

## SECOND DIVISION

[ G.R. NO. 145795, August 09, 2006 ]

**BIENVENIDO DE GUZMAN, PETITIONER, VS. NATIONAL FOOD  
AUTHORITY, RESPONDENT.**

### D E C I S I O N

**PUNO, J.:**

Petitioner Bienvenido de Guzman comes to us via a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the decision<sup>[1]</sup> and resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 50690 which reversed the decision<sup>[3]</sup> of the trial court dismissing the complaint filed by respondent National Food Authority (NFA) against him.

Respondent NFA is a government agency created by virtue of Presidential Decree Nos. 1485 and 1770 while petitioner de Guzman is the owner-proprietor of Mabuhay Rice Mill in Tuguegarao, Cagayan.

On December 2, 1986, respondent and petitioner entered into a Contract of Palay Milling<sup>[4]</sup> (the Contract) whereby petitioner agreed to mill the palay to be delivered by respondent NFA in conformity with the following specifications set by respondent, viz:

- 1) Milling degree Well Milled;  
  
x x x
- 3) Guaranteed Milling Recovery 63.5%  
  
x x x
- 5) Not less than 65% headrice;
- 6) Not more than 35% broken;
- 7) Not more than 14% moisture content;
- 8) Not more than 0.3% impurities;
- 9) Not more than 3.0% yellow and damaged kernels;
- 10) Must be free from live infestation.<sup>[5]</sup>

The Contract also provided for the following penalties in case of delivery of milled rice which does not conform to the specifications set by respondent and in case the

contractor incurs delay in the delivery, viz:

SPECIAL PROVISIONS:

x x x

8. In case the milled rice does not conform with the required milling quality/specifications, NFA will accept delivery subjecting at the same time the CONTRACTOR to a penalty of fifty (P0.50) centavos per kilogram of rice. Provided, that if the sub-standard rice so delivered is clearly apparent to NFA that its palay form was obviously changed into an inferior quality or that the same was adulterated, the CONTRACTOR shall be considered automatically (sic) in default and he shall be liable for the whole value of the stocks based on replacement cost, without prejudice to the incipient criminal liability he may incur therefrom.

Likewise, if rice recoveries and by-products were adulterated, NFA shall have the right to demand replacement cost.

For this purpose, replacement cost shall be based on the latest available replacement cost existing at the time of the issuance of the palay for milling as imposed by NFA.

The foregoing actions shall be without prejudice to such other actions NFA may take under the premises.

9. In case the CONTRACTOR fails to make available for delivery to/withdrawal by NFA the rice recoveries and by-products within five (5) calendar days from the last day of milling of NFA stocks based on the capacity of the mill, the CONTRACTOR shall be given another five (5) calendar days within which to deliver. After the aforementioned additional five (5) grace day period, the CONTRACTOR shall be deemed in default with or without demand, in which case CONTRACTOR shall be liable for payment of the replacement cost plus 12% per annum interest.<sup>[6]</sup>

On January 18, 19 and 20, 1987, petitioner received from respondent NFA a total of 96,150.50 net kilos of palay or its equivalent in rice form of 61,055.58 kilos. On March 12, 14 and April 7, 1987, petitioner de Guzman delivered to respondent NFA a total of 61,055.08 net kilos of milled rice.

An inventory and audit examination of the stocks and empty sacks accountabilities of petitioner de Guzman for the period of October 29, 1986 to April 8, 1987 was conducted by Conrado Pagulayan, the resident auditor of respondent NFA's regional office in Tuguegarao, Cagayan. Based on his findings, petitioner incurred a shortage of 56,372.26 net kilos of palay with an equivalent monetary value of P476,909.31, computed at P8.46 (replacement cost) per kilo. Petitioner was likewise found liable for 12% interest per annum due to late deliveries and penalty of P30,527.54 for deliveries of 61,055.08 net kilos of sub-standard rice, computed at P0.50 per kilo. In all, petitioner de Guzman was found to have a total net shortage of P512,342.72.

A letter of demand<sup>[7]</sup> dated March 11, 1991 was sent by respondent NFA, through its litigation division, to petitioner de Guzman, demanding that petitioner pay his alleged accountabilities for late delivery, delivery of sub-standard milled rice and shortage, in the amount of P512,342.72. Petitioner de Guzman failed to comply.

Respondent NFA filed a Complaint for Sum of Money and Damages<sup>[8]</sup> against petitioner, praying that judgment be rendered:

- 1) Ordering defendant to pay plaintiff the sum of P476,909.31 representing the amount covered by the shortages of 35,796.39 kilos of rice or an equivalent of 56,372.26 net kilos of palay;
- 2) Ordering defendant to pay plaintiff interest in the amount of P7,941.07 plus 12% interest per annum of the entire obligation to commence from July 3, 1987;
- 3) Ordering defendant to pay plaintiff the sum of P30,527.54 as penalty;
- 4) Ordering defendant to pay plaintiff the sum of P50,000.00 as exemplary damages;
- 5) Ordering defendant to pay plaintiff the sum of P50,000.00 as attorneys fees and other cost and expenses of this suit. . and
- 6) Such other and further relief as this Honorable Court may deem just and equitable x x x.<sup>[9]</sup>

Petitioner filed his Answer with counterclaim.<sup>[10]</sup> He admitted having received from respondent 96,150.50 net kilos of palay from January 18 to 20, 1987, but denied incurring any liability for shortage, late deliveries, and failure to deliver rice recoveries in accordance with the specification in the Contract. Petitioner alleged that he delivered 61,055.08 net kilos of milled rice to respondent NFA which complied with the 63.5% guaranteed milling recovery under the Contract. He claimed that the stocks of palay delivered by respondent NFA to him from January 18 to 20, 1987 "were of ages C and D, and on account of their long storage, x x x were within the borderline of yellow and damaged specifications." He allegedly refused to mill said stocks and stored the same at his warehouse for a long time because respondent's representatives failed to retrieve them. However, because of the insistence and assurance of respondent NFA's representatives that said palay stocks would be considered as having "yellow and/or damaged specifications," petitioner eventually agreed to mill the same. Petitioner also contended that it was respondent's representatives who incurred in delay in receiving the milled rice he produced as respondent NFA's warehouse in Tuguegarao, Cagayan was always full and could not accommodate the same. By way of counterclaim, petitioner prayed that respondent be made liable to pay exemplary, compensatory and moral damages, litigation expenses and attorney's fee.

