

THIRD DIVISION

[G.R. No. 199851, November 07, 2018]

NOELL WHESSOE, INC.,^[1] PETITIONER, V. INDEPENDENT TESTING CONSULTANTS, INC., PETROTECH SYSTEMS, INC., AND LIQUIGAZ PHILIPPINES CORP., RESPONDENTS.

DECISION

LEONEN, J.:

The contractor may be solidarily liable with the owner and the subcontractor for any unpaid obligations to the subcontractor's supplier despite the absence of a contract between the contractor and supplier. Full payment to the subcontractor, however, serves as a valid defense against this liability.

This resolves a Petition for Review on Certiorari^[2] assailing the Court of Appeals April 28, 2011 Decision^[3] and December 7, 2011 Resolution^[4] in CA-G.R. CV No. 89300, which affirmed the Regional Trial Court's finding that Noell Whessoe, Inc. (Noell Whessoe) was solidarily liable with Liquigaz Philippines Corporation (Liquigaz) and Petrotech Systems, Inc. (Petrotech) to Independent Testing Consultants, Inc. (Independent Testing Consultants) for unpaid fees of P1,063,465.70.

Independent Testing Consultants is engaged in the business of conducting non-destructive testing on the gas pipes and vessels of its industrial customers.^[5]

Sometime in June 1998, Petrotech, a subcontractor of Liquigaz, engaged the services of Independent Testing Consultants to conduct non-destructive testing on Liquigaz's piping systems and liquefied petroleum gas storage tanks located in Barangay Alas-Asin, Mariveles, Bataan.^[6]

Independent Testing Consultants conducted the agreed tests. It later billed Petrotech, on separate invoices, the amounts of P474,617.22 and P588,848.48 for its services. However, despite demand, Petrotech refused to pay.^[7]

Independent Testing Consultants filed a Complaint^[8] for collection of sum of money with damages against Petrotech, Liquigaz, and Noell Whessoe for P1,063,465.70 plus legal interest. It joined Noell Whessoe as a defendant, alleging that it was Liquigaz's contractor that subcontracted Petrotech.^[9]

In its Answer,^[10] Liquigaz argued that Independent Testing Consultants had no cause of action against it since there were no contractual relations between them and that any contract that Independent Testing Consultants had was with its subcontractors.^[11]

Noell Whessoe, on the other hand, denied that it was Liquigaz's contractor and that its basic role was merely to supervise the construction of its gas plants.^[12] It

argued that any privity of contract was only with Petrotech. Thus, it asserted that Petrotech alone should be liable to Independent Testing Consultants.^[13] Noell Whessoe later submitted a Formal Offer of Documentary Exhibits^[14] showing that Liquigaz engaged Whessoe Projects Limited (Whessoe UK), a limited company organized under the laws of the United Kingdom, for the construction of its storage facilities.^[15] Whessoe UK, in turn, engaged Noell Whessoe, a separate and distinct entity, to be the construction manager for the Mariveles Terminal Expansion Project.^[16] The documents further stated that Whessoe UK had already paid in full its contractual obligations to Petrotech.^[17]

For its part, Petrotech alleged that upon Noell Whessoe's approval, Independent Testing Consultants was chosen to conduct the non-destructive testing on Liquigaz's liquefied petroleum gas storage vessel under the supervision of OIS, an inspection firm from the United Kingdom, and of Nick Stephenson (Stephenson).^[18] However, it averred that it later received a letter from Noell Whessoe withdrawing its approval for Independent Testing Consultants' continued services. Independent Testing Consultants' services allegedly failed to satisfy the standards set by the OIS and Stephenson.^[19] Petrotech further claimed that due to Independent Testing Consultants' poor performance, it incurred additional costs. Thus, it prayed that Independent Testing Consultants be ordered to pay the additional costs as actual damages.^[20]

The Regional Trial Court later declared Petrotech in default for failure to appear during the pre-trial conference.^[21]

