Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NFF INDUSTRIAL CORPORATION, Petitioner,	**G.R. No. 178169**
	Present:
- *versus*-	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
G & L ASSOCIATED BROKERAGE and/or GERARDO TRINIDAD, Respondents.	**Promulgated:** January 12, 2015

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DECISION

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated November 22, 2006 and the Order[2] dated May 22, 2007, respectively, of the Court of Appeals (*CA*), in the civil case entitled *NFF Industrial Corporation v. G & L Associated Brokerage, Inc. and/or Gerardo Trinidad*, docketed as CA-G.R. CV No. 85060.

The facts follow.

Petitioner NFF Industrial Corporation is engaged in the business of manufacturing bulk bags, while respondent G & L Associated Brokerage,

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1 Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring; Annex "A" to Petition, *rollo*, pp. 35-49.

2 Annex "B" to Petition, *id.* at 50.

Inc. (*respondent company*) is among its customers.[3] Respondent Gerardo Trinidad is the general manager of respondent company.[4]

According to petitioner, on July 20, 1999, respondent company ordered one thousand (1,000) pieces of bulk bags from petitioner, at Three Hundred Eighty Pesos (₱380.00) per piece, or a total purchase price of Three Hundred Eighty Thousand Pesos (₱380,000.00), payable within thirty (30) days from delivery, covered by Purchase Order No. 97-002 dated July 29, 1999.[5] In the said Purchase Order, an instruction was made that the bulk bags were for immediate delivery to "*G & L Associated Brokerage, Inc., c/o Hi-Cement Corporation, Norzagaray, Bulacan.*"[6] Shortly thereafter, respondent company ordered an additional one thousand (1,000) pieces of bulk bags, thus for a total of two thousand (2,000) pieces, at the same price per bag and with the same terms of payment as well as the same instructions for delivery.[7]

Accordingly, petitioner made deliveries of the bulk bags to Hi-Cement on the following dates and evidenced by the following documents, to wit:

Units Delivered	**Date of Delivery**	**Amount**	**Delivery Receipts**	**Sales Invoices**
400	July 30, 1999	₱152,000.00	No. 0226 dated July 30, 1999	No. 4113 dated July 30, 1999
1,000	August 4, 1999	₱380,000.00	No. 0229 dated August 4, 1999	No. 4120 dated August 4, 1999
600	August 6, 1999	₱228,000.00	No. 0231 dated August 6, 1999	No. 4122 dated August 6, 1999[8]
2,000		₱760,000.00		

Petitioner alleged that the aforementioned deliveries were duly acknowledged by representatives of respondent company.[9] Petitioner also averred that all the delivery receipts were rubber stamped, dated and signed by the security guard-on-duty, as well as other representatives of respondent company.[10] All deliveries made were likewise covered by sales invoices.[11]

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3 *Rollo*, p. 13.
4 *Id.* at 12.
5 *Id.* at 13.
6 *Id.*
7 *Id.*
8 *Id.* at 14.
9 *Id.*
10 *Id.*
11 *Id.*

Based on the said invoices, the total sales price is Seven Hundred Sixty Thousand Pesos (₱760,000.00).[12] All the sales invoices were duly served upon, and received by respondent company's representative, one Marian Gabay.[13]

On the other hand, respondents alleged that on July 20, 1999, it ordered from petitioner, by way of Purchase Order No. 97-002, one thousand (1,000) pieces of bulk bags from petitioner at a unit price of (₱380.00) per piece for a total purchase price of Three Hundred Eighty Thousand Pesos (₱380,000.00).[14] The said bulk bags were to be used by respondent company for the purpose of hauling cement from Hi-Cement Corporation at Norzagaray, Bulacan, to a dam project in Casecnan, Nueva Ecija, the respondent company having been designated as one of the many haulers at the Hi-Cement Corporation.[15] On July 26, 1999, respondent company formalized its offer through a letter containing the same terms as the Purchase Order and providing for other details regarding the purchase.[16]

According to respondents, the Purchase Order specifically provides that the bulk bags were to be delivered at Hi-Cement Corporation to Mr. Raul Ambrosio, respondent company's checker and authorized representative assigned thereat.[17] Subsequently, however, the ordered bulk bags were not delivered to respondent company, the same not having been received by the authorized representative in conformity with the terms of the Purchase Order.[18]

