

FIRST DIVISION

[G.R. NO. 168794, August 30, 2006]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
GLORIA C. BALLESTEROS, REPRESENTED BY HER ATTORNEY-IN-
FACT, VALENTINO RIVERA, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is an amended petition for review on *certiorari* which seeks to set aside the decision^[1] of the Court of Appeals in CA-G.R. CV No. 58925 dated 18 March 2003 which modified the decision of Branch 26 of the Regional Trial Court (RTC) of Cabanatuan City in Civil Case No. 486-AF dated 17 October 1997,^[2] the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant Development Bank of the Philippines, ordering the same to pay the plaintiff the amount of P26,725.00, representing the total penalty charges/liquidated damages less overpayment of the contract price, plus legal interest at the rate of 6% per annum on the said amount from the time of filing of the complaint up to the time payment is made before finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time the judgment becomes final and executory until fully satisfied.^[3]

and its Resolution^[4] dated 28 June 2005 denying the motion for reconsideration of petitioner Development Bank of the Philippines (DBP).

The following are the antecedents as narrated by the Court of Appeals:

The plaintiff-appellee contractor won the bidding for the refurbishing of the Development Bank of the Philippines, Cabanatuan Branch Building. Thus, pursuant thereto the defendant-appellant Development Bank of the Philippines (DBP for brevity), and the plaintiff-appellee (hereinafter referred to as contractor) entered into a contract of service for the refurbishing of the DBP Cabanatuan Branch building, on 04 April 1988.

Under the said contract, the contractor, agreed to refurbish/renovate the DBP, Cabanatuan Branch building, within a period of thirty-five (35) days, commencing on 11 April 1988, for and in consideration of the contract price of P850,000.00. The parties further agreed that in case the contractor fails to complete the work within the stipulated period, a penalty of P2,000.00 per day of delay, inclusive of Sundays and holidays, shall be deducted from any amount/s due the said contractor.

To supervise the refurbishing work, the DBP hired the services of project architect, Jose Vicente Salazar III. The project architect was named as representative of DBP and was expressly authorized by DBP, to condemn or reject defective works or poor workmanship of the contractor at anytime before the completion, approval and acceptance of such work.

In accordance with the aforesaid contract of service, the contractor commenced the refurbishing work on 11 April 1988 following the specifications prepared by the project architect and approved by the DBP. However, in the course of the work, the contractor, at the behest of the project architect, performed additional works, not included in the said specifications. Among the additional works done by the contractor were the replacement of ten (10) narra flush doors and the repainting of the canteen.

Foreseeing that the refurbishing work would not be completed on 15 May 1988, for the following reasons: (1) problems encountered in the freight delivery service of some materials purchased in Metro Manila due to the negligence of the supplier; (2) unavailability of materials due to the hoarding of the same by suppliers anticipating price increases; and (3) refusal of some laborers to work on Sundays to attend their religious and family obligations; the contractor requested, on 13 May 1988, for an extension of one (1) week, from May 16-22, 1988, without penalty, from DBP to finish the work.

In a radio message, dated 25 May 1988, the DBP approved the contractor's request for extension of one (1) week to finish the work. In the said radio message, the DBP expressly waived its right to receive the stipulated penalty of ₱2,000.00 per day of delay corresponding to the period of extension.

On 22 May 1988, the project architect accepted the turnover of the refurbishing work as 97.2% complete.

However, in a meeting of the Refurbishing Committee held on 25 May 1988, the acceptance made by the project architect was repudiated by the said committee on account of some defects in the refurbishing work noted by the Evaluation Committee and Engineer Bettina Mari, Technical Audit Specialist of the Commission on Audit. In the said meeting, DBP required the contractor to make a correction of the defects noted.

The request of the contractor that she be not charged with the stipulated penalty of ₱2,000.00 per day of delay corresponding to the period of May 16-22 1988, was also brought up in the said meeting. To settle this matter it was agreed that the contractor's request be elevated to the higher authorities of the Commission on Audit.

On 29 May 1988, the Branch Bidding Committee of DBP accepted the refurbishing project at 97.35% complete.

On 2 June 1988, DBP paid the contractor the amount of ₱215,475.00,

representing the outstanding balance of the contract price based on 97.35% completion of the refurbishing work.

On 7 June 1988, Acting Chief Gregorio Yamzon, Regional Office No. III, Commission on Audit, in answer to the query posed by DBP, Branch Auditor Marcelita Sarmiento, as to whether the contractor should be charged with the stipulated penalty of ₱2,000.00 per day of delay from 16 May 1988 to the time of formal turnover of the refurbishing project, opined:

Due to the unexpected failure of the contractor to finish the work on schedule, they requested for an extension of contract time of seven (7) calendar days, the reasons are contained in their letter-request dated May 13, 1988. The reason of the contractor which includes the difficulty in securing the needed materials and the labor problem encountered do not constitute a ground (sic) for the granting of time extension, for it is clearly provided in P.D. 1594, as amended, that no extension of contract time shall be granted the contractor due to (1) non-availability of equipment, supplies and materials to be furnished him; and (2) other causes for which the government is not responsible.

In as much as there seems to be no legal basis to grant the extension of contract time and even after the expiry date of the requested extension, the work remained incomplete, the imposition of liquidated damages as provided in Article III, Paragraph 2 of the contract should be observed, until the final turnover of the completed project.

Pursuant to the letter, dated 7 June 1988, of the Acting Chief of the Regional Office No. III, Commission on Audit, the DBP, recommended for payment to the contractor the amount of ₱88,890.45, representing the 10% retention fee owing the contractor less liquidated damages/penalty in the total amount of ₱14,000.00 for the period corresponding to May 23 to 29, 1988. The DBP, Branch Auditor Marcelita Sarmiento, however, approved for release only the amount of ₱74,890.45, deducting from the ₱88,890.45 recommended by the DBP, liquidated damages/penalty in the additional amount of ₱14,000.00 corresponding to the period May 16 to 22, 1988.

Alleging that the DBP's imposition of the stipulated penalty in the total amount of ₱14,000.00 for the period May 22 to 29, 1988, was unjustified inasmuch as the refurbishing project was turned over and accepted by its project architect on 22 May 1988; alleging further, that DBP's imposition of the additional penalty in the total amount of ₱14,000.00, for the period May 16 to 22, 1988, was likewise without basis since she was granted an extension of one (1) week from 15 May 1988 by the DBP to finish the refurbishing project; alleging that it was through the instigation and prodding of Marcelita Sarmiento that the penalties were imposed upon her; and finally, alleging that DBP failed to pay for the additional work performed by her in the amount of ₱28,000.00; plaintiff-appellee

Gloria C. Ballesteros, through her attorney-in-fact, Valentino Rivera filed, on 17 August 1988, a complaint for Collection and Damages against defendants-appellants DBP and Marcelita Sarmiento. Said complaint was docketed as Civil Case No. 486-AF before the Regional Trial Court of Cabanatuan City, Branch 24.^[5]

After the case was submitted for decision, the presiding judge of Branch 24 of the RTC, Cabanatuan City, inhibited^[6] himself from deciding the case. Hence, the case was re-raffled to Branch 26 of the same court which rendered its decision on 17 October 1997, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

1. Directing and ordering the defendant DBP to pay the plaintiff the amount of ₱28,000.00 with legal rate of interest of 12% from the date of filing of this case up to its payment for the imposed penalty;
2. Ordering and directing the defendant Marcelita Sarmiento in her personal capacity to pay the plaintiff the amount of ₱30,000.00 as incidental, moral and exemplary damages;
3. Directing and ordering the defendant DBP to pay plaintiff the sum of ₱28,000.00 for the additional work with legal rate of interest of 12% from date of filing of this case up to its payment;
4. Ordering and directing both defendants to pay jointly and severally the plaintiff the sum of ₱10,000.00 as attorney's fees; and
5. To pay the costs of suit.^[7]

