

## **ETERTON MULTI-RESOURCES CORPORATION (FORMERLY ETERNIT CORPORATION), PETITIONER, VS. FILIPINO PIPE AND FOUNDRY CORPORATION, RESPONDENT.**

*G.R. No. 179812. July 06, 2010*

Ponente: NACHURA, J.

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### **NACHURA, J.:**

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Eterton Multi-Resources Corporation (ETERTON), challenging the May 28, 2007 Decision[1] and the October 1, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 66917.

The facts:

ETERTON is a corporation engaged in the manufacture of asbestos cement pipes. On November 17, 1980, it entered into an Agreement[3] with respondent Filipino Pipe and Foundry Corporation (FPFC) wherein ETERTON undertook to deliver the asbestos cement pipes needed by FPFC in its Metropolitan Waterworks and Sewerage System PG-8 Project in Novaliches, Quezon City. FPFC paid P1,260,521.83, but only P1,156,408.48 worth of asbestos cement pipes were delivered. ETERTON then refused to make delivery of asbestos cement pipes unless the price would be increased. Thus, to meet the project deadline, FPFC acquiesced to ETERTON's demand, and paid, but under protest, an additional amount of P125,168.03.

Thereafter, FPFC demanded from ETERTON the value of the undelivered asbestos cement pipes and the return of the overpayment it made, but the latter refused. Thus, on September 7, 1983, FPFC filed a collection suit with damages[4] against ETERTON in the Regional Trial Court (RTC) of Pasig, docketed as Civil Case No. 50163.

Traversing the complaint, ETERTON denied FPFC's allegations of short delivery and overpayment. It averred that the amount claimed by FPFC had already been applied to the price escalation and penalty charge imposed by reason of the delay in the payment of the purchases.[5]

On June 21, 1999, the RTC rendered a decision[6] disposing that:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered ordering [petitioner] Eternit Corporation and/or Eterton Multi-Resources Corporation to pay [respondent] Filipino Pipe and Foundry Corporation the following:

- P104,102.67, representing the excess payments made by [respondent] under its first cause of action with interest at [the] legal rate from date of demand until fully paid;
- P50,000.00 as and for attorney's fees; and
- Cost of suit.

SO ORDERED.[7]

On appeal, the CA affirmed the RTC.[8] According to the CA, the records are clear that there were items in the sales invoices that were paid, but were not delivered by ETERTON. It rejected ETERTON's argument that the amount claimed by FPFC had been applied to price escalation and penalty charge, as no sufficient evidence was offered to prove the assertion. It declared FPFC's pieces of evidence sufficient to establish the claim of short delivery. The CA, however, sustained the denial by the RTC of FPFC's claim for reimbursement of the P125,168.03, representing the alleged overpricing of materials, as well as the claims for moral and exemplary damages and attorney's fees, for lack of ample proof. The CA disposed thus:

WHEREFORE, in view of all the foregoing, the assailed decision dated June 21, 1999 of Branch 153, Regional Trial Court of Pasig City in Civil Case No. 50163 is hereby AFFIRMED with MODIFICATION that the award of attorney's fees is DELETED.

SO ORDERED.[9]

ETERTON filed a motion for reconsideration, but the CA denied it on October 1, 2007.[10]

ETERTON is now before us faulting the CA for sustaining FPFC's claim for excess payment on account of short delivery. It contends that the CA was clearly oblivious of the provisions of the Letter-Agreement dated November 17, 1980 and Amendatory Letter-Agreement dated March 4, 1981 on the price escalation schedule applied for deliveries each month. It asserts that there were instances where ETERTON made deliveries of asbestos cement pipes but FPFC was not in a position to accept them. ETERTON was thus constrained to return them to their stockyards. When FPFC accepted the deliveries, the prices of the asbestos cement pipes had increased, and thus, it was charged based on the escalated prices. ETERTON assails the probative value and weight given by the RTC and the CA to FPFC's pieces of evidence.

The appeal lacks merit.

