

AMALIO L. SARMIENTO, DOING BUSINESS UNDER THE NAME OF A.L. SARMIENTO CONSTRUCTION, PETITIONER, VS. HONORABLE COURT OF APPEALS AND HERCON, INC., RESPONDENTS.

G.R. No. 83138. October 17, 1989

Ponente: PARAS, J.

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PARAS, J.:

These are two petitions for review on certiorari seeking to set aside portions of the decision of the Court of Appeals in CA--G.R. CV No. 12060 which modified the decision of the Regional Trial Court of Makati, Branch CL in Civil Case No. 1476 for a Sum of Money and Damages: (1) in G.R. No. 83138 filed by Amalio L. Sarmiento, insofar as it awarded price escalation payment to Hercon, Inc. and insofar as it disallowed payment of moral and exemplary damages and attorney's fees to Sarmiento; and (2) in G.R. No. 85220 filed by Hercon, Inc., insofar as it awarded actual damages to Sarmiento.

These cases arising from the same suit filed in the Regional Trial Court of Makati were consolidated by this Court in the Resolution of April 5, 1989 (G.R. No. 85220 p. 102, Rollo).

The undisputed facts of the case are as follows:

On February 13, 1980, Mass Integrated Group entered into a contract with the Ministry of Public Works and Highways (MPWH, for brevity) for the construction of the Mangahan Floodway Project (Phase B). As representative of Mass Integrated Group, Sarmiento engaged the services of several subcontractors, one of which was Hercon, Inc., to construct the said project.

Sometime in December, 1980, Sarmiento agreed with Leonard Earl Pitcock, the president of Hercon, Inc. that the latter "will participate in 70% of all collections (of Sarmiento) from MPWH including escalation on earthworks and as to dredging works therein, it shall receive as compensation P5.00 per cubic meter of dredge excavation plus 40% of any price escalation payments made by MPWH." (Exh. "A")

Hercon, Inc., together with the other subcontractors, proceeded to work on the project, submitting their respective periodic billings and work accomplishment reports to the MPWH, which in turn, made payments to Sarmiento on the basis of the same. (Decision, Court of Appeals, p. 3).

Conflict arose when on September 19, 1982, Hercon, Inc. stopped working on the project. It claimed that Sarmiento failed to pay its progress billings and its share in the price escalation costs paid by the MPWH.

On January 10, 1983, Hercon, Inc. filed a complaint against Sarmiento, praying for "the sum of P3,846,075.86 representing money collected by defendant A.L. Sarmiento from the MPWH between February 5, 1981 to May 22, 1981 for the balance of plaintiff's dredging accomplishments and contract price escalation on its dredging works and earthworks' as well as the sum of P2,301,027.83 representing contract price adjustment on plaintiff's dredging works from May 23, 1981 to June 22, 1982." (Decision, Court of Appeals, p. 5).

In his Answer, Sarmiento claimed: that Hercon, Inc. breached their contract by abandoning the project; that he had paid all of the billings of Hercon, Inc.; that Hercon, Inc. is not entitled to the entire escalation amount paid by MPWH but merely participates proportionately with the other subcontractors; and that the latter refuses to have a conference with Sarmiento for a joint survey of their accounts. Sarmiento set up a counterclaim for actual, moral and exemplary damages as well as attorney's fees as a consequence of the abandonment of the project by Hercon, Inc. and the malicious filing of its baseless suit. (Decision, Regional Trial Court, p. 4).

After trial, the trial court rendered a decision in favor of Sarmiento, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

1.- ordering plaintiff to pay or reimburse the defendant Amalio L. Sarmiento the amount of P7,370,450.31 representing the cost of the defective works of plaintiff as evidenced by Exhibit '13' which was remedied by defendant at his expense together with the operational costs incurred by said defendant as evidenced by Exhibits '10' to '10-K' and '11';

2.- ordering plaintiff to pay defendant Amalio L. Sarmiento the amount of P500,000.00 for moral damages and the sum of P200,000.00 as exemplary damages;

3.- directing the plaintiff to pay defendant Amalio L. Sarmiento attorney's fees in the amount of P300,000.00;

4.- ordering the plaintiff to pay the cost of this suit; and

5.- ordering the dismissal of other claims and counterclaims which the parties may have against each other in this case.

"SO ORDERED." (P. 508, RTC Rollo) (Decision, Regional Trial Court, p. 13)

Hercon, Inc. appealed from the aforesaid decision. The factual findings of the trial court were adopted by the Court of Appeals, quoting portions thereof in its decision, thus -

"At the outset, it must be stated that, as evidenced by plaintiff's periodic billings (Exhs. D to P) and defendant's money advances and disbursements (Exhs. 4-D to 4-M), plaintiff does not disagree to the following findings and conclusions of the lower court:

"Plaintiff's Exhibit 'Q' which is its own summary of its periodic billings (Exhs. 'D' to 'P') on its work accomplishment in the Mangahan Floodway Project, plaintiff himself stated that most of his work accomplishments evidenced by Exhibits 'D' to 'P' had been paid by Sarmiento 'excluding the escalation price; there is, however, no clear or direct evidence to show just how plaintiff is entitled to escalation price; neither is there evidence on how this claim could be computed and segregated from the various collections of defendant from the MPWH although there appears on Exhibit 'Q' the figures 'P6,147,103.70' marked as Exhibit 'Q-1', there is no showing as to how plaintiff arrived at this figure as allegedly representing 'escalation money due Hercon from May 22, 1981 to June 22, 1982'; this computation, Exhibit 'Q-1', is self-serving and without any basis; assuming, plaintiff is entitled to escalation money from defendant, its evidence on this point is so hazy, self-serving and inconclusive; while it appears that defendant had been able to collect escalation price and the cost of work accomplishments (Exh. 'JJ') from the MPWH, there is absolutely no evidence adduced which part or portion of these amounts collected by defendant pertains to the plaintiff; x x x x x was incumbent upon plaintiff to specify and particularize the amount it is entitled to from these amounts collected by defendant from the MPWH considering these sums represent work accomplishment and for escalation prices for the entire Mangahan Floodway (Phase B) Project, over which several subcontractors, plaintiff being only one of them, that participates/participated (70%) in the said construction project x x x

"It has not been seriously denied or rebutted by plaintiff that the defendant had disbursed or given money to plaintiff as payments or advances for the works subcontracted to be accomplished by the latter; x x x hence, the need of a final reconciliation between Sarmiento of the partial payments or advances he made in relation to the accomplishments of any particular subcontractor after the MPWH shall have finally approved the completion of the project in accordance with the plans and specifications xxx it is unfortunate that plaintiff has refused a conference with the defendant (Exh. '6') for the purpose of reconciliation or payments and accomplishments of the former; according to survey, (Exh. '7') of plaintiff's work on the project, several defects were found thereon (Exh. '8') which constrained the defendant to remedy at his expense in the amount of P5,399,614.40 (Exh. '12') and the sum of P1,970,835.91 (Exhs. '10' to '10-K' & '11'). x x x

On defendant's counterclaim, plaintiff maintains that it did not abandon the project. In support of its argument, it emphasized that its dredger remains in the jobsite. xxx

At any rate, on two (2) counts, plaintiff has impliedly admitted stopping the dredgers from working on the job site. Plaintiff said that he stopped the dredging work for two (2) reasons: (1) the two (2) checks of defendant had bounced; and (2) defendant has failed or refused to pay the amounts due plaintiff. Anent the first reason, the checks were issued long after the stoppage of work. The plaintiff stopped the dredging work on September 19, 1982, while the checks were both dated December, 1982.

Anent the second reason, as earlier presented, documentary evidence proves payment by defendant of plaintiff's work on the floodway. The last periodic billing of plaintiff, Exhibit P, is dated September 20, 1982 while plaintiff stopped the dredging work on September 19, 1982. x x x (Decision, Court of Appeals, pp. 5-8)

The Court of Appeals, however, radically modified the dispositive portion of the decision, as follows:

On the prayers for recovery of damages and attorney's fees, We find that both parties have violated their contract on the Mangahan floodway project.

The appealed judgment awarded defendant the sums of P7,370,450.31 as actual damages, P500,000.00 as moral damages, P200,000.00 as exemplary damages and the sum of P300,000.00 as attorney's fees. We uphold the actual damages, but disallow the moral and exemplary damages and attorney's fees in the total sum of P1,000,000.00, thereby leaving a balance of P7,370,450.31 due defendant by way of actual damages occasioned by the damages he had suffered due to the abandonment by plaintiff of its dredging job and the defects and deficiencies in the works of plaintiff.

On the price escalation due plaintiff, We find that defendant is indebted in the total sum of P6,147,103.70.

WHEREFORE, the decision a quo is modified; as We hold that defendant is liable to plaintiff for price escalation in the amount of P6,147,103.70; while plaintiff is liable to defendant for actual damages in the amount of P7,370,450.31; hence offsetting both accountabilities from each other, the only amount due defendant from plaintiff is the sum of P1,223,346.61, without interest. No special pronouncement as to costs.

SO ORDERED.

(Decision, Court of Appeals, p. 11)

Unsatisfied, both parties filed their respective petitions for review with this Court.

From the petitions, submitted for resolution are the following issues:

WHETHER OR NOT HERCON, INC. BREACHED ITS CONTRACT WITH SARMIENTO WITH RESPECT TO THE MANGAHAN FLOODWAY PROJECT (PHASE B);

WHETHER OR NOT SARMIENTO IS ENTITLED TO THE DAMAGES AWARDED BY THE TRIAL

COURT;

WHETHER OR NOT HERCON, INC. IS ENTITLED TO THE PAYMENT OF PRICE ESCALATION COSTS IN THE AMOUNT OF P6,147,103.70.

We find merit in the petition of Sarmiento.

The Court of Appeals committed reversible error in eliminating the damages awarded by the trial court to Sarmiento and in holding the latter liable for price escalation costs to Hercon, Inc. despite its own finding that the latter abandoned the project and that there were defects and deficiencies in its works in the project.

The contractual breach of Hercon, Inc. was tainted with bad faith. Hercon, Inc. tried to justify its work stoppage due to the alleged failure of Sarmiento to pay his obligations and the latter's issuance of two bouncing checks.

As found by the trial court and the Court of Appeals, however, the documentary evidence on record proves that Sarmiento was up to date in paying all of Hercon's billings. The checks adverted to were postdated checks for December 1982, or long after the stoppage of work on September, 1982. Said checks were issued in advance to induce Hercon, Inc. to resume work on the project but when the latter refused, Sarmiento ordered the bank to stop payment (TSN, Feb. 17, 1986, pp. 41-42). Records also show that Hercon, Inc. ignored numerous conferences requested by Sarmiento for a reconciliation of accounts. The same could have resolved the issue on payment with which Hercon, Inc. tried to justify its refusal to continue the project.

Clearly, there is basis not only for awarding actual damages but moral and exemplary damages as well as attorney's fees to Sarmiento whose contract for the entire project with the MPWH was abruptly terminated due to the malicious and unjustified abandonment by Hercon, Inc. of its undertaking in the project.

The amounts awarded by the trial court for moral and exemplary damages and attorney's fees to Sarmiento are reasonable, considering his reputation as a contractor and the painful ordeal he has gone through.

At the trial, he testified:

"Atty. Sunga

"Q - When you received the complaint in this case, were you affected by this case?

A - Yes, sir.

Q - What is the effect on you?

A - I was affected tremendously, projects with the Ministry of Public Works and Highways were not done. We always complete our projects ahead of time, this time, because of this case, our reputation was clearly affected and even our standing with the banks has been affected very much and also with my fellow contractors, I feel that we were affected so much to the point that there were some nights when I lost sleep.

Q - Was this Mangahan B project completed by Mass Integrated Group?

A - No, sir, as a matter of fact, because of this inability of Hercon to complete or to resume the work, we were constrained or we were forced to request for the termination of the project and this request for termination of the project was approved by the Ministry of Public Works and Highways.

Q - Was this project delayed as a consequence of the abandonment of the work?

A - Yes, very much." (tsn., Sarmiento, February 17, 1986, pp. 51-52)

Hercon, Inc. failed to introduce any evidence to controvert, much less rebut the same.

The Court of Appeals failed to state any satisfactory reason why it awarded Hercon, Inc. price escalation costs. It simply stated that according to Exh. Q and the testimony of the plaintiff, Hercon, Inc. is entitled to price escalation costs in the total sum of P6,147,103.70. (Decision, Court of Appeals, p. 11).

A mere summary of claims does not suffice. It is precisely the basis of these claims that is being questioned. Hercon, Inc. failed to introduce any evidence that will enable the court to determine its claims. Such factual finding by the trial court was adopted by the Court of Appeals in its decision. There is, therefore, no basis for a different conclusion.

It is fundamental that judgments must conform to both the pleadings and the proof and must be in accordance with the theory of the action upon which the pleadings were framed and the case was tried. (Lazo vs. Republic Surety & Insurance Co., Inc., 31 SCRA 329)

Finally, well settled is the rule that the factual findings of the trial court are entitled to great weight and respect on appeal and We find no cogent reasons to disturb the same.

WHEREFORE, the decision of the trial court is hereby reinstated as follows: (1) ordering HERCON Inc. to pay or reimburse Amalio L. Sarmiento the amount of P7,370,450.31 representing the cost of the defective works of the former as evidenced by Exhibit '13' which was remedied by the latter at his expense together with the operational costs incurred by said Sarmiento as evidenced by Exhibits '10' to '10-K' and '11'; (2) ordering HERCON Inc. to pay Amalio L. Sarmiento the amount of P500,000.00 for moral damages and the sum of P200,000.00 as exemplary damages; (3) directing HERCON Inc. to pay Amalio L. Sarmiento attorney's fees in the amount of P300,000.00; (4) ordering HERCON Inc. to pay the cost of this suit; and (5) ordering the dismissal of other claims and counterclaims which the parties may have against each other in this case. The decision of the Court of Appeals is hereby SET ASIDE.

SO ORDERED.

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

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