

MC ENGINEERING, INC., PETITIONER, VS. THE COURT OF APPEALS, GERENT BUILDERS, INC. AND STRONGHOLD INSURANCE CO., INC., RESPONDENTS.

G.R. No. 104047. April 03, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the decision of the Court of Appeals dated November 14, 1991[1] and its resolution dated February 5, 1992.[2] The Court of Appeals reversed the decision dated July 15, 1989 of the Regional Trial Court, Branch 85,[3] Quezon City, in Civil Case No. Q-44392 dismissing the Complaint for Sum of Money With Preliminary Attachment and Damages filed by respondent Gerent Builders, Inc. (“respondent Gerent” for brevity) against petitioner MC Engineering, Inc., (“petitioner” for brevity). The trial court ordered respondents Gerent and Stronghold Surety and Insurance Company (“respondent Surety” for brevity) to pay petitioner, jointly and severally, damages and attorney’s fees.

The Facts

The undisputed facts in this case as found by the trial court and quoted by the Court of Appeals in its assailed decision are as follows:

“x x x On October 29, 1984, Mc Engineering, Inc. and Surigao Coconut Development Corporation (Sucodeco, for short) signed a contract (Exh. B, also Exh. 5), for the restoration of the latter’s building, land improvement, electrical, and mechanical equipment located at Lipata, Surigao City, which was damaged by typhoon Nitang. The agreed consideration was P5,150,000.00[*] of which P2,500,000.00[**] was for the restoration of the damaged buildings and land improvement, while the P3,000,000.00 was for the restoration of the electrical and mechanical works.

The next day, on October 30, 1984 defendant Mc Engineering and plaintiff Gerent Builders, Inc. entered into an agreement wherein defendant subcontracted to plaintiff the restoration of the buildings and land improvement phase of its contract with Sucodeco but defendant retained for itself the restoration of the electrical and mechanical works. The subcontracted work covered the restoration of the buildings and improvement for P1,665,000.00 (Exh. C, also Exh. 6).

Two (2) months later, on December 3, 1984, Sucodeco and defendant Mc Engineering entered into an agreement amending provision No. VII, par 1 of their contract dated October 29, 1984, by increasing the price of the civil works from P2,250,000.00 to P3,104,851.51, or an increase of P854,851.51, with the express proviso that ‘except for the amendment above specified, all the other provisions of the original contract shall remain the same’ (Exh. L).

The civil work aspect consisting of the building restoration and land improvement from which plaintiff would get P1,665,000.00 was completed (TSN., p. 14, July 30, 1986) and the corresponding certificate of acceptance

was executed (Exh. F), but the electrical works were cancelled (Tsn., p. 8, July 30, 1986; Tsn., p. 19, Feb. 11, 1987). On January 2, 1985, plaintiff received from defendant the amount of P1,339,720.00[*] as full payment of the sub-contract price, after deducting earlier payments made by defendant to plaintiff, as evidenced by the affidavit executed by plaintiff's president, Mr. Narciso C. Roque (Exh. 1), wherein the latter acknowledged complete satisfaction for such payment on the basis of the Statement of Account (Exh. 2, 2-a & 2-b) which plaintiff had earlier forwarded to defendant.

Nevertheless, plaintiff is still claiming from defendant the sum of P632,590.13 as its share in the adjusted contract cost in the amount of P854,851.51, alleging that the sub-contract is subject to the readjustment provided for in Section VII of the agreement, and also the sum of P166,252.00 in payment for additional electrical and civil works outside the scope of the sub- contract.”[4]

Petitioner refused to pay respondent Gerent. Thus, on March 21, 1985, respondent Gerent filed the complaint against petitioner. On March 28, 1985, the trial court issued the corresponding writ of preliminary attachment upon the filing by respondent Gerent of a P632,590.13 bond issued by respondent Surety.[5] On April 24, 1985, petitioner moved to quash the writ on the ground that it was improperly issued. The trial court denied the motion.

Petitioner assailed the denial in a petition for certiorari[6] filed with the Court of Appeals. In a resolution dated October 17, 1986, the Court of Appeals[7] rendered a decision granting the petition, as follows:

“Wherefore, finding merit to the petition, the writ of attachment dated March 28, 1985, and the order dated August 14, 1985, denying the motion to quash writ of attachment should be as it is hereby declared null and void, and the execution made by respondent Deputy Sheriff Cristobal C. Florendo, under the writ of attachment issued should be as it is hereby nullified. The respondent Sheriff is hereby directed to restore ownership of the properties heretofore seized and attached to petitioner. No pronouncement as to costs.”[8]

On July 13, 1987, the trial court ordered the return of petitioner's properties that deputy sheriff Cristobal C. Florendo attached and seized. The sheriff reported to the court that he never seized a single property of petitioner but merely conducted a “paper levy”.

On January 5, 1988, petitioner filed an application against the attachment bond to recover damages it suffered due to the wrongful issuance of the writ of attachment. Respondent Surety opposed the application.

In its Answer, petitioner vigorously denied respondent Gerent's causes of action. Petitioner counterclaimed for damages and attorney's fees due to the improper issuance of the writ of attachment.

