

## THIRD DIVISION

[ G.R. No. 174387, December 09, 2015 ]

**BF CORPORATION, PETITIONER, VS. WERDENBERG  
INTERNATIONAL CORPORATION, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

#### THE CASE

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal of the Resolution<sup>[1]</sup> of the Former Seventh Division of the Court of Appeals (CA) dated August 23, 2006, which held respondent entitled to liquidated damages equivalent to 70 days of delay, 10% retention fee, and payment for expenses for repainting job arising from a construction dispute.

#### FACTS

Petitioner<sup>[2]</sup> find respondent<sup>[3]</sup> entered into a Construction Agreement, under which petitioner would construct for respondent a three-story building housing a meat processing plant and a showroom office in Yakal Street, Makati City. The parties agreed on a contract price of Php 43,800,000.00 and a completion and delivery date of April 7, 1995.<sup>[4]</sup> Due to several delays, however, petitioner turned over the building only on August 15, 1995.<sup>[5]</sup> Respondent did not accept the building, asserting it had many deficiencies. Respondent paid petitioner only Php 38,088,445.00.<sup>[6]</sup> Thus, petitioner filed a complaint for sum of money against respondent before the Pasig Regional Trial Court (RTC) for the balance of Php 4,771,221.59.<sup>[7]</sup> In addition, petitioner prayed for the payment of Php 141,944.93 representing expenses incurred due to work on respondent's changes or additional orders, and for a judgment that the liquidated damages claimed by respondent in the amount of Php 3,066,000.00 was without basis.<sup>[8]</sup>

Petitioner enumerated in its complaint the following reasons why the project was delayed:

1. At the start of the excavation phase, petitioner had to remove two to three layers of concrete slabs over the construction site, instead of only 1 layer.<sup>[9]</sup> The soil was also found to be extra soft and had to be filled with boulders. Respondent granted petitioner an extension of only 7 days, but the remedial work required in the removal of the extra layers of concrete slabs, and in stabilizing the condition of the soil, took 30 - 40 days to finish.<sup>[10]</sup>
2. Respondent and another corporation, Sinclair Paints, engaged in a boundary dispute. Respondent ordered petitioner to suspend the excavation works until

the dispute was resolved. The suspension took 6 days, yet petitioner was not credited with an extension.<sup>[11]</sup>

3. The building permit was not secured on time. The application for the building permit was not initially processed by the Building Official of Makati City because respondent failed to timely secure the required Environmental Clearance Certificate (ECC).<sup>[12]</sup>
4. Respondent informed petitioner that the building plan will be revised, such that the locations of the columns, beams and walls to be put up were to be determined only through the verbal instructions of respondent's construction manager.<sup>[13]</sup>
5. On February 20, 1995, the City Building Office served petitioner with an order to stop all construction works until a building permit is secured. Despite this "stop work order," respondent ordered petitioner to continue with the construction discreetly.<sup>[14]</sup>
6. It was only on March 23, 1995 or after the lapse of 31 days from the "stop work order" when the building permit was secured.<sup>[15]</sup>

Thus, while the demolition, excavation, and initial construction works started on November 26, 1994, regular construction works began only 113 days after, or on March 24, 1995.<sup>[16]</sup>

Petitioner further alleged that even after the original completion date of April 7, 1995, construction works continued.<sup>[17]</sup>

Respondent even ordered substantial changes and additional works after April 7, 1995, which took 130 days to complete, or until August 14, 1995.<sup>[18]</sup> In total, petitioner claimed it was entitled to an extension of 243 days, yet asked for only 130 days.<sup>[19]</sup> Respondent, however, granted petitioner with a mere 60-day extension and held it in default for the remaining 70 days. Consequently, petitioner was charged with liquidated damages computed at Php 43,800.00 for every day of delay, or a total of Php 3,066,000.00.<sup>[20]</sup>

In its defense, respondent attributed the delays to the fault of petitioner. Respondent denied suppressing information about the existence of the extra layer of concrete slabs and the extra soft condition of the soil.<sup>[21]</sup> It alleged that petitioner was given this information during the pre-bidding conference, and that petitioner inspected the site and was present during soil testing.<sup>[22]</sup> Respondent averred that petitioner was responsible for securing the required permits.<sup>[23]</sup> As to the changes and additional works, respondent asserted it gave petitioner a 60-day extension, even if these works were merely linear, meaning they may be performed without interrupting the normal pace of the construction work.<sup>[24]</sup> In sum, respondent blamed petitioner's poor workmanship, persistent inaction in satisfying respondent's complaints, and lack of, or defective equipment, for the delays.<sup>[25]</sup> Respondent claimed that due to petitioner's poor workmanship, the turnover in August 1995 was merely partial because there were several works that needed to be adjusted and

corrected, to which petitioner agreed.<sup>[26]</sup> This poor workmanship on the part of petitioner pushed the actual turnover to October 15, 1995.<sup>[27]</sup> Nevertheless, respondent maintained that out of benevolence, it computed delay only from June 6, 1995 to August 15, 1995 (70 days) instead of up to October 15, 1995.<sup>[28]</sup> Even then, after the turnover, respondent had to hire another contractor to do corrective and repainting works because of the same poor workmanship of petitioner. Respondent allegedly incurred additional expenses worth Php 1,202,888.50 for the repainting work of the other contractor.<sup>[29]</sup>

After trial, the RTC ruled in favor of petitioner.<sup>[30]</sup> It duly noted the causes of delay petitioner outlined and concluded that the 60-day credit respondent allowed for delay was not commensurate to the total allowable or justifiable delay. Instead, the RTC ruled that petitioner was entitled to a 130-day extension it requested. Thus, the liquidated damages respondent deducted from the agreed contract price was baseless and unjustified. The dispositive portion of the RTC's Decision reads:

**WHEREFORE**, in view of the foregoing, the Court hereby renders judgment in favor of plaintiff **BF CORPORATION** and against defendant **WERDENBERG INTERNATIONAL CORPORATION** and hereby orders defendant to pay plaintiff the following amounts, to wit:

1. Four Million Seven Hundred Seventy One Thousand Two Hundred Twenty One Pesos and 59/100 (P4,771,221.59) corresponding to the unpaid balance of the contract price, inclusive of the retention fee and net of electric/water billings. Rectification works and other charges at twelve (12%) percent interest per annum from the filing of this suit until fully paid;
2. One Hundred Forty One Thousand Nine Hundred Forty Four and 93/100 (P141,944.93), corresponding to the unpaid balance of the change orders/extra works done, net of advances, taxes and other charges at twelve (12%) percent interest per annum from the filing of this suit until fully paid;
3. Two Hundred Thousand Pesos (P200,000.00) for and as attorney's fees; and,
4. [C]ost of suit.

**SO ORDERED.**<sup>[31]</sup>

On appeal, the CA modified the Decision of the RTC and held respondent entitled to its claim of liquidated damages of Php 3,066,000.00 corresponding to petitioner's 70-day delay. The dispositive portion of the CA Decision<sup>[32]</sup> reads:

WHEREFORE, the decision appealed from is hereby **MODIFIED** and We deem it reasonable to render a decision imposing, as We do hereby impose, upon the defendant-appellant Werdenberg to pay BF Corporation the amount of P1,847,167.52 to complete the payment of its professional fee under their Construction Agreement based on the following computation:

P4,771,222.59 - unpaid balance under the Agreement  
+ 141,944.93 - unpaid balance for change orders  
 P4,913,167.52 - total amount due to BFC  
Less: P3,066,000.00 - liquidated damages by BFC  
 P1,847,167.52 - amount due to BFC

the total sum being payable upon the finality of this decision. Upon failure to pay on such finality, twelve (12%) per cent interest per annum shall be imposed upon afore-mentioned amount from finality until fully paid.

SO ORDERED.<sup>[33]</sup>

On Motion for Reconsideration, the CA modified its Decision.<sup>[34]</sup> On re-evaluation of the evidence, the CA ruled that respondent was entitled to the expenses worth Php 1,050,000.00 it incurred for the repainting job done by another contractor. The CA also granted respondent's claim for a retention fee of 10%. The CA's new computation<sup>[35]</sup> reads:

P4,771,222.59 - unpaid balance under the Agreement  
+ 141,944.93 - unpaid balance for change orders  
 P4,913,167.52 - total amount due to BFC  
Less: P3,066,000.00 - liquidated damages by BFC  
 P1,847,167.52  
Less: 1,050,000.00 - expenses for painting job due to  
 Werdenberg  
 P797,167.52 - amount due to BFC  
Less: 79,716.75 - 10% retention fee by Werdenberg  
 P717,450.75 - amount due to BFC

Hence, this petition, which argues in the main that the CA misappreciated relevant facts and prays that the decision of the RTC be reinstated.

### OUR RULING

Petitioner raises questions of fact, which generally, we cannot entertain in a Rule 45 petition. We are not obliged to review all over again the evidence which the parties adduced in the courts below. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.<sup>[36]</sup> This exception is present here.

The RTC ruled in favor of petitioner, finding that the delay in the construction was not its fault. The RTC found the extension of the delivery date of 60 days granted by respondent incommensurate to the total number of days of justifiable delay. The CA, on the other hand, did not find all the grounds raised by petitioner as causes for justifiable delay to be meritorious. The CA held petitioner at fault when it did not adopt measures to arrest soil deterioration.<sup>[37]</sup> The CA also held that petitioner should have notified respondent that it (petitioner) would stop work until the required building permit was secured.<sup>[38]</sup> Neither did petitioner inform respondent that the revision of the building plan will cause delay. Thus, such revision merely required a reorientation of the project.<sup>[39]</sup> This was also true with the change orders and additional works. The CA gave more credence to the testimony of respondent's

witness, Engr. Antonio Aliño, an engineer of 37 years' experience. Engr. Aliño testified that the change orders and additional works merely required linear activities that did not affect the construction time.<sup>[40]</sup> The CA then deferred to the approximation of respondent that petitioner is, under the facts, entitled to only 60 days of extension of the contracted completion date of April 7, 1995. This meant that the new completion date can be moved to June 6, 1995.<sup>[41]</sup> Since, however, the turnover was made only on August 15, 1995, petitioner incurred delay for 70 days. For this, the CA found petitioner liable for liquidated damages for 70 days of delay.<sup>[42]</sup>

On reconsideration, the CA also noted that the defects on the painting job, which petitioner acknowledged and tried to rectify, were not solved at all. In a letter dated May 31, 1996, respondent informed petitioner that it (respondent) would hire another contractor to do the repainting job. Thus, the CA found respondent entitled to liquidated damages, retention fee, and reimbursement for the expenses in the repainting job.<sup>[43]</sup>

The petition is partly meritorious.

To recall, petitioner originally claimed it was entitled to a 113 day extension of the contracted delivery date because of various delays that moved the regular construction date from November 26, 1994 to March 24, 1995. These various delays were broken down as follows:

- Removal of layers of unforeseen concrete slabs, which took 30-40 days;
- Rectification of the extra soft condition of the soil, which took 14 days;
- Revision of the building plan, which affected the petitioner's conduct of work for a month, or 30 days;
- One month "stop work order" from the City Hall of Makati due to lack of construction permit, or 30 days.

Petitioner argues that respondent concealed the existence of the concrete slabs and the condition of the soil, which necessitated additional work, expense, and use of sophisticated equipment.<sup>[44]</sup> The building plan also had to be revised in an attempt to avoid the necessity of submitting an ECC as a measure to facilitate the approval of the application for a building permit. At the same time, however, the revised building plan was needed as supporting document to the application for a building permit, such that without it, the application was put on hold.<sup>[45]</sup> The revision also called for a 180-degree reorientation of the building floor plan, which stalled the progress of construction for a month because petitioner had to rely on and await mere verbal instructions from respondent's representatives.<sup>[46]</sup> When the revised building plan was finally submitted to petitioner in January 1995,<sup>[47]</sup> the building permit application was further delayed because the city hall officials questioned the provisions on the parking area.<sup>[48]</sup> Thus, due to the lack of building permit, the city hall issued and served a "stop work order" in the construction premises on February 20, 1995. This caused work to stop for a month, or until March 23, 1995, when the building permit was finally secured.