

SCHMID & OBERLY, INC., PETITIONER, VS. RJL MARTINEZ FISHING CORPORATION, RESPONDENT.

G.R. No. 75198. October 18, 1988

Ponente: CORTES, J.

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CORTES, J.:

Petitioner seeks reversal of the decision and the resolution of the Court of Appeals, ordering Schmid & Oberly, Inc. (hereafter to be referred to simply as "SCHMID") to refund the purchase price paid by RJL Martinez Fishing Corporation (hereafter to be referred to simply as "RJL MARTINEZ") to D. Nagata Co., Ltd. of Japan (hereafter to be referred to simply as "NAGATA CO.") for twelve (12) defective "Nagata" -brand generators, plus consequential damages and attorney's fees.

The facts as found by the Court of Appeals, are as follows:

The findings of facts by the trial court (Decision, pp. 21-28, Record on Appeal) shows: that the plaintiff RJL Martinez Fishing Corporation is engaged in deep-sea fishing, and in the course of its business, needed electrical generators for the operation of its business; that the defendant sells electrical generators with the brand of "Nagata", a Japanese product; that the supplier is the manufacturer, the D. Nagata Co., Ltd., of Japan; that the defendant Schmid & Oberly, Inc. advertised the 12 Nagata generators for sale; that the plaintiff purchased 12 brand new Nagata generators, as advertised by herein defendant; that through an irrevocable line of credit, the D. Nagata Co., Ltd. shipped to the plaintiff 12 electric generators, and the latter paid the amount of the purchase price; that the 12 generators were found to be factory defective; that the plaintiff informed the defendant herein that it shall return the 12 generators as in fact three of the 12 were actually returned to the defendant; that the plaintiff sued the defendant on the warranty, asking for rescission of the contract that the defendant be ordered to accept the generators and be ordered to pay back the purchase money; and that the plaintiff asked for damages. (Record on Appeal, pp. 27-28) [CA Decision, pp. 3-4; Rollo, pp. 47-48.]

On the basis thereof, the Court of Appeals affirmed the decision of the trial court ordering petitioner to refund to private respondent the purchase price for the twelve (12) generators and to accept delivery of the same and to pay damages and attorney's fees, with a slight modification as to the amount to be refunded. In its resolution of the motion for reconsideration, the Court of Appeals further modified the trial court's decision as to the award of consequential damages.

Ordinarily, the Court will not disturb the findings of fact of the Court of Appeals in petitions to review the latter's decisions under Rule 45 of the Revised Rules of Court, the scope of the Court's inquiry being limited to a review of the imputed errors of law [Chan v. Court of Appeals, G.R. No. L-727488, June 30, 1970, 33 SCRA 77; Tiongco v. De la Merced, G.R. No. L-24426, July 25, 1974, 58 SCRA 89; Corona v. Court of Appeals, G.R. No. 62482, April 28, 1984, 121 SCRA 865; Baniqued v. Court of Appeals, G.R. No. L-47531, January 30, 1984, 127 SCRA 596.] However, when, as in this case, it is the petitioner's position that the appealed judgment is premised on a misapprehension of facts,[*] the Court is compelled to review the Court of Appeal's factual findings [De la Cruz v. Sosing, 94 Phil. 26 (1953); Castillo v. Court of Appeals, G.R. No. L-48290, September 39, 1983, 124

SCRA 808.].

Considering the sketchiness of the respondent court's narration of facts, whether or not the Court of Appeals indeed misapprehended the facts could not be determined without a thorough review of the records.

Thus, after a careful scrutiny of the records, the Court has found the appellate court's narration of facts incomplete. It failed to include certain material facts.

The facts are actually as follows:

RJL MARTINEZ is engaged in the business of deep-sea fishing. As RJL MARTINEZ needed electric generators for some of its boats and SCHMID sold electric generators of different brands, negotiations between them for the acquisition thereof took place. The parties had two separate transactions over "Nagata" - brand generators.

The first transaction was the sale of three (3) generators. In this transaction, it is not disputed that SCHMID was the vendor of the generators. The company supplied the generators from its stockroom; it was also SCHMID which invoiced the sale.

The second transaction, which gave rise to the present controversy, involves twelve (12) "Nagata" -brand generators. These are the facts surrounding this particular transaction:

As RJL Martinez was canvassing for generators, SCHMID gave RJL MARTINEZ its Quotation dated August 19, 1975 [Exhibit "A"] for twelve (12) "Nagata"-brand generators with the following specifications:

"NAGATA" Single phase AC Alternators, 110/220 V, 60 cycles, 1800 rpm, unity power factor, rectifier type and radio suppressor, 5KVA (5KW) \$546.75 @

It was stipulated that payment would be made by confirmed and irrevocable letter of credit in favor of NAGATA CO. Furthermore, among the General Conditions of Sale appearing on the dorsal side of the Quotation is the following:

Buyer will, upon request, promptly open irrevocable Letter of Credit in favor of Seller, in the amount stated on the face of this memorandum, specifying shipment from any Foreign port to Manila or any safe Philippine port, permitting partial shipments and providing that in the event the shippers are unable to ship within the specified period due to strikes, lack of shipping space or other circumstances beyond their reasonable control. Buyer agrees to extend the said Letter of Credit for later shipment. The Letter of Credit shall otherwise be subject to the conditions stated in this memorandum of contract. [Underscoring supplied.]

Agreeing with the terms of the Quotation, RJL MARTINEZ opened a letter of credit in favor of NAGATA CO. Accordingly, on November 20, 1975, SCHMID transmitted to NAGATA CO. an order [Exhibit "4"] for the twelve (12) generators to be shipped directly to RJL MARTINEZ. NAGATA CO. thereafter sent RJL MARTINEZ the bill of lading and its own invoice (Exhibit "B") and, in accordance with the order shipped the generators directly to RJL MARTINEZ. The invoice states that "one (1) case of 'NAGATA' AC Generators" consisting of twelve sets was –

bought by order and for account risk of Messrs. RJL Martinez Fishing Corporation.

For its efforts, SCHMID received from NAGATA CO. a commission of \$1,752.50 for the sale of the twelve generators to RJL MARTINEZ. [Exhibits "9", "9-A", "9-B" and "9-C".]

All fifteen (15) generators subject of the two transactions burned out after continuous use. RJL MARTINEZ informed SCHMID about this development. In turn, SCHMID brought the matter to the attention of NAGATA CO. In July 1976 NAGATA CO. sent two technical representatives who made an ocular inspection and conducted

tests on some of the burned-out generators, which by then had been delivered to the premises of SCHMID.

The tests revealed that the generators were overrated. As indicated both in the quotation and in the invoice, the capacity of a generator was supposed to be 5 KVA (kilovolt amperes). However, it turned out that the actual capacity was only 4 KVA.

SCHMID replaced the three (3) generators subject of the first sale with generators of a different brand.

As for the twelve (12) generators subject of the second transaction, the Japanese technicians advised RJL MARTINEZ to ship three (3) generators to Japan, which the company did. These three (3) generators were repaired by NAGATA CO. itself and thereafter returned to RJL MARTINEZ; the remaining nine (9) were neither repaired nor replaced. NAGATA CO., however, wrote SCHMID suggesting that the latter check the generators, request for spare parts for replacement free of charge, and send to NAGATA CO. SCHMID's warranty claim including the labor cost for repairs [Exhibit "I".] In its reply letter, SCHMID indicated that it was not agreeable to these terms [Exhibit, "10".]

As not all of the generators were replaced or repaired, RJL MARTINEZ formally demanded that it be refunded the cost of the generators and paid damages. SCHMID in its reply maintained that it was not the seller of the twelve (12) generators and thus refused to refund the purchase price therefor. Hence, on February 14, 1977, RJL MARTINEZ brought suit against SCHMID on the theory that the latter was the vendor of the twelve (12) generators and, as such vendor, was liable under its warranty against hidden defects.

Both the trial court and the Court of Appeals upheld the contention of RJL MARTINEZ that SCHMID was the vendor in the second transaction and was liable under its warranty. Accordingly, the courts a quo rendered judgment in favor of RJL MARTINEZ. Hence, the instant recourse to this Court.

In this petition for review, SCHMID seeks reversal on the following grounds:

(i)

Schmid was merely the indenter in the sale [of the twelve (12) generators] between Nagata Co., the exporter and RJL Martinez, the importer;

(ii)

as mere indenter, Schmid is not liable for the seller's implied warranty against hidden defects, Schmid not having personally assumed any such warranty;

(iii)

in any event, conformably, with Article 1563 of the Civil Code, there was no implied warranty against hidden defects in the sale of these twelve (12) generators because these were sold under their tradename "Nagata"; and

(iv)

Schmid, accordingly, is not liable for the reimbursement claimed by RJL Martinez nor for the latter's unsubstantiated claim of P110.33 operational losses a day nor for exemplary damages, attorney's fees and costs. [Petition, p.6.]