During pre-trial, the parties agreed to litigate the instant case on the following issues, viz:

1. Whether or not the defendant incurred the shortage imputed to him by the plaintiff;

2. Whether or not the plaintiff is entitled to the damages and penalties claimed by it;
3. Whether or not the defendant is entitled to his counterclaim;
4. Whether or not defendant is liable for the amount claimed by plaintiff; and
5. Whether or not defendant['s] defenses are meritorious or not.<sup>[11]</sup>

To prove its allegations, respondent presented Auditor Conrado Pagulayan and Saturnino Rola, Jr., the Assistant Director for Legal Affairs of respondent NFA, as witnesses. It likewise presented the following pieces of documentary evidence: 1) the Contract; 2) Demand to Produce all accountable forms and other pertinent documents dated April 8, 1987; 3) Inventory Certificate dated April 8, 1987; 4) Statement of Palay received by petitioner de Guzman from October 29, 1986 to April 8, 1987; 5) Summary of Complete Examination of Stocks and Sack Accountabilities of petitioner de Guzman from October 29, 1986 to April 8, 1987; 6) Valuation of Shortage; 7) Computation of Interest; and 8) Demand Letter dated March 11, 1991.

On the other hand, petitioner de Guzman and his wife, Victoria de Guzman, testified in his defense. He presented as evidence: 1) the Contract; 2) the Certification<sup>[12]</sup> of Evelyn T. Cunanan, Provincial SQAO of respondent NFA, to prove that some of the stocks issued by respondent NFA for the period of December 1986 to February 1987 were of ages C and D, which, on account of their long-term storage, had acquired characteristics within the borderline of yellow and damaged specifications; and 3) the Memorandum of Edison A. Villasis, Assistant Administrator for Stabilization to the Administrator of respondent NFA, dated January 6, 1993, to prove that other miller-contractors in Tuguegarao, Cagayan received palay of inferior quality from respondent NFA and were likewise protesting against the erroneous assessment of accountabilities.

After trial, the trial court rendered a decision dismissing respondent NFA's complaint "for lack of cause of action" and petitioner de Guzman's counterclaim "for lack of legal and factual basis."<sup>[13]</sup>

In absolving petitioner from payment of penalty under paragraph 8 of the Special Provisions of the Contract, the trial court held:

After careful reading of par. 8, it is very clear that the same is applicable only if the contractor delivers to NFA rice which does not conform with the required milling quality/specifications and that the contractor changed into an inferior quality the palay form delivered by the plaintiff or that the same was adulterated. In the case at bar, there is no evidence whatsoever presented by the plaintiff that defendant changed the palay stocks delivered by the plaintiff to the defendant for milling into an inferior quality or that defendant adulterated the same with inferior quality. While it is admitted by the defendant that the milled rice delivered to plaintiff were of ages C and D, it was however established by defendant's evidence that the palay stocks delivered for milling by plaintiff were of ages C and D (Exh. 2). Thus, it follows that the milled

rice delivered by defendant to the plaintiff was likewise of ages C and D and of the same quality of palay stocks delivered for milling by the plaintiff. Defendant is therefore not liable for plaintiff's claim based on the provision found in par. 8 of the contract.<sup>[14]</sup>

On appeal, the CA reversed and set aside the decision of the trial court. The dispositive portion of the CA's decision states:

WHEREFORE, premises considered, the appealed decision in Civil Case No. Q-92-14073 is hereby REVERSED and SET ASIDE and a new one is hereby rendered ordering the defendant-appellee to pay to plaintiff-appellant the following sums:

(1) P516,525.97 representing the value of 61,055.08 net kilos of milled rice based on replacement cost of P8.46 per kilo, with interest at 6% per annum from the finality of this judgment until fully paid;

(2) P10,000.00 as liquidated damages; and

(3) P10,000.00 as attorney's fees.

SO ORDERED.<sup>[15]</sup>

In reversing the trial court's decision, the CA held:

We agree with the trial court that paragraph 9 which imposes the payment of replacement cost plus 12% interest per annum, cannot be applied against the appellee because the latter actually delivered the milled rice to appellant. Neither is appellee liable for shortage because the records clearly show that appellant received from appellee 61,055.08 net kilos of milled rice on March 12, 14 and April 7, 1987.

However, **We believe that appellee is still liable under paragraph 8 for delivery of sub-standard rice** as indicated in Exhibit "4" under the column "Variety." **Appellee's claim that the palay delivered by plaintiff for milling was of inferior quality in the first place, was not substantiated by him.** This is specially significant in view of the milling contractor's duty to accomplish and submit a Milling Liquidation Report on the basis of a milling logbook wherein entries of the issuance by plaintiff of palay for milling and the delivery of milled rice to plaintiff are supposed to be recorded.

x x x

**Since the appellee clearly violated paragraph 8 under Special Provisions (E) in delivering milled rice of inferior quality, he can be considered automatically in default and is liable for the whole value of the stocks based on replacement cost.** In view thereof, the amount of total accountabilities of appellee to appellant should be computed as follows: