DEL MONTE PHILIPPINES, INC., PETITIONER, VS. NAPOLEON N. ARAGONES, RESPONDENT.

G.R. NO. 153033. June 23, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

The decision in the present Petition for Review on Certiorari hinges on the nature of the contract denominated "Supply Agreement"[1] which was forged between Dynablock Enterprises, represented by its Manager herein respondent Napoleon N. Aragones (Aragones) and Mega-Engineering Services in joint venture with WAFF Construction System Corporation (MEGA-WAFF) — whether it was one of sale or for a piece of work.

On September 18, 1988, herein petitioner Del Monte Philippines Inc. (DMPI) entered into an "Agreement"[2] with MEGA-WAFF, represented by "Managing Principal" Edilberto Garcia (Garcia), whereby the latter undertook "the supply and installation of modular pavement" at DMPI's condiments warehouse at Cagayan de Oro City within 60 calendar days from signing of the agreement.

To source its supply of concrete blocks to be installed on the pavement of the DMPI warehouse, MEGA-WAFF, as CONTRACTOR represented by Garcia, entered into a "Supply Agreement" with Dynablock Enterprises, represented by herein respondent Aragones, as SUPPLIER, under the following terms:

> 1. ITEMS TO BE SUPPLIED
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> The SUPPLIER at its own expense shall provide the CONTRACTOR with labor and all materials, equipment, tools and supplies necessary and incident thereto, the required concrete blocks at the contractor's specified casting site, all in accordance with the terms and conditions of this agreement, as well as the requirements of the project specifications and provisions with respect to the fabrication of concrete blocks.
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> 2. PRICE
>
> The CONTRACTOR will pay the supplier in consideration for the full and total performance of the above undertaking, inclusive of all applicable taxes, the unit price of P7.00 per supplied and accepted piece. This price is based on the assumption that the cost per bag of premium cement is P54.00 and aggregate at P95.00 per cu. m. Any increase of the above raw materials shall be to the account of the contractor. All taxes shall be for the account of the contractor.
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> 3. PLANT/EQUIPMENT
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> 3.1 - The machines for the fabrication/casting of the concrete blocks, including all necessary equipment and accessories, shall be provided by the SUPPLIER. The machines and equipment shall be mobilized and made operational at the specified casting location/stockpiling yard designated and provided by the CONTRACTOR.
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> 3.2 - The SUPPLIER shall ensure that all plant facilities/equipment must, at all times, be accessible for inspection by the representatives of the CONTRACTOR.

3.3 - The SUPPLIER shall ensure that the plant/casting machines actual operating capacities shall not be lower than 75,000 pieces every month. If at any time within the life of this agreement the plant/casting machines are proven to be operating below the required minimum capacity as aforesaid, the SUPPLIER shall be obliged to take the necessary actions to upgrade the plant/casting machines and/or make the necessary rehabilitation to increase the capacity to the required level.

4. QUALITY OF MATERIALS

4.1 – The SUPPLIER guarantees that all materials supplied to the CONTRACTOR shall meet the approved specifications (Attached Annex "A") at 5,000 pci.
In this connection, the CONTRACTOR shall assign an inspector at the casting site to ensure that all items supplied shall conform with the approved standards.
4.2 – The CONTRACTOR may reject any finished product or materials which do not pass the approved standards.

4.3 – There shall be a system of sampling the output of the plant and/or each casting machine for testing in accordance with the quality standards specified. Result of such sampling tests shall be the basis for acceptance or rejection of the finished materials.

4.4 – Where the CONTRACTOR has provided materials to the SUPPLIER to be incorporated into the SUPPLIER's production, as in the case of cement and aggregates, the cost of such materials which becomes part of the rejected products due to faulty batching/mixing/curing shall be for the account of the SUPPLIER.

5. MATERIALS AND OTHER PROVISIONS SUPPLIED BY THE CONTRACTOR

5.1 - All the materials are for the account of the SUPPLIER. The CONTRACTOR shall, however, provide all the cement and aggregates requirement for the fabrication of the concrete blocks, in which the corresponding cost shall be deducted from the periodical proceeds due to the SUPPLIER.

5.2- The CONTRACTOR shall provide and make available to the SUPPLIER the following provisions/facilities free of charge:

a) Casting/Fabrication Area

b) Stockpile Area
c) Warehouse for Cement
d) An all-weather working shed for workers
e) Night Watchers

5.3 – The CONTRACTOR shall arrange for the installation of electrical and water facilities for the work in which the cost of electricity and water actually consumed shall be borne by the SUPPLIER.

5.4 – The SUPPLIER shall be responsible for all materials already turned over by the CONTRACTOR at the casting area. The responsibility, however, of the SUPPLIER on the finished products ceases upon loading of the same to the CONTRACTOR's truck on way to the project site.

6. OBLIGATIONS OF SUPPLIER

6.1 – To fabricate and provide the required block machines in such number adequate to cope up with time schedule.

6.2 – To provide concrete mixers: one (1) unit of two-bagger, and two (2) units of one-bagger.

6.3 – To provide drying racks, measuring boxes, wheel borrows and other necessary hand tools.

6.4 – To supervise and provide the required manpower for the operation and production of concrete blocks.

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6.5 – To undertake the following:

a) mixing and formulation of proper mix.
b) to consolidate, form and compress the blocks.
c) to unload the formed blocks into the drying racks.
d) after initial setting of blocks, to unload and arrange them to wooden pallets.
e) curing of blocks as per approved standards.

7. OTHER OBLIGATIONS OF CONTRACTOR

7.1 - To provide tarpaulin or canvas or plastic sheets to cover blocks during the seasoning stage.

7.2 - To provide forklift and wooden pallets.

8. EXCLUSIVITY OF PRODUCTION

8.1 - Effective upon the execution of this agreement, the SUPPLIER binds itself to devote the entire plant/casting machines and its accessories for the CONTRACTOR's exclusive use and full operation and production of the required concrete blocks for the intended project.

8.2 – The SUPPLIER or his agents or representatives shall not, directly or indirectly, enter into any contract, agreement, concessions or transactions of whatever nature or kind with the project owner or of its representative which will affect the rights, interest or participation of the CONTRACTOR in regard to the execution and accomplishment of the project.

8.3 – In case of violation of this exclusivity clause, utmost fidelity and good faith being of the essence, the CONTRACTOR shall have the right to demand reasonable amount of damages or terminate this agreement upon due notice.

9. CONDITIONS OF PAYMENT

9.1 – Upon mobilization of the casting machines, equipments accessories and making some operational at the casting area by the SUPPLIER, the CONTRACTOR shall advance to the supplier a downpayment or mobilization fund of TEN THOUSAND (P10,000.00) PESOS per machine. Said mobilization fee shall be deducted from the proceeds of the SUPPLIER at two (2) equal installments beginning at the first billing.

9.2 - The SUPPLIER shall present its billing every fifteen days based on the below indicated payment schedule:

a) Billing from 1st/day/month to 15th day payable after fifteen days from the date the billing is submitted.
b) Billing from the 16th day of the month to the 31st day of the month, payable after fifteen days from the date the billing is submitted.

10. EFFECTIVITY OF CONTRACT

This agreement shall be co-terminus with the terms of the contract for the project and/or upon completion of all requirements therefor; PROVIDED, However, that if for some reason or another the production of the concrete blocks is temporarily suspended, this agreement shall remain in force and effective for a period of fifteen (15) days from the date of the cessation of production. In case the said grace period expires without the production having resumed, the CONTRACTOR shall be obliged to pay reasonable compensation for the period of suspension counted from the expiration of the said grace period.

11. PERFORMANCE BOND

The SUPPLIER shall post a SURETY/PERFORMANCE BOND in such sums which may be deemed adequate to secure its faithful compliance of the terms and conditions of this agreement.

> 12. PENALTY CLAUSE
>
> In the event the SUPPLIER fails to meet the requirements demanded in this agreement or when the SUPPLIER is in delay in the performance of its obligation to the prejudice of the CONTRACTOR, the SUPPLIER shall answer for the corresponding damages equivalent to one-tenth (1/10) of the rated monthly production capacity. (Emphasis and underscoring supplied).[3]

Aragones thereupon started assembling the machines for the fabrication/casting of the concrete blocks which MEGA-WAFF specified to be hexagonal shaped. MEGA-WAFF, through Garcia, later directed Aragones to instead fabricate machines for S shaped blocks.

As stated in the "Agreement" between DMPI and MEGA-WAFF, the deadline for the installation of the pavement of the warehouse was November 18, 1988, but it was not met. As extended, the installation was finished on or about February 28, 1989, but MEGA-WAFF was, in accordance with its agreement with DMPI, penalized for the delay, albeit at a reduced amount.

Aragones, having in the meantime gotten wind of MEGA-WAFF & DMPI's "Agreement," more particularly the imposition of a penalty by DMPI for the delay in the completion of the installation of the warehouse pavement, appealed to DMPI, by letter of March 4, 1989,[4] for leniency in the imposition of the penalty which "would affect [him] also although [he] was not a direct party to the contract," he inviting attention to the "intricacy and enormity of the job involved."

Aragones later failed to collect from MEGA-WAFF the full payment of the concrete blocks. He thus sent DMPI a letter dated March 10, 1989,[5] received by the latter on March 13, 1989,[6] advising it of MEGA-WAFF's unpaid obligation and requesting it to earmark and withhold the amount of P188,652.65 "from [MEGA-WAFF's] billing" to be paid directly to him "[l]est Garcia collects and fails to pay [him]."

DMPI, in the meantime, verbally advised Aragones to secure a court order directing it to withhold payment of the amount due MEGA-WAFF for, in the absence of such court order, DMPI was under its agreement with MEGA-WAFF obliged to release full payment within 30 days from acceptance of the completed work.

It appears that Aragones reiterated his request to DMPI for direct payment to him, by letter of March 28, 1989.[7] This was followed by another letter dated April 6, 1989[8] which was received on April 8, 1989[9] by DMPI, copy of which it referred to Garcia, by letter of April 27, 1989,[10] for his comment.

By letter of May 3, 1989[11] addressed to DMPI, Garcia, commenting on Aragones' April 6, 1989 letter, stated:

x x x

> If there is somebody who have (sic) justifiable ground to complain, it is MEGA-WAFF against Atty. Aragones for all the miseries and embarrassment we had suffered due to the factors attributable to Atty. Aragones Dynablock Enterprises.
>
> For proper evaluation of things and to give both parties a fair chance, we enclosed (sic) pertinent papers for your perusal.
>
> As contractor and businessman, it is our firm policy not to take advantage of other people and definitely not to renegade (sic) from commitments/obligations.
>
> We are willing to pay Atty. Aragones but based on the actual accomplishment and amount only due to him as per reconciliation furnished to him. (attached)
> We sincerely hope that the facts we had presented will suffice, and please accept our apology for whatever inconvenience it has caused you and we pray that this matter of payments be settled soon for the general

> benefit of all concerned.
>
> x x x (Underscoring supplied).

It turned out that DMPI had, on or about April 6, 1989, released to MEGA-WAFF a check dated April 4, 1989 in the amount of P157,863.77 representing DMPI's balance of its obligation to MEGA-WAFF.

Aragones was thus prompted to file on May 25, 1989 a complaint[12] for sum of money (P188,652.65) with damages against Garcia and/or MEGA-WAFF and DMPI before the Regional Trial Court (RTC) of Lanao del Norte which was raffled to Branch 5 thereof.

Aragones impleaded DMPI on the strength of Articles 1729 and 1467 of the Civil Code, he contending that it was liable to him who put labor upon or furnished materials for a piece of work.

By his July 14, 1989 Answer,[13] Garcia, without disputing the amount being collected by Aragones, justified his "refusal to satisfy [Aragones'] demand" by claiming that Aragones defaulted in his obligation under the "Supply Agreement".

DMPI, by its Answer[14] of June 25, 1989, pleaded that Aragones had no cause of action against it as it had no privity of contract with him; that it had already paid MEGA-WAFF the full amount due it; and that it had not committed any actionable wrong against Aragones.

Aragones later filed an Amended Complaint,[15] with leave of court, "to cure certain formal defects in the original complaint as to the designation of parties . . ."

DMPI also later filed a Motion for Leave to File an Amended Answer with Cross-Claim against Garcia and WAFF President Francisco Castro[16] which the trial court granted. In the Amended Answer with Cross Claim,[17] DMPI alleged, inter alia, that "[i]n the event [Aragones] succeeds in obtaining a judgment [against] DMPI, that said judgment should be charged to and paid by the cross-defendants who have collected the full contract price of the Agreement wherein [Aragones] claims the rights of a subcontractor, plus consequential damages" (underscoring in the original).

The trial court, upon the following issues:

- Whether or not [Aragones] has still a collectible amount of P188,652.65 from defendants Garcia and Castro;

- Whether or not defendant DMPI may also be held accountable for this unpaid obligation of defendant Garcia/MEGA-WAFF;

- Whether or not the remaining balance of defendant DMPI account payable is P188,652.65 insisted by defendant Garcia/MEGA-WAFF or only P157,863.77 insisted by defendant DMPI;

- Whether or not the parties are entitled to damages pleaded;

- Whether or not there was delay in the performance of the respective obligations of either party or both;

- Assuming that defendant DMPI is liable to plaintiff, whether or not cross defendant Garcia/MEGA-WAFF shall be liable to DMPI for reimbursement.[18],

found for the plaintiff Aragones in light of the following considerations:

> Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:

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(1) Payments made by the owner of the contractor before they are due;

(2) Renunciation by the contractor of any amount due him from the owner.

This article is subject to the provisions of special laws (1597a)

(Article 1729, New Civil Code, [emphasis supplied]).

In interpreting the foregoing provision, the Supreme Court made the following pertinent pronouncement:

"Article 1729 is promulgated to protect the laborers and the materialmen from being taken advantage of by unscrupulous contractors and from possible connivance between owners and contractors." (Velasco vs. C.A. 95 Phils. (sic) (616-641).

"The legal issue that arises is whether or not GSIS is liable to the petitioners for the cost of the materials and labor furnished by them in construction of the 63 houses now owned by the GSIS and for the construction of which no payment has been made on the balance due to petitioners. Our considered view is and we so hold that even in equity alone, GSIS should pay the petitioners, without prejudice to its securing indemnity from Laigo Realty Corp." (Velaso vs. C.A., 95 Phils. (sic) 616-641 [emphasis and underscoring supplied]).

Moreover, anent this matter another decisional rule, says:

"Although there was no privity of contract between plaintiff and defendant Joven, Inc., there is sufficient evidence showing that he had really supplied stones and sands to said defendant and also removed dirt and soil from its construction site. And it is this main point which calls for resolution in the light of the provisions of Art. 1729 of the New Civil Code, to determine whether or not defendant corporation is liable for materials supplied and services rendered by the plaintiff. It is quite clear that the owner of the building, Joven Inc. is liable for materials and labor furnished to the contractor "up to the amount owing from the latter to the contractor" and to enforce such liability, the law allows the person furnishing labor or materials to bring his right of action directly against the owner." (Flores vs. Ruelo, CA 52 OG 850, [emphasis and underscoring supplied]).

Of course, while defendant DMPI is indeed directly liable to pay plaintiff the cost of the construction material (modular paving blocks) sought to be collected, this defendant has also a right of recourse against cross defendant Garcia/MEGA-WAFF for reimbursement of whatever amount it will be required here to pay plaintiff, otherwise it would result in making defendant Garcia/MEGA-WAFF enrich itself at the expense of defendant DMPI. Additionally since the evidence on record shows that plaintiff was compelled to litigate this matter if only to collect a just and demandable obligation, the refusal of these defendants to pay their obligation upon demand could not be justified in law, thus both defendants should be condemned to pay exemplary damages in the amount of P20,000.00 each and attorney's fees in the amount of P10,000.00 each, including the cost of this suit. (Underscoring supplied) [19]

The trial court accordingly rendered judgment in favor of Aragones by decision[20] of September 11, 1992, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, the Court finds that there is ample reason in law and preponderant evidence on record to sustain the cause of action of plaintiff asserted against both defendants, thus judgment is now rendered granting the following relief:

a. That the defendants Garcia/MEGA-WAFF and DMPI shall be liable to jointly and severally pay plaintiff the unpaid cost of the modular paving blocks construction material which he delivered to defendant DMPI priced at P188,652.65 and in the event that defendant DMPI will be made to pay the full amount of this particular obligation, the defendant Garcia MEGA-WAFF must reimburse said defendant such amount;

b. That this unpaid obligation sought to be collected must bear legal interest of 12% per annum from the time

there was an extrajudicial demand made by plaintiff last March 01, 1989; and

c. Lastly, these defendants are condemned that each pay plaintiff P20,000.00 for exemplary damages and P10,000.00 for attorney's fees, including the cost of this suit.

SO ORDERED. (Emphasis and underscoring supplied).[21]

On appeal to the Court of Appeals (CA) by only DMPI, upon the following assigned errors:

I

THE TRIAL COURT ERRED IN HOLDING THAT PLAINTIFF DID NOT INCUR DELAY AND VIOLATE ITS SUPPLY AGREEMENT WITH DEFENDANT MEGA-WAFF;

II

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT MEGA-WAFF'S LIABILITY TO PLAINTIFF IS P188,652.65 BECAUSE AS STIPULATED IN THE SUPPLY AGREEMENT, THE CEMENT AND AGGREGATES USED IN THE MANUFACTURE OF THE BLOCKS WERE ADVANCED BY MEGA-WAFF, THE COST OF WHICH WILL BE DEDUCED FROM PLAINTIFF'S BILLINGS;

III.

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT DMPI IS ALSO LIABLE TO PLAINTIFF FOR ANY LIABILITY OF MEGA-WAFF UNDER THE SUPPLY AGREEMENT;

IV.

ASSUMING EX GRATIA ARGUMENTI THAT DMPI IS LIABLE TO PLAINTIFF'S AID LIABILITY CANNOT EXCEED THE SUM OF P157,863.77 BALANCE OF THE CONTRACT PRICE BETWEEN DMPI AND MEGA-WAFF, LESS AGREED PENALTY FOR LATE DELIVERY AS LIQUIDATED DAMAGES;

V.

THE TRIAL COURT ERRED IN HOLDING DEFENDANT DMPI LIABLE TO PLAINTIFF FOR ATTORNEY'S FEES AND COSTS OF COLLECTION CONSIDERING THAT IT HAD THE RIGHT TO RESIST PAYMENT BECAUSE IT HAS NO PRIVITY OF CONTRACT BETWEEN PLAINTIFF AND DEFENDANT MEGA-WAFF, (Underscoring supplied),[22]

the CA, by decision of September 19, 2001[23] subject of the petition at bar, affirmed the trial court's decision in this wise:

At this juncture it is well to note that the Supply Agreement was in the nature of a contract for a piece of work. The distinction between a contract of sale and one for work, labor and materials is tested by inquiry whether the thing transferred is one not in existence and which never would have existed but for the order of the party desiring to acquire it, or a thing which would have existed but has been the subject of sale to some other persons even if the order had not been given. If the article ordered by the purchaser is exactly such as the seller makes and keeps on hand for sale to anyone, and no change or modification of it is made at purchaser's request, it is a contract of sale even though it may be entirely made after, and in consequence of the purchaser's order for it. [Commissioner of Internal Revenue vs. Engineering Equipment and Supply Company, G.R. No. L-27044, June 30, 1975]

In the case at bench, the modular paving blocks are not exactly what the plaintiff-appellee makes and keeps on hand for sale to anyone, but with a modification that the same be "S" in shape. Hence, the agreement falls within the ambit of Article 1467 making Article 1729 likewise applicable in the instant case.

> As regard the issue of privity of contracts, We need to add only that Article 1311 of the New Civil Code which DMPI invokes is not applicable where the situation contemplated in Article 1729 obtains. The intention of the latter provision is to protect the laborers and the materialmen from being taken advantage of by unscrupulous contractors and from possible connivance between owners and contractors. Thus, a constructive vinculum or contractual privity is created by this provision, by way of exception to the principle underlying Article 1311 between the owner, on the one hand, and those who furnish labor and/or materials, on the other. [Velasco vs. Court of Appeals, G.R. No. L-47544, January 28, 1980]
>
> As a matter of fact, insofar as the laborers are concerned, by a special law, Act no. 3959, otherwise known as "An Act making it obligatory for any person, company, firm or corporation owning any work of any kind executed by contract to require the contractor to furnish a bond guaranteeing the payment of the laborers." they are given added protection by requiring contractors to file bonds guaranteeing payment to them.
>
> It is true that defendant-appellant had already fully paid its obligation to defendant Garcia however, the former's payment to the latter does not extinguish its legal obligation to plaintiff-appellee because such payment was irregular. The former should have taken care not to pay to such contractor the full amount which he is entitled to receive by virtue of the contract, until he shall have shown that he first paid the wages of the laborer employed in said work, by means of an affidavit made and subscribed by said contractor before a notary public or other officer authorized by law to administer oaths. There is no showing that defendant appellant DMPI, as owner of the building, complied with this requirement paid down in Act No. 3959. Hence, under Section 2 of said law, said defendant-appellant is responsible, jointly and severally with the general contractor, for the payment to plaintiff- appellee as sub-contractor.
>
> In this connection, while, indeed, Article 1729 refers to the laborers and materialmen themselves, under the peculiar circumstances of this case, it is but fair and just that plaintiff-appellee be deemed as suing for the reimbursement of what they have already paid the laborers and materialmen, as otherwise he would be unduly prejudiced while either defendant-appellant DMPI or defendant Garcia would enrich themselves at plaintiff-appellee's expense.
>
> Be that as it may, We so hold that plaintiff-appellee has a lawful claim against defendant-appellant DMPI, owner of the constructed warehouse since it disregarded the notice of claim of plaintiff-appellee, at a time when the amounts owing from defendant-appellant DMPI to defendant GARCIA were more than sufficient to pay for plaintiff- appellee's claim. The least that defendant-appellant should have done was to withhold payment of the balance still owing to defendant Garcia as until the claim of plaintiff-appellee was clarified. (Italics in the original; emphasis and underscoring supplied).[24]

Its Motion for Reconsideration having been denied by the CA, DMPI (hereinafter referred to as petitioner) lodged the present Petition for Review on Certiorari, faulting the CA:

I.

> . . . IN FINDING THAT DMPI WAS LIABLE TO RESPONDENT ARAGONES FOR THE UNPAID PRICE OF THE CONCRETE PAVING BLOCKS OWED BY MEGA-WAFF TO THE LATTER.
>
> A. ...IN FINDING THAT THE CONTRACT FOR THE SUPPLY OF THE CONCRETE PAVING BLOCKS WAS NOT A SALE BUT ONE FOR A PIECE OF WORK.
>
> B. ...IN HOLDING DMPI LIABLE BASED UPON THE PROVISIONS OF ARTICLE 1729 OF THE CIVIL CODE AND ACT 3959, WHICH ARE INAPPLICABLE.
>
> II.
>
> . . . IN FAILING TO AWARD MORAL DAMAGES, ATTORNEY'S FEES, AND LITIGATION EXPENSES TO DMPI ON ITS COUNTERCLAIM.[25]

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As reflected above, only petitioner appealed the trial court's decision. MEGA-WAFF did not appeal. The decision as to it then is final and executory.

Petitioner, in the main, contends that while the CA correctly stated the test in determining whether a transfer is a sale or one for a piece of work, it failed to properly apply the same.

Applying the "nature of the object" test, petitioner insists that the concrete block to be produced by Aragones under the "Supply Agreement" represented by Garcia clearly shows that the contract was one of sale, advancing the following reasons:

> 1.4.1 First, the concrete paving blocks were . . . capable of being mass-produced
>
> 1.4.2 Second, save for the shape, there was here no consideration of any special needs or requirements of DMPI taken into account in the design or manufacture of the concrete paving blocks.[26]

Petitioner cites the following ruling in Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc.:[27]

> x x x As can be clearly seen from the wordings of Art. 1467, what determines whether the contract is one of work or of sale is whether the thing has been "manufactured specially for the customer and upon his special order." Thus, if the thing is specially done on the order of another, this is a contract for a piece of work. If, on the other hand, the thing is manufactured or procured for the general market in the ordinary course of one's business, it is a contract of sale." (Italics and emphasis in the original; underscoring supplied),[28]

and argues that "given habituality of business and the ability to mass-produce the article ordered, that customers requires (sic) certain specifications is of no moment, the transaction remains one of sale."

Petitioner further cites, among other authorities, the following ruling in Celestino Co. v. Collector of Internal Revenue:[29]

> x x x The important thing to remember is that Celestino & Co. habitually makes sash, windows and doors, as it has represented in its stationery and advertisements to the public. That it "manufactures" the same is practically admitted by appellant itself. The fact that windows and doors are made by it only when customers place their orders, does not alter the nature of the establishment of such materials-moulding, frames, panels – as it ordinarily manufactured or was in a position habitually to manufacture.
>
> x x x
>
> That the doors and windows must meet desired specifications is neither here nor there. If these specifications do not happen to be of the kind habitually manufactured by appellant – special forms of sash, mouldings, panels – it would not accept the order – and no sale is made. If they do, the transaction would be no different from purchaser of manufactured goods held in stock for sale; they are bought because they meet specifications desired by the purchaser.
>
> Nobody will say that when a sawmill cuts lumber in accordance with the peculiar specifications of a customer – sizes not previously held in stock for sale to the public – it thereby becomes an employee or servant of the customer, not the seller of lumber. The same consideration applies to this sash manufacturer.
>
> The Oriental Sash Factory does nothing more than sell the goods that it mass-produces or habitually makes – sash, panels, mouldings, frames – cutting them to such sizes and combining them in such forms as its customers may desire.
>
> x x x
>
> x x x Such new form does not divest the Oriental Sash Factory of its character as manufacturer. Neither does it take the transaction out of the category of sales under Article 1467 above quoted, because although the Factory

> does not, in the ordinary course of its business, manufacture and keep on stock doors of the kind sold to Teodoro, it could and/or probably had in stock the sash, mouldings and panels it used therefor (some of them at least). (Emphasis in the original; underscoring supplied).

Petitioner concludes that as the "Supply Agreement" between Aragones and MEGA-WAFF was one of sale to which it (petitioner) was not privy, it cannot be held liable for any obligation arising therefrom.

Dodging liability for the damages ("exemplary and . . . attorney's fees including the cost of this suit") awarded to Aragones, petitioner claims that it was in fact the one which was injured by Aragones' filing in bad faith of a complaint bereft of cause of action and "at best, [one] barred by full payment of the amount due to MEGA-WAFF," on account of which it is entitled to moral damages in the amount of P50,000.00 pursuant to Article 2217 of the Civil Code, and to attorney's fees and expenses of litigation in the amount of at least P30,000.00 plus P2,500.00 per hearing pursuant to Article 2208 of the Civil Code.

The petition fails.

The authorities petitioner cited in fact show that the nature of the "Supply Agreement" between Aragones and MEGA-WAFF was one for a piece of work.

Contrary to petitioner's claim that "save for the shape, there was no consideration of any special needs or requirements of DMPI taken into account in the design or manufacture of the concrete paving blocks," the "Supply Agreement" is replete with specifications, terms or conditions showing that it was one for a piece of work.

As reflected in the highlighted and underscored above-quoted provisions of the "Supply Agreement," as well as other evidence on record, the machines Aragones was obliged to fabricate were those for casting the concrete blocks specified by Garcia. Aragones did not have those kind of machines in his usual business, hence, the special order.

While initially Garcia specified that the machines to be fabricated should be for hexagon shaped blocks, he later asked Aragones to instead fabricate machines for casting S shaped blocks.

In accordance with the "Supply Agreement," Garcia furnished the cement and aggregates for the fabrication of the blocks and Aragones fabricated three (3) machines for S shaped blocks which were delivered at the casting site on different dates. And the "entire plant/casting machines and . . . . accessories" were, as dictated under the "Supply Agreement," devoted by Aragones "for [MEGA-WAFF]'s exclusive use.

There can be no gainsaying that the specifications/conditions in the "Supply Agreement" and the admitted subsequent directive of Garcia for Aragones to fabricate machines for casting S shaped, instead of hexagon shaped blocks, show that the concrete blocks were "manufactured specifically for, and upon the special order" of Garcia.

That Garcia supplied the cement and aggregates and that the entire made-to-order casting machines and accessories used in the manufacture of those unusual shaped blocks were agreed upon to be devoted only "for the exclusive use" of MEGA-WAFF should belie petitioner's contention that the concrete blocks were mass-produced and catered to the general market in the ordinary course of Aragones' business.

Under Art. 1467 then of the Civil Code which provides:

> ART. 1467. A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special

> order, and not for the general market, it is a contract for a piece of work. (Emphasis and underscoring supplied),
>
> the "Supply Agreement" was decidedly a contract for a piece of work.
>
> Following Art. 1729 of the Civil Code which provides:
> ART. 1729. Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. x x x
>
> x x x (Underscoring supplied),

Aragones having specially fabricated three casting machines and furnished some materials for the production of the concrete blocks specially ordered and specified by MEGA-WAFF which were to be and indeed they were for the exclusive use of MEGA-WAFF, he has a cause of action upon petitioner up to the amount it owed MEGA-WAFF at the time Aragones made his claim to petitioner.

As Velasco v. CA[30] explains, the intention of Art. 1729 is

> to protect the laborers and materialmen from being taken advantage of by unscrupulous contractors and from possible connivance between owners and contractors. Thus, a constructive vinculum or contractual privity is created by this provision, by way of exception to the principle underlying Article 1311 between the owner, on the one hand, and those who furnish labor and/or materials, on the other.

In fine, a constructive vinculum or contractual privity was created between petitioner and Aragones.

Respecting petitioner's disclaimer of liability for damages and its claim for moral damages, attorney's fees and expenses of litigation, the trial court's disposition thereof, to wit:

> . . . since the evidence on record shows that [Aragones] was compelled to litigate this matter if only to collect a just and demandable obligation, the refusal of [DMPI and MEGA-WAFF] to pay their obligation upon demand could not be justified by law, thus both... should be condemned to pay exemplary damages in the amount of P20,000.00 each and attorney's fees in the amount of P10,000.00 each including... costs of this suit" (underscoring supplied),

merits this Court's approval.

Why should not petitioner be liable for damages. Aragones' request, based on a provision of law, to petitioner for it to pay directly to him his account receivable from MEGA-WAFF/Garcia out of petitioner's account payable to MEGA-WAFF was made before petitioner's obligation to it was due. Yet petitioner settled such obligation to MEGA-WAFF on or about April 6, 1989 when it released to it its check-payment. For petitioner to harp on its undertaking under its "Agreement" with MEGA-WAFF to pay its full obligation thereunder within 30 days from complete installation of the pavement by MEGA-WAFF unless a court injunction could be produced by Aragones is too shallow, under the facts and circumstances surrounding the case, to merit consideration.

Petitioner's referral for comment of Garcia, by letter of April 27, 1989, on Aragones' April 6, 1989 reiterative letter for the withholding of the release of so much amount to MEGA-WAFF even after it (petitioner) had already released on or about April 6, 1989 its check-full payment to MEGA-WAFF reflects a futile attempt to cover-up the apparent "connivance" between it and contractor MEGA-WAFF to the prejudice of Aragones, leaving him no option but to litigate.

As for the assailed citation by the appellate court of Act No. 3959 (which requires a person or firm owning any work of any kind executed by contract to put up a bond guaranteeing the payment of the laborers) as additional

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justification to hold petitioner liable to Aragones, indeed, said Act had been repealed in 1974 by P.D. No. 442 (The Labor Code of the Philippines).

WHEREFORE, in light of the foregoing discussions, the petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Exhibit “A,” RTC Records at 262-266.

[2] Exh. “1 – DMPI”, id. at 363.

[3] Rollo at 43-46.

[4] Exh. “J,” RTC Records at 284-285.

[5] Exh. “K,” id. at 286.

[6] Exh. “K-1,” ibid.

[7] Exh. “L,” id. at 287-288.

[8] Exh. “M,” id. at 289-291.

[9] Exh. “M-2-A,” id. at 291.

[10] Exh. “N,” id. at 292.

[11] Exh. “9-DMPI,” id. at 374.

[12] Id. at 1-10.

[13] Id. at 39-43.

[14] Id. at 28-30.

[15] Id. at 99-107.

[16] Id. at 207-208.

[17] Id. at 209-212.

[18] Id. at 444-445.

[19] Id. at 81-82.

[20] Id. at 443-456.

[21] Id. at 13-14.

[22] Brief for appellant DMPI, CA Rollo at 24, 26-27.

[23] Id. at 68-81.

[24] Id. at 96-98.

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[25] Rollo at 16-17.

[26] Id. at 20.

[27] 159 SCRA199 (1988).

[28] Id. at 206, 207.

[29] 99 Phil. 841 (1956).

[30] 95 SCRA 616-641 (1953).

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