

## FIRST DIVISION

[ G.R. No. 167942, June 29, 2010 ]

**ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. CATHAY PACIFIC STEEL CORPORATION,  
(CAPASCO), RESPONDENT.**

### D E C I S I O N

#### **DEL CASTILLO, J.:**

Parties would do well to always be conscious of their freedom to accept or reject printed stipulations supplied by only one party that form part of the contract they enter into. Failure to object to such stipulations, which are not excessive or unconscionable, will bind them to its performance.

This Petition for Review assails the August 18, 2004 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV. No. 66741 which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Antipolo City, Branch 73 in Civil Case No. 98-5093. Also assailed is the May 3, 2005 Resolution<sup>[3]</sup> denying the motion for reconsideration.

#### ***Factual Antecedents***

On several occasions between June and July of 1997, petitioner Asian Construction and Development Corp. purchased from respondent Cathay Pacific Steel Corp. various reinforcing steel bars worth P2,650,916.40 covered by a total of 12 invoices. On November 21, 1997, petitioner made a partial payment of P2,159,211.49, and on March 2, 1998, another partial payment of P250,000, leaving a balance of P214,704.91. Respondent sent two demand letters dated May 12, 1998, and August 10, 1998, respectively, but no payment was made by petitioner. On November 24, 1998, respondent filed a complaint for a sum of money and damages with the RTC of Antipolo, docketed as Civil Case No. 98-5093.

In its answer, petitioner denied that it authorized the purchases/purchase orders from the respondent; it alleged that no demand for payment was made or received by petitioner, it had no knowledge as to the truth of the invoices, statement of accounts and letters as they were never received by petitioner, it had not received the reinforcing steel bars, the amount billed by respondent was bloated and no deduction was made for the corresponding payments made by petitioner and that it had not agreed to pay interest and attorney's fees.

#### ***Ruling of the Regional Trial Court***

After the pre-trial conference was terminated, trial of the case on the merits was set. Hearing of the case was postponed several times. During the hearing on November 22, 1999, petitioner and its counsel were absent despite notice, and upon

motion of the respondent, the trial court granted and set the *ex-parte* hearing of the case before a designated commissioner. On December 1, 1999, respondent presented its sole witness, David O. Chua (Chua), vice president of respondent company. Thereafter, respondent offered its evidence and rested its case.

On January 10, 2000, the trial court rendered a Decision in favor of the respondent, the *fallo* of which reads:

WHEREFORE, premises considered, defendant Asian [Construction] and Development Corporation is hereby ordered to pay to the plaintiff:

1. P319,050.48 inclusive of interest as of 17 November 1998 plus 2% interest per month until the full amount is paid;
2. P79,762.62 as attorney's fees and as appearance fees; and
3. The costs of suit.

SO ORDERED.<sup>[4]</sup>

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

Petitioner then appealed the case to the CA which found that based on the invoices there is a specific amount of interest agreed upon, which is 24% per annum. It also found that the outstanding balance of petitioner is P241,704.91 which must earn interest from May 12, 1998, which is the date of extra-judicial demand. The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the assailed decision is AFFIRMED with MODIFICATION in this wise:

`WHEREFORE, premises considered, defendant Asian Construction and Development Corporation is hereby ordered to pay to the plaintiff:

1. P241,704.91 plus 24% interest per annum from May 12, 1998 until finality of this decision;
2. 10% of the total amount due as attorney's fees; and
3. The costs of suit.

SO ORDERED.'

SO ORDERED.<sup>[5]</sup>

After the denial by the CA of its motion for reconsideration, petitioner filed the present petition for review on *certiorari*.

## **Issues**

Petitioner raises the following issues:

I- WHETHER X X X PETITIONER DID NOT QUESTION ITS LIABILITY IN ITS ANSWER.

II- WHETHER X X X THE TRIAL COURT AND COURT OF APPEALS ERRED IN ADMITTING THE PHOTOCOPIES OF THE DELIVERY RECEIPTS AND THE TESTIMONY OF MR. DAVID CHUA AS ADMISSIBLE IN EVIDENCE.

III- WHETHER X X X THE COURT OF APPEALS ERRED IN IMPOSING 24% PERCENT INTEREST FROM MAY 12, 1998 UNTIL FINALITY OF DECISION; AND

IV- WHETHER X X X RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.<sup>[6]</sup>

### ***Petitioner's Arguments***

Petitioner contends that it disputed in its Answer the liability imputed to it by respondent. It also contends that respondent failed to prove the affirmative allegations in the complaint. It argues that the photocopies of the delivery receipts were not admissible in evidence and that the witness Chua was incompetent to establish the admissibility of secondary evidence.

Petitioner also contends that the CA did not adhere to the precedent set in the landmark case of *Eastern Shipping Lines v. Court of Appeals*<sup>[7]</sup> in the computation of interest. It further argues that respondent is not entitled to an award of attorney's fees.

### ***Respondent's Arguments***

Respondent on the other hand contends that petitioner's affirmative defenses are not only inconsistent with each other but also reveals an admission of petitioner's obligation to respondent. Respondent also submits that it has duly proven its claim by a preponderance of evidence. The originals of the invoices were presented during the hearing and the loss of the delivery receipts was properly established by respondent, hence the admission of the secondary evidence was proper.

Respondent further submits that the interest rate of 24% per annum was expressly stipulated in the invoice and should thus be the rate used in the computation of the interest. It also contends that the award of attorney's fees is proper because it was constrained to engage the services of counsel and litigate in order to protect its interests.

## **Our Ruling**

The petition is partly meritorious.

*Obligation was duly established*