

## **ADRIAN WILSON INTERNATIONAL ASSOCIATES, INC., PETITIONER, VS. TMX PHILIPPINES, INC., RESPONDENT.**

*G.R. No. 162608. July 26, 2010*

Ponente: DEL CASTILLO, J.

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### **DEL CASTILLO, J.:**

A claimant is entitled to be compensated reasonably and commensurately for what he or she has lost as a result of another's act or omission, and the amount of damages to be awarded shall be equivalent to what have been pleaded and adequately proven. Should the claimant fail to prove with exactitude the extent of injury he or she sustained, the court will still allow redress if it finds that the claimant has suffered due to another's fault.

In this petition for review on certiorari, petitioner Adrian Wilson International Associates, Inc. (AWIA) assails the Decision[1] of the Court of Appeals (CA) dated August 14, 2003 in CA-G.R. CV No. 49272 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 150 by further ordering AWIA to pay to respondent TMX Philippines, Inc. (TMX) the amount of P1,546,084.00 representing the reimbursement of salaries of TMX's employees. AWIA now pleads that we reinstate the RTC Decision or reduce the amount of actual damages representing the reimbursement of the salaries of the TMX employees.

#### **Factual Antecedents**

TMX engaged the services of AWIA for the construction of its watch assembly plant located in the EPZA[3]-run Mactan Export Processing Zone in Cebu (composed of twin modules and another separately designed module).[4] Their Agreement[5] dated December 29, 1978 provided that AWIA would provide basic and detailed architectural designs, plans, and specifications, as well as structural, mechanical, and electrical engineering services.

Specifically, one of AWIA's duties was construction administration, i.e., to guard TMX from defects and deficiencies during the construction phase by determining the progress and quality of the work of the general contractor, P.G. Dakay Construction Company (P.G. Dakay). This is to ensure that this contractor works in accordance with the directed specifications.

Construction began in 1979 and was completed in 1980. After five years, however, TMX noticed numerous cracks and beam deflections (vertical shifting)[6] along the roof girders and beams in columns B, C, F, and G of the twin modules. TMX, opining that the problem may have been due to design errors, informed AWIA of the situation.

In its report dated April 24, 1985,[7] AWIA, thru its project manager Anthony R. Stoner, maintained that its structural roof design of the building was correct and that the building was not in danger of collapsing.

AWIA attributed the existing cracks along column line G to the marginal strength of the concrete that was poured during a heavy rainfall on July 18, 1979. This was based on a construction report dated July 19, 1979, furnished to TMX, of TMXP 2 Project Inspector/AWIA site representative Engr. Gavino Lacanilao (Engr. Lacanilao).[8] In his report, Engr. Lacanilao narrated that the night before, the concrete pouring operations on lines F and G of

Bays 11-16, Section C of TMX's main building were temporarily suspended due to the following mistakes committed by the contractor in the pouring of concrete: a) the presence of rainwater that diluted the concrete; b) the failure to apply grout as a binder, and c) the use of concrete that was mixed for more than 45 minutes. To AWIA, these mistakes had cost the quality of the roof's concrete strength. AWIA thus suggested measures to correct the roof problem, one of them being the installation of a lally column using steel pipe sections.

TMX also sought the opinion of two architectural consultancy firms, the Fletcher-Thompson, Inc. (Fletcher-Thompson) and C.N. Ramientos and Associates. Both concluded that the cracks and displacements of the roof's structural system were due to AWIA's errors in the design calculations and in the factoring of live and dead load and concrete strengths.[9]

Similar to the suggestion of AWIA, Fletcher-Thompson recommended the installation of lally columns. Thus, as preventive and corrective measure, TMX shored up the beams and girders with 118 steel lally columns in all the buildings' modules.

The major construction work was done in December 1985, during which TMX was forced to stop its operations from December 1-18, 1985, putting its employees on forced leave with pay. All in all, TMX spent P3,931,583.00,[10] i.e., P2,385,499.00 for shoring expenses,[11] and P1,546,084.00, representing wages of its employees for the period December 1-18, 1985.[12]

Laying the blame on AWIA for the roof defects, TMX sought reimbursement of everything it had spent for the corrective work by suing AWIA for damages before the RTC of Makati. The case was docketed as Civil Case No. 16587 and raffled to Branch 150.[13]

In its Answer, AWIA insisted on the correctness of its design and that the same was approved by TMX. It stressed that it faithfully complied with its obligation of administering the construction contract and was not responsible for whatever mistakes the contractor made. According to AWIA, TMX has its own staff who supervised the construction and to whom AWIA's inspectors submitted their reports. Conversely, AWIA blamed TMX for the cracks, alleging that the latter's supervising staff ignored the July 19, 1979 construction report of Engr. Lacanilao[14] and that TMX refused to conduct an in-place testing of the concrete. Defending itself against the monetary claims of TMX, AWIA averred that the latter overreacted when it installed 118 lally columns, instead of only 11 columns as recommended by Fletcher-Thompson.[15]

#### Ruling of the Regional Trial Court

After weighing the evidence submitted by the parties, the trial court noted that TMX apparently was satisfied with AWIA's services because after the completion of the Mactan assembly plant in 1980, TMX rehired AWIA four years later for the design of two more separate extensions of the building. All of AWIA's documents, designs, drawings, plans and specifications of the building were subject to TMX and its parent company's approval, which both relayed their comments and instructions to AWIA. During the construction phase, TMX had its own engineering team which actively participated in the project. The trial court concluded that AWIA complied faithfully with its obligations in all phases indicated in the Agreement.[16]

The court a quo found that only 11 shoring columns on the roof girders were necessary to remedy the cracks and deflections in lines B and G, and thus reduced the shoring expenses AWIA incurred on a pro-rate basis. It was also noted that the defects were not solely attributable to AWIA, because TMX ignored Engr. Lacanilao's July 19, 1979 construction report on the pouring of diluted concrete. Thus:

This Court finds that there was no necessity at all for plaintiff TMX to have installed 118 shoring columns all over its building. Except for the bare allegation of TMX president Rogelio Lim that this was done upon the

recommendation of Engr. Ramientos and its U.S.-based consultant Fletcher-Thompson, plaintiff has not shown that it was necessary to put up more than one hundred columns at all beam intersections with sophisticated designs using expensive materials. Admittedly, cracks and deflections appeared in some beams and roof girders after five (5) years from the building's completion. The subject building or any part thereof has not collapsed nor has ever fallen down. As a matter of fact, it was plaintiff's own consultant Fletcher-Thompson in its Beam Deflection Check (Exhibits "5" to "5-J") who recommended the installation of eleven (11) shoring columns on the roof girders which had failures (T.S.N., July 3, 1990, pp. 27-34). Even plaintiff's complaint mentions cracks and deflections only on column lines B and G. To allow plaintiff reimbursement for putting up 118 columns all over the building would unduly favor plaintiff TMX. Only eleven (11) columns would have been necessary to correct the crackings and deflections in column lines B and G. Any excess of that would be considered as a renovation or added improvement of which the defendant should not be made to shoulder.

Thus, the defendant should reimburse TMX only for eleven (11) shoring columns as its just and equitable share in the expenses incurred by plaintiff. Taking the ratio of 11 and 118 columns and applying the same to the total amount of P2,385,499.00, the expenses for installing 11 columns would be P222,377.00.

As regards the claim for reimbursement of P1,546,084.00 representing the salaries and wages that plaintiff allegedly paid its employees during the work stoppage from December 1 to 18, 1985, the same should be denied.

As testified by defendant's witness, Engineer Labrador, it was agreed that the 11 shoring columns will be put up late December since admittedly the last two (2) weeks of December up to the first week of January was plaintiff's scheduled production shutdown as its employees usually go on vacation during those days. Moreover, it is observed that plaintiff failed to present during the hearing of this case the pertinent payroll documents to substantiate its claim. What it produced were only computer printouts of the salaries allegedly paid to its employees for the period in question.

x x x x[17]

The dispositive portion of the trial court's Decision reads:

WHEREFORE, the Court hereby renders judgment as follows:

- Defendant is ordered to pay plaintiff TMX the amount of P222,377.00 as compensatory damages;
- Defendant is ordered to pay P80,000.00 to plaintiff TMX as attorney's fees and litigation expenses;
- The complaint of plaintiff EPZA against defendant is DISMISSED.
- The counterclaim of defendant is DISMISSED.

SO ORDERED.[18]

Both parties appealed to the CA but AWIA later withdrew its appeal leaving TMX to contest the judgment of the trial court.

#### Ruling of the Court of Appeals

The CA agreed with the RTC that AWIA is responsible for the payment of only 11 shoring columns. However, the CA differed as to the RTC's finding that AWIA completely abided by its obligations. To the CA, AWIA failed to promptly and adequately notify its principal of the quality and progress of the work, including the defects and deficiencies in the construction and a determination of how these will be rectified by the contractor. It said:

To excuse AWIA from any liability for the contractor's failure to carry out the work in accordance with the contract documents, it is required, under their Agreement, to "have kept the OWNER currently and adequately

informed in writing of the progress and quality of the work." In the case at bar, We hold that the written report given by AWIA to TMX of the incident could not be the proper notice contemplated in the Agreement. Notably, the report merely contains statements and account of events that transpired during such pouring operations. It did not contain any warning or recommendation as to put TMX on notice that something has to be done. Nor did it inform TMX that said incident threatened the strength of concrete or structural integrity of the roof. For this, AWIA is liable. x x x[19]

The CA further modified the RTC's Decision by ordering AWIA to reimburse TMX the amount of P1,546,084.00 representing the salaries TMX had paid to its employees during the involuntary work stoppage. The appellate court found the check vouchers and financial schedule of payments as sufficient proofs.

#### Issues

Hence, AWIA filed this Petition for Review on Certiorari,[20] raising the following issues: a) whether AWIA properly discharged its duty as construction administrator and b) whether there is a valid basis for the reimbursement of the salaries paid to the employees of TMX.

#### Petitioner's Arguments

AWIA's arguments are summed up as follows:

- a) It complied with its obligation to keep TMX adequately informed about the progress and quality of the work of the contractor. Engr. Lacanilao, AWIA's site representative, even delayed the pouring of the concrete and rejected the concrete that had been mixed for more than 45 minutes during the July 18, 1979 incident. These actions were immediately reported to TMX the following day. TMX's staff of engineers however found no cause for alarm to take remedial measures after being informed. On the contrary, TMX accepted the work done on the building without objections and considered Engr. Lacanilao's report as sufficient compliance with AWIA's responsibility of submitting a report.
- b) Assuming that AWIA failed to keep TMX adequately informed of the ill-effects of the July 18, 1979 incident, still, AWIA cannot be held liable for all the salaries allegedly paid to TMX employees during December, 1985. The factory shutdown for the whole month of December cannot be solely attributed to AWIA's inadequate reporting of weak cement mixture, but was also due to TMX's decision to install 118 permanent shoring columns instead of only 11 columns as recommended by Fletcher-Thompson.

Moreover, AWIA contends that TMX failed to prove its claim of payment of alleged salaries during the shutdown period because the pieces of evidence it presented are mere summaries of salaries paid and vouchers for checks deposited in a bank for the alleged salaries. There are no proofs that TMX employees actually received their salaries during said shutdown period. And even if it could be held responsible for reimbursing the employees' salaries, AWIA claims that it should not be held liable for the TMX employees' salaries during the entire period of installation. Had only 11 columns been installed, the period of shutdown due to remedial work would have been shorter. AWIA thus asks for a reduction of the award, computed at a formula used by the trial court as basis for awarding TMX the cost of installing only 11 columns. Hence, the salary should be computed at 11/118 of P1,546,084.00, or P144,210.37.

#### Respondent's Arguments

On the other hand, TMX maintains that:

- a) AWIA can no longer challenge the finding of the RTC and the CA of its liability. The fact that the trial court ordered the payment of the costs of the 11 columns is an implicit recognition that AWIA was responsible for the

roof damage. AWIA did not appeal this judgment and thus this decision had become final and executory. At most, AWIA can only challenge the CA Decision insofar as the additional award of reimbursement of the employees' salaries is concerned.

b) The CA was correct in its finding that AWIA breached the Agreement. The report of Engr. Lacanilao had misled TMX into believing that no problem existed and that nothing was to be rectified when it was AWIA's duty under the Agreement to notify and promptly alert TMX of remedial measures that must be taken when there are defects in the work of the contractor.

c) The breach warrants a full reimbursement of salaries TMX claims. AWIA cannot use as defense the adequacy of Engr. Lacanilao's report when this contradicts its own answer to the complaint, stating therein that the cause of the roof failure was the "marginal strength of the concrete during a rainfall." The construction and repair of certain portions of the roof system forced TMX to undergo work stoppage and pay its employees wages during the repair period, the ultimate cause of which was AWIA's failure to warn TMX of the possible consequences of the July 18, 1979 incident. Furthermore, the pieces of documentary evidence TMX submitted to support a claim of reimbursement, which included the names of employees, their gross pay and deductions, were never contested during the trial and were appreciated by the CA. The evidence, coupled by the testimony of TMX President Rogelio Lim that the amounts stated in the documents were actually paid to the employees, constituted competent and admissible evidence.

TMX also contends that it was baseless and speculative for AWIA to assume that the time necessary to install 11 columns would not require a period of two weeks, considering that the construction work for installing permanent shoring columns was disruptive. Certain factors, such as pre-installation activities (e.g. careful individual packing of hundreds of TMX's sensitive equipment and materials necessary for watch-making and the painstaking excavation of areas where the new columns were to be attached, which may take long depending on the difficulty and the location), and faster pace of work as time progresses, should be taken into account. Nonetheless, for TMX, AWIA's proposed computation of 11/118 multiplied by the amount of salaries claimed was erroneous, because AWIA assumed that all the 118 columns had been installed from December 1-18, 1995, when the installation was completed in four weeks. Even if it would be assumed that AWIA's mathematical formula was correct, and assuming that half of the 118 columns were installed from December 1-18, 1995, the proper calculation should be 11/50 multiplied by P1,546,084.00, or P288,253.00.

#### Our Ruling

AWIA failed in its duty to guard TMX  
against the contractor's work deficiencies

AWIA persistently faults TMX for its alleged neglect of Engr. Lacanilao's report. But according to the parties' Agreement, the duty of alerting TMX of the problems in the construction of the building behooves entirely on AWIA. The following provisions in the December 29, 1978 Agreement state what AWIA's specific responsibilities are in contract administration:

#### CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

x x x x

1.1.14. The CONSULTANT, shall make periodic and regular visits to the site to determine the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as a CONSULTANT, he shall guard the owner against, and shall promptly notify the OWNER in writing of, defects and deficiencies in the Work of the Contractor and

non-compliance with the Contract Documents. The CONSULTANT shall be required to make such on-site inspections as may be reasonably determined by the OWNER to be necessary. Provided that the CONSULTANT shall have kept the OWNER currently and adequately informed in writing of the progress and quality of the work, the CONSULTANT shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.1.15 Based on such observations at the site and on the Contractor's Applications for Payment, the CONSULTANT shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the CONSULTANT to the OWNER, based on the CONSULTANT's observations at the site as provided in Subparagraph 1.1.14 and on the data comprising the Application for Payment, that the Work has progressed to the point indicated; that to the best of the CONSULTANT's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment, the CONSULTANT shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.1.16 The CONSULTANT shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by the Contractor. The CONSULTANT shall make decisions on all claims of the Contractor relating to the execution and progress of the Work and all other matters or questions related thereto.

1.1.17 The CONSULTANT shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority, with the OWNER's approval, to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed.

x x x x

1.1.20 The CONSULTANT shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and review written guarantees and related documents assembled by the Contractor, and shall issue a final Certificate for Payment. The CONSULTANT shall use its best efforts to enforce warranties and guarantees furnished by the Contractor or by suppliers of materials or equipment to the extent of assisting OWNER in any arbitration or court action if necessary.