Meanwhile, thirty (30) days elapsed from the time the last alleged delivery was made but no payment was effected by respondent company.[19] This prompted petitioner to send a demand letter dated October 27, 1999 to respondent company.[20] As respondent company failed to respond to the demand letter, petitioner followed up its claim from the former through a series of telephone calls.[21] Again, since no concrete answer was provided by respondent company, petitioner sent another demand letter dated November 23, 1999; and finally, a third demand letter dated October 2, 2001.[22] As the demands remained unheeded, petitioner filed a complaint for sum of money against respondents on December 19, 2001.[23]

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12 *Id.*
13 *Id.*
14 Comment to Petition, *rollo*, p. 88.
15 *Id.* at 88-89.
16 *Id.* at 89.
17 *Rollo*, p. 15.
18 *Id.*
19 *Id.*
20 *Id.* at 14-15.
21 *Id.* at 15.
22 *Id.*
23 *Id.*

As no settlement was reached during the pre-trial stage, trial proceeded. On January 25, 2005, the Regional Trial Court (*RTC*) rendered its decision in favor of petitioner. The *fallo* of the Decision provides:

> PRESCINDING FROM THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiff NFF INDUSTRIAL CORPORATION and against the defendant Corporation G & L Associated Brokerage, Inc., and the latter is hereby ordered to pay the plaintiff the following:
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> 1. The sum of Php760,000.00 – representing overdue accounts plus interest from the first demand on October 27, 1999 until fully paid.
> 2. The sum of Php152,000.00 as attorney's fees.
> 3. Cost of suit.
>
> SO ORDERED.[24]

Aggrieved, respondents appealed before the CA. As a result, the decision of the RTC was reversed in the CA's Decision[25] dated November 22, 2006, in the following wise:

> **WHEREFORE**, the appealed decision is, hereby, **REVERSED AND SET ASIDE**. The Complaint against the appellant is perforce **DISMISSED**.
>
> **SO ORDERED**.[26]

Undaunted, petitioner filed a Motion for Reconsideration. The same was, however, denied in the assailed Order dated May 22, 2007.

Hence, this petition stating the following grounds:

> I
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> PREPONDERANCE OF EVIDENCE SHOWS THAT THE RESPONDENT COMPANY ACCEPTED DELIVERY OF THE BULK BAGS.
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> II
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> RESPONDENTS' CONDUCT PREPONDERANTLY SHOWS THAT DELIVERY OF THE BULK BAGS HAS BEEN ACCEPTED.

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24 Annex "O" to Petition, *rollo*, pp. 80-81.
25 *Supra* note 1.
26 *Id.* at 48. (Emphasis in the original)

III
FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT.

IV.
TO SUSTAIN THE DECISION OF THE COURT OF APPEALS WILL CAUSE UNJUST ENRICHMENT ON THE PART OF RESPONDENTS AT THE EXPENSE OF THE PETITIONER.[27]

Simply, the issue before us is whether or not there was valid delivery on the part of petitioner in accordance with law, which would give rise to an obligation to pay on the part of respondent for the value of the bulk bags.

The question is basically factual since it involves an evaluation of the conflicting evidence presented by the opposing parties, including the existence and relevance of specific surrounding circumstances, to determine the truth or falsity of alleged facts.[28]

While it is well settled that factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, nevertheless, the Court has the authority to review and, in proper cases, reverse the factual findings of lower courts in these instances: (a) when the findings of fact of the trial court are in conflict with those of the appellate court; (b) when the judgment of the appellate court is based on misapprehension of facts; and (c) when the appellate court manifestly overlooked certain relevant facts which, if properly considered, would justify a different conclusion.[29] Considering that in the instant case, the findings of the CA are contrary to those of the RTC, a minute scrutiny by this Court is in order, and resort to duly proven evidence becomes necessary.[30]

Petitioner avers that it has delivered the bulk bags to respondent company, which effectively placed the latter in control and possession thereof, as in fact, respondent company had made use of the said bulk bags in the ordinary course of its business activities.[31] Conversely, respondents contend that the evidence on record miserably failed to establish that the alleged deliveries were received by the authorized representative of the respondents. Thus, there was no delivery at all in contemplation of law.[32]

We find respondents' contention devoid of persuasive force.

