

THIRD DIVISION

[G.R. No. 173155, March 21, 2012]

R.S. TOMAS, INC., PETITIONER, VS. RIZAL CEMENT COMPANY, INC., RESPONDENT.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner R.S. Tomas, Inc. against respondent Rizal Cement Company, Inc. assailing the Court of Appeals (CA) Decision^[1] dated December 19, 2005 and Resolution^[2] dated June 6, 2006 in CA-G.R. CV No. 61049. The assailed decision reversed and set aside the Regional Trial Court^[3] (RTC) Decision^[4] dated June 5, 1998 in Civil Case No. 92-1562.

The facts of the case, as culled from the records, are as follows:

On December 28, 1990, respondent and petitioner entered into a Contract^[5] for the supply of labor, materials, and technical supervision of the following projects:

1. **J.O. #P-90-212** – Wiring and installation of primary and secondary lines system.
2. **J.O. #P-90-213** – Supply and installation of primary protection and disconnecting switch.
3. **J.O. #P-90-214** – Rewinding and conversion of one (1) unit 3125 KVA, 34.5 KV/2.4 KV, 3ø Transformer to 4000 KVA, 34.5 KV/480V, 3ø Delta Primary, Wye with neutral secondary.^[6]

Petitioner agreed to perform the above-mentioned job orders. Specifically, it undertook to supply the labor, equipment, supervision, and materials as specified in the detailed scope of work.^[7] For its part, respondent agreed to pay the total sum of P2,944,000.00 in consideration of the performance of the job orders. Petitioner undertook to complete the projects within one hundred twenty (120) days from the effectivity of the contract.^[8] It was agreed upon that petitioner would be liable to respondent for liquidated damages in the amount of P29,440.00 per day of delay in the completion of the projects which shall be limited to 10% of the project cost.^[9] To secure the full and faithful performance of all its obligations and responsibilities under the contract, petitioner obtained from Times Surety & Insurance Co. Inc. (Times Insurance) a performance bond^[10] in an amount equivalent to fifty percent (50%) of the contract price or P1,458,618.18. Pursuant to the terms of the contract,

respondent made an initial payment of P1,458,618.18 on January 8, 1991.^[11]

In a letter^[12] dated March 9, 1991, petitioner requested for an extension of seventy-five (75) days within which to complete the projects because of the need to import some of the materials needed. In the same letter, it also asked for a price adjustment of P255,000.00 to cover the higher cost of materials.^[13] In another letter^[14] dated March 27, 1991, petitioner requested for another 75 days extension for the completion of the transformer portion of the projects for failure of its supplier to deliver the materials.

On June 14, 1991,^[15] petitioner manifested its desire to complete the project as soon as possible to prevent further losses and maintain goodwill between the companies. Petitioner requested for respondent's assistance by facilitating the acquisition of materials and supplies needed to complete J.O. #P-90-212 and J.O. #P-90-213 by directly paying the suppliers. It further sought that it be allowed to back out from J.O. #P-90-214 covering the rewinding and conversion of the damaged transformer.

In response^[16] to petitioner's requests, respondent, through counsel, manifested its observation that petitioner's financial status showed that it could no longer complete the projects as agreed upon. Respondent also informed petitioner that it was already in default having failed to complete the projects within 120 days from the effectivity of the contract. Respondent further notified petitioner that the former was terminating the contract. It also demanded for the refund of the amount already paid to petitioner, otherwise, the necessary action would be instituted. Respondent sent another demand letter^[17] to Times Insurance for the payment of P1,472,000.00 pursuant to the performance bond it issued.

On November 14, 1991,^[18] respondent entered into two contracts with Geostar Philippines, Inc. (Geostar) for the completion of the projects commenced but not completed by petitioner for a total consideration of P3,435,000.00.

