha[d] to cancel the same and demand payment and/or refund from the defendant but the latter refused to pay and/or refund the US\$40,150.00 payment made by the former for the ordered boxes.[4]

In its Answer with Counterclaim,[5] respondent insisted that, as early as April 3, 1998, it had already completed production of the 36,500 boxes, contrary to petitioner's allegation. According to respondent, petitioner, in fact, made an additional order of 24,000 boxes, out of which, 14,000 had been completed without waiting for

petitioner's payment. Respondent stated that petitioner was to pick up the boxes at the factory as agreed upon, but petitioner failed to do so. Respondent averred that, on October 8, 1998, petitioner's representative, Bobby Que (Que), went to the factory and saw that the boxes were ready for pick up. On February 20, 1999, Que visited the factory again and supposedly advised respondent to sell the boxes as rejects to recoup the cost of the unpaid 14,000 boxes, because petitioner's transaction to ship bananas to China did not materialize. Respondent claimed that the boxes were occupying warehouse space and that petitioner should be made to pay storage fee at P60.00 per square meter for every month from April 1998. As counterclaim, respondent prayed that judgment be rendered ordering petitioner to pay \$15,400.00, plus interest, moral and exemplary damages, attorney's fees, and costs of the suit.

In reply, petitioner denied that it made a second order of 24,000 boxes and that respondent already completed the initial order of 36,500 boxes and 14,000 boxes out of the second order. It maintained that

respondent only manufactured a sample of the ordered boxes and that respondent could not have produced 14,000 boxes without the required pre-payments.[6]

During trial, petitioner presented Que as its sole witness. Que testified that he ordered the boxes from respondent and deposited the money in respondent's account.[7] He specifically stated that, when he visited respondent's factory, he saw that the boxes had no print of petitioner's logo.[8] A few months later, he followed-up the order and was told that the company had full production, and thus, was promised that production of the order would be rushed. He told respondent that it should indeed rush production because the need for the boxes was urgent. Thereafter, he asked his partner, Alfred Ong, to cancel the order because it was already late for them to meet their commitment to ship the bananas to China.[9] On cross-examination, Que further testified that China Zero Food, the Chinese company that ordered the bananas, was sending a ship to Davao to get the bananas, but since there were no cartons, the ship could not proceed. He said that, at that time, bananas from Tagum Agricultural Development Corporation (TADECO) were already there. He denied that petitioner made an additional order of 24,000 boxes. He explained that it took three years to refer the matter to counsel because respondent promised to pay.[10]

For respondent, Bienvenido Estanislao (Estanislao) testified that he met Que in Davao in October 1998 to inspect the boxes and that the latter got samples of them. In February 2000, they inspected the boxes again and Que got more samples. Estanislao said that petitioner did not pick up the boxes because the ship did not arrive.[11] Jaime Tan (Tan), president of respondent, also testified that his company finished production of the 36,500 boxes on April 3, 1998 and that petitioner made a second order of 24,000 boxes. He said that the agreement was for respondent to produce the boxes and for petitioner to pick them up from the warehouse.[12] He also said that the reason why petitioner did not pick up the boxes was that the ship that was to carry the bananas did not arrive.[13] According to him, during the last visit of Que and Estanislao, he asked them to withdraw the boxes immediately because they were occupying a big space in his plant, but they, instead, told him to sell the cartons as rejects. He was able to sell 5,000 boxes at P20.00 each for a total of P100,000.00. They then told him to apply the said amount to the unpaid balance.

In its March 2, 2004 Decision, the Regional Trial Court (RTC) ruled that respondent did not commit any breach of faith that would justify rescission of the contract and the consequent reimbursement of the amount paid by petitioner. The RTC said that respondent was able to produce the ordered boxes but petitioner failed to obtain possession thereof because its ship did not arrive. It thus dismissed the complaint and respondent's counterclaims, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of defendant and against the plaintiff and, accordingly, plaintiff's complaint is hereby ordered DISMISSED without pronouncement as to

cost. Defendant's counterclaims are similarly dismissed for lack of merit.

SO ORDERED.[14]

Petitioner filed a notice of appeal with the CA.

On September 21, 2006, the CA denied the appeal for lack of merit.[15] The appellate court held that petitioner failed to discharge its burden of proving what it claimed to be the parties' agreement with respect to the delivery of the boxes. According to the CA, it was unthinkable that, over a period of more than two years, petitioner did not even demand for the delivery of the boxes. The CA added that even assuming that the agreement was for respondent to deliver the boxes, respondent would not be liable for breach of contract as petitioner had not yet demanded from it the delivery of the boxes.[16]

Petitioner moved for reconsideration,[17] but the motion was denied by the CA in its Resolution of February 23, 2007.[18]

In this petition, petitioner insists that respondent did not completely manufacture the boxes and that it was respondent which was obliged to deliver the boxes to TADECO.

We find no reversible error in the assailed Decision that would justify the grant of this petition.

Petitioner's claim for reimbursement is actually one for rescission (or resolution) of contract under Article 1191 of the Civil Code, which reads:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

The right to rescind a contract arises once the other party defaults in the performance of his obligation. In determining when default occurs, Art. 1191 should be taken in conjunction with Art. 1169 of the same law, which provides:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

- (1) When the obligation or the law expressly so declares; or
- (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

In reciprocal obligations, as in a contract of sale, the general rule is that the fulfillment of the parties' respective obligations should be simultaneous. Hence, no demand is generally necessary because, once a party fulfills his obligation and the other party does not fulfill his, the latter automatically incurs in delay. But when different dates for performance of the obligations are fixed, the default for each obligation must be determined by the rules given in the first paragraph of the present article,[19] that is, the other party would incur in delay only from the moment the other party demands fulfillment of the former's obligation. Thus, even in reciprocal obligations, if the period for the fulfillment of the obligation is fixed, demand upon the obligee is still necessary before the obligor can be considered in default and before a cause of action for rescission will accrue.

Evident from the records and even from the allegations in the complaint was the lack of demand by petitioner upon respondent to fulfill its obligation to manufacture and deliver the boxes. The Complaint only alleged that petitioner made a "follow-up" upon respondent, which, however, would not qualify as a demand for the fulfillment of the obligation. Petitioner's witness also testified that they made a follow-up of the boxes, but not a demand. Note is taken of the fact that, with respect to their claim for reimbursement, the Complaint alleged and the witness testified that a demand letter was sent to respondent. Without a previous demand for the fulfillment of the obligation, petitioner would not have a cause of action for rescission against respondent as the latter would not yet be considered in breach of its contractual obligation.

Even assuming that a demand had been previously made before filing the present case, petitioner's claim for reimbursement would still fail, as the circumstances would show that respondent was not guilty of breach of contract.

The existence of a breach of contract is a factual matter not usually reviewed in a petition for review under Rule 45.[20] The Court, in petitions for review, limits its inquiry only to questions of law. After all, it is not a trier of facts, and findings of fact made by the trial court, especially when reiterated by the CA, must be given great respect if not considered as final.[21] In dealing with this petition, we will not veer away from this doctrine and will thus sustain the factual findings of the CA, which we find to be adequately supported by the evidence on record.

As correctly observed by the CA, aside from the pictures of the finished boxes and the production report thereof, there is ample showing that the boxes had already been manufactured by respondent. There is the testimony of Estanislao who accompanied Que to the factory, attesting that, during their first visit to the company, they saw the pile of petitioner's boxes and Que took samples thereof. Que, petitioner's witness, himself confirmed this incident. He testified that Tan pointed the boxes to him and that he got a sample and saw that it was blank. Que's absolute assertion that the boxes were not manufactured is, therefore, implausible and suspicious.

In fact, we note that respondent's counsel manifested in court, during trial, that his client was willing to shoulder expenses for a representative of the court to visit the plant and see the boxes.[22] Had it been true that the boxes were not yet completed, respondent would not have been so bold as to challenge the court to conduct an ocular inspection of their warehouse. Even in its Comment to this petition, respondent prays that petitioner be ordered to remove the boxes from its factory site,[23] which could only mean that the boxes are, up to the present, still in respondent's premises.

We also believe that the agreement between the parties was for petitioner to pick up the boxes from respondent's warehouse, contrary to petitioner's allegation. Thus, it was due to petitioner's fault that the boxes were not delivered to TADECO.

