

AMERICAN WIRE & CABLE CO. INC., PLAINTIFF-APPELLANT, VS. SKI CONSTRUCTION GROUP, INC., DEFENDANT-APPELLEE.

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is an appeal under Rule 41 of the Rules of Cokurt which seeks to annul and set aside the Decision dated April 15, 2011[1] of the Regional Trial Court (RTC) of Parañaque City, Branch 195 in Civil Case No. 08-0290. The dispositive portion of the assailed decision reads:

" xxx xxx xx

WHEREFORE, the foregoing premises considered, the instant complaint is hereby ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.

xxx xxx xxx "

THE ANTECEDENTS

On August 12, 2008, American Wire & Cable Co., (AWCC, for brevity), as plaintiff, filed a complaint for a sum of money against SKI Construction Group, Inc. (SKI, for short), as defendants, before the Regional Trial Court (RTC) of Parañaque City, Branch 195, docketed as Civil Case No. 08-0290.

Plaintiff, in its complaint,[2] alleged the following material facts:

“ xxx xxx xxx

1.3. Plaintiff was the defendant’s nominated supplier undertake the supply and delivery wires for the construction of North Triangle Commercial Center (sic) with a fixed lump sum price of THIRTY FIVE MILLION NINE HUNDRED FIFTY THOUSAND PESOS (P35,950,000.00) inclusive of Value Added Tax.
xxx xxx xxx.

1.4. On 14 October 2005, defendant paid plaintiff the amount of Php 26,472,272.73 representing its seventy five percent (75%) downpayment, which was the net of the two percent (2%) creditable withholding tax amounting to Php 490,277.27.

1.5. Under BIR Revenue Regulation 2-98, Section 2.58(B), every payor required to deduct and withhold taxes is required to furnish the payee a Certificate of Creditable Tax Withheld At Source using the prescribed form (Form 2307) showing the income payments made and the amount of taxes withheld therefrom for every month of quarter within twenty (20) days following the close of the taxable quarter employed by the defendant in filing its quarterly income tax return.

1.6. Since the taxable quarter when the defendant withheld the sum of Php 490,277.27 on 14 October 2005

closed on 31 December 2005, defendant had until 20 January 2006 within which to furnish to the plaintiff the latter's Certificate of Creditable Tax Withheld At Source.

1.7. However, despite the clear and express provision of BIR Revenue Regulation No. 2-98, Section 2.58 (B), defendant furnished to plaintiff its Certificate of Creditable Tax Withheld At Source only on 20 September 2006. xxx xxx xxx.

1.8. Due to defendant's failure to furnish to plaintiff the Creditable Tax Withheld At Source on 20 January 2006, plaintiff was not able to apply the tax withheld by defendant in the amount of Php 490,277.27 as credit against its tax liability for the taxable year 2005. xxx xxx xxx.

1.9. xxx plaintiff demanded from defendant to settle the amount of Php 490,277.27 on or before 29 November 2006. When defendant failed and refused to comply with plaintiff's demand, the latter referred the matter to its legal counsel. xxx xxx.

1.10. On 11 April 2007 and 17 July 2007, plaintiff's counsel sent demand letters to defendant demanding to pay the sum of P613,444.97 plus attorney's fees. Despite receipt of plaintiff's demand letters, defendant failed and refused xxx to comply with plaintiff's just and legal demand.

xxx xxx xxx

2.2. xxx xxx xxx as a matter of law, defendant should be ordered to pay the plaintiff the amount of Php 490,277.27 plus legal interest of 12% per annum from 20 October 2006 until the said amount is fully paid.

xxx xxx xxx "

On its part, defendant denied the material allegations of the complaint. By way of special and affirmative defenses, it alleged that, it did not pay the plaintiff the questioned downpayment but was merely coursed through it pursuant to paragraph 5.1 of the Sub-Contract Agreement; it was North Triangle Depot Commercial Corporation (NTDCC), the owner of the project, that paid plaintiff; In fact, plaintiff received the check issued by NTDCC as payment; it was NTDCC which withheld the amount which plaintiff seeks to recover.[3]

On April 15, 2011, the RTC rendered a Decision[4] dismissing the complaint. It found that plaintiff's witness Edgar Celebre, had admitted that the required 75% downpayment in the amount of P26,472,272.73 was paid not by the defendant but by NTDCC. In fact, under the Sub-Contract Agreement between the parties, it is stipulated therein that the payor is NTDCC, the owner of the project. Also, Edgar Celebre admitted that it did not make any request to the defendant that it be furnished with the subject certificate before it paid the income for the taxable year 2005. These judicial admissions were therefore conclusive and binding upon it.

Thus, the RTC decreed:

" xxx xxx xx

WHEREFORE, the foregoing premises considered, the instant complaint is hereby ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.

xxx xxx xxx "

Finding the RTC's decision unacceptable, plaintiff interposed an appeal.[5]

THE ASSIGNED ERRORS

Plaintiff now Our appellant ascribe the following errors to the RTC, that:

I.

THE COURT A QUO ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO THE AMOUNT OF P490,277.27;

II.

THE COURT A QUO ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO AN INTEREST OF 12% PER ANNUM;

III. THE COURT A QUO ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO DAMAGES.

Plaintiff-appellant, in its Brief,[6] argues that the RTC erred when it ruled that the payor was NTDCC and not the defendant-appellee. The records indicate that it was defendant-appellee who paid the downpayment as evidenced by the Cash Voucher, the Official Receipt and the Certificate of Creditable Tax Withheld at Source. They add that NTDCC is not a party to the Sub-Contract Agreement which was entered into by them, thus, defendant-appellee is solely bound to comply with the payment of the downpayment.

Moreover, it has no obligation to demand a copy of the subject creditable withholding tax from the defendant-appellee. Section 2.58 (B) of BIR Revenue Regulation No. 2-98 is explicit that the payor shall furnish the payee a Certificate of Creditable Tax Withheld at Source. Due to defendant-appellee's failure to furnish it a creditable withholding tax certificate or BIR Form No. 2307 on January 20, 2006, it was not able to apply the tax withheld in the amount of P490,277.27 as credit against its tax liability for the taxable year 2005.[7] Hence, defendant-appellee must pay the amount of P490,277.27 to it.

On the other hand, defendant-appellee, in its Brief,[8] asserts that NTDCC is the actual payor. The Sub-Contract Agreement executed by them clearly states that the entity who is responsible for payment of the downpayment, monthly progress billing up to retention money to plaintiff-appellee is North Triangle Depot Commercial Corporation (NTDCC), the owner. As the payor, NTDCC has the primary responsibility to issue the creditable withholding tax certificate.

Moreover, plaintiff-appellant admitted that it did not even ask or demand for the issuance of the creditable withholding tax certificate on the supposed due date. Plaintiff-appellant also failed to show the factual and legal basis for its entitlement to a return of the amount that was withheld from it. Hence, the RTC did not err in dismissing the complaint.[9]

OUR RULING

The RTC did not err
in ruling that NTDCC is
the payor and not the
defendant-appellee

Plaintiff-appellant faults the RTC for dismissing the complaint. It asserts that there is overwhelming evidence

showing that defendant-appellee paid the downpayment, therefore, as payor, it is required to deduct, withhold taxes and furnish the payee with a withholding tax statement pursuant to Section 2.58 (B) of Revenue Regulation No. 2-98.

In civil cases, it is a basic rule that the party making allegations has the burden of proving them by preponderance of evidence.[10] Preponderance of evidence is 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.” Preponderance of evidence means probability of truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[11]

Here, plaintiff-appellant avers that it was defendant-appellee that paid the amount of P26,472,272.73, Philippine Currency, representing its seventy five percent (75%) downpayment, which was the net of the two percent (2%) creditable withholding tax amounting to P490,277.27, Philippine Currency. After scouring the records, We find that plaintiff-appellant’s failed to discharge this burden.

The records show that a Sub-Contract Agreement[12] was executed between plaintiff-appellant, the Nominated Supplier, and defendant-appellee, the Contractor. The pertinent terms of the Sub-Contract Agreement read:

“ xxx xxx xxx

WHEREAS, the Contractor has entered into a Main Contract with NORTH TRIANGLE DEPOT COMMERCIAL CORPORATION (hereinafter referred to as the Owner) for the complete construction of the PROPOSED NORTH TRIANGLE COMMERCIAL CENTER (hereinafter referred to as Work:, xxx xxx;

WHEREAS, the Owner has nominated the Supplier to the Contractor to undertake Supply and Delivery of Wires (hereinafter referred to as the Sub-contract Works).