On December 14, 1991, petitioner reiterated its desire to complete J.O. #P-90-212 and J.O. #P-90-213 and to exclude J.O. #P-90-214,^[19] but the same was denied by respondent in a letter^[20] dated January 14, 1992. In the same letter, respondent pointed out that amicable settlement is impossible. Hence, the *Complaint for Sum of Money*^[21] filed by respondent against petitioner and Times Surety & Insurance Co., Inc. praying for the payment of the following: P493,695.00 representing the amount which they owed respondent from the downpayment and advances made by the latter *vis-à-vis* the work accomplishment; P2,550,945.87 representing the amount incurred in excess of the cost of the projects as agreed upon; P294,000.00 as liquidated damages; plus interest and attorney's fees.^[22]

Times Insurance did not file any pleading nor appeared in court. For its part, petitioner denied^[23] liability and claimed instead that it failed to complete the projects due to respondent's fault. It explained that it relied in good faith on respondent's representation that the transformer subject of the contract could still be rewound and converted but upon dismantling the core-coil assembly, it discovered that the coils were already badly damaged and the primary bushing

broken. This discovery allegedly entailed price adjustment. Petitioner thus requested respondent for additional time within which to complete the project and additional amount to finance the same. Petitioner also insisted that the proximate cause of the delay is the misrepresentation of the respondent on the extent of the defect of the transformer.

After the presentation of the parties' respective evidence, the RTC rendered a decision on June 5, 1998 in favor of petitioner, the dispositive portion of which reads:

Wherefore, finding defendant-contractor's evidence more preponderant than that of the plaintiff, judgment is hereby rendered in favor of the defendant-contractor against the plaintiff and hereby orders:

- (1) that the instant case be DISMISSED;
- (2) that plaintiff pays defendant the amount of P4,000,000.00; for moral and exemplary & other damages;
- (3) P100,000.00 for attorney's fees and cost of suit.

SO ORDERED.^[24]

The RTC held that the failure of petitioner to complete the projects was not solely due to its fault but more on respondent's misrepresentation and bad faith.^[25] Therefore, the Court dismissed respondent's complaint. Since respondent was found to have committed deceit in its dealings with petitioner, the court awarded damages in favor of the latter.^[26]

Respondent, however, successfully obtained a favorable decision when its appeal was granted by the CA. The appellate court reversed and set aside the RTC decision and awarded respondent P493,695.34 for the excess payment made to petitioner, P508,510.00 for the amount spent in contracting Geostar and P294,400.00 as liquidated damages.^[27] Contrary to the conclusion of the RTC, the CA found that petitioner failed to prove that respondent made fraudulent misrepresentation to induce the former to enter into the contract. It further held that petitioner was given the opportunity to inspect the transformer before offering its bid. ^[28] This being so, the CA added that petitioner's failure to avail of such opportunity is inexcusable, considering that it is a company engaged in the electrical business and the contract involved a sizable amount of money.^[29] As to the condition of the subject transformer unit, the appellate court found the testimony of petitioner's president insufficient to prove that the same could no longer be rewound or converted.^[30] Considering that advance payments had been made to petitioner, the court deemed it necessary to require it to return to respondent the excess amounts, *vis-à-vis* its actual accomplishment.^[31] In addition to the refund of the excess payment, the CA also ordered the reimbursement of what respondent paid to Geostar for the unfinished projects of petitioner as well as the payment of liquidated damages as stipulated in the contract.^[32]

Aggrieved, petitioner comes before the Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues: (1) whether or not respondent was guilty of fraud or misrepresentation as to the actual condition of the transformer subject of the contract;^[33] (2) whether or not the evidence presented by petitioner adequately established the true nature and condition of the subject transformer;^[34] (3) whether or not petitioner is guilty of inexcusable delay in the completion of the projects;^[35] (4) whether or not petitioner is liable for liquidated damages;^[36] and (5) whether or not petitioner is liable for the cost of the contract between respondent and Geostar.^[37]

The petition is without merit.

The case stemmed from an action for sum of money or damages arising from breach of contract. The contract involved in this case refers to the rewinding and conversion of one unit of transformer to be installed and energized to supply respondent's power requirements.^[38] This project was embodied in three (3) job orders, all of which were awarded to petitioner who represented itself to be capable, competent, and duly licensed to handle the projects.^[39] Petitioner, however, failed to complete the projects within the agreed period allegedly because of misrepresentation and fraud committed by respondent as to the true nature of the subject transformer. The trial court found that respondent indeed failed to inform petitioner of the true condition of the transformer which amounted to fraud thereby justifying the latter's failure to complete the projects. The CA, however, had a different conclusion and decided in favor of respondent. Ultimately, the issue before us is whether or not there was breach of contract which essentially is a factual matter not usually reviewable in a petition filed under Rule 45.^[40]

In resolving the issues, the Court inquires into the probative value of the evidence presented before the trial court.^[41] Petitioner, indeed, endeavors to convince us to determine once again the weight, credence, and probative value of the evidence presented before the trial court.^[42] While in general, the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal to the Court because it is not a trier of facts,^[43] there are recognized exceptions^[44] as when the findings of fact are conflicting, which is obtaining in this case. The conflicting conclusions of the trial and appellate courts impel us to re-examine the evidence presented.

After a thorough review of the records of the case, we find no reason to depart from the conclusions of the CA.

It is undisputed that petitioner and respondent entered into a contract for the supply of labor, materials, and technical supervision primarily for the rewinding and conversion of one (1) unit of transformer and related works aimed at providing the power needs of respondent. As agreed upon by the parties, the projects were to be completed within 120 days from the effectivity of the contract. Admittedly, however, respondent failed, not only to perform its part of the contract on time but, in fact, to complete the projects. Petitioner tried to exempt itself from the consequences of said breach by passing the fault to respondent. It explained that its failure to complete the project was due to the misrepresentation of the respondent. It claimed that more time and money were needed, because the condition of the subject transformer was worse than the representations of respondent. Is this defense

tenable?

We answer in the negative.

Records show that petitioner indeed asked for price adjustment and extension of time within which to complete the projects. In its letter^[45] dated March 9, 1991, petitioner anchored its request for extension on the following grounds:

1. To maximize the existing 3125 KVA to 4000 KVA capacity using the same core, we will replace the secondary windings from rectangular type to copper sheet which is more accurate in winding to the required number of turns than using parallel rectangular or circular type of copper magnet wires. However, these copper sheets are not readily available locally in volume quantities, and therefore, we will be importing this material and it will take 60 days minimum time for its delivery.
2. We also find it difficult to source locally the replacement for the damaged high voltage bushing.
3. The delivery of power cable no. 2/0 will also be delayed. This will take 90 days to deliver from January 1991.^[46]

Also in its letter^[47] dated March 27, 1991, petitioner informed respondent that the projects would be completed within the contract time table but explained that the delivery of the transformer would only be delayed. The reasons advanced by petitioner to justify the delay are as follows:

1. Our supplier for copper sheets cannot complete the delivery until April 30, 1991.
2. Importation of HV Bushing will take approximately 45 days delivery per advice of our supplier. x x x^[48]

Clearly, in the above letters, petitioner justified its inability to complete the projects within the stipulated period on the alleged unavailability of the materials to be used to perform the projects as stated in the job orders. Nowhere in said letters did petitioner claim that it could not finish the projects, particularly the conversion of the transformer unit because the defects were worse than the representation of respondent. In other words, there was no allegation of fraud, bad faith, concealment or misrepresentation on the part of respondent as to the true condition of the subject transformer. Even in its letter^[49] dated May 25, 1991, petitioner only requested respondent that payment to the first progress billing be released as soon as possible and without deduction. It further proposed that respondent make a direct payment to petitioner's suppliers.

It was only in its June 14, 1991 letter^[50] when petitioner raised its observations that the subject transformer needed more repairs than what it knew during the bidding. ^[51] In the same letter, however, petitioner repeated its request that direct