

INDUSTRIAL TEXTILE MANUFACTURING COMPANY OF THE PHILIPPINES, INC., PETITIONER, VS. LPJ ENTERPRISES, INC., RESPONDENT.*G.R. No. 66140. January 21, 1993*

Ponente: MELO, J.

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Before Us is a petition for review on certiorari seeking the reversal of the November 9, 1983 decision of the then Intermediate Appellate Court in CA-G.R. CV No. 68281, penned by the Honorable Justice Eduardo P. Caguioa, with Justices Gaviola and Quetulio-Losa concurring, which dismissed petitioner's complaint and absolved herein respondent from any liability to the former.

It appears on record that respondent LPJ Enterprises, Inc. had a contract to supply 300,000 bags of cement per year to Atlas Consolidated Mining and Development Corporation (Atlas for short), a member of the Soriano Group of Companies. The cement was delivered packed in kraft paper bags, then as now, in common use.

Sometime in October, 1970, Cesar Campos, a Vice-President of petitioner Industrial Textile Manufacturing Company of the Philippines (or Itemcop, for brevity), asked Lauro Panganiban, Jr., President of respondent corporation, if he would like to cooperate in an experiment to develop plastic cement bags. Panganiban acquiesced, principally because Itemcop is a sister corporation of Atlas, respondent's major client. A few weeks later, Panganiban accompanied Paulino Ugarte, another Vice-President of Itemcop, to the factory of respondent's supplier, Luzon Cement Corporation in Norzagaray, Bulacan, to test fifty (50) pieces of plastic cement bags. The experiment, however, was unsuccessful. Cement dust oozed out under pressure through the small holes of the woven plastic bags and the loading platform was filled with dust. The second batch of plastic bags subjected to trial was likewise a failure. Although the weaving of the plastic bags was already tightened, cement dust still spilled through the gaps. Finally, with three hundred (300) "improved bags", the seepage was substantially reduced. Ugarte then asked Panganiban to send 180 bags of cement to Atlas via commercial shipping. Campos, Ugarte, and two other officials of petitioner company followed the 180 bags to the plant of Atlas in Sangi, Toledo, Cebu where they professed satisfaction at the performance of their own plastic bags. On December 29, 1970, Campos sent Panganiban a letter proclaiming dramatic results in the experiment. Consequently, Panganiban agreed to use the plastic cement bags. Four purchase orders (P.O.s) were thereafter issued, to wit:

DATE

NUMBER OF BAGS

UNIT COST

AMOUNT

5 January 1971

53,800

P.83

P44,654.00

24 February 1971

11,000

.90

9,900.00

March 1971

41,000

.92

37,720.00

6 April 1971

10,000

.92

9,200.00

TOTAL

P101,474.00

Petitioner delivered the above orders consecutively on January 12, February 27, March 19, and April 17, 1971 (p. 74, Rollo). Respondent, on the other hand, remitted the amounts of P1,640.00, P2,480.00, and P13,230.00 on March 31, April 31, and May 3, 1971 respectively, thereby leaving a balance of P84,123.80 (p. 58, Ibid.). No other payments were made, thus prompting A. Soriano y Cia of petitioner's Legal Department to send demand letters to respondent corporation. Reiterations thereof were later sent by petitioner's counsel. A collection suit was filed on April 11, 1973 when the demands remained unheeded.

At the trial on the merits, respondent admitted its liability for the 53,800 polypropylene lime bags covered by the first purchase order. (TSN, January 5, 1971, p. 131). With respect to the second, third, and fourth purchase orders, respondent, however, denied full responsibility therefor. Respondent said that it will pay, as it did pay for, only the 15,000 plastic bags it actually used in packing cement. As for the remaining 47,000 bags, the workers of Luzon Cement strongly objected to the use thereof due to the serious health hazards posed by the continued seepage of cement dust. Notwithstanding the measures adopted by respondent such as the use of masks, gloves, and conveyor system, the workers still refused to utilize the plastic bags. Respondent was, therefore, constrained to revert to the use of kraft paper bags in packing cement. Thereafter, petitioner was asked to take back the unused plastic bags. Considering however, that the bags were in the cement factory of respondent's supplier, petitioner maintained that it was respondent's obligation to return the bags to them. Apparently, this was not done and so petitioner demanded payment for the said bags.

On May 25, 1981, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered sentencing the defendant to pay the sum of P84,123.80 with

12% interest per annum from May, 1971 plus 15% of the total obligation as attorney's fees, and the costs.

SO ORDERED." (p. 80, *Ibid.*)

Respondent corporation's appeal was upheld by the appellate court when it reversed the trial court's decision and dismissed the case with costs against petitioner. (p. 28, *Ibid.*). Hence, the present recourse.

The first issue to be resolved is the propriety of this petition as it calls for a re-examination of the factual findings of the appellate court.

As asserted by herein respondent, it is well-entrenched in Our jurisprudence that this Court is not a trier of facts (*Valdez v. CA*, 194 SCRA 360 [1991]). As a rule, it is also settled that the factual findings of the appellate court are final and conclusive (*Bustamante v. CA*, 193 SCRA 603 [1991]; *Radiowealth Finance Company v. Palileo*, 197 SCRA 245 [1991]). However, in a long line of cases, We have pronounced certain exceptions, as when the inference made is manifestly mistaken or when the judgment is based on misapprehension of facts or when the appellate court overlooked relevant facts not disputed by the parties and which if properly considered, would justify a different conclusion (*Aquino v. CA*, 204 SCRA 247 [1991]; *Manlapaz v. CA*, 147 SCRA 236 [1987]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]; *Moran v. CA*, 133 SCRA 88 [1984]).

A review of the record instantly reveals that the case at bar falls under the last exception. As earlier adverted to, respondent has repeatedly admitted its liability for the 53,800 plastic lime bags amounting to P44,654.00 yet the appellate court disregarded this fact and totally cleared respondent from all responsibility. On this point alone, the decision of the appellate court may be overturned, or at least modified.

Let Us now turn to the crux of the controversy, which is whether or not respondent may be held liable for the 47,000 plastic bags which were not actually used for packing cement as originally intended.

It is beyond dispute that prior to respondent's transaction with petitioner, the bags were already tested and the results thereof, albeit initially unsuccessful, were nevertheless favorably considered after due alterations were made. Verily, it is on the basis of such experimental findings that respondent agreed to use the plastic cement bags and thereafter issued the purchase orders heretofore mentioned. Significantly, the quantity of bags ordered by respondent also negates its position that the bags were still under experimentation. Indeed, if it were so, the bags ordered should have been considerably lesser in number and would normally increase as the suitability of the plastic bags became more definite. Likewise, it is worthy to note that as of the date of petitioner's third delivery on March 19, 1971, respondent has received a total of 52,000 bags. By then, it was very probable that the problems alluded to by respondent could no longer be resolved, thus, only 15,000 bags were actually used and 37,000 bags were already considered unfit for packing cement. Under such predicament, it was but logical for respondent to cancel then the fourth purchase order for another 10,000 bags. Surprisingly, respondent still accepted the same upon delivery on April 17, 1971 and remitted its payments until May 3, 1971. When petitioner sent letters demanding the full payment of the bags, respondent simply declared that it did not receive any because it transferred its offices to another place. In the meantime, the bags remained in the custody of Luzon Cement, respondent's supplier and virtually a stranger as far as petitioner is concerned. It is for this reason that petitioner may not be expected to just pull out its bags from Luzon Cement.

Not to be overlooked also is the fact that Panganiban, respondent corporation's president, also collected due commissions for the four purchase orders issued in favor of petitioner. (p. 79, *Rollo*).

Finally, the conditions which allegedly govern the transaction according to respondent may not be considered. The trial court correctly observed that such conditions should have been distinctly specified in the purchase orders and respondent's failure to do so is fatal to its cause. We find that Article 1502 of the Civil Code, invoked by both

parties herein, has no application at all to this case. The provision in the Uniform Sales Act and the Uniform Commercial Code from which Article 1502 was taken, clearly requires an express written agreement to make a sales contract either a "sale or return" or a "sale on approval". Parol or extrinsic testimony could not be admitted for the purpose of showing that an invoice or bill of sale that was complete in every aspect and purporting to embody a sale without condition or restriction constituted a contract of sale or return. If the purchaser desired to incorporate a stipulation securing to him the right of return, he should have done so at the time the contract was made. On the other hand, the buyer cannot accept part and reject the rest of the goods since this falls outside the normal intent of the parties in the "on approval" situation. (67 Am Jur 2d, pp. 733, 748).

In the light of these principles, We hold that the transaction between respondent and petitioner constituted an absolute sale. Accordingly, respondent is liable for the plastic bags delivered to it by petitioner.

WHEREFORE, premises considered, the decision appealed from is hereby SET ASIDE and the decision of the trial court REINSTATED.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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