

TONG BROTHERS CO., PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND JULIANO AND COMPANY, RESPONDENTS.

G.R. No. 73918. December 21, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision and order of the then Intermediate Appellate Court, now Court of Appeals, in AC-G.R. No. 68505 which awarded a total amount of P907,220.66 as damages, including attorney's fees, in favor of the private respondent.

The petitioner is a registered general partnership engaged in the construction and repair of vessels with drydocking facilities at Recodo, Zamboanga del Sur while the private respondent is a domestic corporation engaged in the coastwise shipping industry operating for that purpose the vessel M/S Zamboanga-J.

Sometime in December, 1974, the private respondent allegedly contracted with the petitioner the annual drydocking and repair of the Zamboanga-J. On the ground that the petitioner did not complete and execute all the work necessary, essential and indispensable to rendering the vessel seaworthy resulting in its deterioration and total loss, the private respondent filed a complaint against the petitioner for specific performance and damages with the Court of First Instance of Cotabato.

The petitioner denied that there was a perfected contract to repair Zamboanga-J between the two parties.

To prove its case against the petitioner, the private respondent tried to establish the following facts:

xxx xxx xxx

"x x x As the need arose, the plaintiff had its vessels drydocked for repairs at the dockyard of the defendant-appellant in Zamboanga City. This business relationship started in 1960's (t.s.n., March 11, 1980, p. 7). The procedure was for these vessels to be drydocked and repaired and after each job, a statement of account would be sent to the plaintiff-appellee, which remitted payments to the defendant-appellant in varying amounts (Exh. 9). Although Exhibit 9 consolidates the accounts pertaining to the Cotabato J and the Zamboanga-J, in point of fact, statements were separately prepared for said vessels.

"Because the business relationship between the parties herein had continued for over 10 years, the plaintiff-appellee enjoyed credit facilities from the defendant-appellant and the defendant performed repair work on the plaintiff's vessel without need of a formal written contract. On the strength of this relationship, the plaintiff, sometime in December, 1974 brought the Zamboanga-J to the defendant-appellant's dockyard. The defendant-appellant asked for a deposit of P15,000.00 but even without having received this amount that it had requested, the defendant-appellant drydocked the vessel on December 27, 1974 (t.s.n., March 11, 1980, p. 8). The sum of P15,000.00 was received by the defendant on December 28, 1974 for which it issued two receipts, one for P5,000.00 and the other for P10,000.00 (Exhs. "A" and "B").

"With this payment, the defendant commenced work on the Zamboanga-J by removing the rudders, pulled out tail shafts with propellers, etc., removed bottom hull plankings in way of inspecting ribs, and replaced same

with new plankings, etc. (t.s.n., ibid, pp. 112, 126, 134, 135)

"The plaintiff, even before the Zamboanga-J was drydocked, also shipped various lumber materials to Zamboanga City to the defendant-appellant, through Luis Canto, in accordance with instructions from, and based on specifications of the defendant (Exhs. D, E, F, G, and all submarkings, t.s.n. February 14, 1978, pp. 25-30, pp. 31-34).

"For some excuse or other, the defendant did not continue the job on the Zamboanga-J. Instead, it undocked the vessel on February 4, 1975 and left it exposed to the elements where it remained until it became a total loss. This suit was therefore filed to call the defendant-appellant to account for its failure to comply with its obligation to repair the plaintiff-appellee's vessel which failure resulted in damages to the plaintiff-appellee." (pp. 36-37, Rollo)

On the other hand, the petitioner denied responsibility for the total loss of the vessel M/S Zamboanga-J and stated the facts as follows:

xxx xxx xxx

"x x x Its business name is VARADERO DE RECODO. It used to repair the vessels owned by plaintiff-appellee. The last vessel of plaintiff-appellee which was drydocked at the VARADERO DE RECODO was Zamboanga-J. It was drydocked on December 27, 1974, after plaintiff-appellee paid P15,000.00, representing partial payment of its old accounts. Conformably with the written application filed by plaintiff-appellee with the Coast Guard, Zamboanga City, inspector Anton Casimero, inspected the vessel Zamboanga-J on January 2, 1975. Present during the inspection were Messrs. Ricardo Tong and Joaquin Tong, representatives of defendant-appellant and Mr. Luis Canto, representative of plaintiff-appellee. While admittedly the man of plaintiff-appellee in Zamboanga City, Mr. Luis Canto had no authority to enter into a contract with defendant-appellant for the repair of Zamboanga-J. Because of the extensive repair to be done on the vessel, defendant-appellant prepared a written contract for the signature of plaintiff-appellee's authorized representative. In said written contract, plaintiff-appellee was to have deposited with defendant-appellant the amount of P50,000.00, among others. Mr. Luis Canto, man of plaintiff-appellee's in Zamboanga City, was informed on several occasions by defendant-appellant to get in touch with his employer in Cotabato City, the purpose being was (sic) for plaintiff-appellee's representative to see for himself the extent of the deterioration of the vessel and to sign the written contract prepared by defendant-appellant. No authorized representative of plaintiff-appellee came to Zamboanga City. It sent, however, several telegrams to defendant-appellant demanding, among others, that defendant-appellant repair the Zamboanga-J, there being an earlier agreement between defendant-appellant and Mr. Protacio Juliano, authorized representative of plaintiff-appellee. On the other hand, defendant-appellant advised plaintiff-appellee to send its authorized representative to Zamboanga City to see for himself the extent of the deterioration of the vessel Zamboanga-J, and insisted, among others, that it had no contract with plaintiff-appellee for the repair of Zamboanga-J. In addition thereto, plaintiff-appellee never bothered to secure the JOB ORDER from the Coast Guard, it being its duty to do so. The vessel was undocked on February 4, 1975, and the following day, defendant-appellant sent plaintiff-appellee a Statement of Account in the amount of P13,134.95. Of this amount P9,800.00 represented expenses for dock rental and for the docking and undocking of the vessel. The balance of the amount represented expenses for labor and materials used in closing the open sections of the vessel. Without these latter expenses, the vessel Zamboanga-J could not have been REFLOATED. Zamboanga-J was not repaired and it is now a total loss." (pp. 2-4, Appellant's Brief).

The lower court ruled in favor of the private respondent. The dispositive portion of the decision reads:

"WHEREFORE, the Judgment is hereby entered in favor of JULIANO & COMPANY INCORPORATED and against the defendant TONG BROTHERS AND COMPANY who (sic) is ordered to pay the plaintiff the following:

“1. To pay plaintiff the sum of FOUR HUNDRED AND FIFTY THOUSAND PESOS (P450,000.00), which is the value of the Zamboanga-J which is now a total loss;

“2. To pay the plaintiff the sum of FIVE HUNDRED FORTY TWO THOUSAND TWO HUNDRED AND TWENTY PESOS AND SIXTY SIX CENTAVOS (P542,220.66) which is the unrealized net income of the ZAMBOANGA-J for the expected five years serviceability of the ZAMBOANGA-J had the defendant repaired the same and finished the job;

“3. To reimburse plaintiff the sum of TEN THOUSAND PESOS (P10,000.00) as reimbursement for what plaintiff had paid its counsel;

“4. To reimburse plaintiff the sum of FIVE THOUSAND PESOS (P5,000.00) as reimbursement for the expenses incurred by the plaintiff in prosecuting the case and

“5. To pay the costs of this suit.” (Rollo, pp. 34-35)

Upon appeal, the then Intermediate Appellate Court affirmed the lower court's decision but reduced the value of the boat to P350,000.00.

We initially denied the petition in a resolution dated May 5, 1986. Upon a motion for reconsideration, we set aside the resolution and gave due course to the petition.

The petitioner assigns the following errors:

I

THE RESPONDENT INTERMEDIATE APPELLATE COURT ERRED IN FINDING THAT THERE WAS A PERFECTED CONTRACT FOR THE REPAIR OF THE VESSEL ZAMBOANGA-J AND THAT THE PROXIMATE CAUSE OF THE LOSS OF THE VESSEL WAS PETITIONER'S VIOLATION THEREOF.

