

FIRST DIVISION

[G.R. No. 181983, November 13, 2013]

CONSOLIDATED INDUSTRIAL GASES, INC., PETITIONER, VS. ALABANG MEDICAL CENTER, RESPONDENT.

D E C I S I O N

REYES, 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 Amended Decision^[2] dated March 4, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 84988 which, among others, reversed the Decision^[3] dated June 30, 2004 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 213, finding respondent Alabang Medical Center (AMC) to have breached its contract with petitioner Consolidated Industrial Gases, Inc. (CIGI).

The Antecedents

CIGI is a domestic corporation engaged in the business of selling industrial gases (*i.e.*, oxygen, hydrogen and acetylene) and installing centralized medical and vacuum pipeline system. Respondent AMC, on the other hand, is a domestic corporation operating a hospital business.

On August 14, 1995, CIGI, as contractor and AMC, as owner, entered into a contract^[4] whereby the former bound itself to provide labor and materials for the installation of a medical gas pipeline system for the first, second and third floors (*Phase 1 installation project*) of the hospital for the contract price of Nine Million Eight Hundred Fifty-Six Thousand Seven Hundred Twenty-Five Pesos and 18/100 (P9,856,725.18) which AMC duly paid in full.

The herein legal controversy arose after the parties entered into another agreement on October 3, 1996 this time for the continuation of the centralized medical oxygen and vacuum pipeline system in the hospital's fourth & fifth floors (*Phase 2 installation project*) at the cost of Two Million Two Hundred Sixty-Seven Thousand Three Hundred Forty-Four Pesos and 42/100 (P2,267,344.42). This second contract followed the same terms and conditions of the contract for the *Phase 1 installation project*. CIGI forthwith commenced installation works for Phase 2 while AMC paid the partial amount of One Million Pesos (P1,000,000.00) with the agreement that the balance shall be paid through progress billing and within fifteen (15) days from the date of receipt of the original invoice sent by CIGI.^[5]

On August 4, 1997, CIGI sent AMC Charge Sales Invoice No. 125847 as completion billing for the unpaid balance of P1,267,344.42 for the *Phase 2 installation project*. When the sales invoice was left unheeded, CIGI sent a demand letter to AMC on January 7, 1998. AMC, however, still failed to pay thus prompting CIGI to file a

collection suit before the RTC on September 15, 1998.^[6]

CIGI claimed that AMC's obligation to pay the outstanding balance of the contract price for the *Phase 2 installation project* is already due and demandable pursuant to Article II, page 4 of the contract stating that the project shall be paid through progress billing within fifteen (15) days from the date of receipt of original invoice.

In its Answer with Counterclaim,^[7] AMC averred that its obligation to pay the balance of the contract price has not yet accrued because CIGI still has not turned over a complete and functional medical oxygen and vacuum pipeline system. AMC alleged that CIGI has not yet tested Phases 1 and 2 which constitute one centralized medical oxygen and vacuum pipeline system of the hospital despite substantial payments already made. As counterclaim, AMC prayed for actual, moral and exemplary damages, and attorney's fees.

During trial, CIGI presented the testimonies of its officers, James Rodriguez Gillego (Gillego), Credit Manager and Marcelino Tolentino (Tolentino), Installation Manager. Gillego confirmed the unpaid balance of AMC as well as its additional liabilities for interest and penalty charges at 17% *per annum* and 2% per month, respectively.^[8]

Tolentino, on the other hand, declared that CIGI failed to test the installed system because AMC did not supply the necessary electrical power.^[9] He claimed that they finished the installation project in October 1997 or within the period specified in the contract.^[10] CIGI verbally notified Dr. Anita Ty (Dr. Ty), AMC's Medical Director, on the need for electrical power for the test run but she did not respond. On August 23, 1999, they put the request in writing.^[11]

Tolentino also stated that Phase 2 is an extension of the *Phase 1 installation project* such that both phases are not independent of each other. If Phase 2 is not subjected to test run, Phase 1 will not run.^[12] It was Mr. Gavino Pineda (Pineda), his supervisor, and not him, who personally informed Dr. Ty that CIGI is ready to conduct a test run.^[13]

Tolentino admitted that, contrary to what was agreed in the contract, CIGI has not conducted commissioning and lecture on the proper operation and preventive maintenance of the installed system and that the said seminar/orientation does not require the use of electricity.^[14] However, the seminar can only be conducted once they have already fully turned over the system which can only happen after they have performed a test run, which likewise did not materialize because AMC did not supply the necessary electrical power.^[15]

AMC presented Dr. Ty and Melinda Constantino (Constantino), account and administrative officer of AMC. Dr. Ty testified that the payment of the unpaid balance is not yet due because the project is incomplete, defective and non-functional.^[16] She claimed that CIGI failed to comply with its obligation under paragraph 12 of the October 3, 1996 contract for *Phase 2 installation project* stating that the scope of CIGI's work shall include pressure drop, leak testing, painting/color coding and test run of the installed centralized medical oxygen and vacuum pipeline system.^[17] On cross-examination, Dr. Ty asserted that as agreed, the balance of the contract price

shall be paid once CIGI finishes its work under the contract.^[18] She denied receiving any request from CIGI regarding the installation of electricity for purposes of test run. She claimed that CIGI brought up the matter on electricity when it was already collecting the unpaid balance but no such request was made prior to their demand for payment.^[19] Before the hospital became operational, it was equipped with electrical facilities for construction which can adequately support the power need of a mere test run.^[20]

Constantino testified on the total payments already made by AMC to CIGI in the sum of P10,856,000.00 as shown by several Metropolitan Bank (Metrobank) checks payable to CIGI marked as Exhibits "5" to "5-I".^[21]

CIGI submitted in evidence photographs of allegedly defective and incomplete parts of the installed medical oxygen and vacuum pipeline system, such as: (a) a rusting pendant which is supposed to be stainless and anti-rust; (b) incomplete assembly of alarm system; (c) incomplete assembly of isolation valve; and (d) incomplete electrical wiring of Pegasus and leaking oil.^[22]

On June 11, 2003, AMC filed a *Motion for Leave of Court to Admit Amended Answer with Counterclaims*^[23] seeking, in addition, the rescission of the subject contracts, return of its payment of P10,856,000.00 for an unfinished project. AMC also asked that it be recompensed in the sum of P17,220,084.90 for interest expense on the loans obtained from Metrobank which were used to fund the installation projects. It further averred that CIGI's failure to complete the system is shown not only in its failure to conduct the agreed test run and orientation/seminar but also in the patently defective and incomplete parts of the installation.

In its Order^[24] dated September 11, 2003, the RTC denied the motion because its admission will compel CIGI to substantially alter the presentation of its evidence and thus delay the resolution of the case. The RTC further reasoned that AMC's failure to amend its answer will not affect the result of the trial.

Ruling of the RTC

After the parties have submitted their respective memorandum, the RTC rendered its Decision^[25] dated June 30, 2004, wherein it adjudged AMC to have breached the contract for failure to perform its obligation of paying the remaining balance of the contract price. CIGI, on the other hand, was found to have faithfully complied with its contractual obligations. In so ruling, the RTC relied on Tolentino's testimony that they were unable to test run the installed system because AMC failed to provide the necessary electrical power despite repeated requests made to Dr. Ty.^[26] AMC's counterclaim for damages was dismissed. Accordingly, the decision disposed as follows:

Prescinding from the foregoing considerations, judgment is hereby rendered in favor of the [petitioner] CONSOLIDATED INDUSTRIAL GASES, INC., and against the [respondent] ALABANG MEDICAL CENTER represented by its owner/Chairman of the Board Anita Ty. The counterclaim is likewise, accordingly ordered D[IS]MISSED.

As PRAYED FOR, the [respondent] is hereby ordered[:]

[a] To pay the amount of ONE MILLION TWO HUNDRED SIXTY[-]SEVEN THOUSAND THREE HUNDRED FORTY[-]FOUR AND 42/100 [Php 1,267,344.42] Philippine Currency, representing the balance of the principal obligations.

[b] To pay the corresponding legal interest until said obligation shall have been paid and settled and cost of suit.

SO ORDERED.^[27]

Ruling of the CA

AMC appealed to the CA which in its Decision^[28] dated September 14, 2007 granted the appeal and reversed the RTC judgment. The CA ruled that it was CIGI who breached the contract when it failed to complete the project and to turn over a fully functional centralized medical oxygen and vacuum pipeline system. Consequently, the CA declared the complaint dismissed and ordered CIGI to correct/replace the defective parts installed. AMC was adjudged entitled to attorney's fees for CIGI's unfounded action. AMC's counterclaim for P17,220,084.90 as actual damages representing alleged interest payments on the loans it obtained from Metrobank was denied for lack of factual and legal basis. The decretal portion of the Decision reads:

WHEREFORE, the decision of the Regional Trial Court dated June 30, 2004 is hereby **REVERSED** and **SET ASIDE**. The complaint is hereby dismissed and CIGI is hereby ordered to pay AMC the sum of P50,000.00 by way of attorney's fees plus costs.

SO ORDERED. ^[29]

AMC moved for partial reconsideration raising the propriety of its counterclaim for the refund of the P10,856,725.18 paid to CIGI since the project never became operational.^[30]

In its Comment^[31] and own Motion for Reconsideration^[32], CIGI countered that a refund will amount to rescission, an issue which was denied deliberation by the RTC. As such, the same cannot be raised and threshed out for the first time on appeal. CIGI shifted the blame to AMC and claims that it could have easily conducted a test run on the system if the latter supplied the electricity needed in accordance with the contract. Anent the alleged defective parts, CIGI asserted that it is highly suspect for AMC to raise the same four years after the filing of the complaint. CIGI also stated that being idle and exposed to various elements, the condition of certain parts of the system will definitely deteriorate.

The CA re-examined its earlier decision and issued an Amended Decision^[33] dated March 4, 2008. It took into consideration AMC's manifestation that it is willing to pay

the balance of P1,267,344.42 on the condition that CIGI will turn over a fully functional centralized medical oxygen and vacuum pipeline system.^[34] The CA found that CIGI reneged on its obligation under the contract when it failed to test run the installed system. The Amended Decision disposed as follows, viz:

WHEREFORE, this Amended Decision is rendered [PARTIALLY] GRANTING AMC's Partial Motion for Reconsideration dated 25 September 2007. Accordingly, CIGI is given a reasonable period of sixty (60) days from the finality of this Decision to correct and/or replace the defective parts mentioned in this Decision and turn over a fully functional centralized medical oxygen and vacuum pipeline system. AMC, in turn, is directed to provide the required facilities such as water and electricity during installation free of charge and to pay within five (5) days from the turn over the unpaid balance in the sum of P1,267,344.42 to CIGI. Failure of CIGI to turn over a fully functional centralized medical oxygen and vacuum pipeline system will result to the rescission of the contract. As a legal consequence, within ten (10) days from the rescission of the contract CIGI should return the sum of P10,856,725.18 to AMC and remove the materials and equipments it installed at AMC within ninety (90) days from the rescission of the contract, at its own expense.

The motion for reconsideration dated 08 October 2007 filed by CIGI is **DENIED** for lack of merit.

The Decision dated 30 June 2004 of the Regional Trial Court is hereby **REVERSED** and **SET ASIDE**. The complaint is dismissed and CIGI is ordered to pay AMC the sum of P50,000.00 by way of attorney's fees plus costs.

SO ORDERED.^[35]

Dismayed, CIGI interposed the present recourse alleging, in the main, that the CA committed misapprehension of facts. CIGI maintained that AMC refused to provide the necessary electrical facilities for the test run and that under the contract, CIGI was merely required to provide labor and materials. CIGI averred that the CA erred in relying on the testimony of Tolentino because he never specifically declared that CIGI did not complete the project. CIGI prayed that the decision of the RTC ordering AMC to pay the balance of the contract price be reinstated.

The Issue

The core issue for resolution is whether or not CIGI's demand for payment upon AMC is proper.

Ruling of the Court

Primarily, the arguments proffered by CIGI involve questions of fact which are beyond the scope of the Court's judicial review under Rule 45 of the Rules of Court. It is a settled rule that the Court examines only questions of law on appeal and not questions of facts. However, jurisprudence has recognized several exceptions in