

THIRD DIVISION

[G.R. No. 188072, October 19, 2011]

EMERITA M. DE GUZMAN, PETITIONER, VS. ANTONIO M. TUMOLVA, RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court assailing the February 24, 2009 Decision^[1] of the Court of Appeals (CA) and its May 26, 2009 Resolution^[2] in CA-G.R. SP. No. 104945 entitled "*Antonio M. Tumolva v. Emerita M. De Guzman*."

The Facts

On September 6, 2004, petitioner Emerita M. De Guzman (*De Guzman*), represented by her attorneys-in-fact, Lourdes Rivera and Dhonna Chan, and respondent Antonio Tumolva, doing business under the name and style A.M. Tumolva Engineering Works (*the Contractor*), entered into a Construction Agreement^[3] (*Agreement*) for the construction of an orphanage consisting of an administration building, directors/guests house, dining and service building, children's dormitory, male staff house, and covered walkways in Brgy. Pulong Bunga, Purok 4, Silang, Cavite, for a contract price of P15,982,150.39. Incorporated in the Agreement was the plan and specifications of the perimeter fence. The Contractor, however, made deviations from the agreed plan^[4] with respect to the perimeter fence of the orphanage.

On September 6, 2005, after the completion of the project, De Guzman issued a Certificate of Acceptance. For his part, the Contractor issued a quitclaim acknowledging the termination of the contract and the full compliance therewith by De Guzman.

In November 2006, during typhoon "Milenyo," a portion of the perimeter fence collapsed and other portions tilted. In her Letter dated December 5, 2006, De Guzman, through counsel, demanded the repair of the fence in accordance with the plan. In response, the Contractor claimed that the destruction of the fence was an act of God and expressed willingness to discuss the matter to avoid unnecessary litigation. De Guzman, however, reiterated her demand for the restoration of the wall without additional cost on her part, or in the alternative, for the Contractor to make an offer of a certain amount by way of compensation for the damages she sustained. Her demand was not heeded.

On February 14, 2008, De Guzman filed a Request for Arbitration^[5] of the dispute before the Construction Industry Arbitration Commission (CIAC). She alleged that

the Contractor deliberately defrauded her in the construction of the perimeter fence by "under sizing the required column rebars from 12mm. based on the plan to only 10mm., the required concrete hollow blocks from #6 to #5, and the distance between columns from 3.0m to 4.3m."^[6] Further, the Contractor neither anchored the lentes beams to the columns nor placed drains or weepholes along the lower walls. She prayed for an award of actual, moral and exemplary damages, as well as attorney's fees and expenses of litigation, and for the inspection and technical assessment of the construction project and the rectification of any defect.

In his Answer with Counterclaim, the Contractor denied liability for the damaged fence claiming, among others, that its destruction was an act of God. He admitted making deviations from the plan, but pointed out that the same were made with the knowledge and consent of De Guzman through her representatives, Architect Quin Baterna and Project Engineer Rodello Santos (*Engineer Santos*), who were present during the construction of the fence. He further argued that pursuant to the Agreement, the claim for damages was already barred by the 12-month period from the issuance of the Certificate of Acceptance of the project within which to file the claim. He, thus, prayed for the dismissal of the action and interposed a counterclaim for actual and compensatory damages for the additional work/change orders made on the project in the amount of P2,046,500.00, attorney's fees and litigation expenses.

After due proceedings, the CIAC issued the Award dated July 17, 2008 in favor of De Guzman, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered and **AWARD** is made on the monetary claims of Claimant **EMERITA M. DE GUZMAN**, directing **Respondent Contractor ANTONIO M. TUMOLVA**, to pay her the following amounts:

P187,509.00 as **actual damages** for reconstructing the collapsed and damaged perimeter fence.

Interest is awarded on the foregoing amount at the **legal rate of 6% per annum** computed from the date of this Award. After finality thereof, interest at the rate of **12%** per annum shall be paid thereon until full payment of the awarded amount shall have been made, *"this interim period being deemed to be at that time already a forbearance of credit"* (*Eastern Shipping Lines, Inc. v. Court of Appeals* (243 SCRA 78 ^[1994]))

P100,000.00 as **moral damages**.

P100,000.00 as **exemplary damages**.

P50,000.00 for attorney's fees and expenses of litigation.

P437,509.00 - TOTAL AMOUNT DUE THE CLAIMANT

The CIAC staff is hereby directed to make the necessary computation of how much has been paid by Claimant as its proportionate share of the arbitration costs totaling **P110,910.44**, which computed amount shall be reimbursed by Respondent to the Claimant.

SO ORDERED.^[7]

Aggrieved, the Contractor filed before the CA a Petition for Review with prayer for the issuance of a temporary restraining order, challenging the CIAC's award of damages in favor of De Guzman.

On February 24, 2009, the CA modified the Award rendered by CIAC. The dispositive portion of the decision states:

WHEREFORE, the instant petition is **partly GRANTED**. The assailed Award dated July 17, 2008 rendered by the CIAC in CIAC Case No. 03-2008 is hereby **MODIFIED**, deleting the award of actual, moral and exemplary damages, but awarding temperate damages in the amount of P100,000.00 for reconstructing the collapsed and damaged perimeter fence. The rest of the Award stands.