On July 15, 1989, after trial on the merits, the trial court rendered its decision, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered against the plaintiff and in favor of the defendant, as follows:

- Dismissing the instant case;

- Ordering the plaintiff and Stronghold Surety And Insurance Company to pay defendant M.C. Engineering, Inc., jointly and severally, the sum of P70,000.00 as moral damages; P30,000.00 as exemplary damages; and P50,000.00 as attorney's fees, plus costs.

SO ORDERED.”[9]

From the foregoing decision, respondents filed separate notices of appeal on September 5, 1989 and November 2, 1989, respectively.[10]

The Court of Appeals rendered the assailed Decision on November 14, 1991.[11] On February 5, 1992, the Court of Appeals denied petitioner's motion for reconsideration.[12]

The Ruling of the Court of Appeals

The Court of Appeals ruled respondent Gerent's claim meritorious, declaring that Gerent is entitled to share 74% of the price increase in the civil works portion of the main contract.

First, the Court of Appeals found that the price increase arose from a second detailed estimate of the costs of civil works allegedly submitted by respondent Gerent to petitioner. Thus, the Court of Appeals stated:

“xxx. To obtain an adjustment in the contract price, it appears that plaintiff-appellant, as sub-contractor, submitted a second detailed estimate of the costs of civil works (Exh. D) to appellee which, after marking up the figures therein to reflect its share, attached the same to its letter of proposal for an increase in the contract price eventually submitted to SUCODECO. On the basis of the estimates, the latter agreed to increase the cost for the full restoration of its typhoon damaged buildings and land improvement (civil works) from P2,250,000.00 to P3,104,851.51 (Exh. L). Payment of this adjustment was made by SUCODECO on December 27, 1984 (Exh. N). It is from this increase of P854,851.51 that plaintiff-appellant sought to recover its share from the appellee.”[13]

“Appellee denies the submission of the second detailed estimates by plaintiff-appellant. It must be observed, however, that appellee is an electro-mechanical engineering firm which becomes an accredited civil contractor only for as long as it has civil engineers to do the civil works. Thus, in the SUCODECO project, appellee hired plaintiff-appellant, an undisputed civil contractor, to furnish civil engineering services. Taking into account the technical expertise required to draw up such a detailed estimate of civil works as Exh. D and the absence of proof that other civil contractors apart from plaintiff-appellant was ever engaged by appellee, it is undoubtedly plausible that plaintiff-appellant made the estimates which appellee submitted to SUCODECO, with the corresponding adjustments in the costs.”[14]

Second, the Court of Appeals noted that the price increase preceded the cancellation of petitioner's electrical and mechanical works portion of the main contract.

Petitioner's president, Mario Cruel, testified that on December 3, 1984, Sucodeco approved the price increase for the civil works portion of the main contract. A week later, or on December 14, 1984, Sucodeco wrote to petitioner canceling the electrical and mechanical works portion of the main contract.[15] The Court of Appeals thus reasoned:

“From the foregoing, it is apparent that the adjustment in the price of civil works preceded the cancellation of the electro-mechanical works. If it is indeed true that the adjustment was for the sole benefit of appellee for its preparatory expenses and lost profits, the increase would have been effected simultaneously with or after the cancellation of the electrical and mechanical works. The fact that the amendment in the contract was made before the cancellation could only mean that SUCODECO agreed to increase the cost of the civil works not to compensate appellee for the then still subsisting original agreement but as a result of the higher estimates submitted by the contractor and subcontractor on the expenses for the civil works.”[16]

Third, the Court of Appeals did not consider the absence of an itemized listing of material and labor costs relevant to respondent Gerent's right to a share in the price increase.

The Court of Appeals ruled that it is Sucodeco, the project owner, and not petitioner who can question the true value of the material and labor costs. Since Sucodeco did not raise any question, it must have agreed to the price increase even without the submission of the true value. Consequently, the Court of Appeals held that it was petitioner's obligation to pay respondent Gerent its share of the price increase in accordance with the subcontract.[17]

Fourth, the Court of Appeals found no evidence that petitioner spent substantial amounts on the electrical and

mechanical portion of the main contract to justify petitioner's claim to the entire price increase.

The Court of Appeals rejected petitioner's claim that the price increase was intended to compensate petitioner for the losses it suffered due to the cancellation of the electrical and mechanical portion of the main contract. The Court of Appeals stated that:

"It is important to note that despite appellee's posturing that it incurred expenses prior to the cancellation of its contract, thus entitling it to the whole adjustment price, the records are bereft of proof showing substantial amounts expended by appellee. To justify its entitlement to the whole amount, it could have presented receipts reflecting purchases of materials, drawing plans of engineering designs, detailed estimates of electrical and mechanical works and testimonies of engineers allegedly mobilized to start the planning. As it is, the most that appellee could produce were three (3) purchase invoices totaling P110,000.00. xxx." [18]

Fifth, the Court of Appeals found the quitclaim executed by respondent Gerent on January 2, 1985 vitiated with fraud since petitioner intentionally withheld from Gerent the information that on December 3, 1984 Sucodeco had already agreed to the price increase. The Court of Appeals ruled:

"xxx. The mere fact that an affidavit or quitclaim was executed by Mr. Roque on behalf of his company does not preclude or estop plaintiff-appellant from recovering its just share for it appears that appellee intentionally withheld from Mr. Roque a vital information. Had he known, it is highly unlikely that he will sign the quitclaim. We are more apt to believe Mr. Roque's protestations that he did not know about the adjustment. His testimony is straightforward, consistent and unwavering. Moreover, a prudent man engaged in the business of construction for decades and whose interests are amply protected by a written instrument will not be easily convinced to acquiesce to have appellee get P1.4M of the whole contractual price. Appellee apparently led Mr. Roque to believe that no adjustment was made to hide its big share in the contract. Considering the fraud employed against plaintiff-appellant, the quitclaim is not binding at all." [19]

Thus, in the dispositive portion of the assailed decision the Court of Appeals decreed:

"WHEREFORE, premises considered, judgment is hereby rendered setting aside the appealed decision of the lower court, and in lieu thereof defendant-appellee is ordered to pay plaintiff-appellant the sum of P632,590.13 representing the increased contract price in the sub-contract agreement, with the civil works by SUCODECO, and attorney's fees equivalent to 25% of P632,590.13. Plaintiff-appellant and the surety-appellant are hereby adjudged to solidarily pay appellee the sum of P5,000.00 as attorney's fees, in connection with the wrongful obtention of the writ of attachment. With costs against defendant-appellee.

SO ORDERED."

Hence, this petition.

The Issues

In its Memorandum, petitioner raises the following issues:

- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND GROSSLY ERRED IN HOLDING THAT RESPONDENT GERENT IS ENTITLED TO P632,590.13 OR 74% OF THE PRICE INCREASE IN THE CIVIL WORKS PORTION OF THE MAIN CONTRACT BETWEEN PETITIONER AND SUCODECO.
- WHETHER OR NOT THE QUITCLAIM EXECUTED BY GERENT WAS VITIATED WITH FRAUD.
- WHETHER OR NOT PETITIONER IS ENTITLED TO ACTUAL, MORAL, AND EXEMPLARY DAMAGES DUE TO THE WRONGFUL ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT.
- WHETHER OR NOT THE AMOUNT OF P5,000.00 AS ATTORNEY'S FEES IS SUFFICIENT.

- WHETHER OR NOT RESPONDENT GERENT IS ENTITLED TO ATTORNEY'S FEES IN THE AMOUNT EQUIVALENT TO TWENTY FIVE PERCENT (25%) OF P632,590.13.

The Ruling of the Court

The Court finds for petitioner MC Engineering, Inc.

The Quitclaim of Respondent Gerent

We begin with the issue of whether the so-called quitclaim executed by respondent Gerent is valid. If the quitclaim is valid, then the quitclaim settles with finality all the claims of respondent Gerent, rendering its complaint against petitioner without any legal basis. If fraud vitiated the quitclaim, then it becomes necessary to determine if petitioner still owes respondent Gerent any amount under their subcontract.

The quitclaim is embodied in the Affidavit executed on January 2, 1985 by respondent Gerent's president, Narciso Roque. The Affidavit is not the usual quitclaim which expressly discharges and releases a party from any and all liabilities. The Affidavit does not contain such express language. However, the Affidavit expressly acknowledges receipt by Gerent of "full payment" of the subcontract price^[20] from petitioner. The effect, nevertheless, is the same because a creditor who receives and acknowledges full payment from his debtor causes the extinguishment of his claim against the debtor.^[21] Roque, however, now claims that had petitioner informed him of the price increase granted by Sucodeco on December 3, 1984, he would not have signed the Affidavit of January 2, 1985.

The primary question to resolve is whether petitioner misled, deceived or coerced respondent Gerent into signing the Affidavit. We rule petitioner did not. The Court of Appeals erred in declaring that fraud vitiated the Affidavit.

Fraud is never presumed but must be established by clear and convincing evidence. There is no evidence that petitioner misled, deceived or coerced respondent Gerent's president into signing the Affidavit. A mere preponderance of evidence is not even adequate to prove fraud. Thus, in *Maestrado vs. Court of Appeals*, ^[22] the Court ruled that:

"The deceit employed must be serious. It must be sufficient to impress or lead an ordinarily prudent person into error, taking into account the circumstances of each case. Silence or concealment, by itself, does not constitute fraud, unless there is a special duty to disclose certain facts. Moreover, the bare existence of confidential relation between the parties, standing alone, does not raise the presumption of fraud."^[23] (Emphasis supplied)

There was no proof of fraud presented by respondent Gerent other than its bare and unsubstantiated allegations. On the contrary, respondent Gerent's president, Roque, admitted that he was fully aware and certain of the impending price increase. Thus, Roque testified:

"Q:

Is it really true that you knew that there will be an increase because you were discussing that already?

A:

I know that there will be an increase.

Q:

Because you were discussing it?

A:

Yes. I know that there will be an increase, that is why I am always inquiring from Mr. Cruel whether there was already an increase made and adjustment of the contract.

Q:

When was the increase being discussed?

A:

Even during the time of the initial start of the project it was already discussed.

Q:

What particular month?

A:

About November.

Q:

And the contract was signed by Mario Cruel and Sucodeco in October? October 29, 1984?

A:

Yes, sir.” [24] (Emphasis supplied)

Despite his certainty that a price increase was imminent, Roque still signed the Affidavit without any reservation. Since respondent Gerent was fully aware of the impending price increase, it cannot claim that it was misled or deceived into signing the Affidavit. The non-disclosure by petitioner of the price increase did not mislead or deceive respondent Gerent because Roque fully knew that the price increase would in any event happen. Based on his own testimony, Roque voluntarily, willingly and freely signed the Affidavit without any compulsion or coercion from anyone. Thus, Roque testified:

“Q:

But you know before hand that what you signed is supposed to be an affidavit?

