MARSMAN DRYSDALE LAND, INC.,PETITIONER, VS. PHILIPPINE GEOANALYTICS, INC. AND GOTESCO PROPERTIES, INC., RESPONDENTS.

G.R. No. 183374. June 29, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On February 12, 1997, Marsman Drysdale Land, Inc. (Marsman Drysdale) and Gotesco Properties, Inc. (Gotesco) entered into a Joint Venture Agreement (JVA) for the construction and development of an office building on a land owned by Marsman Drysdale in Makati City.[1]

The JVA contained the following pertinent provisions:

> SECTION 4. CAPITAL OF THE JV
>
> It is the desire of the Parties herein to implement this Agreement by investing in the PROJECT on a FIFTY (50%) PERCENT- FIFTY (50%) PERCENT basis.
>
> 4.1. Contribution of [Marsman Drysdale]-[Marsman Drysdale] shall contribute the Property.
>
> The total appraised value of the Property is PESOS: FOUR HUNDRED TWENTY MILLION (P420,000,000.00).
>
> For this purpose, [Marsman Drysdale] shall deliver the Property in a buildable condition within ninety (90) days from signing of this Agreement barring any unforeseen circumstances over which [Marsman Drysdale] has no control. Buildable condition shall mean that the old building/structure which stands on the Property is demolished and taken to ground level.
>
> 4.2. Contribution of [Gotesco]- [Gotesco] shall contribute the amount of PESOS: FOUR HUNDRED TWENTY MILLION (P420,000,000.00) in cash which shall be payable as follows:
>
> 4.2.1.
>
> The amount of PESOS: FIFTY MILLION (P50,000,000.00) upon signing of this Agreement.
>
> 4.2.2.
>
> The balance of PESOS: THREE HUNDRED SEVENTY MILLION (P370,000,000.00) shall be paid based on progress billings, relative to the development and construction of the Building, but shall in no case exceed ten (10) months from delivery of the Property in a Buildable condition as defined in section 4.1.
>
> A joint account shall be opened and maintained by both Parties for handling of said balance, among other Project concerns.
>
> 4.3. Funding and Financing

4.3.1

Construction funding for the Project shall be obtained from the cash contribution of [Gotesco].

4.3.2

Subsequent funding shall be obtained from the pre-selling of units in the Building or, when necessary, from loans from various banks or financial institutions. [Gotesco] shall arrange the required funding from such banks or financial institutions, under such terms and conditions which will provide financing rates favorable to the Parties.

4.3.3

[Marsman Drysdale] shall not be obligated to fund the Project as its contribution is limited to the Property.

4.3.4

If the cost of the Project exceeds the cash contribution of [Gotesco], the proceeds obtained from the pre-selling of units and proceeds from loans, the Parties shall agree on other sources and terms of funding such excess as soon as practicable.

4.3.5

x x x x.

4.3.6

x x x x.

4.3.7

x x x x.

4.3.8

All funds advanced by a Party (or by third parties in substitution for advances from a Party) shall be repaid by the JV.

4.3.9

If any Party agrees to make an advance to the Project but fails to do so (in whole or in part) the other party may advance the shortfall and the Party in default shall indemnify the Party making the substitute advance on demand for all of its losses, costs and expenses incurred in so doing. (emphasis supplied; underscoring in the original)

Via Technical Services Contract (TSC) dated July 14, 1997,[2] the joint venture engaged the services of Philippine Geoanalytics, Inc. (PGI) to provide subsurface soil exploration, laboratory testing, seismic study and geotechnical engineering for the project. PGI, was, however, able to drill only four of five boreholes needed to conduct its subsurface soil exploration and laboratory testing, justifying its failure to drill the remaining borehole to the failure on the part of the joint venture partners to clear the area where the drilling was to be made.[3] PGI was able to complete its seismic study though.

PGI then billed the joint venture on November 24, 1997 for P284,553.50 representing the cost of partial subsurface soil exploration; and on January 15, 1998 for P250,800 representing the cost of the completed seismic study.[4]

Despite repeated demands from PGI,[5] the joint venture failed to pay its obligations.

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Meanwhile, due to unfavorable economic conditions at the time, the joint venture was cut short and the planned building project was eventually shelved.[6]

PGI subsequently filed on November 11, 1999 a complaint for collection of sum of money and damages at the Regional Trial Court (RTC) of Quezon City against Marsman Drysdale and Gotesco.

In its Answer with Counterclaim and Cross-claim, Marsman Drysdale passed the responsibility of paying PGI to Gotesco which, under the JVA, was solely liable for the monetary expenses of the project.[7]

Gotesco, on the other hand, countered that PGI has no cause of action against it as PGI had yet to complete the services enumerated in the contract; and that Marsman Drysdale failed to clear the property of debris which prevented PGI from completing its work.[8]

By Decision of June 2, 2004,[9] Branch 226 of the Quezon City RTC rendered judgment in favor of PGI, disposing as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of plaintiff [PGI].
>
> The defendants [Gotesco] and [Marsman Drysdale] are ordered to pay plaintiff, jointly:
>
> (1) the sum of P535,353.50 with legal interest from the date of this decision until fully paid;
>
> (2) the sum of P200,000.00 as exemplary damages;
>
> (3) the sum of P200,000.00 as and for attorney's fees; and
>
> (4) costs of suit.
>
> The cross-claim of defendant [Marsman Drysdale] against defendant [Gotesco] is hereby GRANTED as follows:
>
> a) Defendant [Gotesco] is ordered to reimburse co-defendant [Marsman Drysdale] in the amount of P535,353.[50] in accordance with the [JVA].
>
> b) Defendant [Gotesco] is further ordered to pay co-defendant [Marsman Drysdale] the sum of P100,000.00 as and for attorney's fees.
>
> SO ORDERED. (underscoring in the original; emphasis supplied)

Marsman Drysdale moved for partial reconsideration, contending that it should not have been held jointly liable with Gotesco on PGI's claim as well as on the awards of exemplary damages and attorney's fees. The motion was, by Resolution of October 28, 2005, denied.

Both Marsman Drysdale and Gotesco appealed to the Court of Appeals which, by Decision of January 28, 2008,[10] affirmed with modification the decision of the trial court. Thus the appellate court disposed:

> WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The assailed Decision dated June 2, 2004 and the Resolution dated October 28, 2005 of the RTC of Quezon City, Branch 226, in Civil Case No. Q99-39248 are hereby AFFIRMED with MODIFICATION deleting the award of exemplary damages in favor of [PGI] and the P100,000.00 attorney's fees in favor of [Marsman Drysdale] and ordering defendant-appellant [Gotesco] to REIMBURSE [Marsman Drysdale] 50% of the aggregate sum due [PGI], instead of the lump sum P535,353.00 awarded by the RTC. The rest of the Decision stands.
>
> SO ORDERED. (capitalization and emphasis in the original; underscoring supplied)

In partly affirming the trial court's decision, the appellate court ratiocinated that notwithstanding the terms of the

JVA, the joint venture cannot avoid payment of PGI's claim since "[the JVA] could not affect third persons like [PGI] because of the basic civil law principle of relativity of contracts which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof."[11]

Their motions for partial reconsideration having been denied,[12] Marsman Drysdale and Gotesco filed separate petitions for review with the Court which were docketed as G.R. Nos. 183374 and 183376, respectively. By Resolution of September 8, 2008, the Court consolidated the petitions.

In G.R. No. 183374, Marsman Drysdale imputes error on the appellate court in

> A. ...ADJUDGING [MARSMAN DRYSDALE] WITH JOINT LIABILITY AFTER CONCEDING THAT [GOTESCO] SHOULD ULTIMATELY BE SOLELY LIABLE TO [PGI].
>
> B. ...AWARDING ATTORNEY'S FEES IN FAVOR OF [PGI]...
>
> C. ...IGNORING THE FACT THAT [PGI] DID NOT COMPLY WITH THE REQUIREMENT OF "SATISFACTORY PERFORMANCE" OF ITS PRESTATION WHICH, PURSUANT TO THE TECHNICAL SERVICES CONTRACT, IS THE CONDITION SINE QUA NON TO COMPENSATION.
>
> D. ...DISREGARDING CLEAR EVIDENCE SHOWING [MARSMAN DRYSDALE'S] ENTITLEMENT TO AN AWARD OF ATTORNEY'S FEES.[13]

On the other hand, in G.R. No. 183376, Gotesco peddles that the appellate court committed error when it

> ...ORDERED [GOTESCO] TO PAY P535,353.50 AS COST OF THE WORK PERFORMED BY [PGI] AND P100,000.00 [AS] ATTORNEY'S FEES ...[AND] TO REIMBURSE [MARSMAN DRYSDALE] 50% OF P535,353.50 AND PAY [MARSMAN DRYSDALE] P100,000.00 AS ATTORNEY'S FEES. [14]

On the issue of whether PGI was indeed entitled to the payment of services it rendered, the Court sees no imperative to re-examine the congruent findings of the trial and appellate courts thereon. Undoubtedly, the exercise involves an examination of facts which is normally beyond the ambit of the Court's functions under a petition for review, for it is well-settled that this Court is not a trier of facts. While this judicial tenet admits of exceptions, such as when the findings of facts of the appellate court are contrary to those of the trial court's, or when the judgment is based on a misapprehension of facts, or when the findings of facts are contradicted by the evidence on record,[15] these extenuating grounds find no application in the present petitions.

At all events, the Court is convinced that PGI had more than sufficiently established its claims against the joint venture. In fact, Marsman Drysdale had long recognized PGI's contractual claims when it (PGI) received a Certificate of Payment[16] from the joint venture's project manager[17] which was endorsed to Gotesco for processing and payment.[18]

The core issue to be resolved then is which between joint venturers Marsman Drysdale and Gotesco bears the liability to pay PGI its unpaid claims.

To Marsman Drysdale, it is Gotesco since, under the JVA, construction funding for the project was to be obtained from Gotesco's cash contribution, as its (Marsman Drysdale's) participation in the venture was limited to the land.

Gotesco maintains, however, that it has no liability to pay PGI since it was due to the fault of Marsman Drysdale that PGI was unable to complete its undertaking.

The Court finds Marsman Drysdale and Gotesco jointly liable to PGI.

PGI executed a technical service contract with the joint venture and was never a party to the JVA. While the JVA

clearly spelled out, inter alia, the capital contributions of Marsman Drysdale (land) and Gotesco (cash) as well as the funding and financing mechanism for the project, the same cannot be used to defeat the lawful claim of PGI against the two joint venturers-partners.

The TSC clearly listed the joint venturers Marsman Drysdale and Gotesco as the beneficial owner of the project,[19] and all billing invoices indicated the consortium therein as the client.

As the appellate court held, Articles 1207 and 1208 of the Civil Code, which respectively read:

> Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations. There is a solidary liability only when the obligation expressly so states, or when the law or nature of the obligation requires solidarity.
>
> Art. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits. (emphasis and underscoring supplied),

presume that the obligation owing to PGI is joint between Marsman Drysdale and Gotesco.

The only time that the JVA may be made to apply in the present petitions is when the liability of the joint venturers to each other would set in.

A joint venture being a form of partnership, it is to be governed by the laws on partnership.[20] Article 1797 of the Civil Code provides:

> Art. 1797. The losses and profits shall be distributed in conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion.
>
> In the absence of stipulation, the share of each in the profits and losses shall be in proportion to what he may have contributed, but the industrial partner shall not be liable for the losses. As for the profits, the industrial partner shall receive such share as may be just and equitable under the circumstances. If besides his services he has contributed capital, he shall also receive a share in the profits in proportion to his capital. (emphasis and underscoring supplied)

In the JVA, Marsman Drysdale and Gotesco agreed on a 50-50 ratio on the proceeds of the project.[21] They did not provide for the splitting of losses, however. Applying the above-quoted provision of Article 1797 then, the same ratio applies in splitting the P535,353.50 obligation-loss of the joint venture.

The appellate court's decision must be modified, however. Marsman Drysdale and Gotesco being jointly liable, there is no need for Gotesco to reimburse Marsman Drysdale for "50% of the aggregate sum due" to PGI.

Allowing Marsman Drysdale to recover from Gotesco what it paid to PGI would not only be contrary to the law on partnership on division of losses but would partake of a clear case of unjust enrichment at Gotesco's expense. The grant by the lower courts of Marsman Drysdale cross-claim against Gotesco was thus erroneous.

Marsman Drysdale's supplication for the award of attorney's fees in its favor must be denied. It cannot claim that it was compelled to litigate or that the civil action or proceeding against it was clearly unfounded, for the JVA provided that, in the event a party advances funds for the project, the joint venture shall repay the advancing party. [22]

Marsman Drysdale was thus not precluded from advancing funds to pay for PGI's contracted services to abate any legal action against the joint venture itself. It was in fact hardline insistence on Gotesco having sole responsibility

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to pay for the obligation, despite the fact that PGI's services redounded to the benefit of the joint venture, that spawned the legal action against it and Gotesco.

Finally, an interest of 12% per annum on the outstanding obligation must be imposed from the time of demand[23] as the delay in payment makes the obligation one of forbearance of money, conformably with this Court's ruling in Eastern Shipping Lines, Inc. v. Court of Appeals.[24] Marsman Drysdale and Gotesco should bear legal interest on their respective obligations.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are AFFIRMED with MODIFICATION in that the order for Gotesco to reimburse Marsman Drysdale is DELETED, and interest of 12% per annum on the respective obligations of Marsman Drysdale and Gotesco is imposed, computed from the last demand or on January 5, 1999 up to the finality of the Decision.

If the adjudged amount and the interest remain unpaid thereafter, the interest rate shall be 12% per annum computed from the time the judgment becomes final and executory until it is fully satisfied. The appealed decision is, in all other respects, affirmed.

Costs against petitioners Marsman Drysdale and Gotesco.

SO ORDERED.

Carpio,[*] Brion, Abad,[**] and Villarama, Jr., JJ., concur.

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[*] Additional member per Raffle dated June 16, 2010.

[**] Additional member per Special Order No. 843 dated May 17, 2010.

[1] I Records, pp. 101-120.

[2] Id. at pp. 6-31.

[3] Id. at p. 2.

[4] Id. at pp. 33 and 36. Covered by Billing Invoice Nos. 437 and 526, respectively.

[5] Id. at pp. 222, 224, and 225; Exhibits "E"; "F" and "G."

[6] II Records, pp. 397-398. See also Transcript of Stenographic Notes, August 21, 2001, p. 8.

[7] I Records, pp. 92-94.

[8] Id. at p. 70.

[9] II Records, pp. 505-530. Penned by Judge Leah S. Domingo Regala.

[10] CA rollo, pp. 274-282. Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Portia Ali×¡o-Hormachuelos and Lucas P. Bersamin (now a member of the Court).

[11] Id. at p. 278.

[12] Id. at p. 322.

[13] Rollo (G.R. No. 183374), pp. 19-20.

[14] Rollo (G.R. No. 183376), p. 19.

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[15] La Rosa v. Ambassador Hotel, G.R. No. 177059, March 13, 2009, 581 SCRA 340, 345-346.

[16] I Records, pp. 218-221; Exhibits "B," "C" and "D."

[17] Lawrence Campbell.

[18] I Records, p. 223; Exhibit "E-2."

[19] In the Technical Services Contract's SC-1 Definitions portion, it was stated that "OWNER means Marsman-Drysdale Land, Inc./Gotesco Properties, Inc., a Joint Venture and its authorized representatives and successors in interest."

[20] Aurbach v. Sanitary Wares Manufacturing Corp., G.R. No. 75875, December 15, 1989, 180 SCRA 130, 146-147.

[21] I Records, p. 107. Section 8 of the JVA states that: "x x x x. a) proceeds from the JV shall be shared equally on a 50:50 ratio between the Parties unless such ratio is changed due to additional investments as provided in Section 4.3; x x x x."

[22] I Records, p. 105. The JVA states that: "x x x x. 4.3.8. All funds advanced by a Party (or by third parties in substitution for advances from a Party) shall be repaid by the [joint venture]. x x x x."

[23] Vide: I Records, p. 40. The last demand letter from PGI is dated January 5, 1999.

[24] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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