

## THIRD DIVISION

[ G.R. No. 150903, December 08, 2003 ]

**VICENTE JOSEFA, PETITIONER, VS. ZHANDONG TRADING CORPORATION, RESPONDENT .**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

At bar is a petition for review on certiorari of the Decision of the Court of Appeals dated June 29, 2001 and its Resolution dated November 20, 2001 in CA-G.R. CV No. 63644,<sup>[1]</sup> entitled "*Zhandong Trading Corporation vs. Vicente Josefa*" for sum of money.

The facts of the case as culled from the records are:

On June 6, 1996, Zhandong Trading Corporation (Zhandong), respondent, filed with the Regional Trial Court, Branch 81, Quezon City, a complaint for sum of money against Vicente Josefa, petitioner, Tan Y. Ching (also known as Antonio Tan) and Evelyn Chua (Tan's mother), docketed as Civil Case No. Q-96-27691.

The complaint alleges *inter alia* that respondent Zhandong is engaged in the importation and sale of hardboards/staple boards and other merchandise. In the course of its business, its president, Eleanor Chy, met Tan, who referred petitioner Vicente Josefa, as a client, to Chy. Relying on Tan's assurance that petitioner is "a good customer" and owns a construction supply store, respondent, on various dates in February, March and April, 1996, sold and delivered to said petitioner a total of 313 crates of boards, valued at P4,558,100.00 payable within sixty (60) days from date of delivery. However, petitioner, instead of paying respondent, remitted his payments to Tan. In turn, Tan delivered various checks to respondent, which accepted them upon Tan's declaration that they came from petitioner. A number of the checks bounced. When respondent confronted Tan, the latter issued his own checks and those of his mother, Evelyn Chua. Later, without any valid reason, Tan stopped payment by checks. Those issued by his mother bounced. This prompted respondent to send petitioner and Tan a demand letter dated May 14, 1996, but they ignored it. Consequently, respondent suffered damages and was constrained to file the instant complaint with the assistance of counsel for a fee.

In his answer, petitioner Vicente Josefa specifically denied the allegations in the complaint. He averred that he did not directly deal with respondent Zhandong. He transacted business with Tan and paid all his obligations to him. He is not privy to the agreement between Tan and respondent; hence, if his payments were not remitted to the latter, it should bear the consequences. He did not comply with respondent's demand letter because he had paid Tan in full. As counterclaim, petitioner prayed for an award of damages as a result of respondent's unlawful filing of the complaint and the attachment of his properties. To protect his interest, he

filed a cross-claim against Tan.

After hearing, the trial court rendered its Decision,<sup>[2]</sup> the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering defendant Vicente Josefa to pay to the plaintiff the amount of P4,558,100.00 representing the value of 47,980 pieces of hardboards at P95.00 per piece, with interest at 12% per annum from the filing of the complaint until fully paid;
2. Ordering defendant Vicente Josefa to pay to the plaintiff the amount of P200,000.00 as attorney's fees plus P100,000.00 as litigation expenses;
3. Ordering defendant Tan Y Ching, aka Tony Tan, to reimburse to co-defendant Vicente Josefa the amount of P4,474,200.00 which Josefa paid to Tan with interest at the legal rate from the date Josefa paid the amount to Tan until fully paid.
4. Dismissing the counterclaims of defendants Tan and Josefa for lack of merit.

"SO ORDERED."

In holding that petitioner purchased the hardboards from respondent Zhandong and not from Tan, the trial court ratiocinated as follows:

"While it is true that the sale to Josefa was negotiated by and thru' defendant Tan, what is most significant is that there is nothing in the delivery receipts or sales invoices that even remotely suggests that the seller is defendant Tan. The delivery receipts and invoices are in Zhandong's letterhead with the firm name printed in big letters it can't be missed by anyone looking at the document, contrary to Josefa's assertion that he did not see Zhandong's firm name (tsn, 9-19-97, p. 8). The sales invoices clearly indicate that the seller is Zhandong and the buyer is Josefa. Plainly written across the face of the sales invoices are the words 'GOODS/STOCK BELONG TO ZHANDONG TRADING CORPORATION UNTIL FULLY PAID' (Exhs. 'M' & 'N'). There can be no doubt at all that the seller is plaintiff Zhandong, not Tan, and that the buyer is Josefa and not Tan.

"Thus, Josefa's claim that he only learned later that the boards belonged to Zhandong is without any doubt untrue. There is also the undisputed fact that even after he was told that he should pay directly to plaintiff Zhandong, he insisted on paying to defendant Tan, claiming he had no liability to Zhandong (Affidavit of Pablito Uy, par. 3(a), p. 833, Record; tsn, 11-14-97, pp. 18 & 19). In fact, even after he received plaintiff's demand letter on May 15, 1996, Josefa persisted to pay defendant Tan by issuing a check dated May 18, 1996 (Exh. '18' – Josefa)."

On appeal, the Court of Appeals affirmed the trial court's Decision. Petitioner filed a motion for reconsideration but was denied.<sup>[3]</sup>

Hence, this petition ascribing to the Court of Appeals the following errors:

1. IN AFFIRMING THE RULING OF THE LOWER COURT THAT PETITIONER IS LIABLE TO THE RESPONDENT DESPITE "THE MOUNTAIN OF EVIDENCE" SHOWING THAT BOTH PARTIES HAD NO BUSINESS TRANSACTION WITH EACH OTHER AND RESPONDENT'S ADMISSION THAT TAN WAS THE ONE WHO MADE ALL THE NEGOTIATIONS FOR THE SALE OF THE HARDBOARDS;
2. IN FAILING TO RULE THAT TAN IS SOLELY RESPONSIBLE FOR THE PAYMENT OF THE HARDBOARDS HE ORDERED FROM RESPONDENT; AND
3. IN AFFIRMING THE DECISION OF THE TRIAL COURT HOLDING PETITIONER LIABLE FOR ATTORNEY'S FEES AND LITIGATION EXPENSES AND DISMISSING PETITIONER'S COUNTERCLAIM.<sup>[4]</sup>

Petitioner contends that he transacted business directly with Tan, relying on the latter's representation that he was the owner of the merchandise. Inasmuch as Tan has been his supplier for a long time, there was no reason why he should not believe him. Petitioner maintains that he had paid Tan for all the hardboards delivered to him. Considering that he is not privy to the transactions between Tan and respondent, it follows that he is not liable for Tan's failure to remit his payments to respondent.

For its part, respondent Zhandong counters that only questions of law, not facts, may be raised in a petition for review on certiorari. Furthermore, findings of fact by the trial court, supported by substantial evidence and affirmed by the Court of Appeals, are final and conclusive and cannot be reviewed by this Court.

While it is firmly entrenched in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on certiorari, however, such rule is not ironclad and admits certain exceptions, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.<sup>[5]</sup> Here, we find that the trial court and the Court of Appeals misapprehended and overlooked relevant and established facts.

Evidence presented during the hearing before the court *a quo* shows that Tan negotiated the sale of the hardboards with petitioner Vicente Josefa. Eleanor Chy, president of respondent Zhandong, testified on direct examination that it was Tan