

SECOND DIVISION

[G.R. No. 179812, July 06, 2010]

**ETERTON MULTI-RESOURCES CORPORATION (FORMERLY
ETERNIT CORPORATION), PETITIONER, VS. FILIPINO PIPE AND
FOUNDRY CORPORATION, RESPONDENT.**

RESOLUTION

NACHURA, J.:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Eterton Multi-Resources Corporation (ETERTON), challenging the May 28, 2007 Decision^[1] and the October 1, 2007 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 66917.

The facts:

ETERTON is a corporation engaged in the manufacture of asbestos cement pipes. On November 17, 1980, it entered into an Agreement^[3] with respondent Filipino Pipe and Foundry Corporation (FPFC) wherein ETERTON undertook to deliver the asbestos cement pipes needed by FPFC in its Metropolitan Waterworks and Sewerage System PG-8 Project in Novaliches, Quezon City. FPFC paid P1,260,521.83, but only P1,156,408.48 worth of asbestos cement pipes were delivered. ETERTON then refused to make delivery of asbestos cement pipes unless the price would be increased. Thus, to meet the project deadline, FPFC acquiesced to ETERTON's demand, and paid, but under protest, an additional amount of P125,168.03.

Thereafter, FPFC demanded from ETERTON the value of the undelivered asbestos cement pipes and the return of the overpayment it made, but the latter refused. Thus, on September 7, 1983, FPFC filed a collection suit with damages^[4] against ETERTON in the Regional Trial Court (RTC) of Pasig, docketed as Civil Case No. 50163.

Traversing the complaint, ETERTON denied FPFC's allegations of short delivery and overpayment. It averred that the amount claimed by FPFC had already been applied to the price escalation and penalty charge imposed by reason of the delay in the payment of the purchases.^[5]

On June 21, 1999, the RTC rendered a decision^[6] disposing that:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered ordering [petitioner] Eternit Corporation and/or Eterton Multi-Resources Corporation to pay [respondent] Filipino Pipe and Foundry Corporation the following:

1. P104,102.67, representing the excess payments made by [respondent] under its first cause of action with interest at [the] legal rate from date of demand until fully paid;
2. P50,000.00 as and for attorney's fees; and
3. Cost of suit.

SO ORDERED.^[7]

On appeal, the CA affirmed the RTC.^[8] According to the CA, the records are clear that there were items in the sales invoices that were paid, but were not delivered by ETERTON. It rejected ETERTON's argument that the amount claimed by FPFC had been applied to price escalation and penalty charge, as no sufficient evidence was offered to prove the assertion. It declared FPFC's pieces of evidence sufficient to establish the claim of short delivery. The CA, however, sustained the denial by the RTC of FPFC's claim for reimbursement of the P125,168.03, representing the alleged overpricing of materials, as well as the claims for moral and exemplary damages and attorney's fees, for lack of ample proof. The CA disposed thus:

WHEREFORE, in view of all the foregoing, the assailed decision dated June 21, 1999 of Branch 153, Regional Trial Court of Pasig City in Civil Case No. 50163 is hereby **AFFIRMED** with **MODIFICATION** that the award of attorney's fees is **DELETED**.

SO ORDERED.^[9]

ETERTON filed a motion for reconsideration, but the CA denied it on October 1, 2007.^[10]

ETERTON is now before us faulting the CA for sustaining FPFC's claim for excess payment on account of short delivery. It contends that the CA was clearly oblivious of the provisions of the Letter-Agreement dated November 17, 1980 and Amendatory Letter-Agreement dated March 4, 1981 on the price escalation schedule applied for deliveries each month. It asserts that there were instances where ETERTON made deliveries of asbestos cement pipes but FPFC was not in a position to accept them. ETERTON was thus constrained to return them to their stockyards. When FPFC accepted the deliveries, the prices of the asbestos cement pipes had increased, and thus, it was charged based on the escalated prices. ETERTON assails the probative value and weight given by the RTC and the CA to FPFC's pieces of evidence.

The appeal lacks merit.

It is evident that the issue raised in this petition is the correctness of the factual findings of the RTC and the CA. In petitions for review on *certiorari* under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. An inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, for this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties.^[11]