

CONTINENTAL CEMENT CORPORATION, PETITIONER, VS. ASEA BROWN BOVERI, INC., BBC BROWN BOVERI, CORP., AND TORD B. ERIKSSON,? ? RESPONDENTS.

G.R. No. 171660. October 17, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

"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."[1]

This Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court assails the Decision[3] dated August 25, 2005 and the Resolution[4] dated February 16, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 58551.

Factual Antecedents

Sometime in July 1990, petitioner Continental Cement Corporation (CCC),

a corporation engaged in the business of producing cement,[5] obtained the services of respondents[6] Asea Brown Boveri, Inc. (ABB) and BBC Brown Boveri, Corp. to repair its 160 KW Kiln DC Drive Motor (Kiln Drive Motor).[7]

On October 23, 1991, due to the repeated failure of respondents to repair the Kiln Drive Motor, petitioner filed with Branch 101 of the Regional Trial Court (RTC) of Quezon City a Complaint[8] for sum of money and damages, docketed as Civil Case No. Q-91-10419, against respondent corporations and respondent Tord B. Eriksson (Eriksson), Vice-President of the Service Division of the respondent ABB.[9] Petitioner alleged that:

4. On July 11, 1990, the plaintiff delivered the 160 KW Kiln DC Drive Motor to the defendants to be repaired under PO No. 17136-17137, x x x

The defendant, Tord B. Eriksson, was personally directing the repair of the said Kiln Drive Motor. He has direction and control of the business of the defendant corporations. Apparently, the defendant Asea Brown Boveri, Inc. has no separate personality because of the 4,000 shares of stock, 3996 shares were subscribed by Honorio Poblador, Jr. The four other stockholders subscribed for one share of stock each only.

5. After the first repair by the defendants, the 160 KW Kiln Drive Motor was installed for testing on October 3, 1990. On October 4, 1990 the test failed. The plaintiff removed the DC Drive Motor and replaced it with its old motor. It was only on October 9, 1990 that the plaintiff resumed operation. The plaintiff lost 1,040 MTD per day from October 5 to October 9, 1990.

6. On November 14, 1990, after the defendants had undertaken the second repair of the motor in question, it was installed in the kiln. The test failed again. The plaintiff resumed operation with its old motor on November 19, 1990. The plaintiff suffered production losses for five days at the rate of 1,040 MTD daily.

7. The defendants were given a third chance to repair the 160 KW Kiln DC Drive Motor. On March 13, 1991, the motor was installed and tested. Again, the test failed. The plaintiff resumed operation on March 15, 1991. The plaintiff sustained production losses at the rate of 1,040 MTD for two days.

8. As a consequence of the failure of the defendants to comply with their contractual obligation to repair the 160 KW Kiln DC Drive Motor, the plaintiff sustained the following losses:

(a) Production and opportunity losses - P10,600,000.00

This amount represents only about 25% of the production losses at the rate of P72.00 per bag of cement.

(b) Labor Cost and Rental of Crane - 26,965.78

(c) Penalties (at P987.25 a day) for failure to deliver the motor from

Aug. 29, 1990 to July 31, 1991. - 331,716.00

(d) Cost of money interest of the

P987.25 a day from July 18, 1990

to April 5, 1991 at 34% for 261 days - 24,335.59

Total Damages 10,983,017.42

9. The plaintiff has made several demands on the defendants for the payment of the above-enumerated damages, but the latter refused to do so without valid justification.

10. The plaintiff was constrained to file this action and has undertaken to pay its counsel Twenty Percentum (20%) of the amount sought to be recovered as attorney's fees.[10]

Respondents, however, claimed that under Clause 7 of the General Conditions,[11] attached to the letter of offer[12] dated July 4, 1990 issued by respondent ABB to petitioner, the liability of respondent ABB "does not extend to consequential damages either direct or indirect." [13] Moreover, as to respondent Eriksson, there is no lawful and tenable reason for petitioner to sue him in his personal capacity because he did not personally direct the repair of the Kiln Drive Motor.[14]

Ruling of the Regional Trial Court

On August 30, 1995, the RTC rendered a Decision[15] in favor of petitioner. The RTC rejected the defense of limited liability interposed by respondents since they failed to prove that petitioner received a copy of the General Conditions.[16] Consequently, the RTC granted petitioner's claims for production loss, labor cost and rental of crane, and attorney's fees.[17] Thus:

WHEREFORE, premises above considered, finding the complaint substantiated by plaintiff, judgment is hereby rendered in favor of plaintiff and against defendants, hereby ordering the latter to pay jointly and severally the former, the following sums:

P10,600,00.00 for loss of production;

P 26,965.78 labor cost and rental of crane;

P 100,000.00 attorney's fees and cost.

SO ORDERED.[18]

Ruling of the Court of Appeals

On appeal, the CA reversed the ruling of the RTC. The CA applied the exculpatory clause in the General Conditions and ruled that there is no implied warranty on repair work; thus, the repairman cannot be made to pay for loss of production as a result of the unsuccessful repair.[19] The fallo of the CA Decision[20] reads:

WHEREFORE, premises considered, the assailed August 30, 1995 Decision of the Regional Trial Court of Quezon City, Branch 101 is hereby REVERSED and SET ASIDE. The October 23, 1991 Complaint is hereby DISMISSED.

SO ORDERED.[21]

Petitioner moved for reconsideration[22] but the CA denied the same in its Resolution[23] dated February 16, 2006.

Issues

Hence, the present recourse where petitioner interposes the following issues:

- Whether x x x the [CA] gravely erred in applying the terms of the "General Conditions" of Purchase Orders Nos. 17136 and 17137 to exculpate the respondents x x x from liability in this case.
- Whether x x x the [CA] seriously erred in applying the concepts of 'implied warranty' and 'warranty against hidden defects' of the New Civil Code in order to exculpate the respondents x x x from its contractual obligation.[24]

Petitioner's Arguments

Petitioner reiterates that the General Conditions cannot exculpate respondents because petitioner never agreed to be bound by it nor did petitioner receive a copy of it.[25] Petitioner also imputes error on the part of the CA in applying the concepts of warranty against hidden defects and implied warranty.[26] Petitioner contends that these concepts are not applicable because the instant case does not involve a contract of sale.[27] What applies are Articles 1170 and 2201 of

the Civil Code.[28]

Respondents' Arguments

Conversely, respondents insist that petitioner is bound by the General Conditions.[29] By issuing Purchase Order Nos. 17136-37, petitioner in effect accepted the General Conditions appended to respondent ABB's letter of offer.[30] Respondents likewise defend the ruling of the CA that there could be no implied warranty on the repair made by respondent ABB as the warranty of the fitness of the equipment should be enforced directly against the manufacturer of the Kiln Drive Motor.[31] Respondents also deny liability for damages claiming that they performed their obligation in good faith.[32]

Our Ruling

The petition has merit.

Petitioner and respondent ABB entered into a contract for the repair of petitioner's Kiln Drive Motor, evidenced by Purchase Order Nos. 17136-37,[33] with the following terms and conditions:

a)

Total Price:

P197,450.00

b)

Delivery Date:

August 29, 1990 or six (6) weeks from receipt of order and down payment[34]

c)

Penalty:

One half of one percent of the total cost or Nine Hundred Eighty Seven Pesos and Twenty five centavos (P987.25) per day of delay.

Respondent ABB, however, not only incurred delay in performing its obligation but likewise failed to repair the Kiln Drive Motor; thus, prompting petitioner to sue for damages.

Clause 7 of the General Conditions is not binding on petitioner

Respondents contend that under Clause 7 of the General Conditions their liability "does not extend to consequential damages either direct or indirect." [35] This contention, however, is unavailing because respondents failed to show that petitioner was duly furnished with a copy of said General Conditions. Hence, it is not binding on petitioner.

Having breached the contract it entered with petitioner, respondent ABB is liable for damages pursuant to Articles 1167, 1170, and 2201 of the Civil Code, which state:

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Art. 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.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

Based on the foregoing, a repairman who fails to perform his obligation is liable to pay for the cost of the execution of the obligation plus damages. Though entitled, petitioner in this case is not claiming reimbursement for the repair allegedly done by Newton Contractor,[36] but is instead asking for damages for the delay caused by respondent ABB.

Petitioner is entitled to penalties under
Purchase Order Nos. 17136-37

As per Purchase Order Nos. 17136-37, petitioner is entitled to penalties in the amount of P987.25 per day from the time of delay, August 30, 1990, up to the time the Kiln Drive Motor was finally returned to petitioner. Records show that although the testing of Kiln Drive Motor was done on March 13, 1991, the said motor was actually delivered to petitioner as early as January 7, 1991.[37] The installation and testing was done only on March 13, 1991 upon the request of petitioner because the Kiln was under repair at the time the motor was delivered; hence, the load testing had to be postponed.[38]

Under Article 1226[39] of the Civil Code, the penalty clause takes the place of indemnity for damages and the payment of interests in case of non-compliance with the obligation, unless there is a stipulation to the contrary. In this case, since there is no stipulation to the contrary, the penalty in the amount of P987.25 per day of delay covers all other damages (i.e. production loss, labor cost, and rental of the crane) claimed by petitioner.

Petitioner is not entitled to recover production loss,
labor cost and the rental of crane

Article 1226 of the Civil Code further provides that if the obligor refuses to pay the penalty, such as in the instant case, [40] damages and interests may still be recovered on top of the penalty. Damages claimed must be the natural and probable consequences of the breach, which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.[41]

Thus, in addition to the penalties, petitioner seeks to recover as damages production loss, labor cost and the rental of the crane.

Petitioner avers that every time the Kiln Drive Motor is tested, petitioner had to rent a crane and pay for labor to install the motor.[42] But except for the Summary of Claims for Damages,[43] no other evidence was presented by petitioner to show that it had indeed rented a crane or that it incurred labor cost to install the motor.

Petitioner likewise claims that as a result of the delay in the repair of the Kiln Drive Motor, its production from August 29, 1990 to March 15, 1991 decreased since it had to use its old motor which was not able to produce cement as much as the one under repair;[44] and that every time the said motor was installed and tested, petitioner had to stop its operations; thereby, incurring more production losses.[45] To support its claim, petitioner presented its monthly production reports[46] for the months of April to June 1990 showing that on the average it was able to produce 1040 MT of cement per day. However, the production reports for the months of August 1990 to March 1991 were not presented. Without these production reports, it cannot be determined with reasonable certainty whether petitioner indeed incurred production losses during the said period. It may not be amiss to say that competent proof and a reasonable degree of certainty are needed to justify a grant of actual or compensatory damages; speculations, conjectures, assertions or guesswork are not sufficient.[47]

Besides, consequential damages, such as loss of profits on account of delay or failure of delivery, may be recovered only if such damages were reasonably foreseen or have been brought within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.[48] Considering the nature of the obligation in the instant case, respondent ABB, at the time it agreed to repair petitioner's Kiln Drive Motor, could not have reasonably foreseen that it would be made liable for production loss, labor cost and rental of the crane in case it fails to repair the motor or incurs delay in delivering the same, especially since the motor under repair was a spare motor.[49]

For the foregoing reasons, petitioner is not entitled to recover production loss, labor cost and the rental of the crane.

Petitioner is not entitled to attorney's fees

Neither is petitioner entitled to the award of attorney's fees. Jurisprudence requires that the factual basis for the award of attorney's fees must be set forth in the body of the decision and not in the dispositive portion only.[50] In this case, no explanation was given by the RTC in awarding attorney's fees in favor of petitioner. In fact, the award of attorney's fees was mentioned only in the dispositive portion of the decision.

Respondent Eriksson cannot be made jointly and severally liable for the penalties

Respondent Eriksson, however, cannot be made jointly and severally liable for the penalties. There is no showing that respondent Eriksson directed or participated in the repair of the Kiln Drive Motor or that he is guilty of bad faith or gross negligence in directing the affairs of respondent ABB. It is a basic principle that a corporation has a personality separate and distinct from the persons composing or representing it; hence, personal liability attaches only in exceptional cases, such as when the director, trustee, or officer is guilty of bad faith or gross negligence in directing the affairs of the corporation.[51]

In sum, we find petitioner entitled to penalties in the amount of P987.25 per day from August 30, 1990 up to January 7, 1991 (131 days) or a total amount of P129,329.75 for the delay caused by respondent ABB. Finally, we impose interest at the rate of six percent (6%) on the total amount due from the date of filing of the complaint until finality of this Decision. However, from the finality of judgment until full payment of the total award, the interest rate of twelve percent (12%) shall apply.[52]

WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated August 25, 2005 and the Resolution dated February 16, 2006 of the Court of Appeals in CA-G.R. CV No. 58551 are hereby REVERSED and SET ASIDE. Respondent ABB is ORDERED to pay petitioner the amount of P129,329.75, with interest at 6% per annum to be computed from the date of the filing of the complaint until finality of this Decision and 12% per annum thereafter until full payment.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Peralta,[*] and Villarama, Jr., JJ., concur.

[*] In lieu of Associate Justice Lucas P. Bersamin, per Special Order No. 1110 (Revised) dated September 30, 2011.

[**] Sometimes referred as Tord B. Eriksson in some parts of the records.

[1] Civil Code, Article 2199.

[2] Rollo, pp. 30-166 with Annexes "A" to "M" inclusive.

[3] Id. at 54-64; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[4] Id. at 66-67.

[5] Id. at 30.

[6] The two corporations merged on June 10, 1988, with Asea Brown Boveri, Inc. as the surviving entity. (Id. at 88).

[7] Id. at 55.

[8] Id. at 79-81.

[9] Id. at 90.

[10] Id. at 79-81.

[11] Id. at 95. Clause 7 provides:

Clause 7. GENERAL LIABILITY AND MAINTENANCE GUARANTEE

All machinery and apparatus for our manufacture is guaranteed to be of high grade material and of good and careful workmanship and we undertake to correct and make good any defect or defects which may develop under normal and proper use within the guarantee period and which are due solely to faulty design, material, or workmanship, provided always that we are notified immediately after the defect is discovered and that such defective parts are promptly returned. The repaired or new parts will be delivered free or in the case of goods for exports f.o.b. Defective parts thus replaced remain our property. Unless otherwise stated in the tender or order confirmation the guarantee period is twelve months for all ordinary machinery and apparatus operated under normal conditions. The guarantee period is reckoned from the date delivery is made, or if delivery cannot be made on account of delays caused by circumstances beyond our control, from the date the goods are ready for dispatch at our premises. All liability on our part ceases at the termination of the guarantee period.

Our liability is in all cases limited as provided in these conditions and does not extend to consequential loss either direct or indirect, nor to expenses for repair or replacements or otherwise paid or incurred without our written authority.

[12] Id. at 93-94.

[13] Id. at 95.

[14] Id. at 90-91.

[15] Id. at 97-107; penned by Judge Pedro T. Santiago.

[16] Id. at 106.

[17] Id.

[18] Id.

[19] Id. at 59-63.

[20] Id. at 54-64

[21] Id. at 63.

[22] Id. at 68-78.

[23] Id. at 66-67.

[24] Id. at 276.

[25] Id. at 277-279.

[26] Id. at 279.

[27] Id.

[28] Id. at 280-282.

[29] Id. at 248.

[30] Id.

[31] Id. at 255.

[32] Id. at 259.

[33] Id. at 82-83.

[34] Down payment was made on July 18, 1990; TSN dated July 27, 1994, Direct Examination of Jessica Alonzo, p. 12.

[35] Rollo, p. 89.

[36] TSN dated June 15, 1994, Direct Examination of Engr. Juanito Fernando, p. 9.

[37] Records, p. 391.

[38] Id.

[39] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

[40] Rollo, pp. 81 and 88.

[41] Civil Code, Article 1174.

[42] TSN dated July 27, 1994, Direct Examination of Jessica Alonzo, p. 9.

[43] Records, p. 343.

[44] TSN dated July 27, 1994, Direct Examination of Jessica Alonzo, pp.4-11.

[45] Id.

[46] Records, pp. 340-342.

[47] Citytrust Banking Corporation v. Villanueva, 413 Phil. 776, 787 (2001).

[48] Mendoza v. Philippine Air Lines, Inc., 90 Phil. 836, 844 (1952), citing Chapman v. Fargo, L.R.A. (1918 F) p. 1049.

[49] TSN dated June 15, 1994, Direct Examination of Engr. Juanito Fernando, pp. 4-5.

[50] Mercury Drug Corporation v. Baking, G.R. No. 156037, May 25, 2007, 523 SCRA 184, 192.

[51] Queensland-Tokyo Commodities, Inc. v. George, G.R. No. 172727, September 8, 2010, 630 SCRA 304, 315.

[52] Duarte v. Duran, G.R. No. 173038, September 14, 2011, citing Tropical Homes, Inc. v. Court of Appeals, 338 Phil. 930, 943-943 (1997), and Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

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