

## THIRD DIVISION

**[ G.R. No. 178169, January 12, 2015 ]**

**NFF INDUSTRIAL CORPORATION, PETITIONER, VS. G & L  
ASSOCIATED BROKERAGE AND/OR GERARDO TRINIDAD,  
RESPONDENTS.**

**DECISION**

**PERALTA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>[1]</sup> dated November 22, 2006 and the Order<sup>[2]</sup> dated May 22, 2007, respectively, of the Court of Appeals (CA), in the civil case entitled *NFF Industrial Corporation v. G & L Associated Brokerage, Inc. and/or Gerardo Trinidad*, docketed as CA-G.R. CV No. 85060.

The facts follow.

Petitioner NFF Industrial Corporation is engaged in the business of manufacturing bulk bags, while respondent G & L Associated Brokerage, Inc. (*respondent company*) is among its customers.<sup>[3]</sup> Respondent Gerardo Trinidad is the general manager of respondent company.<sup>[4]</sup>

According to petitioner, on July 20, 1999, respondent company ordered one thousand (1,000) pieces of bulk bags from petitioner, at Three Hundred Eighty Pesos (P380.00) per piece, or a total purchase price of Three Hundred Eighty Thousand Pesos (P380,000.00), payable within thirty (30) days from delivery, covered by Purchase Order No. 97-002 dated July 29, 1999.<sup>[5]</sup> In the said Purchase Order, an instruction was made that the bulk bags were for immediate delivery to "G & L Associated Brokerage, Inc., c/o Hi-Cement Corporation, Norzagaray, Bulacan."<sup>[6]</sup> Shortly thereafter, respondent company ordered an additional one thousand (1,000) pieces of bulk bags, thus for a total of two thousand (2,000) pieces, at the same price per bag and with the same terms of payment as well as the same instructions for delivery.<sup>[7]</sup>

Accordingly, petitioner made deliveries of the bulk bags to Hi-Cement on the following dates and evidenced by the following documents, to wit:

<b>Units Delivered</b>	<b>Date of Delivery</b>	<b>Amount</b>	<b>Delivery Receipts</b>	<b>Sales Invoices</b>
400	July 30, 1999	P152,000.00	No. 0226 dated July 30, 1999	No. 4113 dated July 30, 1999
1,000	August 4, 1999	P380,000.00	No. 0229 dated August	No. 4120 dated August

			4, 1999	4, 1999
600	August 6, 1999	P228,000.00	No. 0231 dated August 6, 1999	No. 4122 dated August 6, 1999 <sup>[8]</sup>
2,000		P760,000.00		

Petitioner alleged that the aforementioned deliveries were duly acknowledged by representatives of respondent company.<sup>[9]</sup> Petitioner also averred that all the delivery receipts were rubber stamped, dated and signed by the security guard-on-duty, as well as other representatives of respondent company.<sup>[10]</sup> All deliveries made were likewise covered by sales invoices.<sup>[11]</sup> Based on the said invoices, the total sales price is Seven Hundred Sixty Thousand Pesos (P760,000.00).<sup>[12]</sup> All the sales invoices were duly served upon, and received by respondent company's representative, one Marian Gabay.<sup>[13]</sup>

On the other hand, respondents alleged that on July 20, 1999, it ordered from petitioner, by way of Purchase Order No. 97-002, one thousand (1,000) pieces of bulk bags from petitioner at a unit price of (P380.00) per piece for a total purchase price of Three Hundred Eighty Thousand Pesos (P380,000.00).<sup>[14]</sup> The said bulk bags were to be used by respondent company for the purpose of hauling cement from Hi-Cement Corporation at Norzagaray, Bulacan, to a dam project in Casecanan, Nueva Ecija, the respondent company having been designated as one of the many haulers at the Hi-Cement Corporation.<sup>[15]</sup> On July 26, 1999, respondent company formalized its offer through a letter containing the same terms as the Purchase Order and providing for other details regarding the purchase.<sup>[16]</sup>

According to respondents, the Purchase Order specifically provides that the bulk bags were to be delivered at Hi-Cement Corporation to Mr. Raul Ambrosio, respondent company's checker and authorized representative assigned thereat.<sup>[17]</sup> Subsequently, however, the ordered bulk bags were not delivered to respondent company, the same not having been received by the authorized representative in conformity with the terms of the Purchase Order.<sup>[18]</sup>

Meanwhile, thirty (30) days elapsed from the time the last alleged delivery was made but no payment was effected by respondent company.<sup>[19]</sup> This prompted petitioner to send a demand letter dated October 27, 1999 to respondent company.<sup>[20]</sup> As respondent company failed to respond to the demand letter, petitioner followed up its claim from the former through a series of telephone calls.<sup>[21]</sup> Again, since no concrete answer was provided by respondent company, petitioner sent another demand letter dated November 23, 1999; and finally, a third demand letter dated October 2, 2001.<sup>[22]</sup> As the demands remained unheeded, petitioner filed a complaint for sum of money against respondents on December 19, 2001.<sup>[23]</sup>

As no settlement was reached during the pre-trial stage, trial proceeded. On January 25, 2005, the Regional Trial Court (RTC) rendered its decision in favor of petitioner. The *fallo* of the Decision provides:

PRESCINDING FROM THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiff NFF INDUSTRIAL CORPORATION

and against the defendant Corporation G & L Associated Brokerage, Inc., and the latter is hereby ordered to pay the plaintiff the following:

1. The sum of Php760,000.00 – representing overdue accounts plus interest from the first demand on October 27, 1999 until fully paid.
2. The sum of Php152,000.00 as attorney's fees.
3. Cost of suit.

