Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

VIRGILIO S. DAVID,
Petitioner,

- versus -

MISAMIS OCCIDENTAL II ELECTRIC COOPERATIVE, INC.,
Respondent.

G.R. No. 194785

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
MENDOZA,
REYES,* and
PERLAS-BERNABE, *JJ.*

Promulgated:

11 July 2012

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DECISION

MENDOZA, J.:

Before this Court is a petition for review under Rule 45 of the Rules of Court assailing the July 8, 2010 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. CR No. 91839, which affirmed the July 17, 2008 Decision[2] of the Regional Trial Court, Branch VIII, Manila *(RTC)* in Civil Case No. 94-69402, an action for specific performance and damages.

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* Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

[1] *Rollo*, pp. 94-101. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justice Mario L. Guariña III and Associate Justice Rodil V. Zalameda.

[2] Id. at 65-77. Penned by Judge Felixberto T. Olalia, Jr.

<u>The Facts:</u>

Petitioner Virgilio S. David *(David)* was the owner or proprietor of VSD Electric Sales, a company engaged in the business of supplying electrical hardware including transformers for rural electric cooperatives like respondent Misamis Occidental II Electric Cooperative, Inc. *(MOELCI),* with principal office located in Ozamis City.

To solve its problem of power shortage affecting some areas within its coverage, MOELCI expressed its intention to purchase a 10 MVA power transformer from David. For this reason, its General Manager, Engr. Reynaldo Rada *(Engr. Rada)*, went to meet David in the latter's office in Quezon City. David agreed to supply the power transformer provided that MOELCI would secure a board resolution because the item would still have to be imported.

On June 8, 1992, Engr. Rada and Director Jose Jimenez *(Jimenez)*, who was in-charge of procurement, returned to Manila and presented to David the requested board resolution which authorized the purchase of one 10 MVA power transformer. In turn, David presented his proposal for the acquisition of said transformer. This proposal was the same proposal that he would usually give to his clients.

After the reading of the proposal and the discussion of terms, David instructed his then secretary and bookkeeper, Ellen M. Wong, to type the names of Engr. Rada and Jimenez at the end of the proposal. Both signed the document under the word "conforme." The board resolution was thereafter attached to the proposal.

As stated in the proposal, the subject transformer, together with the basic accessories, was valued at ₱5,200,000.00. It was also stipulated therein that 50% of the purchase price should be paid as downpayment and the remaining balance to be paid upon delivery. Freight handling, insurance, customs duties, and incidental expenses were for the account of the buyer.

The Board Resolution, on the other hand, stated that the purchase of the said transformer was to be financed through a loan from the National Electrification Administration *(NEA).* As there was no immediate action on the loan application, Engr. Rada returned to Manila in early December 1992 and requested David to deliver the transformer to them even without the required downpayment. David granted the request provided that MOELCI would pay interest at 24% per annum. Engr. Rada acquiesced to the condition. On December 17, 1992, the goods were shipped to Ozamiz City via William Lines. In the Bill of Lading, a sales invoice was included which stated the agreed interest rate of 24% per annum.

When nothing was heard from MOELCI for sometime after the shipment, Emanuel Medina *(Medina)*, David's Marketing Manager, went to Ozamiz City to check on the shipment. Medina was able to confer with Engr. Rada who told him that the loan was not yet released and asked if it was possible to withdraw the shipped items. Medina agreed.

When no payment was made after several months, Medina was constrained to send a demand letter, dated September 15, 1993, which MOELCI duly received. Engr. Rada replied in writing that the goods were still in the warehouse of William Lines again reiterating that the loan had not been approved by NEA. This prompted Medina to head back to Ozamiz City where he found out that the goods had already been released to MOELCI evidenced by the shipping company's copy of the Bill of Lading which was

stamped *"Released,"* and with the notation that the arrastre charges in the amount of ₱5,095.60 had been paid. This was supported by a receipt of payment with the corresponding cargo delivery receipt issued by the Integrated Port Services of Ozamiz, Inc.

Subsequently, demand letters were sent to MOELCI demanding the payment of the whole amount plus the balance of previous purchases of other electrical hardware. Aside from the formal demand letters, David added that several statements of accounts were regularly sent through the mails by the company and these were never disputed by MOELCI.

On February 17, 1994, David filed a complaint for specific performance with damages with the RTC. In response, MOECLI moved for its dismissal on the ground that there was lack of cause of action as there was no contract of sale, to begin with, or in the alternative, the said contract was unenforceable under the Statute of Frauds. MOELCI argued that the quotation letter could not be considered a binding contract because there was nothing in the said document from which consent, on its part, to the terms and conditions proposed by David could be inferred. David knew that MOELCI's assent could only be obtained upon the issuance of a purchase order in favor of the bidder chosen by the Canvass and Awards Committee.

