

JUAN F. NAKPIL & SONS AND JUAN F. NAKPIL, PETITIONERS, VS. THE COURT OF APPEALS, UNITED CONSTRUCTION COMPANY, INC., JUAN J. CARLOS, AND THE PHILIPPINE BAR ASSOCIATION, RESPONDENTS.

G.R. No. L-47851. April 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a motion for reconsideration of the October 3, 1986 decision of this Court, filed by the United Construction Co., Inc., the decretal portion of which reads:

“WHEREFORE, the decision appealed from is hereby MODIFIED and considering the special and environmental circumstances of this case, we deem it reasonable to render a decision imposing, as We do hereby impose, upon the defendant and the third-party defendants (with the exception of Roman Ozaeta) a solidary (Art. 1723, Civil Code, Supra, p. 10) indemnity in favor of the Philippine Bar Association of FIVE MILLION (P5,000,000.00) Pesos to cover all damages with the exception of attorney's fees) occasioned by the loss of the building (including interest charges and lost rentals) and an additional ONE HUNDRED THOUSAND (P100,000.00) Pesos as and for attorney's fees, the total sum being payable upon the finality of this decision. Upon failure to pay on such finality, twelve (12%) per cent interest per annum shall be imposed upon aforementioned amounts from finality until paid. Solidary costs against the defendant and third-party defendants (except Roman Ozaeta).

“SO ORDERED.” (G.R. No. 47851, Rollo, p. 635)

Plaintiff-appellant Philippine Bar Association (PBA for short) decided to construct an office building on its 840 square meters lot located at the corner of Aduana and Arzobispo Streets, Intramuros, Manila. For the plans, specifications and design, PBA contracted the services of third-party defendants-appellants Juan F. Nakpil & Sons and Juan F. Nakpil (NAKPILS for short). For the construction of the building, PBA contracted the services of United Construction Company, Inc. (UNITED, for short) on an administration basis. The building was completed in June, 1966.

On August 2, 1968, an unusually strong earthquake hit Manila and its environs and the building in question sustained major damage. The front columns of the building buckled, causing the building to tilt forward dangerously. As a temporary remedial measure, the building was shored up by UCCI at the expense of P13,661.28.

On November 29, 1968, PBA commenced this action for recovery of damages against UCCI and its President and General Manager Juan J. Carlos, claiming that the collapse of the building was caused by defects in the construction. UNITED, in turn, filed a third-party complaint against the NAKPILS, alleging in essence that the collapse of the building was due to the defects in the architects' plans, specifications and design. Roman Ozaeta, the then President of PBA, was included as a third-party defendant for damages for having included Juan J.

Carlos, President of UNITED as party defendant.

At the pre-trial, the parties agreed to refer the technical issues in the case to a commissioner. Andres O. Hizon, a lawyer and structural engineer, was appointed by the Court as commissioner.

Meanwhile, PBA moved twice for the demolition of the building on the ground that it might topple down in case of a strong earthquake. The motions were opposed by the defendants and the matter was referred to the Commissioner. Finally, on April 30, 1979, the building was authorized to be demolished at the expense of PBA, but not before another earthquake of high intensity on April 7, 1970 followed by other strong earthquakes on April 9 and 12, 1970, caused further damage to the property. The actual demolition was undertaken by the buyer of the damaged building.

After the protracted hearings, the Commissioner eventually submitted his report on September 25, 1970 with the findings that while the damage sustained by the PBA building was caused directly by the August 2, 1968 earthquake, they were also caused by the defects in the plans and specifications prepared by the NAKPILS; UNITED's deviations from said plans and specifications and its failure to observe the requisite workmanship in the construction of the building; and failure of PBA to exercise the requisite degree of supervision in the construction of the building.

All the parties registered their objections, to aforesaid findings which in turn were answered by the Commissioner.

The court agreed with the findings of the Commissioner except as to the holding that the owner is charged with full time supervision of the construction. The court saw no legal or contractual basis for such conclusion. Thus, on September 21, 1971, the lower court rendered a decision, the decretal portion which, reads:

"WHEREFORE, judgment is hereby rendered:

"(a) Ordering defendant United Construction Co., Inc. and third-party defendants (except Roman Ozaeta), the sum of P989,335.68 with interest at the legal rate from November 29, 1968, the date of the filing of the complaint until full payment;

"(b) Dismissing the complaint with respect to defendant Juan J. Carlos;

"(c) Dismissing the third-party complaint;

"(d) Dismissing the defendants' and third-party defendants' counterclaim for lack of merit;

"(e) Ordering defendant United Construction Co., Inc. and third-party defendants (except Roman Ozaeta) to pay the costs in equal shares.

"SO ORDERED."

On appeal, the Court of Appeals modified the above-said decision of the lower court. The dispositive portion of the decision of the Court of Appeals, reads:

"WHEREFORE, the judgment appealed from is modified to include an award of P200,000.00 in favor of plaintiff-appellant Philippine Bar Association, with interest at the legal rate from November 29, 1968 until full payment to be paid jointly and severally by defendant United Construction Co., Inc. and third-party defendants (except Roman Ozaeta). In all other respects, the judgment dated September 21, 1971 as modified in the December 8, 1971 Order of the lower court is hereby affirmed with COSTS to be paid by the defendant and third party defendant (except Roman Ozaeta) in equal shares.

"SO ORDERED."

All the parties herein appealed the aforesaid decision of the Court of Appeals.

This Court promulgated on October 3, 1986 a decision in favor of the Philippine Bar Association which modified the appealed decision of the Court of Appeals, as above-quoted (Rollo of G.R. No. L-47851, pp. 634-662).

On December 24, 1986, UNITED filed a Motion for Reconsideration (Rollo of L-47863, pp. 683-707). On the other hand, on January 15, 1987, the NAKPILS filed a Motion to Refer Case to Supreme Court En Banc and for Reconsideration of aforesaid decision (Rollo of L-47851, pp. 717-751).

On February 11, 1987, UNITED filed a Manifestation (Rollo of L-47863, pp. 796-797) that it is joining the NAKPILS in regard to their prayer to refer the present case to the Court En Banc.

The Second Division of this Court, in a Resolution dated April 1, 1987 (Rollo of L-47851, p. 788) denied the NAKPILS' Motion for Reconsideration.

On April 15, 1987, PBA filed its Comment to UNITED's Motion for Reconsideration (Rollo of L-47896, pp. 828-835) while on April 24, 1987, the NAKPILS filed a Motion For Leave To File Second Motion For Reconsideration (En Banc) (Rollo of L-47851, pp. 791-797). On May 7, 1987, PBA filed its Comment to the NAKPILS' Motion For Leave To File Second Motion For Reconsideration (En Banc) (Rollo of L-47851, pp. 790-795). On May 14, 1987, UNITED filed a Reply to PBA's comment (Rollo of L-47863, pp. 844-853), while the NAKPILS filed a Reply to the same comment on May 22, 1987 (Rollo of L-47851, pp. 798-801).

The issues raised in subject motion for reconsideration of UCCI of the decision of this Court of October 3, 1986, are as follows:

I

THE FINDINGS OF THE COMMISSIONER, AS ADOPTED BY THE TRIAL COURT, AND AFFIRMED BOTH BY THE COURT OF APPEALS AND THIS HONORABLE COURT NEGATE THE PREMISE THAT, THE SUBJECT BUILDING COLLAPSED; HENCE, ARTICLE 1723 DOES NOT APPLY.

II

THE LEGAL DUTY OF PBA TO PROVIDE FULLTIME AND ACTIVE SUPERVISION IN THE CONSTRUCTION OF THE SUBJECT BUILDING IS IMPOSED BY PUBLIC INTEREST, USAGE AND CUSTOM; FAILING IN THAT DUTY, PBA MUST BEAR AND/OR SHARE IN ANY LIABILITY FOR DAMAGES IN THE PREMISES.

III

LIABILITY, IF ANY, FOR THE DAMAGE OF THE SUBJECT BUILDING MUST BE BORNE BY ALL THE PARTIES IN ACCORDANCE WITH THE COMMISSIONER'S FINDINGS AND WITH DUE REGARD TO THE CONDITION OF THE BUILDING PRIOR TO PBA'S DEMOLITION THEREOF.

IV

THE FINDING OF BAD FAITH IS NOT WARRANTED IN FACT AND IS WITHOUT BASIS IN LAW.

V

THE AWARD OF DAMAGES COINED IN GENERAL TERMS IS DEFECTIVE; MOREOVER IT IS UNWARRANTED BY THE FACTS AND THE LAW.

VI

THE AWARD OF ATTORNEY'S FEES IN THE AMOUNT OF P100,000.00 IS UNWARRANTED.

VII

THE INTEREST OF TWELVE PER CENT (12%) PER ANNUM IMPOSED ON THE TOTAL AMOUNT

OF THE MONETARY AWARD IS IN CONTRAVENTION OF LAW.

It will be noted that not unlike the motion for reconsideration filed by petitioner Juan F. Nakpil and Sons, which was denied in the resolution of April 1, 1987, there is nothing in the motion for reconsideration filed by the United Construction Co., Inc. that was not fully discussed in the assailed decision of October 3, 1986.

I

United Construction Co., Inc. (UNITED for short), gave considerable emphasis on the fact that the PBA building did not collapse as found by the trial court and affirmed by the Court of Appeals. Otherwise stated, UNITED wishes to stress that subject building did not disintegrate completely as the term “collapse” is supposed to connote.

Be that as it may, it will be observed that in the assailed decision, this Court is in complete accord with the findings of the trial court and affirmed by the Court of Appeals, that after the April 2, 1968 earthquake the building in question was not totally lost; the collapse, was only partial and the building could still be restored at the expense of P900,000.00. But after the subsequent earthquake on April 7, 9, and 12, 1970 there was no question that further damage was caused to the property resulting in an eventual and unavoidable collapse or demolition (complete collapse). In fact, on April 30, 1970, the building was authorized by the trial court to be demolished at the expense of the plaintiff. Note that a needed demolition is in fact a form of “collapse”.

The bone of contention is therefore, not on the fact of collapse but on who should shoulder the damages resulting from the partial and eventual collapse. As ruled by this Court in said decision, there should be no question that the NAKPILS and UNITED are liable for the damage.

Citing the case of *Tucker v. Milan* (49 O.G. 4379, 4380) as the case in point, the pertinent portion of the decision reads:

“One who negligently creates a dangerous condition cannot escape liability for the natural and probable consequences thereof, although the act of a third person, or an act of God for which he is not responsible, intervenes to precipitate the loss.”

II

UNITED argues that it is the legal duty of PBA to provide full-time and active supervision in the construction of subject building. Failing to cite any provision of law to support its arguments, UNITED insists on the inherent legal duty of the owner, reinforced by practice, usage and custom, to exercise such supervision. Apart from the fact that UNITED seems to have completely contradicted its own view that this construction involves highly technical matters and therefore beyond the ambit of ordinary understanding and experience, the contrary appears to be more in accord with ordinary practice, which is to avail oneself of the services of architects and engineers whose training and expertise make them more qualified to provide effective supervision of the construction. In fact, it was on the suggestion of Juan F. Nakpil, one of the petitioners herein, that the construction was undertaken on an administration basis (Decision, p. 3). Thus, the trial court did not err in holding that charging the owner with full time supervision of the construction has no legal or contractual basis (Decision, p. 7).