The trial court held *inter alia* that the imposition of a ₱2,000.00 penalty for every day of delay in the completion of the project has no leg to stand on, because prior to the lapse of the period stipulated in the Contract for Services, respondent filed on 13 May 1998 a letter-request for a one-week extension (16 May 1998 to 22 May 1998) to complete the project without the imposition of any penalty, and that the extension was approved by the DBP. It explained that since the refurbishing/renovation of the DBP building, Cabanatuan Branch, was completed, turned over and accepted by Architect Jose Vicente Salazar III, DBP Project Architect, on 22 May 1988, there was no delay to speak of.

In ruling the way it did, the trial court disregarded the argument of defendant Marcelita A. Sarmiento, Branch Auditor, DBP Cabanatuan City, that the extension granted by the DBP, Head Office, violated Presidential Decree No. 1594^[8] because the grounds contained in the request for extension were not allowed under the Implementing Rules and Regulations of said law.

Aggrieved, petitioner and defendant Sarmiento appealed to the Court of Appeals via a Notice of Appeal.^[9] On 18 March 2003, the Court of Appeals promulgated the assailed decision.

The Court of Appeals ruled that the extension of the contract time from 16 May to

22 May 1988, which was granted by the DBP to respondent, was valid and lawful. It explained that the Implementing Rules of Presidential Decree No. 1594 disallowed the granting of time extension to the contractor only when the failure or neglect to provide the required equipment, supplies or materials is inexcusable. And since the reasons for the unavailability of the materials needed to finish the refurbishing work were satisfactorily explained by the respondent in this case, respondent cannot be held liable for the stipulated penalty during the period of extension.

Moreover, the Court of Appeals concluded that it is Architect Jose Vicente Salazar III, DBP Project Architect, who was clothed with the authority to approve and accept the refurbishing project, which he did on 22 May 1998. In arriving at said conclusion, it elucidated that under the "SPECIFICATIONS," petitioner expressly designated its project architect as its representative in the inspection and supervision of the refurbishing work and that the project architect was authorized to condemn or reject defective works and/or poor workmanship at anytime before the completion, approval and acceptance of such work. This, it said, was apart from the fact that petitioner did not authorize any other person from inspecting and supervising the contractor's work and/or to approve and accept said work. Corollarily, it ruled that there is no justification for the imposition of the penalty/liquidated damages against the contractor for the period 23 May to 29 May 1988 considering that the project has already been accepted on 22 May 1988.

The Court of Appeals, finding no basis to hold petitioner and defendant Sarmiento guilty of bad faith considering that they were merely implementing the opinion of the Acting Chief of the Regional Office No. III, Commission on Audit (COA), in the imposition of the stipulated penalty/liquidated damages upon respondent, deleted the award of incidental, moral and exemplary damages, and attorney's fees in favor of the latter.

Petitioner and respondent filed their respective motions for reconsideration, but same were denied by the Court of Appeals in its resolution dated 28 June 2005.^[10]

Not satisfied, petitioner is now before this Court by way of a Petition^[11] for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.^[12]

Petitioner assigns a solitary error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT ORDERED THE PETITIONER DBP TO RETURN THE AMOUNT OF P26,725.00 REPRESENTING THE LIQUIDATED DAMAGES ASSESSED/DEDUCTED FROM THE RETENTION FEE PAID TO RESPONDENT '

1. THE ASSAILED DECISION AND RESOLUTION ISSUED BY THE COURT OF APPEALS FAILED TO CONSIDER THE CONSTITUTIONAL POWERS OF THE COMMISSION ON AUDIT (COA) TO REVIEW CONTRACTS INVOLVING THE DISBURSEMENT OF GOVERNMENT FUNDS.
2. RESPONDENT FAILED TO EXHAUST ADMINISTRATIVE REMEDIES AND ELEVATE THE ADVERSE DECISION OF COA ACTING CHIEF GREGORIO YAMZON, REGIONAL