It is evident that the issue raised in this petition is the correctness of the factual findings of the RTC and the CA. In petitions for review on certiorari under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. An inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, for this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties.[11]

Both the RTC and the CA found that there was a short delivery of P104,102.67. The RTC explained in this wise:

A comparison of the quantities of goods delivered revealed that as to the goods covered by Invoice No. 71547, there is a difference of 1,980 while as to the goods covered by Invoice No. 71548, there is a difference of 1,195.

[ETERTON], in its Comment/Objection to [FPFC's] formal offer of evidence contended that the gate passes and material receiving reports (Exh. "B" to "QQ" and "SS" to "FFF") are not conclusive proofs of the actual deliveries made by [ETERTON] because it can easily be distorted by not presenting one or two or more of such exhibits. However, [ETERTON] who is in possession of and from whom said gate passes originated could have easily presented concrete proof like additional gate passes to prove its contention but it failed to do so.

This Court is thus convinced that the actual deliveries made by [ETERTON] to [FPFC] are those reflected in [FPFC's] Exh. "B" to "QQ" and "SS" to "FFF" which is (sic) less than the quantities in the invoices. Therefore, as to quantities there is short delivery of 3,178.

In computing the prices of said short deliveries, this Court is of the opinion that the unit prices of each goods (sic) as appearing in the corresponding invoices should be the basis. We agree with [ETERTON] that pursuant

to the terms and condition of the letter-agreement it entered into with [FPFC], the escalated prices of the pipes prevailing and controlling at the date of deliveries shall be the basis of the computation. This Court however believes that the unit price as appearing in the invoices is the agreed purchase price of the asbestos cement pipes for the following reasons: (1) In paragraph 3 of its Answer, [ETERTON] alleged that the parties mutually agreed that the invoice price for each delivery shall be escalated on the basis of the discount and price escalation schedule embodied in the Letter-Agreement; (2) [ETERTON] further alleged in paragraph 5 of its Answer that the Invoice Nos. 71547 and 71548 were later on amended by a Debit Memo sent by [ETERTON] to [FPFC] to cover the difference between the invoice price and the escalation price. However, the alleged Debit Memo was not even presented as evidence by [ETERTON]; (3) The acceptance by [ETERTON] of payment for Invoice No. 71547 in the amount of P750,495.68 (Exh. "PPPP" to "ZZZZ") and for Invoice No. 71548 in the total amount of P204,074.40 (Exh. "ZZZZ-A") which is the amount payable as stated in said invoices proves that the agreed purchase price is what is appearing thereon.

x x x x

In sum, the total amount of short deliveries under Invoice No. 71547 and 71548 is P265,927.66. However, FPFC being honest enough admitted that although there were short deliveries, there were also over deliveries, that is deliveries which were not fully paid or no payment at all were made x x x.

x x x x

Thus, deducting the over delivery in the amount of P161,824.99 from the short delivery in the amount of P265,927.66, the amount will be P104,102.67 which is the total claim to be awarded to FPFC x x x.[12]

We reviewed the records before us and found no compelling reason to depart from and reverse the trial court's findings and conclusions. The findings of the RTC, as affirmed by the CA, are well supported by evidence on record.

We reiterate that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal. While this Court has recognized several exceptions to this rule,[13] none of these exceptions finds application here. ETERTON failed to convince us that the trial court has overlooked, misunderstood, or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case. Neither is there any proof that the findings of fact below were reached arbitrarily or capriciously. Accordingly, the CA committed no reversible error in affirming the findings of the RTC.

WHEREFORE, the petition is DENIED. The May 28, 2007 Decision and October 1, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 66917 are AFFIRMED. Costs against petitioner.

### **SO ORDERED.**

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

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Renato C. Dacudao (retired) and Noel G. Tijam, concurring; rollo, pp. 24-32.

[2] Rollo, p. 33.

[3] Exh. "E"; Envelope of Exhibits.

[4] Records, pp. 1-6.

[5] Id. at 47-55.

[6] Id. at 597-622.

[7] Id. at 622.

[8] Supra note 1.

[9] Id. at 31.

[10] Supra note 2.

[11] Development Bank of the Philippines v. Licuanan, G.R. No. 150097, February 26, 2007, 516 SCRA 644, 651.

[12] Records, pp. 616-619.

[13] See Montecillo v. Pama, G.R. No. 158557, February 4, 2008, 543 SCRA 512.

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