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THIRD DIVISION

[G.R. No. 173181, March 03, 2010]

HUTAMA-RSEA/SUPERMAX PHILS., J.V., PETITIONER, VS. KCD BUILDERS CORPORATION, REPRESENTED BY ITS PRESIDENT CELSO C. DIOKNO, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 14, 2005 and the Resolution[2] dated June 19, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 78262.

The Facts

The facts of the case, as summarized by the CA, are as follows:

> On 10 December 2001, appellee KCD Builders Corporation filed a complaint for sum of money against appellants [Hutama-RSEA/Super Max, Philippines and/or Charles H.C. Yang] before the Regional Trial Court of Makati. Its cause of action arose from a written contract which was the Notice to Proceed dated 10 November 2000 executed by the parties whereby appellant [Hutama] as principal contractor of Package 2-Site Works in Philips Semiconductors Phils. Inc. - Integrated Circuits Plant Phase II Project located at the Light Industry and Science Park of the Philippines-2 (LISPP-2) Calamba, Laguna contracted with appellee [KCD] as sub-contractor for the said project. The final billing dated 20 September 2001 was submitted to appellant Charles H.C. Yang, and despite a joint evaluation by the parties through their respective representatives who agreed on the amount [of] P2,967,164.71 as HUTAMA's total obligation to appellee [KCD], and a letter of demand, appellant corporation [Hutama] failed and refused to pay.
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> Summons was served on appellants [Hutama and Yang] on 8 February 2002 which was received by their secretary, Ms. Evelyn Estrabela in behalf of the two defendants [Hutama and Yang]. On 21 February 2002, their counsel filed an Entry of Appearance and Motion for Extension of time to File Responsive Pleading. They were given a 20-day extension period to file the responsive pleading, or until 16 March 2002.
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> On 11 April 2002, appellee [KCD] filed a Motion to Declare Defendant/s [Hutama and Yang] in Default for failure to file the responsive pleading within the extended period, and set the same for hearing on 26 April 2002.

On 23 April 2002, appellant Charles H.C. Yang filed a Motion to Dismiss for failure of the complaint to state a case of action against him, as he merely signed the sub-contract between the parties not for his personal benefit but only in behalf of appellant HUTAMA. On the same date, appellant HUTAMA filed an Urgent Motion to Admit Attached Answer with Compulsory Counterclaim, together with the said answer.

During the hearing on appellee's [KCD's] motion to declare defendant/s [Hutama and Yang] in default, the trial court noted the filing of appellants' [Hutama and Yang's] respective motion to dismiss and answer with counterclaim but noted that the filing thereof on 27 March 2002 was too late considering that they were only given an extended period up [to] 16 March 2002 to do the same. Thus, the trial court granted the motion to declare defendants [Hutama and Yang] in default and directed, upon appellee's [KCD's] motion, the presentation of evidence ex-parte before the branch clerk of court who was appointed as commissioner to received evidence.

Appellants [Hutama and Yang] filed an Urgent Motion to Set Aside Order of Default. During the hearing, the trial court ordered appellee [KCD] to file an opposition or comment. After the Manifestation filed by appellee [KCD] on 24 June 2002, the trial court set anew the hearing on the motion to set aside order of default on 22 August 2002, but appellants [Hutama and Yang] failed to appear. The trial court then denied the said motion in the Order dated 19 September 2002.

During the ex-parte presentation of evidence, appellee's [KCD's] witness Celso C. Dioko testified that there was a contract executed between appellants [Hutama and Yang] and appellee [KCD] regarding the construction of Package 2 Site Works in Philips Semiconductor Phils. Inc., Calamba, Laguna where appellee [KCD] was the sub-contractor as evidenced by a Notice to Proceed. After the completion of the project, he [Dioko] billed them the total amount of P3,009,954.05. After they [Hutama and Yang] received the bill, they asked him [Dioko] to have a joint evaluation by their engineer and his engineer on site. The authorized engineer to evaluate the amount arrived at was Engr. Jose De Asis. Thus, their authorized engineers came out with the total amount of P2,967,164.71 as cost of the project. After the joint evaluation, he [Dioko] again sent the bill to appellant Charles H.C. Yang and wrote a letter to HUTAMA to pay the final billing. The appellants [Hutama and Yang], however, failed to comply with the demand. Upon the filing of this case, appellee [KCD] paid P30,000.00 acceptance fee and P3,000.00 per appearance fee and a contingency of 15% of the total amount due as attorney's fees.