II

THE RESPONDENT INTERMEDIATE APPELLATE COURT ERRED IN AWARDING EXCESSIVE DAMAGES TO PRIVATE RESPONDENT CONSIDERING THAT THE SUBJECT VESSEL WAS A WORLD WAR II DERELICT AND CONSIDERING FURTHER THAT THE RESPONDENT APPELLATE COURT FOUND AS A FACT THAT THE OWNER OF THE VESSEL WAS ALSO AT FAULT IN NOT MINIMIZING ITS LOSSES.

III

THE RESPONDENT INTERMEDIATE APPELLATE COURT ERRED IN FINDING THAT PETITIONER FAILED TO CONSIGN THE VESSEL UPON THE REFUSAL OF ITS OWNER TO ACCEPT ITS RETURN INSPITE OF THE EVIDENCE THAT THE VESSEL HAD ALWAYS BEEN UNDER THE FULL CONTROL AND DIRECTION OF ITS OWNER. (Rollo, pp. 17-18)

The decisive issue is whether or not there was a perfected contract between the petitioner and the private respondent to repair the vessel Zamboanga-J.

The applicable laws on work done upon a vessel are the general rules on contract. A contract may be entered into in whatever form except where the law requires a document or other special form as in the contracts enumerated in Article 1388 of the Civil Code. The general rule, therefore, is that a contract may be oral or written. (*Royal Lines, Inc. v. Court of Appeals*, 143 SCRA 608).

The appellate court, adopting the findings and conclusions of the lower court, ruled that there was a perfected

contract for the repair of the vessel Zamboanga-J. It based its ruling on the following circumstances: 1) The previous transactions and business relationship between the two parties showed that they never executed written contracts for the repair of vessels owned by the private respondent; 2) The procedure for necessary repairs of the private respondent's vessels consisted only in the drydocking of the vessel at the petitioner's shipyard to be repaired by the latter after which the bill would be sent to the former for the payment; 3) In the case of the contract to repair Zamboanga-J, this vessel was accepted by the petitioner and it was drydocked on December 27, 1974; 4) A day after, or on December 28, 1974, the private respondent paid P15,000.00 in the form of two (2) checks as initial deposit for the repair of Zamboanga-J; 5) There was a job order from the Coast Guard as evidenced by the application for drydocking (Exhibit C) and the admitted inspection of the vessel by the Coast Guard in the presence of Mr. Joaquin Tong, a managing partner of the Varadero de Recodo, the business name of the petitioner; and 6) The petitioner actually commenced the repair of the vessel when it removed the rudders and pulled out the tail shafts and did other things.

The general rule is that the "jurisdiction of this Court in cases brought to us from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of facts being conclusive. (Community Savings and Loan Association, Inc., et al. v. Court of Appeals, et al., G.R. No. 75786, August 31, 1987, citing *De Gala-Sison v. Manalo*, 8 SCRA 595; *Goduco v. Court of Appeals*, 14 SCRA 282; *Ramirez Telephone Corporation v. Bank of America*, 29 SCRA 171; *Chua v. Court of Appeals*, 33 SCRA 373.) There are, however, exceptions to this rule as when:

"x x x (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellees [*Roque v. Buan*, L-22459, Oct. 31, 1967, 21 SCRA 648]; (6) the findings of facts of the Court of Appeals are contrary to those of the trial court; (7) said findings of facts are conclusions without citation of specific evidence on which they are based; (8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents [*Garcia v. CA*, L-26490, June 30, 1970, 33 SCRA 622]; and (9) when the finding of facts of the Court of Appeals is premised on the absence of evidence and is contradicted by evidence on record [*Salazar v. Gutierrez*, L-21727, May 29, 1970, 33 SCRA 243]." (*Tolentino v. De Jesus*, 56 SCRA 167)

The fact that the parties' previous contracts for the repair of the private respondent's vessels were all oral and that the procedure consisted merely in the vessels being drydocked at the petitioner's shipyard and after repair the petitioner would just send the bill to the private respondent, does not necessarily result in a conclusive presumption that all subsequent contracts between the parties of similar or allied nature should also be oral and the procedure be the same.

An examination of the records reveals that there are circumstances overlooked by the appellate court which support the petitioner's contentions that -- 1) there was no perfected contract between the parties to repair Zamboanga-J, and 2) the proximate cause of the total loss of Zamboanga-J was the abandonment of the vessel by the private respondent.

On January 2, 1975, during the inspection made by the Coast Guard inspector, Anton Casimero, in the presence of Mr. Luis Canto, the private respondent's representative, and Mr. Joaquin Tong, managing partner of the petitioner, it was found that the wooden boat had so deteriorated that in order to repair it, all the original ribs of the boat and the planking must be removed and that, in effect, the repair would be a construction of a new boat. It was also established that the private respondent never paid on time during the parties' previous transactions and when the Zamboanga-J was drydocked at the petitioner's shipyard, the private respondent still owed P28,000.00 for previous jobs. In fact, the petitioner had filed a collection suit, Civil Case No. 281 (1728), against the private

respondent with the Court of First Instance of Cotobato.

These undisputed facts give credence to the petitioner's contention that before accepting the job request to repair Zamboanga-J, it wanted to have the private respondent sign a written contract with an initial downpayment of P50,000.00. According to the petitioner, the P15,000.00 was partial settlement of previous accounts. Taking into consideration the petitioner's previous experiences together with the private respondent's allegations, it is equally likely that the P15,000.00 paid by the latter on December 28, 1974 was only a condition precedent to the acceptance of Zamboanga-J for drydocking and not a downpayment for its repair. We agree with the petitioner in its contentions:

"x x x That the payment of P15,000 on December 28, 1974 could not have possibly been for the repairs of the Zamboanga-J is confirmed no less than by the very findings of the trial court when it stated that 'the procedure that was followed was for the vessels of plaintiff (herein private respondent) to be drydocked and repaired and after (sic) job, the statements of account will be sent to plaintiff and in turn, the plaintiff will remit payment to the defendant (herein petitioner) in varying amounts' (p. 182, R.A.). Following this reasoning, and concededly since the work on the Zamboanga-J had not yet even commenced, then the P15,000 payment on December 28, 1974 could only pertain to the partial settlement of private respondent's previous unpaid accounts. It is for this reason that the two receipts marked as Exhibits A and B issued on December 28, 1974 for P15,000 made no specific mention that these were in payment for the repairs of the Zamboanga-J. As a matter of fact, private respondent admits that no such downpayment had been required for past repairs with the shipyard.

"Petitioner's submission is further strengthened when we consider that no estimate of the expenses for repairs to be incurred had as yet been made on the vessel Zamboanga-J on December 28, 1974 (one day after the vessel was admitted for drydocking) and petitioner would have no basis for requesting an immediate downpayment. The evidence shows that it was only on January 2, 1975 when a Coast Guard inspector conducted an ocular inspection of the vessel in the presence of Luis Canto, private respondent's representative. Logically, it was only at that time (January 2, 1975) that the shipyard was appraised of the work to be done on the vessel and for this reason, said petitioner demanded for a P50,000 downpayment, not P15,000 as claimed by private respondent." (p. 24, Rollo)

Contrary to the findings of the appellate court, there was actually no job order issued by the Coast Guard. Exhibit "C" is merely the petitioner's application for an inspection of the boat addressed to the Coast Guard. Moreover, the removal of the rudders and pulling out of the tail shafts with propellers, done even before January 2, 1975, were standard operating procedures on the part of the petitioner to inspect the condition of the tail shafts and also the state of the rudders. This did not amount to a commencement of the repair of the vessel or a partial compliance with a contract to repair the vessel.

Between January 14, 1975 to January 28, 1975, the two parties communicated with each other through telegrams.

