

**PILAR DEVELOPMENT CORPORATION, PETITIONER, VS.
INTERMEDIATE APPELLATE COURT, KINGSWOOD TRADING CO.,
INC., AND CONSTRUCTION AND DEVELOPMENT CORPORATION OF
THE PHILIPPINES, RESPON...**

G.R. No. 72283. December 12, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a Petition for Review to reverse and set aside

- Decision promulgated July 9, 1985 rendered by the respondent, Intermediate Appellate Court, (IAC) in AC-G.R. No. 69321, and

- Resolution dated September 16, 1985 issued in said case by respondent IAC, denying the motion for reconsideration filed by plaintiff-appellant (petitioner herein) for lack of merit;

on the ground that said respondent IAC committed errors of law in its failure to draw the correct conclusion from its undisputed factual findings.

The pertinent facts giving rise to the instant petition are as follows.

Petitioner Pilar Development is a corporation engaged in the business of residential housing and subdivision development. On October 26, 1976 petitioner filed before the Court of First Instance of Manila, now Regional Trial Court (RTC) a complaint against private respondent Kingswood Trading Co. Inc. (KINGSWOOD, for short) for recovery of actual and compensatory damages in the sum of P101,921.10 alleging that KINGSWOOD delivered to the petitioner 3,000 bags of defective cement, which caused the petitioner not only to stop operation at its batching plant for the manufacture of concrete mix from September 3, to September 14, 1976 but also to stop the construction of its development projects. Petitioner had to demolish all existing constructions built or affected with the defective cement including those cement delivered by other suppliers, resulting in the delay in the completion of the projects of the petitioner. Respondent in its answer denied liability claiming that it is not a manufacturer but only a dealer or distributor of cement. Respondent proceeded to file a third party complaint against Construction and Development Corporation of the Philippines (CDCP) alleging that the latter was the manufacturer of the 3,000 bags of allegedly defective cement delivered to the petitioner. Third party defendant CDCP filed its Answer, alleging among other things that cement manufactured by it had passed rigid standard quality control before delivery and distribution to its cement dealers and therefore not defective.

On January 7, 1981, the trial court rendered its judgment dismissing the complaint, the third-party complaint and the counterclaims, with costs against the plaintiff. This decision was appealed by the plaintiff (petitioner herein) to the Court of Appeals (now the respondent IAC). The Appellate Court affirmed the decision of the lower court with costs against plaintiff-appellant. Petitioner filed a motion for reconsideration which was denied for lack of merit. From this decision, petitioner now comes to Us for Review, alleging that the respondent IAC committed

errors of law in that it drew the wrong conclusions from the disputed facts as found by it (IAC) in its decision, (p. 9, Petition for Review, dated November 11, 1985) (underscoring ours), reproduced herein as follows:

"The plaintiff-appellant, through its purchasing agent, the Tai-Pan Traders, Inc., purchased on credit from the defendant-appellee 3,000 bags of cement in bulk with a total value of P42,000.00 to be utilized in the manufacture of concrete mix for use by it in its residential subdivisions. The defendant-appellee delivered the cement in bulk C.O.D. which was discharged in the silo of the plaintiff-appellant's batching plant, at Talon, Las Pinas, Rizal. Thereafter, the cement delivered by defendant-appellee was used in the manufacture of ready-mix concrete which was delivered to the land development and housing projects of plaintiff-appellant at Pilar Village, Las Pinas, Metro Manila for the construction of the roads and the footings for the residential houses therein. Upon removal of the forms twenty-four hours later, however, the concrete-mix was still soft and cracks had developed. Plaintiff-appellant's project engineer caused an analysis and examination of samples of said concrete mix in the presence of the defendant-appellee's representative to determine the cause of delay in setting of the mix and the cracks. He found that the defect was due to the poor quality of the cement delivered by defendant-appellee. He then had the cement examined by an expert. The examination conducted by the Quality Control Laboratory of the Philippine Rock Products revealed that the cement used had low mortar strength and low SO₃ content. As a consequence, the construction where the defective cement was placed had to be demolished and replaced. Accordingly, plaintiff filed an action against defendant-appellee for damages in the total sum of P101,921.00. The defendant-appellee in turn filed a third-party complaint against the Construction Development Corporation of the Philippines alleging that the latter is solely responsible for the bulk of cement delivered and sold to plaintiff-appellant; the defendant-appellee being only a distributor and dealer of the cement produced and manufactured by third-party defendant.

"After trial on the merits, the court below found that the plaintiff was not able to establish that the defective concrete mix used in the Pilar Village Constructions was caused by the cement (Midland Cement) delivered by the defendant. According to the court, since not a single witness testified that he had personal knowledge of the use of the questioned cement in the manufacture of the concrete mix, plaintiff's evidence falls short of the quantum of evidence required to prove his cause of action. Moreover, the court below ruled that there was a probability that the defective concrete mix was not caused by the questioned cement but by a different kind of cement since at about 2:00 p.m., on the same day that the cement (Midland Cement) was delivered, another brand of cement (Island Cement), was delivered and discharged in bulk to plaintiff's batching plant.

As a consequence of the court a quo's decision, plaintiff appealed to this Court, interposing the following assignment of errors:

"I

THE TRIAL COURT ERRED WHEN IT FOUND THAT CEMENT-DELIVERIES MADE BY THE DEFENDANT-APPELLEE TO APPELLANT WERE NOT DEFECTIVE.

II

THE TRIAL COURT ERRED WHEN IT DID NOT ORDER THE REPLACEMENT OF THE 809 BAGS OF MIDLAND CEMENT.

III

THE TRIAL COURT ERRED WHEN IT DISMISSED THE COMPLAINT WITH COSTS AGAINST THE APPELLANT."

(Appellant's Brief, p. 1)

"The evidence for the plaintiff shows that the two silos of its batching plant were empty prior to the cement deliveries made by the defendant-appellee, and that when the deliveries were made, Midland Cement filed the two silos. Thus, the plaintiff argued that it was not possible that such cement could have been mixed with other

cement. Likewise, the plaintiff's evidence shows that Midland Cement was the cement brand used during the morning deliveries, and that test made on samples of Midland Cement conducted by plaintiff and Phil. Rock Products reveal that the same was defective in that it had a low strength and low trisulphate oxide content.

"On the part of the third-party defendant, its evidence shows that it conducted its own laboratory test on the same cement and found that it was good cement. Furthermore, it was able to show that the unused Midland Cement - 809 bags of them, returned to it by plaintiff was resold to other customers and the latter did not complain of the poor or defective quality of said item. It is also not disputed that when plaintiff conducted the test on samples of Midland Cement, third-party defendant was not duly represented."

(pp. 21-22, Record, pp. 2-3, Decision of IAC)

Supported by the foregoing findings of facts, the respondent court made the following ruling:

"We are at loss to determine which position is correct. Under the circumstances, we are constrained to decide the issue under the rule of burden of proof.

"Where the evidence on an issue of fact is in equipoise or there is any doubt on which the evidence preponderates the party having the burden of proof falls upon that issue, that is to say, if the evidence touching a disputed fact is equally balanced, or if it does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail. (23 C. J., 11-12).

"When the scale should stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for defendant. (III Moran 562)

"The burden of proof in the present case, in so far as plaintiff's cause of action is concerned, lies on the plaintiff just as it also is on the defendant, in so far as the latter's counterclaim is concerned. The alleged defect of the cement delivered to plaintiff must be shown by preponderance of evidence. Taking into consideration the evidence submitted by the parties, we hold that no such preponderance has been established by plaintiff.

"With respect to the contention of the plaintiff that 809 bags of Midland Cement should be returned to it, we note that the trial court ordered the return of the sum of P11,326.00, the invoice value thereof. Under the circumstances, we find this the most equitable remedy considering that it was plaintiff which actually returned the 809 bags to the defendant-appellee.

WHEREFORE, premises considered, the decision of the lower court is hereby AFFIRMED, with costs against plaintiff-appellant.

SO ORDERED."

(p. 4, Decision of IAC)

The main issue before Us is whether or not we should consider as a question of law the issue raised in the petition.

By its own admission, petitioner accepts the factual findings of the respondent Appellate Court as correct and undisputed (p. 5, Petition dated November 11, 1985). It has been held that:

"When the facts are undisputed, the question of whether or not the conclusion drawn therefrom by the Court of Appeals is correct, is a question of law cognizable by the Supreme Court" (Comments on the Rules of Court, Moran 1979 Edition, Vol. II, p. 474 citing the case of Commissioner of Immigration vs. Garcia, L-28082, June 28, 1974).

However, all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals (Id.), citing the case of Luna v. Linatoc, 74 Phil. 15.

Furthermore, it can be seen from the records of the case that petitioner's contention raises more of a question of

fact than a question of law. The criterion is this: "There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts and there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts" (Comments on the Rules of Court, Moran 1979 Edition, Vol. II, p. 473 citing the case of *Ramos v. Pepsi-Cola Bottling Co. of the Phil.*, 19 SCRA 289, 292). The law creating the Court of Appeals is intended mainly to take away from the Supreme Court the work of examining the evidence, and confine its task to the determination of questions which do not call for the reading and study of transcripts, containing the testimony of witnesses. (*Id.*, citing the case of *Sta. Ana v. Hernandez* 18 SCRA 973, 978).

After a thorough consideration of the evidence and records of the case, We find no compelling reason to disagree with the findings and conclusions of the respondent court.

WHEREFORE, PREMISES CONSIDERED, the Petition for Review is denied for lack of merit, but the private respondent is hereby ordered to return the invoice value (P11,326) of the 809 bags of cement which were returned to it by the petitioner.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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