SO ORDERED.<sup>[24]</sup>

Aggrieved, respondents appealed before the CA. As a result, the decision of the RTC was reversed in the CA's Decision<sup>[25]</sup> dated November 22, 2006, in the following wise:

**WHEREFORE**, the appealed decision is, hereby, **REVERSED AND SET ASIDE**. The Complaint against the appellant is performe **DISMISSED**.

**SO ORDERED.**<sup>[26]</sup>

Undaunted, petitioner filed a Motion for Reconsideration. The same was, however, denied in the assailed Order dated May 22, 2007.

Hence, this petition stating the following grounds:

I

PREPONDERANCE OF EVIDENCE SHOWS THAT THE RESPONDENT COMPANY ACCEPTED DELIVERY OF THE BULK BAGS.

II

RESPONDENTS' CONDUCT PREPONDERANTLY SHOWS THAT DELIVERY OF THE BULK BAGS HAS BEEN ACCEPTED.

III

FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT.

IV.

TO SUSTAIN THE DECISION OF THE COURT OF APPEALS WILL CAUSE UNJUST ENRICHMENT ON THE PART OF RESPONDENTS AT THE EXPENSE OF THE PETITIONER.<sup>[27]</sup>

Simply, the issue before us is whether or not there was valid delivery on the part of petitioner in accordance with law, which would give rise to an obligation to pay on the part of respondent for the value of the bulk bags.

The question is basically factual since it involves an evaluation of the conflicting evidence presented by the opposing parties, including the existence and relevance

of specific surrounding circumstances, to determine the truth or falsity of alleged facts.<sup>[28]</sup>

While it is well settled that factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, nevertheless, the Court has the authority to review and, in proper cases, reverse the factual findings of lower courts in these instances: (a) when the findings of fact of the trial court are in conflict with those of the appellate court; (b) when the judgment of the appellate court is based on misapprehension of facts; and (c) when the appellate court manifestly overlooked certain relevant facts which, if properly considered, would justify a different conclusion.<sup>[29]</sup> Considering that in the instant case, the findings of the CA are contrary to those of the RTC, a minute scrutiny by this Court is in order, and resort to duly proven evidence becomes necessary.<sup>[30]</sup>

Petitioner avers that it has delivered the bulk bags to respondent company, which effectively placed the latter in control and possession thereof, as in fact, respondent company had made use of the said bulk bags in the ordinary course of its business activities.<sup>[31]</sup> Conversely, respondents contend that the evidence on record miserably failed to establish that the alleged deliveries were received by the authorized representative of the respondents. Thus, there was no delivery at all in contemplation of law.<sup>[32]</sup>

We find respondents' contention devoid of persuasive force.

The resolution of the issue at bar necessitates a scrutiny of the concept of "delivery" in the context of the Law on Sales.<sup>[33]</sup> Under the Civil Code, the vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.<sup>[34]</sup> The ownership of thing sold is considered acquired by the vendee once it is delivered to him in the following wise:

Art. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

Art. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

Thus, ownership does not pass by mere stipulation but only by delivery.<sup>[35]</sup> Manresa explains, "the delivery of the thing x x x signifies that title has passed from the seller to the buyer."<sup>[36]</sup> Moreover, according to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right.<sup>[37]</sup> The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code signifies that the transmission of ownership from vendor to vendee has taken place.<sup>[38]</sup> Here, emphasis is placed on Article 1497 of the Civil Code, which contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee.<sup>[39]</sup>

In *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*,<sup>[40]</sup> the concept of "delivery" was elucidated, to wit:

Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur. It is an act by which one party parts with the title to and the possession of the property, and the other acquires the right to and the possession of the same. In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate **"the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee."**<sup>[41]</sup>

Applying the foregoing criteria to the case at bar, We find that there were various occasions of delivery by petitioner to respondents, and the same was duly acknowledged by respondent Trinidad. This is supported by the testimony of petitioner's Sales Manager, Richard Agustin Vergamos, an excerpt thereof states:

DIRECT EXAMINATION

ATTY. CORALDE

Q: So, after getting the order of two thousand pieces (2,000 pcs.) and after following the delivery instructions of Mr. Trinidad, after you agreed to the price of three hundred eighty pesos per piece (P380.00/pc) what happened next, if any, Mr. Witness?

A: WE processed the order and as committed to him, **we delivered the items few days after the order.**

COURT

Q: How many days?

Let me refer, your honor, to the document of the D.R.

x x x x

A: **On July 30, 1999, we delivered four hundred pieces (400 pcs.) to Union Cement Manufacturing Plant under the company name G & L Associated Brokerage, your honor.**

ATTY. CORALDE:

Q: So after your company delivered on July 30, 1999, what did you do next, if any, Mr. Witness?

A: After I was advised by our deliveryman, **I immediately called Mr. Trinidad that we were able to deliver only four hundred pieces (400 pcs.) of bulk bags.**

Q: And what was his reaction to your report, Mr. Witness?

A: At first, I apologized because I was not able to make the five hundred pieces required. So, in reply..

x x x x

ATTY. CORALDE

Q: So what was his reaction to your report that you delivered only four hundred pieces (400 pcs) of bulk bags instead of five hundred pieces (500 pcs), Mr. Witness?

A: **He acknowledged our delivery and thanked me for delivering the item.**

x x x x

Q: So, after the conversation with Mr. Trinidad, what happened