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27 *Rollo*, p. 17.
28 *Lagon v. Hooven Comalco Industries, Inc.*, 402 Phil. 404, 412-413 (2001).
29 *Id.* at 413.
30 *Legaspi v. Court of Appeals*, 161 Phil. 471, 478 (1976), citing *Tolentino v. De Jesus*, 155 Phil. 144 (1974).
31 *Rollo*, p. 21.
32 *Supra* note 1, at 93.

The resolution of the issue at bar necessitates a scrutiny of the concept of "delivery" in the context of the Law on Sales.[33] Under the Civil Code, the vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.[34] The ownership of thing sold is considered acquired by the vendee once it is delivered to him in the following wise:

> Art. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.
>
> Art. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

Thus, ownership does not pass by mere stipulation but only by delivery.[35] Manresa explains, "the delivery of the thing x x x signifies that title has passed from the seller to the buyer."[36] Moreover, according to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right.[37] The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code signifies that the transmission of ownership from vendor to vendee has taken place.[38] Here, emphasis is placed on Article 1497 of the Civil Code, which contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee.[39]

In *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*,[40] the concept of "delivery" was elucidated, to wit:

> Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur. It is an act by which one party parts with the title to and the possession of the property, and the other acquires the right to and the possession of the same. In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate ***"the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee."***[41]

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33 *Cebu Winland Development Corporation v. Ong Siao Hua*, 606 Phil. 103, 113 (2009).
34 Civil Code, Art. 1495.
35 *Cebu Winland Development Corporation v. Ong Siao Hua*, *supra* note 33, at 114.
36 *Id.*
37 *Id.*
38 *Id.*
39 *Id.*
40 421 Phil. 709 (2001).
41 *Id.* at 731. (Emphasis ours)

Applying the foregoing criteria to the case at bar, We find that there were various occasions of delivery by petitioner to respondents, and the same was duly acknowledged by respondent Trinidad. This is supported by the testimony of petitioner's Sales Manager, Richard Agustin Vergamos, an excerpt thereof states:

DIRECT EXAMINATION

ATTY. CORALDE

Q: So, after getting the order of two thousand pieces (2,000 pcs.) and after following the delivery instructions of Mr. Trinidad, after you agreed to the price of three hundred eighty pesos per piece (P380.00/pc) what happened next, if any, Mr. Witness?
A: WE processed the order and as committed to him, ***we delivered the items few days after the order***.

COURT

Q: How many days?
A: Let me refer, your honor, to the document of the D.R.

x x x x

A: ***On July 30, 1999, we delivered four hundred pieces (400 pcs.) to Union Cement Manufacturing Plant under the company name G & L Associated Brokerage***, your honor.

ATTY. CORALDE:

Q: So after your company delivered on July 30, 1999, what did you do next, if any, Mr. Witness?
A: After I was advised by our deliveryman, **I immediately called Mr. Trinidad that we were able to deliver only four hundred pieces (400 pcs.) of bulk bags**.

Q: And what was his reaction to your report, Mr. Witness?
A: At first, I apologized because I was not able to make the five hundred pieces required. So, in reply…

x x x x

ATTY. CORALDE

Q: So what was his reaction to your report that you delivered only four hundred pieces (400 pcs) of bulk bags instead of five hundred pieces (500 pcs), Mr. Witness?
A: ***He acknowledged our delivery and thanked me for delivering the item.***

x x x x

Q: So, after the conversation with Mr. Trinidad, what happened next, in so far as the second delivery, Mr. Witness?
A: And in that call, ***he followed-up to me the balance of delivery***.

Q: So what did you tell him?
A: I told him that the two thousand pieces (2,000 pcs.) we agreed was already in process in our production and the one thousand pieces (1,000 pcs.) is scheduled to deliver a few days later.

x x x x

Q: No, my question is, who advised you that there was already delivery made on August 4, 1999?
A: Our deliveryman advised me that they have already delivered the one thousand pieces (1,000 pcs.) bulk bags to the Cement Manufacturing Plant.

