

THIRD DIVISION

[G.R. No. 121484, January 31, 2005]

MEA BUILDERS, INC., VICENTE LLAVE, ERNESTO YU AND ANGEL YUANLIAN, PETITIONERS, VS. COURT OF APPEALS (FORMER FIFTEENTH DIVISION) AND METROPOLITAN BANK AND TRUST COMPANY, RESPONDENTS.

DECISION

CORONA, J.:

Petitioners MEA Builders Inc. (MEA), Vicente Llave (Llave), Ernesto Yu (Yu), and Angel Yuanlian (Yuanlian) assail the August 30, 1994 decision^[1] of the Court of Appeals in CA-G.R. No. 40146 which reduced the amount awarded to them by way of counterclaim by the Makati Regional Trial Court, Branch 147 in its July 18, 1991 decision^[2] in Civil Case No. 8532.

On July 15, 1982, MEA entered into a contract^[3] with Capital Resources Corporation (CRC) for the construction of housing units for CRC's residential subdivision in Multinational Village, Parañaque, Metro Manila in consideration of P39,256,880, payable in cash and negotiable securities. Under the contract the cash portion shall be payable in 90-day stand-by letters of credit from a bank.

On August 11, 1982, MEA, CRC and private respondent Metropolitan Bank and Trust Company (Metrobank) entered into a tripartite agreement^[4] whereby stand-by letters of credit would be issued to cover the cash portion of the payments on completed housing units in the MEA and CRC July 15, 1982 contract, subject to the following conditions:

- i. The houses, townhouses, and duplexes shall have already been completed, as attested to by the Certificate of Completion duly signed by the Contractor and accepted by the owner or the owner's representative, Metrobank representative, and the Home Financing Corporation;
- ii. That the letters of credit shall be in amounts not less than P2,000,000.00 for each letter of credit, in other words, the aggregate total of the contracted price of the completed units should not fall below P2,000,000.00 per letter of credit;
- iii. That the letter of credit shall be a domestic, assignable, divisible, and irrevocable letter of credit payable ninety (90) days from date of issuance and/or opening of the letter of credit and the drawdown date can be advanced to the date of receipt of payment by Metrobank from the National Home Mortgage Finance Corporation/other entities for units covered by the particular letter of credit; and,

- iv. That the owner shall secure an HFC Guarantee in favor of Metrobank to cover the amounts of these letters of credit which are fully secured by real estate mortgages as provided for in the agreement.

On the same day, MEA and CRC amended the July 15, 1982 construction agreement by increasing the contract price to P45,552,950.^[5]

In a letter^[6] dated August 9, 1982 to Home Financing Corporation (HFC), Metrobank expressed its willingness to finance the construction of the CRC Multinational Village project up to the amount of P190 million thru letters of credit.

On September 13, 1982, MEA wrote to Metrobank asking if it could obtain the desired stand-by letters of credit even without the HFC guarantee.^[7] In its reply^[8] dated September 30, 1982, Metrobank advised MEA that the letters of credit could be issued only upon submission of the HFC guarantee and only for completed houses/townhouses/duplex units.

On January 14, 1983, with the construction work under the tripartite agreement already in progress, MEA and CRC executed another contract,^[9] this time for the horizontal development of another parcel of land also in Multinational Village. Under the contract, MEA was to perform landfill and other stipulated infrastructural work for P7,755,000, excluding the cost of filling materials which MEA would advance chargeable to CRC.

On January 18, 1983, CRC submitted to HFC a Progress Report^[10] of work accomplished by MEA stating its accomplishment to be worth P2,691,685.45.

On February 11, 1983, HFC issued an official resolution approving the P120,000,000 cash guarantee.^[11]

On March 1, 1983, in order to increase its capital, MEA secured from Metrobank an advance of P3,000,000 from the amount which may become due to it under the tripartite agreement. Metrobank advanced the amount on condition that it would nominally be covered by a promissory note^[12] and by a suretyship agreement executed by petitioners Llave, Yu and Yuanlian. The suretyship agreement^[13] was executed on March 3, 1983.

The promissory note was twice extended. When MEA completed construction of several housing units entitling it to P3,330,277.60 from Metrobank, the amount was applied as follows:

- a. partial liquidation of the P3,000,000.00 advance made by MEA in the amount of P1,500,000.00;
- b. various other accounts payable by MEA to or assumed by it in favor of Metrobank in the amount of P1,253,511.14;
- c. balance received by or credited to the account of MEA in the amount of P576,716.45.

As a result of the partial liquidation, petitioners executed a new promissory note^[14] in favor of Metrobank for the remaining P1,500,000 balance out of the original

P3,000,000.