On January 14, 1975, Protacio Juliano, owner of the respondent company sent the following telegram to the petitioner:

"PLEASE ADVISE EXTENT OF REPAIR FOR DRYDOCK ZAMBO-J PER OUR AGREEMENT WIRE
REPLY

JULIANO" (Exhibit J-2, p. 20, Folder of Exhibits)

On January 16, 1975 Juliano again sent the following telegram to the petitioner:

"URGENTLY REQUIRE STATUS REPAIR ZAMBOANGA-J ADVISE COLLECT

JULIANO" (Exhibit J-3, p. 20, Folder of Exhibits)

On January 17, 1975, the petitioner in turn sent the following telegram to Juliano:

"NEED YOUR PRESENCE BEFORE WE START THE REPAIR FOR EVALUATION REGARDS
VARADERO" (Exhibit J-4, p. 20, Folder of Exhibits)

On January 18, 1975, Juliano sent the following telegram to the petitioner:

"REUR JAN 17 INSISTING ON PREVIOUS AGREEMENT MY PRESENCE NO LONGER NECESSARY
PLEASE REPLY
TOTO JULIANO" (Exhibit J-5, p. 20, Folder of Exhibits)

In reply to Juliano, the petitioner sent the following telegram in January 20, 1975:

"WE CANNOT START THE JOB ORDER WITHOUT YOUR PRESENCE TO DETERMINE THE
EXTENT OF WORK
VARADERO DE RECODO" (Exhibit J-4, p. 21, Folder of Exhibits)

On January 22, 1975, the petitioner sent another telegram to Protacio Juliano as follows:

"YOUR PRESENCE BADLY NEEDED UP TO FRIDAY IF NOT ARRIVED PRESUME NOT
INTERESTED WITH THE REPAIR OF ZBGA-J STOP WILL COVER OPENED SECTION AND
UNDOCK
VARADERO DE RECODO" (Exhibit 5-B, p. 23, Folder of Exhibits)

In reply, Atty. Badoy, representing the private respondent, sent a telegram to the petitioner on January 23, 1975, to wit:

"RE-ZAMBOANGA-J PARTY CONCERNED OUT OF CITY ANYTHING YOU DO NOT IN
ACCORDANCE WITH AGREEMENT IS SOLELY AT YOUR OWN RISK REGARDS
ATTY. BADOY" (Exhibit A, p. 23, Folder of Exhibits)

On January 28, 1975, the petitioner sent another telegram to Juliano, to wit:

"REURTEL JANUARY 23 NO AGREEMENT AS TO THE EXTENT OF REPAIRS AND PAYMENT
WILL UNDOCK VESSEL
VARADERO DE RECODO" (Exhibit J-7, p. 21, Folder of Exhibits)

These series of communications show that there was no perfected contract to repair the vessel Zamboanga-J. The parties were aware of where they stood.

Article 1315 of the Civil Code provides:

"Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law."

while Article 1319 thereof provides:

"Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer."

As can be gleaned from the exchange of telegrams between the two parties, there was not yet a meeting of the minds as to the cause of the contract. The cause of a contract has been defined "as the essential reason which moves the contracting parties to enter into it (8 Manresa, 5th Edition, p. 450). In other words, the cause is the immediate, direct and proximate reason which justifies the creation of an obligation thru the will of the contracting parties (3 Castan, 4th Edition, p. 347)." (General Enterprises, Inc. v. Lianga Bay Logging Co., Inc., 11 SCRA 733, 739). For the private respondent, the cause of the contract was the repair of its vessel Zamboanga-J while for the petitioner the cause would be its commitment to repair the vessel and make it seaworthy. The telegrams dated January 17, January 20, and January 28, 1975 sent by the petitioner to the private respondent, however, indicate that the former had not accepted the repair of Zamboanga-J, the reason being that the extent of the repair to be made necessitated a major expense so that the petitioner insisted on the presence of the private respondent for evaluation before it accepted the repair of the wooden vessel. That the petitioner had not yet consented to the contract is evident when on January 28, 1975, it sent a telegram stating: "xxx NO AGREEMENT AS TO THE EXTENT OF REPAIRS AND PAYMENT WILL UNDOCK VESSEL". The fact that the private respondent who received this telegram ignored it, confirms that there was no perfected contract to repair Zamboanga-J.