1.1.21 The CONSULTANT shall not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of the Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work but will promptly inform OWNER thereof in writing and determine how such acts or omissions will be rectified by the Contractor prior to issuing a final Certificate of Payment.

x x x x[21]

As can be inferred from the contract, TMX could solely and absolutely rely on the assessments and recommendations of AWIA. Under the aforementioned provisions, AWIA was tasked to guard TMX against construction problems and to ensure the quality of P.G. Dakay's performance. It also had the authority to approve or reject the contractor's work, and it could issue certificates of payments for the progress billings of the contractor only if it found the latter's job as covered by each of the billings satisfactory. Thus, it is irrelevant

whether TMX has its own engineering staff to evaluate the reports about the construction work. Taking together Sections 1.1.14 and 1.1.21, AWIA is not liable for the contractor's construction errors on the following conditions: a) that it promptly and adequately informs TMX of whatever defects and deficiencies in the construction are and b) that it determines how these problems could be repaired. AWIA should not release a final certification of payment in favor of the contractor unless these had been done.

The July 19, 1979 report[22] of Engr. Lacanilao is quoted below:

TO MR. ROGELIO Q. LIM  
FROM GAVINO S. LACANILAO  
DATE 19 JULY 1979

TMXP 2, General Manager TMXP 2, Project Inspector

SUBJECT HEAVY RAINS DURING THE POURING

Last night at 22:45 hours while we were continuously pouring (Monolythic Concreting) on lines F and G of Bays 11 to 16 Section C of Main Building a signal for heavy rains coming was noted, so all the personnel involved in the pouring covered the newly poured concrete with polyethylene (Plastic) sheets to protect from the rain. When the rain started the newly poured concrete were protected.

During the heavy rain the pouring was temporarily suspended. Since I was the only one who has a rain coat, I inspected the whole top area and found out that rain water accumulated which was approximately thirteen (13) inches deep, because the water line was just below one (1) inch of my rubber boots.

So I removed all the temporary plugs of the C.I. downspouts to prevent accumulated rain water from destruction, and that was the only time that the water dispersed little by little.

When the rain stopped, Engineers Ramon Aseniero and E. Gahi told me that they will continue the pouring. I advised that they must first remove the water on top of both the plastic sheets and the newly poured concrete so that the concrete to be poured will not be diluted.

While men working between bays 15 and 16 were busy applying air pressure on the surface of the fresh concrete with water and the forms to be poured, I suddenly saw the contents in the bucket of one of the overhead cranes was about to be poured out on the newly poured concrete. So I ran and told Engr. E. Gahi why he is already pouring the concrete in the bucket while the rain water is still there? And Engr. Gahi told me that he was just following the order of Mr. John Y. Lim who just arrived and without assessing the situation and asking my decision being the inspector of the project.

So I approached Mr. Lim and asked him why he gave the order of pouring the concrete? He told me right away and pointing at the stopped poured concrete is already sitting. So I told him that if he continue [sic] pouring the concrete, I will go out of the construction site or I will not certify the said area. That was the time our argument stopped.

The following are my reasons why I delay the pouring:

\*The poured concrete before the rain was with standing water.

\*All the forms to be concreted were covered with water.

Note: If they will pour concrete on the above reasons, the mixed concrete will be diluted too much with water that it will lessen the strength of the roofing slab.

\*They were pouring the concrete without first applying grout to act as binder on the surface of the washed concrete.

\*They [sic] concrete they were trying to pour was already more than 45 minutes in the mixer, because the rain stopped at 01:15 hrs of July 20, 1979.

Specification manual page 02800-6 Section 1.04.04 truck mixing second to the last paragraph says:  
"Concrete not in place within 45 minutes from the time the ingredients were charged into the mixing drum or that has developed initial sitting should not be used. No exemption. So I rejected the two (2) batches."

Respectfully,

(Signed) G.S. LACANILAO  
TMXP 2, Project Inspector

The subject report is merely a narration of what Engr. Lacanilao had done and the justifications why he delayed the pouring of concrete and why he rejected two batches of concrete mix. Engr. Lacanilao explained that P.G. Dakay's representative did not proceed with the pouring of the substandard concrete mix, after he was informed that he (Engr. Lacanilao) would not certify the area. TMX then was led to believe that this incident was no cause for alarm since apparently, Engr. Lacanilao had prevented a possible problem. The report did not in any way warn TMX that the quality of the roof may be in jeopardy and that it had to be rectified. AWIA even approved all of P.G. Dakay's progress billings and issued a final certification of payment, an assurance that it found no problems at all with the construction work. Ironically though, when the cracks and deflections in certain sections of the roof had appeared, AWIA cited the marginal strength of the concrete as a result of the July 18, 1979 incident as the most probable cause of the cracks in TMX's roof.

AWIA's failure to adequately inform TMX of the possible implications of the contractor's mistake in the concrete pouring was a crucial factor that had cost the former to spend for the repairs.

AWIA breached its responsibility to inform TMX of the contractor's mistake. TMX may demand for damages duly proven as a natural consequence of the roof failures it has suffered. If the amount it claims cannot be proven with certainty, temperate damages may be awarded instead.

In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the 'natural and probable consequences of the breach of the obligation'.[23]

Both the trial court and the CA held AWIA liable for the cost of 11 shoring columns. AWIA no longer challenged this ruling when it withdrew its appeal to the appellate court, rendering the judgment final and executory.[24] We also found that AWIA had breached its duty of contract administration. Had the effects on the marginal strength of the concrete been promptly disclosed to TMX, the cracks and deflections could have been rectified by the contractor before it was issued its final certification of payment and the owner could have been spared from further expenses. There is a causal connection between AWIA's negligence and the expenses incurred by TMX. The latter was compelled to shutdown the plant during the workdays in December to repair the roof. In the process, it incurred expenses for the repairs, including the salaries of its workers who were put on forced leave, for which it can ask for reimbursement as actual damages.

Actual damages puts the claimant in the position in which he had been before he was injured. The award thereof must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and nonsubstantial proof.[25] Under the Civil Code, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.[26]

After an exhaustive perusal of the records pertaining to the claim of the salaries covering December 1-18, 1985 allegedly paid to TMX employees, we find that TMX's pieces of evidence do not substantiate such plea for the full reimbursement of the salaries. To prove that salaries have been paid, TMX has the burden to show that payments have actually been made to its employees. However, the documents it submitted were composed only of a master list of daily and monthly paid employees, summarized and itemized lists and computations of payroll costs during the covered period of shoring installation, salary structures, and vouchers prepared by the accounting department. These pieces of evidence, as well as the bare assertion of the TMX President, do not show a reasonable degree of certainty of actual payment to and actual receipt by its workers but only reflect the list of disbursements. No other witnesses who could corroborate the actual payment of the salaries of the employees during the shutdown period were presented. Vouchers are not receipts. A receipt is a written and signed acknowledgment that money has been received or goods have been delivered, while a voucher is documentary record of a business transaction.[27] Hence, the RTC correctly preferred the payroll documents (which contain the signatures of employees), implying that these are the primary/best evidence of payment, or "that which [afford] the greatest certainty of the fact in question".[28]

While TMX failed to prove the exact amount of the salaries it had paid, we however acknowledge that TMX had to pay its employees during the shutdown and had suffered pecuniary loss for the structural problem. Moreover, we concede to AWIA's stance that the installation of only 11 shoring columns, instead of 118, would significantly reduce the number of days allotted for the repairs. As a matter of equity, therefore, a relief to TMX in the form of temperate damages[29] is warranted. We find the amount of P500,000.00 reasonable and sufficient under the circumstances.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 49272 is **AFFIRMED** with the **MODIFICATION** that the award of P1,546,084.00 as part of actual damages is deleted, and in lieu thereof, temperate damages amounting to P500,000.00 are awarded. Costs against AWIA.

**SO ORDERED.**

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

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[1] Rollo, pp. 7-25; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid.

[2] Id. at 117-118; penned by Judge Erna Falloran Aliposa.

[3] EPZA stands for Export Processing Zone Authority.

[4] Two of the buildings, called 'twin modules,' are of the same design for watch assembly and office spaces, while the other one is differently designed to be used as a warehouse.

[5] Rollo, pp. 84-100.

[6] Id. at 56-59, 71-79.

[7] Id. at 428-430.

[8] Records, pp. 499-500.

[9] RTC Exhibits, pp. 44-47 and Records, pp. 181-182. Fletcher-Thompson, Inc. enumerated the following errors:

- Superimposed dead load used in the calculations was less than that actually imposed on the structure.
- Load distribution from roof beams to roof girders was erroneously assumed to be a uniform loading in lieu of a correct concentrated load distribution.
- Load redistribution caused by stiffness variations in the structural system was not accounted for.
- Allowable stresses were calculated assuming the concrete would attain a compressive strength of 5,000 psi in 28 days whereas the project specifications call for a strength attainment of 4,000 psi in 28 days.
- A live load of 20 psi, as used in the calculations, is not consistent with the drainage system. This live load assumption would be valid only if the roof drainage system would limit rainwater accumulations to 3.85 inches. x x x

On the other hand, Engr. Capistrano Ramientos of C.N. Ramientos and Associates enumerated the following errors:

- A. Wilson's structural engineers failed to factor in all live and deadloads in their computations/designs which A. Wilson's own architects, mechanical and electrical engineers had designed into the three buildings. This resulted in A. Wilson's structural designs/computations being engineered for load of 95 lbs/square foot, which is 23.70% lower than the correct/actual load of 117.50 per lb/square foot.
- A. Wilson made a mistake in assuming the loads to be distributed uniformly throughout the length of girders when, in fact, the loads were actually a combination of concentrated and distributed loads in the girders. This resulted in A. Wilson's underestimating the girder's bending moment by 14.38% or fully 95,546 lbs-foot.
- A. Wilson forgot to take into account the effect of rib-shortening due to post-tensioning of beams and girders. This resulted in A. Wilson mistakenly believing that no additional loads/stress had to be considered in its design, when actually there was an incremental load/stress resulting from rib-shortening of no less than an additional 47,828 lbs load/stress on each Beam-Girder intersection of the ridge girders (lines B and G).

The combined effect of errors 1 to 3 above resulted in A. Wilson underestimating the actual total load in each of the ridge girders (lines B and G) of the 3 buildings by 97.6%. This resulted in A. Wilson mistakenly designing girders for a maximum bending moment or load of only 664,044 foot-pounds when the actual bending moment or load is 1,312,360 foot pounds, 97.6% more (or almost 100% or double) A. Wilson's computation.

A. Wilson failed to considered[sic] that 5,000 psi concrete strength is not normally achievable in Cebu using Cebu aggregates.

x x x x

[10] Exhibit "H", folder of exhibits, p. 88.

[11] Folder of exhibits, pp. 89-391.

[12] Id. at 408-427.

[13] EPZA was a co-plaintiff in the case, but for lack of cause of action, the court eventually dismissed its complaint against AWIA.

[14] Rollo, pp. 129-130.

[15] Records, pp. 504-515.

[16] The December 29, 1978 Agreement specified the duties of AWIA during the Schematic Design Phase, the

Design Development Phase, the Construction Documents Phase, the Bidding or Negotiation Phase, and the Construction Phase-Administration of the Construction Contract.

[17] Rollo, p. 127.

[18] Id. at 128.

[19] Id. at 68-69.

[20] TMX likewise elevated the case before us, docketed as G.R. No. 159580, but we denied its petition on October 22, 2003 for want of reversible error.

[21] Rollo, pp. 87-89.

[22] Records, pp. 504-515.

[23] Civil Code, Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

[24] Development Bank of the Philippines v. Pingol Land Transport System Company, Inc., 465 Phil. 641, 650 (2004).

[25] Spouses Ong v. Court of Appeals, 361 Phil. 338, 353 (1999).

[26] CIVIL CODE, Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[27] Towne and City Development Corporation v. Court of Appeals, 478 Phil. 466, 475 (2004).

[28] Philippine National Bank v. Court of Appeals, 326 Phil. 326, 337 (1996).

[29] CIVIL CODE, Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

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