Eventually, pursuant to Rule 16, Section 5 of the Rules of Court, MOELCI filed its Motion for Preliminary Hearing of Affirmative Defenses and Deferment of the Pre-Trial Conference which was denied by the RTC to abbreviate proceedings and for the parties to proceed to trial and avoid piecemeal resolution of issues. The order denying its motion was raised with the CA, and then with this Court. Both courts sustained the RTC ruling.

Trial ensued. By reason of MOELCI's continued failure to appear despite notice, David was allowed to present his testimonial and

documentary evidence *ex parte,* pursuant to Rule 18, Section 5 of the Rules. A Very Urgent Motion to Allow Defendant to Present Evidence was filed by MOELCI, but was denied.

In its July 17, 2008 Decision, the RTC dismissed the complaint. It found that although a contract of sale was perfected, it was not consummated because David failed to prove that there was indeed a delivery of the subject item and that MOELCI received it.[3]

Aggrieved, David appealed his case to the *CA*.

On July 8, 2010, the CA affirmed the ruling of the RTC. In the assailed decision, the CA reasoned out that although David was correct in saying that MOELCI was deemed to have admitted the genuineness and due execution of the "quotation letter" (Exhibit A), wherein the signatures of the Chairman and the General Manager of MOELCI appeared, he failed to offer any textual support to his stand that it was a contract of sale instead of a mere price quotation agreed to by MOELCI representatives. On this score, the RTC erred in stating that a contract of sale was perfected between the parties despite the irregularities that tainted their transaction. Further, the fact that MOELCI's representatives agreed to the terms embodied in the agreement would not preclude the finding that said contract was at best a mere contract to sell.

A motion for reconsideration was filed by David but it was denied.[4]

Hence, this petition.

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[3] Id. at 74.
[4] Id. at 125.

Before this Court, David presents the following issues for consideration:

I.

WHETHER OR NOT THERE WAS A PERFECTED CONTRACT OF SALE.

II.

WHETHER OR NOT THERE WAS A DELIVERY THAT CONSUMMATED THE CONTRACT.

The Court finds merit in the petition.

I.

On the issue as to whether or not there was a perfected contract of sale, this Court is required to delve into the evidence of the case. In a petition for review on certiorari under Rule 45 of the Rules of Court, the issues to be threshed out are generally questions of law only, and not of fact. This was reiterated in the case of *Buenaventura v. Pascual,*[5] where it was written:

> Time and again, this Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, the findings of the trial court must be accorded the highest respect, even finality, by this Court.

That being said, the Court is not unmindful, however, of the recognized exceptions well-entrenched in jurisprudence. It has always been stressed that when supported by substantial evidence, the findings of fact of

[5] G.R. No. 168819, November 27, 2008, 572 SCRA 143, 157.

the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
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> (2) When the inference made is manifestly mistaken, absurd or impossible;
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> (3) Where there is a grave abuse of discretion:
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> (4) When the judgment is based on a misapprehension of facts;
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> (5) When the findings of fact are conflicting;
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> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
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> **(7) When the findings are contrary to those of the trial court;**
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> (8) When the findings of fact are without citation of specific evidence on which the conclusions are based;
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> (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
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> (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. [6] [Emphasis supplied]

In this case, the CA and the RTC reached different conclusions on the question of whether or not there was a perfected contract of sale. The RTC ruled that a contract of sale was perfected although the same was not consummated because David failed to show proof of delivery.[7] The CA was of the opposite view. The CA wrote:

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[6] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 06, 2011, 650 SCRA 656, 660.
[7] *Rollo*, p. 74.

> Be that as it may, it must be emphasized that the appellant failed to offer any textual support to his insistence that Exhibit "A" is a contract of sale instead of a mere price quotation conformed to by MOELCI representatives. To that extent, the trial court erred in laying down the premise that "indeed a contract of sale is perfected between the parties despite the irregularities attending the transaction." x x x
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> That representatives of MOELCI conformed to the terms embodied in the agreement does not preclude the finding that such contract is, at best, a mere contract to sell with stipulated costs quoted should it ultimately ripen into one of sale. The conditions upon which that development may occur may even be obvious from statements in the agreement itself, that go beyond just "captions." Thus, the appellant opens with, "WE are pleased to submit our quotation xxx." The purported contract also ends with. "Thank you for giving us the opportunity to quote on your requirements and we hope to receive your order soon" apparently referring to a purchase order which MOELCI contends to be a formal requirement for the entire transaction. [8]

In other words, the CA was of the position that Exhibit A was at best a contract to sell.

A perusal of the records persuades the Court to hold otherwise.

The elements of a contract of sale are, to wit: a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b) Determinate subject matter; and c) Price certain in money or its equivalent.[9] It is the absence of the first element which distinguishes a contract of sale from that of a contract to sell.

