

## TWELFTH DIVISION

[ CA-G.R. CV No. 96318, May 07, 2014 ]

**NOEL R. IGNACIO, PLAINTIFF-APPELLEE, VS. MANILA KYOWA, INC., DEFENDANT-APPELLANT.**

### D E C I S I O N

**PAREDES, J.:**

#### THE CASE

THIS IS ON THE APPEAL filed by Manila Kyowa, Inc. (*Manila Kyowa*) from the Decision<sup>[1]</sup> dated July 30, 2009 issued by the Regional Trial Court, Branch 146, Makati City (*RTC*), in Civil Case No. 03-1071 for collection of sum of money with damages.

#### The ANTECEDENTS

Noel Ignacio (*Ignacio*) filed a Complaint<sup>[2]</sup> for sum of money with damages against Manila Kyowa alleging that: He is engaged in the business of communication networking and installation of cell sites/towers and satellite/cable communication equipment and doing business under the name and style "NRI Telecom Construction Network". Sometime in the months of July to December 2001, Manila Kyowa contracted his services for various works, i.e. installation of towers, antennas and restoration works, specified in the work orders issued by Manila Kyowa, for an agreed total consideration of P3,070,000.00 excluding variation works. In the course of the engagement, variation works needed were also performed by Ignacio, billing Manila Kyowa for the said services. Despite completion of the works, Manila Kyowa failed to pay the balance of the agreed consideration and the variation works performed. Demand letters were sent to Manila Kyowa but to no avail. As of June 13, 2002, the unpaid obligation amounted to P856,363.25. Ignacio referred the matter to his counsel who sent a demand letter to Manila Kyowa on September 12, 2002, still, Manila Kyowa refused to pay. Ignacio prays that Manila Kyowa should be made to pay the following sums: (1) P856,363.25 plus interest, representing actual damages; (2) P300,000.00 as exemplary damages; (3) P100,000.00 plus P2,500.00 for every hearing, as and for attorney's fees; and (4) cost of suit.

Manila Kyowa filed its Answer<sup>[3]</sup> denying the averments in the Complaint and, by way of affirmative defense, that: The filing of the Complaint is premature since there is still an offer of reconciliation which remains unanswered by Ignacio; and, the Compliant states no cause of action since the avenue for compromise and settlement has not been exhausted.

Pre-Trial was conducted<sup>[4]</sup> and, thereafter, trial ensued.

Ignacio testified<sup>[5]</sup> basically reiterating the allegations in his Complaint. However, he failed to identify the original copies of the work orders since, according to him, these

were in the possession of Manila Kyowa. They only received facsimile copies which they photocopied. He also explained how they arrived at the balance of P856,000.00, thus:

Contract Work Order	Contract Amount	Payment	Balance
ATO Cauayan	P1,575,000.00	P1,550,000.00	P25,000.00
ATO CDO	P575,000.00	P344,000.00	P231,000.00
ATO Tuguegarao	P500,000.00	P260,000.00	P240,000.00
Metro Center	P300,000.00	P180,000.00	P120,000.00
Additional work – Cauayan	P120,000.00	P105,000.00	P15,000.00
Variation works for ATO Tuguegarao	P33,412.50	P0	P33,412.50
Variation works for ATO CDO	P185,550.75	P0	P185,550.75
Manpower for CAD Operator	P6,400.00		P6,400.00
		Total Balance	P856,363.25

For Manila Kyowa, Herminigildo Zuñiga, accountant, testified<sup>[6]</sup> that: Manila Kyowa entered into a Sub-contract Agreement (*Agreement*) with Ignacio, particularly for the ATO Cauayan Air Transportation. The Agreement was already implemented and payments were made to Ignacio. The amount claimed by Ignacio is incorrect since there were some payments which were not acknowledged and some variation orders which were not included in the Agreement. Payments which were not acknowledged by Ignacio can be proven by the check vouchers and acknowledgement receipts. Further, Ignacio charged them for labor which was not in the Agreement. The variation works are still subject for approval by management before Manila Kyowa pays. Whenever they have a dispute with other sub-contractors, they settle through arbitration under Article 18 of the Agreement.

The parties submitted their respective formal offer of exhibits, as follows:

***Plaintiff's exhibits***<sup>[7]</sup>

<b>Exhibit</b>	<b>Description</b>
"A" to "E"	Various work orders of Manila Kyowa to NRI Telecom and Construction Network
"F" and "G"	Billings for variation works performed
"H" and "H-1"	Billing for the supply of manpower dated December 5, 2001 with attached Daily Time Record of Manila Kyowa
"I"	Demand Letter dated September 11, 2002 addressed to Manila Kyowa
"J"	Billing Status as of June 13, 2002, detailing the claim in the amount of P856,363.25
"K" to "Q"	Various demand letters sent and received by Manila Kyowa

***Defendant's exhibits***<sup>[8]</sup>

<b>Exhibit</b>	<b>Description</b>
"1"	Check Voucher No. CV 2362 A dated May 17, 2001 in the amount of P80,000.00
"2"	Check Voucher No. CV 2614 C dated July 12, 2001 in the amount of P35,000.00
"2-a"	Official Receipt No. 0022 dated July 12, 2001 in the amount of P35,000.00
"3"	Check Voucher No. CV 4628 dated June 27, 2002 in the amount of P50,000.00
"3-a"	Official Receipt No. 0094 dated June 28, 2002 in the amount of P49,090.91
"4"	Check Voucher No. CV 4711 dated July 31, 2002 in the amount of P30,000.00
"4-a"	Official Receipt No. 0097 in the amount of P30,000.00

"5"	Check Voucher No. CV 4857 dated September 13, 2002 in the amount of P30,000.00
"5-a"	Official Receipt No. 0098 dated September 16, 2002 in the amount of P29,454.55
"6"	Subcontract Agreement between Ignacio and Manila Kyowa

On July 30, 2009, the RTC rendered a Decision<sup>[9]</sup>, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff against the defendant, ordering the latter to pay the former the following:

1. Six hundred thirty four thousand ninety pesos & 81/100 (P634,090.81) as actual damages representing the mitigated obligation of the defendant plus interest at the legal rate from the filing of the complaint until fully paid;
2. Exemplary damages in the amount of fifty thousand (P50,000.00) pesos;
3. One hundred thousand (P100,000.00) pesos for and as attorney's fees; and
4. Cost of suit.

SO ORDERED.

Manila Kyowa filed a Motion for Reconsideration<sup>[10]</sup> but the same was denied in the Order<sup>[11]</sup> dated September 28, 2010 for lack of merit. Thus, this Appeal.

### **ASSIGNMENT OF ERRORS**

Manila Kyowa assigned<sup>[12]</sup> the following errors:

#### **I.**

THE TRIAL COURT ERRED IN ACQUIRING JURISDICTION OVER THE PRESENT CASE IT BEING CLEARLY WITHIN THE JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) AS PROVIDED BY THE SUB-CONSTRUCTION AGREEMENT ENTERED INTO BETWEEN PLAINTIFF-APPELLEE AND DEFENDANT-APPELLANT.

#### **II.**

THE TRIAL COURT ERRED IN NOT TAKING INTO CONSIDERATION DEFENDANT-APPELLANT'S OBJECTIONS AND COMMENTS TO THE PLAINTIFF-APPELLEE'S EXHIBITS THESE BEING MERELY PHOTOCOPIES AND SELF-SERVING EVIDENCE OF THE PLAINTIFF-APPELLEE.

#### **III.**