

**PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY,
PETITIONER, VS. THE COURT OF APPEALS AND DAVE HARVEY, INC.,
RESPONDENTS.**

G.R. No. L-28245. May 22, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari of the decision of respondent Court of Appeals[1] in CA-G.R. No. 31179-R entitled "The Philippine American General Insurance Company, Inc., plaintiff-appellant, versus Dave Harvey, Incorporated, defendant-appellee" promulgated September 18, 1967. The antecedent facts of this case may be briefly narrated as follows:

On February 21, 1958, herein private respondent Dave Harvey, Inc. entered into a written contract with Caltex (Phil.) Inc. (hereinafter referred to as Caltex), whereby for a consideration, the former undertook the painting of one (1) welded cone roof tank belonging to Caltex and located at the Philippine Wallboard Corporation in Nasipit, Agusan, Captioned "PAINTING CONTRACT", the agreement provided, inter alia, that the work was to be performed in accordance with the provisions of the "SPECIFICATIONS FOR TANK PAINTING" attached to the contract as its Annex "A" and made a part thereof.[2] The relevant provisions of the "PAINTING CONTRACT" are reproduced hereunder:

"9. Should any defects, shrinkage or other faults appear, or be found by (Caltex) within ninety (90) days from the acceptance of the work due to defective or improper materials or workmanship, (private respondent) shall amend or make good such defect at his own expense and, in case of default, (Caltex) shall cause it to be done for the account of (private respondent) for which (Caltex's) bond shall be liable."

"12. (Private respondent) shall furnish (Caltex) surety bond in the amount of P1,500.00 given by a surety company acceptable to (Caltex) and conditioned upon (private respondent's) faithful performance of the terms and conditions of this contract, including the payment of all labor. It shall also be liable for any defect arising out of defective materials or workmanship which may appear or be found by (Caltex) within ninety (90) days from date of completion and acceptance of the work."[3]

The last clause of the "SPECIFICATIONS FOR TANK PAINTING", Annex "A", on the other hand, provides thus:

"Any defects in workmanship that may be discovered within the period of One Year - - - will be corrected by (private respondent) without any additional charge to Caltex."[4]

To secure the full and faithful performance by private respondent of its obligation as provided in the painting contract, herein petitioner Philippine American General Insurance Company, Inc. issued a surety bond in the sum of P1,500.00 in favor of Caltex.[5] In turn, private respondent executed a written undertaking to indemnify petitioner for whatever damages, losses or expenses which the latter may sustain or incur in consequence of having become a surety.[6]

Private respondent proceeded with the painting job, completed the same, and turned it over to Mr. George Mears of the Philippine Wallboard Corporation sometime in March, 1958. In the same month, Mr. Mears certified that the painting job undertaken by private respondent for Caltex was satisfactory.[7]

On September 16, 1958, Caltex wrote a letter to private respondent informing the latter of alleged defects in the work performed. Four months later, Caltex demanded of petitioner the payment of P1,500.00, the amount secured by the surety bond, alleging that private respondent failed to accomplish the work in accordance with the specifications agreed upon, making it necessary for Caltex to engage another painting contractor to repeat the painting job in accordance with the specifications at a cost of P2,850.00.[8] Petitioner and private respondent exchanged communications and, ultimately, petitioner paid Caltex under the surety bond.

To recover what it had paid to Caltex, and on the strength of the indemnity agreement heretofore mentioned, petitioner on August 20, 1959 filed a complaint against private respondent in the City Court of Manila. After the case was submitted for decision upon the pleadings filed and on a partial stipulation of facts submitted by the parties, the City Court dismissed the complaint reasoning that the "liability of (private respondent) upon the painting and contract basis of the indemnity bond had prescribed and x x x (petitioner), therefore, had no basis paying (Caltex) on the said bond." [9]

Petitioner brought the case on appeal to the Court of First Instance of Manila. The parties presented anew the partial stipulation of facts submitted in the City Court and likewise adduced evidence. The case was again dismissed. According to the Court, by virtue of the express terms of the painting contract and the partial stipulation of facts, private respondent cannot be held liable for any defect, shrinkage or other faults discovered after a period of 90 days from acceptance of the work performed by private respondent. Since the alleged defects in the painting job were noted only after more than three (3) months from March, 1958 when Mr. Mears of Philippine Wallboard Corporation certified the painting job to be satisfactory, private respondent could no longer be held liable for such defects, and consequently, petitioner should not have paid Caltex under the surety bond. The Court added that private respondent could not be held in estoppel for failure to answer petitioner's demand letter and to inform the latter of any defense which said private respondent had in its behalf because petitioner was fully aware of or should have known the terms of the painting contract and would have found out that private respondent was not liable for any defect found in the painting job after three (3) months from the date of the delivery of the job.[10]

On appeal to the respondent Court of Appeals, the judgment of dismissal was affirmed with the following observations:

"The work referred to above was turned over in March, 1958, to one George Mears of the Philippine Wallboard Corporation, who 'certified that the painting undertaken by the (private respondent) for Caltex (Phil.) Inc. was satisfactory.' (Pars. 3 & 4 of Partial Stipulation of Facts, Exh. A). And since the alleged defects were noted only on September 16, 1958, it is plainly obvious that such discovery is very much beyond the 90-day period that the painting contractor x x x may be held for any defect, shrinkage or other faults that may be found in the painting job. Such being the case, we do not see our way clear to hold the defendant liable for the alleged defects discovered after 90 days that the painting job was completed and delivered.

"True enough that the ultimate paragraph of Annex A of the 'Painting Contract' (p. 5, Folder of Exhs.) says that 'any defects in workmanship that may be discovered within the period of one year - will be corrected by the contractor without any additional charge to Caltex.' However, we have significantly noted that (1) said Annex A of the Painting Contract is entitled 'Specifications For Tank Painting' and that (2) the surety bond of P1,500.00 put up by the (petitioner) for (private respondent) in favor of Caltex (Phil.) Inc. was to answer for any defects arising out of defective materials or workmanship which may appear or be found by the Company Caltex (Phil.) Inc. within 90 days from the date of completion and acceptance of work. It is thus readily seen

that only defects arising from defective materials or workmanship and discovered within 90 days from completion and acceptance of work are covered by the surety bond. Stated in another way, defects in the painting job discovered beyond 90 days are not covered by said bond. The liability of the surety bond is clearly stated in paragraph 12 of the 'Painting Contract' (pp. 5 & 6, Folder of Exhs.) So that the payment by the (petitioner) of the bond to Caltex (Phil.) Inc. does not fall within the purview of the indemnity agreement entered into by said (petitioner) and (private respondent) in connection with the surety bond. Consequently, we cannot order the (private respondent) to reimburse the (petitioner) for the payment the latter made." [11]

Petitioner now comes to this Court with the following assignment of errors:

I. The respondent Court of Appeals committed an error of law in not holding that, under the applicable provisions of law on the interpretation of contracts, the contractual stipulation providing for a warranty period of one year, is controlling insofar as the duration of such warranty period is concerned.

II. The respondent Court of Appeals committed an error of law in setting aside the contractual stipulation providing for a one-year warranty period, manifestly for the reason that this stipulation is contained in the specifications annexed to the painting contract.

III. The respondent Court of Appeals committed an error of law in holding that the surety bond was not answerable for defects in the painting job discovered beyond ninety days although within the warranty period of one year.

IV. The respondent Court of Appeals committed an error of law in its appreciation of paragraph 5 of the "Partial Stipulation of Facts".

Reduced to its barest essentials, the issue to be resolved is whether or not, upon the undisputed facts of this case, petitioner is entitled to reimbursement from private respondent for paying Caltex on the surety bond, the alleged defects having been discovered after ninety (90) days but within one (1) year from the date the painting job was turned over to and pronounced satisfactory by one Mr. George Mears, the latter unquestionably acting on behalf and with authority of Caltex.

The controversy between the parties is readily imputable to the different warranty periods provided for in Section 9 and 12 of the "PAINTING CONTRACT" on the one hand, and the last clause or sentence of the contract's Annex "A" on the other. It is also quite understandable why the parties herein had assumed and would insist on their respective postures - for private respondent, that the 90-day warranty period is controlling, and for petitioner, that the 1-year warranty period should prevail.

After due consideration of the facts and circumstances of this case, We hold and so rule that the 90-day warranty provisions in the "PAINTING CONTRACT" should be applied and, therefore, We affirm the decision of the Court of Appeals.

To begin with, the inclusion in a written contract for a piece of work such as the one in question, of a provision defining a warranty period against defects, is not uncommon. This kind of a stipulation is of particular importance to the contractor, for as a general rule, after the lapse of the period agreed upon therein, he may no longer be held accountable for whatever defects, deficiencies or imperfections that may be discovered in the work executed by him.

