

**ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,
PETITIONER, VS. NOEL T. TULABUT, DOING BUSINESS UNDER THE
NAME AND STYLE OF N.T. TULABUT CONSTRUCTION SUPPLY,
RESPONDENT.**

G.R. NO. 161904. April 26, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court for the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 73124 and its resolution which affirmed, with modification, the Decision[2] of the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 45, in Civil Case No. 11820.

Factual Antecedents

In January 1998, petitioner Asian Construction and Development Corporation (ACDC) was awarded the development of the Philippine Centennial Exposition (Theme Park Project) at Clarkfield, Pampanga. Subsequently, in February 1998, the petitioner ACDC contracted the services of respondent Noel T. Tulabut, doing business under the name and style of N.T. Tulabut Construction Supply. The latter was to supply labor, materials, tools, equipment and supervision for other necessary works for the construction of two cafeterias, two fast food take-out stands and a snack stand, all located at the Food Plaza of the project site. The petitioner bound and obliged itself to pay the price of the project in the amount of P3,414,058.60 through progress billing. Construction ensued and, as of June 8, 1998, the petitioner had paid the cost of the project save for a small balance of P3,246.12.

Subsequently, the petitioner again contracted the services of the respondent for the construction of two additional cafeterias via Purchase Order (P.O.) No. 73-985, the net cost of which amounted to P400,000.75. In partial payment of the project, the petitioner drew and issued, on July 15, 1998, Land Bank Check No. 0000074516 and delivered the same to the respondent. However, the said check was dishonored upon its presentment for payment on the ground that it was drawn against insufficient funds.

The respondent was able to complete the project and turned the same over to the petitioner. The total amount due as of the final billing dated November 26, 1998 was P486,409.45. However, despite the respondent's written demand for payment, the petitioner failed to settle the balance of its obligation.

The respondent then filed a complaint for collection against the petitioner with the RTC of San Fernando, Pampanga. The complaint alleged that as of May 29, 1998, the account of the petitioner in favor of the respondent had amounted to P900,000.00, exclusive of damages, plus attorney's fees. The respondent prayed for the issuance of a writ of preliminary attachment, which the RTC granted after an attachment bond of P1,400,000.00 was posted. There being a third party claimant, the respondent posted an additional bond of P500,000.00.

In its answer with counterclaim, the petitioner averred that the respondent had not yet fully completed nor turned over the project subject of the contracts. It claimed that it had already settled its outstanding account equivalent to or even more than the percentage of the work actually accomplished. It was added that settlement of the billings in question was dependent upon its (petitioner's) receipt of payment from the government as the owner of the project; as of the filing of the complaint, the government had not yet paid the petitioner for its billings on the corresponding work accomplished. The petitioner thus prayed that the complaint be dismissed.

The respondent adduced testimonial and documentary evidence, and in the course thereof admitted having received P125,571.81 as partial payment from the petitioner upon the filing of the complaint. On the other hand, the petitioner opted not to adduce any evidence in its behalf.

After trial, the trial court ruled in favor of the respondent. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [respondent], hereby ordering the [petitioner] to pay [respondent] the following:

- The balance of [its] obligation in the amount of P364,083.76, exclusive of the 10% retention;
- Legal rate of interest thereon reckoned from April 5, 1999;
- 25% of P364,083.76 as attorney's fees; and
- Costs of litigation.

SO ORDERED.[3]

The petitioner appealed to the CA, contending that if it was, indeed, liable for the claims of the respondent, the same should be reckoned only from the lapse of one year after the issuance of a certificate of completion of the project, as was the standard practice in the construction industry. It averred that the respondent had not been able to establish that the project had been fully completed since it was unable to show that a certificate of completion in its favor had been issued by the petitioner. The petitioner also argued that there was no legal and factual basis for the award of attorney's fees.

The CA rendered judgment dismissing the appeal and affirming the appealed decision with modification. The CA ruled that the petitioner was estopped from denying liability for the respondent's claims since its officers had approved the pertinent purchase orders and billings. The appellate court also held that the petitioner failed to prove that it was a common practice in the construction industry for the subcontractor to pay the retention billings only upon the main contractor's issuance of a certificate of completion of the projects agreed upon. However, the CA reduced the award for attorney's fees to 10% of the amount due.

The petitioner now seeks relief from this Court via its petition for review on certiorari, contending that:

- I. THE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF ESTOPPEL AND PRESUMED THE COMPLETION OF THE PROJECT OR WORKS UNDERTAKEN BY RESPONDENT.
- II. THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER ACTED IN GROSS AND EVIDENT BAD FAITH IN REFUSING TO SATISFY RESPONDENT'S CLAIM THEREBY AWARDING ATTORNEY'S FEES.[4]

The petitioner alleges that the CA erred when it affirmed the trial court's finding that the project or works undertaken by the respondent had been fully completed, considering that such finding was based solely on the petitioner's approval of purchase orders and final billings. The petitioner asserts that the doctrine of estoppel must

not be applied because although its officers irrefutably approved the purchase orders and billings of the respondent, the same had nothing to do with the actual completion of the works which the latter was obliged to accomplish. The petitioner avers that such approval did not amount to prove that the projects had been completed. In fact, the respondent failed to adduce proof that the projects had actually been completed.

As regards the issue of the award of attorney's fees, the petitioner insists that its failure to fund the Land Bank check with the face amount of P400,000.00 is not proof of its gross and evident bad faith. The petitioner posits that the respondent himself is guilty of fraud since the amount he demanded was way beyond what was actually proven and what the trial court eventually awarded.

The petition is barren of merit.

The petitioner admits that the issues on appeal are factual. Under Rule 45 of the Rules of Court, only questions of law may be raised, for the simple reason that the Court is not a trier of facts. The findings of the trial court as affirmed by the CA are conclusive on this Court, absent proof of any of the recognized exceptional circumstances^[5] such as: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) the findings are contrary to the admissions of both parties.^[6]

These exclusions notwithstanding, we find no compelling reason to treat the instant case as falling under any of the aforementioned exceptional circumstances.

The trial court concluded that the respondent had completed the project and that the project had been approved and accepted by the petitioner, sans any plaintiff. The petitioner even made partial payment in the amount of P125,571.81 after the complaint was filed against it in the trial court.^[7] In affirming the findings of the trial court, the CA ratiocinated as follows:

It should be noted that there existed a contract between the plaintiff-appellee and the defendant-appellant and the same was expressed in the purchase orders and final billings which bear the signatures of the officers of the appellant corporation. This fact is not disputed by the appellant corporation (Answer, par. 2, Records, p. 66). While defendant-appellant argues that the project has not been completed, it did not deny the aforesaid purchase orders and final billings as well as the authority of the persons whose signatures appeared thereon who made the approval thereto, to act and sign in behalf of the appellant corporation. It is also significant to note that the amount for which the appellant corporation is liable, is clearly stated therein which bears the signatures of the officers of the appellant corporation. Thus, it cannot escape its pecuniary obligation by merely denying the completion of the project because by signing the aforesaid purchase orders and progress billings, the appellant corporation manifested its approval to the matters stated therein and it is thereby precluded to deny it subsequently by principle of estoppel.

In one case, it was held that "the application of the principle of estoppel is proper and timely in heading off plaintiff's shrewd efforts at renouncing his previous acts to the prejudice of parties who had dealt with him honestly and in good faith" (*Pureza v. Court of Appeals*, 290 SCRA 110). It is provided, as one of the conclusive presumptions under Rule 131, Section 3(a), of the Rules of Court that, "Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing to be true, and

to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.” (Supra). Hence, when the appellant corporation manifested its approval in the purchase orders (Exhibits “A,” “B,” “C,” “D” and “E,” Folder of Exh.) and progress billings (Exhibits “H” and “J,” Folder of Exh.), it cannot, thereafter, refute such act or renege on the effects of the same to the prejudice of the appellee who merely relied on it.

As to the allegation of the appellant that the plaintiff-appellee corporation should have secured a certificate of completion as the same is the practice in the construction industry, is a fact that cannot be taken judicial notice of. Thus, as it is the appellant who alleges such fact, it has the burden of proving it. However, in the instant case, such allegation is not proven by evidence. Therefore, it cannot refute the clear and convincing evidence presented by the plaintiff-appellee corporation confirming the appellant’s obligation under the progress billings as the same was approved and signed by its officers.[8]

The petitioner failed to adduce a morsel of evidence to controvert that of the respondent, which evidence proved that the project had been completed and turned over to the petitioner, and that it had accepted the same.

The respondent, as the plaintiff, was obliged to establish the material averments of his complaint by a preponderance of evidence.[9] The petitioner as the defendant was burdened to prove its defenses that the respondent had failed to complete the project.[10] While the respondent, as the plaintiff, adduced testimonial and documentary evidence to prove his claim that he had completed the projects and that the petitioner had approved and accepted the same but failed to pay the balance of its account despite demands, the petitioner opted not to adduce a morsel of evidence in its behalf. Conformably, the petitioner must bear the consequence. In *Manongsong v. Estimo*,[11] the Court stressed:

... Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff’s prima facie case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant’s. The concept of “preponderance of evidence” refers to evidence which is of greater weight, or more convincing, than that which is offered in opposition to it; at bottom, it means probability of truth.[12]

Thus, the terms and conditions of the contract between the petitioner and the respondent unequivocally expressed in the purchase orders and progress billings must govern the contractual relation of the parties, for these serve as the terms of the agreement, which are binding and conclusive between them. As the Court ruled in *Tuazon v. Court of Appeals*: [13]

... When the words of the contract are clear and readily understandable, there is no room for construction. The contract is the law between the parties. Said this Court:

“‘A contract,’ according to Article 1305 of the Civil Code, ‘is a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.’ Once, the minds of the contracting parties meet, a valid contract exists, whether it is reduced to writing or not. And, 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”[14]

Indeed, the petitioner is estopped from evading its pecuniary obligation by merely asserting without proof that the respondent failed to complete the projects and the non-payment of its principal. With the signatures of its duly

authorized representatives on the subject documents, the genuineness and due execution of which have not been contested, the petitioner, in effect, freely and voluntarily affirmed all the concurrent rights and obligations flowing therefrom. Viewed in this light, it is barred from claiming the contrary without transgressing the principle of estoppel and mutuality of contracts. Needless to state, contracts must bind both contracting parties; their validity or compliance cannot be left to the will of one of them.[15]

On the same vein, there is no error of judgment committed with regard to the grant of attorney's fees. Surely, the petitioner is evidently wanting in good faith as to the fulfillment of its just and valid obligation. Extant from the records are the following facts: (a) the petitioner feigned ignorance of the existence of the bounced check it issued and the receipt of the demand letter dated March 10, 1999; (b) it did not advise the respondent as to the insufficiency of its funds in the Land Bank prior to the presentment of the check for payment; and (c) it did not make a prompt commitment to the respondent, such as offering to replace the dishonored check or tendering even partial payment of the unsettled amount. Not one of these was contradicted by the petitioner.

IN LIGHT OF ALL THE FOREGOING, the instant petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang, concurring.

[2] Penned by Judge Adelaida Ala-Medina.

[3] Rollo, p. 64.

[4] Rollo, p. 13.

[5] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 127473, 8 December 2003, 417 SCRA 196; *Duremdes v. Duremdes*, G.R. No. 138256, 12 November 2003, 415 SCRA 684; *Larena v. Mapili*, G.R. No. 146341, 7 August 2003, 408 SCRA 484; *Tugade, Sr. v. Court of Appeals*, G.R. No. 120874, 31 July 2003, 407 SCRA 497; *Serrano v. Court of Appeals*, G.R. No. 123896, 25 June 2003, 404 SCRA 639.

[6] *Zaragoza v. Nobleza*, G.R. No. 144560, 13 May 2004, 428 SCRA 410; *Pastor v. Philippine National Bank*, G.R. No. 141316, 20 November 2003, 416 SCRA 283; *Twin Towers Condominium Corporation v. Court of Appeals*, G.R. No. 123552, 27 February 2003, 398 SCRA 203; *Philippine Airlines, Inc. v. Court of Appeals*, supra; *Duremdes v. Duremdes*, supra; *Larena v. Mapili*, supra; *Tugade, Sr. v. Court of Appeals*, supra; *Serrano v. Court of Appeals*, supra.

[7] Rollo, pp. 26 and 63.

[8] *Id.* at 29-30.

[9] Section 1, Rule 131 of the Rules of Evidence.

[10] *Ibid.*

[11] G.R. No. 136773, 25 June 2003, 404 SCRA 683.

[12] *Id.* at 693, citing *Jison v. Court of Appeals*, 286 SCRA 495 (1998).

[13] G.R. No. 119794, 3 October 2000, 341 SCRA 707.

[14] Id. at 718, citing *National Irrigation Administration v. Gamit*, 215 SCRA 436 (1992).

[15] Article 1308 of the New Civil Code.

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