

THE REPARATIONS COMMISSION, PLAINTIFF-APPELLEE, VS. THE VISAYAN PACKING CORPORATION AND THE FIELDMEN'S INSURANCE CO., INC., DEFENDANTS-APPELLANTS.*G.R. No. L-30712. February 06, 1991*

Ponente: BIDIN, J.

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This is an appeal originally filed with the Court of Appeals but certified to this Court for disposition since it involves purely questions of law, from the decision of the then Court of First Instance of Manila[*], Branch IX, dated June 23, 1964, in Civil Case No. 51712, ordering the defendants-appellants herein to pay, jointly and severally, to the plaintiff-appellee the sum of P124,242.47, with interest at the legal rate from the date of the filing of the complaint until fully paid and denying plaintiff's prayer for attorney's fees. With respect to the cross-claim of Fieldmen's Insurance Co., Inc., the said court ordered Visayan Packing Corporation to pay Fieldmen's Insurance Co., Inc. such amount which the latter may pay to the plaintiff-appellee with interest at 12% per annum until fully paid, and attorney's fees equivalent to 10% of the amount paid by Fieldmen's Insurance Co., Inc. to the plaintiff-appellee. With costs against the defendants-appellants.

As gathered from the records, the antecedent facts of this case are as follows:

Plaintiff Reparations Commission (Repacom, for short) is a government entity created by virtue of Republic Act No. 1789, with offices at the 5th Floor, Development Bank of the Philippines Building No. 2, Port Area, Manila while the defendants, Visayan Packing Corporation (Vispac, for short) and the Fieldmen's Insurance Co., Inc. (FICI, for short) are corporations duly organized and registered under the laws of the Philippines, with offices in Bacolod City, Philippines and Singson Bldg., Plaza Moraga, Manila, respectively.

On May 19, 1960, plaintiff Repacom adopted Resolution No. 262 awarding to the defendant Vispac by way of a contract of conditional purchase and sale subsequently executed on November 15, 1960 (Exhibit "A") the following reparations goods with a total F.O.B. value of P1,242,424.67 (Exhibit "A-2"): one (1) Cannery Plant, divested from M/S "Estancia"; two (2) Fishing Boats M/S "SONIA" and M/S "ANA LARES", 75 G.T. and one (1) Fishing Boat M/S "SALVADOR 'B'", 100 G.T.; including all its corresponding accessories and appurtenances. These reparations goods were delivered to the defendant Vispac, on May 30, 1960 (Exhibit "A-2").

Attached with said contract and forming part thereof is the questioned Schedule of Installment Payments, herein reproduced, as follows:

SCHEDULE OF INSTALLING PAYMENTS

NAME OF END-USER VISAYAN PACKING CORPORATION

ADDRESS Bacolod City

NATURE CAPITAL GOODS/SERVICES One (1) Cannery Plant and appurtenances; Two (2) Fishing Vessels, 75 G.T. M/S "SONIA" and M/S "ANA LARES" and one (1) fishing vessel "M/S SALVADOR B", 100 G.T., together with all equipment and appurtenances.

DATE OF COMPLETE DELIVERY May 30, 1960

TOTAL F.O.B. COST P1,242,424.67

AMOUNT OF FIRST INSTALLMENT (10% of FOB COST P124,242.47)

DUE DATE OF 1ST INSTALLMENT May 30, 1962

TERM: Ten (10) EQUAL YEARLY INSTALLMENTS

RATE OF INTEREST: THREE PERCENT (3%) PER ANNUM

NO. OF INSTALLMENTS

DATE DUE

AMOUNT

1

May 30, 1963

P131,085.07

2

" " 1964

P131,085.07

3

" " 1965

P131,085.07

4

" " 1966

P131,085.07

5

" " 1967

P131,085.07

6

" " 1968

P131,085.07

7

" " 1969

P131,085.07

8

" " 1970

P131,085.07

9

" " 1971

P131,085.07

10

" " 1972

P131,085.07

MANILA, PHILIPPINES, -----

1960

VISAYAN PACKING CORPORATION REPARATIONS COMMISSION

END-USER

BY: BY:

HERNAN DE LA RAMA

RODOLFO MASLOG

President & General Manager

(Ibid., Exhibit "A-1", p. 11).

