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THIRD DIVISION

[G.R. No. 194785, July 11, 2012]

VIRGILIO S. DAVID, PETITIONER, VS. MISAMIS OCCIDENTAL II ELECTRIC COOPERATIVE, INC., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Before this Court is a petition for review under Rule 45 of the Rules of Court assailing the July 8, 2010 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR No. 91839, which affirmed the July 17, 2008 Decision[2] of the Regional Trial Court, Branch VIII, Manila *(RTC)* in Civil Case No. 9469402, an action for specific performance and damages.

The Facts:

Petitioner Virgilio S. David *(David)* was the owner or proprietor of VSD Electric Sales, a company engaged in the business of supplying electrical hardware including transformers for rural electric cooperatives like respondent Misamis Occidental II Electric Cooperative, Inc. *(MOELCI)*, with principal office located in Ozamis City.

To solve its problem of power shortage affecting some areas within its coverage, MOELCI expressed its intention to purchase a 10 MVA power transformer from David. For this reason, its General Manager, Engr. Reynaldo Rada *(Engr. Rada)*, went to meet David in the latter's office in Quezon City. David agreed to supply the power transformer provided that MOELCI would secure a board resolution because the item would still have to be imported.

On June 8, 1992, Engr. Rada and Director Jose Jimenez *(Jimenez)*, who was in-charge of procurement, returned to Manila and presented to David the requested board resolution which authorized the purchase of one 10 MVA power transformer. In turn, David presented his proposal for the acquisition of said transformer. This proposal was the same proposal that he would usually give to his clients.

After the reading of the proposal and the discussion of terms, David instructed his then secretary and bookkeeper, Ellen M. Wong, to type the names of Engr. Rada and Jimenez at the end of the proposal. Both signed the document under the word "conforme." The board resolution was thereafter attached to the proposal.

As stated in the proposal, the subject transformer, together with the basic accessories, was valued at P5,200,000.00. It was also stipulated therein that 50% of the purchase price should be paid as downpayment and the remaining balance to be paid upon delivery. Freight handling, insurance, customs duties, and incidental expenses were for the account of the buyer.

The Board Resolution, on the other hand, stated that the purchase of the said transformer was to be financed through a loan from the National Electrification Administration *(NEA)*. As there was no immediate action on the loan application, Engr. Rada returned to Manila in early December 1992 and requested David to deliver the transformer to them even without the required downpayment. David granted the request provided that MOELCI would pay interest at 24% per annum. Engr. Rada acquiesced to the condition. On December 17, 1992, the goods were shipped to Ozamiz City via William Lines. In the Bill of Lading, a sales invoice was included which stated the agreed interest rate of 24% per annum.

When nothing was heard from MOELCI for sometime after the shipment, Emanuel Medina *(Medina)*, David's Marketing Manager, went to Ozamiz City to check on the shipment. Medina was able to confer with Engr. Rada who told him that the loan was not yet released and asked if it was possible to withdraw the shipped items. Medina agreed.

When no payment was made after several months, Medina was constrained to send a demand letter, dated September 15, 1993, which MOELCI duly received. Engr. Rada replied in writing that the goods were still in the warehouse of William Lines again reiterating that the loan had not been approved by NEA. This prompted Medina to head back to Ozamiz City where he found out that the goods had already been released to MOELCI evidenced by the shipping company's copy of the Bill of Lading which was stamped *"Released,"* and with the notation that the arrastre charges in the amount of P5,095.60 had been paid. This was supported by a receipt of payment with the corresponding cargo delivery receipt issued by the Integrated Port Services of Ozamiz, Inc.

Subsequently, demand letters were sent to MOELCI demanding the payment of the whole amount plus the balance of previous purchases of other electrical hardware. Aside from the formal demand letters, David added that several statements of accounts were regularly sent through the mails by the company and these were never disputed by MOELCI.

On February 17, 1994, David filed a complaint for specific performance with damages with the RTC. In response, MOECLI moved for its dismissal on the ground that there was lack of cause of action as there was no contract of sale, to begin with, or in the alternative, the said contract was unenforceable under the Statute of Frauds. MOELCI argued that the quotation letter could not be considered a binding contract because there was nothing in the said document from which consent, on its part, to the terms and conditions proposed by David could be inferred. David knew that MOELCI's assent could only be obtained upon the issuance of a purchase order in favor of the bidder chosen by the Canvass and Awards Committee.

