

**ATLANTIC GULF & PACIFIC COMPANY OF MANILA,
PLAINTIFF-APPELLEE, VS. MATERIAL DISTRIBUTORS (PHIL.)
INCORPORATED, DEFENDANT-APPELLANT, ANTONIO QUIRINO,
INTERVENOR.**

G.R. No. L-5624. October 29, 1955

Ponente: LABRADOR, J.

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In the month of October, 1946, defendant entered into a contract with the plaintiff for the repair and reconditioning of tractors, cranes and other heavy industrial equipment at plaintiff's plant. It was agreed that plaintiff was to finish all spare parts needed to repair and reconditioning, purchasing them or making them at its own shop, and was to be paid for said services the actual cost thereof plus 15%. Defendant was to deliver the industrial units to plaintiff's plant at its own expense and to remove them after reconditioning had been finished. By virtue of the agreement, heavy industrial units were delivered by defendant to plaintiff's premises. The agreement was originally verbal, but it was put in writing on February 27, 1947. In accordance with the written agreement plaintiff was to be paid on the basis of cost plus 15%; all work should stop except on certain tractors which the defendant specified as necessary to complete its contracts; the defendant would remove all its properties then in the shop of the plaintiff except those specified and indicated; and defendant will pay on the date of the contract, on account and subject to final audit, 85% on all invoices rendered to date for equipment actually released and make a similar advance payment of 85% against all invoices or items delivered, whether complete or not, such payment to be made not beyond three days after receipt of the invoices. Pursuant to the above written contract, the repair and reconditioning work undertaken by the plaintiff under the oral agreement was continued. Defendant paid 85% of the unpaid invoices previously submitted, but left unpaid 15% thereof and it removed from plaintiff's premises the greater bulk of the equipment it had deposited with the plaintiff. It was at this stage that a misunderstanding arose between the parties.

On April 35, 1947 plaintiff brought this action alleging that on March 19, 1947, plaintiff submitted to the defendant a detailed statement of the amounts due it from defendant, with a total of P194,996.28 but the defendant failed and refused to pay the said amount in violation of its written agreement. The complaint had attached thereto, as integral part thereof, Exh. G, an itemized statement, with the different amounts constituting each item, including the amount used for labor and that used for materials. To these was added 15% (as per agreement) and 2% as contractor's tax.

In its answer, defendant admitted the existence of the agreement and the deliveries of the heavy equipment, but it denied that the units had been efficiently and satisfactorily reconditioned. It also alleged that six of the units which had been delivered to Antonio Quirino were for the latter's account, not for it; that it is not liable for the amount claimed in the statement, Exhibit G, under the agreement of "cost plus 15%." As special defenses, it alleged that the 15% agreed upon as payment was to be computed on the cost of labor and materials alone, not on all other expenses, such as overhead and departmental or accounting profits; that the charges made in plaintiff's statement were excessive and unreasonable for the results accomplished; that plaintiff was grossly inefficient and wasteful in the employment of labor and use of materials; that after the receipt of the invoices from plaintiff, defendant found that it was being overcharged in violation of the agreement and therefor refused to pay the excessive charges; that as a consequence of its refusal, plaintiff closed its doors to defendant and refused to allow defendant to remove its property or that of Antonio Quirino. In its "counterclaim", it alleged that it had made an overpayment of P22,132.26 and under its "cross-complaint" it alleged: (1) that because of plaintiff's legal refusal to complete the repair on certain equipment as per agreement defendant was unable to fulfill its commitments under its contracts with third parties and suffered damages in the amount of P19,706.40; (2) that by reason of the refusal of plaintiff to allow defendant to remove certain properties from its premises, defendant's equipment depreciated in value to the extent of P100,000; (3) that defendant furnished plaintiff with, a crawler crane with complete pile driving equipment for which plaintiff owed it (defendant) rentals at the rate of P320 per day or a total amount of P19,520; (4) that plaintiff is using for its own purposes one crane, one compressor and one pile driving equipment and it is responsible to defendant for the rentals thereof, amounting to P19,200; (5) that plaintiff secured the writ of attachment on defendant's property upon false statements and is responsible to defendant for the premium of P3,510 annually; and (6) that plaintiff has unjustly retained certain equipment belonging to Antonio Quirino in spite of the fact that the charges for repair and reconditioning thereof had already been paid and such refusal has resulted in loss of property due to double depreciation in the value of said equipment.

Plaintiff presented a reply denying the allegations confined in the special defense of defendant's answer. As to the "cross-complaints", it (1) denied the allegations of cross-complaint 1, in relation to defendant's contracts commitments for lack of information and belief, but justified its refusal to deliver by the refusal of defendant to pay the charges demanded; (2) admitted that it took delivery of the crawler crane: but denied having taken the pile driving equipment, and alleged that its refusal to deliver the same was by virtue of its lien or right of retention as repairman; (3) alleged that plaintiff did not retain the pile driving equipment but defendant failed to take possession of the same and that the value of its use is not at the rate of P320 per day but P100 per day only; (4) claimed that it never contemplated the use of the air compressor and the lubricating unit, these were used under the understanding between them that the equipment to be repaired could be utilized by the plaintiff in its work of repair and reconditioning; (5) denied for lack of knowledge, that defendant was paying 3% premium in a bond it furnished for the dissolution of the attachment; and (6) denied the allegations contained therein and alleged that it retains the units mentioned in "cross-complaint" No. 6 under its right of lien thereon for repairs done on said equipment.

On January 6, 1948, a pre-trial was held and thereafter the court entered an order for the reference of the following issues to three commissioners, namely, Felipe Ollada, Chairman, Charles M. Smith and Ben Pettigrew, members, and Vicente Antillon, secretary or recorder: (a) Was the reconditioning performed by the plaintiff on equipment delivered to it by defendant pursuant to their contract done in a manner that was satisfactory; efficient and in accordance with approved standards for such kind of work in the City of Manila under the conditions prevailing at the time, was the work performed in a wasteful, inefficient and unsatisfactory manner? (b) Are the plaintiff's charges for such reconditioning work presented reasonable or unreasonable? (c) Are the plaintiff's

charges for such reconditioning work as presented correct and in accordance with the contract "plus 15" between the parties? (Rec. on Appeal, pp. 298-299).

The Commissioners held sessions on August 9, August 10, August 11, August 23, August 25, August 31, September 10, September 20, and October 13, 1948. During the hearings the following testified: Henry J. Belden, E. R. Sanderson, William McLaren, Modesto C. Flores, Victor Buencamino and Francisco Rheberg, all witnesses for the plaintiff. At the last hearing on October 13, 1948, while attorneys for defendant were cross-examining witness Modesto C. Flores, Atty. Gibbs, for defendant, stated that he could not continue with the cross-examination then, but wanted the witness Flores to prepare a statement as to whether or not work was performed on units not described in Exhibits 3 of the answer from and after February 27, 1947. Flores agreed to make a study and prepare the statement but intimated that it would take some time for him to do so. At this stage of the proceedings, the session was adjourned and no further sessions were held.

On November 2, 1949; the Commissioners submitted their report. The defendant received copy of the report on that same date. On November 28, its lawyers made the following objections: (1) that the hearings before the Commissioners here not complete and the defendant did not finish its cross-examination, (2) that the report was prepared without the use of the transcript of the testimonies at the hearing; and (3) that no evidence was submitted by the plaintiff except that contained in the report, and it was prayed that the report be set for hearing. On December 1, plaintiff filed an opposition to the defendant-appellant's objections alleging that the defendant filed its objection beyond the ten-day period allowed and, therefore, had waived presentation of its objection to the report. On the same date, it presented a motion asking the court to render a decision. This motion as objected to on the ground that the proceedings before the Commissioners were not complete and that the defendant had been deprived of the right to present evidence thereat.

After that there was a lull in the proceedings. From January 1950 to May, 1951, no action was taken in the case. It appears from the record that the Clerk of Court had kept the records of the case in the drawers of his office table, forgot to bring them out for action or further proceedings.

On May 28, 1951, the Clerk of Court reset the report of the Commissioners for hearing on June 2, 1951. At the hearing held on said date, the court resolved to consult the transcript. On August 6, 1951, the court ordered the parties to state whether they had any objection to have the case submitted for decision (Rec. on Appeal, p. 355). On October 21, a hearing was held before the Commissioners. At that hearing, attorneys for the defendant called the attention of the court to the fact that no evidence had been presented by the defendant before the Commissioners and that the evidence before the Commissioners was therefore incomplete. The court asked the parties if they were ready to submit the Commissioners' report for approval or disapproval, and counsel for the defendants reiterated their objection that the evidence was incomplete.

On October 22, 1951, the court entered judgment adopting the findings of the Commissioners as correct and sentencing the defendant to pay the plaintiff the sum of P194,996.28. It also dismissed the defendant's counterclaim and "cross-complaints" as well as the intervention of Lope Sareal. Defendant presented a motion for new trial alleging the same grounds, i.e., that the report is incomplete because the documents considered by the Commissioners had not been attached thereto and that the evidence is incomplete because the defendant had not finished cross-examining the last witness and had not had the opportunity to present its evidence. The plaintiff replied stating that there was no need of presenting the documents examined by the Commissioners because the same were voluminous, and that defendant had already agreed to submit the case for decision. The trial court denied the motion for new trial and hence this appeal.

The main argument of defendant on this appeal is that the lower court erred in acting upon the Commissioners'

report, it appearing that at the time of the submission thereof the defendant had not finished its cross-examination of a witness of the plaintiff, and that it did not have the opportunity to present its own evidence. It is further claimed that the court erred in not requiring further hearing before the Commissioners in order to allow plaintiff to close its evidence and the defendant to submit its own. In reply plaintiff argues that as it had established a prima facie case in its favor before the Commissioners, defendant, by its laches, is estopped from further cross-examining the witnesses for the plaintiff, or from introducing evidence in support of its claims and defenses. It is also argued that the Commissioners were bound to submit their report within 30 days only and that the defendant having failed to present its objections thereto to the court within the time prescribed by the Rules, it had lost the right to object to the report.

It is a fact conclusively shown by the record and not disputed by appellee that after the last session of the Commissioners on October 13, 1948, when attorney for defendant-appellant asked to continue the cross-examination of witness Flores after the latter had examined certain points in relation to the document on which he testified, no further session was held by the Commissioners with the presence of parties. The witnesses who had testified were all witnesses for the plaintiff-appellee. No witnesses for the defendant-appellant were called, and on no occasion was the defendant-appellant asked or given the opportunity to present any witness to sustain its defense.

It is, however, claimed on behalf of plaintiff-appellee that defendant-appellant has been guilty of laches such that he is estopped from presenting its witnesses before the Commissioners. While it is the duty of all parties to an action to see to it that proceedings are not delayed, the burden of prosecuting a case to final termination rests primarily on the plaintiff; it cannot be expected that the defendant would be eager to expedite the proceedings and have an unfavorable judgment against it rendered as promptly as possible. No waiver of its right to present its evidence before the Commissioners can ever be implied from the conduct of the defendant-appellant in the proceedings. When the report was called for hearing, defendant-appellant promptly objected against the approval of the report on the ground that its cross-examination of a witness for the plaintiff had not terminated and that it never had the opportunity to present its own witnesses. When the judge at the hearing on October 21, 1951 asked whether the parties were willing to have the report of the Commissioners submitted for approval or disapproval, again the defendant-appellant clearly reiterated its objection that the evidence was incomplete because there was none presented by it. Under the circumstances of the case, as the defendant had not yet had the opportunity to present its own witnesses before the Commissioners, it should have been the duty of the court, in order not to deny the defendant-appellant its day in court and the right and opportunity to present its own evidence, to have rejected the report and required the Commissioners to hear the defendant-appellant's evidence. If the Commissioners were no longer available to do or perform their duties another set of Commissioners could have been appointed to continue the work. But the trial court was not justified, because of its legitimate desire to expedite the termination of the case, which had been dragging on for years, to deny the defendant-appellant the precious constitutional right to present witnesses and evidence in its defense, for such a denial amounts to a deprivation of its right or property without due process of law.

The plaintiff-appellee claims that defendant-appellant's objection to the report of the Commissioners should be ignored for the reason that it was presented 20 days after it received copy thereof. This contention has no merit. True it is the defendant which was furnished a copy of the Commissioners' report on November 2, 1949. However, according to Section 10 of Rule 34 of the Rules of Court the time for the presentation of its objection is 10 days from receipt of the notification by the Clerk of Court. The notification the Clerk of Court was received on May 28, 1951 and the hearing was set for June 2, 1951. But defendant-appellant's objection was presented on November 28, 1949. It cannot be stated, therefore, that defendant presented its objection beyond the time allowed by the Rules and has, therefore, waived the same.

There is another error committed by the trial court in rendering its decision on the basis of the report alone. While it is true that the most important issue is the reasonableness and correctness of amounts claimed by the plaintiff-appellee, there are other facts and issues raised in the counterclaim and in the "cross-complaints" contained in defendant's answer; the court was not justified in denying the defendant-appellant the right to prove the claims contained therein. Even if it were true that the parties had agreed to "abide by any recommendations or conclusions which the Commissioners may unanimously or by majority agree upon," as the issues or facts alleged in the "cross-complaints" were not included in the issues referred to the Commissioners, the court was not justified in ignoring the counterclaim and cross complaints, but should have set the case for hearing on said counterclaim and cross complaints.

This case has been pending since 1947. The unreasonable delay which was unfortunately attended its disposition serves as a lesson for both the bench and the bar. Impatience should not easily result from delays occasioned by the observance of apparently, unimportant steps in legal proceedings, because such steps may involve fundamental constitutional rights. The have achieved its desire to the case by ordering the continuation of the hearings before the Commissioners and permitting the defendant to submit evidence in support of its side. After the report of the Commissioners had been filed and after an opportunity had been granted the defendant to prove its defenses, further opportunity should have been extended to the defendant to prove his counterclaim and his "cross-complaint." All these steps could not have lasted six-months. However, because of the denial of a fundamental right to defendant, induced by impatience over essential steps in the judicial process, no less than 3 years have been lost to the litigants and much work caused to the courts of justice.

The judgment appealed from is hereby revoked and the case remanded to the trial court for further proceedings in accordance herewith. With costs against the plaintiff-appellee.

Paras C.J., Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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