

EPG CONSTRUCTION COMPANY, INC., AND EMMANUEL P. DE GUZMAN, PETITIONERS, VS. HONORABLE COURT OF APPEALS (17TH DIVISION), (REPUBLIC OF THE PHILIPPINES), UNIVERSITY OF THE PHILIPPI...

G.R. No. 103372. June 22, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner EPG Construction Co., Inc. and the University of the Philippines, herein private respondent, entered into a contract for the construction of the UP Law Library Building for the stipulated price of P7,545,000. The agreement included the following provision:

ARTICLE XI

GUARANTEE

CONTRACTOR guarantees that the work completed under the contract and any change order, thereto, shall be in accordance with the plans and specification prepared by ARCHITECT, and shall conform to the specific requirements, performances, and capacities required by the contract, and shall be free from imperfect workmanship or materials. CONTRACTOR shall repair at his own cost and expenses for a period of one (1) year from date of substantial completion and acceptance of the work by the OWNER, all the work covered under the contract and change orders that may prove defective except maintenance works. The CONTRACTOR shall be liable in accordance with Art. 1723 of the Civil Code in case, within 15 years from completion of the project, the building collapses on account of defects in the construction or the use of materials of inferior quality furnished by him or due to any violation of the terms of contract.

Upon its completion, the building was formally turned over by EPG to the private respondent. UP issued a certification of acceptance dated January 13, 1983, reading as follows:

This is to certify that the General Construction Work of the College of Law Library Annex Building, University of the Philippines, Diliman, Quezon City, has been satisfactorily completed as per plans and specifications as of January 11, 1983 without any defects whatsoever and therefore accepted.

Release of the 10% retention is hereby recommended in favor of EPG Construction, Inc.

Sometime in July, 1983, the private respondent complained to the petitioner that 6 air-conditioning units on the third floor of the building were not cooling properly. After inspection of the equipment, EPG agreed to shoulder the expenses for their repair, including labor and materials, in the amount of P38,000.00.

For whatever reason, the repair was never undertaken. UP repeated its complaints to EPG, which again sent its representatives to assess the defects. Finally, it made UP a written offer to repair the system for P194,000.00.

UP insisted that EPG was obligated to repair the defects at its own expense under the guarantee provision in their contract. EPG demurred. UP then contracted with another company, which repaired the defects for P190,000.00.

The private respondent subsequently demanded from EPG reimbursement of the said amount plus an equal sum as liquidated damages. When the demand was rejected, UP sued EPG and its president, Emmanuel P. de Guzman, in the Regional Trial Court of Quezon City. De Guzman moved to dismiss the complaint as to him for lack of a cause of action, but the motion was denied.

After trial, judgment was rendered by Judge Antonio P. Solano requiring both defendants jointly and severally to pay the plaintiff P190,000.00 as actual damages, P50,000.00 as liquidated damages, P10,000.00 as attorney's fees, and costs.

The petitioners appealed to the Court of Appeals, which sustained the trial court.[1] They then came to this Court to fault the respondent court for not holding that: 1) UP was estopped by its certificate of acceptance from imputing liability to EPG for the defects; 2) the defects were due to force majeure or fortuitous event; and 3) Emmanuel de Guzman has a separate personality from that of EPG Construction Co., Inc.

The petitioners, argue that by issuing the certificate of acceptance, UP waived the guarantee provision and is now estopped from invoking it. The argument is absurd. All UP certified to was that the building was in good condition at the time it was turned over to it on January 13, 1983. It did not thereby relieve the petitioners of liability for any defect that might arise or be discovered later during the one-year period of the guarantee. Any other interpretation would make the guarantee provision useless to begin with as it would have automatically become *functus officio* with the turn-over of the construction.

The petitioners bolster their argument by quoting Article 1719 of the Civil Code thus, "Acceptance of the work by the employer relieves the contractor of liability x x x" and stopping there. The Article reads in full as follows:

Art. 1719. Acceptance of the work by the employer relieves the contractor of liability for any defect in the work, unless:

- (1) The defect is hidden and the employer is not, by his special knowledge, expected to recognize the same; or
- (2) The employer expressly reserves his rights against the contractor by reason of the defect.

The exceptions were omitted by the petitioners for obvious reasons. The defects complained against were hidden and the employer was not expected to recognize them at the time the work was accepted. Moreover, there was an express reservation by UP of its right to hold the contractor liable for the defects during a period of one year.

The petitioners' contention that the defects were caused by force majeure or fortuitous event as a result of the frequent brown-outs in Metro Manila is not meritorious. The Court is not prepared to accept that the recurrent power cut-offs can be classified as force majeure or a fortuitous event. We agree that the real cause of the problem, according to the petitioners' own subcontractor, was poor workmanship, as discovered upon inspection of the cooling system. Among the defects noted were improper interlocking of the entire electrical system in all the six units; wrong specification of the time delay relay, also in all the six units; incorrect wiring connections on the oil pressure switches; improper setting of the Hi and Lo pressure switches; and many missing parts like bolts and screws of panels, and the compressor terminal insulation, and the terminal screws of a circuit breaker.[2]

Curiously, it has not been shown that the cooling system in buildings within the same area have been similarly damaged by the power cut-offs. The brown-outs have become an intolerable annoyance, but they cannot excuse all contractual irregularities, including the petitioners' shortcomings.

The petitioners also claim that the breakdown of the cooling system was caused by the failure of UP to do

maintenance work thereon. We do not see how mere maintenance work could have corrected the above-mentioned defects. At any rate, whether the repairs in the air-conditioning system can be considered mere maintenance work is a factual issue. The resolution thereof by the lower courts is binding upon this Court in the absence of a clear showing that it comes under the accepted exceptions to the rule. There is no such showing here.

The final point of the petition is that Emmanuel P. de Guzman has a separate legal personality from EPG Construction Co., Inc. and should not be held solidarily liable with it. He stresses that the acts of the company are its own responsibility and there is no reason why any liability arising from such acts should be ascribed to him. Thus:

It is a doctrine well-established and obtains both at law and in equity that a corporation is a distinct legal entity to be considered as separate and apart from the individual stockholders or members who compose it, and is not affected by the personal rights, obligations and transactions of its stockholders or members.[3]

The trial court did not explain why Emmanuel de Guzman was held solidarily liable with EPG Construction Co., Inc., and neither did the respondent court when it affirmed the appealed decision. In its Comment on the present petition, UP also did not refute the petitioners' argument and simply passed upon it sub silentio although the matter was squarely raised and discussed in the petition.

Notably, when Emmanuel de Guzman moved to dismiss the complaint as to him, UP said in its opposition to the motion that it was suing him "in his official capacity and not in his personal capacity." His inclusion as President of the company was therefore superfluous, as De Guzman correctly contended, because his acts as such were corporate acts imputable to EPG itself as his principal. It is settled that:

A corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. The general manager of a corporation therefore should not be made personally answerable for the payment of the employee's backwages unless he had acted maliciously or in bad faith in terminating the services of the employee.[4]

The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proved that De Guzman acted maliciously or in bad faith when, as President of EPG, he sought to protect its interests and resisted UP's claims. Whatever damage was caused to UP as a result of his acts is the sole responsibility of EPG even though De Guzman was its principal officer and controlling stockholder.

In sum, we hold that the lower court did not err in holding EPG liable for the repair of the air-conditioning system at its expense pursuant to the guarantee provision in the construction contract with UP. However, Emmanuel de Guzman is not solidarily liable with it, having acted on its behalf within the scope of his authority and without any demonstrated malice or bad faith.

WHEREFORE, the appealed decision is AFFIRMED but with the modification that EPG Construction Co., Inc. shall be solely liable for the damages awarded in favor of the University of the Philippines. It is so ordered.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Penned by Justice Fernando A. Santiago, with Ramirez and Martin, JJ. concurring.

[2] Records, pp. 17-18.

[3] Sulo ng Bayan, Inc. v. Araneta, 72 SCRA 347, 353.

[4] Lim v. NLRC, 171 SCRA 328.

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