

ARWOOD INDUSTRIES, INC., PETITIONER, VS. D.M. CONSUNJI, INC., RESPONDENT.

G.R. No. 142277. December 11, 2002

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CORONA, J. :

This is a petition for review of the decision[1] dated November 12, 1999 of the Court of Appeals, which affirmed, with modification, the decision[2] dated April 1, 1997 of the Regional Trial Court, Branch 153, Pasig City in Civil Case No. 63489.

The core issue of this petition is the propriety of the imposition of two percent (2%) interest on the amount adjudged by the trial court and later affirmed by the Court of Appeals in favor of respondent D.M. Consunji, Inc. and against petitioner Arwood Industries, Inc.

The factual backdrop of this case is as follows:

Petitioner and respondent, as owner and contractor, respectively, entered into a Civil, Structural and Architectural Works Agreement[3] (Agreement) dated February 6, 1989 for the construction of petitioner's Westwood Condominium at No. 23 Eisenhower St., Greenhills, San Juan, Metro Manila. The contract price for the condominium project aggregated P20,800,000.00.

Despite the completion of the condominium project, the amount of P962,434.78 remained unpaid by petitioner. Repeated demands by respondent for petitioner to pay went unheeded.

Thus, on August 13, 1993, respondent, as plaintiff in Civil Case No. 63489 filed its complaint[4] for the recovery of the balance of the contract price and for damages against petitioner.

Respondent specifically prayed for the payment of the (a) amount of P962,434.78 with interest of 2% per month or a fraction thereof, from November 1990 up to the time of payment; (b) the amount of P250,000 as attorney's fees and litigation expenses; (c) amount of P150,000 as exemplary damages and (d) costs of suit.[5]

After trial, the court below resolved to grant the relief prayed for by respondent, thus:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant ordering the latter to pay the former the following:

“(1) the sum of P962,434.78 representing the balance of contract price with interest at 2% per month from November 1990 up to the time of payment;

“(2) the amount of P150,000.00 as attorney's fees; and

“(3) Cost(s) of suit.

SO ORDERED.”[6]

Petitioner appealed to the Court of Appeals, particularly opposing the finding of the trial court with regard to the imposition of the monetary interest of 2% per month on the adjudicated amount.

The Court of Appeals upheld the trial court despite dauntless demurring by petitioner. Respondent court found basis in Article 6.03 of the Agreement concerning the imposition of the 2% interest, which reads:

“Payment shall be made by the OWNER to the CONTRACTOR within fifteen (15) calendar days after receipt of the Construction Manager’s Certificate. In the event OWNER delays the payments (i.e. beyond the stipulated time) to the CONTRACTOR of monthly progress billings, the CONTRACTOR shall have the option to either suspend the works on the Project until such payments have been remitted by the OWNER or continue the work but the OWNER shall be required to pay the interest at a rate of two (2%) percent per month or the fraction thereof in days of the amount due for payment by the OWNER. The same interest shall be added to the billing of the following month. Furthermore, the progress payments shall be reduced by a portion of the downpayment made by the OWNER corresponding to the value of the work completed.”[7]

Respondent court, however, modified the decision of the trial court by deleting the award of attorney’s fees for the following reasons:

“Finally, defendant-appellant argues that the court a quo erred in awarding attorney’s fees because the same was not mentioned in the body of the decision.

“On this ultimate point, We agree.

“In the case of Del Rosario vs. Court of Appeals (267 SCRA 158, 175), the Supreme Court held that:

‘Finally, like the adjudication of actual or compensatory damages, the award of attorney’s fees must be deleted. The matter was dealt with only in the dispositive portion of the Trial Court’s decision. Since the judgment does not say why attorney’s fees were awarded, there is no basis for such award, which should consequently be removed. So did this Court rule, for instance, in Scott Consultants and Resource Development Corp., Inc. et al. (242 SCRA 393, 406):

‘It is settled that the award of attorney’s fees is the exception rather than the rule and counsel’s fees are not to be awarded every time a party wins. The power of the court to award attorney’s fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney’s fees.”[8]

Petitioner moved to reconsider, unsuccessfully.

Hence, this petition for review. The only issue is the correctness of imposing a 2% per month interest on the award of P962,434.78.

Petitioner argues that the trial court’s decision has no basis in imposing the 2% interest per month. Although the Agreement contained a provision with regard to the interest, this provision was not mentioned by the trial court in awarding interest in the dispositive portion. This provision of the Agreement does not apply to the claim of respondent but refers to the “monthly progress billings.” The amount of P962,434.78 is not a “monthly progress billing” and should not therefore be subject to interest.

Furthermore, the pre-trial order of the trial court dated February 4, 1994 did not include interest as one of the issues to be resolved and determined during the trial; the parties agreed that the main issue was –

“x x x whether or not defendant is liable to pay the balance of P964,434.78 as stated in the Complaint.”[9]

Thus, the trial court erroneously disposed of the issue on payment of interest.

Petitioner points to the error of the Court of Appeals in basing its decision (on the issue of interest) on Article 6.03 of the Agreement. It reasons that while there was a formal offer of the Agreement and its sub-markings, the provision on interest was neither sub-marked nor formally offered in evidence.[10] Hence, the imposition of interest is wanting in basis as it is not even explicitly alleged in the complaint before the trial court.

Petitioner's stance hardly deserves this Court's attention.

The Agreement or the contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, "when the terms of an agreement have been reduced to writing, it is 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." [11]

Consequently, upon the fulfillment by respondent of its obligation to complete the construction project, petitioner had the correlative duty to pay for respondent's services. However, petitioner refused to pay the balance of the contract price. From the moment respondent completed the construction of the condominium project and petitioner refused to pay in full, there was delay on the part of petitioner. This delay was never disputed.

Delay in the performance of an obligation is looked upon with disfavor because, when a party to a contract incurs delay, the other party who performs his part of the contract suffers damages thereby. *Dilaciones in lege sunt idiosae*. [12] Obviously, respondent suffered damages brought about by the failure of petitioner to comply with its obligation on time. And, sans elaboration of the matter at hand, damages take the form of interest. Accordingly, the appropriate measure of damages in this case is the payment of interest at the rate agreed upon, which is 2% interest for every month of delay.

It must be noted that the Agreement provided the contractor, respondent in this case, two options in case of delay in monthly payments, to wit: a) suspend work on the project until payment is remitted by the owner or b) continue the work but the owner shall be required to pay interest at a rate of two percent (2%) per month or a fraction thereof. Evidently, respondent chose the latter option, as the condominium project was in fact already completed. The payment of the 2% monthly interest, therefore, cannot be jettisoned overboard.

Since the Agreement stands as the law between the parties, [13] this Court cannot ignore the existence of such provision providing for a penalty for every month's delay. *Facta legem facunt inter partes*. [14] Neither can petitioner impugn the Agreement to which it willingly gave its consent. From the moment petitioner gave its consent, it was bound not only to fulfill what was expressly stipulated in the Agreement but also all the consequences which, according to their nature, may be in keeping with good faith, usage and law. [15] Petitioner's attempt to mitigate its liability to respondent should thus fail.

As a last-ditch effort to evade liability, petitioner argues that the amount of P962,434.78 claimed by respondent and later awarded by the lower courts does not refer to "monthly progress billings," the delayed payment of which would earn interest at 2% per month.

We disagree.

Petitioner appears confused by a semantics problem. "Monthly progress billings" certainly form part of the contract price. If the amount claimed by respondent is not the "monthly progress billings" provided in the contract, what then does such amount represent? Petitioner has not in point of fact convincingly supplied an answer to this query. Neither has petitioner shown any effort to clarify the meaning of "monthly progress

billings” to support its position. This leaves us no choice but to agree with respondent that the phrase “monthly progress billings” refers to a portion of the contract price payable by the owner (petitioner) of the project to the contractor (respondent) based on the percentage of completion of the project or on work accomplished at a particular stage. It refers to that portion of the contract price still to be paid as work progresses, after the downpayment is made.”[16]

This definition is, indeed, not without basis. Articles 6.02 and 6.03 of the Agreement, which respectively provides that the “(b)alance shall be paid in monthly progress payments based on actual value of the work accomplished”[17] and that “the progress payments shall be reduced by a portion of the downpayment made by the OWNER corresponding to the value of the work completed” give sense to respondent’s interpretation of “monthly progress billings.”

Even supposing that petitioner has a different definition of “monthly progress billings,” it must nonetheless be interpreted in favor of herein respondent because Article 6.03 of the Agreement, which gives respondent the options in case of petitioner’s default in payment, was obviously stipulated for respondent’s benefit.[18]

Thus, respondent correctly contends that the amount claimed, which is part of the contract price, would not have accumulated had petitioner been diligent in the monthly payment of the work accomplished by respondent.

Respondent’s claim, it must be noted, includes “payment of the sum of P962,474.78, exclusive of damages.” The Complaint of plaintiff-respondent prayed for the amount of P962,474.78 “exclusive of damages.” Petitioner had all the opportunity to squarely meet the issue on interest at the pre-trial as it was deemed included in the phrase “exclusive of damages.” The appeal to the respondent court on the matter of interest was, therefore, a belated effort to object to the contents of the Agreement. Petitioner cannot resort to this sneaky scheme. “Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.”[19] And, since there was no timely objection to the contents of the Agreement, the Agreement and its contents form part of the evidence of the case. All the parties to the case, therefore, are considered bound by any favorable or unfavorable effects resulting from the evidence.[20]

Needless to state, it is not indispensable that Article 6.03 of the Agreement be sub-marked and formally offered in evidence during the pre-trial before said provision may take effect. For one, the provision on the payment of monthly interest is included in the Agreement, the existence and validity of which, to reiterate, were not objected to by petitioner. For another, the payment of interest as penalty is a necessary consequence of petitioner’s failure to exercise diligence in the discharge of its obligation under the contract.

Moreover, even assuming that there was a default of stipulation or agreement on interest, respondent may still recover on the basis of the general provision of law, which is Article 2209 of the Civil Code, thus:

“Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.”

Article 2209 of the Civil Code, as abovementioned, specifies the appropriate measure of damages where the obligation breached consisted of the payment of sum of money. Article 2209 was, in extent, explicated by the Court in *State Investment House, Inc. vs. Court of Appeals*, [21] which provides:

“The appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum of money, is the payment of penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest, then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been agreed upon, then payment of legal interest or six

percent (6%) per annum.”[22]

Hence, even in the absence of a stipulation on interest, under Article 2209 of the Civil Code, respondent would still be entitled to recover the balance of the contract price with interest. Respondent court, therefore, correctly interpreted the terms of the agreement which provides that “the OWNER shall be required to pay the interest at a rate of two percent (2%) per month or the fraction thereof in days of the amount due for payment by the OWNER.”

We, therefore, find no basis to alter the findings of the Court of Appeals affirming the decision of the trial court.

WHEREFORE, the petition is hereby DENIED.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez, and Morales, JJ., concur.
Panganiban, J., on official business.

[1] Penned by Associate Justice Bennie A. Adeguin-Dela Cruz and concurred in by Associate Justices Fermin A. Martin, Jr. and Elvi John S. Asuncion.

[2] Annex "C."

[3] Annex "A."

[4] Annex "1."

[5] Ibid.

[6] Annex "C."

[7] Supra note 3; italics type given.

[8] Rollo, p. 32.

[9] Pre-Trial Order dated February 4, 1994 in Civil Case No. 63489; Annex “L.”

[10] Petitioner's Reply, rollo, p. 230.

[11] Section 9, Rule 130, Rules of Court.

[12] Delays in law are odious.

[13] Rizal Commercial Banking vs. Court of Appeals, 178 SCRA 739 [1989]; Escano vs. Court of Appeals, 100 SCRA 197 [1980]; Philippine American General Insurance vs. Mutuc, 61 SCRA 22 [1974]; Lazo vs. Republic Surety & Insurance Co., Inc, 31 SCRA 329 [1970].

[14] The stipulations have the force of law between the parties.

[15] Article 1315, Civil Code of the Philippines; Lapinig vs. Court of Appeals, 115 SCRA 213 [1982].

[16] Respondent's Comment; rollo, p. 157.

[17] Supra note 3.

[18] *Asturias Sugar Central, Inc. vs. The Pure Cane Molasses Co.*, 57 Phil. 519 [1932]; *Government vs. Derham Brothers*, 36 Phil. 960 [1917]; *Enriquez vs. Watson & Co.*, 22 Phil. 623 [1912].

[19] *People vs. Uy*, 327 SCRA 335 [2000].

[20] *Ibid.*

[21] 198 SCRA 390 [1991]; see also *Pacific Mills, Inc. v. Court of Appeals*, 206 SCRA 317 [1992]

[22] *Italic type given.*

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