

THIRD DIVISION

[G.R. No. 176917, August 04, 2009]

**CONTINENTAL CEMENT CORP., PETITIONER, VS. FILIPINAS
(PREFAB) SYSTEMS, INC., RESPONDENT.**

[G.R. NO. 176919]

**FILIPINAS (PREFAB) SYSTEMS, INC., PETITIONER, VS.
CONTINENTAL CEMENT CORP., RESPONDENT.**

D E C I S I O N

NACHURA, J.:

Before this Court are two Petitions for Review on Certiorari assailing the Court of Appeals' Decision^[1] dated October 20, 2006 and Resolution^[2] dated March 6, 2007 in CA G.R. CV No. 71593.

The antecedents, as summarized by the Court of Appeals, are as follows:

x x x [P]laintiff-appellee Continental Cement Corporation (CCC) entered into a construction agreement with defendant-appellant Filipinas Systems, Inc. (FILSYSTEMS) for the civil works construction for its Cement Plant Expansion Project at Bo. Bigte, Norzagaray, Bulacan for and in consideration of P82,300,00.00 (sic). Under the contract, the period for the project's completion should be 300 days from 22 February 1993 or up to 18 December 1993. However, on 3 September 1993, CCC filed an action for Specific Performance with TRO and/or Preliminary Mandatory Injunction against FILSYSTEMS to prevent the latter from pulling out its equipment from the site and stopping the construction of the project. While the suit was pending, the parties entered into a Compromise Agreement which was approved by the trial court on 14 October 1993. Among others, the said agreement provided for new terms and conditions of payment. Under Item No. 5 thereof, the civil works was to be paid in cash, cement, crushed aggregates (sic) as well as steel bars. The agreement, particularly Item No. 6, also admitted that FILSYSTEMS has 109 days [from 6 October 1993 or actual resumption of work, exclusive of contract time extensions for accomplished and future changes] to finish the project. And under item no. 7, the parties further agreed that all future change orders, additional works and construction bulletins shall be implemented by FILSYSTEMS only after CCC and its architect sign and the two agree on the price which will be billed separately. The change orders, additional works and construction bulletins already accomplished prior to the Compromise Agreement were supposed to be reconciled and paid immediately.

Thereafter, FILSYSTEMS and CCC filed their separate Motions for Execution based on the aforementioned Compromise Agreement on, (sic) 1 and 14 September 1994, respectively.

Banking on items no. 5 and 7 of the Compromise Agreement, FILSYSTEMS claimed that CCC failed to release the cement and crushed aggregates as per the agreed schedules annexed to the Compromise Agreement and to pay FILSYSTEMS' subsequent billings also in the form of cement. Aside from this claim, the latter also asked for the fifteen percent (15%) liquidated damages and five percent (5%) attorney's fees computed from the original price.

On the other hand, CCC advanced that FILSYSTEMS failed to finish the project after one hundred nine (109) days as provided in Item no. 6 of the same compromise agreement. As such, it similarly prays for the fifteen percent (15%) liquidated damages and five percent (5%) attorney's fees.^[3]

After trial, the RTC issued a Decision,^[4] the dispositive portion of which reads:

WHEREFORE, premises considered, finding that the defendant failed to perform its obligation under the Compromise Agreement dated October 4, 1993, without any justification, the plaintiff's expansion project on time or within the 109 calendar days, from October 6, 1993 to January 23, 1994, as agreed and without fault on plaintiff's part, this Court hereby orders said defendant to pay the plaintiff the following:

1. The sum of Twelve Million Three Hundred Forty Five Thousand Pesos (Php 12,345,000.00) in liquidated damages pursuant to the Compromise Agreement;
2. The sum of Fifty Million Three Hundred Thirty Eight Thousand Two Hundred Twenty One Pesos and Sixty One Centavos (Php 50,338,221.61) for the cost of finishing plaintiff's expansion cement plant, pursuant to Article 1167 of the Civil Code; and
3. Four Million One Hundred Fifteen Thousand Pesos (Php 4,115,000.00) for attorney's fees, as provided for in the Compromise Agreement.
4. Plus costs.

SO ORDERED.^[5]

FILSYSTEMS appealed the Decision to the Court of Appeals. On October 20, 2006,

the CA issued the assailed Decision,^[6] the dispositive portion of which reads:

WHEREFORE, the instant appeal is AFFIRMED with these MODIFICATIONS:

(1) Appellant FILSYSTEMS is hereby ordered to pay appellee CCC the following:

(a) The sum of Six Million One Hundred Seventy-Two Thousand Five Hundred Pesos (PhP6,172,500.00) as liquidated damages; and

(b) The sum of Six Million Six Hundred Thousand Seven Hundred Twenty-Three Pesos and Thirty-Six Centavos (PhP6,600,723.36) as the cost of finishing CCC's expansion cement plant;

and

(2) Appellee CCC is hereby ordered to pay appellant FILSYSTEMS the following:

(a) The sum of Ten Million Four Hundred Twenty Thousand One Hundred Sixty-One Pesos and Seventeen Centavos (PhP10,420,161.17) as the amount still due the latter based on the parties (sic) reconciliatory talks;

(b) The sum of Seven Hundred Seventy-Seven Thousand Seven Hundred Thirty-Five Pesos (PhP777,735.00) as liquidated damages.

SO ORDERED.^[7]

The CA found CCC to have defaulted in the payment of its obligations. On the other hand, FILSYSTEMS not only incurred in delay in performing its obligation but, in fact, failed to finish the project.

The CA held that, under the Compromise Agreement, CCC was to pay FILSYSTEMS P3.5 million in cement for change orders, additional works, and construction bulletins, even as the parties failed to reconcile their accounts.

The CA, likewise, held that, while FILSYSTEMS agreed that CCC would pay in kind, the payment was not to be made in advance. Under the Compromise Agreement, CCC was to deliver the delivery receipts only and not the cement. These delivery receipts were to be given in advance to allow FILSYSTEMS to withdraw cement from CCC's plants, but always against the value equivalent to the completed or accomplished work.

The CA also found that FILSYSTEMS was in fact lagging behind in its work schedule. It said that CCC's delay was not a sufficient excuse for FILSYSTEMS to incur in delay and not finish the project. According to the CA, FILSYSTEMS failed to explain how the delay in CCC's payment contributed to its own delay.

On the other hand, the CA upheld FILSYSTEMS' claim that it was entitled to time extension. However, it said that FILSYSTEMS could not unilaterally claim the time extension in order to excuse itself or justify the delay in the project. As such, FILSYSTEMS is still liable for the delay. Hence, the CA made a tempered application of the penalty clause of the Construction Contract. It reduced the liquidated damages awarded by the trial court by half, bringing down FILSYSTEMS' liability to P6,172,500.00.

The CA also found that FILSYSTEMS had completed 92.839% of the project, based on the testimony of CCC's own accounting manager,^[8] and is, therefore, entitled to P10,420,161.17. This also proves, the CA said, that payments by CCC to FILSYSTEMS were also delayed. Hence, the CA held that CCC is liable to pay FILSYSTEMS P777,735.00 as liquidated damages.

The CA also modified the trial court's award of P50,338,221.61 in favor of CCC, which was allegedly the cost incurred when CCC hired another contractor to finish the project. The CA said that the amount was glaringly disproportionate to the unfinished part of the project. Considering that the unfinished work is equivalent only to 7.161% of the project, the amount FILSYSTEMS should pay must be correspondingly reduced to P6,600,723.36.

CCC then filed the first of the two petitions at bar.^[9] It assails the part of the CA's Decision holding that FILSYSTEMS is entitled to P3.5 million in cement. It claims that the payment of that amount is still subject to final reconciliation of accomplished change orders, additional works, and construction bulletins.^[10]

It also argues that the CA erred in reducing the award of liquidated damages, stressing that time is of the essence in the Construction Contract, and that FILSYSTEMS' delay and total failure to complete the project is a clear breach of the Compromise Agreement and renders the essence of time under the Construction Contract moot.^[11] Thus, CCC posits that it is entitled to the full amount of liquidated damages.^[12]

CCC likewise disputes the finding that it incurred in delay in paying FILSYSTEMS. It avers that nowhere in the Compromise Agreement did it admit that it was in delay; that the Compromise Agreement stated, in fact, that the balance it is to pay FILSYSTEMS would be due only after the completion of the project, a condition never fulfilled because of the latter's breach.^[13]

Then, CCC assails the CA's finding that FILSYSTEMS had finished 92.839% of the project, since no evidence was adduced to this effect before FILSYSTEMS was deemed in delay. Instead, CCC claims that it was able to show that, because FILSYSTEMS was unable to finish the project, the former was compelled to contract C.E. Construction to complete the same.^[14]

Lastly, CCC questions the deletion of the award of attorney's fees. It argues that the Compromise Agreement provided that attorney's fees equivalent to five percent of the total original contract price, plus change orders/additional works/construction bulletins, must be paid by the aggrieved party to the guilty party. Because FILSYSTEMS breached its obligation under the Compromise Agreement, CCC submits that the trial court correctly awarded it P4,115,000.00 in attorney's fees.
[15]

Hence, CCC prays that this Court partially reverse the CA Decision and affirm the trial court's Decision *in toto*.
[16]

Meanwhile, FILSYSTEMS filed its own Petition for Review^[17] of the CA Decision.

FILSYSTEMS claims that the CA erroneously considered all infractions committed by CCC prior to the signing of the Compromise Agreement to have been set aside by the said agreement. It points to the CA's failure to appreciate that the former was authorized to suspend work in the event CCC defaulted in the payment of submitted progress billings;^[18] thus, FILSYSTEMS was not in delay. On the contrary, it was CCC that was in delay in the payment of FILSYSTEMS' approved progress billings, prompting the latter to invoke its right to stop work in accordance with Article V of the Construction Agreement. According to FILSYSTEMS, CCC's delay totaled 77 days; but the CA refused to grant FILSYSTEMS the equivalent time extension, because the infraction occurred before the Compromise Agreement.^[19]

Next, FILSYSTEMS posits that the CA misconstrued the Construction Agreement to be on a "turn key" basis, which means that the contractor would initially finance the completion of the project. FILSYSTEMS argues that the agreement was the regular type of construction agreement, where the owner was obligated to pay the contractor periodically based on the percentage of completion of work.^[20] FILSYSTEMS emphasized that its refusal to continue working was due to CCC's failure to promptly pay the former's submitted/approved progress billings.^[21]

Thus, FILSYSTEMS prays for modification of the CA Decision and the deletion of all monetary awards in favor of CCC.^[22]

The resolution of these cases calls for a re-examination of facts. While generally, the Court is not a trier of facts, a recognized exception thereto is a situation where the findings of fact of the Court of Appeals and the trial court are conflicting.^[23]

Indeed, the most fundamental rule in the interpretation of contracts is that, if the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control. However, where some ambiguity exists, in order to determine the intention of the parties, their contemporaneous and subsequent acts should be considered.^[24]

Thus, to resolve the question of default by the parties, we must re-examine the terms of the Construction Contract and the Compromise Agreement.

We sustain the finding of the CA holding CCC to have incurred in default in its payments to FILSYSTEMS.