

## THIRD DIVISION

**[ G.R. No. 212058, December 07, 2015 ]**

**STAR ELECTRIC CORPORATION, PETITIONER, VS. R & G  
CONSTRUCTION DEVELOPMENT AND TRADING, INC.,  
RESPONDENT.**

### **D E C I S I O N**

**VELASCO JR., J.:**

#### **Nature of the Case**

This is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 95008, reversing and setting aside the Decision of the Regional Trial Court of Parañaque City, Branch 196 (RTC) which granted petitioner Star Electric Corporation's complaint for collection of sum of money against respondent R & G Construction Development and Trading, Inc.

#### **The Facts**

In May 2002, petitioner, as sub-contractor, entered into a Construction Contract with respondent where it undertook the installation of electrical, plumbing, and mechanical works in a commercial building known as Grami Empire Hotel (the Project) for the amount of P2,571,457.21<sup>[1]</sup> payable via the progress billing method. <sup>[2]</sup> As stipulated, construction of the project commenced upon the signing of the contract, and respondent paid petitioner P500,000 and P80,000 as downpayment and advance payment, respectively.

Subsequent developments saw respondent refusing to pay petitioner's progress billings despite repeated demands. Because of this, petitioner informed respondent through a letter dated September 20, 2002 that it would be stopping its work at the project site until the amount due under the progress billings is fully paid. Petitioner made it clear, however, that it is amenable to terminate their contract, without prejudice to its claim for payment.<sup>[3]</sup>

The next day, on September 21, 2002, petitioner received a letter from respondent formally terminating the Construction Contract.<sup>[4]</sup> In the said letter, respondent informed petitioner that it had conducted a detailed inspection of its work and found that: (1) most of the delivered breakers were secondhand; and (2) the rough-in materials such as full-boxes and PVC conduit pipes were installed improperly. Further, respondent stated that it found petitioner's overall progress of work to be 23.13% and, thus, the downpayment of P580,000 already fully compensated petitioner's effort.

In its reply letter of September 24, 2002,<sup>[5]</sup> petitioner attributed project delay to the several modifications in the building's construction plan. It argued that respondent should have rejected the electrical panel boards right away and before delivery. Petitioner also insisted that without the electrical panel boards, the extent of its completion should be at least 40%, including all unused materials on site. Petitioner also suggested the appointment of an independent appraiser to evaluate and finally resolve the rate of completion. Finally, petitioner requested that it be allowed to pull-out from the project site its tools and equipment, enumerated in the letter.

As its demand letter dated October 14, 2002<sup>[6]</sup> went unheeded, petitioner filed, on April 4, 2003, a complaint for the payment of sum of money against respondent before the RTC. In the complaint, petitioner, as plaintiff, prayed that respondent be ordered to pay it P1,235,052.70 representing the amount due under the following progress billings:

Progress Billing No. 1 <sup>[7]</sup>	August 18, 2002	P356,129.26
Change Order No. 1 <sup>[8]</sup>	August 18, 2002	50,000.00
Progress Billing No. 2 <sup>[9]</sup>	September 12, 2002	278,250.66
Progress Billing No. 3 <sup>[10]</sup>	September 13, 2002	345,100.00
Progress Billing No. 4 <sup>[11]</sup>	October 1, 2002	<u>205,472.82</u>
	<b>Total</b>	<b>P1,235,052.70</b>

On October 20, 2003, petitioner filed an **amended complaint** where it lowered the amount of its claim to P771,152.48. In arriving at this lower figure, petitioner subtracted respondent's downpayment of P580,000 from P1,235,052.70 and added P116,100 which, allegedly, represented the cost of petitioner's tools and equipment withheld by respondent at the project site.<sup>[12]</sup>

On August 29, 2004, petitioner sent respondent another letter demanding payment for a final billing dated November 3, 2002<sup>[13]</sup> in the amount of P498,581.35.<sup>[14]</sup> Petitioner explained that this final billing was presented sometime in November 2002 to respondent's Project Engineer, Ronnie Lauzon, who, however, refused to receive the billing document.