Q: What did you do after receiving that information from your deliveryman?
A: ***After that advise[d], I called again Mr. Trinidad to inform him that we already delivered one thousand pieces (1,000 pcs.) of bulk bags and he acknowledged our delivery and thank me that I was able to deliver one thousand pieces (1,000 pcs.), sir.***

x x x x

Q: Now, who advised you that there was a delivery of six hundred pieces (600 pcs.)?
A: Our deliveryman, sir.

Q: So, having been informed that, what did you do next, if any, Mr. Witness?
A: ***And after advised I called again MR. Gerry Trinidad to inform of the delivered six hundred pieces (600 pcs.) bags.***

Q: And then what was his reaction, Mr. Witness?
A: ***He confirmed our delivery, sir.***

Q: So after that, did you have any occasion to talk again personally to Mr. Gerry Trinidad, Mr. Witness?
A: Yes, sir.

Q: When was this?
A: It was when the time I have to submit the invoices, sir.

Q: What for these invoices are (sic), Mr. Witness?
A: These invoices have to be submitted to the customer for recognizing the delivery, as well as for collection purposes and payment of the orders, sir.[42]

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[42] TSN (Direct Examination of Richard Agustin Vergamos for the Plaintiff), March 10, 2003, pp. 27-42. (Emphasis supplied)

Based on the foregoing, it is clear that petitioner has actually delivered the bulk bags to respondent company, *albeit* the same was not delivered to the person named in the Purchase Order. In addition, by allowing petitioner's employee to pass through the guard-on-duty, who allowed the entry of delivery into the premises of Hi-Cement, which is the designated delivery site, respondents had effectively abandoned whatever infirmities may have attended the delivery of the bulk bags. As a matter of fact, if respondents were wary about the manner of delivery, such issue should have been brought up immediately after the first delivery was made. Instead, Mr. Trinidad acknowledged receipt of the first batch of the bulk bags and even followed up the remaining balance of the orders for delivery.

Thus, the RTC correctly held that:

> The evidence adduced by the parties clearly proved that Gerardo Trinidad himself, initially ordered 1,000 pieces of NFF bulk bags at Php380.00 per piece from the plaintiff on or about July 29, 1999. After testing and checking sample bags, Mr. Trinidad had approved it and even instructed the Sales Manager of NFF in the person of Richard Bergamo to place and print the bags with G & L logo as well as control number on all our sides of bags and thereafter agreed to the quantity of Two Thousand [2,000] pieces as what had been agreed upon during the meeting with the Union Cement Marketing personnel at the Cement manufacturing [TSN March 10, 2003, pp. 25]. ***Initial delivery of 400 pieces of bulk bags were made on July 31, 1999 and then followed by another delivery of additional bulk bags on August 5, 1999 while the remaining 600 pieces of bags were delivered on August 6, 1999 to complete the 2,000 pieces ordered by the defendant. All these deliveries were made to defendant's designated address at "G & L Associated Brokerage, Inc., C/O HI CEMENT CORPORATION, NORZAGARAY BULACAN." These deliveries were made in compliance with Hi-Cement's standard/regular operating procedure. It passed thru guard on duty, who allowed the entry of delivery into the premises of Hi-Cement, which is the designated delivery site and then a representative of the defendant thereat received the delivered items in behalf of the defendant***.[43]

Respondents' mere allegations of non-delivery and misdelivery deserve scant consideration. On the matter of non-delivery, We find it bizarre that respondents failed in demanding the delivery of the bulk bags despite its urgent need to procure the same, as admitted by respondents' witnesses. Customarily, failure to deliver the goods could have prompted respondents to follow up on the orders and ensure that the same is delivered at the earliest opportunity. In fact, if they had not actually received any quantity of bulk bags, despite their alleged repeated demands, they could have demanded in writing or resorted to legal action for the enforcement thereof. But there was dearth of evidence showing the same. On the matter of misdelivery, when the instruction to deliver the partial five hundred (500)

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43 *Supra* note 24, at 78.

pieces of bulk bags was made by Mr. Trinidad, the latter did not even mention the name Ramil Ambrosio. The significance of such condition, therefore, falls flat to the actual delivery made by petitioner at the agreed delivery site. As testified by Mr. Vergamos, to wit:

> DIRECT TESTIMONY
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> ATTY. CORALDE
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> Q: Now, Mr. Witness, where was the delivery of the bulk bags required for you by Mr. Trinidad?
> A: I was instructed by Mr. Gerry Trinidad to deliver the partial five hundred pieces (500 pcs.) bags to Union Cement Manufacturing Plant in Norzagaray, Bulacan, under the name G & L Associated Brokerage, sir.
>
> Q: Did he advise you of specific person to whom this delivery should be made, Mr. Witness?
> A: ***He did not advise me of any person, sir***.[44]

Interestingly, respondents presented the payroll of its employees wherein the name Ramil Ambrosio appeared only in the payroll for the periods of July 16 to 31, 1999, August 16 to 31, 1999 and September 16 to 30, 1999. However, for the period from July 30 to August 6, 1999, during which the deliveries were made, the name Ramil Ambrosio does not appear in the payroll of respondent company.[45] Thus, it is clear that during the time the deliveries were made on the agreed dates and for which petitioner in fact delivered the bags to respondent company, there was no Ramil Ambrosio to actually receive the same as he obviously did not report for work.[46]

More importantly, in his testimony, respondent Trinidad categorically admitted receiving the delivery receipts, which evince the actual delivery of the bulk bags, to wit:

> DIRECT EXAMINATION
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> ATTY. RODRIGUEZ
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> Q: The plaintiff also presented other Delivery Receipts, Mr. Witness, one (1) dated on August 4, 1999, No. 0229, previously marked as Exhibit "C" for the plaintiff and another Receipt No. 0231 dated August 6, 1999, kindly go over these Delivery Receipts, Mr. Witness, and inform us if you have seen this Delivery Receipts before?

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44 TSN (Direct Examination of Richard Agustin Vergamos for the Plaintiff), dated March 10, 2003, pp. 26-27. (Emphasis supplied)
45 Records, p. 63.
46 *Id*.

COURT

Q: The one with No. 0229 dated August 4, 1999, you saw it?
A: Yes, your honor, I have seen this.

Q: Where did you see it?
A: I have seen this before. This was attached to the billing they have sent us, your honor.
Q: How about the other receipt, Mr. Witness, No. 0231?

INTERPRETER

Witness perusing over the document hand by the counsel.

A: Yes sir, I have already seen this sir.

Q: And on what occasion did you see this Delivery Receipt, Mr. Witness?
A: Thru the billing that they have sent to us, sir.

Q: In other words, you have copies of these delivery receipts?

x x x x

ATTY. RODRIGUEZ

x x x x

Q: Mr. Witness, you mentioned that you have seen these Delivery Receipts before thru the invoices or billings sent to you by the plaintiff in this case, if these receipts are shown to you, will you be able to identify them?
A: Yes, sir.[47]

Similarly, the corresponding sales invoices were duly served upon, and received by respondent company's representatives, as shown by the signatures of one Marian Gabay, respondent Trinidad's helper at his residence, who received the sales invoices in behalf of respondent company.[48] It is worthy to stress that from the time the copies of the sales invoices were served on respondents and thereafter, respondents were never heard to complain relative thereto.[49]

On this score, We agree with petitioner that it is rather confounding that respondents, despite receipt, on various occasions, of the billing statements and delivery receipts, failed to even call the attention of petitioner regarding the matter.[50] In the same vein, despite the subsequent receipt of demand letters, receipt of which were duly acknowledged and admitted by

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47 TSN (Direct Examination of Gerardo Trinidad for the Defense), October 13, 2003, pp. 26-28.
48 Records, p. 61.
49 *Id*.
50 *Rollo*, p. 24.

respondents, the latter opted not to question or contest the same, which is quite unusual and extremely inconsistent with its claim of non-delivery of the bulk bags in question.[51]

At any rate, We find merit in petitioner's argument that despite its failure to strictly comply with the instruction to deliver the bulk bags to the specified person, acceptance of delivery may be inferred from the conduct of the respondents.[52] Accordingly, respondents may be held liable to pay for the price of the bulk bags pursuant to Article 1585 of the Civil Code, which provides that:

> ARTICLE 1585. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

As early as *Sy v. Mina*,[53] it has been pronounced that the vendee's acceptance of the equipment and supplies and accessories, and the use it made of them is an implied conformity to the terms of the invoices and he is bound thereby.[54] The Court in that case also held that the buyer's failure to interpose any objection to the invoices issued to it, to evidence delivery of the materials ordered as per their agreement, should be deemed as an implied acceptance by the buyer of the said conditions.[55]

