

SECOND DIVISION

[G.R. NO. 161904, April 26, 2005]

**ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,
PETITIONER, VS. NOEL T. TULABUT, DOING BUSINESS UNDER
THE NAME AND STYLE OF N.T. TULABUT CONSTRUCTION
SUPPLY, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court for the reversal of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 73124 and its resolution which affirmed, with modification, the Decision^[2] of the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 45, in Civil Case No. 11820.

Factual Antecedents

In January 1998, petitioner Asian Construction and Development Corporation (ACDC) was awarded the development of the Philippine Centennial Exposition (Theme Park Project) at Clarkfield, Pampanga. Subsequently, in February 1998, the petitioner ACDC contracted the services of respondent Noel T. Tulabut, doing business under the name and style of N.T. Tulabut Construction Supply. The latter was to supply labor, materials, tools, equipment and supervision for other necessary works for the construction of two cafeterias, two fast food take-out stands and a snack stand, all located at the Food Plaza of the project site. The petitioner bound and obliged itself to pay the price of the project in the amount of P3,414,058.60 through progress billing. Construction ensued and, as of June 8, 1998, the petitioner had paid the cost of the project save for a small balance of P3,246.12.

Subsequently, the petitioner again contracted the services of the respondent for the construction of two additional cafeterias via Purchase Order (P.O.) No. 73-985, the net cost of which amounted to P400,000.75. In partial payment of the project, the petitioner drew and issued, on July 15, 1998, Land Bank Check No. 0000074516 and delivered the same to the respondent. However, the said check was dishonored upon its presentment for payment on the ground that it was drawn against insufficient funds.

The respondent was able to complete the project and turned the same over to the petitioner. The total amount due as of the final billing dated November 26, 1998 was P486,409.45. However, despite the respondent's written demand for payment, the petitioner failed to settle the balance of its obligation.

The respondent then filed a complaint for collection against the petitioner with the RTC of San Fernando, Pampanga. The complaint alleged that as of May 29, 1998,

the account of the petitioner in favor of the respondent had amounted to P900,000.00, exclusive of damages, plus attorney's fees. The respondent prayed for the issuance of a writ of preliminary attachment, which the RTC granted after an attachment bond of P1,400,000.00 was posted. There being a third party claimant, the respondent posted an additional bond of P500,000.00.

In its answer with counterclaim, the petitioner averred that the respondent had not yet fully completed nor turned over the project subject of the contracts. It claimed that it had already settled its outstanding account equivalent to or even more than the percentage of the work actually accomplished. It was added that settlement of the billings in question was dependent upon its (petitioner's) receipt of payment from the government as the owner of the project; as of the filing of the complaint, the government had not yet paid the petitioner for its billings on the corresponding work accomplished. The petitioner thus prayed that the complaint be dismissed.

The respondent adduced testimonial and documentary evidence, and in the course thereof admitted having received P125,571.81 as partial payment from the petitioner upon the filing of the complaint. On the other hand, the petitioner opted not to adduce any evidence in its behalf.

After trial, the trial court ruled in favor of the respondent. The *fallo* of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [respondent], hereby ordering the [petitioner] to pay [respondent] the following:

1. The balance of [its] obligation in the amount of P364,083.76, exclusive of the 10% retention;
2. Legal rate of interest thereon reckoned from April 5, 1999;
3. 25% of P364,083.76 as attorney's fees; and
4. Costs of litigation.

SO ORDERED.^[3]

The petitioner appealed to the CA, contending that if it was, indeed, liable for the claims of the respondent, the same should be reckoned only from the lapse of one year after the issuance of a certificate of completion of the project, as was the standard practice in the construction industry. It averred that the respondent had not been able to establish that the project had been fully completed since it was unable to show that a certificate of completion in its favor had been issued by the petitioner. The petitioner also argued that there was no legal and factual basis for the award of attorney's fees.

The CA rendered judgment dismissing the appeal and affirming the appealed decision with modification. The CA ruled that the petitioner was estopped from denying liability for the respondent's claims since its officers had approved the pertinent purchase orders and billings. The appellate court also held that the petitioner failed to prove that it was a common practice in the construction industry for the subcontractor to pay the retention billings only upon the main contractor's

issuance of a certificate of completion of the projects agreed upon. However, the CA reduced the award for attorney's fees to 10% of the amount due.

The petitioner now seeks relief from this Court via its petition for review on *certiorari*, contending that:

I. THE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF ESTOPPEL AND PRESUMED THE COMPLETION OF THE PROJECT OR WORKS UNDERTAKEN BY RESPONDENT.

II. THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER ACTED IN GROSS AND EVIDENT BAD FAITH IN REFUSING TO SATISFY RESPONDENT'S CLAIM THEREBY AWARDING ATTORNEY'S FEES.^[4]

The petitioner alleges that the CA erred when it affirmed the trial court's finding that the project or works undertaken by the respondent had been fully completed, considering that such finding was based solely on the petitioner's approval of purchase orders and final billings. The petitioner asserts that the doctrine of estoppel must not be applied because although its officers irrefutably approved the purchase orders and billings of the respondent, the same had nothing to do with the actual completion of the works which the latter was obliged to accomplish. The petitioner avers that such approval did not amount to prove that the projects had been completed. In fact, the respondent failed to adduce proof that the projects had actually been completed.

As regards the issue of the award of attorney's fees, the petitioner insists that its failure to fund the Land Bank check with the face amount of P400,000.00 is not proof of its gross and evident bad faith. The petitioner posits that the respondent himself is guilty of fraud since the amount he demanded was way beyond what was actually proven and what the trial court eventually awarded.

The petition is barren of merit.

The petitioner admits that the issues on appeal are factual. Under Rule 45 of the Rules of Court, only questions of law may be raised, for the simple reason that the Court is not a trier of facts. The findings of the trial court as affirmed by the CA are conclusive on this Court, absent proof of any of the recognized exceptional circumstances^[5] such as: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) the findings are contrary to the admissions of both parties.^[6]

These exclusions notwithstanding, we find no compelling reason to treat the instant case as falling under any of the aforementioned exceptional circumstances.

The trial court concluded that the respondent had completed the project and that