Petitioner had the burden to prove that the agreement was, in fact, for respondent to deliver the boxes within 30 days from payment, as alleged in the Complaint. Its sole witness, Que, was not even competent to testify on the

terms of the agreement and, therefore, we cannot give much credence to his testimony. It appeared from the testimony of Que that he did not personally place the order with Tan, thus:

Q.

No, my question is, you went to Davao City and placed your order there?

A.

I made a phone call.

Q.

You made a phone call to Mr. Tan?

A.

The first time, the first call to Mr. Alf[re]d Ong. Alfred Ong has a contact with Mr. Tan.

Q.

So, your first statement that you were the one who placed the order is not true?

A.

That's true. The Solar Harvest made a contact with Mr. Tan and I deposited the money in the bank.

Q.

You said a while ago [t]hat you were the one who called Mr. Tan and placed the order for 36,500 boxes, isn't it?

A.

First time it was Mr. Alfred Ong.

Q.

It was Mr. Ong who placed the order[,] not you?

A.

Yes, sir.[24]

Q.

Is it not a fact that the cartons were ordered through Mr. Bienvenido Estanislao?

A.

Yes, sir.[25]

Moreover, assuming that respondent was obliged to deliver the boxes, it could not have complied with such obligation. Que, insisting that the boxes had not been manufactured, admitted that he did not give respondent the authority to deliver the boxes to TADECO:

Q.

Did you give authority to Mr. Tan to deliver these boxes to TADECO?

A.

No, sir. As I have said, before the delivery, we must have to check the carton, the quantity and quality. But I have not seen a single carton.

Q.

Are you trying to impress upon the [c]ourt that it is only after the boxes are completed, will you give authority to Mr. Tan to deliver the boxes to TADECO[?]

A.

Sir, because when I checked the plant, I have not seen any carton. I asked Mr. Tan to rush the carton but not...[26]

Q.

Did you give any authority for Mr. Tan to deliver these boxes to TADECO?

A.

Because I have not seen any of my carton.

Q.

You don't have any authority yet given to Mr. Tan?

A.

None, your Honor.[27]

Surely, without such authority, TADECO would not have allowed respondent to deposit the boxes within its premises.

In sum, the Court finds that petitioner failed to establish a cause of action for rescission, the evidence having shown that respondent did not commit any breach of its contractual obligation. As previously stated, the subject boxes are still within respondent's premises. To put a rest to this dispute, we therefore relieve respondent from the burden of having to keep the boxes within its premises and, consequently, give it the right to dispose of them, after petitioner is given a period of time within which to remove them from the premises.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals Decision dated September 21, 2006 and Resolution dated February 23, 2007 are AFFIRMED. In addition, petitioner is given a period of 30 days from notice within which to cause the removal of the 36,500

boxes from respondent's warehouse. After the lapse of said period and petitioner fails to effect such removal, respondent shall have the right to dispose of the boxes in any manner it may deem fit.

SO ORDERED.

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

[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Magdangal M. de Leon and Ramon R. Garcia, concurring; rollo, pp. 103-114.

[2] Id. at 127.

[3] Records, p. 96.

[4] Rollo, p. 27.

[5] Id. at 33-36.

[6] Records, 31-32.

[7] TSN, July 10, 2003, p. 5.

[8] Id. at 7.

[9] Id. at 9-10.

[10] Id. at 18-22.

[11] TSN, October 16, 2003, p. 14.

[12] TSN, December 4, 2003, p. 13.

[13] Id. at 15.

[14] Rollo, p. 60.

[15] Supra note 1, at 113-114.

[16] Id. at 110-112.

[17] Rollo, pp. 115-121.

[18] Supra note 2.

[19] IV ARTURO M. TOLENTINO, Commentaries and Jurisprudence on the Civil Code of the Philippines (1985 ed.), p. 10, citing 8 Manresa.

[20] Omengan v. Philippine National Bank, G.R. No. 161319, January 23, 2007, 512 SCRA 305, 309.

[21] Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation, G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609, 638-639.

[22] TSN, December 4, 2003, p. 26.

[23] Rollo, p. 137.

[24] TSN, July 10, 2003, p. 15.

[25] Id. at 21.

[26] Id. at 25.

[27] Id. at 27.

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