

FIRST DIVISION

[G.R. No. 162608, July 26, 2010]

**ADRIAN WILSON INTERNATIONAL ASSOCIATES, INC.,
PETITIONER, VS. TMX PHILIPPINES, INC., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

A claimant is entitled to be compensated reasonably and commensurately for what he or she has lost as a result of another's act or omission, and the amount of damages to be awarded shall be equivalent to what have been pleaded and adequately proven. Should the claimant fail to prove with exactitude the extent of injury he or she sustained, the court will still allow redress if it finds that the claimant has suffered due to another's fault.

In this petition for review on *certiorari*, petitioner Adrian Wilson International Associates, Inc. (AWIA) assails the Decision^[1] of the Court of Appeals (CA) dated August 14, 2003 in CA-G.R. CV No. 49272 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Makati City, Branch 150 by further ordering AWIA to pay to respondent TMX Philippines, Inc. (TMX) the amount of P1,546,084.00 representing the reimbursement of salaries of TMX's employees. AWIA now pleads that we reinstate the RTC Decision or reduce the amount of actual damages representing the reimbursement of the salaries of the TMX employees.

Factual Antecedents

TMX engaged the services of AWIA for the construction of its watch assembly plant located in the EPZA^[3]-run Mactan Export Processing Zone in Cebu (composed of twin modules and another separately designed module).^[4] Their Agreement^[5] dated December 29, 1978 provided that AWIA would provide basic and detailed architectural designs, plans, and specifications, as well as structural, mechanical, and electrical engineering services.

Specifically, one of AWIA's duties was construction administration, *i.e.*, to guard TMX from defects and deficiencies during the construction phase by determining the progress and quality of the work of the general contractor, P.G. Dakay Construction Company (P.G. Dakay). This is to ensure that this contractor works in accordance with the directed specifications.

Construction began in 1979 and was completed in 1980. After five years, however, TMX noticed numerous cracks and beam deflections (vertical shifting)^[6] along the roof girders and beams in columns B, C, F, and G of the twin modules. TMX, opining that the problem may have been due to design errors, informed AWIA of the situation.

In its report dated April 24, 1985,^[7] AWIA, thru its project manager Anthony R. Stoner, maintained that its structural roof design of the building was correct and that the building was not in danger of collapsing.

AWIA attributed the existing cracks along column line G to the marginal strength of the concrete that was poured during a heavy rainfall on July 18, 1979. This was based on a construction report dated July 19, 1979, furnished to TMX, of TMXP 2 Project Inspector/AWIA site representative Engr. Gavino Lacanilao (Engr. Lacanilao).

^[8] In his report, Engr. Lacanilao narrated that the night before, the concrete pouring operations on lines F and G of Bays 11-16, Section C of TMX's main building were temporarily suspended due to the following mistakes committed by the contractor in the pouring of concrete: a) the presence of rainwater that diluted the concrete; b) the failure to apply grout as a binder, and c) the use of concrete that was mixed for more than 45 minutes. To AWIA, these mistakes had cost the quality of the roof's concrete strength. AWIA thus suggested measures to correct the roof problem, one of them being the installation of a lally column using steel pipe sections.

TMX also sought the opinion of two architectural consultancy firms, the Fletcher-Thompson, Inc. (Fletcher-Thompson) and C.N. Ramientos and Associates. Both concluded that the cracks and displacements of the roof's structural system were due to AWIA's errors in the design calculations and in the factoring of live and dead load and concrete strengths.^[9]

Similar to the suggestion of AWIA, Fletcher-Thompson recommended the installation of lally columns. Thus, as preventive and corrective measure, TMX shored up the beams and girders with 118 steel lally columns in all the buildings' modules.

The major construction work was done in December 1985, during which TMX was forced to stop its operations from December 1-18, 1985, putting its employees on forced leave with pay. All in all, TMX spent P3,931,583.00,^[10] i.e., P2,385,499.00 for shoring expenses,^[11] and P1,546,084.00, representing wages of its employees for the period December 1-18, 1985.^[12]

Laying the blame on AWIA for the roof defects, TMX sought reimbursement of everything it had spent for the corrective work by suing AWIA for damages before the RTC of Makati. The case was docketed as Civil Case No. 16587 and raffled to Branch 150.^[13]

In its Answer, AWIA insisted on the correctness of its design and that the same was approved by TMX. It stressed that it faithfully complied with its obligation of administering the construction contract and was not responsible for whatever mistakes the contractor made. According to AWIA, TMX has its own staff who supervised the construction and to whom AWIA's inspectors submitted their reports. Conversely, AWIA blamed TMX for the cracks, alleging that the latter's supervising staff ignored the July 19, 1979 construction report of Engr. Lacanilao^[14] and that TMX refused to conduct an in-place testing of the concrete. Defending itself against the monetary claims of TMX, AWIA averred that the latter overreacted when it installed 118 lally columns, instead of only 11 columns as recommended by

Ruling of the Regional Trial Court

After weighing the evidence submitted by the parties, the trial court noted that TMX apparently was satisfied with AWIA's services because after the completion of the Mactan assembly plant in 1980, TMX rehired AWIA four years later for the design of two more separate extensions of the building. All of AWIA's documents, designs, drawings, plans and specifications of the building were subject to TMX and its parent company's approval, which both relayed their comments and instructions to AWIA. During the construction phase, TMX had its own engineering team which actively participated in the project. The trial court concluded that AWIA complied faithfully with its obligations in all phases indicated in the Agreement.^[16]

The court *a quo* found that only 11 shoring columns on the roof girders were necessary to remedy the cracks and deflections in lines B and G, and thus reduced the shoring expenses AWIA incurred on a pro-rate basis. It was also noted that the defects were not solely attributable to AWIA, because TMX ignored Engr. Lacanilao's July 19, 1979 construction report on the pouring of diluted concrete. Thus:

This Court finds that there was no necessity at all for plaintiff TMX to have installed 118 shoring columns all over its building. Except for the bare allegation of TMX president Rogelio Lim that this was done upon the recommendation of Engr. Ramientos and its U.S.-based consultant Fletcher-Thompson, plaintiff has not shown that it was necessary to put up more than one hundred columns at all beam intersections with sophisticated designs using expensive materials. Admittedly, cracks and deflections appeared in some beams and roof girders after five (5) years from the building's completion. The subject building or any part thereof has not collapsed nor has ever fallen down. As a matter of fact, it was plaintiff's own consultant Fletcher-Thompson in its Beam Deflection Check (Exhibits "5" to "5-J") who recommended the installation of eleven (11) shoring columns on the roof girders which had failures (T.S.N., July 3, 1990, pp. 27-34). Even plaintiff's complaint mentions cracks and deflections only on column lines B and G. To allow plaintiff reimbursement for putting up 118 columns all over the building would unduly favor plaintiff TMX. Only eleven (11) columns would have been necessary to correct the crackings and deflections in column lines B and G. Any excess of that would be considered as a renovation or added improvement of which the defendant should not be made to shoulder.

Thus, the defendant should reimburse TMX only for eleven (11) shoring columns as its just and equitable share in the expenses incurred by plaintiff. Taking the ratio of 11 and 118 columns and applying the same to the total amount of P2,385,499.00, the expenses for installing 11 columns would be P222,377.00.

As regards the claim for reimbursement of P1,546,084.00 representing the salaries and wages that plaintiff allegedly paid its employees during the work stoppage from December 1 to 18, 1985, the same should be denied.

