

REFRATORIES CORPORATION OF THE PHILIPPINES, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND FIRESTONE CERAMIC, INC., RESPONDENTS.

G.R. No. 70839, August 17, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

In 1980, petitioner Refractories Corporation of the Philippines (Refractories, for short) imported from Japan around 250 metric tons of magnesite "ube" green and magnesia clinker. When the shipment arrived, they were discovered to be water-damaged and unfit for consumption hence they were stored in the warehouse of petitioner at Iligan City. As a consequence, petitioner declared the whole cargo a total loss and filed a claim with its insurer, Filriters Guaranty Assurance Corporation (hereinafter referred to as Filriters).

Subsequently, with the knowledge and consent of petitioner, Filriters placed said shipment on bid for salvage disposal and, in the public auction held by virtue thereof, one Alejandrino Sangalang, acting for and in behalf of private respondent Firestone Ceramic, Inc. (Firestone, for brevity), submitted a sealed bid in the amount of P115,182.00, at the rate of P450.00 per metric ton. The goods were thereafter awarded to private respondent, as the highest bidder, for the aforesaid amount of the bid.

After full payment of the price of the goods, private respondent attempted to withdraw the goods from the warehouse of petitioner but the latter refused to release the same on the ground that it had not received its insurance claim payment and the question of whether or not the goods were exempt from customs duties and taxes had yet to be resolved.

Petitioner later withdrew its objection after entering into an agreement on February 19, 1981 with herein private respondent, said Alejandrino Sangalang and Filriters, providing inter alia that;

"1. RCP hereby withdraws its objection/opposition to the award of the bidding to Sangalang and/or FCI and allows them or their agents to remove the salvaged cargo consisting of 255.96 metric tons of magnesite 'ube green' and magnesia clinker from the premises of RCP at Iligan City;

"2. The removal of said cargo shall be supervised by Average Adjusters, Inc. and shall be done within 15 days from the time the surveyors confirm their availability and the costs and expenses to be incurred therefore (sic) shall be for the sole account of Sangalang and/or FCI. Said removal shall be done within the regular bonded warehouse working hours;

"3. Sangalang and/or FCI shall undertake to pay, if required, any liability for customs duties, compensating tax and/or any other import taxes, duties, and/or obligations of whatever nature that may be levied in connection with said award and shall hold RCP and Filriters free and harmless from any and all such claims relating to the award in favor of Sangalang and/or FCI;

"4. Filriters, Sangalang and/or FCI waives and abandons any and all claims for damages, liabilities, causes of

action or otherwise against RCP arising out of or in connection with the opposition to the award of the bid then interposed by RCP;

"5. In the event that the salvaged cargo at the premises of RCP to be removed by Sangalang and/or FCI is less than the bidden quantity, due to shortage or non-existence thereof, Filriters shall correspondingly reimburse Sangalang and/or FCI for the deficiency at P450 per metric ton. Likewise, the claim of RCP against Filriters shall be correspondingly reduced at such computation as stated in the Subrogation Receipt.

"6. Filriters shall pay the insurance proceeds to RCP in the amount of P737,682.03 under the terms and conditions set forth in the Subrogation Receipt which the latter would sign. It is understood that this Agreement does not supersede, alter, amend or modify any of the provisions of the Subrogation Receipt."[1]

Accordingly, private respondent paid the customs duties and taxes on the goods on May 5, 1981 amounting to P14,865.00. In spite of this, petitioner again refused to release the goods when respondent tried to take them the next day, May 6, 1981. This time, petitioner demanded payment of storage fees in the sum of P3,455.44 per month, claiming that there was delay on the part of private respondent in withdrawing the goods which supposedly forced petitioner to store the goods in Iligan City. Private respondent refused to pay "on the ground that the demand was unlawful and unjustified since the conditions of the agreement have been complied with"[2] and insisted on the delivery of the goods.

Said controversy resulted in the filing by private respondent of a complaint for specific performance and damages against Filriters Guaranty Assurance Corporation and petitioner Refractories Corporation of the Philippines[3] on May 29, 1981, praying that judgment be rendered ordering defendants therein to release to plaintiff 70.715 metric tons of the aforesaid magnesite and 185.245 metric tons of magnesia clinker and to pay actual and compensatory damages in the amount of P234,000.00, moral and exemplary damages in an amount to be determined by the trial court, attorney's fees in the sum of P50,000.00, and costs of suit.[4]

During the pendency of said case in the court a quo, private respondent was able to obtain delivery of 159.28 metric tons of the cargo upon a deposit of P44,920.98 representing the storage fees for the period from March 8, 1981 to April 8, 1982. Around 96 metric tons were left in the warehouse of petitioner.[5]

On January 24, 1983, the trial court rendered judgment finding that it was petitioner which prevented the immediate removal of the cargo and if there was any delay on the part of private respondent, the same was caused by the imposition of custom duties and taxes. According to the court, the parties to the agreement of February 19, 1981 "were aware of the possible delay in the removal of the cargo in view of the probability of the demand for the payment of customs duties and taxes on the shipment."[6] The dispositive portion contains the following directives, viz:

"1) Ordering defendants to allow plaintiff to take delivery of 96 metric tons of water-damaged magnesite ube green and magnesia clinker and in default thereof, to pay to plaintiff jointly and severally the sum of P276,672.00 which is equivalent to the insurance payment on the shipment plus the legal interest thereon at 18 per cent per annum from May 6, 1981 until the same is fully paid;

"2) Sentencing defendants jointly and severally to pay to plaintiff the sum of P234,000.00 as and for actual and compensatory damages, and the further sum of P50,000.00 as and for attorney's fees and expenses of litigation;

"3) Sentencing defendant Filriters Guaranty Assurance Corporation (to) pay to defendant Refractories Corporation of the Philippines the sum of P73,768.20 representing the unpaid balance of the insurance proceeds of the water-damaged cargo;

"4) On its cross-claim, defendant FGAC is entitled to the reimbursement by defendant RCP of whatever amount the former pays to plaintiff by reason of this judgment;

“5) The Clerk of Court is hereby ordered to release to plaintiff by way of refund the amount of P44,920.98 heretofore deposited by the latter;

“6) The counterclaims of both defendants against plaintiff are hereby dismissed.

"With costs against defendants." [7]

On appeal to the then Intermediate Appellate Court, [8] said decision of the trial court was affirmed with a modification regarding the interest which was reduced to twelve percent (12%) per annum. [9]

Refractories and Filriters separately appealed to this Court by petitions for review on certiorari. Acting on Filriter's petition, docketed as G.R. No. 70945, we resolved on July 8, 1985 to deny the same for lack of merit. [10] A motion for reconsideration thereof was subsequently denied on September 18, 1985 and judgment became final and executory on October 10, 1985.

Likewise, the present petition of Refractories was denied in our resolution of October 23, 1985 for lack of merit. [11] Petitioner's motion for reconsideration of said resolution, on which the parties were allowed to submit their respective memoranda, is now before us for resolution.

Preliminarily, we dispose of and reject private respondent's contention that the petition for review in this case was filed out of time. Respondent Firestone's theory that the motion for reconsideration of the decision of respondent court filed therein by Refractories "merely suspended the running of the 15-day period to appeal" [12] is without legal basis. Section 1, Rule 45 of the Rules of Court provides that "(a) party may appeal by certiorari, from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time." In other words, in the event a motion for reconsideration is filed and denied, the period of fifteen days begins to run again from notice of denial. [13] The records show that herein petitioner received on May 16, 1985 a copy of the resolution dated May 9, 1985 of respondent court denying its motion for reconsideration of the decision in AC--G.R. CV No. 00493. Upon motion filed on May 22, 1985, it was granted in our resolution of June 3, 1985 an extension of 30 days within which to file a petition for review on certiorari counted from the expiration of the reglementary period, which petition it seasonably filed on June 18, 1985.

We are also convinced that said motion for reconsideration was not pro forma since it specifically and adequately pointed out and discussed the findings and conclusions in the judgment of respondent court which it claimed, correctly as hereinafter shown, were not supported by the evidence or were contrary to law. [14]

On the merits of the case, we agree with the findings of the courts below that respondent's action for specific performance was justified. Petitioner's demand for payment of storage fees was not one of respondent's obligations under the agreement, hereinbefore quoted, hence there was no need to pay the same before the goods in question could be released.

However, with respect to the awards for damages and attorney's fees, the judgment of the trial court, as affirmed by respondent court, require modification. Article 2219 of the Civil Code is explicit as to the requirements for entitlement to actual or compensatory damages, that is, that "(e)xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." Indeed, before the award of actual or compensatory damages can be made, adequate proof of the pecuniary loss suffered is indispensable. These factual and legal bases must be clearly established and reliance on mere speculation, conjecture or guesswork on the part of the trial court will demand the reversal of the award. The same is true if the proof is flimsy and unsubstantiated. [15]

The foregoing considerations appear to have been lost upon the trial court when it awarded two components of

actual and compensatory damages, one for P234,000.00 and another in the sum of P276,672.00 in case of failure to deliver the remaining 96 tons of said water-damaged magnesite and magnesia clinker. With respect to the first, the absence of actual proof thereon to justify the same is evident from the records and transcripts of the proceedings in the case. Other than the recitation of the reliefs prayed for in the complaint, no evidence with respect to said damages was ever pleaded or adduced in court. This may also be gleaned from private respondent's own submission.[16] Respondent Firestone erroneously relied on the transcript of the notes wherein petitioner allegedly "readily admitted that the reliefs prayed for were those outlined in the complaint,"[17] obviously under the mistaken belief that the bare statement of reliefs prayed for, and no more, is proof in itself of the supposed injury resulting from the wrong allegedly committed against it.