Indeed, the use by respondent of the bulk bags is an act of dominion, which is inconsistent with the ownership of petitioner. As correctly observed by the RTC, the use of the bulk bags by respondents can be readily verified from the records of the case, to wit:

> The plaintiff's witness affirmatively testified that the personnel of G & L Associated Brokerage used the bulk bags by loading cement inside the bulk bags and it was lifted by a forklift and lifted the same towards the truck belonging to G & L Associated Brokerage [TSN May 12, 2003 pp. 13]. Case records even disclosed that the Exhibits L and its submarkings which was identified by the plaintiff's witness Richard Agustin Bergamo who took the pictures himself evidently showing that the defendant being the haulers of the Union Cement, withdrew tonner bags from Union Cement Bulacan Plan and used these tonner bags supplied by the plaintiff in hauling Union Cement intended for CP Casecnan. The self-serving claim of Gerardo Trinidad that he was constrained to make an order to

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51 *Id.* at 22.

52 *Id.* at 25-26.

53 G.R. No. L-32217, August 15, 1988, 164 SCRA 312, citing *Pan Pacific Company (Phils.) v. Advertising Corporation*, G.R. No. L-22050, June 13, 1968, 23 SCRA 977, 991.

54 *Sy v. Mina*, *supra*, at 315.

55 *Id.*, citing *Naga Development v. Court of Appeals*, G.R. No. L-28173, September 30, 1971. 41 SCRA 106.

> some other suppliers due to alleged non-delivery of the tonner bags likewise, deserved scant consideration. Defendant Gerardo Trinidad admitted having used more than four thousand bags for the Casecnan Project but when asked to produce copies of sales invoices and proof of purchase with respect to these alleged suppliers in connection with Casecnan Project, said defendant miserably failed to produce even a single proof and instead identified some delivery receipts covering the period year 2000 contrary to his very claim that the bulk bags were urgently needed sometime in July 1999 for the Casecnan Project.[56]

Also, the fact that respondent company was the sole user of the tonner bags at the Bulacan Plant of Union Cement during the period pertinent to this case was duly proven by the Certification issued by Union Cement Corporation, dated July 26, 2002, that respondent was the only sole user of tonner bags at Union Cement Bulacan Plant intended for the CP Casecnan Project(*Project*) from August 1999 to June 2001. To bolster this, the pictures taken at the premises of respondent company situated near the Project clearly depict respondent company's act of using tonner bags supplied by petitioner, in hauling Union Cement intended for the Project.[57]

At this juncture, the overriding consideration is the evidence adduced that the bulk bags delivered by petitioner at the Union Cement Plant were actually used by respondents, and this Court cannot allow respondents to enrich themselves at the expense of another.

Having received the aforesaid billings, the corresponding delivery receipts and demand letters rendered by petitioner, respondents should have forthwith called the attention of petitioner, if indeed, its insinuation that the bulk bags themselves have not been delivered or misdelivered were true.[58] In the ordinary course of business, in case of unwarranted claims of payment of a sum of money, one would immediately protest the same.[59] But no such action was taken by respondents despite notice thereof.[60] Only when respondents were required by the RTC to submit an answer to the complaint were they constrained to contest the claims of petitioner. If respondent were to be defeated only by its failure to effect delivery to the designated representative of respondent, the latter would inevitably be unjustly enriched at the expense of the former.[61]

If at all, respondents' failure to pay the purchase price may have been due to lack of funds rather than non-delivery or misdelivery of the bulk bags. On cross-examination, Aurelio L. Gomez, petitioner's general manager,

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56 *Supra* note 24, at 78-79.
57 Records, p. 62.
58 *Rollo*, p. 26.
59 *Id.*
60 *Id.*
61 Records, p. 115.

testified that respondents admitted after the third delivery that they were postponing the payment because they have no money to pay. Thus:

> ` CROSS-EXAMINATION
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> ATTY. RODRIGUEZ:
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> Q: How about the other officers of the corporation, did you inquire from them?
> A: Not me personally sir, but my credit collector.
>
> Q: Did you inquire from them what was the result of the inquiry?
> A: ***This was after the third delivery was made when they said that they have no money to pay that is why they were postponing the payment sir***.[62]

Sifting through the testimony of the witnesses and the evidence submitted, the evidence of petitioner preponderantly established that there was valid delivery of bulk bags, which gives rise to respondent company's corresponding obligation to pay therefor. By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side.[63] Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties.[64] As such, it has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence.[65] It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[66] Contrary to respondents' view, We find that petitioner has successfully established its case. Accordingly, We give greater weight, credit and value to its evidence.

