

NORTHERN CEMENT CORPORATION, PETITIONER-APPELLANT, VS. INTERMEDIATE APPELLATE COURT AND SHIPSIDE, INCORPORATED, RESPONDENTS-APPELLEES.

G.R. No. 68636. February 29, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The basic issue in this case is the meaning of the phrase "integrated services" as used in the agreement entered into by the Northern Cement Corporation, the herein appellant, and appellee Shipperside, Inc. It is nothing short of amazing that no attempt whatsoever was made beforehand to expressly define or delimit the same, considering the cost and volume of such services. And what is equally incredible is that the contract was not even in writing, as if the parties considered the subject thereof not important enough to merit more than a verbal understanding.

As it turned out, perhaps inevitably, these omissions have resulted in this controversy involving hundreds of thousands of pesos and seemingly endless argument, some of it strained and even fatuous. One may well ask, Where were the lawyers to begin with? Despite the canards that have been hurled at the legal profession, this case might have been avoided altogether if the parties had previously consulted their respective counsel. The first thing counsel would have done was draw up a contract with all the necessary whereases and wherefores, in the thorough idiom of the lawyer, and so aborted this conflict.

This case began in the Court of First Instance of La Union with the filing by Shipperside of a complaint for recovery from NCC of the amount of P453,347.82 representing arrastre, stevedoring, and other service charges.[1] The trial judge[2] dismissed the complaint and also ruled in favor of the defendant on its counterclaim.[3] The decision was appealed to and, after extensive exchange of pleadings, reversed by the Intermediate Appellate Court.[4] The respondent court is now faulted for grave abuse of discretion in this appeal under Rule 45 of the Rules of Court.

We gave due course to this petition and the parties submitted their respective briefs in due time. The petitioner asked for leave to file a reply brief on February 19, 1986, which was granted, but has not done so to date despite two extensions allowed by the Court.

As simply put as possible, the antecedent facts are as follows: In connection with its exportation of cement, NCC contracted the arrastre, stevedoring and other related services of Shipperside beginning September 14, 1973.[5] The understanding was that for the latter's "integrated services," the former would pay it at the fixed rate of P0.41 per bag of cement, which amount was, after Shipperside had started rendering its services, later increased to P0.46 by agreement of the parties.[6] Subsequently, Shipperside advised NCC of another increase in this rate[7] and billed it accordingly, as well as for "regular and overtime standby, lighting, equipment rental, gears, empty bags, and other charges." [8] NCC apparently acceded to the new arrangement but about two years later questioned this billing, contending that the agreed integrated rate of P0.46 covered all the services rendered by Shipperside and that such rate could not be increased unilaterally.[9] Shipperside said that only arrastre and stevedoring services were included; all other services were subject to separate billings; and, moreover, NCC had not earlier objected to the billing.[10] In

the end, as no agreement could be reached, Shipperside filed its complaint for collection of the amount allegedly due from NCC.[11]

We have gone over the arguments of the parties and find that the respondent court did not err in its interpretation of the phrase "integrated services" as used by the parties in their verbal agreement. There being no written definition of this term, it was proper to understand it in the light of the usages of the place where the contract was entered into and of the particular circumstance attending the case at bar. The meaning given is in our view consonant with such usages and circumstances, not to mention ordinary common sense.

Obviously, Shipperside offered for the fixed fee only such services as could be predetermined and for which a value could be fixed in advance. As an entity long engaged and experienced in the business of arrastre and stevedoring, it would not have been so foolhardy as to bind itself to a rate covering all services when that rate was sufficient only to defray the expenses of stevedoring and arrastre. And more so since at the time the contract was entered into no projection of the other services rendered, and of their possible cost, could be reasonably made.

We approve and adopt the following explanation given by the respondent court on the extent and meaning of the phrase "integrated services" for which the parties had agreed on the fixed fee of P0.46 per bag of cement:

"x x x. Obviously, the charges for stevedoring and arrastre services are predetermined by the weight, volume, or measurement of the shipment, and as to the manpower to effect these services the same is directly controlled by the plaintiff without the intervention of any third party.

"Thus, it was that the plaintiff advised the defendant that the only port and extra-port services integrated or included in the rate of P0.46 per bag of cement handled are regular arrastre and stevedoring charges, gear charges, cleaning gang charges, and charges for opening and closing of ship hatches (Exh. O, Ibid., p. 209). And on this advice, the defendant continued to avail itself of the port and extra-port services of the plaintiff.

"On the other hand, the charges for services performed for the defendant by the plaintiff during regular overtime work on weekdays, special overtime work during all hours on Sundays and holidays, regular and special standby time during breakdowns of defendant's cement plant in Sison, Pangasinan, and regular overtime and special overtime work when defendant's cement was hauled from its plant in Sison, Pangasinan, to the pier in San Fernando, La Union, are different from the charges for regular stevedoring and arrastre services. The regular overtime work, the special overtime work, and the regular and special standby time cannot be predetermined because they depended entirely on the needs and demands of the defendant.

"x x x x.

"The four jobs enumerated under the caption, 'OTHER SERVICES' in the management contracts are specific activities whose costs are predetermined and as to the manpower necessary to perform them the same is directly controlled by the plaintiff. Indeed, they are listed respectively in Sections 14 and 19 of the two management contracts under stevedoring and arrastre services for, as stated elsewhere in this analysis, stevedoring and arrastre charges are also predeterminable since the charges thereon are based on weight, volume or measurement. Moreover, the words 'and other services' in the parenthetical phrase are classed with arrastre and stevedoring services.

"Thus, the words 'and other services' in the parenthetical phrase of the opening sentence of the first paragraph of plaintiff's letter to the defendant do not refer at all to the port and extra-port services performed by the plaintiff outside of regular working hours on weekdays and during all hours on Sundays and holidays under the rubric 'OVERTIME SERVICES' found in Sections 16 and 17 of the Management Contract dated March 1, 1964 (Exh. P, Ibid., pp. 225-226) and in Sections 21 and 22 of the Management Contract dated October 7, 1968 (Exh. Q, Ibid., pp. 243-244)."[12]

NCC's argument is that it had never accepted the unilateral increase of the said fee and the other fees billed by

Shipside beyond the charges for arrastre and stevedoring services. To the contention that it never protested the billing, NCC has a rather quaint explanation, to say the least. First, it says it continued availing itself of the services of Shipside despite such billing because it had no choice as Shipside had a monopoly of such services in the region. Second, it says it did not object to the billing because it was not really a demand for payment but a mere request it could ignore.

Even the Constitution recognizes monopolies, providing only that they can be regulated or even prohibited when the public interest so requires.[13] Monopolies are not objectionable per se, and there is no showing in the case at bar that the terms imposed by Shipside were oppressive or opportunistic. There is no evidence either of any arm-twisting here. In fact, NCC says elsewhere in its brief that the integrated rate offered by Shipside was a package deal intended to attract business, "designated as a 'came on' to various port users." [14] This would negate its own suggestion that Shipside was exploiting its monopoly and dictating its rates upon those needing its services.

The evidence is that NCC willingly availed itself of Shipside's services and continued doing so even after it had received notice of the change in the stipulated rate followed by the corresponding billing one month later.

It is true that the original rate of P0.41 was increased earlier only after negotiations between NCC and Shipside and that no similar transactions preceded the increase now challenged. But, as Shipside correctly argues, NCC did not seasonably question this increase and thus in effect impliedly accepted it. We note NCC's vehement insistence that it did not protest the billing earlier because it was at that time not a demand for payment but a mere routinary request.[15] This is not even sophistry. What it is is a miserable exercise in logic that betrays the paucity of the petitioner's cause.

In polite society, one does not immediately demand a right even if already demandable. He merely requests it. And this is true not only in ordinary relationships but even in business circles, more so perhaps because of the goodwill and patronage - translating to pesos and centavos - that must be maintained between the parties. The mere fact then that the billing merely requests payment does not mean that the payment does not have to be made because it is not yet demanded (and, as NCC would put it, not even demandable). That is quibbling. It puts a chip on every one's shoulders. This argument would remove all courtesy and refinement in business dealings and convert them to cold, peremptory, adversary and dehumanized legal proceedings.

In any event, the records show that the increase in the rates was communicated to NCC on August 12, 1974,[16] and the billing based on these rates was made initially on September 13, 1974.[17] The billing included charges for the other services now questioned by NCC. NCC indicated no objection either to the notice or to the billing. On the contrary, it continued availing itself of the services of Shipside as if the new arrangement was perfectly acceptable. Furthermore, at Shipside's request, NCC agreed, without objection or reservation, to make deposits on its account in the total amount of P690,000.00 during the period from September 17, 1974, (after the new rates were supposed to have come into effect) to February 7, 1975.[18] It was only later, in reply to Shipside's letter of April 30, 1975, that NCC finally objected to the said billings, arguing for the first time that it was liable only under the original rate of P0.46 and no more. It was too late; estoppel had already set in.

Rule 131, Section 3, of the Rules of Court provides:

"SEC. 3. Conclusive presumptions. - The following are instances of conclusive presumptions:

"(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

It would have been so easy for NCC to manifest its objection to the increased billing, but it did not. It was silent for almost two years and until shortly before the suit against it was filed by Shipperside. Shipperside, for its part, continued rendering its services to NCC, believing that the latter, by its failure to object to the billing, had accepted the same.

The trial court said no express objection was necessary as "the clearly overt act of non-payment" was a more effective method of manifesting NCC's protest. We do not think so. Such "overt act of non-payment" may be due to other causes, usually lack of funds and does not necessarily signify an unwillingness to accept liability. At any rate, what prevented NCC from categorically saying it was objecting to the billing? NCC says it never gave the impression it had acceded to the increased rates and asks in its brief: "Where is the consent to the increased rate? Where is the conduct of NCC showing estoppel?" The counter- question is: Where was its objection to the new rates, and when was it made?

One might suspect that NCC chose not to protest the billing of September 14, 1974, for fear of immediately losing the services of Shipperside which, as NCC stresses, had the monopoly of the stevedoring and arrastre services in La Union at the time. It thus led Shipperside to believe it was accepting all the charges while all the time intending to reject them later, after it would no longer be needing such services. If so, that would be astute but hardly fair. If not, one wonders why NCC did not immediately question the said billing, especially since, being a mere request, as it insists, it could have been rejected outright. A positive and categorical stance rather than a mere ambiguous silence would have prevented the application to NCC now of the principle of estoppel.

The award on the counterclaim is another matter.

It is contended that the respondent court erred in limiting the refund to the amount specified by the petitioner in its counterclaim. The trial court had allowed the refund in the sum of P526,280.53 on the justification that this had been established by the evidence adduced at the trial. On appeal, however, the respondent court reversed, holding that this refund should be limited to the sum of P31,652.62, which was the amount claimed in the counterclaim. In support, it cited a number of cases, including *Malayan Insurance Company v. Manila Port Services*,^[19] where it was held:

"The contention is meritorious. In its complaint, the appellee asked for 'the sum of P3,236.46 on all causes of action, plus interest thereon from the time of first demand until complete and full payment thereof; the sum of P500.00 by way of attorney's fees, and costs.' The trial court, however, awarded to the appellee the total amount of P4,564.77, with interests thereon at the rate of 6% per annum from the filing of the complaint; attorney's fees in the amount of P300.00; and the costs of suit. In the case of *J.M. Tuason & Co. v. Santiago*,^[20] this Court ruled that where the plaintiff failed to amend the prayer of its complaint as to the amount of damages so as to make it conform to the evidence, the amount demanded in the complaint should be awarded as damages. There having been no amendment to the prayer in the complaint to conform with evidence, the award to the appellee should be reduced to the sum of P3,235.46, on all causes of action, plus interest thereon at the rate of 6% per annum from the filing of the complaint."

The applicable rule is Rule 10, Section 5, providing as follows:

"SEC. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be

subversed thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

There have been instances where the Court has held that even without the necessary amendment, the amount proved at the trial may be validly awarded, as in *Tuazon v. Bolanos*,^[21] where we said that if the facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint was necessary, especially where defendant had himself raised the point on which recovery was based. The appellate court could treat the pleading as amended to conform to the evidence although the pleadings were not actually amended. Amendment is also unnecessary when only clerical errors or non-substantial matters are involved, as we held in *Bank of the Philippine Islands v. Laguna*.^[22] In *Co Tiamco v. Diaz*,^[23] we stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party. And in the recent case of *National Power Corporation v. Court of Appeals*,^[24] we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform with the evidence.

It is the view of the Court that pursuant to the above-mentioned rule and in light of the decisions cited, the trial court should not be precluded from awarding an amount higher than that claimed in the pleadings notwithstanding the absence of the required amendment. But this is upon the condition that the evidence of such higher amount has been presented properly, with full opportunity on the part of the opposing parties to support their respective contentions and to refute each other's evidence.

We find in the case at bar that there was a failure of the above-stated condition. The record discloses that although NCC was allowed to adduce evidence in support of its claim for refund beyond the amount indicated in its counterclaim, Shipside's rebuttal evidence was practically brushed aside on the ground that it was not permitted by the stipulation of facts earlier entered into by the parties, besides being hearsay and self-serving. This was not consistent with due process and therefore vitiated the findings of the trial court based on the unilateral assertions of the petitioner.

On the said stipulation of facts, Shipside says it was limited only to allowing NCC to prove additional payments of the accountabilities covered by Shipside's claims. If it did not object to the presentation of evidence regarding the alleged excess payments of NCC, it was because it was led to believe that such evidence would refer only to the payments covered by the complaint. We agree that under the Aldanese ruling cited by the respondent court below, it could present rebuttal evidence on the petitioner's counterclaim.^[25]

As the respondent court put it:

"The second weakness of the trial court's conclusion is that the defendant did not really succeed in proving any excess payment for the first period of September 14, 1973 to September 12, 1974.

"By stipulation of facts, dated February 22, 1977, the defendant paid the plaintiff during the first period the sum of P743,140.56, without prejudice to defendant's proof of additional payments during the said period (*Ibid.*, pp. 73, 260; Defendant's Brief, p. 9). And in the comparative tabulation in the decision (*Record on Appeal*, p. 399), the trial court also tried to show that out of the total sum of P763,000.00 paid by the defendant at various times only the amount of P288,246.07 appears to have been credited by the plaintiff in favor of the defendant. Thus, after subtracting P288,246.07 from P263,000.00, the trial court simply concluded that the balance of P474,753.93 was not credited in favor of the defendant and ruled this amount as excess payment. The trial court tried to justify its conclusion (*Ibid.*, pp. 374-375, 395) first by the testimony of Ernesto B. Gapuz (*tsn*, June 14, 1977, pp. 14-29), and second by Exhibits '3', '5', '6', '7', '8', '10', '11', '14', '15', '16', '17', '18', '19', and '20' (Defendant's Folder of Exhibits, pp. 3-8, 10-11, 14-20) in relation to

Exhibit '4' (Id., p. 4).

"The troublesome part of this simplistic approach to an involved question lies in the failure of the trial court to weigh defendant's claim of excess payment with plaintiff's rebuttal evidence (Record on Appeal, pp. 196-220).

"The main reason of the trial court in disregarding plaintiff's rebuttal evidence is that it violates the stipulations of facts of the parties as embodied in the orders of the trial court dated July 19, 1976, February 22, 1977 and March 9, 1977 (Ibid., pp. 403, 411).

"This is a grave abuse of judicial discretion because the trial court's failure to consider plaintiff's rebuttal evidence contravenes the doctrine laid down in *American Express Co., Inc. v. Vicente Aldanese*, 47 Phil. 325, 327. There the Supreme Court held that additional evidence is admissible, even after the filing of the stipulation of facts, when such amendment of the stipulation of facts is for the purpose of bringing to the knowledge of the court all the facts pertinent to, and necessary for, the better solution of the principal questions involved in the case.

"Thus, in the light of this accepted wisdom the trial court should have weighed plaintiff's rebuttable evidence against defendant's claim of excess payments during the first period of September 14, 1973 to September 12, 1974 and see where the balance tilts."

To remedy the virtual disregard by the trial court of the rebuttal evidence of Shipline, the respondent court sought to consider the same and in the end admitted all the 142 exhibits without much analysis and without giving NCC a chance to refute them. This approach was also, to use its own word, simplistic. We have the feeling that even as the trial court was precipitate in rejecting this evidence altogether, there was a similar lack of care on the part of the respondent court in going to the other extreme, as it were, and accepting such evidence in toto. A more thorough review of this matter is, as the Court sees it, called for in the interest of justice.

To this end, the Court finds it necessary to remand this case to the respondent court in accordance with Section 9 of B.P. Blg. 129 for the reception and a more careful evaluation of the evidence, from both the petitioner and the private respondent, regarding the claimed excess payments and, if necessary, for the corresponding amendment of the pleadings. This should be done in accordance with the principles enunciated and the decisions cited above. The evidence adduced should be the basis of its ascertainment of whether or not the counterclaim should be allowed, and if so, in what amount. We also direct that, in arriving at the awards to be made, to whichever party it may be due, the respondent court should provide for legal interest at the rate of 6% only, in accordance with the recent decisions of this Court.[26]

WHEREFORE, subject to the rulings announced herein, this case is remanded to the Court of Appeals for the determination of the amount due, if any, on the counterclaim of the petitioner against the private respondent. The rest of the decision of the respondent court is AFFIRMED, with costs against the petitioner.

Teahankee, C.J., Narvasa, Gancayco, and Grino-Aquino, JJ., concur.

[1] Record on Appeal, pp. 1-5 (Rollo, p. 81).

[2] Judge Angel A. Daquigan.

[3] Record on Appeal, pp. 230-231.

[4] Decision, rollo, pp. 54-76, penned by Pascual, J., with Zosa and Camilon, JJ., concurring.

[5] Ibid., p. 15.

[6] Id.

[7] Id.

[8] Id., p. 56.

[9] Id.; Record on Appeal, p. 349.

[10] Id.; Id., p. 350.

[11] Rollo, p. 15.

[12] Ibid., pp. 57-60.

[13] Art. XII, Sec. 19, Constitution.

[14] Brief for the Petitioner, p. 42.

[15] Ibid., p. 32; Rollo, pp. 33-34.

[16] Rollo, p. 33.

[17] Ibid.

[18] Id.; Record on Appeal, p. 73.

[19] 85 SCRA 320.

[20] 99 Phil. 615.

[21] 95 Phil. 106.

[22] 48 Phil. 5.

[23] 75 Phil. 672.

[24] 113 SCRA 556.

[25] 47 Phil. 325.

[26] Philippine Rabbit Bus Lines, Inc. v. Cruz, 143 SCRA 158, citing Reformina v. Tomol, Jr., 139 SCRA 260.

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