In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, such as, in most cases,

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[8] Id. at 98-99.

[9] *Reyes v. Turapan*, G.R. No. 188064, June 01, 2011, 650 SCRA 283, 297, citing *Nabus v. Joaquin & Pacson,* G.R. No. 161318, November 25, 2009, 605 SCRA 334, 348-353.

the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.[10]

In a contract of sale, on the other hand, the title to the property passes to the vendee upon the delivery of the thing sold. Unlike in a contract to sell, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller. The vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded.[11]

An examination of the alleged contract to sell, "Exhibit A," despite its unconventional form, would show that said document, with all the stipulations therein and with the attendant circumstances surrounding it, was actually a Contract of Sale. The rule is that it is not the title of the contract, but its express terms or stipulations that determine the kind of contract entered into by the parties.[12] ***First,*** **there was meeting of minds as to the transfer of ownership of the subject matter**. The letter (Exhibit A), though

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[10] Id.
[11] Id.
[12] Id.

appearing to be a mere price quotation/proposal, was not what it seemed. It contained terms and conditions, so that, by the fact that Jimenez, Chairman of the Committee on Management, and Engr. Rada, General Manager of MOELCI, had signed their names under the word "CONFORME," they, in effect, agreed with the terms and conditions with respect to the purchase of the subject 10 MVA Power Transformer. As correctly argued by David, if their purpose was merely to acknowledge the receipt of the proposal, they would not have signed their name under the word "CONFORME."

Besides, the uncontroverted attending circumstances bolster the fact that there was consent or meeting of minds in the transfer of ownership. To begin with, a board resolution was issued authorizing the purchase of the subject power transformer. Next, armed with the said resolution, top officials of MOELCI visited David's office in Quezon City three times to discuss the terms of the purchase. Then, when the loan that MOELCI was relying upon to finance the purchase was not forthcoming, MOELCI, through Engr. Rada, convinced David to do away with the 50% downpayment and deliver the unit so that it could already address its acute power shortage predicament, to which David acceded when it made the delivery, through the carrier William Lines, as evidenced by a bill of lading.

***Second,* the document specified a determinate subject matter** which was one (1) Unit of 10 MVA Power Transformer with corresponding KV Line Accessories. **And *third,* the document stated categorically the price certain in money** which was ₱5,200,000.00 for one (1) unit of 10 MVA Power Transformer and ₱2,169,500.00 for the KV Line Accessories.

In sum, since there was a meeting of the minds, there was consent on the part of David to transfer ownership of the power transformer to MOELCI in exchange for the price, thereby complying with the first

element. Thus, the said document cannot just be considered a contract to sell but rather a perfected contract of sale.

II.

Now, the next question is, was there a delivery?

MOELCI, in denying that the power transformer was delivered to it, argued that the Bill of Lading which David was relying upon was not conclusive. It argued that although the bill of lading was stamped "Released," there was nothing in it that indicated that said power transformer was indeed released to it or delivered to its possession. For this reason, it is its position that it is not liable to pay the purchase price of the 10 MVA power transformer.

This Court is unable to agree with the CA that there was no delivery of the items. On the contrary, there was delivery and release.

To begin with, among the terms and conditions of the proposal to which MOELCI agreed stated:

> **2. Delivery – Ninety (90) working days upon receipt of your purchase order and downpayment.**
>
> **C&F Manila, freight, handling, insurance, custom duties and incidental expenses shall be for the account of MOELCI II.** [13] **(Emphasis supplied)**

On this score, it is clear that MOELCI agreed that the power transformer would be delivered and that the freight, handling, insurance, custom duties, and incidental expenses shall be shouldered by it.

[13] Records, p. 4.

On the basis of this express agreement, Article 1523 of the Civil Code becomes applicable. It provides:

> Where, in pursuance of a contract of sale, **the seller is authorized or required to send the goods to the buyer delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer**, except in the cases provided for in Article 1503, first, second and third paragraphs, or unless a contrary intent appears. (Emphasis supplied)

Thus, the delivery made by David to William Lines, Inc., as evidenced by the Bill of Lading, was deemed to be a delivery to MOELCI. David was authorized to send the power transformer to the buyer pursuant to their agreement. When David sent the item through the carrier, it amounted to a delivery to MOELCI.

Furthermore, in the case of *Behn, Meyer & Co. (Ltd.) v. Yangco,*[14] it was pointed out that a specification in a contract relative to the payment of freight can be taken to indicate the intention of the parties with regard to the place of delivery. So that, if the buyer is to pay the freight, as in this case, it is reasonable to suppose that the subject of the sale is transferred to the buyer at the point of shipment. In other words, the title to the goods transfers to the buyer upon shipment or delivery to the carrier.

Of course, Article 1523 provides a mere presumption and in order to overcome said presumption, MOELCI should have presented evidence to the contrary. The burden of proof was shifted to MOELCI, who had to show that the rule under Article 1523 was not applicable. In this regard, however, MOELCI failed.

There being delivery and release, said fact constitutes partial performance which takes the case out of the protection of the Statute of

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[14] 38 Phil. 602, 605 (1918).

Frauds. It is elementary that the partial execution of a contract of sale takes the transaction out of the provisions of the Statute of Frauds so long as the essential requisites of consent of the contracting parties, object and cause of the obligation concur and are clearly established to be present.[15]

That being said, the Court now comes to David's prayer that MOELCI be made to pay the total sum of ₱5,472,722.27 plus the stipulated interest at 24% per annum from the filing of the complaint. Although the Court agrees that MOELCI should pay interest, the stipulated rate is, however, unconscionable and should be equitably reduced. While there is no question that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be reduced to a reasonable and fair level. There is nothing in the said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[16] Accordingly, the excessive interest of 24% per annum stipulated in the sales invoice should be reduced to 12% per annum.

Indeed, David was compelled to file an action against MOELCI but this reason alone will not warrant an award of attorney's fees. It is settled that the award of attorney's fees is the exception rather than the rule. Counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary

[15] *Dao Heng Bank, Inc. v. Spouses Laigo*, G.R. No. 173856, November 20, 2008, 571 SCRA 434, 443.
[16] *Castro v. Tan,* G.R. No. 168940, November 24, 2009, 605 SCRA 231, 237-238.

concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code[17] which demands factual, legal, and equitable justification. Its basis cannot be left to speculation or conjecture. In this regard, none was proven.

Moreover, in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.[18] MOELCI's case cannot be similarly classified.

Also, David's claim for the balance of ₱73,059.76 plus the stipulated interest is denied for being unsubstantiated.

WHEREFORE, the petition is **GRANTED**. The July 8, 2010 Decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. Respondent Misamis Occidental II Electric Cooperative, Inc. is ordered to pay petitioner Virgilio S. David the total sum of ₱5,472,722.27 with interest at the rate of 12% per annum reckoned from the filing of the complaint until fully paid.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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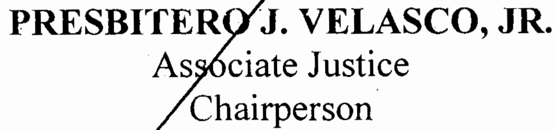
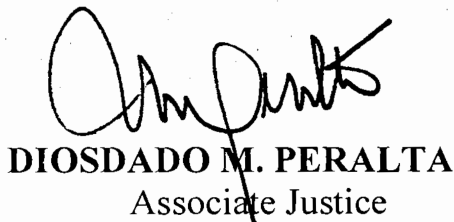
[17] Id. at 455.
[18] *Benedicto v. Villaflores*, G.R. No. 185020, October 6, 2010, 632 SCRA 446, 456.

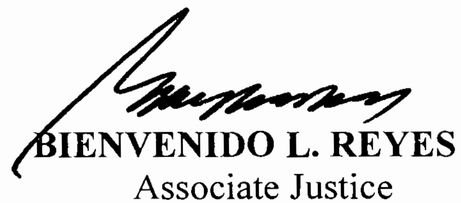
WE CONCUR:



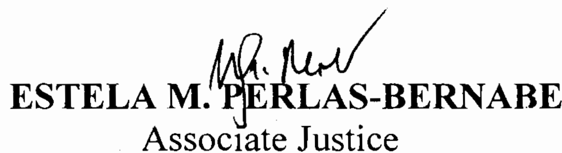
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



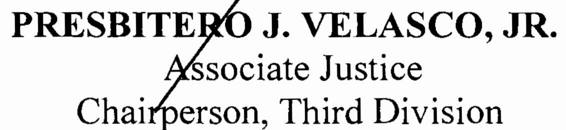
BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

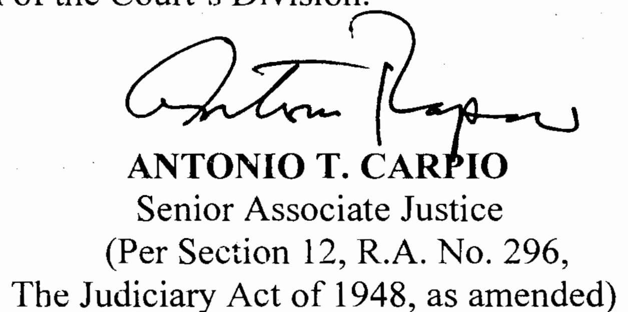
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296,
The Judiciary Act of 1948, as amended)