Chairman

Defendant-appellant FICI is impleaded as bondsman for the principal defendant Vispac, under Surety Bond No. 4122 (Exhibit "B") issued by the former on May 30, 1960, to guarantee "faithful observance and compliance by the principal of all its obligations" recited in the Contract of Conditional Purchase and Sale of Reparations Goods

(Exhibit "A") and in the annexed Schedule of Payments (Exhibit "A-1").

On September 27, 1962, Repacom filed a complaint for specific performance with the court a quo against Vispac seeking collection of the amount of P124,242.47 allegedly due on May 30, 1962 as payment of the 1st installment of the reparations goods and impleaded the FICI as defendant.

In its answer dated November 8, 1962, Vispac claimed that the Schedule of Payments (Exhibit "A") is vague and ambiguous with respect to the date when the first installment falls due and that by reason thereof, the ambiguity should be construed against Repacom, the party which drafted the contract.

Thus, while Repacom maintains that the 1st installment is due on May 30, 1962, Vispac, on the other hand, argues that it is due on May 30, 1963.

On January 13, 1964, Repacom and Vispac submitted a "Stipulation of Facts" and both prayed that this case be submitted for decision after their respective memoranda have been filed. FICI joined with this move and request of the principal parties.

Pertinent provisions of said Stipulation of Facts are quoted as follows:

paragraph 1 -

"That in order to abbreviate proceeding they have agreed that the transcript of notes taken in Civil Case No. 51713, The Reparations Commission vs. Fieldmen's Insurance Co., Inc., Branch III, CFI, Manila, be submitted as evidence in the above entitled case. This agreement stemmed from the fact that both Civil Case 51712, the case now being litigated and Civil Case No. 51713 mentioned earlier in this paragraph are both collection cases instituted by the Reparations Commission against the defendant, The Visayan Packing Corporation and the Fieldmen's Insurance Co., Inc., based on similar Contracts of Conditional Purchase and Sale, drafted in the usual standard form and containing practically the same standard provisions and stipulations."

paragraph 2 -

"That Civil Case No. 51713 has already been decided on March 27, 1963 granting relief for the plaintiff, The Reparations Commission as prayed for, a copy of said decision is hereto attached and marked Annex 'A' for purposes of identification and is hereby made an integral part of this Stipulation of Facts."

Paragraph 3 -

"That Civil Case No. 51712 refers to reparations goods, denominated, one (1) cannery plant, two (2) fishing boats, M/S 'Sonia' and M/S 'Ana Lares', 100 G.T. including all its corresponding accessories and appurtenances, which is the subject matter of Contract of Conditional Purchase and Sale dated November 15, 1960 entered into by and between the plaintiff Reparations Commission as Conditional Vendor and the defendant, The Visayan Packing Corporation as Conditional Vendee, the legality and due execution of which is not disputed by the herein parties, a copy of which contract together with its annex 'B' were introduced in evidence by plaintiffs as Exhibits 'A' and 'A-1' respectively and were admitted by the Court without objection on the part of the defendants. That, likewise, there were introduced in evidence and admitted by the Court without objection on the part of the defendants as additional exhibits, Exh. 'A-2' (Date of complete delivery as it appears in Annex 'B' [May 30, 1960]; Exh. 'A-1'; Exh. 'A-2', amount due in the sum of P124,242.47; Exh. 'A-4', date of first installment as it appears in Annex 'B' (Exh. 'A-1') and as Exh. 'B', FICI Bond No. 4122."

On the basis of the said Stipulations of Facts and the pleadings submitted by the parties, the court a quo rendered judgment, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment ordering the defendant to pay, jointly and severally, to the plaintiff the sum of P124,242.47 with interest at the legal rate from the date of filing of the

complaint until fully paid. The plaintiff's prayer for attorney's fees is denied, inasmuch as there is no showing that the defendants were motivated with bad faith in failing to pay plaintiff's claim.