In its March 7, 2005 Decision,^[22] the Regional Trial Court found Liquigaz, Noell Whessoe, and Petrotech solidarity liable to Independent Testing Consultants. It ruled that Liquigaz was liable considering that it was the entity which directly benefited from Independent Testing Consultants' services. It likewise held that Noell Whessoe, as the main contractor of the project, could not escape liability. Petrotech, as the subcontractor of the project, was also held liable.^[23] The dispositive portion of the Regional Trial Court March 7, 2005 Decision read:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Liquigaz Philippine Corp., Noell Whessoe, Inc. and Petrotech Systems, Inc.

1) Ordering all defendants to pay plaintiff jointly and severally the amount of Php 1,063,465.70 plus legal rate of interest from December 1, 1998 until it is fully paid;

2) Ordering the defendants to pay attorney's fees equivalent to 25% of the principal amount of claim; and, the costs of suit.

SO ORDERED.^[24]

Only Noell Whessoe and Liquigaz appealed to the Court of Appeals.^[25] Thus, the Regional Trial Court March 7, 2005 Decision became final as to Petrotech.^[26]

In its April 28, 2011 Decision,^[27] the Court of Appeals affirmed the Regional Trial Court March 7, 2005 Decision and found that Noell Whessoe, Petrotech, and

Liquigaz were liable to Independent Testing Consultants. It found that Whessoe UK, as contractor, assigned construction management to Noell Whessoe, effectively stepping into the shoes of Whessoe UK. Hence, Noell Whessoe could not disclaim knowledge that Petrotech engaged the services of Independent Testing Consultants, considering its admission that it later sent a letter to Petrotech withdrawing its approval of the engagement.^[28] The Court of Appeals, however, held that Noell Whessoe's liability did not preclude it from demanding reimbursement from Petrotech for any amount paid.^[29]

The Court of Appeals likewise found that Liquigaz had knowledge, as early as January 1999, that one of its subcontractors, Petrotech, failed to fulfill its contractual obligations in the amount of P1,063,465.70 to another subcontractor, Independent Testing Consultants.^[30] It likewise found that Liquigaz still owed Noell Whessoe the amount of US\$9,000.00, which it could have withheld subject to Petrotech's fulfillment of its contractual obligations. Thus, Liquigaz was liable to Independent Testing Consultants, but only up to the amount of US\$9,000.00, which it could also demand from Petrotech.^[31] The dispositive portion of the Court of Appeals April 28, 2011 Decision read:

WHEREFORE, the instant appeals are PARTLY GRANTED. The Decision of the RTC, Branch 161, Pasig City, dated March 7, 2005, is hereby AFFIRMED with MODIFICATIONS.

1. Defendants WHESSOE and PETROTECH are ordered to pay plaintiff-appellee jointly and severally the total claim of P1,063,465.70 plus legal rate of interest from December 1, 1998 until it is fully paid. On the other hand, the liability of defendant-appellant LIQUIGAZ, in case it is required to satisfy the judgment herein, is limited only to the amount of US\$9,000.00, or its peso equivalent at the time of payment, with right of reimbursement from PETROTECH.
2. The cross-claim of defendant-appellant WHESSOE against PETROTECH is GRANTED. The latter is ordered to reimburse WHESSOE in the event that it will be made to satisfy the judgment herein.
3. Defendants are ordered to pay the costs of suit. However, the award of attorney's fees in favor of plaintiff-appellee is DELETED.

SO ORDERED.^[32]

Noell Whessoe filed a Motion for Reconsideration, which was denied by the Court of Appeals in its December 7, 2011 Resolution.^[33] Hence, it filed this Petition^[34] before this Court.

Petitioner asserts that it should not have been made solidarity liable to respondent Independent Testing Consultants since it had no privity of contract with the latter. It maintains that the Contract Agreement for the Mariveles Terminal Expansion Project^[35] was between Liquigaz and Whessoe UK, an entity separate and distinct from petitioner. It likewise asserts that the Pipework and Mechanical Equipment

Installation Subcontract^[36] for the testing and delivery of subcontracting works was between Whessoe UK and Petrotech. It explained that the Conditions of Contract for Supply of Professional, Technical and Management Services^[37] between Whessoe UK and petitioner was not intended to be a deed of assignment where petitioner would step into Whessoe UK's shoes as contractor but was rather merely an undertaking to supply professional, technical, and management services.^[38]

Petitioner maintains that it cannot be bound by the contract between Whessoe UK and Petrotech simply because it sent a letter to Petrotech expressing dissatisfaction or disapproval of respondent Independent Testing Consultants' services.^[39] It likewise points out that even assuming that there was privity of contract, Whessoe UK had already paid in full its contractual obligations to Petrotech.^[40] Thus, it asserts that it was entitled to moral damages of P1,000,000.00 since "the filing of this baseless and unfounded case . . . has tarnished its good business name and standing by giving the erroneous and false impression to the public that it is a company that reneges on its obligations."^[41]

Respondent Independent Testing Consultants, on the other hand, counters that petitioner directly approved and commissioned its services, as admitted by Petrotech in its Answer before the Regional Trial Court.^[42] It claims that petitioner never introduced evidence that it had already paid Petrotech, and that its allegation that it was not the same entity being sued was negated by its Answer before the Regional Trial Court.^[43] Thus, respondent argues that petitioner was not entitled to any of its counterclaims.^[44]

From the arguments of the parties, this Court is asked to resolve the issue of whether or not petitioner Noell Whessoe, Inc. can be held solidarily liable with respondents Liquigaz Philippines Corporation and Petrotech Systems, Inc. for unpaid fees to respondent Independent Testing Consultants, Inc. Assuming that petitioner Noell Whessoe, Inc. was not liable, this Court is further asked to resolve the issue of whether or not it was entitled to moral damages.

I

To resolve the issue of whether petitioner is solidarily liable with Liquigaz and Petrotech, this Court must first pass upon petitioner's argument that it is a separate and distinct entity from Whessoe UK, the signatory of the contracts with them. This, however, is a question of fact.

As a general rule, only questions of law can be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.^[45] The distinction between a question of fact and a question of law is settled. There is a question of law if the issue can be determined without reviewing or evaluating the evidence on record. Otherwise, the issue raised is a question of fact.^[46]

Petitioner raises an issue that has already been factually determined by both the Regional Trial Court and the Court of Appeals. For this Court to pass upon the same issue, it would have to review and evaluate the evidence presented before the lower courts. Clearly then, petitioner raises a question of fact.

Appeal is not a matter of right but of sound judicial discretion.^[47] This Court may, in its discretion, entertain questions of fact if they fall under certain exceptions,

summarized in *Medina v. Mayor Asistio, Jr.* :^[48]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.^[49] (Citations omitted)

Petitioner's assignment of the Court of Appeals' alleged errors centers on the Court of Appeals' interpretation of the provisions of the Conditions of Contract for Supply of Professional, Technical and Management Services,^[50] and the Letter^[51] dated June 29, 1998. Therefore, it alleges that the Court of Appeals' judgment was based on a misapprehension of facts. Any review requires a reevaluation of these two (2) documents mentioned.

The presence of any of the exceptions to the general rule, however, does not automatically place the case under this Court's review. This Court explained in *Pascual v. Burgos*^[52] that the party claiming an exception "must demonstrate and prove"^[53] that a review of the factual findings is necessary.

Petitioner has not alleged that it raised a question of fact, much less allege that this case falls under any of the exceptions. This would have merited the denial of the Petition since this Court is not a trier of facts. Petitioner, however, argues that this case falls under the considerations stated in Rule 45, Section 6 of the Rules of Court:

Section 6. Review discretionary. — A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

(a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or

(b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

In particular, petitioner alleges that: