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THIRD DIVISION

[G.R. No. 188027, August 09, 2017]

SWIRE REALTY DEVELOPMENT CORPORATION, PETITIONER, V. SPECIALTY CONTRACTS GENERAL AND CONSTRUCTION SERVICES, INC. AND JOSE JAVELLANA, RESPONDENTS.

D E C I S I O N

REYES, JR., J:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated February 24, 2009 and Resolution[3] dated May 25, 2009 issued by the Court of Appeals (CA) in CA-G.R. CV No. 84706.

The controversy arose from a Complaint for Sum of Money and Damages filed by Swire Realty Development Corporation (petitioner) against Specialty Contracts General and Construction Services, Inc., represented by its President and General Manager Jose Javellana, Jr. (the respondents).

The Complaint alleges breach of an Agreement to Undertake Waterproofing Works[4] (the Agreement) entered into on December 27, 1996 by the petitioner and the respondents. By virtue of this, the respondents undertook to perform waterproofing works on the petitioner's condominium project known as the Garden View Tower for the amount of Php 2,000,000.00 over a period of 100 calendar days from the execution of the Agreement or until April 6, 1997. The amount agreed upon is to be paid to the respondents as follows: 20% as down payment, and the balance of 80% payable through monthly progress billings based on accomplished work, subject to a 10% retention fee and 1% withholding tax. The Agreement likewise provided that the parties are liable for penalty in case of delay in the performance of their respective obligations and that retention fee shall be released to the respondents within 90 days from turnover and acceptance by the petitioner of the completed work.

After due proceedings, the Regional Trial Court (RTC) of Quezon City, Branch 224, on July 9, 2004, rendered its Decision,[5] *viz*.:

> WHEREFORE, judgment is hereby rendered ordering [the respondents] to pay [the petitioner] the following:
>
> 1.) P400,000.00 representing actual damages moneys advanced by defendant Specserve without completion of waterproofing works;
> 2.) P124,931.40 representing the contract price paid by [the petitioner] to Esicor for the unfinished works of Specserve;
> 3.) P100,000.00 as attorney's fees.
>
> SO ORDERED.[6]

The respondents filed a motion for reconsideration of the RTC decision, which the RTC denied in its Order[7] dated October 25, 2004.

The matter was elevated to the CA. Finding proof that additional works were performed by the respondents, the CA in its Decision dated February 24, 2009, reversed and set aside the RTC's decision, in this wise:

> IN VIEW OF THE FOREGOING, the decision appealed from is reversed, and a new one entered directing the [petitioner] to pay the defendant Specserv the amount of P157,702.06 with legal interest of six (6) percent per annum form October 10, 1997 until paid.[8] (Citation omitted)

In so ruling, the CA computed the outstanding liabilities in this manner:

Original project cost		P2,000,000.00
Accomplishment rate		90%
		P1,800,000.00
Additional works		57,702.06
		P1,857,702.06
Less: Advances by Swire Paid Billings (inclusive of withholding tax)	P400,000.00	
	1,260,000	
		1,660,000.00
Balance due Specserv for a 90% accomplishment rate		197,702.06
Less: Penalty claim by Swire for failure of Specserv to execute the remaining 10%		40,000.00
Balance due Specserv		P157,702.06[9]

The petitioner sought a reconsideration of the CA decision, but it was denied by the CA in its Resolution[10] dated May 25, 2009.

In support of this petition for review on *certiorari*, the petitioner alleges the following grounds:

I.

> THE CA GRAVELY MISAPPRECIATED THE FACTS WHEN IT RULED THAT THE RESPONDENTS' PURPORTED "ADDITIONAL WORKS" WERE NOT INCLUDED IN THE SCOPE OF WORKS UNDER THE PARTIES' AGREEMENT DESPITE THE PRESENCE OF CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY;
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> II.
>
> THE CA COMPLETELY IGNORED AND DISREGARDED THE ESTABLISHED EVIDENCE OF ACTUAL DAMAGES WHICH THE PETITIONER HAD SUFFERED ON ACCOUNT OF THE RESPONDENTS' BREACH OF THEIR CONTRACTUAL UNDERTAKING AND IN DISCOUNTING THE CLEAR AND EXPRESS PROVISIONS OF THE PARTIES' AGREEMENT IN DETERMINING AND CONSIDERING SUCH DAMAGES; and
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> III.
>
> THE FINDINGS OF THE TRIAL COURT, WHICH IS IN A BETTER POSITION TO EVALUATE THE PARTIES' RESPECTIVE EVIDENCE AND TESTIMONIES, ARE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, AND ARE THEREFORE DEEMED FINAL AND CONCLUSIVE.[11]

For their part, the respondents aver that the Court cannot review the findings of fact rendered by the CA especially since they are supported by the evidence on record. Thus, they submit that the petition must be dismissed outright.

The resolution of the instant case hinges on two issues. First, whether the Court in this petition for review on *certiorari* can review the findings of fact rendered by the CA, and if in the affirmative, whether the waterproofing of the swimming pool constitutes additional works for which the respondents must be compensated.

Ruling of the Court

The petition is meritorious.

Under the Rules of Court, only questions of law should be raised in a petition for review on *certiorari*. However, the rule admits of exceptions as recognized by the Court in the case of *Medina v. Mayor Asistio, Jr.*,[12] namely:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x; (2) When the inference made is manifestly mistaken, absurd or impossible x x x; (3) Where there is a grave abuse of discretion x x x; (4) When the judgment is based on a misapprehension of facts x x x; (5) When the findings of fact are conflicting x x x; (6) When the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x; (7) The findings of the [CA] are contrary to those of the trial court x x x; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents x x x; and (10) The finding of fact of the [CA] is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x.[13] (Citations omitted)

In the instant controversy, a number of the foregoing exceptions obtain. Among these, the factual findings of the CA and the RTC vary as to whether the waterproofing of the swimming pool constitutes additional work, and since the conclusion of the CA in this regard is based on a misapprehension of facts, the Court can therefore pass upon and review the same in resolving this petition.[14]

The CA, in concluding that additional works were performed, relied on the testimony during trial that instructions were given to the respondent to waterproof the pool again as a result of its change in depth.[15] The CA then made reference to the *Site Instruction Form*[16] issued by the person in charge of the project Hector Gallegos as to the extent and scope of the works accomplished.[17]

The Court does not agree with the foregoing findings of the CA. A plain reading of the Agreement reveals that the works performed and accomplished are included in the Scope of Works therein agreed upon.

As correctly pointed out by the petitioner, a mere statement in the Site Information Form that "*2nd waterproofing after lightweight concrete topping*"[18] should be done on the swimming pool, does not automatically mean that the same constitutes additional work. In the absence of evidence to the contrary, it is implied that such work is deemed included in the enumeration of the Swimming Pool as a covered area in the Agreement. Article I enumerates the scope of works and covered area under the Agreement, *to wit*:

ARTICLE I
SCOPE OF WORKS

1.1 The **CONTRACTOR** hereby agree[s] to perform for the **OWNER** the following scope of works for the Waterproofing requirements of the PROJECT:

a. Supply of materials, tools and equipment, labor and supervision for the satisfactory completion of the Proj[e]ct.

b. Surface preparation by removal of dust, dirt, loose cement particles and other foreign material including acid etching.

c. Cleaning/floodtesting.

d. The covered [area] under this Agreement are as follows:

Level	Area Description	Approx. Area in (sq.m.)	System
x x x x			
Ground Floor	Entire Ground Floor	1087.88	Xypex
	Driveway above B-01	374.46	Xypex
	Ramps Down to B-01	215.00	Xypex

Lagoon	112.70	Xypex
Swimming Pool	**234.20**	**Xypex**
Shower/Sauna/Filter Rm.	32.37	Xypex
Slop Sink	0.76	Xypex

x x x x

Note: The agreed price for the abovementioned covered area for Xypex is P 246.776 per sq.m. and for Epoxy is P 607.456 per sq.m. [19] (Emphasis Ours)

By entering into the Agreement and signifying their acceptance thereto, it is understood therefore that the respondents undertook to perform all works necessary to accomplish the waterproofing requirements in the entire 234.20 square meters of the swimming pool.

Had the respondent really believed the same to be an additional work to be performed, it should have, prior to performing the same, raised the matter with the petitioner and sought the implementation of Article VII of the Agreement which provides:

ARTICLE VII
CHANGE ORDERS

7.1 If the **OWNER** shall, upon written notice to the **CONTRACTOR**, order change or deviation from the plan or specification either by omitting or adding works, the corresponding charges for deductive works shall be based on the unit cost abovementioned. However, the unit prices for additive works shall be subject to further agreement between the **OWNER** and the **CONTRACTOR**.[20]

As to the other factual matters, there being no inconsistency between the findings of the RTC and the CA, the Court sees no reason to disturb the same, especially since they are supported by the evidence on record.

Therefore, the Court adopts the following facts which are affirmed by both the RTC and the CA:

a) the extent of work accomplished by the respondents is only at 90% and that despite demand they failed to deploy their workers, until the 100-day period for the works to finish has already expired;[21]

b) the respondents' allegation that they refused to continue with the works because the sum pit area was not free from debris has not been substantiated[22] and, thus, cannot justify their non-performance nor absolve them from liability for damages; and

c) there is no basis for the respondents' claim for short payments considering that the records are replete with evidence establishing that all progressive billings are accepted by them;