SO ORDERED.^[8]

The CA held that although the Contractor deviated from the plan, CIAC's award of actual damages was not proper inasmuch as De Guzman failed to establish its extent with reasonable certainty. The CA, however, found it appropriate to award temperate damages considering that De Guzman suffered pecuniary loss as a result of the collapse of the perimeter fence due to the Contractor's negligence and violation of his undertakings in the Agreement. It further ruled that there was no basis for awarding moral damages reasoning out that De Guzman's worry for the safety of the children in the orphanage was insufficient to justify the award. Likewise, it could not sustain the award of exemplary damages as there was no showing that the Contractor acted in wanton, reckless, fraudulent, oppressive, or malevolent manner.

De Guzman filed a motion for reconsideration of the said decision, but it was denied for lack of merit by the CA in its Resolution dated May 26, 2009.

Hence, De Guzman interposed the present petition before this Court anchored on the following

GROUND

(I)

THE COURT OF APPEALS ERRED IN RULING THAT THE EVIDENCE ON RECORD FAILED TO SUFFICIENTLY ESTABLISH THE AMOUNT OF ACTUAL DAMAGES THAT PETITIONER DE GUZMAN CAN RECOVER FROM THE RESPONDENT.

(II)

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER DE

GUZMAN IS NOT ENTITLED TO AWARDS OF MORAL AND EXEMPLARY DAMAGES.^[9]

De Guzman argues *inter alia* that the Contractor is liable for the actual damages that she suffered from the collapse of the perimeter fence. He failed to put weep holes on the collapsed portion of the said fence, which could have relieved the pressure from the wet soil of the adjoining higher ground.

De Guzman adds that the computation of the cost of rebuilding the collapsed portion of the perimeter fence by Engineer Santos constituted substantial evidence warranting an award of actual damages. His affidavit served as his direct testimony in the case even if he did not appear during the hearing. Having been notarized, it must be admissible in evidence without further proof of authenticity.

Further, De Guzman questions the CA's deletion of the award for moral and exemplary damages. She insists that her anxiety and suffering over the safety of the children in the orphanage entitled her to an award of moral damages. It is likewise her position that the Contractor's wanton acts of deliberately cheating the benefactors of the orphanage by making deviations on the approved plan through the use of construction materials of inferior quality warranted the imposition of exemplary damages against the Contractor.

The Court's ruling

There is no doubt that De Guzman incurred damages as a result of the collapse of the perimeter fence. The Contractor is clearly guilty of negligence and, therefore, liable for the damages caused. As correctly found by the CA:

Nonetheless, the Court sustains the CIAC's conclusion that the CONTRACTOR was negligent in failing to place weepholes on the collapsed portion of the perimeter fence. Fault or negligence of the obligor consists in his failure to exercise due care and prudence in the performance of the obligation as the nature of the obligation so demands, taking into account the particulars of each case. It should be emphasized that even if not provided for in the plan, the CONTRACTOR himself admitted the necessity of putting weepholes and claimed to have actually placed them in view of the higher ground elevation of the adjacent lot *vis-à-vis* the level ground of the construction site. Since he was the one who levelled the ground and was, thus, aware that the lowest portion of the adjoining land was nearest the perimeter fence, he should have ensured that sufficient weepholes were placed because water would naturally flow towards the fence.

However, the CONTRACTOR failed to refute Mr. Ramos' claim that the collapsed portion of the perimeter fence lacked weepholes. Records also show that the omission of such weepholes and/or their being plastered over resulted from his failure to exercise the requisite degree of supervision over the work, which is the same reason he was unable to discover the deviations from the plan until the fence collapsed. Hence, the CONTRACTOR cannot be relieved from liability therefor.^[10]

The Court finds no compelling reason to deviate from this factual finding by the CIAC, as affirmed by the CA. It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.^[11]

CIAC's award of actual damages, however, is indeed not proper under the circumstances as there is no concrete evidence to support the plea. In determining actual damages, one cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best evidence obtainable regarding specific facts that could afford some basis for measuring compensatory or actual damages.^[12] Article 2199 of the New Civil Code defines actual or compensatory damages as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages.

Unfortunately, De Guzman failed to adduce evidence to satisfactorily prove the amount of actual damage incurred. Contrary to her assertion, the handwritten calculation of reconstruction costs made by Engineer Santos and attached to his affidavit cannot be given any probative value because he never took the witness stand to affirm the veracity of his allegations in his affidavit and be cross-examined on them. In this regard, it is well to quote the ruling of the Court in the case of *Tating v. Marcella*,^[13] to wit:

There is no issue on the admissibility of the subject sworn statement. However, the admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. It is settled that affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiant. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.

Neither is there any evidence presented to substantiate Engineer Santos' computation of the reconstruction costs. For such computation to be considered, there must be some other relevant evidence to corroborate the same.^[14] Thus, the