

THIRD DIVISION

[G.R. NO. 159831, October 14, 2005]

**PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS.
JOHN BORDMAN LTD. OF ILOILO, INC., RESPONDENT.**

DECISION

PANGANIBAN, J.:

Deeply imbedded in our jurisprudence is the doctrine that the factual findings of the Court of Appeals (CA) affirming those of the trial court are, subject to some exceptions, binding upon this Court. Otherwise stated, only questions of law, not of facts, may be raised before this Court in petitions for review under Rule 45 of the Rules of Court. Nonetheless, in the interest of substantial justice, the Court delved into both the factual and the legal issues raised in the present case and found no reason to overturn the CA's main Decision. Furthermore, under the peculiar factual circumstances of the instant appeal, this Court holds that the period for reckoning the prescription of the present cause of action began only when respondent discovered with certainty the short deliveries made by petitioner.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the August 20, 2002 Decision^[2] and August 29, 2003 Resolution^[3] of the Court of Appeals (CA) in CA-GR CV No. 46974. The challenged Decision disposed as follows:

"**WHEREFORE**, premises considered, the assailed decision dated August 30, 1991 of the RTC, Branch 26, Manila in Civil Case No. 13419 is hereby **AFFIRMED** with the **MODIFICATION** that the award of exemplary damages and attorney's fees be both reduced to P100,000.00.

"The order dated December 9, 1991 is likewise **AFFIRMED**."^[4]

The assailed Resolution denied reconsideration.

The Facts

Petitioner Pilipinas Shell Petroleum Corporation ("Pilipinas Shell") is a corporation engaged in the business of refining and processing petroleum products.^[5] The invoicing of the products was made by Pilipinas Shell, but delivery was effected through Arabay, Inc., its sole distributor at the time material to the present case.^[6] From 1955 to 1975, Respondent John Bordman Ltd. of Iloilo, Inc. ("John Bordman") purchased bunker oil in drums from Arabay.^[7] When Arabay ceased its operations in 1975, Pilipinas Shell took over and directly marketed its products to John Bordman.^[8]

On August 20, 1980, John Bordman filed against Pilipinas Shell a civil case for specific performance. The former demanded the latter's short deliveries of fuel oil since 1955; as well as the payment of exemplary damages, attorney's fees and costs of suit.^[9] John Bordman alleged that Pilipinas Shell and Arabay had billed it at 210 liters per drum, while other oil companies operating in Bacolod had billed their customers at 200 liters per drum. On July 24, 1974, when representatives from John Bordman and Arabay conducted a volumetric test to determine the quantity of fuel oil actually delivered, the drum used could only fill up to 190 liters, instead of 210 liters, or a short delivery rate of 9.5%.^[10] After this volumetric test, Arabay reduced its billing rate to 200 (instead of 210) liters per drum, except for 4 deliveries between August 1 and September 9, 1974, when the billing was at 190 liters per drum.^[11]

On January 23, 1975, another volumetric test allegedly showed that the drum could contain only 187.5 liters.^[12] On February 1, 1975, John Bordman requested from Pilipinas Shell that 640,000 liters of fuel oil, representing the latter's alleged deficient deliveries, be credited to the former's account.^[13] The volume demanded was adjusted to 780,000 liters, upon a realization that the billing rate of 210 liters per drum had been effective since 1966.

On October 24, 1977 and November 9, 1977, representatives from John Bordman, the auditor of the Iloilo City Commission on Audit, pump boat carriers, and truck drivers conducted actual measurements of fuel loaded on tanker trucks as transferred to dented drums at mouth full. They found that the drums could contain 180 liters only.^[14] In its Complaint, John Bordman prayed for the appointment of commissioners to ascertain the volume of short deliveries.^[15]

On October 21, 1980, Pilipinas Shell and Arabay filed their Answer with Counterclaim.^[16] They specifically denied that fuel oil deliveries had been less than those billed.^[17] Moreover, the drums used in the volumetric tests were allegedly not representative of the ones used in the actual deliveries.^[18]

By way of affirmative defense, Pilipinas Shell and Arabay countered that John Bordman had no cause of action against them.^[19] If any existed, it had been waived or extinguished; or otherwise barred by prescription, laches, and estoppel.^[20]

During the pretrial, the parties agreed to limit the issues to the following: (1) whether the action had prescribed, and (2) whether there had been short deliveries in the quantities of fuel oil.^[21] John Bordman's Motion for Trial by Commissioner was granted by the RTC,^[22] and the court-appointed commissioner submitted her Report on April 20, 1988.^[23]

On April 3, 1989, Pilipinas Shell and Arabay filed a Motion for Resolution of their affirmative defense of prescription.^[24] Because prescription had not been established with certainty, the RTC ordered them on November 6, 1989, to present evidence in support of their defense.^[25]

On August 30, 1991, the RTC issued a Decision in favor of respondent.^[26] Pilipinas Shell and Arabay were required to deliver to John Bordman 916,487.62 liters of bunker fuel oil, to pay actual damages of P1,000,000; exemplary damages of P500,000; attorney's fees of P500,000; and the costs of suit.^[27] The basis of the trial court's decision was predicated on the following pronouncement:

"Since [respondent] had fully paid their contract price at 210 liters per drum, then the [petitioner] should deliver to the [respondent] the undelivered volume of fuel oil from 1955 to 1974, which is 20 liters per drum; and 10 liters per drum from 1974 to 1977. Per the invoice receipts submitted, the total volume of fuel oil which [petitioner] have failed to deliver to [respondent] is 916,487.62 liters."^[28]

Pilipinas Shell appealed to the CA, alleging that John Bordman had failed to prove the short deliveries; and that the suit had been barred by estoppel, laches, and prescription.^[29]

Ruling of the Court of Appeals

Upholding the trial court, the CA overruled petitioner's objections to the evidence of respondent in relation to the testimonies of the latter's witnesses and the results of the volumetric tests.^[30] The CA noted that deliveries from 1955 to 1977 had been admitted by petitioner; and the fact of deficiency, established by respondent.^[31]

The appellate court also debunked petitioner's claims of estoppel and laches. It held that the stipulation in the product invoices stating that respondent had received the products in good order was not controlling.^[32] On the issue of prescription, the CA ruled that the action had been filed within the period required by law.^[33]

Hence, this Petition.^[34]

The Issues

Petitioner states the issues in this wise:

"I.

Respondent's allegation that the Petition must be summarily dismissed for containing a false, defective and unauthorized verification and certification against forum shopping is patently unmeritorious, as the requisites for a valid verification and certification against forum shopping have been complied with.

"II.

The Decisions of the court *a quo* and of the Honorable Court of Appeals were clearly issued with grave abuse of discretion, based as they are on an unmistakable misappreciation of facts clearly appearing in the records of the case.

A.

The Honorable Court of Appeals erred giving full faith and credence to the testimony of respondent's sole witness, who was neither an "expert witness" nor one with personal knowledge of the material facts.

B.

The Honorable Court of Appeals erred in ruling that the testimony of respondent's sole witness was not controverted and that the results of his volumetric tests were not disproved by petitioner as the records of the court *a quo* indubitably show that petitioner disputed the testimony of said witness in every material respect.

C.

The court *a quo* and the Honorable Court of Appeals erred when it failed to hold that the results of the volumetric tests conducted by respondent's sole witness are not worthy of full faith and credence, considering that drums subjected to said tests in 1974 and 1975 were not the same with, or otherwise similar to those used by petitioner in the deliveries made to respondent since 1955.

D.

The Honorable Court of Appeals erred in holding that petitioner's unilateral reduction of billing rates constitutes an implied admission of the fact of short deliveries. The reduction was made for no other purpose than as a business accommodation of a valued client.

"III.

The court *a quo*, as well as the Honorable Court of Appeals, gravely erred in not ruling that respondent's claims of alleged short deliveries for the period 1955 to 1976 were already barred by prescription.

"IV.

The Honorable Court of Appeals and the court *a quo* erred in not ruling that respondent's claims are barred by estoppel and laches considering that respondent failed to assert its claim for about twenty-five (25) years.

"V.

The Honorable Court of Appeals erred in awarding to respondent compensatory damages, exemplary damages, attorney's fees and cost of suit, when petitioner has not otherwise acted in a wanton, fraudulent, reckless, oppressive or malevolent manner."^[35]

The Court's Ruling

In the main, the Petition has no merit, except in regard to the CA's grant of exemplary damages.

First Issue:

Validity of Verification and Certification

Preliminarily, the Court shall tackle respondent's allegation that petitioner's verification and certification against forum shopping had not complied with, and were in fact made in contravention of, Section 4 of Rule 45 of the Rules of Court.^[36] Respondent alleges that Romeo B. Garcia, vice-president of Pilipinas Shell, had no authority to execute them.^[37]

The records, however, show that petitioner's president conferred upon its vice-president the power to institute actions. As certified by the assistant board secretary, the delegation was authorized by petitioner's board of directors.^[38] The power to institute actions necessarily included the power to execute the verification and certification against forum shopping, as required in a petition for review before this Court.

In any event, the policy of liberal interpretation of procedural rules compels us to give due course to the Petition.^[39] There appears to be no intention to circumvent the need for proper verification and certification, which are intended to assure the truthfulness and correctness of the allegations in the Petition and to discourage forum shopping.^[40]

Second Issue:

Appreciation of Facts

As a general rule, questions of fact may not be raised in a petition for review.^[41] The factual findings of the trial court, especially when affirmed by the appellate court, are binding and conclusive on the Supreme Court.^[42] Nevertheless, this rule has certain exceptions,^[43] which petitioner asserts are present in this case.^[44] The Court reviewed the evidence presented and revisited the applicable pertinent rules. Being intertwined, the issues raised by petitioner relating to the evidence will be discussed together.

Objection to Respondent's Witness

Petitioner claims that the trial court erred in giving credence to the testimony of respondent's witness, Engineer Jose A. Macarubbo. The testimony had allegedly consisted of his personal opinion. Under the Rules of Evidence, the opinion of a witness is not admissible, unless it is given by an expert.^[45] Macarubbo was allegedly not an expert witness; neither did he have personal knowledge of material facts.^[46]

We clarify. Macarubbo testified that sometime in May 1974, respondent had contacted him to review the reception of fuel at its lime plant. He discovered that Arabay had been billing respondent at 210 liters per drum, while other oil companies