On October 4, 2004, petitioner filed a second amended complaint increasing its claim to P1,269,734.05.<sup>[15]</sup> It alleged that it should have included in its computation the amount of P498,581 which was reflected in the November 3, 2002 final billing. In its Motion to Admit Second Amended Complaint,<sup>[16]</sup> petitioner explained that it failed to include this final billing in its original complaint and first amended complaint because the same was misplaced and was discovered only sometime during the 2<sup>nd</sup> week of August 2004 of August 2004.

For its part, respondent asserted that it disapproved the payment for the progress billings for a reason and not arbitrarily.<sup>[17]</sup> As alleged, petitioner was guilty of delay

and unacceptable workmanship of its alleged finished work. Further, respondent insisted that it already made a complete payment of P580,000, proportionate to respondent's actual finished work which passed the generally accepted standards of good workmanship and which was 23.13% of the contract amount, P2,571,457.21. [18]

Respondent said that it has expressed its dissatisfaction to petitioner, first, through a September 12, 2002 memo addressed to the latter's general manager, Gerald R. Martinez (Martinez), complaining of delay, [19] and thereafter, through a September 17, 2002 memo rejecting the room panel boards in the building's third floor due to uneven surface finish and ordering rectification at petitioner's cost.

To remedy petitioner's defective work, respondent allegedly engaged the services of CP Giron Enterprises (CP Giron) and PTL Power Corporation (PTL Power), which respectively charged P558,730 and P161,810 for the reworks, restorations, and rectifications these two subcontractors had undertaken on the project. Thus, as counterclaim, respondent sought for the reimbursement of the foregoing expenses it incurred to repair and complete the work of petitioner.

### **RTC Decision**

On November 16, 2009, the RTC rendered judgment in favor of petitioner, respondent being ordered to pay the former P1,153,534.09, [20] with legal interest plus attorney's fees and cost of suit. [21]

The trial court found respondent's allegation of defective works as self-serving and considered petitioner to have faithfully performed its obligations in accordance with the Construction Contract. Further, the RTC explained that respondent could not benefit from its allegation of delay when it allowed petitioner to work up to November 3, 2002 and caused a number of changes in the project. The RTC expounded:

With the mild objection by defendant on alleged defective works, defendant is not entirely opposed to the line of evidence of plaintiff in squarely proving the line of construction activity made by the latter to the construction project which services remained partially unpaid. In fact, born by the testimony of defendant's witness, Engineer Lauson he evaluated the project to be 30% complete to his satisfaction at the time that 4<sup>th</sup> progress billing was given to him for liquidation to signify that plaintiff had complied with the contract of services to October 1, 2002, or two (2) months beyond the original contract period, and it was only unfortunate that the principal owner, of the hotel was unsatisfied with the work of plaintiff who was contracted out by defendant company, nevertheless, the engagement and consummation of the sub-contract agreement was properly undertaken by plaintiff up to November 3, 2002, or beyond the original period for construction.

It cannot be gainsaid that plaintiff was in delay considering defendant permitted the continuity of construction activity up to the time of the progress billing of November 3, 2002, despite the fact that there might be minor objections to the construction activity of plaintiff. Defendant cannot gain premium to an alleged delay in the project when it had caused numerous renovation on the installation projects and even raised the level of the floor area of the construction works which would

practically cause an implied amendment to the construction period and the activity attending the same given the multitude of activities confronting plaintiff. The interpretation of the extended period for the contract period should be interpreted in favor of both parties, and the period of five months for the construction project which was substantially performed by plaintiff is reasonable enough to undertake the various electrical, plumbing, mechanical and related works.