III

UNITED points out that bad faith is a question of fact which was not established. The Commissioner, the trial court and the Court of Appeals, all of which are triers of fact, allegedly concede that there was negligence but not bad faith.

A careful study of the decision will show that there is no contradiction between the above finding of negligence by the trial court which was affirmed by the Court of Appeals and the ruling of this Court. On the contrary, on the

basis of such finding, it was held that such wanton negligence of both the defendant and the third-party defendants in effecting the plans, designs, specifications, and construction of the PBA building is equivalent to bad faith in the performance of their respective tasks (Decision, p. 28).

IV & V

UNITED takes exception to the five (5) fold increase in the award of damages from P1,189,335.00 to P5 million pesos. It is claimed that the report of the Commissioner speaks of only P1,100,000.00 so that there is no basis for such award.

It will be recalled that the estimate of the Commissioner was limited to P1,100,000.00 for costs of repairs after the partial collapse of the building on April 2, 1968 but not after its total collapse resulting from the subsequent earthquakes. It is therefore evident that the actual cost of total reconstruction of the building in question was not considered by the commissioner in the computation. Considering further the present cost of reconstruction, the new amount (arrived at almost 20 years later) is far from being excessive. It is indeed a very conservative estimate.

Any allegation that PBA could have mitigated its loss by executing an offer to purchase the building prior to its complete demolition loses sight of the fact, that the offer was very low, considering the combined value of the building and the lot.

In addition, there is merit in the PBA claim that the unrealized rental income awarded to it should not be limited to a period of one-half year but should be computed on a continuing basis at the rate of P178,671.76 a year until judgment for the principal amount shall have been satisfied. Thus, this Court awarded an "indemnity in favor of the Philippine Bar Association of FIVE MILLION (P5,000,000.00) Pesos to cover all damages (with the exception of attorney's fees) occasioned by the loss of the building (including interest charges and lost rentals) x x x."

As for the award of attorney's fees, there is no question that the size of attorney's fees as well as the amount of damages, is subject to the sound discretion of the court (*Magbanua v. IAC*, 137 SCRA 332 [1985]). Earlier, this Court has ruled that an award of 10% of the amount of total recovery, for attorney's fees, is reasonable. (*Central Bank of the Phil. v. Court of Appeals*, 63 SCRA 435 [1975]).

VI

There should be no dispute that the imposition of 12% interest pursuant to Central Bank Circular No. 416 (passed pursuant to the authority granted to the Central Bank by P.D. No. 116 which amended Act. No. 2655, otherwise known as the Usury Law) is applicable only in the following: (1) loans; (2) forbearance of any money, goods or credit; and (3) rate allowed in judgments (judgments spoken of refer to judgments involving loans or forbearance of any money, goods or credits. (*Philippine Rabbit Bus Lines Inc. v. Cruz*, 143 SCRA 160-161 [1986]; *Reformina v. Tomol, Jr.*, 139 SCRA 260 [1985]). It is true that in the instant case, there is neither a loan or a forbearance, but then no interest is actually being imposed provided the sums referred to in the judgment are paid upon the finality of the judgment. It is delay in the payment of such final judgment, that will cause the imposition of the interest.

It will be noted that in the cases already adverted to, the rate of interest is imposed on the total sum, from the filing of the complaint until paid; in other words, as part of the judgment for damages. Clearly they are not applicable to the instant case.

PREMISES CONSIDERED, UNITED's motion for reconsideration is hereby DENIED; the NAKPILS' motion for leave to file second motion for reconsideration is also DENIED, the latters' first motion on the same grounds having been already denied with finality in the resolution of April 3, 1987. Needless to say, the Motion to Refer

this case to the Court En Banc is DENIED, in view of all the things stated in this Resolution.

SO ORDERED.

Fernan, (Chairman), Padilla, Bidin, and Cortes, JJ., concur.

Gutierrez, J., no part - ponente in the Court of Appeals.

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