

THIRD DIVISION

[G.R. No. 142277, December 11, 2002]

ARWOOD INDUSTRIES, INC., PETITIONER, VS. D.M. CONSUNJI, INC., RESPONDENT.

D E C I S I O N

CORONA, J .:

This is a petition for review of the decision^[1] dated November 12, 1999 of the Court of Appeals, which affirmed, with modification, the decision^[2] dated April 1, 1997 of the Regional Trial Court, Branch 153, Pasig City in Civil Case No. 63489.

The core issue of this petition is the propriety of the imposition of two percent (2%) interest on the amount adjudged by the trial court and later affirmed by the Court of Appeals in favor of respondent D.M. Consunji, Inc. and against petitioner Arwood Industries, Inc.

The factual backdrop of this case is as follows:

Petitioner and respondent, as owner and contractor, respectively, entered into a Civil, Structural and Architectural Works Agreement^[3] (Agreement) dated February 6, 1989 for the construction of petitioner's Westwood Condominium at No. 23 Eisenhower St., Greenhills, San Juan, Metro Manila. The contract price for the condominium project aggregated P20,800,000.00.

Despite the completion of the condominium project, the amount of P962,434.78 remained unpaid by petitioner. Repeated demands by respondent for petitioner to pay went unheeded.

Thus, on August 13, 1993, respondent, as plaintiff in Civil Case No. 63489 filed its complaint^[4] for the recovery of the balance of the contract price and for damages against petitioner.

Respondent specifically prayed for the payment of the (a) amount of P962,434.78 with interest of 2% per month or a fraction thereof, from November 1990 up to the time of payment; (b) the amount of P250,000 as attorney's fees and litigation expenses; (c) amount of P150,000 as exemplary damages and (d) costs of suit.^[5]

After trial, the court below resolved to grant the relief prayed for by respondent, thus:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant ordering the latter to pay the former the following:

"(1) the sum of P962,434.78 representing the balance of contract price with interest at 2% per month from November 1990 up to the time of payment;

"(2) the amount of P150,000.00 as attorney's fees; and

"(3) Cost(s) of suit.

SO ORDERED."^[6]

Petitioner appealed to the Court of Appeals, particularly opposing the finding of the trial court with regard to the imposition of the monetary interest of 2% per month on the adjudicated amount.

The Court of Appeals upheld the trial court despite dauntless demurring by petitioner. Respondent court found basis in Article 6.03 of the Agreement concerning the imposition of the 2% interest, which reads:

"Payment shall be made by the OWNER to the CONTRACTOR within fifteen (15) calendar days after receipt of the Construction Manager's Certificate. **In the event OWNER delays the payments** (i.e. beyond the stipulated time) to the CONTRACTOR of monthly progress billings, **the CONTRACTOR shall have the option to either suspend the works on the Project until such payments have been remitted by the OWNER or continue the work but the OWNER shall be required to pay the interest at a rate of two (2%) percent per month or the fraction thereof in days of the amount due for payment by the OWNER.** The same interest shall be added to the billing of the following month. Furthermore, the progress payments shall be reduced by a portion of the downpayment made by the OWNER corresponding to the value of the work completed."^[7]

Respondent court, however, modified the decision of the trial court by deleting the award of attorney's fees for the following reasons:

"Finally, defendant-appellant argues that the court a quo erred in awarding attorney's fees because the same was not mentioned in the body of the decision.

"On this ultimate point, We agree.

"In the case of Del Rosario vs. Court of Appeals (267 SCRA 158, 175), the Supreme Court held that:

'Finally, like the adjudication of actual or compensatory damages, the award of attorney's fees must be deleted. The matter was dealt with only in the dispositive portion of the Trial Court's decision. Since the judgment does not say why attorney's fees were awarded, there is no basis for such award, which should consequently be removed. So did this Court rule, for instance, in *Scott Consultants and Resource Development Corp., Inc. et al.* (242 SCRA 393, 406):

'It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual,

legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees."^[8]

Petitioner moved to reconsider, unsuccessfully.

Hence, this petition for review. The only issue is the correctness of imposing a 2% per month interest on the award of P962,434.78.

Petitioner argues that the trial court's decision has no basis in imposing the 2% interest per month. Although the Agreement contained a provision with regard to the interest, this provision was not mentioned by the trial court in awarding interest in the dispositive portion. This provision of the Agreement does not apply to the claim of respondent but refers to the "monthly progress billings." The amount of P962,434.78 is not a "monthly progress billing" and should not therefore be subject to interest.

Furthermore, the pre-trial order of the trial court dated February 4, 1994 did not include interest as one of the issues to be resolved and determined during the trial; the parties agreed that the main issue was –

"x x x whether or not defendant is liable to pay the balance of P964,434.78 as stated in the Complaint."^[9]

Thus, the trial court erroneously disposed of the issue on payment of interest.

Petitioner points to the error of the Court of Appeals in basing its decision (on the issue of interest) on Article 6.03 of the Agreement. It reasons that while there was a formal offer of the Agreement and its sub-markings, the provision on interest was neither sub-marked nor formally offered in evidence.^[10] Hence, the imposition of interest is wanting in basis as it is not even explicitly alleged in the complaint before the trial court.

Petitioner's stance hardly deserves this Court's attention.

The Agreement or the contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, "when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement."^[11]

Consequently, upon the fulfillment by respondent of its obligation to complete the construction project, petitioner had the correlative duty to pay for respondent's services. However, petitioner refused to pay the balance of the contract price. From the moment respondent completed the construction of the condominium project and petitioner refused to pay in full, there was delay on the part of petitioner. This delay was never disputed.

Delay in the performance of an obligation is looked upon with disfavor because, when a party to a contract incurs delay, the other party who performs his part of the