- As may be expected, the basic issue confronting this Court is whether the second transaction between the parties was a sale or an indent transaction. SCHMID maintains that it was the latter; RJL MARTINEZ claims that it was a sale.

At the outset, it must be understood that a contract is what the law defines it to be, considering its essential elements, and not what it is called by the contracting parties [*Quiroga v. Parsons Hardware Co.*, 38 Phil. 501 (1918).]

The Civil Code defines a contract of sale, thus:

ART. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

It has been said that the essence of the contract of sale is the transfer of title or agreement to transfer it for a price paid or promised [*Commissioner of Internal Revenue v. Constantino*, G.R. No. L-25926, February 27, 1970, 31 SCRA 779, 785, citing *Salisbury v. Brooks*, 94 SE 117, 118-19.] "If such transfer puts the transferee in the attitude or position of an owner and makes him liable to the transferor as a debtor for the agreed price, and not merely as an agent who must account for the proceeds of a resale, the transaction is a sale." [*Ibid.*]

On the other hand, there is no statutory definition of "indent" in this jurisdiction. However, the Rules and Regulations to Implement Presidential Decree No. 1789 (the Omnibus Investments Code) lumps "indentors" together with "commercial brokers" and "commission merchants" in this manner:

. . . A foreign firm which does business through the middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines. But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines [Part I, Rule I, Section 1, par. g (1).]

Therefore, an indentor is a middleman in the same class as commercial brokers and commission merchants. To get an idea of what an indentor is a look at the definition of those in his class may prove helpful.

A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him; he is strictly a middleman and for some purpose the agent of both parties. (19 Cyc., 186; *Henderson vs. The State*, 50 Ind., 234; *Black's Law Dictionary*.) A broker is one whose occupation it is to bring parties together to bargain, or to bargain for them, in matters of trade, commerce or navigation. (*Mechem on Agency*, sec. 13; *Wharton on Agency*, sec. 695.) Judge Storey, in his work on Agency, defines a broker as an agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation, for compensation commonly called brokerage. (*Storey on Agency*, sec. 28.) [*Behn, Meyer and Co., Ltd. v. Nolting and Garcia*, 35 Phil. 274, 279-80 (1916).]

A commission merchant is one engaged in the purchase or sale for another of personal property which, for this purpose, is placed in his possession and at his disposal. He maintains a relation not only with his principal and the purchasers or vendors, but also with the property which is subject matter of the transaction. [*Pacific Commercial Co. v. Yatco*, 68 Phil. 398, 401 (1939).]

Thus, the chief feature of a commercial broker and a commercial merchant is that in effecting a sale, they are merely intermediaries or middlemen and act in a certain sense as the agent of both parties to the transaction.

Webster defines an indent as "a purchase order for goods especially when sent from a foreign country." [*Webster's Ninth New Collegiate Dictionary* 612 (1986).] It would appear that there are three parties to an indent transaction,

namely, the buyer, the indenter, and the supplier who is usually a non-resident manufacturer residing in the country where the goods are to be bought [Commissioner of Internal Revenue v. Cadwallader Pacific Company, G.R. No. L-20343, September 29, 1976, 73 SCRA 59.] An indenter may therefore be best described as one who for compensation, acts as a middleman in bringing about a purchase and sale of goods between a foreign supplier and a local purchaser.

Coming now to the case at bar, the admissions of the parties and the facts appearing on record more than suffice to warrant the conclusion that SCHMID was not a vendor, but was merely an indenter, in the second transaction.

In its complaint, RJI MARTINEZ admitted that the generators were purchased "through indent order" [Record on Appeal, p.6.] In the same vein, it admitted in its demand letter previously sent to SCHMID that twelve (12) of fifteen (15) "Nagata"-brand generators "were purchased through your company (SCHMID), by indent order and three (3) by direct purchase." [Exhibit "D".] The evidence also show that RJI MARTINEZ paid directly NAGATA CO. for the generators, and that the latter company itself invoiced the sale [Exhibit "B"], and shipped the generators directly to the former. The only participation of SCHMID was to act as an intermediary or middleman between NAGATA CO. and RJI MARTINEZ, by procuring an order from RJI MARTINEZ and forwarding the same to NAGATA CO. for which the company received a commission from NAGATA CO. [Exhibits "9", "9-A", "9-B" and "9-C".]

The above transaction is significantly different from the first transaction wherein SCHMID delivered the goods from its own stock (which it had itself imported from NAGATA CO.), issue its own invoice, and collected payment directly from the purchaser.

These facts notwithstanding, RJI MARTINEZ insists that SCHMID was the vendor of the twelve generators on the following grounds:

First, it is contended that the Quotation and the General Conditions of Sale on the dorsal side thereof do not necessarily lead to the conclusion that NAGATA CO., and not SCHMID, was the real seller in the case of the twelve (12) generators in that:

(i)

the signing of the quotation, which was under SCHMID's letterhead, perfected the contract of sale (impliedly, as between the signatories thereto – i.e., RJI MARTINEZ and SCHMID);

(ii)

the qualification that the letter of credit shall be in favor of NAGATA CO. constituted simply the manner of payment requested by SCHMID (implying that SCHMID, as seller, merely chose to waive direct payment, stipulating delivery of payment instead to NAGATA CO. as supplier);

Second, it is asserted that the acts of SCHMID after was informed of the defect in the generators were indicative of its awareness that it was the vendor and acknowledgment of its liability as such vendor. Attention is called to these facts: When RJI MARTINEZ complained to SCHMID that the generators were defective, SCHMID immediately asked RJI MARTINEZ to send the defective generators to its shop to determine what was wrong. SCHMID likewise informed NAGATA CO. about the complaint of RJI MARTINEZ. When the Japanese technicians arrived, SCHMID made available its technicians, its shop and its testing equipment. After the generators were found to have factory defects, SCHMID facilitated the shipment of three (3) generators to Japan and, after their repair, back to the Philippines [Memorandum for the Respondent, p. 8.]

Third, it is argued that the contents of the letter from NAGATA CO. to SCHMID regarding the repair of the generators indicated that the latter was "within the purview of a seller." [Ibid.]

Fourth, it is argued that if SCHMID is considered as a mere agent of NAGATA CO., a foreign corporation not licensed to do business in the Philippines, then the officers and employees of the former may be penalized for violation of the old Corporation Law which provided:

Sec. 69. . . . Any officer or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos or both such imprisonment and fine, in the discretion of the Court.

The facts do not bear out these contentions.

The first contention disregards the circumstances surrounding the second transaction as distinguished from those surrounding the first transaction, as noted above.

Neither does the solicitous manner by which SCHMID responded to RJL MARTINEZ's complaint prove that the former was the seller of the generators. As aptly stated by counsel, no indentor will just fold its hands when a client complains about the goods it has bought upon the indentor's mediation. In its desire to promote the product of the seller and to retain the goodwill of the buyer, a prudent indentor desirous of maintaining his business would have to act considerately towards his clients.

Note that in contrast to its act of replacing the three (3) generators subject of the first transaction, SCHMID did not replace any of the twelve (12) generators, but merely rendered assistance to both RJL MARTINEZ and NAGATA CO. so that the latter could repair the defective generators.

The proposal of NAGATA CO. rejected by SCHMID that the latter undertake the repair of the nine (9) other defective generators, with the former supplying the replacement parts free of charge and subsequently reimbursing the latter for labor costs [Exhibit "I"], cannot support the conclusion that SCHMID is vendor of the generators subject of the second transaction or was acting "within the purview of a seller."

Finally, the afore-quoted penal provision in the Corporation Law finds no application to SCHMID and its officers and employees relative to the transactions in the instant case. What the law seeks to prevent, through said provision, is the circumvention by foreign corporations of licensing requirements through the device of employing local representatives. An indentor, acting in his own name, is not, however, covered by the above-quoted provision. In fact, the provision of the Rules and Regulations implementing the Omnibus Investments Code quoted above, which was copied from the Rules implementing Republic Act No. 5455, recognizes the distinct role of an indentor, such that when a foreign corporation does business through such indentor, the foreign corporation is not deemed doing business in the Philippines.

In view of the above considerations, this Court rules that SCHMID was merely acting as an indentor in the purchase and sale of the twelve (12) generators subject of the second transaction. Not being the vendor, SCHMID cannot be held liable for the implied warranty for hidden defects under the Civil Code [Art. 1561, et seq.].

- However, even as SCHMID was merely an indentor, there was nothing to prevent it from voluntarily warranting that the twelve (12) generators subject of the second transaction are free from any hidden defects. In other words, SCHMID may held answerable for some other contractual obligation, if indeed it had so bound itself. As stated above, an indentor is to some extent an agent of both the vendor and the vendee. As such agent, therefore, he may expressly obligate himself to undertake the obligations of his principal [See Art. 1897, Civil Code.]

The Court's inquiry, therefore, shifts to a determination of whether or not SCHMID expressly bound itself to warrant that the twelve (12) generators are free of any hidden defects.

Again, we consider the facts.

The Quotation [Exhibit "A"] is in writing. It is the repository of the contract between RJL MARTINEZ and SCHMID. Notably, nowhere is it stated therein that SCHMID did bind itself to answer for the defects of the things sold. There being no allegation nor any proof that the Quotation does not express the true intent and agreement of the contracting parties, extrinsic parol evidence of warranty will be to no avail [See Rule 123, Sec. 22.]

The trial court, however, relied on the testimony of Patrocinio Balagtas, the head of the Electrical Department of RJL MARTINEZ, to support the finding that SCHMID did warrant the twelve (12) generators against defects.

Upon careful examination of Balagtas' testimony, what is at once apparent is that Balagtas failed to disclose the nature or terms and conditions of the warranty allegedly given by SCHMID. Was it a warranty that the generators would be fit for the fishing business of the buyer? Was it a warranty that the generators to be delivered would meet the specifications indicated in the Quotation? Considering the different kinds of warranties that may be contracted, unless the nature or terms and conditions of the warranty are known, it would not be possible to determine whether there has been a breach thereof.

Moreover, a closer examination of the statements allegedly made by the representative of SCHMID reveals that they merely constituted an expression of opinion which cannot by any means be construed as a warranty [See Art. 1546, Civil Code.]

We quote from Balagtas' testimony:

ATTY. CATRAL:

Q:

Did you not say at the start of your cross examination, Mr. Balagtas, that the only participation you had in the acquisition of those twelve (12) units [of] generators was your having issued a purchase order to your own company for the purchase of the units?

ATTY. AQUINO:

Misleading, your Honor.

ATTY CATRAL:

I am asking the witness.

COURT:

He has the right to ask that question because he is on cross. Moreover, if I remember, he mentioned something like that. Witness may answer.

A:

Yes, sir. Before I submitted that, we negotiated with Schmid and Oberly the best generators they can recommend because we are looking for generators. The representative of Schmid and Oberly said that Nagata is very good. That is why I recommended that to the management. [t.s.n., October 14, 1977, pp. 23-25.]

At any rate, when asked where SCHMID's warranty was contained, Balagtas testified initially that it was in the receipts covering the sale. (At this point, it may be stated that the invoice [Exhibit "B"] was issued by NAGATA CO. and nowhere is it stated therein that SCHMID warranted the generators against defects.) When confronted with a copy of the invoice issued by NAGATA CO., he changed his assertion and claimed that what he meant was that the date of the commencement of the period of SCHMID'S warranty would be based on the date of the invoice. On further examination, he again changed his mind and asserted that the warranty was given verbally. [TSN, October 14, 1977, pp. 19-22.] But then again, as stated earlier, the witness failed to disclose the nature or terms and conditions of the warranty allegedly given by SCHMID.

On the other hand, Hernan Adad, SCHMID's General Manager, was categorical that the company does not warrant goods bought on indent and that the company warrants only the goods bought directly from it, like the three generators earlier bought by RJL MARTINEZ itself [TSN, December 19, 1977, pp. 63-64.] It must be recalled that SCHMID readily replaced the three generators from its own stock.

In the face of these conflicting testimonies, this Court is of the view that RJL MARTINEZ has failed to prove that SCHMID had given a warranty on the twelve (12) generators subject of the second transaction. Even assuming that a warranty was given, there is no way to determine whether there has been a breach thereof, considering that its nature or terms and conditions have not been shown.

- In view of the foregoing, it becomes unnecessary to pass upon the other issues.

WHEREFORE, finding the Court of Appeals to have committed a reversible error, the petition is GRANTED and the appealed Decision and Resolution of the Court of Appeals are REVERSED. The complaint of RJL Martinez Fishing Corporation is hereby DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., and Bidin, JJ., concur.

Feliciano, J., no part.

[*] Specifically, petitioner alleges that the findings of the trial court adopted by the Court of Appeals are "contradictory to the recorded evidence" [Petition, p. 3; Rollo, p.8.]

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