"With respect to the cross-claim of defendant Fieldmen's Insurance Co., Inc., the Court hereby orders defendant Visayan Packing Corporation to pay defendant Fieldmen's Insurance Co., Inc., such which the latter may pay to the plaintiff by reason of this judgment, with interest at 12% per annum until fully paid, and attorney's fees equivalent to 10% of the amount paid by Fieldmen's Insurance Co., Inc., to the plaintiff. With costs against the defendants."

From said decision, Vispac and FICI filed on July 24, 1964 and July 27, 1964, respectively, a motion for reconsideration of the said decision. On August 8, 1964, the court a quo issued its order denying the said motion.

Feeling aggrieved, Vispac and FICI appealed the case to the Court of Appeals, docketed therein as CA-G.R. No. 34552-R.

After the parties have submitted their respective briefs, Repacom on April 28, 1965; Vispac on January 2, 1965; and FICI on January 15, 1965, the case was submitted for decision on September 6, 1965. In a resolution promulgated June 14, 1969, the Court of Appeals[**] certified the instant case to this Court for proper disposition for being pure question of law.

While Vispac and FICI raised several issues, the focal issue involved in the instant case, as correctly stated by the trial court and the Court of Appeals, is the interpretation of the Schedule of Payments (Exhibit "A-1").

It is the contention of the Repacom that under the above-quoted Schedule of Payments, the amount of P124,242.47 representing the 1st installment without interest, which is equivalent to 10% of the entire F.O.B. costs, has already become due and demandable on May 30, 1962. However, Vispac and FICI argue that as there are two dates given for the first installment in the said Schedule of Payment, the 1st installment should be on May 30, 1963 considering that it was Repacom which prepared the contract and therefore such ambiguity should be taken against the latter which caused the ambiguity.

The petition is devoid of merit.

Section 12, Republic Act 1789, reads as follows:

"Section 12 - Terms of Sale -

"Capital goods and complimentary services disposed to private parties as provided for in sub?section (1) of Section 2 hereof, shall be sold on a cash or credit basis under the rules and regulations as maybe determined by the Commission. Sales on credit basis shall be paid in installments. Provided that the 1st installment shall be paid with-in 24 months after complete delivery of the capital goods and the balance within a period not exceeding 10 years." (Underscoring supplied)

As indicated in the Schedule of Payments, Exhibit "A-1", the amount of P124,242.47, now being claimed by the Repacom from Vispac, represents the 1st installment or initial payment without interest as said amount is equivalent to 10% of the total F.O.B. cost of the reparation goods received by Vispac which is P1,242,424.67. Exhibit "A-2" of the Schedule of Payments specifically states the date when the reparations goods in question were delivered which was on May 30, 1960. This particular date was not denied by Vispac as per their Stipulation of Facts. Consequently, as reflected in the Schedule of Payments; Exhibit "A-1", the 1st installment without interest in the amount of P124,242.47 representing 10% of the F.O.B. cost of reparations goods, became due and demandable on May 30, 1962, or exactly 24 months from the date of the complete delivery of the reparations goods to Vispac.

The rest of the schedule clearly refers to the payment of the balance of the sales on credit which in accordance with law (Section 12, Rep. Act 1789) must be paid within a period not exceeding ten (10) years, and chargeable with interest at 3% per annum. Said schedule of payment for the balance i.e., after payment of the first installment is, in turn, payable in ten (10) equal yearly installments, as follows:

Term: Ten (10) equal yearly installments.