WHEREAS, the Contractor has accepted the Nominated Supplier to undertake the said Sub-contract Works.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenant and stipulations hereinafter set forth, the parties have agreed as follows:

xxx xxx xxx

ARTICLE IV-CONTRACT PRICE

4.1. For and in consideration of the Nominated Supplier’s full and faithful performance and completion of its stipulated work in accordance with the terms and conditions herein provided, the Owner agrees to pay the Nominated Supplier a fixed lump sum price of PESOS: THIRTY FIVE MILLION NINE HUNDRED FIFTY THOUSAND and 00/100 (P35,950,000.00) inclusive of Value Added Tax.

xxx xxx xxx

ARTICLE V-TERMS OF PAYMENT

5.1 The Owner thru the Contractor agrees to pay the Nominated Supplier a downpayment equivalent to seventy five percent (75%) of the Sub-contract Price after both parties signed this contract and after the Owner receives from the Nominated Supplier the required bond as stipulated in Article VI hereunder.

5.2 The Owner shall pay the Nominated Supplier thru the Contractor within the monthly progress billings in accordance with the General Conditions of Contract, subject to pro-rata liquidation of downpayment.

5.3 The Owner thru the Contractor shall release to the Nominated Supplier the retained amount in accordance with the Special Conditions of the Main Contract.

xxx xxx xxx “

The contract between them constitutes the law and they are, therefore, bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor.[13] A plain reading of the provisions of the Sub-Contract Agreement clearly states that the North Triangle Depot Commercial Center (NTDCC), the Owner, shall pay the sub-contract price in the amount of P35,950,000.00, Philippine Currency to plaintiff-appellant, the Nominated Supplier. It is also stipulated that the NTDCC thru defendant-appellee, the Contractor, agrees to: (1) pay downpayment equivalent to seventy five percent (75%) of the sub-contract Price, (2) pay the monthly progress billings and (3) release of the retained amount to plaintiff-appellee. Where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean.[14] We cannot supply material stipulations, read into the contract words it does not contain or, for that matter, read into it any other intention that would contradict its plain import.[15] We must therefore give effect to the parties’ agreement and enforce the Sub-Contract Agreement to the letter.

It is also clear in the testimony of Edgar Celebre, the Finance Division Head of Plaintiff-Appellant AWCC, that it was NTDCC which paid plaintiff-appellant. On cross-examination,[16] he admitted that while it received a check from defendant-appellee, the same was issued by NTDCC, viz:

“ xxx xxx xxx

Q

Now, do you have any proof of the receipt of this downpayment by the plaintiff from the defendant?

A

I have some documents, official receipt issued to SKI for the amount that we received amounting to more than 20 million plus.

Q

Now, you must have received this in the form of check payment?

A Yes, sir.

Q And whose checking account was used for the payment of downpayment.

A Actually the checking account is for the payment to American Wire was from Ayala, sir.

Q Ayala or North Triangle?

A It's the same.

Q From what you know it's the same?

A Yes, sir. (Underscoring Ours)

xxx xxx xxx “

As a matter of fact, Edgar Celebre, when asked of clarificatory questions by the RTC, reiterated that it was Ayala that paid the plaintiff-appellee,[17] thus:

“ xxx xxx xxx

Q

You said that it was Ayala that paid the plaintiff in behalf of defendant, did you not say that?

A

I did.

Q

And when you say that Ayala has to pay the plaintiff in behalf of SKI, because Ayala is paying the obligation of its subsidiaries, did you say that?

A

The subsidiary is North Triangle, your honor.

Q

And what is the connection between defendant and North Triangle?

A

Can I read the subcontract, your honor?

COURT:

Can you not answer the question of the court without referring to the subcontract?

A

Okay, the North Triangle is the owner of the North Triangle Depot, it's a building, it's a mall.

Q The connection between defendant SKI and North Triangle is there any connection between the two?

A SKI is the contractor of North Triangle.

Q And North Triangle is a subsidiary of Ayala?

A Yes, sir.

Q SKI is not?

A No, your honor.

Q And it was Ayala that paid for and in behalf of defendant not North Triangle?