Engr. Jose De Asis testified that he is an employee of appellee corporation [KCD] and knows the appellants [Hutama and Yang] to be the representatives of HUTAMA. He was the one who prepared the final evaluation and the total outstanding obligation inside the office of Philips Conductors [in] Calamba, Laguna. He and appellants [Hutama and Yang]

were present when the agreement was prepared and the amount agreed upon was promised to be paid to Dioko.[3]

On February 20, 2003, the Regional Trial Court (RTC) rendered a decision[4] in favor of KCD Builders Corporation (KCD), *viz*.:

> WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of the plaintiff [KCD] as against the defendant[s Hutama and Yang], ordering the defendants to:
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> 1.) Pay the plaintiff [KCD] the amount of P2,967,164.71 representing the defendants [Hutama and Yang's] total indebtedness in favor of the plaintiff [KCD] with interest of 12% per annum from October 11, 2001, until the same has been fully paid;
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> 2.) Pay the plaintiff [KCD] 5% of the total amount awarded plus P30,000.00 acceptance fees and P3,000.00 appearance fees as and by way of attorney's fees; and
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> 3.) Costs of the suit.
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> SO ORDERED.[5]

Aggrieved, Hutama Semiconductor Phils., Inc. (Hutama) and Charles H.C. Yang (Yang) filed an appeal before the CA. On October 14, 2005, the CA rendered a Decision,[6] the dispositive portion of which reads:

> **WHEREFORE**, the foregoing considered, the assailed decision is hereby modified by dismissing the complaint against appellant Charles H.C. Yang for lack of cause of action. The decision is AFFIRMED in all other respects.
>
> **SO ORDERED**.[7]

Unsatisfied, Hutama and Yang filed a motion for reconsideration; however, the same was denied in a Resolution[8] dated June 19, 2006.

Hence, this petition.

The Issues

Petitioner assigned the following errors:

I

> THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS, REVERSIBLE ERROR, IF NOT GRAVE ABUSE OF DISCRETION, IN

REFUSING TO RESOLVE AS TO -

(A) WHETHER OR NOT THE COURT *A QUO* COMMITTED SERIOUS, REVERSIBLE ERROR, WHEN IT FAILED TO CONSIDER THAT RESPONDENT ABANDONED THE PROJECT AND IT IS THE LATTER (sic) LIABLE TO PETITIONER;

(B) WHETHER OR NOT THE COURT *A QUO* COMMITTED SERIOUS, REVERSIBLE ERROR, WHEN IT DENIED PETITIONER'S RIGHTS TO PRESENT ITS EVIDENCE IN VIOLATION OF ITS CONSTITUTIONAL RIGHTS TO DUE PROCESS; AND

(C) WHETHER OR NOT THE COURT A QUO COMMITTED SERIOUS, REVERSIBLE ERROR, WHEN IT FAILED TO CONSIDER THAT RESPONDENT FAILED TO COMPLY WITH SECTION 5, RULE 7 OF THE 1997 RULES OF CIVIL PROCEDURE ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING;

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS, REVERSIBLE ERROR, IF NOT GRAVE ABUSE OF DISCRETION, IN DENYING PETITIONER['S] MOTION FOR RECONSIDERATION WITHOUT STATING CLEARLY AND DISTINCTLY THE FACTUAL AND LEGAL BASIS THEREOF.[9]

In sum, the sole issue for resolution is whether the CA erred in affirming the decision of the RTC as to the liability of Hutama to KCD.

The Ruling of the Court

We resolve to deny the petition.

First, Hutama assails the decision of the CA based on its claim that it is KCD which owes them a sum of money because the latter abandoned the project. In other words, Hutama is asking this Court to review the factual findings of the RTC and the CA. This position of petitioner is untenable.

A petition under Rule 45 of the Rules of Court shall raise only questions of law. As a rule, findings of fact of a trial judge, when affirmed by the CA, are binding upon the Supreme Court. This rule admits of only a few exceptions, such as when the findings are grounded entirely on speculations, surmises or conjectures; when an inference made by the appellate court from its factual findings is manifestly mistaken, absurd or impossible; when there is grave abuse of discretion in the appreciation of facts; when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; when there is a misappreciation of facts; when the findings of fact are conclusions without