Eventually, pursuant to Rule 16, Section 5 of the Rules of Court, MOELCI filed its Motion for Preliminary Hearing of Affirmative Defenses and Deferment of the Pre-Trial Conference which was denied by the RTC to abbreviate proceedings and for the parties to proceed to trial and avoid piecemeal resolution of issues. The order denying its motion was raised with the CA, and then with this Court. Both courts sustained the RTC ruling.

Trial ensued. By reason of MOELCI's continued failure to appear despite notice, David was allowed to present his testimonial and documentary evidence *ex parte*,

pursuant to Rule 18, Section 5 of the Rules. A Very Urgent Motion to Allow Defendant to Present Evidence was filed by MOELCI, but was denied.

In its July 17, 2008 Decision, the RTC dismissed the complaint. It found that although a contract of sale was perfected, it was not consummated because David failed to prove that there was indeed a delivery of the subject item and that MOELCI received it.[3]

Aggrieved, David appealed his case to the *CA*.

On July 8, 2010, the CA affirmed the ruling of the RTC. In the assailed decision, the CA reasoned out that although David was correct in saying that MOELCI was deemed to have admitted the genuineness and due execution of the "quotation letter" (Exhibit A), wherein the signatures of the Chairman and the General Manager of MOELCI appeared, he failed to offer any textual support to his stand that it was a contract of sale instead of a mere price quotation agreed to by MOELCI representatives. On this score, the RTC erred in stating that a contract of sale was perfected between the parties despite the irregularities that tainted their transaction. Further, the fact that MOELCI's representatives agreed to the terms embodied in the agreement would not preclude the finding that said contract was at best a mere contract to sell.

A motion for reconsideration was filed by David but it was denied.[4]

Hence, this petition.

Before this Court, David presents the following issues for consideration:

I.

WHETHER OR NOT THERE WAS A PERFECTED CONTRACT OF SALE.

II.

WHETHER OR NOT THERE WAS A DELIVERY THAT CONSUMMATED THE CONTRACT.

The Court finds merit in the petition.

I.

On the issue as to whether or not there was a perfected contract of sale, this Court is required to delve into the evidence of the case. In a petition for review on certiorari under Rule 45 of the Rules of Court, the issues to be threshed out are generally questions of law only, and not of fact. This was reiterated in the case of *Buenaventura v. Pascual,*[5] where it was written:

> Time and again, this Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact

> complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, the findings of the trial court must be accorded the highest respect, even finality, by this Court.

That being said, the Court is not unmindful, however, of the recognized exceptions well-entrenched in jurisprudence. It has always been stressed that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
> (2) When the inference made is manifestly mistaken, absurd or impossible;
> (3) Where there is a grave abuse of discretion:
> (4) When the judgment is based on a misapprehension of facts;
> (5) When the findings of fact are conflicting;
> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
> (7) **When the findings are contrary to those of the trial court;**
> (8) When the findings of fact are without citation of specific evidence on which the conclusions are based;
> (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
> (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[6] [Emphasis supplied]

In this case, the CA and the RTC reached different conclusions on the question of whether or not there was a perfected contract of sale. The RTC ruled that a contract of sale was perfected although the same was not consummated because David failed to show proof of delivery.[7] The CA was of the opposite view. The CA wrote:

> Be that as it may, it must be emphasized that the appellant failed to offer any textual support to his insistence that Exhibit "A" is a contract of sale instead of a mere price quotation conformed to by MOELCI representatives. To that extent, the trial court erred in laying down the premise that "indeed a contract of sale is perfected between the parties despite the irregularities attending the transaction." x x x
>
> That representatives of MOELCI conformed to the terms embodied in the agreement does not preclude the finding that such contract is, at best, a mere contract to sell with stipulated costs quoted should it ultimately ripen into one of sale. The conditions upon which that development may occur may even be obvious from statements in the agreement itself, that