A Yes, your honor. (Emphasis supplied)

xxx xxx xxx “

The foregoing statements of Edgar Celebre are judicial admissions, which, as a rule, plaintiff-appellant is not allowed to contradict. A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding. It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[18] It also bears stressing that a judicial admission removes an admitted fact from the field of controversy.[19] The declarations of Edgar Celebre in the course of the trial are therefore conclusive and binding upon plaintiff-appellant.

We therefore find no reason to depart from the findings of the RTC, viz:

“ xxx xxx xxx

As testified to by plaintiff's witness, the required 75% downpayment of P26,472,272.73 was paid not by defendant but by Ayala or North Triangle which is the owner of the project, in the form of check.

xxx xxx xxx

From the aforequoted provisions of the contract, it is very clear that the Payor is North Triangle Depot Commercial Corporation and not herein defendant. This fact was even confirmed by plaintiff's witness himself, Mr. Celebre, who testified that it was Ayala or North Triangle that paid the downpayment. Celebre's testimony that the amount paid by Ayala or North Triangle represents its advances to defendant is not deserving of credence simply because nobody from said company was presented to corroborate the same.

At this juncture, it could be safely surmised that the reason the receipt of payment of 75% downpayment was issued in defendant's name and that defendant appears to be the payor in the certificate of creditable tax withheld a source is that the payment was coursed by the owner (North Triangle Depot Commercial Corporation), thru it, pursuant to their contract.

Moreover, the Court also took notice of the fact that plaintiff was also without fault when it failed to credit the tax withheld in its favor. As admitted by it, it did not make any request from defendant that it be furnished with the subject certificate before it paid its income tax for taxable year 2005 in 2006. Neither did it claim the deduction of the tax withheld when it paid the income tax in the said year. xxx xxx. While it may be true that defendant has the duty to furnish plaintiff the subject certificate, the latter, nevertheless, to the mind of this Court, has also the corresponding duty to remind the former or ask from it such certificate in the event that it failed to do so. Unfortunately, plaintiff did not do what is incumbent upon it when defendant failed to furnish it the subject certificate.

All told, our answer in the first issue is in the Negative. Its failure to avail of the tax withheld was due to its own inaction for which defendant cannot be held liable. With this finding, the 2nd issue is also answered in the Negative.

As regards the 3[rd] issue, this Court finds no merit in the parties' respective claims for damages.

xxx xxx xxx “

The dismissal of the
complaint is proper

It is also plaintiff-appellant's position that due to defendant-appellee's failure to furnish it a Certificate of Creditable Tax Withheld at Source on January 20, 2006, it was not able to apply the tax withheld in the amount of P490,277.27, Philippine Currency, as credit against its tax liability for the taxable year 2005, hence, the said amount must be returned to it.

This posture is trite.

On March 22, 2002, Revenue Regulations No. 3-2002[20] (RR No. 3-2002) amended Section 2.58 (B) of Revenue Regulations No. 2-98 by providing a remedy to the payee should the payor fail to furnish it a copy of BIR Form No. 2307, to wit:

“ xxx xxx xxx

SECTION 1. Section 2.58 (B) and (C) of Revenue Regulations No. 2-98, is hereby amended to read as follows:

“Section 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

xxx xxx xxx

(B) Withholding tax statement for taxes withheld.—Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form No. 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.

For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

Upon request of the payee, however, the payor must furnish such certificate simultaneously with the income payment.

xxx xxx xxx “

Based on the foregoing, the payee has an adequate and readily available remedy against the payor who failed to furnish a copy of BIR Form No. 2307, namely, the mandatory audit of the payor's income tax liabilities upon verified complaint of the payee.

Then as now, the rule is before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her.[21] There is nothing on record showing that plaintiff-appellant resorted to or availed of this remedy. Instead, it chose to immediately file a complaint for a sum of money before the RTC. Obviously, this is infirm. It must be stressed that failure to exhaust all administrative remedies is fatal to a party's cause of action.[22] As plaintiff-appellant clearly failed to fully exhaust the remedy provided in RR No. 3-2002, the complaint should indeed be dismissed.

All told, it is unnecessary to pass upon the other issues raised by plaintiff-appellant.

