

**ALLIANCE TOBACCO CORPORATION, INC., PETITIONER, VS.
PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION,
FARMER'S VIRGINIA TOBACCO REDRYING COMPANY, INC.
AND INTERMEDIATE APPELLATE COURT...**

G.R. No. 66944. November 13, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in the instant petition for review on certiorari of the decision of the then Intermediate Appellate Court is whether or not petitioner's delivery of 174 bales of tobacco to the Farmer's Virginia Tobacco Redrying Company, Inc. (FVTR), a contractee of the Philippine Virginia Tobacco Administration (PVTa), perfected the contract of sale between petitioner and the (PVTa) so as to hold the latter liable for the loss of said bales while in the possession of the FVTR.

The PVTa, a government corporation created under Republic Act No. 2265 to promote the tobacco industry, entered into a contract of procuring, redrying and servicing with the FVTR for the 1963 tobacco trading operation.[1] In June of that year, the PVTa also entered into a merchandising loan agreement with the petitioner, a duly incorporated and authorized tobacco trading entity, whereby the PVTa agreed to lend P25,500 to the petitioner for the purchase of flue-cured Virginia tobacco from bona fide Virginia tobacco farmer-producers.[2]

The following month, petitioner shipped to the FVTR 96 bales of tobacco weighing 4,800 kilos covered by Guia No. 1 and 167 bales weighing 8,350 kilos covered by Guia No. 2. In the words of the lower court, the following transpired:

"x x x. Before shipping the tobacco to the Redrying Plant, the plaintiff (petitioner herein) obtained a Clearance issued by the Tobacco Inspector, authorizing the tobacco shipment to proceed to the Redrying Plant. Upon the arrival of the tobacco shipments in the Redrying Plant, defendant FVTR, at Bauang, La Union (Bauang for short), they were listed in the Log Book, after which the tobacco were brought inside the Redrying Compound. The Log Book was then submitted to the Marketing Department, formerly the Trading Department and kept by the Branch Manager, Bauang, Mr. Jovencio Pimentel, assisted by Mr. Pio Balagot. The documents submitted accompanying the tobacco shipments were the BIR clearance, Clearance from the Regional Tobacco Inspector at San Fernando, La Union (San Fernando for short) and Guias Nos. 1 and 2. After several days, the grading of the plaintiff's tobacco took place but only 89 bales from Guia No. 2 were graded, weighed and accepted. The remaining bales of tobacco in Guia No. 2 and the whole of Guia No. 1 were not graded and weighed because after grading and weighing 89 bales of Guia No. 2, some officers and employees in the premises of defendant FVTR asked money for the separate grading and weighing of the ungraded and unweighed tobacco bales. Because the rest of the plaintiff's tobacco were not graded and weighed, Aldegunda Villanueva, Business Manager of the plaintiff, saw the Branch Manager of the defendant FVTR and asked him to have their tobacco graded and weighed. Since the grading and weighing of the plaintiff's tobacco was (sic) not resumed, in 1965, said Business Manager personally called on Atty. Eduardo Bananal, Manager of the defendant PVTa in Manila and told the latter that some tobacco of the plaintiff were not graded and weighed and were no longer in

the premises of defendant FVTR's Redrying Plant, Manager Bananal told her that the plaintiff's tobacco in question were considered accepted.

"The operations of defendant FVTR in Bauang, stopped in October 1963. The plaintiff asked that its ungraded and unweighed tobacco be withdrawn from the Redrying Plant. The defendants PVTA and FVTR refused to allow the plaintiff's request because according to them the tobacco sought to be withdrawn were subject of a merchandising loan and owned by defendant PVTA." [3]

Unfortunately, the remaining ungraded and unweighed 174 bales with a total value of P28,382 were lost while they were in the possession of the FVTR. Having learned of such loss in 1965, petitioner demanded for its value and the application of the same to its merchandising loan with PVTA but both the latter and the FVTR refused to heed said demands. [4]

Consequently, petitioner filed in the then Court of First Instance of La Union a complaint against PVTA and FVTR praying that the two defendants be ordered to pay it P4,443 representing the value of the 89 bales which were weighed, graded and accepted by the defendants, P28,382.00 representing the value of the lost bales of tobacco and/or that the said amount be applied to its loan with PVTA, and P4,000 as attorney's fees and litigation expenses. [5] They prayed that interest be charged on the first two amounts.

FVTR was declared in default. [6] Thereafter, petitioner and the PVTA submitted a stipulation of facts and agreed that a partial judgment be rendered as to the 89 bales of tobacco which had been weighed and graded. [7]

In its decision, [8] the lower court, citing Santiago Virginia Tobacco Planters Association vs. PVTA, [9] ruled that the PVTA should not be held responsible for the lost bales of tobacco because they were not yet properly graded and weighed and that petitioner failed to present the weigher's tally sheets and warehouse receipts or quedans. The dispositive portion of the decision states:

"WHEREFORE, judgment is hereby rendered as follows:

"1. Ordering the defendant PVTA to pay the plaintiff the amount of P9,323.11 which is the agreed value of the plaintiff's uncontested 89 bales of tobacco, with interest at the legal rate, from the filing of the Complaint on December 27, 1968, up to its full payment;

2. Ordering the defendant PVTA to pay the plaintiff the amount of P1,000 as attorney's fee;

Since the plaintiff admitted that it has a merchandising loan of P20,000 from defendant PVTA, the amounts to be paid to the former may be applied by the latter to the payment of said loan and its interest at the agreed rate.

3. Dismissing the plaintiff's complaint regarding the 96 bales and 78 bales of tobacco under Guias Nos. 1 and 2, respectively.

There is no pronouncement as to costs.

SO ORDERED." [10]

Petitioner appealed to the then Intermediate Appellate Court which, in its decision of March 20, 1984, [11] affirmed in toto the lower court's decision. Hence, petitioner interposed the instant petition for review on certiorari of the appellate court decision. It contends that the question of substance decided by the said court is not in accord with the decision of this Court in Philippine Virginia Tobacco Administration vs. De los Angeles, [12] and that the said "question of substance boils down (to) whether or not there is a perfected contract of sale between petitioner and respondent PVTA with respect to the aforesaid remaining bales of tobacco." [13]

On the other hand, the herein respondent alleges that, without having been weighed or graded, the tobacco

shipment could not be deemed to have been accepted by FVTR, much less the PVTA. It insists that the Santiago Virginia Tobacco Planters Association, Inc. vs. PVTA case (Santiago case for brevity) should be applied. Furthermore, the petition having presented only the factual question of whether or not the tobacco shipment was indeed weighed and graded at the redrying plant, the same must be denied.[14]

On January 13, 1986, this Court denied the petition for lack of merit. However upon petitioner's motion for reconsideration of the resolution denying the petition, the Court set aside said resolution of January 13, 1986 and gave due course to the petition.[15]

At the outset, it should be emphasized that the lower court made a definitive factual finding on the actual and physical delivery of the lost bales of tobacco from the petitioner to the FVTR.[16] The parties, however, disagree as to the legal implications of such delivery. Petitioner contends that it bound not only FVTR but also the PVTA and perfected the contract of sale between petitioner and the PVTA. On the other hand, the PVTA argues that the delivery was not valid and binding on it considering that, not having been weighed and graded by its agents, it had not duly accepted the shipments so as to perfect the contract of sale.

Under the Santiago case, shipping documents and checklists which are accomplished prior to delivery do not prove actual delivery. To prove such delivery, documents such as the weigher's tally sheet and the warehouse receipts which are accomplished when the actual delivery is made are necessary. It should be noted, however, that the factual circumstances extant in this case are different from those in the Santiago case.

In said case, there was a need to prove actual delivery because the petitioner therein demanded for the payment of tobacco shipments which were allegedly delivered to the FVTR.[17] In other words, the actual, physical delivery of the shipments was not proven. On the other hand, in this case, the lower court established from the testimonies of witnesses the fact that petitioner entrusted to the FVTR a total of 263 bales of tobacco 89 bales of which were even actually weighed and graded in the redrying plant.[18] However, for reasons beyond the control of the petitioner, the FVTR refused to weigh and grade the remaining 174 bales. On top of this, the FVTR also refused to grant petitioner's request to withdraw the unweighed and ungraded shipments. As it turned out later, said shipments were lost while in the custody of FVTR, thereby placing the petitioner in a "no win" situation.

The Civil Code provides that ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.[19] There is delivery when the thing sold is placed in the control and possession of the vendee.[20] Indeed, in tobacco trading, actual delivery plays a pivotal role. The peculiar procedure undergone in trading, which procedure was set out at length in both the Santiago and the PVTA vs. De los Angeles cases, reveals that delivery seals the contract of sale because the trader loses not only possession but also control over the shipment. Outlined by the PVTA pursuant to its power "to take over and assume, and therefore exclusively direct, supervise and control, all functions and operations with respect to the processing, warehousing, and trading of Virginia tobacco, the provisions of any existing law to the contrary notwithstanding,"[21] the procedure is observed by everyone involved in the trade.

Verily, the tobacco trading procedure conceived and formulated by the PVTA is akin to a contract of adhesion wherein only one party has a hand in the determination of the terms. But observance of the procedure more often than not renders a trader at a disadvantage. The moment the shipment is placed in the hands of the PVTA or its representative and it is lost, the trader is left empty-handed. While the flaw may not really be in the procedure itself, the same may be found in the persons charged with the implementation of the procedure. Some personnel mishandle the shipment to the detriment of the trader. Some demand grease money to facilitate the trading process. Sadly, this is what happened in this case.

Hence, while under an ideal situation, we would have found merit in respondent PVTA's contention that the

contract of sale could not have been perfected pursuant to Article 1475[22] of the Civil Code because to determine the price of the tobacco traded, the shipment should first be inspected, graded and weighed, we find said contention misplaced herein. A strict interpretation of the provision of Article 1475 may result in adverse effects to small planters who would not be paid for the lost products of their toil. Such situation was what the ruling in PVTA vs. De los Angeles sought to avoid.

Equity and fair dealing, the anchor of said case, must once more prevail. Since PVTA had virtual control over the lost tobacco bales, delivery thereof to the FVTR should also be considered effective delivery to the PVTA.

WHEREFORE, the decision of the appellate court insofar as it affirms the decision of the lower court directing the PVTA to pay petitioner the amount of P9,323.11 for the 89 bales of tobacco is hereby affirmed.

Respondent PVTA is likewise ordered to pay petitioner's claim of P28,382.00 for the lost 174 bales of tobacco. Both amounts are subject to interest at the legal rate from the filing of the complaint on December 27, 1968 up to their full payment.

Should the petitioner still owe respondent PVTA pursuant to the merchandising loan agreement between them, the same shall be offset by whatever amount the petitioner would receive from the respondent PVTA by virtue of this decision. No costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 48.

[2] Rollo, pp. 51-53.

[3] Rollo, pp. 81-82.

[4] Rollo, p. 26.

[5] Ibid.

[6] Rollo, p. 32.

[7] Rollo, pp. 79-80.

[8] Penned by Judge Antonio G. Bautista.

[9] L-26292, February 18, 1970, 31 SCRA 528.

[10] Rollo, p. 85.

[11] Penned by Justice Mariano A. Zosa and concurred in by Justices Jorge R. Coquia and Florelina Castro-Bartolome.

[12] L-33079, December 11, 1978, 87 SCRA 197.

[13] Rollo, p. 9.

[14] Rollo, pp. 118-128.

[15] Rollo, p. 107.

[16] Rollo, p. 81.

[17] Santiago decision, supra, at p. 533.

[18] Rollo, p. 81.

[19] Art. 1477.

[20] Art. 1497.

[21] Sec. 4(a), Republic Act No. 2265.

[22] This article was erroneously cited as Art. 1425 in respondent PVTa's memorandum (p.11). Art. 1475 provides that "(t)he contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price."

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