It is to be noted that despite its knowledge of Zamboanga-J having been undocked as early as February 7, 1975 when the petitioner sent a telegram advising that "Zamboanga-J undocked already", the private respondent took no action to save its vessel. Instead, its officers and crew were ordered ashore and the vessel was left to rot and decay in the sea of Zamboanga. It was only on July 28, 1975, after the lapse of almost six months, that the private respondent tried to recover the value of its vessel from the petitioner. This prompted the petitioner to send another telegram to the private respondent on August 1, 1975, to wit:

"AS EARLY AS JANUARY VARADERO DEMANDED ZAMBOANGAJ OFFICERS YOUR MR CANTO TAKE ZAMBOANGAJ OUT VARADERO PREMISES BUT YOUR OFFICERS CREW ABANDONED SAME PRESENTLY VARADERO PAYING SECURITY GUARDS AND DEMANDING REIMBURSEMENT

ATTORNEY JESUS AQUINO

COUNSEL VARADERO RECODO"

(Exhibit 5-C, p. 23, Folder of Exhibits)

Under the circumstances, we rule that the proximate cause of the total loss of Zamboanga-J was the negligence of the private respondent. Breach of contract by the appellant could not have been the proximate cause as there was no perfected contract between the parties to repair Zamboanga-J. Hence, the private respondent is not entitled to recover damages against the private respondent.

We agree with the petitioner that:

"The loss of the vessel can be attributed only to the immediate and proximate negligence of private respondent who failed to exercise the diligence of a good father of a family. Because after the undocking on February 4, 1974: (1) the officers and the crew were allowed to depart; (2) no measures were taken to have the vessel repaired; (3) the vessel was left to the elements; (4) a marine surveyor was hired only six months later when the ship was already beyond repair, the subsequent loss can be attributed solely to the negligence of the owner. Consequently, petitioner should be totally absolved of any liability for the loss of Zamboanga-J as so provided under Article 2179 of the Civil Code.

"ART. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury

being the defendant's lack of due care, shall mitigate the damages to be awarded. (Underscoring supplied)'

"The private respondent, as the shipowner, was in actual possession of the vessel all along even when it was on drydock and after it had been undocked. This is shown by the affidavit dated September 20, 1985 of the petitioner attached as Annex A to the Supplement to Motion for Reconsideration dated September 25, 1985 (Annex I, Petition) and by the fact that the vessel had a thousand items by value to be safeguarded such as nautical instruments, bedding, kitchen utensil and the like. As a matter of fact, the crew of the vessel was on board when the Zamboanga-J was released from petitioner's shipyard on February 4, 1975. Respondent's witness Luis Canto even admitted that the subject vessel was afloat. For several months, private respondent allowed the Zamboanga-J to rot and deteriorate by exposing it to the elements. The private respondent did not take any measure to save the ship but even ordered its crew to abandon it. The marine surveyor was dispatched only on September 1976 to inspect the Zamboanga-J which at that time was already a total loss." (p. 27, Rollo)

The private respondent did not bother from January, 1975 to September, 1976 or for almost two years, to find out what happened to its vessel in spite of its full knowledge that the boat had been undocked and to take concrete steps to save and rehabilitate it. It relied completely on an alleged verbal understanding in order to get from the petitioner the full value of a functioning vessel and the income it claimed would have been earned for the next five years. Not only was a written agreement for the repair of the vessel, missing in this case but the petitioner formally refused to accept the job and to enter into the contract unless certain terms were met. Under the circumstances, we are constrained to rule that the respondent court committed reversible error.

WHEREFORE, the instant petition is hereby GRANTED. The questioned decision is REVERSED AND SET ASIDE. The complaint in Civil Case No. 2446 of the then Court of First Instance of Cotabato is DISMISSED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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