WHEREFORE, premises considered, the appeal is DISMISSED. The assailed Decision dated April 15, 2011 of the Regional Trial Court (RTC) of Parañaque City, Branch 195 in Civil Case No. 08-0290 is hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, H.S., and Barza, R.F., JJ., concur.

[1] Penned by Judge Aida Estrella Macapagal, Records, pp. 418-422.

[2] Complaint, Ibid., pp. 2-8.

[3] Answer, Id., pp. 78-81.

[4] Supra, Note 1.

[5] Id., pp.527-528.

[6] Plaintiff-Appellant's Brief; Rollo, pp. 26-46.

[7] Ibid.,

[8] Defendant-appellee's Brief; Id., pp. 61-74.

[9] Id.,

[10] Co, et.al. vs. Co., et.al. G.R. No. 184454, August 3, 2011. Citing Ocampo vs. Ocampo, G.R. 471 Phil. 519 (2004).

[11] Spouses Ramos vs. Obispo and Far East Bank and Trust Company, G.R. No. 193804, February 27, 2013. Citing Chua v. Westmont Bank, G.R. No. 182650, February 27, 2012, 667 SCRA 56, 68, citing Eulogio v. Apeles, G.R. No. 167884, January 20, 2009, 576 SCRA 561, 571-572.

[12] Marked as Exhibit "A"; Records, pp. 99-206.

[13] LVM Construction Corporation vs. F.T. Sanchez, et.al., G.R. No. 181961, December 5, 2011. Citing R&M General Merchandise, Inc. v. Court of Appeals, G.R. No. 144189, 5 October 419 Phil. 131, 142 (2001). Antipolo Properties, Inc. v. Nuyda, G.R. No. 171832, 12 October 2009, 603 SCRA 376, 381.

[14] Magoyag vs. Maruhom, G.R. No. 179743, August 2, 2010.

[15] LVM Construction Corporation vs. F.T. Sanchez, et.al., Supra, Note 13, citing Sps. Barrera v. Sps. Lorenzo, 438 Phil. 42, 49 (2002). German Marine Agencies, Inc. v. NLRC, 403 Phil. 572, 589 (2001).

[16] TSN dated January 26, 2010; Cross-examination of Edgar Celebre, pp. 7-8; Records, pp. 481-482.

[17] TSN dated January 26, 2010, pp. 24-28.; Records, pp. 498-500.

[18] Landoil Resources Corporation vs. Al Rabiah Lighting Company, G.R. No. 174720, September 7, 2011. Citing Binarao v. Plus Builders, Inc., G.R. No. 154430, June 16, 2006, 491 SCRA 49, 54. Granada, et al. v. PNB, G.R. No. L-20745, September 2, 1966, 18 SCRA 1. Yulionsiu v. PNB, G.R. No. L-19227, February 17, 1968, 22 SCRA 585. See Section 4, Rule 129 of the Rules of Court.

[19] Alfelor vs. Halasan, G.R. No. 165987, March 31, 2006. citing Mobil Oil Co. v. Dodd, 515 S.W.2d 350 (1974).

[20] Amending Section 2.58 and Further Amending Section 2.83 of Revenue Regulations No. 2-98 as Amended, Relative to the Submission of the Alphabetical Lists of Employees/Payees in Diskette Form and the Substituted Filing of Income Tax Returns of Payees/ Employees Receiving Purely Compensation Income from Only One Employer for One Taxable Year Whose Tax Due is Equal to Tax Withheld and Individual –Payees Whose Compensation Income is Subject to Final Withholding Tax.

[21] Public Hearing Committee of the Laguna Lake Development Authority, et.al vs. SM Prime Holdings, Inc., G.R. No. 170599, September 22, 2010. citing Ongsuco v. Malones, G.R. No. 182065, October 27, 2009, 604 SCRA 499, 511.

[22] National Irrigation Administration vs. Enciso, G.R. No. 142571, May 5, 2006. citing Paat vs. Court of Appeals, 111107, January 10, 1997.; 266 SCRA 167, pp. 175-177. See also DARAB vs. Court of Appeals, G.R. No. 113220-21, January 21, 1997. citing Baguioro vs. Basa 214 SCRA 437 (1992.). See NEA vs. Villanueva, G.R. No. 168203, march 9, 2010. citing Teotico vs. Baer, G.R. No. 147464, June 8, 2006, 490 SCRA 279, 285.

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