A warranty provision against defects is generally found in the body of the main contract itself. It governs the relations between the parties subsequent to the consummation of the agreement, but calls for application only if and when defects are discovered in the work performed. Therefore, it is unusual to find such a warranty provision merely in an annex to the main contract, more so, as in the case at bar, where the main agreement is a painting contract and its Annex "A" refers to painting specifications. Such specifications would necessarily consist of

details on what type and color, and even brand, of paint to be used, how many coatings of paint to be applied, the cleaning of the surface to be painted before application of paint, the manner of application of the paint, i.e., by spraying or brushing, and such other particulars connected with the actual painting job. A warranty clause would normally not be included among the painting specifications.

Since the 1-year warranty stipulation is found in Annex "A" of the contract in question, whereas the 90-day warranty provision is in the main contract itself, then the cardinal rules in the interpretation of contracts laid down by Art. 1374 of the New Civil Code and Rule 130, Sec. 9, Rules of Court, govern, and they provide as follows:

"Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly."

Section 9, Rule 130, Rules of Court, also provides that "In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Further, jurisprudence laid down the rules that:

"xxx (c)ontracts should be so construed as to harmonize and give effect to the different provisions thereof." (Reparations Commission vs. Northern Lines, Inc., 34 SCRA 203, 211)

"Where there is an apparent repugnancy between two clauses or provisions of a contract, it is the province and duty of the court to find harmony between them and to reconcile them if possible. In other words, and as a corollary of the rule that the entire contract, and each and all of its parts and provisions, must be given effect if that can consistently and reasonably be done, all clauses and provisions of a contract should, if possible, be so construed as to harmonize with one another." (Am. Jur. 2d, Vol. 17, p. 673).

Examining more closely the seemingly inconsistent stipulations at bar, it will be noted that the 90-day warranty provisions in the main painting contract (Sections 9 and 12, *supra*) refer to the liability of the surety bond which private respondent, as the contractor, was required to furnish. The evident purpose of these provisions is to make the surety bond liable for defects found within the 90-day period defined. On the other hand, the 1-year warranty clause in the contract's Annex "A" not only fails to mention the surety bond, but explicitly makes private respondent directly and personally liable for the defects therein contemplated. Moreover, it is noted that the 90-day warranty provisions specifically refer to "defects arising out of defective materials or workmanship, while the 1-year warranty clause is limited to "defects in workmanship". The provisions in question may, therefore, be reasonably reconciled with each other and construed together to mean that the contracting parties, private respondent and Caltex, intended for the surety bond to be chargeable for "defects arising out of defective materials or workmanship" found within 90 days from the date of completion and acceptance of the painting job, but for private respondent itself to be directly liable for "defects in workmanship" discovered beyond said period of 90 days and until nine more months thereafter, to complete the one-year period.

On the basis of the foregoing interpretation of the the contract at bar, Caltex could no longer enforce the surety bond for the alleged defects discovered in the painting job, said defects having been noted after the 90-day period specified in the agreement. It follows as a necessary consequence that petitioner should not have paid Caltex on the bond. Correspondingly, private respondent may not be required to reimburse petitioner under the indemnity agreement.

Parenthetically, had this been a suit between Caltex and private respondent, and the alleged defects in workmanship are duly proved, the latter might have been directly and personally made to correct such defects, on the basis of the last clause of the contract's Annex "A". However, this being an action between petitioner and private respondent to enforce the indemnity agreement on the ground of payment made under the surety bond, the lapse of the 90-day period before the discovery of the alleged defects forecloses the right of petitioner to

reimbursement.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., in the result.
Concepcion, Jr., J., on leave.

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- [1] Second Division, Concepcion Jr., H., J., ponente, Enriquez and Soriano, JJ., concurring.
[2] Section 1 of the "PAINTING CONTRACT"; Folder of Exhibits, p. 5.
[3] Folder of Exhibits, p. 6.
[4] Ibid., p. 10.
[5] Schedule "A" of the Complaint, Original Record on Appeal, pp. 3-4.
[6] Schedule "B" of the Complaint, Original Record on Appeal, pp. 5-8.
[7] Partial Stipulation of Facts, pars. 3 and 4; Folder of Exhibits, pp. 1-2.
[8] Partial Stipulation of Facts, pars. 6 and 7; Folder of Exhibits, p. 2.
[9] Decision of the City Court of Manila, Original Record on Appeal, p. 14.
[10] Decision of the Court of First Instance; Original Record on Appeal, pp. 41-46.
[11] Decision of the Court of Appeals, pp. 6-7; Rollo, pp. 14-15.

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