

SIXTH DIVISION

[CA-G.R. CV NO. 97005, May 19, 2014]

**AMERICAN WIRE & CABLE CO. INC., PLAINTIFF-APPELLANT, VS.
SKI CONSTRUCTION GROUP, INC., DEFENDANT-APPELLEE.**

DECISION

CRUZ, R.A. J.:

THE CASE

This is an appeal under Rule 41 of the Rules of Cokurt which seeks to annul and set aside the Decision dated April 15, 2011^[1] of the Regional Trial Court (RTC) of Parañaque City, Branch 195 in Civil Case No. 08-0290. The dispositive portion of the assailed decision reads:

" xxx xxx xx

WHEREFORE, the foregoing premises considered, the instant complaint is hereby ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.

xxx xxx xxx "

THE ANTECEDENTS

On August 12, 2008, American Wire & Cable Co., (AWCC, for brevity), as plaintiff, filed a complaint for a sum of money against SKI Construction Group, Inc. (SKI, for short), as defendants, before the Regional Trial Court (RTC) of Parañaque City, Branch 195, docketed as Civil Case No. 08-0290.

Plaintiff, in its complaint,^[2] alleged the following material facts:

" xxx xxx xxx

1.3. Plaintiff was the defendant's nominated supplier undertake the supply and delivery wires for the construction of North Triangle Commercial Center (sic) with a fixed lump sum price of THIRTY FIVE MILLION NINE HUNDRED FIFTY THOUSAND PESOS (P35,950,000.00) inclusive of Value Added Tax. xxx xxx xxx.

1.4. On 14 October 2005, defendant paid plaintiff the amount of Php 26,472,272.73 representing its seventy five percent (75%) downpayment, which was the net of the two percent (2%) creditable withholding tax amounting to Php 490,277.27.

1.5. Under BIR Revenue Regulation 2-98, Section 2.58(B), every payor required to deduct and withhold taxes is required to furnish the payee a

Certificate of Creditable Tax Withheld At Source using the prescribed form (Form 2307) showing the income payments made and the amount of taxes withheld therefrom for every month of quarter within twenty (20) days following the close of the taxable quarter employed by the defendant in filing its quarterly income tax return.

1.6. Since the taxable quarter when the defendant withheld the sum of Php 490,277.27 on 14 October 2005 closed on 31 December 2005, defendant had until 20 January 2006 within which to furnish to the plaintiff the latter's Certificate of Creditable Tax Withheld At Source.

1.7. However, despite the clear and express provision of BIR Revenue Regulation No. 2-98, Section 2.58 (B), defendant furnished to plaintiff its Certificate of Creditable Tax Withheld At Source only on 20 September 2006. xxx xxx xxx.

1.8. Due to defendant's failure to furnish to plaintiff the Creditable Tax Withheld At Source on 20 January 2006, plaintiff was not able to apply the tax withheld by defendant in the amount of Php 490,277.27 as credit against its tax liability for the taxable year 2005. xxx xxx xxx.

1.9. xxx plaintiff demanded from defendant to settle the amount of Php 490,277.27 on or before 29 November 2006. When defendant failed and refused to comply with plaintiff's demand, the latter referred the matter to its legal counsel. xxx xxx.

1.10. On 11 April 2007 and 17 July 2007, plaintiff's counsel sent demand letters to defendant demanding to pay the sum of P613,444.97 plus attorney's fees. Despite receipt of plaintiff's demand letters, defendant failed and refused xxx to comply with plaintiff's just and legal demand.

xxx xxx xxx

2.2. xxx xxx xxx as a matter of law, defendant should be ordered to pay the plaintiff the amount of Php 490,277.27 plus legal interest of 12% per annum from 20 October 2006 until the said amount is fully paid.

xxx xxx xxx "

On its part, defendant denied the material allegations of the complaint. By way of special and affirmative defenses, it alleged that, it did not pay the plaintiff the questioned downpayment but was merely coursed through it pursuant to paragraph 5.1 of the Sub-Contract Agreement; it was North Triangle Depot Commercial Corporation (NTDCC), the owner of the project, that paid plaintiff; In fact, plaintiff received the check issued by NTDCC as payment; it was NTDCC which withheld the amount which plaintiff seeks to recover.^[3]

On April 15, 2011, the RTC rendered a Decision^[4] dismissing the complaint. It found that plaintiff's witness Edgar Celebre, had admitted that the required 75% downpayment in the amount of P26,472,272.73 was paid not by the defendant but by NTDCC. In fact, under the Sub-Contract Agreement between the parties, it is stipulated therein that the payor is NTDCC, the owner of the project. Also, Edgar Celebre admitted that it did not make any request to the defendant that it be

furnished with the subject certificate before it paid the income for the taxable year 2005. These judicial admissions were therefore conclusive and binding upon it.

Thus, the RTC decreed:

" xxx xxx xx

WHEREFORE, the foregoing premises considered, the instant complaint is hereby ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.

xxx xxx xxx "

Finding the RTC's decision unacceptable, plaintiff interposed an appeal.^[5]

THE ASSIGNED ERRORS

Plaintiff now Our appellant ascribe the following errors to the RTC, that:

- I. THE COURT A *QUO* ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO THE AMOUNT OF P490,277.27;
- II. THE COURT A *QUO* ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO AN INTEREST OF 12% PER ANNUM;
- III. THE COURT A *QUO* ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO DAMAGES.

Plaintiff-appellant, in its Brief,^[6] argues that the RTC erred when it ruled that the payor was NTDCC and not the defendant-appellee. The records indicate that it was defendant-appellee who paid the downpayment as evidenced by the Cash Voucher, the Official Receipt and the Certificate of Creditable Tax Withheld at Source. They add that NTDCC is not a party to the Sub-Contract Agreement which was entered into by them, thus, defendant-appellee is solely bound to comply with the payment of the downpayment.

Moreover, it has no obligation to demand a copy of the subject creditable withholding tax from the defendant-appellee. Section 2.58 (B) of BIR Revenue Regulation No. 2-98 is explicit that the payor shall furnish the payee a Certificate of Creditable Tax Withheld at Source. Due to defendant-appellee's failure to furnish it a creditable withholding tax certificate or BIR Form No. 2307 on January 20, 2006, it was not able to apply the tax withheld in the amount of P490,277.27 as credit against its tax liability for the taxable year 2005.^[7] Hence, defendant-appellee must pay the amount of P490,277.27 to it.

On the other hand, defendant-appellee, in its Brief,^[8] asserts that NTDCC is the actual payor. The Sub-Contract Agreement executed by them clearly states that the entity who is responsible for payment of the downpayment, monthly progress billing up to retention money to plaintiff-appellee is North Triangle Depot Commercial

Corporation (NTDCC), the owner. As the payor, NTDCC has the primary responsibility to issue the creditable withholding tax certificate.

Moreover, plaintiff-appellant admitted that it did not even ask or demand for the issuance of the creditable withholding tax certificate on the supposed due date. Plaintiff-appellant also failed to show the factual and legal basis for its entitlement to a return of the amount that was withheld from it. Hence, the RTC did not err in dismissing the complaint.^[9]

OUR RULING

The RTC did not err in ruling that NTDCC is the payor and not the defendant-appellee

Plaintiff-appellant faults the RTC for dismissing the complaint. It asserts that there is overwhelming evidence showing that defendant-appellee paid the downpayment, therefore, as payor, it is required to deduct, withhold taxes and furnish the payee with a withholding tax statement pursuant to Section 2.58 (B) of Revenue Regulation No. 2-98.

In civil cases, it is a basic rule that the party making allegations has the burden of proving them by preponderance of evidence.^[10] Preponderance of evidence is the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence means probability of truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.^[11]

Here, plaintiff-appellant avers that it was defendant-appellee that paid the amount of P26,472,272.73, Philippine Currency, representing its seventy five percent (75%) downpayment, which was the net of the two percent (2%) creditable withholding tax amounting to P490,277.27, Philippine Currency. After scouring the records, We find that plaintiff-appellant's failed to discharge this burden.

The records show that a Sub-Contract Agreement^[12] was executed between plaintiff-appellant, the Nominated Supplier, and defendant-appellee, the Contractor. The pertinent terms of the Sub-Contract Agreement read:

" xxx xxx xxx

WHEREAS, the Contractor has entered into a Main Contract with NORTH TRIANGLE DEPOT COMMERCIAL CORPORATION (hereinafter referred to as the Owner) for the complete construction of the PROPOSED NORTH TRIANGLE COMMERCIAL CENTER (hereinafter referred to as Work:, xxx xxx;

WHEREAS, the Owner has nominated the Supplier to the Contractor to undertake Supply and Delivery of Wires (hereinafter referred to as the Sub-contract Works).

WHEREAS, the Contractor has accepted the Nominated Supplier to undertake the said Sub-contract Works.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenant and stipulations hereinafter set forth, the parties have agreed as follows:

xxx xxx xxx

ARTICLE IV-CONTRACT PRICE

4.1. For and in consideration of the Nominated Supplier's full and faithful performance and completion of its stipulated work in accordance with the terms and conditions herein provided, the Owner agrees to pay the Nominated Supplier a fixed lump sum price of PESOS: THIRTY FIVE MILLION NINE HUNDRED FIFTY THOUSAND and 00/100 (P35,950,000.00) inclusive of Value Added Tax.

xxx xxx xxx

ARTICLE V-TERMS OF PAYMENT

5.1 The Owner thru the Contractor agrees to pay the Nominated Supplier a downpayment equivalent to seventy five percent (75%) of the Sub-contract Price after both parties signed this contract and after the Owner receives from the Nominated Supplier the required bond as stipulated in Article VI hereunder.

5.2 The Owner shall pay the Nominated Supplier thru the Contractor within the monthly progress billings in accordance with the General Conditions of Contract, subject to pro-rata liquidation of downpayment.

5.3 The Owner thru the Contractor shall release to the Nominated Supplier the retained amount in accordance with the Special Conditions of the Main Contract.

xxx xxx xxx "

The contract between them constitutes the law and they are, therefore, bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor.^[13] A plain reading of the provisions of the Sub-Contract Agreement clearly states that the North Triangle Depot Commercial Center (NTDCC), the Owner, shall pay the sub-contract price in the amount of P35,950,000.00, Philippine Currency to plaintiff-appellant, the Nominated Supplier. It is also stipulated that the NTDCC thru defendant-appellee, the Contractor, agrees to: (1) pay downpayment equivalent to seventy five percent (75%) of the sub-contract Price, (2) pay the monthly progress billings and (3) release of the retained amount to plaintiff-appellee. Where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean.^[14] We cannot supply material stipulations, read into the contract words it does not contain or, for that matter, read into it any other intention that would contradict its plain import.^[15] We must therefore give effect to the parties' agreement and enforce the Sub-Contract Agreement to the letter.

It is also clear in the testimony of Edgar Celebre, the Finance Division Head of Plaintiff-Appellant AWCC, that it was NTDCC which paid plaintiff-appellant. On cross-