

FIRST DIVISION

[G.R. No. 113558, April 18, 1997]

**EDITHA M. MIJARES AND GLICERIO T. MIJARES, PETITIONERS,
VS. COURT OF APPEALS AND METRO DRUG, INC., RESPONDENTS.
D E C I S I O N**

KAPUNAN, J.:

This petition for review on *certiorari* seeks the reversal of (1) the August 31, 1992 Decision^[1] of the Court of Appeals which set aside the decision of the Regional Trial Court of Manila, Branch 46,^[2] and (2) the January 10, 1994 Resolution of the Court of Appeals denying the Motion for Reconsideration of its decision.

In its Complaint dated May 2, 1988 filed before the Manila Regional Trial Court, herein private respondent, Metro Drug, Inc., alleged that herein petitioners, spouses Editha Mijares and Glicerio T. Mijares, while doing business under the style "Aklan Drug," purchased and received from Metro Drug various products the total value of which amounted to P32,034.42.^[3] Despite Metro Drug's repeated demands however, petitioners have failed and have refused to pay said amount.^[4] Metro Drug thus prayed that the Regional Trial Court render judgment:

(a) Ordering the defendants to pay, jointly and severally, the plaintiff the sum of P32,034.42 with interest thereon of 1% a month from February, 1986 until fully paid;

(b) Ordering the defendants to pay, jointly and severally, the plaintiff the sum equivalent to 25% of the amount claimed in this suit as and for attorney's fees;

(c) Ordering the defendants to pay, jointly and severally, the costs of this suit.^[5]

In their "Answer With Compulsory Counterclaim," petitioners qualified Metro Drug's allegation that they were doing business under the style "Aklan Drug," claiming that the same "is a sole proprietorship in the name of defendant Editha M. Mijares."^[6] The petitioners denied the rest of Metro Drug's allegations. They likewise interposed a counterclaim for malicious prosecution and prayed that judgment be rendered:

A. Dismissing the Complaint in toto for utter lack of merit; and

B. Ordering plaintiff to pay defendants as follows:

1. The sum of P200,000.00 each, or such other sum as the Honorable Court may determine, as and by way of moral damages;
2. The sum of P25,000.00 as and by way of attorney's fees, plus all expenses of

suit as may be proven in the course of trial.^[7]

On March 8, 1991, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendants. The Complaint is ordered dismissed and the plaintiff is ordered to pay the defendants the sum of

P30,000.00 for moral damages

P10,000.00 as attorney's fees

and to pay the costs of suit.

SO ORDERED.^[8]

The factual findings of the trial court are as follows:

Dioscoro Lamenta, salesman/collector of Metro Manila Drug Inc. visits plaintiff's customers once a week, book orders for pharmaceutical products and insure that orders are received by customers. He also collects the value of goods within 30 days after delivery to customers. The defendants as owners of Aklan Drug had been buying pharmaceutical products from Metro Drug since 1976. They (defendants) had good record with the plaintiff. However, there were eight (8) charge/sales invoices (Exhs. A to H) which became a source of some misunderstanding between the parties.

It appears that Editha Mijares, aside from being the operator of Aklan Drug, was also an officer of the Ospital Ng Maynila Consumers Cooperative, Inc. It was an employees' cooperative and she was its pharmacist and manager. Ospital ng Maynila Cooperative became a concessionaire of a small area right inside the hospital compound and it operated a drugstore under its Certificate of Registration dated November 15, 1985 (Exh. 13). Obviously, Ospital ng Maynila Cooperative had some transactions with the plaintiff as supplier of pharmaceutical products. Subsequently, the Board of Directors of the Cooperative decided to dissolve it and stopped its operations. Operations stopped in October 1986. In a letter dated October 23, 1986, Solomon Silverio, Jr. offered to lease from the City of Manila, thru the Mayor, the site previously occupied by the Cooperative. The offer having been accepted, a Contract of Lease (Exh. 1) was entered into between the City of Manila as Lessor and Solomon Silverio, Jr. as Lessee effective November 1, 1986.

Thereafter, Solomon Silverio as the new lessee, put up a drugstore on the same area occupied by the Cooperative.

On November 26, 1986, delivery of pharmaceutical products was made by plaintiff thru Dioscoro Lamenta, to the said store. It was covered by Exhibit A. In 1987, on seven other occasions, particularly on

March 6, 1987

March 11, 1987

July 29, 1987

July 30, 1987

August 3, 1987

August 11, 1987

August 24, 1987

more deliveries of pharmaceutical products were made in the same place by the plaintiff. From the first to the seventh deliveries (Exhs. A to G) they were received by Luz Espares. The 8th delivery (Exh. H) was received by Hilda Rodrigona. These two were never the employees of the defendants.

The total value of these eight (8) deliveries under charge invoices is in the sum of P32,034.42.

In partial payment of these receivables, plaintiff received Check No. 264292 (Exh. J) dated November 27, 1987. It was paid to Lamenta, when the latter went to the store in the compound of the Ospital ng Maynila to collect. It was drawn by Solomon Silverio, Jr. which check was under the account name Farmacia delos Remedios under Account No. 202-830126-2 in the amount of P14,180.46. Metro Drug deposited said check with the FEBTC in its account on December 3, 1987. On December 4, 1987, it received a notice from the bank that the check was returned to it on the ground of insufficient fund.

On April 4, 1988, plaintiff filed a telegram (Exh. K) addressed to Aklan Drug at 1711 Zamora St., Pandacan Manila, demanding full redemption of the dishonored check and full payment of outstanding account for P27,938.06. About 4 to 5 days after the telegram was sent, Lamenta was able to talk to Editha Mijares who directed him to a certain Solomon Silverio to collect the amount. He asked why as she was the owner of Aklan Drug. But he was told by Editha that Silverio is the one managing the store.