As testified by defendant's witness, Engineer Labrador, it was agreed that the 11 shoring columns will be put up late December since admittedly the last two (2) weeks of December up to the first week of January was plaintiff's scheduled production shutdown as its employees usually go on vacation during those days. Moreover, it is observed that plaintiff failed to present during the hearing of this case the pertinent payroll documents to substantiate its claim. What it produced were only computer printouts of the salaries allegedly paid to its employees for the period in question.

x x x x^[17]

The dispositive portion of the trial court's Decision reads:

WHEREFORE, the Court hereby renders judgment as follows:

1. Defendant is ordered to pay plaintiff TMX the amount of P222,377.00 as compensatory damages;
2. Defendant is ordered to pay P80,000.00 to plaintiff TMX as attorney's fees and litigation expenses;
3. The complaint of plaintiff EPZA against defendant is DISMISSED.
4. The counterclaim of defendant is DISMISSED.

SO ORDERED.^[18]

Both parties appealed to the CA but AWIA later withdrew its appeal leaving TMX to contest the judgment of the trial court.

Ruling of the Court of Appeals

The CA agreed with the RTC that AWIA is responsible for the payment of only 11 shoring columns. However, the CA differed as to the RTC's finding that AWIA completely abided by its obligations. To the CA, AWIA failed to promptly and adequately notify its principal of the quality and progress of the work, including the defects and deficiencies in the construction and a determination of how these will be rectified by the contractor. It said:

To excuse AWIA from any liability for the contractor's failure to carry out the work in accordance with the contract documents, it is required, under their Agreement, to "have kept the OWNER currently and **adequately informed** in writing of the progress and quality of the work." In the case at bar, We hold that the written report given by AWIA to TMX of the incident could not be the proper notice contemplated in the Agreement. Notably, the report merely contains statements and account of events that transpired during such pouring operations. It did not contain any warning or recommendation as to put TMX on notice that something has to be done. Nor did it inform TMX that said incident threatened the strength of concrete or structural integrity of the roof. For this, AWIA is liable. x x x^[19]

The CA further modified the RTC's Decision by ordering AWIA to reimburse TMX the amount of P1,546,084.00 representing the salaries TMX had paid to its employees during the involuntary work stoppage. The appellate court found the check vouchers and financial schedule of payments as sufficient proofs.

Issues

Hence, AWIA filed this Petition for Review on *Certiorari*,^[20] raising the following issues: a) whether AWIA properly discharged its duty as construction administrator and b) whether there is a valid basis for the reimbursement of the salaries paid to the employees of TMX.

Petitioner's Arguments

AWIA's arguments are summed up as follows:

a) It complied with its obligation to keep TMX adequately informed about the progress and quality of the work of the contractor. Engr. Lacanilao, AWIA's site representative, even delayed the pouring of the concrete and rejected the concrete that had been mixed for more than 45 minutes during the July 18, 1979 incident. These actions were immediately reported to TMX the following day. TMX's staff of engineers however found no cause for alarm to take remedial measures after being informed. On the contrary, TMX accepted the work done on the building without objections and considered Engr. Lacanilao's report as sufficient compliance with AWIA's responsibility of submitting a report.

b) Assuming that AWIA failed to keep TMX adequately informed of the ill-effects of the July 18, 1979 incident, still, AWIA cannot be held liable for all the salaries allegedly paid to TMX employees during December, 1985. The factory shutdown for the whole month of December cannot be solely attributed to AWIA's inadequate reporting of weak cement mixture, but was also due to TMX's decision to install 118 permanent shoring columns instead of only 11 columns as recommended by Fletcher-Thompson.

Moreover, AWIA contends that TMX failed to prove its claim of payment of alleged salaries during the shutdown period because the pieces of evidence it presented are mere summaries of salaries paid and vouchers for checks deposited in a bank for the alleged salaries. There are no proofs that TMX employees actually received their salaries during said shutdown period. And even if it could be held responsible for reimbursing the employees' salaries, AWIA claims that it should not be held liable for the TMX employees' salaries during the entire period of installation. Had only 11 columns been installed, the period of shutdown due to remedial work would have been shorter. AWIA thus asks for a reduction of the award, computed at a formula used by the trial court as basis for awarding TMX the cost of installing only 11 columns. Hence, the salary should be computed at 11/118 of P1,546,084.00, or P144,210.37.

Respondent's Arguments

On the other hand, TMX maintains that: