

UPSI PROPERTY HOLDINGS, INC., PETITIONER, VS. DIESEL CONSTRUCTION CO., INC., RESPONDENT.

G.R. No. 200250. August 06, 2014

Ponente: MENDOZA, J.

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MENDOZA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court filed by UPSI Property Holdings, Inc. (UPSI) assails the November 11, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 110926, and its January 17, 2012 Resolution[2] denying its petition for certiorari.

The present controversy stemmed from a complaint filed by respondent Diesel Construction Co., Inc. (Diesel) against UPSI before the Construction Industry Arbitration Commission (CIAC) for collection of unpaid balance of the contract price and retention money under their construction agreement, damages for unjustified refusal to grant extension of time, interest, and attorney's fees.

On December 4, 2001, Arbitral award[3] was rendered by the CIAC in favor of Diesel, to wit:

Summary of Awards:

Wherefore, judgment is hereby rendered and the AWARD of monetary claims is made as follows:

CLAIMANT:

Description

Amount Claimed

Award

Unpaid Balance of Construction

Agreement

P3,943,000.00

P3,661,692.60

Additional Labor Costs

1,509,756.00 0.00

Interest

690,942.23

Attorney's Fees

1,000,000.00

366,169.00

Total

P7,143,698.23

P4,027,861.60

RESPONDENT:

Description

Amount Claimed

Award

Cost to Complete the Project

P1,321,500.92

P 0.00

Liquidated Damages

4,340,000.00

0.00

Attorney's Fees

900,000.00

0.00

Total

P6,561,500.92

0.00

Net Award to Claimant:

P4,027,861.60

Claimant, Diesel Construction Corporation, Inc., is hereby awarded the amount of FOUR MILLION TWENTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY-ONE PESOS AND SIXTY CENTAVOS plus legal interest of six percent (6%) per annum on the said amount computed from June 4, 2001 and at the rate of twelve percent (12%) per annum from the date of finality of the decision herein until fully paid.

Respondent is further ordered to pay the full cost of arbitration in the amount of TWO HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED SIX PESOS AND THREE CENTAVOS and to reimburse the Claimant of all advances made in this regard.

SO ORDERED.[4]

The CIAC judgment became the subject of a petition for review before the CA, which rendered a decision, dated April 16, 2002, quoted as follows:

WHEREFORE, premises considered, the petition is GRANTED and the questioned Decision is MODIFIED in this wise:

a. The claim of petitioner UPSI for liquidated damages is GRANTED to the extent of PESOS: ONE MILLION THREE HUNDRED NINE THOUSAND AND FIVE HUNDRED (P1,309,500.00) representing forty-five (45) days of delay at P29,100 per diem;

b. We hold that respondent [Diesel] substantially complied with the Construction Contract and is therefore entitled to one hundred percent (100%) payment of the contract price. Therefore, the claim of respondent Diesel for an unpaid balance of PESOS: TWO MILLION FOUR HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED EIGHTY-TWO and SIXTY-FOUR centavos (P2,441,482.64), which amount already includes the retention on the additional works or Change Orders, is GRANTED, minus liquidated damages. In sum, petitioner UPSI is held liable to respondent Diesel in the amount of PESOS: ONE MILLION ONE HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED EIGHTY-TWO and sixty four centavos (P1,131,982.64), with legal interest until the same is fully paid;

c. The parties are liable equally for the payment of arbitration costs;

d. All claims for attorney's fees are DISMISSED; and

e. Since there is still due and owing from UPSI an amount of money in favor of Diesel, respondent FGU is DISCHARGED as surety for Diesel.

Costs de officio.

SO ORDERED.[5]

UPSI filed its Motion for Partial Reconsideration,[6] dated May 6, 2002, while Diesel filed its Motion for Reconsideration,[7] dated May 7, 2002. The CA denied that of UPSI, but partially granted that of Diesel. Thus:

WHEREFORE, the Motion for Reconsideration of respondent Diesel Construction Co., Inc. is partially GRANTED. The liquidated damages are hereby reduced to P1,146,519.00 (45 days multiplied by P25,478.20 per diem). However, in accordance with the main opinion, We hold that petitioner is liable to respondent Diesel for the total amount of P3,661,692.64, representing the unpaid balance of the contract price plus the ten-percent retention, from which the liquidated damages, must, of course, be deducted. Thus, in sum, as amended, We hold that petitioner is still liable to respondent Diesel in the amount of P2,515,173.64, with legal interest until the same is fully paid.

The main opinion, in all other respects, STANDS.

SO ORDERED.[8]

Unsatisfied, Diesel and UPSI filed their separate petitions for review before the Court, docketed as G.R. No. 154885 and G.R. No. 154937, respectively, which were later consolidated. The Court then rendered judgment on March 24, 2008, the dispositive portion of which reads:

WHEREFORE, Diesel's petition is PARTIALLY GRANTED and UPSI's Petition is DENIED with qualification. The assailed Decision dated April 16, 2002 and Resolution dated August 21, 2002 of the CA are MODIFIED, as follows:

(1)

The award for liquidated damages is DELETED;

(2)

The award to Diesel for the unpaid balance of the contract price of PhP 3,661,692.64 is AFFIRMED;

(3)

UPSI shall pay the costs of arbitration before the CIAC in the amount of PhP 298,406.03;

(4)

Diesel is awarded attorney's fees in the amount of PhP 366,169; and

(5)

UPSI is awarded damages in the amount of PhP 310,834.01, the same to be deducted from the retention money, if there still be any, and, if necessary, from the amount referred to in item (2) immediately above.

In summary, the aggregate award to Diesel shall be PhP 3,717,027.64. From this amount shall be deducted the award of actual damages of PhP 310,834.01 to UPSI which shall pay the costs of arbitration in the amount of PhP 298,406.03.

FGU is released from liability for the performance bond that it issued in favor of Diesel.

No costs.

SO ORDERED.[9]

UPSI moved for a reconsideration[10] and Diesel filed its Motion for Leave to File and Admit Attached Comment and/or Opposition (to UPSI Property Holdings, Inc.'s Motion for Reconsideration) with Motion for Clarification.[11] In its Resolution,[12] dated August 20, 2008, the Court denied with finality the motion filed by UPSI and granted that of Diesel's.

On October 8, 2008, the March 24, 2008 Decision of the Court became final and executory.

Eventually, Diesel filed the Motion for Issuance of Writ of Execution with the CIAC.

On February 17, 2009, despite numerous pleadings filed by UPSI opposing the execution of the Court's decision, the CIAC granted[13] the execution sought by Diesel. Still unsatisfied, UPSI questioned by certiorari the execution granted by the CIAC before the CA, docketed as CA-G.R. SP No. 108423. On July 9, 2009, the CA denied[14] the UPSI petition and later its motion for reconsideration.

Meanwhile, pending the resolution of the petition for certiorari in CA-G.R. SP No. 108423, Diesel sought the amendment of the writ of execution before the CIAC so that the payment of legal interest be included in the writ as well as in the reimbursement of half of the arbitration costs. Despite the opposition by UPSI, CIAC partially granted Diesel's motion in its Order,[15] dated July 29, 2009, which considered the interest being claimed by Diesel. But as far as the reimbursement of half of the arbitration costs was concerned, the CIAC denied it. UPSI questioned the CIAC order via a petition for certiorari with the CA, docketed as CA-G.R. SP 110926, arguing that the CIAC gravely abused its discretion when it substantially modified the writ of execution by holding that Diesel was entitled to legal interest. The CA, however, denied the petition in its ruling that:

Hence, the issue of legal interest was never raised, nor quibbled about by the petitioner, making it final and binding regardless of what the principal award may turn out to be.

An incisive scrutiny of the portion of the Supreme Court's Decision stating that, "[The] award to Diesel for the unpaid balance of the contract price of PhP3,661,692.64 is AFFIRMED." only goes to show that such amount represents the balance of the contract price plus the ten-percent retention, from which the liquidated damages must be deducted; the difference or the net amount of which bears legal interest until fully paid as awarded by this Court. Hence, the confirmation by the Supreme Court that the final award should indeed be P3,661,692.64 addressed the question as to what should be the unpaid balance due to the private respondent. Logically, whatever the amount is awarded necessarily bears the legal interest as awarded previously by this

Court.

We disagree with petitioner's contention that the Supreme Court deleted the legal interest by its silence on that matter. If such was its intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to herein petitioner.[16]

The CA further explained that there was no substantial variance between the assailed judgment and the writ of execution rendered to enforce it because the whole context of the controversy pointed to the rightful provision of legal interest in the total execution of the final judgment.[17]

UPSI subsequently filed a motion for reconsideration, but it was likewise denied.

Hence, the present petition assigning the following

ERRORS:

THE COURT OF APPEAL SERIOUSLY ERRED AND DECIDED IN A MANNER NOT IN ACCORDANCE WITH THE LAW AND PREVAILING JURISPRUDENCE WHEN IT RULED THAT:

- CIAC IS ALLEGEDLY CORRECT IN ISSUING THE ASSAILED ORDER SINCE THE ISSUE OF LEGAL INTEREST WAS SUPPOSEDLY NEVER RAISED BY PETITIONER BEFORE THE SUPREME COURT IN ITS EARLIER PETITION, THEREBY CONSIDERING THE MATTER ALLEGEDLY AS ALREADY A SETTLED ISSUE. ON THE CONTRARY, PETITIONER HAS CONSISTENTLY PUT IN ISSUE CIAC'S ERRONEOUS IMPOSITION OF LEGAL INTEREST AS EARLY AS 28 DECEMBER 2001 IN ITS PETITION FOR REVIEW FILED BEFORE THE HONORABLE COURT OF APPEALS.

- IT WAS ALLEGEDLY CORRECT AND PROPER THAT CIAC SUPPOSEDLY CLARIFIED THE PROVISION ON PAYMENT OF INTEREST IN THE WRIT OF EXECUTION IT ISSUED ALLEGEDLY PURSUANT TO THE CONTEXT OF THE FINAL JUDGMENT RENDERED BY THE SUPREME COURT. ON THE CONTRARY, CIAC PURPOSELY CHANGED THE PROVISIONS OF THE SUPREME COURT'S DECISION TO FAVOR RESPONDENT DIESEL.[18]

The crucial issue for resolution revolves around the propriety of the inclusion of the legal interest in the writ of execution despite the "silence" of the Court in the dispositive portion of its judgment which has become final and executory.

Before ruling on the propriety of the assailed CA decision, the issue of forum shopping has been brought to the attention of the Court as Diesel pointed out in its Comment,[19] as well as in its Memorandum,[20] that UPSI likewise sought the exclusion of legal interest in another separate petition for certiorari before the CA, docketed as CA-G.R. SP No. 122827 while CA-G.R. SP No. 110926 was still pending before it. For said reason, Diesel prays that the subject petition be summarily dismissed with prejudice pursuant to Section 5, Rule 7 of the Rules of Court.

UPSI refutes the above allegation and avers that it has been in good faith as it even disclosed that CA-G.R. SP No. 122827 was still pending before the CA when it filed this petition, as evidenced by the Verification and Certification of Non-Forum Shopping.[21]

Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or certiorari. There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (a) identity of parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of relief sought.[22]

If at all, it would be the second petition filed before the CA which should be dismissed being an offshoot of the first petition which, based on the records, was what happened as the CA rendered its judgment[23] in CA-G.R. SP No. 122827 dismissing it for being violative of the rule against forum shopping. Thus, there is no legal impediment of any kind that would bar full resolution of the present controversy.

