

ALCATEL PHILIPPINES, INC., PETITIONER, VS. I.M. BONGAR & CO., INC. AND STRONGHOLD INSURANCE CO., INC., RESPONDENTS.

G.R. No. 182946. October 05, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case is about a trial court's award of attorney's fees in the dispositive portion of its decision but with no discussion of its entitlement in the body of that decision.

The Facts and the Case

Philippine Long Distance Telephone Company (PLDT) engaged the services of Alcatel Philippines, Inc. (Alcatel) to do the civil works needed for its Fast Track Project in North Parañaque. To carry out these works, on June 20, 1991 Alcatel entered into a P12,047,407.00 subcontract with I.M. Bongar and Co., Inc. (Bongar) for the construction of needed manholes and conduits. Alcatel gave Bongar a down payment of 20% of the contract price or P2,409,481.40.

Two of the requirements of their agreement were that Bongar was to post 1) a performance bond equivalent to 25% of the total value of the subcontract and 2) an advance payment bond guarantee. Complying with these requirements, on June 27, 1991 Bongar and Stronghold Insurance Co., Inc. (SIC) executed a Surety Bond and a Performance Bond, binding themselves jointly and severally to pay Alcatel P2,409,481.40 and P3,011,851.75, respectively, in the event of Bongar's failure to perform faithfully and within the agreed time, its obligations under its contract.

The contract with Bongar took effect on July 29, 1991. The parties agreed to have the project completed within 90 days from July 29 or by October 29. In the course of periodic inspection of the progress of the works, however, Alcatel noted that Bongar had fallen behind schedule. Alcatel also received reports of inferior work from the homeowners association in Parañaque. As it turned out, Bongar failed to finish the required works by October 29.

After several meetings between the parties, on December 1, 1991 Bongar wrote Alcatel submitting an adjusted work schedule that set a new completion target by May 31, 1992. On April 20, 1992, however, Bongar altogether stopped further construction activities, forcing Alcatel to take over the works. In a letter dated June 1, 1992, Alcatel cancelled Bongar's contract, demanded that it vacate and turn over possession of the construction area, and hand over all uninstalled Alcatel-supplied materials within 24 hours from receipt of the letter.

Since Bongar ignored the letter, Alcatel sent it another one dated August 7, 1992, this time with notice to SIC, demanding payment of their liabilities under their bonds. Both Bongar and SIC refused to comply, thus prompting Alcatel to file an action for damages against them before the Makati Regional Trial Court (RTC).

On September 24, 2001 the RTC rendered judgment, ordering Bongar and SIC to pay Alcatel, jointly and severally, the value of the uninstalled materials given to Bongar worth P919,471.10 and attorney's fees and costs of P500,000.00. But the RTC denied for lack of evidence Alcatel's claims for P500,482.41 in overpayment and

P1,098,208.02 in additional costs spent for completing the subject works. Alcatel appealed to the Court of Appeals (CA).

On August 31, 2007 the CA affirmed the RTC Decision but deleted the award of attorney's fees and costs for the reason that, while these are stated in the dispositive portion, they are not mentioned in the body of the decision. Alcatel seeks the review of the CA decision.

The Issues Presented

The issues in this case are whether or not the CA erred in ruling that Alcatel is not entitled to a) an award of attorney's fees; b) a refund of overpayment; and c) payment of additional costs for completion.

The Rulings of the Court

Although attorney's fees are not allowed in the absence of stipulation, the court can award the same when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just, and demandable claim.[1]

Still, the award of attorney's fees to the winning party lies within the discretion of the court, taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. Further, the court should state the reason for the award of attorney's fees in the body of the decision. Its unheralded appearance in the dispositive portion is, as a rule, not allowed.[2]

Here, however, although the RTC did not specifically discuss in the body of its decision its basis for awarding attorney's fees, its findings of fact clearly support such an award. For instance, the RTC found, based on the record, that Bongar persistently and clearly violated the terms of its contract with Alcatel. It failed to finish the works by October 29, 1991, the stipulated date. It sought on December 1, 1991, more than a month after it was in violation, to finish its job by May 31, 1992, an extra seven months for just a three-month project. Worse, when Alcatel had to take over the job to save its own undertaking to PLDT, Bongar refused to return to Alcatel the uninstalled materials that it provided for the works.[3] Alcatel was forced to litigate to protect its interest.[4]

With respect, however, to Alcatel's claims for refund of what it overpaid Bongar and for recovery of the costs incurred in procuring needed materials anew, the Court sees no reason to deviate from the findings of the RTC and the CA. Alcatel mainly asserts that, since Bongar failed to specifically deny those claims, it should be deemed to admit them. But, as the CA aptly held, Bongar vehemently disputed and rejected such claims in its answer to the complaint.[5]

Notably, Alcatel averred that it paid Bongar P7,056,449.31 when the value of its work amounted to only P6,555,966.92, showing an excess payment of P500,482.41. But, in its Answer, Bongar said that it received only P6,505,049.61.[6] Besides, the receipts that Alcatel presented were only for P2,409,481.40,[7] P1,300,000.00,[8] and P2,795,568.71.[9] It adduced no receipts for the amounts of P315,790.00 and P234,609.70.[10] The same is true of Alcatel's claim for re-procurement costs. It adduced no evidence to substantiate such claim. Indeed, Alcatel expressed the belief that it did not have to prove its two claims since Bongar did not specifically deny them,[11] an unfounded belief.

WHEREFORE, the Court PARTLY GRANTS the petition, SETS ASIDE the decision of the Court of Appeals in CA-G.R. CV 74652 dated August 31, 2007, and REINSTATES the decision of the Regional Trial Court of Makati, Branch 66, in Civil Case 93-2323 dated September 24, 2001.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Civil Code of the Philippines, Article 2208.

[2] Pagsibigan v. People, G.R. No. 163868, June 4, 2009, 588 SCRA 249, 258.

[3] Exhibits "R", "S", "T", "U", "V", "V-1", "W", and "W-1", records, Vol. III, pp. 96-113 and 117-118.

[4] Civil Code of the Philippines, Article 2208. In the absence of stipulation, attorney' s fees and expenses of litigation, other than judicial costs cannot be recovered except:

x x x x

2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

[5] See paragraphs 21 and 22 of the Answer to the Complaint, records, Vol. I, p. 273.

[6] Id. at 270.

[7] Exhibit "N", records, Vol. III, p. 62.

[8] Exhibit "O", id. at 63.

[9] Exhibits "P" to "P-29", id. at 64-93.

[10] TSN, April 20, 1998, pp. 52-53.

[11] Rollo, p. 25.

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