

D.M. WENCESLAO & ASSOCIATES, INC., PETITIONER, VS. FREYSSINET PHILIPPINES, INC., RESPONDENT.

G.R. No. 166857. September 11, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the 10 August 2004 Decision[2] and 21 January 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 58093. In its 10 August 2004 Decision, the Court of Appeals affirmed the 17 April 1997 Decision[4] of the Regional Trial Court of Manila, Branch 34 (trial court), with modification that only petitioner D.M. Wenceslao & Associates, Inc. (DMWAI) shall be liable to pay respondent Freyssinet Philippines, Inc. (FPI) P322,413.15 with interest at 6% per annum from the date of the filing of the complaint. The Court of Appeals also deleted the awards of attorney's fees and expenses of litigation. In its 21 January 2005 Resolution, the Court of Appeals denied DMWAI's motion for reconsideration.

The Facts

Sometime in January 1989, DMWAI undertook the construction of the National Historical Institute Building (NHI project). On 6 January 1989, Delfin J. Wenceslao, Jr. (Wenceslao, Jr.) accepted the contract proposal submitted by FPI for the fabrication and delivery of pre-stressed piles for the NHI project for P2,600,000.[5] The contract provided for a 30% down payment upon the signing of the contract and the balance of 70% shall be by progress payment based on work accomplished. The contract also provided for an interest rate of 18% per annum on delinquent accounts.

On 5 August 1993, FPI filed a complaint[6] against Wenceslao, Jr. doing business under the name and style of D.M. Wenceslao & Associates and/or D.M. Wenceslao Construction. According to FPI, the NHI project had been completed in November 1989 but Wenceslao, Jr. has not fully paid FPI for the pre-stressed piles. FPI prayed that Wenceslao, Jr. be ordered to pay FPI P322,413.15 plus interest at 18% per annum from November 1989 until full payment and 25% of the award as attorney's fees and the cost of the suit.

On 29 March 1994, FPI filed a motion with leave of court to admit amended complaint.[7] In the amended complaint,[8] FPI impleaded DMWAI as a party defendant. Wenceslao, Jr. opposed the motion on the ground that the amended complaint sought to create a new cause of action against him. In its 12 July 1994 Order,[9] the trial court admitted the amended complaint.

On 17 April 1997, the trial court rendered a decision in FPI's favor. The dispositive portion of the 17 April 1997 Decision provides:

WHEREFORE, in view of the above findings, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter to jointly and severally pay the plaintiff the sum of P322,413.15 with interest at 18% per annum from November 1989 until full payment and to pay the sum equivalent to 25% of the

principal balance as litigation expenses and attorney's fees and to pay the cost of the suit.

The counterclaim interposed by the defendants is hereby DISMISSED for lack of merit.

SO ORDERED.[10]

DMWAI appealed to the Court of Appeals. DMWAI alleged that the trial court erred in admitting FPI's amended complaint. DMWAI also questioned the trial court's ruling that DMWAI is liable for the IBRD account and in holding Wenceslao, Jr. severally and jointly liable with DMWAI for the monetary awards. DMWAI added that the trial court erred in awarding interest at 18% per annum, attorney's fees, litigation expenses and the cost of the suit.

On 10 August 2004, the Court of Appeals affirmed with modification the trial court's 17 April 1997 Decision. The dispositive portion of the 10 August 2004 Decision provides:

WHEREFORE, the decision appealed from is MODIFIED by deleting the award of attorney's fees and expenses of litigation and holding defendant-appellant D.M. Wenceslao & Associates, Inc. solely liable to plaintiff-appellee Freyssinet Philippines, Inc. for the payment of the amount of P322,413.15, with interest at six percent (6%) per annum from the date of filing of the complaint. However, the interest rate shall be twelve percent (12%) per annum from the time the judgment in this case becomes final and executory and until such amount is fully paid.

SO ORDERED.[11]

DMWAI filed a motion for reconsideration. In its 21 January 2005 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The Ruling of the Trial Court

While ruling that DMWAI had fully paid FPI for the NHI project, the trial court still found DMWAI liable to FPI for the International Bank for Reconstruction and Development (IBRD) account. According to the trial court, even after the excess payments from the NHI project were applied, DMWAI's statement of account showed a balance of P322,413.15 from the IBRD account. The trial court said that, based on Section 5, Rule 10[12] of the Rules of Court, it acquired jurisdiction over the issue of the unpaid balance on the IBRD account when FPI presented evidence to prove its claim and Wenceslao, Jr. admitted that he still had an outstanding account with FPI. The trial court added that DMWAI did not object when FPI presented evidence with respect to the IBRD account.

The Ruling of the Court of Appeals

The Court of Appeals stated that the trial court did not err in admitting FPI's amended complaint because the amendment was only a matter of form as it merely impleaded DMWAI as an additional defendant and did not change or add another issue in the case.

The Court of Appeals affirmed the trial court's ruling that while the NHI project has been fully paid, DMWAI is still liable to FPI for the IBRD account. The Court of Appeals noted that DMWAI did not object to FPI's Exhibit "J" showing that DMWAI has an outstanding balance of P618,796 for the IBRD account and even adopted the same as its Exhibit "7." According to the Court of Appeals, DMWAI's failure to object to the evidence presented by FPI on the IBRD account meant that DMWAI gave its implied consent to have the trial court pass upon the issue.

The Court of Appeals also ruled that Wenceslao, Jr. should not be held jointly and severally liable with DMWAI because Wenceslao, Jr. signed the contract, not in his personal capacity, but as President of DMWAI.

However, the Court of Appeals modified the interest rate from 18% to 6% per annum. The Court of Appeals said that the interest rate of 18% per annum on delinquent accounts pertained only to the NHI project, which has been fully paid. Since the unpaid balance of P322,413.15 concerned the IBRD account and no evidence was presented to show the interest rate on the IBRD account, the Court of Appeals ruled that the interest rate should be 6% per annum pursuant to Article 2209[13] of the Civil Code to be computed from the date of the filing of the complaint. However, the interest rate shall be 12% per annum from the time the judgment becomes final and executory until it is satisfied.

The Court of Appeals deleted the awards of attorney's fees and expenses of litigation because there was no proof that DMWAI acted in gross and evident bad faith in denying its liability to FPI on the NHI project.

The Issues

DMWAI raises the following issues:

- Whether the trial court had jurisdiction over the IBRD account; and
- Whether DMWAI is liable to pay interest on the IBRD account.

The Ruling of the Court

The petition has no merit.

DMWAI argues that the trial court's application of Section 5, Rule 10 of the Rules of Court was misplaced. DMWAI insists that at no time during the trial did FPI present any evidence or testimony to prove DMWAI's liability for the IBRD account. DMWAI adds that it had no opportunity to fully present evidence on the matter or to refute FPI's claim. DMWAI argues that the IBRD account was "merely mentioned" during the trial to prove that an off-setting agreement existed between the parties and that it should be applied to the NHI project. DMWAI adds that it should not be made liable to pay interest on the IBRD account as this was not the issue raised in FPI's complaint.

FPI maintains that the trial court had jurisdiction over the IBRD account because it was included in the issue of off-setting of accounts.

In *Bank of America v. American Realty Corporation*,[14] we stated:

When evidence is presented by one party, with the express or implied consent of the adverse party, as to issues not alleged in the pleadings, judgment may be rendered validly as regards those issues, which shall be considered as if they have been raised in the pleadings. There is implied consent to the evidence thus presented when the adverse party fails to object thereto.

Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basic requirements of fair play had been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.[15]

DMWAI faults the trial court for finding it liable to FPI for the IBRD account despite the fact that the complaint sought to collect from the NHI project. This is not accurate. While on the face of the complaint there was no

specific allegation that DMWAI is liable to FPI for the IBRD account, subsequent developments, from the pre-trial conference up to the presentation of evidence and the examination of witnesses, show that FPI sought to recover DMWAI's unpaid accounts including the IBRD account. Moreover, DMWAI did not raise any objection on the issue.

A careful scrutiny of the decisions of the trial court and the Court of Appeals reveals that their findings and conclusions on the matter of DMWAI's liability to FPI for the IBRD account are overwhelmingly supported by the evidence.

On this issue, the trial court stated:

However, considering the incorporation of the statement of account (Exh. "J") the balance from the IBRD project and subtracting therefrom the excess after the payments were applied to the NHI project, this Court finds and so holds that defendant is still liable to the plaintiff. This is affirmed by the admission of D.J. Wenceslao, Jr., in his testimony. Based from the provision of Rule 10, Section 5, judgment can be rendered by this Court ordering the defendant to pay the unpaid obligation, it having acquired jurisdiction over said subject matter.

Although the issue raised and upon which the complaint is predicated is the collection from the NHI project, yet the account covering the IBRD [project] of the defendant with the plaintiff was tried with the implied consent of the former. Under the rule it can be considered by the Court. Defendant's conformity is affirmed by D.J. Wenceslao's admission that they still have an outstanding balance with the plaintiff but not for the NHI project. Under Rule 10, Sec.5 [,] failure to amend does not affect the result of the trial of said issue. The defendants did not even object to the plaintiff's presentation of evidence with respect to the other account which is included in the statement of account Exh."J". Jurisdiction therefore over [the] other issue other than that expressed in the present complaint was acquired by this Court.[16]

On the other hand, the Court of Appeals declared:

The Pre-Trial Order dated October 26, 1995 defined the issues as follows:

- "1. Whether there is an agreement or negotiation regarding the off-setting of accounts between the parties.
2. If there was, whether the plaintiff [FPI] is still entitled to collect the balance or whether there is still a balance to be collected.
3. Whether defendant Wenceslao [Jr] is personally liable."

Wenceslao, Jr. admitted that based on the statement of account, the company has a liability with Freyssinet, but not on the NHI account. The statement of account dated September 26, 1990 shows the total obligation of DMWA, Inc. to Freyssinet in the amount of P2,588,346.00, representing the contract amount of P2,969,550.00 for the NHI Project and the balance of account of P618,796.00 for the IBRD Project. However, the statement of account prepared by Freyssinet as of March 23, 1993 shows that the total obligation in the amount of P3,588,346.00 was reduced to P352,413.15. A check dated May 15, 1993 in the amount of P30,000.00 was issued by Wenceslao, Jr. to Freyssinet, further reducing the obligation of DMWA, Inc. to Freyssinet to P322,413.15.

Thus, when evidence is presented by one party, with the express or implied consent of the adverse party, as to issues not alleged in the pleadings, judgment may be rendered validly as regards those issues, which shall be considered as if they have been raised in the pleadings. There is implied consent to the evidence thus presented when the adverse party fails to object thereto. In the case at bench, appellants not only did not object to Freyssinet's Exhibit "J" showing that it has an outstanding balance in the amount of P618,796.00 for the IBRD Project, they even adopted the same as their Exhibit "7".[17] (Citations omitted)

Contrary to DMWAI allegations, evidence was properly presented with full opportunity on the part of both parties to support their relative contentions and to refute each other's evidence. In this case, DMWAI was not prejudiced by the inclusion of the IBRD account as one of the controverted issues. Moreover, DMWAI had been afforded ample opportunity to refute and object to the evidence related to the IBRD account, thus, the rudiments of fair play had been properly observed.

Since we have affirmed the ruling of the trial court and the Court of Appeals which held DMWAI liable to FPI for the IBRD account, we likewise affirm the ruling of the Court of Appeals on DMWAI's liability to pay interest on the IBRD account.

WHEREFORE, we DENY the petition. We AFFIRM the 10 August 2004 Decision and 21 January 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 58093.

SO ORDERED.

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

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

[2] Rollo, pp. 40-53. Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring.

[3] Id. at 55-56.

[4] CA rollo, pp. 49-59. Penned by Judge Romulo A. Lopez.

[5] Exhibit "A," Folder of Exhibits, pp. 1-3.

[6] Records, pp. 1-4.

[7] Id. at 119-120.

[8] Id. at 121-125.

[9] Id. at 140.

[10] CA rollo, pp. 58-59.

[11] Rollo, p. 52.

[12] Section 5, Rule 10 of the Rules of Court provides:

SEC. 5. - Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[13] Article 2209 of the Civil Code provides:

ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the

indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

[14] 378 Phil. 1279 (1999), citing Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores de Talisay-Silay, Inc., 317 Phil. 432 (1995).

[15] Id. at 1302-1303.

[16] CA rollo, pp. 56-57.

[17] Rollo, pp. 47-49.

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