

FIRST DIVISION

[G.R. No. 117190, January 02, 1997]

**JACINTO TANGUILIG DOING BUSINESS UNDER THE NAME AND
STYLE J.M.T. ENGINEERING AND GENERAL MERCHANDISING,
PETITIONER, VS. COURT OF APPEALS AND VICENTE HERCE JR.,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This case involves the proper interpretation of the contract entered into between the parties.

Sometime in April 1987 petitioner Jacinto M. Tanguilig doing business under the name and style J. M. T. Engineering and General Merchandising proposed to respondent Vicente Herce Jr. to construct a windmill system for him. After some negotiations they agreed on the construction of the windmill for a consideration of P60,000.00 with a one-year guaranty from the date of completion and acceptance by respondent Herce Jr. of the project. Pursuant to the agreement respondent paid petitioner a down payment of P30,000.00 and an installment payment of P15,000.00, leaving a balance of P15,000.00.

On 14 March 1988, due to the refusal and failure of respondent to pay the balance, petitioner filed a complaint to collect the amount. In his Answer before the trial court respondent denied the claim saying that he had already paid this amount to the San Pedro General Merchandising Inc. (SPGMI) which constructed the deep well to which the windmill system was to be connected. According to respondent, since the deep well formed part of the system the payment he tendered to SPGMI should be credited to his account by petitioner. Moreover, assuming that he owed petitioner a balance of P15,000.00, this should be offset by the defects in the windmill system which caused the structure to collapse after a strong wind hit their place.^[1]

Petitioner denied that the construction of a deep well was included in the agreement to build the windmill system, for the contract price of P60,000.00 was solely for the windmill assembly and its installation, exclusive of other incidental materials needed for the project. He also disowned any obligation to repair or reconstruct the system and insisted that he delivered it in good and working condition to respondent who accepted the same without protest. Besides, its collapse was attributable to a typhoon, a force majeure, which relieved him of any liability.

In finding for plaintiff, the trial court held that the construction of the deep well was not part of the windmill project as evidenced clearly by the letter proposals submitted by petitioner to respondent.^[2] It noted that "[i]f the intention of the parties is to include the construction of the deep well in the project, the same should be stated in the proposals. In the absence of such an agreement, it could be safely

concluded that the construction of the deep well is not a part of the project undertaken by the plaintiff."^[3] With respect to the repair of the windmill, the trial court found that "there is no clear and convincing proof that the windmill system fell down due to the defect of the construction."^[4]

The Court of Appeals reversed the trial court. It ruled that the construction of the deep well was included in the agreement of the parties because the term "deep well" was mentioned in both proposals. It also gave credence to the testimony of respondent's witness Guillermo Pili, the proprietor of SPGMI which installed the deep well, that petitioner Tanguilig told him that the cost of constructing the deep well would be deducted from the contract price of P60,000.00. Upon these premises the appellate court concluded that respondent's payment of P15,000.00 to SPGMI should be applied to his remaining balance with petitioner thus effectively extinguishing his contractual obligation. However, it rejected petitioner's claim of force majeure and ordered the latter to reconstruct the windmill in accordance with the stipulated one-year guaranty.

His motion for reconsideration having been denied by the Court of Appeals, petitioner now seeks relief from this Court. He raises two issues: firstly, whether the agreement to construct the windmill system included the installation of a deep well and, secondly, whether petitioner is under obligation to reconstruct the windmill after it collapsed.

We reverse the appellate court on the first issue but sustain it on the second.

The preponderance of evidence supports the finding of the trial court that the installation of a deep well was not included in the proposals of petitioner to construct a windmill system for respondent. There were in fact two (2) proposals: one dated 19 May 1987 which pegged the contract price at P87,000.00 (Exh. "1"). This was rejected by respondent. The other was submitted three days later, i.e., on 22 May 1987 which contained more specifications but proposed a lower contract price of P60,000.00 (Exh. "A"). The latter proposal was accepted by respondent and the construction immediately followed. The pertinent portions of the first letter-proposal (Exh. "1") are reproduced hereunder -

In connection with your Windmill System and Installation, we would like to quote to you as follows:

One (1) Set - Windmill suitable for 2 inches diameter deepwell, 2 HP, capacity, 14 feet in diameter, with 20 pieces blade, Tower 40 feet high, including mechanism which is not advisable to operate during extra-intensity wind. Excluding cylinder pump.

UNIT CONTRACT PRICE P87,000.00

The second letter-proposal (Exh. "A") provides as follows:

In connection with your Windmill system Supply of Labor Materials and Installation, operated water pump, we would like to quote to you as follows -

One (1) set - Windmill assembly for 2 inches or 3 inches deep-well pump, 6 Stroke, 14 feet diameter, 1-lot blade materials, 40 feet Tower complete with standard

appurtenances up to Cylinder pump, shafting U.S. adjustable International Metal.

One (1) lot - Angle bar, G. I. pipe, Reducer Coupling, Elbow Gate valve, cross Tee coupling.

One (1) lot - Float valve.

One (1) lot - Concreting materials foundation.

F. O. B. Laguna

Contract Price P60,000.00

Notably, nowhere in either proposal is the installation of a deep well mentioned, even remotely. Neither is there an itemization or description of the materials to be used in constructing the deep well. There is absolutely no mention in the two (2) documents that a deep well pump is a component of the proposed windmill system. The contract prices fixed in both proposals cover only the features specifically described therein and no other. While the words "deep well" and "deep well pump" are mentioned in both, these do not indicate that a deep well is part of the windmill system. They merely describe the type of deep well pump for which the proposed windmill would be suitable. As correctly pointed out by petitioner, the words "deep well" preceded by the prepositions "for" and "suitable for" were meant only to convey the idea that the proposed windmill would be appropriate for a deep well pump with a diameter of 2 to 3 inches. For if the real intent of petitioner was to include a deep well in the agreement to construct a windmill, he would have used instead the conjunctions "and" or "with." Since the terms of the instruments are clear and leave no doubt as to their meaning they should not be disturbed.

Moreover, it is a cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration^[5] and, in case of doubt, their contemporaneous and subsequent acts shall be principally considered.^[6] An examination of such contemporaneous and subsequent acts of respondent as well as the attendant circumstances does not persuade us to uphold him.

Respondent insists that petitioner verbally agreed that the contract price of P60,000.00 covered the installation of a deep well pump. He contends that since petitioner did not have the capacity to install the pump the latter agreed to have a third party do the work the cost of which was to be deducted from the contract price. To prove his point, he presented Guillermo Pili of SPGMI who declared that petitioner Tanguilig approached him with a letter from respondent Herce Jr. asking him to build a deep well pump as "part of the price/contract which Engineer (Herce) had with Mr. Tanguilig."^[7]

We are disinclined to accept the version of respondent. The claim of Pili that Herce Jr. wrote him a letter is unsubstantiated. The alleged letter was never presented in court by private respondent for reasons known only to him. But granting that this written communication existed, it could not have simply contained a request for Pili to install a deep well; it would have also mentioned the party who would pay for the undertaking. It strains credulity that respondent would keep silent on this matter and leave it all to petitioner Tanguilig to verbally convey to Pili that the deep well