Finally, with regard to the liability of respondent Trinidad, we adopt with approval the findings of the RTC that he was merely being sued in his capacity as General Manager of respondent company.[67] Since there was no showing of any of circumstances warranting the piercing the veil of corporate fiction, he cannot be held jointly and severally liable for the outstanding obligation of respondent company.[68] As held in *Kukan International Corporation v. Reyes*,[69] citing an earlier case, those who seek to pierce the veil must clearly establish that the separate and distinct

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62 TSN (Cross Examination of Aurelio L. Gomez), March 3, 2003, pp. 26-28. (Emphasis supplied)
63 *Republic v. Reyes-Bakunawa*, G.R. No. 180418, August 28, 2013, 704 SCRA 163, 177-178.
64 *Id.* at 178.
65 *Id.*
66 *Id.*
67 *Supra* note 24, at 80.
68 *Id.*
69 G.R. No. 182729, September 29, 2010, 631 SCRA 596.

personalities of the corporations are set up to justify a wrong, protect fraud, or perpetrate a deception, to wit:

> The same principle was the subject and discussed in *Rivera v. United Laboratories, Inc.*:
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> > While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, ***in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues***, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.
> >
> > ***To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly***. It cannot be presumed. (Emphasis supplied.)[70]

All told, We find reason to overturn the findings of the CA and affirm the decision of the trial court. Accordingly, respondent is hereby ordered to pay petitioner the sum of Seven Hundred Sixty Thousand Pesos (₱760,000.00), representing overdue accounts plus interest from the first demand on October 27, 1999 until fully paid in accordance with the doctrine laid down in *Eastern Shipping Lines v. Court of Appeals*,[71] then later on in *Nacar v. Gallery Frames*,[72]as well as attorney's fees.[73]

At this juncture, it is well to note that under *Nacar*, in the absence of stipulation by the parties, the judgment obligor shall be liable to pay six percent (6%) interest per annum to be computed from default, *i.e.*, judicial or extrajudicial demand pursuant to the provisions of Article 1169 of the Civil Code.[74] Furthermore, when the judgment of the court awarding the sum of money becomes final and executory, the rate of legal interest shall be six percent (6%) per annum from such finality until its satisfaction,[75] taking the form of a judicial debt.

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70 *Kukan International Corporation v. Reyes, supra*, at 617-618.
71 G.R. No. 97412, July 12, 1994, 234 SCRA 78.
72 G.R. No. 189871, August 13, 2013, 703 SCRA 439.
73 *Eastern Shipping Lines v. Court of Appeals, supra* note 71, at 80-81.
74 *Nacar v. Gallery Frames, supra*, note 72, at 457-458.
75 *Id.* at 458.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 22, 2006 and the Order dated May 22, 2007, respectively, of the Court of Appeals are hereby **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court, dated January 25, 2005, is hereby **AFFIRMED** with **MODIFICATION** to the effect that legal interest shall be awarded to petitioner at the following rates:

a) For the period of October 27, 1999[76] to June 30, 2013,[77] the interest rate of twelve percent (12%) per annum shall be imposed, compounded annually;
b) For the period of July 1, 2013[78] up to the day prior to the date of promulgation of this Decision, the interest rate of six percent (6%) per annum shall be imposed, compounded annually; and
c) From the date of promulgation of this Decision up to full payment, a straight six percent (6%) interest per annum shall be imposed on the sum of money plus the interest computed under paragraph (a) and (b) above.[79]

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[76] This is the date of petitioner's first demand letter to respondent company.

[77] According to *Nacar v. Gallery Frames*, "in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum - as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 - but will now be six percent (6%) per annum effective July 1, 2013. ***It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.***" (Emphasis supplied)

[78] *Id.*

[79] Such interest is imposed by reason of the Court's decision and takes the nature of a judicial debt.

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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.

MARIA LOURDES P. A. SERENO
Chief Justice