A:

Yes, sir.

Q:

Did you make any complaint to MC Engineering?

A:

No, sir.

xxx.

Q:

When you signed that affidavit Exh. “1”, did you not make any protests?

A:

No, I did not make any protest.”[25]

Petitioner was under no obligation to disclose to respondent Gerent, a subcontractor, any price increase in petitioner’s main contract with Sucodeco. Respondent Gerent is not a party to the main contract. The subcontract between petitioner and respondent Gerent does not require petitioner to disclose to Gerent any price increase in the main contract. The non- disclosure by petitioner of the price increase cannot constitute fraud or breach of any obligation on the part of petitioner.

Moreover, the record shows that the P139,720.30 representing final and full payment of the subcontract price was paid by petitioner to respondent Gerent based on the statement of account Gerent itself prepared and submitted to petitioner. This can be gleaned from the testimony of Roque, to wit:

“Q:

You have submitted likewise a statement of account?

A:

Yes, sir.

Q:

And this statement of account is this Annex “1” of the Answer?

A:

Yes, sir.

ATTY. AGUINALDO

May we request that this statement of account be marked as Exh. “2”.

And the signature above the typewritten name Narciso Roque including the words submitted by, be marked as Exh. 2-A and the figure P139,720.30 be encircled and be marked as Exh. 2-B.”[26]

The Statement of Account signed and submitted by respondent Gerent’s president Roque to petitioner provides as follows:

“January 2, 1985

MC ENGINEERING, INC.

98 Sgt. J. Catolos St.,
Cubao, Quezon City

Subject: Breakdown for sub-contracted work at Sucodeco Proj.

STATEMENT OF ACCOUNT

CONTRACT AMOUNT.....

P1,665,000.00

Less: Previous Payments:

October 30 - 50% downpayment

- P832,500.00

December 4 – 2nd partial payments.

- 400,000.00

December 13- 3rd partial payments.

- 200,000.00

P1432,500.00

Deduction for cost of materials
taken from Sucodeco.

92,779.70

1,525,279.70

BALANCE DUE & COLLECTIBLE

P139,720.30
vvvvvvvvvvvvvv

Submitted by:

NARCISO C. ROQUE
Chairman

Conforme:

_____”[27] (Emphasis supplied)

Again, nothing in the Statement of Account indicates any reservation relating to the impending price increase. Thus, respondent Gerent was paid what it actually believed, estimated and demanded should be its fair compensation for its subcontract work. The voucher issued by petitioner to respondent Gerent in full payment of the subcontract price states as follows:

“MC ENGINEERING, INC.
Quezon City CHECK VOUCHER NO. 21324
Date January 2, 1985

TO: GERENT BUILDERS INCORPORATED

Full payment for subcontracted work at Sucodeco Project.....

P 139,720.30

Less: 3% of 15% withholding tax.....

628.74

P139,091.56

Amount paid by Check No. RCBC # 479476

P139,091.56

Received the sum of PESOS one hundred thirty nine thousand ninety one pesos & 56/100 only from MC ENGINEERING, INC. in full payment of account.

By:

Payee

Checked and recommended by: APPROVED BY:

Office Assistant President”[28]

(Emphasis supplied)

This voucher, stating that the amount of P139,091.56 was in “full payment” for the subcontract work, was signed by Roque at the same time he received the check payment for the same amount.

Finally, the Affidavit that Roque signed provides as follows:

“A F F I D A V I T

I, NARCISO C. ROQUE, of legal age, Filipino, married with residence and postal address at No. 58 Lanzones Street, Quezon City, Metro Manila, Philippines, after being sworn to in accordance with law, do hereby depose and say:

- That I am the CHAIRMAN/PRESIDENT of GERENT BUILDERS, INC.;
- That my Company, GERENT BUILDERS, INC., has sub- contracted with MC ENGINEERING, INC. for the restoration works of building and land improvement of SUCODECO OIL HILLS, INC. located at Bo. Lipata, Surigao City;
- That in the prosecution of restoration works and land improvement of SUCODECO OIL MILLS, INC. Buildings, GERENT BUILDERS, INC. had fully paid the wages of laborers, rentals of equipment and machineries used; and fully paid materials used in the fabrication, delivery and erection of same, and that no supplier, laborer, equipment and machinery owner has standing claim against my company;
- That all taxes due in accordance with the project have been fully paid as of date;
- That the ONE HUNDRED THIRTY NINE THOUSAND SEVEN HUNDRED TWENTY PESOS AND 30/100 (P139,720.30) ONLY, released on January 2, 1985 REPRESENTS FULL PAYMENT OF MY CONTRACT WITH MC ENGINEERING, INC.; (Emphasis supplied)
- That this affidavit is being executed for purpose of collecting from MC ENGINEERING, INC.;
- That affiant, further sayeth none.

NARCISO C. ROQUE
Affiant” [29]

(Emphasis supplied)

The inescapable conclusion is that the Affidavit was meant to be a total quitclaim by respondent Gerent, fully discharging petitioner from whatever amounts it may have owed Gerent under the subcontract. There is nothing in the Affidavit that reserves respondent Gerent's right to collect a portion of any price increase in the main contract. On the other hand, the Affidavit is clear, unequivocal and absolute that respondent Gerent had received "full payment" under the subcontract. Respondent Gerent is now estopped from impugning the validity of the Affidavit simply because petitioner secured a higher price for the main contract.

