

## SECOND DIVISION

**[ G.R. No. 199781, February 18, 2013 ]**

**LICOMCEN, INC., PETITIONER, VS. ENGR. SALVADOR ABAINZA,  
DOING BUSINESS UNDER THE NAME AND STYLE "ADS  
INDUSTRIAL EQUIPMENT," RESPONDENT.**

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

**CARPIO, J.:**

#### **The Case**

This petition for review<sup>[1]</sup> assails the 21 September 2011 Decision<sup>[2]</sup> and the 6 December 2011 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CV No. 86296. The Court of Appeals affirmed the 7 November 2005 Decision<sup>[4]</sup> of the Regional Trial Court, Branch 8, Legazpi City, in Civil Case No. 9919, which ordered petitioner LICOMCEN, Inc. (petitioner) to pay respondent Engr. Salvador Abainza (respondent) the sum of P1,777,202.80 plus 12% interest per annum, P50,000 attorney's fees, and P20,000 litigation and incidental expenses.

#### **The Facts**

Respondent filed an action for sum of money and damages against Liberty Commercial Center, Inc. (Liberty). Respondent alleged that in 1997 and 1998, he was hired by Liberty to do various projects in their commercial centers, mainly at the LCC Central Mall, Naga City, for the supply, fabrication, and installation of air-conditioning ductworks. Respondent completed the project, which included some changes and revisions of the original plan at the behest of Liberty. However, despite several demands by respondent, Liberty failed to pay the remaining balance due on the project in the sum of P1,777,202.80.

Liberty denied the material allegations of the complaint and countered that the collection suit was not filed against the real party-in-interest. Thus, respondent amended his complaint to include petitioner as defendant.<sup>[5]</sup> The HRD Administrative Manager of Liberty testified that petitioner LICOMCEN, Inc. is a sister company of Liberty and that the incorporators and directors of both companies are the same.

#### **The Ruling of the Trial Court**

The trial court found that petitioner's claim that it has fully paid respondent the total cost of the project in the sum of P6,700,000 pertains only to the cost of the original plan of the project. However, the additional costs of P1,777,202.80 incurred for labor, materials, and equipment on the revised plan were not paid by petitioner.

As found by the trial court, petitioner (then defendant) ordered and approved the

revisions in the original plan, thus:

During the awarding of the work, defendants wanted the aircon duct[s] changed from rectangular to round ducts because Ronald Tan, one of the LCC owners who came from abroad, suggested round aircon ducts he saw abroad were preferable. Plaintiff prepared a plan corresponding to the changes desired by the defendants (*Exhibits "D", "D-1", "D-2"*).

The changing of the rectangular ducts to round ducts entailed additional cost in labor and materials. Plaintiff had to remove the rectangular ducts installed, resize it to round ducts and re-install again. More G.I. Sheets were needed and new fittings as well, because the fittings for the rectangular ducts cannot be used in the round duct. There were movements of the equipment. In the original plan, the air handling unit (AHU) was [o]n the ground floor. It was relocated to the second floor. There were additional air ducting in the two big comfort rooms for customers, an exhaust blower to the dondon and discaminos, fresh air blower and lock machine at the food court were installed.

Because of the changes, defendants wanted the tonnage of the refrigeration (TR) to be increased to cool up the space. The 855 tons capacity was increased to 900 [sic] tons. These changes entailed additional expense for labor and materials in the sum of Php1,805,355.62 (*Exhibits "F" to "F-26"*).

Plaintiff's work was being monitored by Es De Castro and Associates (ESCA), defendant's engineering consultant. Paper works for the approval of ESCA are signed by Michal Cruz, an electrical engineer, and Jake Ozaeta, mechanical engineer, both employees of the defendants and a certain Mr. Tan, a representative of defendants who actually supervises the construction. Plaintiff presented the cost changes on the rework and change to 960 ton capacity. The total balance payable to plaintiff by defendant is Php 1,777.202.80 (Exhibit "G-42"). Accomplishment report had been submitted by plaintiff and approved by ESCA, project was turned over in 1988 but plaintiff was not paid the balance corresponding to the changed plan of work and additional work performed by plaintiff. Series of communications demanding payment (*Exhibits "G-3" to "G-11", "G-13", "G-17" to "G-18", "G-23", "G-24", "G-25", "G-26", "G-35 to 42"*) were made but plaintiff [sic] refused to pay.<sup>[6]</sup>

On 7 November 2005, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, decision is hereby rendered in favor of the plaintiff and against defendant LICOMCEN, Inc. ordering the latter to pay the plaintiff the sum of Php1,777,202.80 as its principal obligation with interest at 12% per annum until the amount is fully paid, the sum of Php50,000.00 as attorney's fess [sic] and Php20,000.00 as litigation and incidental expenses. Costs against defendant LICOMCEN,

Inc.

The case against Liberty Commercial Center, Inc. is hereby ordered DISMISSED.

SO ORDERED.<sup>[7]</sup>

### **The Ruling of the Court of Appeals**

Petitioner appealed the trial court's Decision to the Court of Appeals, invoking Article 1724 of the Civil Code which provides:

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties.

The Court of Appeals stated that petitioner never raised Article 1724 of the Civil Code as a defense in the trial court. Citing Section 1, Rule 9 of the Rules of Court<sup>[8]</sup> and the case of *Bank of the Philippine Islands v. Leobrera*,<sup>[9]</sup> the Court of Appeals ruled that petitioner cannot be allowed to change its theory on appeal since the adverse party would then be deprived of the opportunity to present further evidence on the new theory. Besides, the Court of Appeals held that Article 1724 of the Civil Code is not even applicable to the case because the Contract of Agreement was never signed by the parties considering that there were substantial changes to the original plan as the work progressed. Thus, the Court of Appeals affirmed the trial court's Decision, finding petitioner liable to respondent for the additional costs in labor and materials due to the revisions in the original project.

Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 6 December 2011. Hence, this petition.

### **The Issue**

The issue in this case is whether petitioner is liable for the additional costs incurred for labor, materials, and equipment on the revised project.

### **The Ruling of the Court**

We find the petition without merit.

In this case, petitioner invoked Article 1724 of the Civil Code as a defense against