

FIRST DIVISION

[G.R. NO. 145259, October 25, 2005]

**CASIMIRO R. NADELA, PETITIONER, VS. ENGINEERING AND
CONSTRUCTION CORPORATION OF ASIA (ECCO-ASIA),
RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review on certiorari^[1] of the Decision^[2] dated 12 November 1999 and the Resolution dated 31 July 2000 of the Court of Appeals in CA-G.R. CV No. 37399. The Court of Appeals modified the Decision^[3] of the Regional Trial Court of Makati, Branch 58 ("trial court").

The Facts

Respondent Engineering and Construction Corporation of Asia ("ECCO-ASIA") is a corporation engaged in the construction business. Petitioner Casimiro R. Nadela ("Nadela") was the Regional Logistics Manager of ECCO-ASIA from 11 October 1982 until 11 April 1983. Effective 12 April 1983, Nadela became the Assistant Vice-President of the Visayas Office of ECCO-ASIA^[4] and on 1 September 1984, ECCO-ASIA appointed him Assistant Vice-President of the Southern Philippines Division ("Southern Division").^[5] As Assistant Vice-President, Nadela was in charge of procuring and monitoring materials, manpower and equipment requirements in the Southern Division.^[6] Nadela's contractual employment with ECCO-ASIA ended on 31 July 1985 upon the expiration of his contract.^[7]

According to Nadela, ECCO-ASIA suffered financial setbacks in 1983 until 1985. As Assistant Vice-President of the Southern Division of ECCO-ASIA, Nadela decided to offset the obligations of ECCO-ASIA to its creditors through payment in kind. Since the major creditors of ECCO-ASIA were located in Cebu, Nadela arranged for all the materials, tools and equipment owned by ECCO-ASIA in his division to be stored in the Cebu Oversea Hardware warehouse ("warehouse") to facilitate the offsetting arrangement.^[8]

Percival G. Llaban ("Llaban"), owner of JAPER Marketing, was one of the creditors of ECCO-ASIA. Llaban supplied the liquefied petroleum gas to ECCO-ASIA for its metal cutting operation. In a letter dated 28 April 1985,^[9] Llaban wrote ECCO-ASIA demanding payment of its payables to JAPER Marketing. Considering the financial condition of ECCO-ASIA, Llaban agreed to be paid in tools and equipment. To facilitate the offsetting of ECCO-ASIA's payables to Llaban, Nadela withdrew the remaining tools and equipment of ECCO-ASIA worth approximately P600,000^[10]

from the warehouse and brought these to Llaban's residence. Llaban selected some tools and equipment worth P119,165.18^[11] as payment of ECCO-ASIA's account to JAPER Marketing. In September 1985, Llaban executed a receipt and quitclaim in favor of ECCO-ASIA.^[12] After the offsetting, the excess tools and equipment of ECCO-ASIA remained in Llaban's residence. Llaban later brought some of the tools and equipment to his store Casper Enterprises for storage.^[13]

Juan F. Ibañez ("Ibañez") was the internal auditor of ECCO-ASIA and administrator of its Buli Logistic Facility in Muntinlupa. Sometime in 1985, ECCO-ASIA's Vice President Melina E. Medina ("Medina") directed Ibañez to go to Cebu and investigate Nadela's withdrawal from the warehouse of ECCO-ASIA's property valued at approximately P600,000. Ibañez proceeded to wind up the operation of the Southern Division of ECCO-ASIA.^[14] He arranged a conference with Llaban and Nadela to discuss the return of the remaining properties of ECCO-ASIA. Llaban agreed to return the remaining tools and equipment of ECCO-ASIA provided he would be paid the remaining balance of P19,000. However, Nadela objected because ECCO-ASIA had not fully paid his salary.^[15] Ibañez continued the offsetting of ECCO-ASIA's payables to Llaban and signed the remaining delivery receipts^[16] dated 26 September 1985 in favor of Llaban for the full settlement of its account. Thereafter, Llaban executed a receipt and quitclaim in favor of ECCO-ASIA.

Ibañez likewise facilitated the offsetting of accounts of ECCO-ASIA in favor of Nadela and signed delivery receipts dated 11 September 1985,^[17] 12 September 1985,^[18] and 2 October 1985^[19] representing tools and equipment worth more than P53,600 delivered to Nadela.

On 18 September 1985, ECCO-ASIA sent a letter^[20] to Nadela, requesting the immediate return of the tools and construction materials of ECCO-ASIA. The letter was signed by Ibañez and enclosed was a list^[21] of the tools and construction materials amounting to P476,365.69 which were still in Nadela's custody. On 7 October 1985, Medina sent a telegram^[22] to Nadela reiterating the request of ECCO-ASIA for Nadela to turn over to Ibañez the equipment, construction materials and vehicle of ECCO-ASIA which were still in Nadela's custody.

On 29 October 1985, ECCO-ASIA filed with the trial court an action against Nadela and Llaban for Recovery of Personal Property and/or Collection of Sum of Money with Prayer for Preliminary Attachment. The case was docketed as Civil Case No. 12117.

On 11 November 1985, Nadela's counsel sent to the president of ECCO-ASIA, Mr. Cesar Pio Roda, a letter stating that Nadela had a right to retain and dispose the company assets in his possession until all his claims against ECCO-ASIA were satisfied.

Meanwhile, in February 1986, Nadela filed with the Regional Arbitration Branch No. VII, Cebu City, a complaint for unpaid wages and other money claims against ECCO-ASIA. On 14 December 1990, the Labor Arbiter rendered a decision in favor of Nadela which was subsequently affirmed by the National Labor Relations Commission. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises considered, judgment is rendered in favor of complainant ordering respondent to pay P52,188.81 representing unpaid balance of complainant's salaries.

Respondent is also ordered to pay separation pay for the period from October 11, 1982 to July 31, 1985 the sum of P28,500.00 representing three months plus the imputed period from July 31, 1985 up to the time of actual payment but such imputed period not to exceed 3 years, equivalent to one month salary for every year.

Finally, respondent is assessed the amount of P400.00 pursuant to NLRC Memorandum dated July 3, 1990.

SO ORDERED.^[23]

On 21 February 1992, the trial court rendered a decision in Civil Case No. 12117. The trial court held Nadela liable for unlawfully withholding ECCO-ASIA's property but dismissed the case against Llaban for lack of evidence. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

- 1) Ordering defendant Casimiro R. Nadela to return the various pieces of equipments, tools and construction materials valued at P476,365.69 or if he cannot return them, to pay plaintiff the value of such equipments, tools and materials in the amount of P476,365.69 with legal interest at 12% per annum from October 29, 1985;
- 2) Ordering the case against Percival G. Llaban dismissed; and
- 3) Ordering defendant Casimiro R. Nadela to pay 25% of the amount awarded to plaintiff as attorney's fees and P500.00 per appearance and to pay the costs of the suit.

SO ORDERED.^[24]

Nadela appealed to the Court of Appeals. On 12 November 1999, the Court of Appeals modified the decision of the trial court as follows:

WHEREFORE, foregoing premises considered, the decision appealed from is hereby modified, in so far as the interest on the obligation is concerned and as to award of attorney's fees, by:

- 1) Ordering defendant Casimiro R. Nadale (sic) to return the various pieces of equipment, tools and construction materials valued at P476,365.69 or if he cannot return them, to pay plaintiff-appellee the value of such equipments, tools and materials in the amount of P476,365.69 with interest at 6% computed from October 29, 1985, and at 12% interest computed from the time the judgment becomes final and executory until fully paid or satisfied;
- 2) No award as to attorney's fees;

3) Ordering the case against Percival Llaban dismissed.

No cost.

SO ORDERED.^[25]

Nadela filed a motion for reconsideration which the Court of Appeals denied in a Resolution dated 31 July 2000. Hence, this petition for review.

The Ruling of the Court of Appeals

The Court of Appeals found no justifiable reason to disturb the factual findings and conclusion of the trial court. The appellate court held that

Articles 1707^[26] and 1731^[27] of the Civil Code are not applicable to the case since the provisions apply only when goods are manufactured or work is done on personal properties.

However, the Court of Appeals disagreed with the trial court on the imposition of the interest rate and on the award of attorney's fees. The Court of Appeals held that when an obligation, other than a loan or forbearance of money, is breached, the interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum, computed from the filing of the complaint. The rate is 12% from the time the judgment becomes final and executory until full payment.

The Court of Appeals deleted the award for attorney's fees. The Court of Appeals held that attorney's fees could not be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Besides, the appellate court noted that no bad faith was shown by Nadela which would justify the award of attorney's fees.

The Issues

Nadela contends that:

1. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN FAILING TO CONSIDER THAT THE TRIAL COURT IN RENDERING ITS ASSAILED DECISION OVERLOOKED AND SET ASIDE SUBSTANTIAL FACTS AND CIRCUMSTANCES WHICH IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION OR ALTER THE RESULT OF THIS CASE.
2. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN BASING ITS ASSAILED DECISION ON PURE HEARSAY.
3. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO RULE THAT GRANTING THERE ARE ITEMS AND EQUIPMENT REMAINING IN THE CUSTODY OF PETITIONER, LEGAL COMPENSATION AUTOMATICALLY APPLIES WITH RESPECT TO PETITIONER'S CLAIM FOR UNPAID SALARIES AND BENEFITS

The Court's Ruling

The petition is partly meritorious.

Sufficient evidence support the factual findings of the trial and appellate courts

Nadela alleges that the finding of the trial and appellate courts that he has custody of the remaining tools and equipment of ECCO-ASIA is contrary to the evidence on record.

The Court is not convinced.

Nadela, as the Assistant Vice-President of the Southern Division of ECCO-ASIA, arranged for all the tools and equipment of ECCO-ASIA to be stored in the warehouse. Nadela later withdrew the remaining tools and equipment of ECCO-ASIA worth P600,000 and brought them to Llaban's residence for the offsetting of ECCO-ASIA's account with Llaban. The list of withdrawn items marked as Exhibits "A" to "A-23" contained Nadela's signature.^[29] After the account with Llaban was settled, the tools and equipment of ECCO-ASIA remained in Llaban's residence for storage. Nadela insisted on retaining the tools and equipment in Llaban's residence until the full payment of his claims against ECCO-ASIA.

Both Ibañez and Llaban testified that Nadela objected to the return of the remaining tools and equipment of ECCO-ASIA after the offsetting of Llaban's payables unless ECCO-ASIA also settled Nadela's claims. During cross-examination, Ibañez testified:

Q: After the items were being selected by Mr. Llaban, there were some items left in the residence of Mr. Llaban, is that correct?

A: Yes, sir.

Q: And during that period, you even went to the premises of Mr. Llaban and saw the items remaining?

A: Yes, sir.

Q: Did you not ask Mr. Llaban to return these items to you?

A: I have about two or three times. I even held conferences in the residence of Mr. Llaban.

Q: And what was the response of Mr. Llaban?

A: **Mr. Llaban agreed to return the items in excess of the ones selected as long as he only be paid of the remaining P19,000.00 but Mr. Nadela objected because he claimed that he should also be cleared.**

Q: You requested Mr. Llaban three times, that is, for him to return the items still remaining in his residence but Mr. Nadela refused or objected for Mr. Llaban to return these items [t]o you, that is what you mean?

A: That is what Mr. Llaban wants.