

**ENCARNACION CONSTRUCTION & INDUSTRIAL CORPORATION,
PETITIONER, V. PHOENIX READY MIX CONCRETE DEVELOPMENT
& CONSTRUCTION, INC., RESPONDENT.***G.R. No. 225402. September 04, 2017*

Ponente: PERLAS-BERNABE, J.

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Before the Court is a petition for review on certiorari[1] assailing the Decision[2] dated July 22, 2015 and the Resolution[3] dated June 29, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102671, which affirmed the Decision[4] dated December 4, 2013 of the Regional Trial Court of Imus, Cavite, Branch 20 (RTC) in Civil Case No. 3547-10 granting the complaint for sum of money filed by respondent Phoenix Ready Mix Concrete Development and Construction, Inc. (Phoenix) against petitioner Encarnacion Construction & Industrial Corporation (ECIC), and dismissing the latter's counterclaim for damages.

The Facts

On January 27 and March 25, 2009, Phoenix entered into two (2) separate Contract Proposals and Agreements (Agreement)[5] with ECIC for the delivery of various quantities of ready-mix concrete.[6] The Agreement was made in connection with the construction of the Valenzuela National High School (VNHS) Marulas Building.[7] ECIC received the ready-mix concrete delivery in due course. However, despite written demands from Phoenix, ECIC refused to pay. Hence, Phoenix filed before the RTC the Complaint[8] for Sum of Money against ECIC for the payment of P982,240.35, plus interest and attorney's fees.[9]

In its Answer with Counterclaim,[10] ECIC claimed that it opted to suspend payment since Phoenix delivered substandard ready-mix concrete, such that the City Engineer's Office of Valenzuela (City Engineer's Office) required the demolition and reconstruction of the VNHS building's 3rd floor.[11] It contended that since the samples taken from the 3rd floor slab failed to reach the comprehensive strength of 6,015 psi in 100 days,[12] the City Engineer's Office ordered the dismantling of the VNHS building's 3rd floor, and thus, incurred additional expenses amounting to P3,858,587.84 for the dismantling and reconstruction.[13]

The RTC Ruling

In a Decision[14] dated December 4, 2013, the RTC ordered ECIC to pay Phoenix the amount of P865,410.00, with twelve percent (12%) interest per annum, reckoned from November 5, 2009, the date ECIC received the demand, as well as P50,000.00 as attorney's fees, and the costs of suit.[15]

Primarily, the RTC found that Phoenix fully complied with its obligation under their Agreement to deliver the ready-mix concrete, with the agreed strength of 3000 and 3500 psi G-3/4 7D PCD,[16] which ECIC used to complete the 3rd floor slab of the VNHS building.[17] Moreover, it pointed out that the alleged sub-standard quality of the delivered ready-mix concrete did not excuse ECIC from refusing payment, noting that under Paragraph 15 of the Agreement, any claim it has on the quality and strength of the transit mixed concrete should

have been made at the time of delivery. Since ECIC raised the alleged defects in the delivered concrete only on June 16, 2009, or 48 days after the last delivery date on April 29, 2009,[18] it considered ECIC to have waived its right to question the quality of the delivered concrete under the principle of estoppel in pais.[19] It added that under Paragraph 15 of the Agreement, ECIC does not have the right to suspend or refuse payment once delivery has been made; thus, ECIC's refusal to pay despite demand constitutes breach of their Agreement, entitling Phoenix to attorney's fees, but at the reduced amount of P50,000.00.[20] Lastly, it reduced the rate of the stipulated interest from 18% to 12% per annum, counted from November 5, 2009.[21]

Meanwhile, the RTC denied ECIC's counterclaim for failure to pay the necessary docket fees.[22]

Aggrieved, ECIC appealed[23] to the CA, arguing that it paid the necessary docket fees for its counterclaim well within a reasonable time from its filing or on June 18, 2010[24] and that it did not waive its right to question the strength of the delivered concrete which, based on various tests, was substandard.[25]

The CA Ruling

In a Decision[26] dated July 22, 2015, the CA affirmed the RTC ruling holding ECIC liable for the payment of the delivered ready-mix concrete.

At the outset, the CA agreed with ECIC that the docket fees for its counterclaim was paid well within a reasonable time from the prescriptive date; thus, the RTC should not have automatically dismissed its counterclaim.[27] Nonetheless, it ruled that ECIC is bound by their Agreement to pay for the delivered ready-mix concrete. Moreover, it observed that before ECIC signed and bound itself to the Agreement, it should have questioned the condition set under Paragraph 15, i.e., that complaints about the quality of the concrete should be made upon delivery.[28] Further, there is no showing that ECIC was at a disadvantage when it contracted with Phoenix so as to render the Agreement void on the ground that it is a contract of adhesion. Thus, the CA concluded that ECIC's failure to make any claim on the strength and quality of the ready-mix concrete upon delivery, pursuant to Paragraph 15 of the Agreement, constitutes a waiver thereof on its part.[29]

Dissatisfied, ECIC moved[30] for reconsideration, which the CA denied in a Resolution[31] dated June 29, 2016; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in denying ECIC's counterclaim for damages.

The Court's Ruling

The petition lacks merit.

In the present petition, ECIC maintains that it is entitled to its counterclaim because the Agreement it signed with Phoenix, particularly Paragraph 15 thereof, is void for being a contract of adhesion; and, the ready-mix concrete Phoenix delivered for the 3rd floor slab of the VNHS building was substandard, causing it to incur additional expenses to reconstruct the building's 3rd floor.

A contract of adhesion is one wherein one party imposes a ready-made form of contract on the other. It is a contract whereby almost all of its provisions are drafted by one party, with the participation of the other party being limited to affixing his or her signature or "adhesion" to the contract.[32] However, contracts of adhesion are not invalid per se as they are binding as ordinary contracts.[33] While the Court has occasionally struck down contracts of adhesion as void, it did so when the weaker party has been imposed upon in dealing with the dominant bargaining party and reduced to the alternative of taking it or leaving it, completely deprived of the

opportunity to bargain on equal footing.[34] Thus, the validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtained in each case and the situation of the parties concerned.[35]

In this case, there is no proof that ECIC was disadvantaged or utterly inexperienced in dealing with Phoenix. There were likewise no allegations and proof that its representative (and owner/proprietor) Ramon Encarnacion (Encarnacion) was uneducated, or under duress or force when he signed the Agreement on its behalf. In fact, Encarnacion is presumably an astute businessman who signed the Agreement with full knowledge of its import. Case law states that the natural presumption is that one does not sign a document without first informing himself of its contents and consequences.[36] This presumption has not been debunked.

Moreover, it deserves highlighting that apart from the January 27 and March 25, 2009 Contract Proposals and Agreements, ECIC and Phoenix had entered into three (3) similar Agreements under the same terms and conditions[37] for the supply of ready-mix concrete. Thus, the Court is hard-pressed to believe that Encarnacion had no sufficient opportunity to read and go over the stipulations of the Agreement and reject or modify the terms had he chosen to do so.

Further, the Court finds that the terms and conditions of the parties' Agreement are plain, clear, and unambiguous and thus could not have caused any confusion. Paragraph 15 of the Agreement provides that:

x x x x Any claim on the quality, strength, or quantity of the transit mixed concrete delivered must be made at the time of delivery. Failure to make the claim constitutes a waiver on the part of the SECOND PARTY for such claim and the FIRST PARTY is released from any liability for any subsequent claims on the quality, strength or [sic] the ready mixed concrete.[38]

Based on these terms, it is apparent that any claim that ECIC may have had as regards the quality or strength of the delivered ready-mix concrete should have been made at the time of delivery. However, it failed to make a claim on the quality of the delivered concrete at the stipulated time, and thus, said claim is deemed to have been waived.

In this relation, the Court clarifies that the absence of the signature of Encarnacion on the second page of the Agreement did not render these terms inoperative. This is because the first page of the Agreement - on which the signature of Encarnacion appears - categorically provides that the terms and conditions stipulated on the Agreement's reverse side form part of their contract and are equally binding on them, viz.:

No terms and conditions shall be valid and binding except those stipulated herein and/or the reverse side thereof. No modifications, amendments, assignments or transfer of this contract or any of the stipulation herein contained shall be valid and binding unless agreed by writing between the PARTIES herein.

x x x x[39] (Emphasis and underscoring supplied)

Thus, by having its representative affix his signature on the first page of the Agreement and thereby accepting Phoenix's proposed contract, ECIC likewise signified its conformity to the entirety of the stipulated terms and conditions, including the stipulations on the Agreement's reverse side. Verily, ECIC positively and voluntarily bound itself to these terms and conditions and cannot now claim otherwise.

Finally, it should be noted that ECIC failed to raise the alleged defect in the delivered concrete well within a reasonable time from its discovery of the hairline cracks, as it notified Phoenix thereof only 48 days after the last delivery date on April 29, 2009, and days after it was already notified thereof by the City Engineer's Office.[40] The lack of justifiable explanation for this delay all the more bolsters the conclusion that ECIC indeed waived its right to make its claim.

The other issues raised by ECIC on this matter are essentially factual in nature, and thus, not proper for a petition for review on certiorari. Rule 45 of the Rules of Court, which governs this kind of petition, requires that only questions of law should be raised.[41] Factual questions are not the proper subject of an appeal by certiorari as it is not the Court's function to once again analyze and calibrate evidence that has already been considered in the lower courts.[42] While there are recognized exceptions to this rule that warrant review of factual findings, ECIC, as the party seeking review, however, failed to demonstrate that a factual review is justified under the circumstances prevailing in this case.[43]

In any event, the evidence on record do not support ECIC's claim that the hairline cracks that appeared on the 3rd floor slab of the VNHS building resulted from the substandard quality of the delivered ready-mix concrete. While it was shown that the City Engineer's Office inspected the site and approved the structural design before the delivered concrete for the 3rd floor slab was poured, and that the results of the test conducted by the Philippine Geoanalytics Testing Center[44] from the samples taken showed that the hardened concrete failed to reach the required comprehensive strength days after the pouring, ECIC, however, failed to account for the period that intervened from the time the delivered concrete was poured to the time the hairline cracks were observed. As the claiming party, it was incumbent upon ECIC to prove that the hairline cracks were truly caused by the inferior quality of the delivered concrete. Besides, Phoenix offered a more plausible explanation, i.e., that ECIC failed to observe the proper procedure for applying and curing the delivered concrete during the intervening period. This resulted in what Phoenix's witness described as "plastic (cement) shrinkage caused by the rapid evaporation of the water component and other factors." [45]

All told, ECIC failed to convincingly prove its counterclaim against Phoenix and thus, the same was correctly denied by the CA.

WHEREFORE, the petition is DENIED. The Decision dated July 22, 2015 and the Resolution dated June 29, 2016 of the Court of Appeals in CA-G.R. CV No. 102671 are hereby AFFIRMED.

SO ORDERED.

Carpio, Acting C.J., (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

[1] Rollo, pp. 8-42.

[2] Id. at 49-57. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando concurring.

[3] Id. at 47.

[4] Id. at 76-82. Penned by Judge Fernando L. Felicen.

[5] See copies of the January 27, 2009 Agreement (records, pp. 29-30) and March 25, 2009 Agreement (rollo, p. 133).

[6] Portions of the RTC and CA Decisions, as well as of the records, use the term "cement" instead of "concrete." However, Phoenix's witness Engr. Vince Nicholas Villasenor (Engr. Villasenor) clarified that these two terms are different; "concrete" refers to the mixture of cement, gravel, sand, and other mixtures (see records, p. 361). For purposes of this decision and in view of Engr. Villasenor, the term "concrete" shall be used.

[7] Rollo, p. 49.

[8] Dated January 25, 2010. Records, pp. 2-6.

[9] Rollo, p. 49.

[10] Dated June 16, 2010. Records, pp. 12-18.

[11] See *id.* at 17.

[12] *Id.* at 13.

[13] *Id.* at 18.

[14] Rollo, pp. 76-82.

[15] *Id.* at 81-82.

[16] See Delivery Receipts; records, pp. 37-55.

[17] *Id.* at 79.

[18] See Statement and Sales Invoice; records, p. 36.

[19] Rollo, p. 80.

[20] *Id.* at 80-81.

[21] *Id.* at 81.

[22] *Id.* at 80.

[23] See Notice of Appeal dated January 22, 2014 (*id.* at 83-84) and Appellant's Brief dated September 29, 2014; *id.* at 90-126.

[24] *Id.* at 98.

[25] *Id.* at 100-101.

[26] *Id.* at 49-57.

[27] *Id.* at 54.

[28] *Id.* at 56.

[29] *Id.*

[30] See Motion for Reconsideration dated August 17, 2015; *id.* at 58-64.

[31] *Id.* at 47.

[32] *Equitable PCI Bank v. Ng Sheung Ngor*, 565 Phil. 520, 536-537 (2007).

[33] See *Cabanting v. BPI Family Savings Bank, Inc.*, G.R. No. 201927, February 17, 2016; *Equitable PCI Bank v. Ng Sheung Ngor*, *id.* at 537; and *Spouses Poltan v. BPI Family Savings Bank, Inc.*, 546 Phil 257, 269 (2007).

[34] See *Cabanting v. BPI*, *id.*; and *Spouses Poltan v. BPI Family Savings Bank, Inc.*, *id.* at 269.

[35] See *Cabanting v. BPI*, *id.*

[36] See *Cabanting v. BPI*, *id.*; and *Spouses Poltan v. BPI Family Savings Bank, Inc.*, *supra* note 33 at 270, citing *Lee v. CA*, 426 Phil. 290, 316 (2002).

[37] Dated November 6, 2008, February 18, 2009, and February 27, 2009. Rollo, pp. 130-133.

[38] Id. at 130, reverse side.

[39] See copy of the Agreement; id. at 130. See also copy of the other Agreements signed by the parties; id. at 131-133.

[40] See the City Engineer's Office's letters dated May 20, 2009 and May 29, 2009 informing ECIC of the appearance of the hairline cracks on the VNHS building's 3[rd] floor (id. at 151-152). ECIC informed Phoenix of the City Engineer's Office's letters regarding the appearance of the hairline cracks only on June 11, 2009 (id. at 11 and 206).

[41] See *Spouses Miano v. Manila Electric Company (MERALCO)*, G.R. No. 205035, November 16, 2016. See also *Abad v. Spouses Guimba*, 503 Phil. 321, 328 (2005).

[42] See *Miano v. Manila Electric Company (MERALCO)*, id.

[43] See *Prudential Bank (now Bank of the Philippine Islands) v. Rapanot*, G.R. No. 191636, January 16, 2017; and *Spouses Miano v. Manila Electric Company (MERALCO)*, id.

Some of the recognized exceptions to the factual-bar-rule are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of facts are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the findings of facts of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record.

[44] See Test Report on Drilled Concrete Core; rollo, p. 157.

[45] Id. at 53.

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