Defendants self-serving statements over its claimed defective works of plaintiff does not stand the test of evidence when the project engineer of defendant failed to present better or cogent evidence to really show that the circuit breakers installed in the project were second hand and the pipe installation and electrical boxes were defective. In effect, plaintiff is considered to have regularly and faithfully installed materials in good working condition in accordance with the contract entered into by the parties. Furthermore, in the absence of substantial line of objection other than a bare notice or other defective works, there remains no reason for defendant to insist on the same which remains entirely imaginary if not untrue for want of evidence.<sup>[22]</sup>

x x x x

WHEREFORE, premises considered, judgment is herewith rendered in favor of plaintiff Star Electric Corporation and defendant R&G Construction Development and Trading, Inc. is ordered to pay plaintiff the amount of One Million One Hundred Fifty-Three Thousand Six Hundred Thirty-four pesos and Nine Centavos (Php1,153,634.09) representing the unpaid value of the service contract to the defendant company, with legal interest from demand; the amount of One Hundred Twenty Thousand Pesos (Php120,000) representing Attorney's fees and costs of suit.<sup>[23]</sup>

Respondent then appealed to the CA.

### **CA Decision**

By Decision dated July 17, 2013,<sup>[24]</sup> the CA reversed and set aside the RTC Decision and entered a new one dismissing petitioner's complaint and ordering the latter to pay respondent P540,009.75 as liquidated damages.

The appellate court predicated its ruling on the following premises: petitioner's work was, indeed, defective and that the materials it installed in the building were substandard. On the other hand, respondent likewise violated its obligations under the Construction Contract when it entered into agreements with CP Giron and PTL Power without giving petitioner the opportunity to repair its defective work. Being both guilty of breach of contract, the CA declared that each party should bear its own loss. The CA held:

What is clear was that the works performed by the plaintiff-appellee were defective and the materials it used were of poor quality leaving the defendant-appellant with no choice but to demand for the rectification of the same at plaintiff-appellee's expense and thereafter engaged the services of another contractor to remedy the defective works and finish the project as well. In fact, when defendant-appellant obtained the services of CP Giron Enterprises and PTL Power Corporation, it was charged Php558,730.00 and Php161,810.00, respectively, for the

reworks, restorations, repairs, and rectifications these two sub-contractors had undertaken on the project.

At any rate, we find that the defendant-appellant has its own share of breach of the Construction Contract. Like the plaintiff-appellee, it likewise failed to comply with its undertaking to afford the plaintiff-appellee the opportunity to rectify the defects in their works and proceeded instead to unilaterally hire another contractor to finish the project. In its letter dated September 24, 2004, plaintiff-appellee explained that it had tried to replace and correct immediately the works which defendant-appellant found unacceptable. Yet, the former found their efforts and works still way below their standard notwithstanding defendant-appellant's close monitoring.

x x x x

Using as yardstick the foregoing ruling, we are of the view that both parties committed breach of certain provisions in their Construction Contract and each shall bear their own loss. Thus, whatever collectible plaintiff-appellee has with defendant-appellant, the same shall be reasonably offset to the expenses the latter had shouldered in securing the services of other contractors who undertook the remedial works on the project.<sup>[25]</sup>

The CA, however, found that, indeed, petitioner incurred delay in the construction of the project, in the process disagreeing with the RTC's disquisition on the implied extension of the project when respondent "permitted the continuity of the construction activity up to the time of the progress billing of November 2002 x x x." According to the CA, the RTC's holding would imply a partial novation due to the change in the period of the contract. The appellate court explained, however, that novation is never presumed and requires an overt or explicit act to bind the parties. Here, the CA held that there was no novation of the contract especially as to the period agreed upon. Thus, the appellate court assessed petitioner P540,009.75 as liquidated damages in accordance with the formula stated in the Construction Contract. The dispositive portion of the CA Decision reads:

**WHEREFORE**, above premises duly considered, the instant appeal is **GRANTED**. The impugned decision of the Regional Trial Court of Parañaque City, Branch 196 dated November 16, 2009 is **REVERSED AND SET ASIDE** and a new one is entered **DISMISSING** plaintiff-appellee's complaint and ordering the latter to pay defendant-appellant the sum of P540,009.75 as liquidated damages.<sup>[26]</sup>

The CA denied petitioner's motion for reconsideration on April 1, 2014.<sup>[27]</sup> Thus, petitioner filed the instant petition.

### **Issue**

Whether the CA erred in setting aside the RTC Decision and in ordering petitioner to pay respondent liquidated damages for its alleged delay in the construction of the project.