Likewise, the award of P276,672.00 which the petitioner was ordered to pay is not sustained by the evidence. Such amount was claimed to be equivalent to the insurance payment, but no reason has been advanced, nor is any apparent, as to why the measure of the amount to be paid by petitioner in case of non-delivery of the aforesaid balance of the shipment should be the insurance amount due from Filriters. The agreement of February 19, 1981 is clear that the amount to be paid to private respondent in case of shortage or deficiency in delivery is P450.00 per metric ton. This amount is in fact the same monetary basis of the bid of Firestone which it actually paid for the salvaged cargo. Thus, if ever there should be any pecuniary loss because of the non-delivery of the goods, it should not be based on the insurance coverage or proceeds which would be due only to the petitioner because of the declaration of total loss of the cargo since this represents the indemnity for the amount spent in importing the goods and is the value thereof at the time of the loss. Whatever additional damages may be suffered by private respondent because of non-delivery or incomplete delivery shall be covered by the legal interest on the principal amount due, that is, six percent (6%) per annum from default.[18]

Further, for lack of factual basis and legal justification, the award of attorney's fees should be eliminated. No evidence was adduced to support such claim for attorney's fees as damages nor did the lower courts state the reason therefor, all in violation of the proscription against the imposition of a penalty on the right to litigate. The award of attorney's fees is the exception rather than the general rule and counsel's fees is not to be awarded every time a party wins a suit.[19] The discretion of the court to award attorney's fees under Article 2208 of the Civil Code "demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture." [20] In all events, the court must state the reason for the award of attorney's fees.[21]

FOR ALL THE FOREGOING CONSIDERATIONS, the Court resolves to RECONSIDER its resolution dismissing the petition at bar and to MODIFY the appealed decision by deleting the award of actual and compensatory damages in the amount of P234,000.00 and attorney's fees in the amount of P50,000.00. The amount to be paid in case petitioner fails to deliver the 96 metric tons of the water-damaged cargo or a part thereof is hereby ordered to be P450.00 per metric ton, with interest thereon at the legal rate of six percent (6%) per annum from May 6, 1981 until fully paid. In all other respects, the decision of the trial court, as adopted by respondent court, is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Original Record, 64-65.

[2] Rollo, 38.

- [3] Civil Case No. 9146-P, Court of First Instance of Rizal, Branch CX, Pasay City; Original Record, 1-4.
- [4] *Id.*; *id.*, 4.
- [5] Rollo, 174.
- [6] *Ibid.*, *id.*
- [7] *Ibid.*, 174-175.
- [8] AC-G.R. CV No. 00493, Second Civil Cases Division.
- [9] Penned by Justice Crisolito Pascual, with the concurrence of Justices Serafin E. Camilon and Desiderio P. Jurado.
- [10] G.R. No. 70945. Rollo, 44.
- [11] Rollo, 107.
- [12] *Ibid.*, 178.
- [13] *Codilla vs. Estenzo*, 97 SCRA 351 (1980); *Lacsamana, et al. vs. The Hon. Second Special Cases Division of the Intermediate Appellate Court, et al.*, 143 SCRA 643 (1986).
- [14] *Maturan vs. Araula, et al.*, 111 SCRA 615 (1982); *Vina vs. Court of Appeals, et al.*, 126 SCRA 371 (1983).
- [15] *Rubio vs. Court of Appeals, et al.*, 141 SCRA 488 (1986); *Dee Hua Liong Electrical Equipment Corporation vs. Romeo Reyes, et al.*, 145 SCRA 713 (1986); *De la Paz, Jr., et al. vs. Intermediate Appellate Court, et al.*, 154 SCRA 65 (1987); *Danao, et al. vs. Court of Appeals, et al.*, 154 SCRA 446 (1987); *Medelo vs. Gorospe, et al.*, 159 SCRA 248 (1988); *Civil Aeronautics Administration vs. Court of Appeals, et al.*, G.R. No. 51806, November 8, 1988.
- [16] Rollo, 183-184.
- [17] *Ibid.*, 184.
- [18] *Reformina, et al. vs. Tomol, Jr., et al.*, 139 SCRA 260 (1985); *Philippine Rabbit Bus Lines, Inc. vs. Cruz, et al.*, 143 SCRA 158 (1986).
- [19] *Phoenix Publishing House, Inc. vs. Ramos, et al.*, 159 SCRA 383 (1988); *Philippine National Bank vs. Court of Appeals, et al.*, 159 SCRA 433 (1988); *Arenas vs. Court of Appeals, et al.*, G.R. No. 56524, January 27, 1989.
- [20] *Medco Industrial Corporation, et al. vs. Court of Appeals, et al.*, G.R. No. 84610, Nov. 24, 1988.
- [21] *Buan, et al. vs. Camaganacan*, 16 SCRA 321 (1966), and cases therein cited.

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