Did the CA correctly uphold the CIAC in concluding that the legal interest was deemed included in the amounts awarded by the Court in G.R. Nos. 154885 and 154937?

The Court rules in the affirmative.

It is true that a decision that has attained finality becomes immutable and unalterable and cannot be modified in any respect, even if the modification was meant to correct erroneous conclusions of fact and law, and whether the modification was made by the court that rendered it or by this Court as the highest court of the land.[24] Any attempt on the part of the x x x entities charged with the execution of a final judgment to insert, change or add matters not clearly contemplated in the dispositive portion violates the rule on immutability of judgments."[25]

UPSI argues that it has consistently questioned the issue of the imposition of legal interest and, that even assuming without admitting that the issue of legal interest was not raised, the Court was clothed with authority to review matters even if not assigned as errors on appeal if it finds this consideration necessary in arriving at a just decision of the case.[26] The failure of Diesel to timely move for reconsideration resulted in the finality of the March 24, 2008 Decision of the Court where the Court was silent on the award of legal interest.

Further, UPSI claims that the Motion for Clarification filed by Diesel, which was merely noted by the Court, was an admission on its part that the subject decision did not include the award of legal interest. Therefore, no one, including the CA, "can avoid assuming that the 24 March 2008 decision necessarily includes the award of legal interest.[27] The writ of execution must conform to the judgment promulgated and not to the CIAC Decision nor the April 16, 2002 Decision and August 21, 2002 Resolution of the CA. In unilaterally interpreting the judgment as one which included payment of legal interest despite the fact that nowhere in the dispositive portion of the decision can be found any grant of legal interest, the CIAC caused a substantial variance between the final and executory decision and the writ of execution to enforce it.[28]

On the other hand, Diesel counters that the legal interest imposed by the CIAC on the judgment in its favor accrued upon finality of the said judgment. The legal interest became applicable as a matter of law upon finality. There was no need for it to be awarded or declared in the judgment itself.[29]

Moreover, Diesel avers that UPSI never raised the issue of legal interest. Not being an issue, the propriety of the imposition of legal interest, was not the subject of the Court's decision.[30]

The Court's Ruling

The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment.[31] After scrutiny of the subject decision, nowhere can it be found that the Court intended to delete the award of legal interest especially that, as Diesel argues, it was never raised. In fact, what the Court carefully reviewed was the principal amount awarded as well as the liquidated damages because they were specifically questioned. Recall that the CA modified the awards granted by the CIAC, but not the legal interest. In finally resolving the controversy, the Court affirmed the amount of unpaid balance of the contract price in favor of Diesel but expressly deleted the award of liquidated damages. There being no issue as to the legal interest, the Court did not find it necessary anymore to disturb the imposition of such. As correctly observed by the CA:

x x x. A panoramic view of the case from its inception in the arbitral level to this Court and then to the

Supreme Court reveals the context of the decisions rendered by the three (3) tribunals in its totality. The Supreme Court already took into context the previous decisions of public respondent CIAC and this Court which consistently included the payment of legal interest in their dispositive portions. Hence, the Supreme Court merely ruled on the current issues presented by petitioner which did not include legal interest. It is already an act of redundancy for it to repeat what had already been adequately settled and explained by public respondent CIAC and this Court.[32]

Thus, contrary to UPSI's argument, there is no substantial variance between the March 24, 2008 final and executory decision of the Court and the writ of execution issued by the CIAC to enforce it. The Court's silence as to the payment of the legal interests in the dispositive portion of the decision is not tantamount to its deletion or reversal. The CA was correct in holding that if such was the Court's intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to UPSI.[33]

It is likewise observed that the CIAC itself is very mindful of the rule on immutability of judgment. The motion of Diesel to modify and/or amend the writ of execution involved not only the payment of legal interest but also the reimbursement of arbitration costs. The CIAC, however, denied the reimbursement, declaring that:

It will be noted that the award made by this Arbitral Tribunal for payment by the Respondent to the Claimant of the P298,406.03 costs of arbitration had been affirmed by the Supreme Court and that the latter decision has attained finality and immutability. Thus, even if there had been any error on the matter (on which this Arbitral Tribunal does not concede), it is much too late in the day to make the corresponding adjustments thereon.[34]

Corollarily, had the inclusion of the legal interest in the writ been violative of the rule on immutability of judgment, the CIAC would not have granted it.

Consequently, the Court, in *Nacar vs. Gallery Frames*,[35] instructs:

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

Following the foregoing ruling by the Court, the legal interest remains at 6% and 12% per annum, as the case may be, since the judgment subject of the execution became final on March 24, 2008. Interests accruing after July 1, 2013, however, shall be at the rate of 6% per annum.

As a final note, it is herein reiterated that the manner of the execution of a final judgment is not a matter of "choice." As to how a judgment should be satisfied does not revolve upon the pleasure or discretion of a party unless the judgment itself expressly provides for such discretion. Foremost rule in execution of judgments is that "a writ of execution must conform strictly to every essential particular of the judgment promulgated, and may not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed." As a corollary rule, the Court has clarified that "a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto." [36]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio,[*] Peralta, (Acting Chairperson), Bersamin,**] Mendoza, and Leonen, JJ., concur.

August 14, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___August 6, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 14, 2014 at 2:20 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Acting Member in lieu of Associate Justice Martin S. Villarama, Jr., no part, per Special Order No. 1691-O, dated May 22, 2014.

**] Designated Member per Raffle, dated March 21, 2012, in lieu of Associate Justice Presbitero J. Velasco, Jr., no part, being a ponente in related cases.

[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Mariflor Punzalan Castillo and Marlene Gonzales-Sison, concurring; rollo, pp. 58-70.

[2] Id. at 99-100.

[3] Id. at 251-271.

[4] Id. at 270-271.

[5] Id. at 481-482.

[6] Id. at 484-508.

[7] Id. at 509-535.

[8] Id. at 544.

[9] Id. at 714-715.

[10] Id. at 717-741.

[11] Id. at 743-758.

[12] Id. at 759-760.

[13] Id. at 791-800.

[14] Penned by Associate Justice Martin S. Villarama, Jr., (now member of the Court), with Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, concurring. Id. at 827-841.

[15] Id. at 47-55.

[16] Id. at 67-68.

[17] Id. at 69.

[18] Id. at 1011.

[19] Id. at 892-919.

[20] Id. at 1082-1095.

[21] Id. at 1028.

[22] Teodoro III v. Atty. Gonzales, A.C. No. 6760, January 30, 2013, 689 SCRA 484.

[23] Penned by Associate Justice Mario V. Lopez, with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting, concurring; rollo, pp. 1097-1104.

[24] University of the Philippines v. Dizon, G.R. No. 171182, August 23, 2012, 679 SCRA 54, 84.

[25] Bani Rural Bank Inc. v. De Guzman, G.R. No. 170904, November 13, 2013.

[26] Rollo, pp. 1013-1014.

[27] Id. at 1018.

[28] Id. at 1017-1022.

[29] Id. at 1093.

[30] Id.

[31] Raymundo v. Galen Realty and Mining Corporation, G.R. No. 191594, October 16, 2013, citing Pastor, Jr. et al. v. CA, et al., 207 Phil. 758, 767 (1983).

[32] Rollo, p. 69.

[33] Id. at 68.

[34] Id. at 53.

[35] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[36] Raymundo v. Galen Realty and Mining Corporation, G.R. No. 191594, October 16, 2013, citing Tumibay v. Soro, G.R. No. 152016, April 13, 2010, 618 SCRA 169.

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