

EK LEE STEEL WORKS CORPORATION, PETITIONER, VS. MANILA CASTOR OIL CORPORATION, ROMY LIM, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 119033. July 09, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is a petition for review[1] of the Decision[2] dated 7 February 1995 of the Court of Appeals in CA-G.R. CV No. 34743. The Court of Appeals reversed the decision[3] of the Regional Trial Court, Branch 123, Kalookan City in a collection suit filed by Ek Lee Steel Works Corporation against Manila Castor Oil Corporation and Romy Lim.

The Antecedents

Ek Lee Steel Works Corporation (petitioner) is engaged in the construction business while Manila Castor Oil Corporation (respondent) claims to be a pioneer in the castor oil industry with Romy Lim (Lim) as its President.

In November 1987, respondent contracted petitioner for the construction of respondent's castor oil plant and office complex in Sasa, Davao City. Petitioner agreed to undertake the construction of the following structures with their respective costs:

Project Price

- I. Office Building (Building I) and Boiler Room P2,000,000
- II. Concrete Fence 10- feet-high on three sides of the factory site P283,662[4]
- III. 20-meter x 52-meter Concrete Pavement P318,800
- IV. 90,000-gallon Steel Oil Tank with Stand P472,500
- V. 40- feet-high 10,000-gallon Water Tank P103,556.60
- VI. Steel Oil Tank Foundation P175,650
- VII. 40-ton Oil Tank P88,837

Under the seven letter-agreements, respondent would make various stipulated down payments upon approval of petitioner's proposals. The remaining balance of the contract prices was payable to petitioner through progress billings.

In April 1988, petitioner alleged that respondent verbally agreed to have another building (Building II-Warehouse) constructed on the project site worth P349,249.25. Respondent denied the existence of this contract because it never approved such contract. Therefore, petitioner discontinued its construction of Building

II-Warehouse after finishing its foundation and two side walls.

On 16 May 1988, petitioner submitted a Statement of Account to respondent showing respondent's accumulated payables totaling P764,466. [5] Respondent paid P500,000 as shown in a letter of even date. In the same letter, respondent promised to pay certain amounts thereafter upon the completion of specific portions of the project. The full text of the letter dated 16 May 1988[6] reads:

May 16, 1988

MR. DANNY ANG

General Manager

Ek Lee Steel Works Corp.

#171 5[th] St., 8[th] Avenue

Caloocan City, M.M.

SUBJECT: FIFTH PARTIAL PAYMENT OF P500,000.00

Dear Danny,

This is to confirm that upon payment of the subject above, the fifth (5) partial payment which represent 70.5% of the total project cost of 3.4 Million, you will have to accomplished [sic] all the contracted work by June 15, 1988, except the office building. Thereafter, we will pay you the 6 [th] partial payment with the amount of P200,000.00. And upon the completion of the office building we will then pay you the amount of P460,000.00 which will represent 90% of the contracted work. As per the terms of our contract we will keep the P340,000.00 which represent the 10% retention.

Yours truly,

R.T. LIM

President

Conforme:

Mr. Danny Ang

Date: signed

On 5 July 1988, respondent paid petitioner P70,000.

Sometime thereafter, petitioner allegedly demanded payment of respondent's remaining balance, but to no avail. Hence, petitioner stopped its construction in the project site. Thereafter, petitioner requested the Office of the City Engineer of Davao City to conduct an ocular inspection of the project site to determine the percentage of its finished work. Engineer Demetrio C. Alindada of the Davao Engineering Office reported that most of the scope of the work items were 100% completed.

On 4 November 1988, petitioner filed a collection suit against respondent and Lim, with an application for a writ of preliminary attachment. The complaint prayed, among others, that respondent and Lim be held jointly and severally liable for the amount of P1,623,013.81 with interest.

In their answer filed on 23 December 1988, respondents jointly alleged, as an affirmative defense, that as of 16 May 1988, petitioner was already in delay. They claimed that petitioner abandoned the project on 16 July 1988. Respondents further alleged that certain portions of the construction work did not conform to the specifications agreed upon by the parties.

Then, on 8 May 1990, respondents filed a Supplemental Answer, alleging that sometime in July 1989, the

90,000-gallon capacity oil tank tilted towards the sea resulting in the stoppage of respondent's operations. Consequently, respondents were constrained to hire a contractor to remedy the damage caused by the poor and substandard installation of the oil tank. Respondents prayed for the payment of surveyor's fee, contractor's fee, operating expenses, and unrealized income during the shut-down period.

During the trial, respondents presented as evidence a Technical Verification Report submitted by Engineer Raul D. Moralizon to prove that the project was incomplete and had no utility value at the time petitioner abandoned the project.

The Ruling of the Trial Court

The trial court ruled in favor of petitioner. The trial court held that petitioner was justified in abandoning its construction of the project. As of 5 July 1988, when respondent paid P70,000, petitioner's billings reached P3,895,872.85, while payments totaled only P2,505,534, or short by P1,390,338.85, exclusive of other charges. Considering respondent's non-payment of this remaining balance, petitioner was understandably unwilling to proceed with the construction of the project. Respondent's non-payment was a clear violation of the stipulated progress billings.

The trial court likewise noted petitioner's request for an inspection from the Engineering Office of Davao City prior to the issuance of an occupancy permit. The trial court declared that "no contractor who has unreasonably abandoned a job ever bothered itself making such a request; an abandoning contractor just packs up and goes." In addition, the trial court found that respondent never reported the supposed "abandonment" to the Engineering Office of Davao City. Neither did respondent send a notice or letter demanding the completion of the project. Had there been abandonment, respondent would have filed a suit against petitioner.

On the "modifying" agreement dated 16 May 1988, the trial court found the parties' diametrically-opposed versions equally true. Respondent claimed that it gave petitioner an extension of the deadline until 15 June 1988. On the other hand, petitioner insisted that it gave respondent an equivalent extension to raise enough funds to meet the accumulated bills. However, the trial court held that this particular agreement is not crucial in this case.

The trial court also gave the Report of Engineer Demetrio C. Alindada of the Davao Engineering Office (Alindada Report) a higher probative value than the Technical Verification Report submitted by respondent's hired Civil Engineer, Raul D. Moralizon (Moralizon Report). The trial court found the Moralizon Report self-serving. Based on the Alindada Report, most of the items contracted for construction were 100% completed. Hence, the trial court applied Article 1234 of the Civil Code which states that "[i]f the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less the damages suffered by the obligee."

The trial court disposed of the collection case, as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter, jointly and severally, as follows:

- To pay the plaintiff the amount of P1,426,176.45 with legal interest to be computed from the date of the filing of the complaint until fully paid;
- To pay the plaintiff the amount of P154,883.33 representing actual damages in the form of interest payment for loans;
- To pay the amount of P100,000.00 as and for attorney's fees; and
- Costs of the suit.

Defendants' counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals reversed the decision of the trial court. The appellate court ruled that the 16 May 1988 letter novated all the earlier agreements between the parties. It held that the letter specified the scope of the remaining construction work, the amounts payable by respondent, and the schedules for the completion of the remaining work and for the corresponding payments.

The Court of Appeals stated that petitioner was not entitled to further payments from respondent because petitioner failed to comply with its obligation of finishing all the contracted work, except the office building, on 15 June 1988 as clearly stipulated in the 16 May 1988 letter.

The Court of Appeals found that the petitioner's failure to complete the project rendered the same useless for the object which the parties had intended it to be, specifically, an office, plant, and warehouse complex.

The Court of Appeals disagreed with the trial court's reliance on the Alindada Report. The appellate court stated that the Alindada Report should rather have indicated the scope of work items enumerated in the parties' seven letters-contracts and the percentage of work accomplished in each of these items, instead of enumerating merely the scope of work items which Alindada found completed. The Alindada Report was therefore not a reliable evidence in determining the percentage of accomplishment in the project.

The Court of Appeals went on to say that even assuming that Article 1234 of the Civil Code applies to this case, the trial court should have correspondingly decreased the amount to be recovered by petitioner by the amount of damages suffered by respondent, as stated in the same provision.

However, the Court of Appeals faulted respondent for the trial court's failure to correspondingly reduce the amount recoverable by petitioner. There was no showing that respondent demanded that petitioner should finish the project; otherwise, respondent would hire another contractor to complete it. Respondent did not report petitioner's abandonment of the project to the Office of the Building Official of Davao City. Respondent simply hired another contractor to complete the unfinished job left by petitioner. In addition, the building permits obtained for the supposed continuation of the works indicated that they were for "new construction" instead of "addition," "repair," "renovation," or "others."

The Court of Appeals ordered petitioner to reimburse P70,000 as overpayment by respondent.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, and for all the foregoing considerations, the Decision appealed from is hereby REVERSED and SET ASIDE, and another one entered:

- Dismissing the complaint;
- Ordering the plaintiff: (a) To reimburse the defendants the amount of P70,000.00;
- (b) To pay defendant Manila Castor Oil Corporation the sum of P50,000.00 as damages for besmirched reputation;
- (c) To pay defendant Romy Lim the amount of P50,000.00 for moral damages;
- (d) To pay defendants their attorney's fees in the amount of P10,000.00.

With costs in this instance against the plaintiff-appellee.

SO ORDERED.[8]

Hence, this petition.

The Issues

The issues in this case are:

- Whether the 16 May 1988 letter novated the previous agreements of the parties;
- Whether petitioner can validly collect from respondent the remaining balance of the total contract price;
- Whether respondent is entitled to P70,000 allegedly as overpayment; and
- Whether Lim is solidarily liable to petitioner for the alleged remaining balance.

The Ruling of the Court

The petition has no merit.

The resolution of the issues in this case requires a re-examination of the evidence presented by the contending parties during the trial. Generally, the Court does not resolve questions of facts. However, this rule admits of several exceptions. The instant case falls under one of the recognized exceptions, which is, when the findings of facts of the trial court and the Court of Appeals are conflicting.[9] Therefore, a review of the facts and the pieces of evidence is proper.

We shall discuss jointly the first two issues as they are interrelated.

Respondent contends that the 16 May 1988 letter novated the parties' previous agreements, thereby scrapping the system of progress billings. Respondent posits that its obligation to pay petitioner the remaining balance of the contract price arises only upon the completion of the entire project, except the office building, on 15 June 1988, pursuant to the terms of the 16 May 1988 letter. Since petitioner failed to finish this portion of the project on 15 June 1988, its claim is not yet due and demandable.

The Court finds no novation of the previous agreements between the parties considering that the 16 May 1988 letter did not expressly extinguish the parties' obligations under their previous contracts. On the contrary, it expressly recognized the parties' reciprocal obligations.[10]

It must be pointed out that as of 16 May 1988, respondent's accumulated payables reached P764,466, but only P500,000 was paid. Respondent was therefore not up to date with its payments. Petitioner, on the other hand, was behind schedule in its construction work because the project should be fully operational by April 1988.[11]

To remedy the situation, the 16 May 1988 letter fixed a period for the completion of the other structures of the project, except the office building.[12] Petitioner was given a month to finish this portion of the project and the records show that it was aware of this deadline. Danny Ang testified on this matter.

ATTY. GUNO

Can you stipulate as manifested by counsel then the new deadline for all the project on [sic] June 15 as indicated in the contract.

ATTY. SALVADOR

It is stated here in Exhibit 1, the complaint [sic] here has to finish not later June 15 of 1988.

ATTY. GUNO

We agree on that.

Q: And you were also informed by the defendants that they had to be operated [sic] by April 1988?

A: Yes, sir.[13]

At the same time, the 16 May 1988 letter specified the amounts still payable to petitioner conditioned upon the accomplishment of certain portions of the project. The amount of P200,000 was payable on 15 June 1988 if petitioner finished the project, excluding the office building; and P460,000 was payable after the completion of the office building. Thus, while the 16 May 1988 letter did not extinguish the parties' obligations under their previous contracts, it modified the manner of payment from the system of progress billings to a specific schedule of payments.

The question now is whether petitioner complied with its obligation of finishing the project, except the office building, on 15 June 1988 to be entitled to P200,000.

Contrary to petitioner's claim of project completion, there is sufficient evidence on record showing petitioner's failure to finish the project on 15 June 1988. Petitioner admitted in its complaint that Contracts I and III "failed to reach full accomplishment": Contract I - 97% for Building I, 95% for Office Building, and 99% for Boiler Room, and Contract III - 90%.[14]

The photographs[15] presented by respondent show various areas of the construction which were not completed. Danny Ang, petitioner's General Manager, confirmed on the witness stand that the images in the photographs showed the incomplete status of the project, thus:

Q:

Now Mr. Witness please tell us the date when you left the job site or you pulled out of the job site?

A: It could be in July 1988, sir.

Q:

And during the direct testimony last July 17 you testified that the pictures attached in the answer of the defendants were the pictures of unfinished portion of the project, is that correct?

A: Yes, sir.

Q: And these are the pictures after you had pulled out of the job site?

A: Yes, sir.

Q: These are the pictures on July 1988 when you pulled out of the construction?

A: I don't know when those pictures...

x x x

Q: Please tell us if these are the pictures?

A: This is the picture of the project which we were not able to finish, sir.[16] (Emphasis supplied)

Further, the Moralizon Report found deficiencies in three construction contracts and concluded that petitioner abandoned the project. Significantly, petitioner did not rebut the Moralizon Report.

Petitioner relied on the Alindada Report to support its claim of completion. The Alindada Report concluded that almost all the work items are 100% completed and that only two pieces of steel sliding doors in Building I were not yet installed.[17] However, petitioner's admissions and respondent's evidences clearly contradict the Alindada Report. This contradiction effectively destroyed the disputable presumption of the regular issuance of the Alindada Report.[18]

The fact that the building permits obtained by respondent after petitioner stopped its construction were for "new construction" instead of "addition," "repair," "renovation," or "others" does not conclusively prove that petitioner finished the project.

Considering the foregoing, there is no doubt that petitioner failed to comply with its undertaking to complete the project, except the office building, on 15 June 1988. Consequently, respondent's obligation to pay the P200,000 did not arise. Respondent could not be considered in delay when it failed to pay petitioner at that time. According to the last paragraph of Article 1169 of the Civil Code, "[i]n reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

Furthermore, the loss of the probative value of the Alindada Report due to petitioner's admissions and respondent's unrefuted evidences, as discussed above, renders petitioner's claim for the remaining balance of the contract price unsubstantiated. Without any corroborating evidence, petitioner's allegations are plainly without weight. The plaintiff must rely on the strength of its own evidence and not upon the weakness of that of the defendants.[19] Hence, for its failure to discharge the burden of proof[20] required in this case,[21] petitioner's complaint must be dismissed.

As regards the reimbursement of P70,000, suffice it to state that this figure was never specifically pleaded as an overpayment in the answer filed by respondent before the trial court. Therefore, wanting any basis, the Court of Appeals erred in ordering the return of this particular amount to respondent.

The foregoing discussion renders unnecessary the resolution of the last issue raised by petitioner.

WHEREFORE, we DENY the petition. We MODIFY the assailed Decision of the Court of Appeals by deleting the reimbursement of P70,000 in favor of respondent Manila Castor Oil Corporation. Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and Leonardo-De Castro,. JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 41-54. Penned by Associate Justice Cezar D. Francisco with Associate Justices Delilah Vidallon Magtolis and Celia Lipana- Reyes, concurring.

[3] Id. at 55-67. Penned by Judge Mauro T. Allarde.

[4] A handwritten figure was superimposed on the letter-contract signifying that the contract price is only P283,662 instead of P387,280. Based on Section 15, Rule 130 of the Rules of Court, when an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

[5] Exhibit "K," Folder of Exhibits, Vol. I, p. 32.

[6] Exhibit "J," id. at 31.

[7] Rollo, pp. 66-67.

[8] Id. at 53.

[9] Ong v. Bogñalbal, G.R. No. 149140, 12 September 2006, 501 SCRA 490; Yao v. Matela, G.R. No. 167767, 29 August 2006, 500 SCRA 136.

[10] See Zapanta v. De Rotaeché, 21 Phil. 154, 159 (1912).

[11] See TSN, 6 October 1989, p. 8.

[12] Rollo, p. 222.

[13] TSN, 6 October 1989, p. 8.

[14] Records, pp. 7-8.

[15] Exhibits "1," "1-A," "4" to "4-V," Folder of Exhibits, Vol. II, pp. 48, 53-70.

[16] TSN, 6 October 1989, pp. 31-32.

[17] Exhibit "I," Folder of Exhibits, Vol. I, p. 29.

[18] See Yao v. Matela, *supra* note 9.

[19] See Quinto v. Andres, G.R. No. 155791, 16 March 2005, 453 SCRA 511, 523.

[20] Section 1 of Rule 131 defines burden of proof as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[21] In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. Preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. (See Condes v. Court of Appeals, G.R. No. 161304, 27 July 2007, 528 SCRA 339, 352.)

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