Lamenta felt that as salesman/collector of the plaintiff, he has limited duties. He felt he has no duty to check who is the owner of the drugstore to whom he delivers the drugs. Hence in this case, that he went to the store to collect and was given a check in that store is enough. He did not care whoever was in that store. So when he was told in his office that the check paid to him bounced, he went back to that drugstore, to inform them of the dishonor, without even recalling to whom he gave said information. Based on such limiting attitude, he has always perceived Editha Mijares as a debtor of the plaintiff.

Editha Mijares and her husband do not acknowledged at all that they have any outstanding account with the plaintiff. Defendant Glicerio Mijares, as a doctor, never had anything to do with the drugstore of his wife. It was only Editha Mijares who operates and manages the Aklan Drug located at 1711 Zamora St., Pandacan, Manila (Exhs. 2 and 2-A.) And as far as Editha is concerned, she never ordered the drugs Lamenta brought to the Ospital ng Maynila on November 26, 1986 and in 1987 which are covered by the charge/sale invoices (Exh. A to H). Neither has she, nor her employees, received them. Luz Espares and Hilda Rodrigona who received the goods in question from Lamenta are not her employees.

While Editha Mijares has dealt with the plaintiff, but it was always only thru Lamenta that they transacted business. And all her purchases were paid for. In fact, plaintiff acknowledges that defendants paid all accounts incurred except the claim herein.

When Lamenta tried to collect from Editha Mijares for the disputed claim, Editha Mijares referred him to Mr. Silverio as the new operator and concessionaire of the drugstore. She informed him verbally that they have no more business inside the Ospital ng Maynila as the cooperative drugstore has already stopped operations. Despite said verbal notice, the demand telegram addressed to Aklan Drug was still sent to Editha Mijares. On Lamenta's follow-up of said telegram, Editha Mijares again directed Lamenta to see Solomon Silverio, the new owner of the drugstore. In fact on a certain occasion, Lamenta told Mijares "nasabihan ko na, bahala na sila" obviously referring to the information he gave Metro Drug that Editha Mijares is no longer running the drugstore at the Ospital ng Maynila.^[9]

On the basis of the above findings, the trial court concluded that:

x x x it is clear that the products covered by plaintiff's Exh. A to H inclusive, were not purchased by, nor delivered to, nor received by the defendants. As a consequence, defendants are not liable to plaintiff for the sums indicated in Exh. A to H inclusive ^[10]

On appeal by Metro Drug, the Court of Appeals reversed the decision of the Regional Trial Court ratiocinating that:

DEFENDANTS-APPELLEES, however, want to convince Us of certain details unknown to the plaintiff-appellant's representative Dioscoro Lamenta that the cooperative has already been dissolved or that the operation of the cooperative drugstore has already been terminated, and that there was a new lease which paved the way for the entry into the picture of a certain Solomon Silverio, Jr., in order to avoid liability. But the undeniable and un rebutted fact is that appellant's representative Dioscoro Lamenta had been delivering pharmaceuticals to the drugstore of the appellees from 1976-1986. There were no significant changes in operational or personnel scheme as well as the use of the old credit line. In fine, the delivery of the pharmaceuticals was with the consent of the defendants as owners of the drugstore. The defendants' contention that Luz Espares and Hilda Rodrigona were no longer employed with the cooperative

drugstore owned by the defendants cannot absolve defendants from liability on appellant's claim.

TO repeat the basic liability of the defendants-appellees, it should be made clear that this proceeds from the obligation arising from the purchase by the appellee and receipt of the pharmaceuticals delivered by the appellant. This delivery was precipitated by the appellees' order of the merchandise. The appellees' order of the merchandise and the appellant's agreement to deliver, as in fact it delivered said merchandise, constitutes a contract of sale which is perfected (Art. 1475, NCC; Warner vs. Inza, 43 Phil. 404).^[11]

Not satisfied with the decision of the Court of Appeals, petitioners came to this Court by way of petition for review, alleging that:

I. THE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE DECISION DATED MARCH 8, 1991 OF THE TRIAL COURT.

II. THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE MERCHANDISE COVERED BY EXHIBITS A TO H WERE PURCHASED BY, DELIVERED TO, AND RECEIVED BY PETITIONERS.

III. THE COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO PAY RESPONDENT THE SUM OF P32,034.43 WITH INTEREST THEREON OF 1% A MONTH FROM FEBRUARY 1986 UNTIL FULLY PAID; TO PAY SUM EQUIVALENT TO 25% OF THE AMOUNT CLAIMED AS ATTORNEY'S FEES; AND TO PAY THE COSTS OF SUIT.
^[12]

We give due course to the petition.

As a general rule, the findings of fact of the Court of Appeals are binding upon this Court. The rule, however, is not absolute, and jurisprudence has carved out several exceptions. Among these are when the findings of the Court of Appeals are contrary to those of the trial court.^[13]

In the case at bar, the evidence as found by the trial court conclusively shows that by October 1986, Editha Mijares was no longer involved in the operation of the drugstore. On November 1, 1986, a certain Solomon Silverio, Jr. put up an entirely distinct drugstore, as the new lessee of the area. It was this same Solomon Silverio, Jr. who drew the bouncing check in partial payment of the pharmaceutical products.

The only evidence alluding to petitioners' ownership of the drugstore is Dioscoro Lamenta's testimony, to wit:

Q You stated that that drug store located at Ospital Ng Maynila has no sign [identifying the store as Aklan Drug]?

A I did not notice any sign, Sir.

Q But you know for a fact that this drug-store is an extension owned and operating by the defendant?

A Yes, Sir.^[14]