Rate of Interest: Three per cent (3%) per annum

No. of Installments

Date Due

Amount

1

May 30, 1963

P131,086.07

2

" " 1964

"

3

" " 1965

"

4

" " 1966

"

5

" " 1967

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" " 1968

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" " 1969

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While it is a statutory and decisional rule in this juris-diction that the contract is the law between the contracting parties (Art. 1306, Civil Code: *Phoenix Assurance Co., Ltd. vs. United States Lines*, 22 SCRA 674 [1968]; *Phil. American General Insurance v. Mutuc*, 61 SCRA 22 [1974]; *Herrera v. Petrophil Corporation*, 146 SCRA 360 [1986]; *Syjuco v. CA*, 172 SCRA 111 [1989]), there is a proviso that nothing therein must be contrary to law, morals, good customs, public policy, or public order (Art. 1306, Civil Code; *Lagunsad v. Soto*, 92 SCRA 476 [1979]). To sustain the contention of Vispac and FICI that the 1st installment should be due on May 30, 1963, instead of May 30, 1962, would render the said installment payment unenforceable as it would run counter to the provision of the said law (Section 12 R.A. 1789) which specifically provides that "the 1st installment shall be paid within 24 months after complete delivery of the capital goods", or on May 30, 1962, the complete delivery thereof having been made on May 30, 1960.

Finally, it is basic that a contract is what the law defines it to be, and not what it is called by the contracting parties (*Novesteras v. CA*, 149 SCRA 48 [1987]).

Having disposed of the main issue, discussion of other ancillary issues raised by the appellant Vispac becomes unnecessary.

As to the issue of FICI's liability arising from its issuance of Surety Bond No. 4122 dated May 30, 1960, it will be noted that FICI interposed for the first time, on appeal, the defense that Surety Bond No. 4122 has already expired. FICI did not allege any defense to the effect that Surety Bond No. 4122 has already expired either in its answer to the complaint dated October 26, 1962 nor in the entire proceedings below. In fact, it adopted as its own whatever defenses its co-defendant-appellant Vispac may interpose (*Rollo*, Record on Appeal, FICI, p. 25; p. 44). It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process (*Dihiansan v. CA*, 153 SCRA 713 [1987]; *Anchuelo v. IAC*, 147 SCRA 434 [1987]; *Dulos Realty & Development Corp. v. CA*, 157 SCRA 425 [1988]; *Ramos v. IAC*, 175 SCRA 70 [1989]; *Gevero v. IAC*, G.R. 77029, August 30, 1990).

Anent the contention of FICI that the trial court erred in ordering Vispac to pay to FICI attorney's fees equivalent to only 10% of the amount due despite the fact that Vispac bound itself to pay to FICI attorney's fees equivalent to 20% of the total amount due but in no case less than P200.00 as per their Indemnity Agreement (Exhibit "1-FICI"), it has been held that a stipulation regarding the payment of attorney's fees is neither illegal nor immoral and is enforceable as the law between the parties (*Santiago v. Dimayuga*, 3 SCRA 919 [1961]), as long as such stipulation does not contravene law, good morals, good customs, public order or public policy (*Polytrade Corp. v.*

Blanco, 30 SCRA 187 [1969]; Social Security Commission v. Almeda, 168 SCRA 474 [1988]).

Considering, therefore, that the 20% attorney's fees provided under the parties' Indemnity Agreement (Exhibit "1-FICI") is not contrary to the existing jurisprudence on the matter[*] and is not considered excessive nor unconscionable, the same should be awarded to FICI.

WHEREFORE, the decision appealed from is Affirmed with the modification that the amount of the attorney's fees due from Vispac to FICI should be 20% of the amount due as per Indemnity Agreement.

SO ORDERED.

Gutierrez, Jr., and Feliciano, JJ., concur.

Fernan, C.J., (Chairman), no part.

[*] Penned by Judge Ramon O. Nolasco

[**] First Division, penned by Associate Justice Hermogenes Concepcion and concurred in by Presiding Justice Julio Villamor and Associate Justice Angel Mojica.

[*] Under the existing jurisprudence regarding attorney's fees, in the case of Polytrade, supra, the rate allowed was 25%; in Santiago v. Dimayuga, supra, 20%; in Cosmopolitan Insurance Co., Inc. v. Reyes, 15 SCRA 258 [1965], 15%; In Vda. de. Reyes v. CA, 116 SCRA 607 [1982]), 15%; and in the case of Social Security Commission v. Almeda, supra, 15%.

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