By May 10, 1983, MEA finished 45 single detached units, evidenced by certificates of completion authenticated by CRC, MEA, Metrobank and HFC.

On November 4, 1983 MEA informed Metrobank of the suspension of its operations and that it would resume operations after arrangements regarding the letter of credit were finalized.

Metrobank paid P3,274,263.22 for the 45 finished detached houses—P1,830,227.60 in irrevocable domestic letter of credit and P1,444,035.62 in cash evidenced by a certificate of full payment.^[15]

On January 31, 1984 MEA informed Metrobank and CRC of its work resumption.^[16]

In its February 9, 1984 reply,^[17] Metrobank advised MEA to hold off construction work until after CRC would have sold a substantial number of the completed units. It was to their mutual benefit to reduce their exposure to the project.

In a letter^[18] dated June 11, 1984, MEA objected to the indefinite suspension and demanded payment for their work accomplishments, plus interest and charges.

In the meantime, MEA defaulted on the P1.5 Million promissory note which matured February 6, 1984. Hence, on September 25, 1984, Metrobank instituted Civil Case No. 8532 for the recovery of the amount covered by the promissory note plus interest in the sum of P1,800,840.

In their answer with compulsory counterclaim, MEA and other petitioners admitted the execution of the promissory note as well as the continuing suretyship. However, they denied any liability to Metrobank on the ground that the promissory note and continuing suretyship failed to reflect the true intent and agreement of the parties. They contended that the real agreement of the parties was not a "straight" or simple loan payable within a fixed period of time but an advance payment scheme tied up with the agreements relative to the execution of construction work in the CRC-Multinational Village Project, to be liquidated from payments expected to become due to MEA. In support thereof, they also invoked the tripartite agreement among CRC, MEA and Metrobank.

On July 18, 1991, the trial court decided in favor of MEA and found that the promissory note covering the P1.5 million was not really a "straight" or simple loan. It ruled:

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WHEREFORE, in view of all the foregoing, the Court hereby renders judgment in favor of the defendants and against the plaintiff, ordering the latter to pay the former:

1. the sum of P18,200,000.00 representing the actual fair market value of construction work already performed by defendant MEA including the cost of filling materials advanced by it at the CRC Multinational Village minus the amount of P1.5 million covered by the promissory note dated November 7, 1983;

2. the sum of P9,000,000.00 as actual and consequential damages suffered by defendant MEA up to April 1984;
3. the sum equivalent to three percent (3%) per month on the sums due as above stated, starting May 1984 until the above-mentioned amounts are fully paid;
4. the sum equivalent to 10% of all amounts found due to the defendants;
5. dismissing the plaintiff's complaint.

With costs.^[19]

On appeal, the Court of Appeals modified the decision of the trial court:

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To us, the P18,200,000.00 assessment by the court *a quo* was an over-computation.

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Also, the agreement between CRC and MEA Builders made mention of P39,256,880.00 as the total contract price; method of payment through cash (standby Letters of Credit from appellant bank); an HFC guarantee, but not a pre-condition to the contract; taxes; a system of retention; contractors work guarantee; completion of project; and final Certificate of Completion, the latter pre-supposing a Certificate of Completion stating that the project has been completed and accepted. This was amended on August 11, 1982, by increasing the contract price to P45,552,950.00.

The horizontal project, on the other hand, was stipulated only between CRC and MEA Builders, and mentioned filling materials to be advanced by MEA Builders, but to be reimbursed by CRC through a Letter of Credit from METROBANK; a schedule of completion; a contract amount of P7,755,000.00; a schedule of payment; and acceptance and final payment through a Final Certificate of Completion, and thereafter issuance of Letters of Credit as payment.

We also have before us the Progress Report with the corresponding amounts for the period ending January 18, 1983 (Exhs. 18 and 18-A), for P2,691,685.45; the Progress Report (Exh. 20), also dated January 18, 1983 for P6,384,184.00; and then finally, the Progress Report dated January 20, 1983 (Exh. 19), horizontal construction, for P6,889,560.30. Obviously, Exh. 20 is only a duplicate original of the Progress Report dated January 18, 1983. This means a total of 120 units were built for Lots 9, 10 and 4. Built were townhouses of two models, duplex and single detached units. Admittedly, a total of 45 single detached housing units were already paid (Exh. M) in the total amount of P3,274,263.82.

Necessarily, the appellant bank should only be held answerable for an amount definitely less than P18,200,000.00, or the cost of the units being mentioned in Exh. 20, less P3,274,263.22, and still less the balance of the unpaid loan.