Thus, in *Maestrado vs. Court of Appeals*[30] we stated that:

"The freedom to enter into contracts, such as the quitclaims, is protected by law and the courts are not quick to interfere with such freedom unless the contract is contrary to law, morals, good customs, public policy or public order. Quitclaims, being contracts of waiver, involve the relinquishment of rights, with knowledge of their existence and intent to relinquish them. xxx.

Quitclaims being duly notarized and acknowledged before a notary public, deserve full credence and are valid and enforceable in the absence of overwhelming evidence to the contrary."

In the instant case, the Affidavit is indisputably intended to document the fact that petitioner had fully paid respondent Gerent for the subcontract work. Roque's signature thereon attests to the truth of the contents of the Affidavit. Thus, Roque again testified:

"Q:

But you read the contents of the affidavit?

A:

Yes, sir.

Q:

You understand the contents of the affidavit when you signed?

A:

Yes, sir."[31]

The execution of the Affidavit by Roque, president of respondent Gerent, finally puts to rest all the claims of Gerent against petitioner under the subcontract. The very purpose of the Affidavit, just like a quitclaim, is precisely to finally settle all the claims of respondent Gerent, regardless of the merits of the claims. The Affidavit can be annulled only if it was procured through fraud. There is no convincing evidence to establish that fraud vitiated the Affidavit. The fact that petitioner received a windfall because of the price increase is not a reason to annul the Affidavit. Consequently, the Affidavit renders moot and academic all the other issues raised in this petition. Nevertheless, the Court will still painstakingly discuss and resolve the remaining issues raised by petitioner.

The 74%-26% Sharing.

The Court of Appeals upheld respondent Gerent's theory that the subcontract provides for a 74%-26% sharing between Gerent and petitioner in any price increase for the civil works portion of the main contract. Ruled the Court of Appeals:

“The question left to be determined is the amount of appellant’s share in the adjusted price. The record reveals that out of the P2,250,000.00 originally earmarked for civil works, plaintiff-appellant, as sub-contractor, was awarded P1,665,000.00 which is 74% of the first amount. Moreover, in the second detailed estimate submitted by plaintiff-appellant to appellee, the total cost of P2,297,590.00 was charged for civil works. This amount was subsequently increased by appellee to P3,104,851.00[*] when it submitted the estimates to SUCODECO. Again, the mark-up was 26% of plaintiff-appellant’s estimate. Under the circumstances, the parties had clearly intended to split the cost award to 74%-26% in plaintiff-appellant’s favor. This entitles plaintiff-appellant to the sum of P632,590.13 as its share in the adjusted price.”[32]

Again, we do not agree. A perusal of the subcontract reveals the following stipulations:

“ARTICLE II

SUB-CONTRACT PRICE

2.1. In consideration of the full and satisfactory performance of the works by the SUB-CONTRACTOR the CONTRACTOR shall pay the SUB-CONTRACTOR the Lump Sum amount of ONE MILLION SIX HUNDRED SIXTY FIVE THOUSAND (P1,665,000.00) PESOS.

2.2. The SUB-CONTRACT PRICE above is subject to section VIII of MAIN CONTRACT. By reason thereof, parties hereby declare and understand that the SUB-CONTRACT PRICE of P1.665 is subject to change and verification pending the final submission of the true value as maybe determined by evaluation and inspection by representatives of OWNER, CONTRACTOR and SUB-CONTRACTOR.”[33] (Emphasis supplied)

On the other hand, the main contract between petitioner and Sucodeco provides as follows:

“VIII. SPECIAL SIDE AGREEMENT. – It is hereby declared and understood that Contract Price of P5.25M is subject to changes and verification pending the final submission of the true value as maybe determined by evaluation and inspection by representatives of both parties, SURIGAO COCONUT DEVELOPMENT CORPORATION and MC ENGINEERING, INC.”[34] (Emphasis supplied)

The Court of Appeals was correct in holding that:

“The above-cited stipulations are very clear and need no extraneous interpretation. The lump sum amount of P1,665,000.00 due to plaintiff-appellant in payment of the civil works subcontracted to it is subject to change depending on the true value to be submitted and evaluated by the parties to the contracts.”[35] (Emphasis supplied)

However, the Court of Appeals erred in upholding respondent Gerent’s claim that it was entitled to a 74% share in the price increase of the main contract.

Respondent Gerent alleges that as a customary business practice petitioner and respondent Gerent agreed to a 74%-26% sharing in the main contract price for the civil works portion. The alleged 74%-26% sharing can be upheld only if such specific sharing was agreed upon in the subcontract, or if the subcontract is a joint venture. A textual examination of the terms of the subcontract shows no provision regarding any 74%-26% sharing between petitioner and respondent Gerent. Instead, the subcontract specifically provides for a fixed price for the civil works in the amount of P1,665,000.00, subject to change only upon submission of the “true value” of the work undertaken by the subcontractor.

Neither is there any stipulation in the subcontract indicating a joint venture between petitioner and respondent Gerent. That the subcontract price corresponds to 74% of the main contract price cannot by itself be interpreted to mean that the parties agreed to a 74%-26% sharing of any price increase in petitioner’s main contract with

Sucodeco. Roque, respondent Gerent's president, testified that the 74%-26% arrangement was not incorporated in the subcontract and was a mere gentleman's agreement. This can be gleaned from the testimony of Roque, to wit:

"Q:

Mr. Witness, you mentioned under page 5 of the transcript when you gave your direct testimony that the agreement between you and the defendant was a joint venture, is that correct?

A:

Yes, sir.

Q:

Where is that agreement?

A:

It was a verbal agreement between us. Among contractors there is such a thing as gentleman's agreement.

Q:

Are you referring to...you mean to say that that agreement is not in writing?

A:

It is not in writing but it was verbally agreed between the defendant and myself.

xxx.

"Q:

Why was that 74%-26% sharing not placed in the agreement with MC Engineering by your company?

xxx.

A:

Prior to entering into our proposal we have already an agreement with Mr. Cruel that whatever contract we will get, the civil work will be awarded to me on subcontract wherein 26% will be for MC Engineering and 74% will be for us.

Q:

That is verbal agreement?

A:

Verbal prior to the execution of the subcontract agreement.

Q:

That was the verbal agreement prior to the execution and signing of the subcontract agreement?

A:

It was.

“Q:

This agreement, to reiterate your testimony for the alleged 74% and 26% sharing, this has never been reduced into writing?

A:

It is not, sir.”[36] (Emphasis supplied)

The terms of the subcontract are clear and explicit. There is no need to read into them any alleged intention of the parties. If the true intention of the parties was a 74%-26% sharing in any price increase in the main contract, the parties could have easily incorporated such sharing in the subcontract, being a very important matter. They did not because that was not their agreement.

Section 9, Rule 130 of the Revised Rules of Court provides that “[w]hen the terms of an agreement have been reduced to writing, it is to be considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.” Simply put, evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict, or defeat the operation of a valid contract.[37] While parol evidence is admissible to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in writing, unless there has been fraud or mistake.[38] It is basic that parties are bound by the terms of their contract which is the law between them.[39]

Respondent Gerent claims that petitioner cannot be allowed to evade its lawful obligation arising from the subcontract, citing the well-known principle of law against unjust enrichment. Article 22 of the Civil Code provides that “[e]very person who through an act or performance by another, or by any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.” Two conditions must generally concur before the rule on unjust enrichment can apply, namely: (a) a person is unjustly benefited, and (b) such benefit is derived at another’s expense or damage.[40]

Such a situation does not exist in this case. The benefit or profit derived by petitioner neither comes from respondent Gerent nor makes the Gerent any poorer. The profit derived by petitioner comes from Sucodeco by virtue of the main contract to which respondent Gerent is not a party. Respondent Gerent’s rights under the subcontract are not diminished in any way, and Gerent remains fully compensated according to the terms of its own subcontract. The profit derived by petitioner is neither unjust, nor made at the expense of respondent Gerent.

That a main contractor is able to secure a price increase from the project owner does not automatically result in a corresponding price increase to the subcontractor in the absence of an agreement to the contrary. In this case, there is no stipulation in the subcontract that respondent Gerent will automatically receive 74% of whatever price increase petitioner may obtain in the civil works portion of the main contract. Neither has the subcontract been changed to reflect a higher subcontract price.

In a subcontract transaction, the benefit of a main contractor is not unjust even if it does less work, and earns more profit, than the subcontractor. The subcontractor should be satisfied with its own profit, even though less than the main contractor's, because that is what it bargained for and contracted with the main contractor. Article 22 of the Civil Code is not intended to insure that every party to a commercial transaction receives a profit corresponding to its effort and contribution. If a subcontractor knowingly agrees to receive a profit less than its proportionate contribution, that is its own lookout. The fact that a subcontractor accepts less does not make it dumb for that may be the only way to beat its competitors. The winning subcontractor cannot be allowed to later on demand a higher price after bagging the contract and beating competitors who asked for higher prices. Even if the subcontractor incurs a loss because of its low price, it cannot invoke Article 22 of the Civil Code to save it from financial loss. Article 22 is not a safety net against bad or overly bold business decisions.

Under the foregoing circumstances, we hold that Gerent is not entitled to any share in the price increase in the main contract. Whatever price increase petitioner obtained in the main contract, whether for the civil works portion or otherwise, was solely for the benefit of petitioner.

The First and Second Detailed Estimates

There is no true valuation of the civil works.

The main contract clearly provides that as a condition precedent for any upward or downward adjustment in the contract price, there must first be a true valuation of the materials and labor costs to be determined through evaluation and inspection by representatives of petitioner and Sucodeco.[41] A similar provision is found in the subcontract requiring, before any change in the subcontract price, for a true valuation to be determined by Sucodeco, petitioner and respondent Gerent. The records establish that respondent Gerent was responsible for making the estimates of the actual cost of the civil works which served as basis for the original price of the main contract.

However, the Court of Appeals erred in finding that the price increase in the main contract was based on a second detailed estimate supplied by respondent Gerent.[42] The evidence adduced reveals that the parties did not undertake any true valuation of the cost of the civil works. The price increase could not have been based on a true valuation because no true valuation was ever made as required by the main contract and subcontract. There is no substantial evidence to support respondent Gerent's assertion that the price increase was based on a second estimate that Gerent allegedly supplied petitioner.

The true valuation of the works must be based on the true value or estimates of the actual materials and labor required for the work. An examination of the alleged second detailed estimate reveals nothing but a plain summary of computation. Not only is it undated but there is also nothing in the said estimate which indicates that it was indeed received, evaluated and marked-up by petitioner as claimed by respondent Gerent. Neither was it clearly established by convincing evidence that the same was the true and final valuation of the civil works pursuant to the terms of the subcontract and main contract. This is evident from the testimony of Roque, the president of respondent Gerent, to wit:

“Q:

So your conclusion is that based on the payment of SUCODECO to MC Engineering, you are now entitled to your claim of alleged 74%?

A:

Yes, sir.

Q:

And it is not based on the actual determination of the true value of the materials and labor spent and utilized in the project?

A:

In the same manner as MC Engineering....it is not based on the true value.

Q:

It is not based on the true value?

A:

Yes sir.”[43] (Underscoring Supplied)

Clearly, the price increase did not result from a true valuation of materials and labor, which is the only valid ground for any adjustment in the subcontract price.

The second estimate is lower than the first estimate.

A further perusal of the testimony of Narciso Roque clearly shows that the alleged second estimate, assuming it was agreed to by petitioner and Sucodeco, was actually even lower than the first estimate which was the basis of the original contract price for the civil works. Thus, respondent Gerent’s Roque testified as follows:

“Q:

Now, you made a second estimate?

A:

Yes, sir, I made a second estimate on November 5.”

xxx.

“Q:

How much was that?

A:

P2,297,590.00, for the restoration of the civil works and land development.”

xxx.

“Q:

How much again was the total of the first estimate?

A:

In the first estimate the total...

Q:

The breakdown first.

A:

For building is P2,257,351.20 and the land improvement is P247,361.40.

Q:

And this is the first estimate, am I correct?

A:

Yes, sir.

Q:

When was this made?

A:

That was October 15.

Q:

Then there was a second estimate?

A:

The second estimate is the final adjusted cost submitted to MC Engineering by Gerent Builders. The total for building and land improvement is P2,297,590.00.”[44] (Underscoring supplied)

If indeed the price increase in the main contract were based on the lower second estimate, then the actual price adjustment would have been downward and not upward. The fact that the main contract price went up from the original P2,250,000.00 to P3,104,851.51 shows that the price increase was not made on the basis of the second estimate.

There was no itemized listing of material and labor costs.

Moreover, the record is bereft of proof of an itemized listing of the costs of materials and labor to be used upon which respondent Gerent could have based its second estimate. This negates further respondent Gerent's claim that the price increase was based on its second estimate.

The inevitable conclusion is that the price increase in the civil works portion of the main contract was based on other factors and not on the alleged second estimate submitted by respondent Gerent.

Third Issue: Award of actual, moral and exemplary damages.

We come to the issue of whether or not petitioner is entitled to its counterclaim for actual, moral and exemplary damages due to the wrongful issuance of the writ of attachment. The Court of Appeals held that:

“xxx. In the instant suit, appellee failed to establish bad faith and malice against plaintiff-appellant when it sought to attach the former's properties. The lower court itself in its decision did not make any express pronouncement as to the existence of malice and bad faith in the procurement of the writ of attachment. Instead the trial court concluded that ‘as a result of such attachment, the defendant's business operation and credit standing have been prejudiced and damaged’ and ‘the defendant is entitled to recover moral and exemplary damages by reason of the irregular issuance of the writ of attachment.’ Such conclusions do not immediately warrant the award of moral damages. It is true that the attachment was wrongful. But in the absence of proof of bad faith or malice, plaintiff-appellant's application cannot be said to be harassing or oppressing but merely an act done to assert and protect a legal right. (Emphasis supplied)

The grant of exemplary damages is likewise improper. Since no moral damages is due to appellee and it appearing that no actual damages was awarded by the lower court, the grant of exemplary damages has no leg on which to stand (Art. 2234, Civil Code).

If at all, the wrongful issuance of the writ of attachment, as ruled out by this Court, merely resulted in actual damages to appellee. But such is not automatically awarded for it is subject to proof. Appellee's claim that it lost major contracts after a credit investigation revealed that its accounts were garnished is a bare allegation not merely unsupported by solid evidence but is also speculative. The alleged \$35,000.00 remittance refused by the Hongkong and Shanghai Bank does not inspire belief for failure of appellee to produce documentary proof to buttress its claim.”[45]

We agree with the Court of Appeals that the trial court erred in awarding moral and exemplary damages to petitioner. The mere fact that a complaint is dismissed for lack of legal basis will not justify an award of moral damages to the prevailing party.[46] Even the dismissal of a “clearly unfounded civil action or proceeding” will not entitle the winning party to moral damages.[47] For moral damages to be awarded, the case must fall within the instances enumerated in Article 2219, or under Article 2220, of the Civil Code.[48] Moreover, in the absence of fraud, malice, wanton recklessness or oppressiveness, exemplary damages cannot be awarded.[49]

Fourth and Fifth Issues : Award of Attorney's Fees

The last matter to be determined is the reasonableness of the attorney's fees awarded to both parties. The Court of Appeals held that:

“xxx, the award of attorney's fees must vary. Considering the wrongful attachment made against appellee's accounts, it is understandable that it incurred attorney's fees in procuring the discharge of the attachment for which reason the amount of P5,000.00 may reasonably be awarded. However, inasmuch as plaintiff-appellant was constrained to file this suit to protect its legal interest, and pursuant to the terms of the sub-contract, appellee is adjudged to pay appellant 25% of P632,590.13, the amount involved in this suit.”[50]

The award must be modified. The Court of Appeals was partly correct in holding that the award of attorney's fees to petitioner is justified considering that petitioner was constrained to engage the services of counsel at an agreed

attorney's fees. To secure the lifting of the writ of attachment, petitioner's counsel, Atty. Mario Aguinaldo testified that he was paid P1,250.00 on January 1985, P10,000.00 on April 10, 1985 and another P10,000.00 on June 30, 1985 for his legal services, totaling P21,500.00.[51] Accordingly, the award of P5,000.00 is hereby increased to P21,250.00. We deem it just and equitable that attorney's fees be awarded when a party is compelled to incur expenses to lift a wrongfully issued writ of attachment.[52]

WHEREFORE, the petition is GRANTED and the assailed Decision of the Court of Appeals is SET ASIDE. The decision of the trial court is AFFIRMED WITH MODIFICATION. The complaint against petitioner is dismissed with prejudice. Respondents Gerent Builders, Inc. and Stronghold Surety and Insurance Company are ordered to pay petitioner MC Engineering, Inc., jointly and severally, the sum of P21,250.00 as attorney's fees. Costs against respondents.

SO ORDERED.

Melo, (Chairman), Panganiban, and Sandoval- Gutierrez, JJ., concur.
Vitug, J., on official leave.

[1] Penned by Justice Celso L. Magsino and concurred in by Associate Justices Artemon D. Luna and Jainal D. Rasul, Rollo, pp. 6-18.

[2] Ibid, p. 19.

[3] Penned by Judge Bernardo Abesamis, Records in Civil Case No. Q-44392, pp. 355-361.

[*] This should read P5,250,000.00

[**] This should read P2,250,000.00.

[*] This should read P139,720.30.

[4] Supra, see note 1.

[5] Supra, see note 3, p. 334, Exhibit "1" for respondent Surety.

[6] Docketed as CA-G.R. SP. No. 67001 and entitled "MC Engineering, Inc. vs. Hon. Jose P. Castro, et. al."

[7] Fifth Division composed of Justices Antonio M. Martinez, Jorge R. Coquia and Bienvenido C. Ejercito.

[8] Supra, see note 3, pp. 213-221.

[9] Supra, see note 3.

[10] Ibid, pp. 361 and 375.

[11] Supra, see note 1.

[12] Supra, see note 2.

[13] Supra, see note 1, Decision, p.6.

[14] Ibid., p. 8.

[15] Ibid., p. 7; TSN, February 11, 1987, pp. 15-16 & 18-19.

[16] Ibid., p. 8.

[17] Ibid., p. 9.

[18] Ibid.

[19] Ibid., pp. 9-10.

[20] Supra, see note 3, p. 297, Exhibit “1”, Affidavit of Mr. Narciso Roque dated January 2, 1985.

[21] Article 1231 (1), Civil Code of the Philippines.

[22] 327 SCRA 678 (2000).

[23] Ibid.

[24] TSN, August 8, 1985, pp. 30-31.

[25] TSN, August 8, 1985, pp. 61-62.

[26] Supra, see note 3, p.305, Exhibit “8-f” (same as Exhibits “2” & “4-d”); TSN, August 8, 1985, p. 60.

[27] Ibid.

[28] Ibid., p. 304, Exhibits “8-b”, “8-c”, “8-d” & “8-e”.

[29] Supra, see note 20.

[30] Supra, see note 21.

[31] TSN, August 8, 1985, p. 62.

[*] This should read P3,104.851.51.

[32] Supra, see note 1, Decision p. 11.

[33] Supra, see note 3, Exhibit “C”.

[34] Ibid., Exhibit “B”.

[35] Supra, see note 1, p. 6.

[36] TSN, August 8, 1995, pp. 9 & 14; August 16, 1985, pp. 19-20.

[37] Dela Rama vs. Ledesma, 143 SCRA 1 (1986).

[38] Ibid.

[39] Rizal Commercial Banking vs. CA, 178 SCRA 739 (1989).

[40] Jose C. Vitug, Compendium of Civil Law and Jurisprudence, Revised Ed. 1993, p.18.

[41] Supra, see note 32.

[42] Supra, see note 3, Exhibit “D”.

[43] TSN, August 8, 1985, p. 47.

[44] Ibid.

[45] Supra, see note 1, Decision, pp. 10-11.

[46] Barreto vs. Arevalo, et al, 99 Phil. 771 (1956).

[47] Malonzo vs. Galang, 109 Phil. 16 (1960)

[48] Caraiga vs. Laguna Tayabas Bus Company, 110 Phil. 346 (1960).

[49] Article 2232, Civil Code of the Philippines.

[50] Supra, see note 1, Decision, p. 11.

[51] Supra, see note 3, pp.319-320, Exhibits “14”, “15” & “16”; TSN, November 3, 1988, pp. 4-5.

[52] Article 2208 (11), Civil Code of the Philippines; Lazatin vs. Twaño, 2 SCRA 842 (1961).

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