

THIRD DIVISION

[G.R. No. 180824, August 28, 2009]

**URBAN CONSOLIDATED CONSTRUCTORS PHILIPPINES, INC.,
PETITIONER, VS. THE INSULAR LIFE ASSURANCE CO., INC.,
RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

The only issue in this petition for review on certiorari is whether petitioner Urban Consolidated Constructors Philippines, Inc. (Urban) is liable to pay liquidated damages to respondent Insular Life Assurance Co., Inc. (Insular).

The facts show that on October 13, 1989, respondent Insular engaged the services of Urban to construct a six-storey building within a period not to exceed 365 days at a contract price of P30,498,689.00. On February 19, 1991, the parties executed a General Construction Agreement (GCA),^[1] which, among others, extended the deadline for the completion of the project to June 30, 1991, and increased the contract price to P38,885,000.00. The parties thereafter agreed to move the deadline to September 30, 1991, but the construction was beset by several delays. When Urban tendered the building for acceptance on July 21, 1992, Insular refused to accept the same.

On February 11, 1993, Urban filed an action for collection of sum of money and damages^[2] against Insular contending that Insular caused the delay in the completion of the project and that, as a consequence of said delay, Urban suffered damages. Insular allegedly failed to inform Urban about the government road widening project which necessitated alterations/revisions in the plans and specifications and delayed the issuance of the building permit, as well as the boundary dispute which Insular had with the adjoining lot owner. Insular also allegedly incurred delay in the approval/payment of monthly billings; in the delivery of materials to the construction site; and in the execution of a formal written construction agreement.

Urban also alleged that on September 7, 1992, Insular took over the project and occupied the building without justifiable cause. Urban thus prayed that it be awarded (1) P4 Million as excess construction costs for the increase in the cost of materials during the period of the delay; (2) P250,000.00 for increase in financing costs; (3) P250,000.00 for the illegal take over of the project; (4) P1,454,799.50 for unpaid change orders or additional works; (5) P554,972.51 for unpaid progress billings; (6) P2,134,908.80 representing the amount retained by Insular; (7) P1 Million for lost opportunities to enter into other construction contracts; (8) P1 Million as attorney's fees; (9) liquidated damages to be determined by the court; and (10) the costs of suit.

In its Answer with Compulsory Counterclaim,^[3] Insular alleged that the delay in the construction of the building was due to Urban's failure to timely procure the building permit and not the road widening project and the boundary dispute with the adjacent owner. Insular further averred that although it agreed to directly pay the suppliers of material by way of accommodation to Urban which always lacked funds, however the obligation to have the materials delivered to the construction site still remained with Urban. Moreover, the obligation to directly pay the suppliers arise only after the delivery of the materials, and evaluation by Insular's project manager.

Insular claimed that in the execution of the GCA on February 19, 1991, the parties took into consideration the problems that arose after October 13, 1989. Thus, (1) the deadline for the completion of the project was moved to June 30, 1991 and the contract price was increased to P38,885,000.00; (2) Insular extended financial assistance to Urban by directly paying the suppliers of construction materials; and (3) the construction deadline was further extended to September 30, 1991. However, Urban still failed to meet the target completion date.

As regards the change orders, Insular explained that these were freely agreed upon by the parties and the resultant delays were sufficiently compensated by the extension of the completion date. Insular also averred that when it took over the construction of the building on September 3, 1992, Urban was already behind the original schedule by one year; and that it applied the retention money to the expenses it incurred in the completion of the substandard and unfinished work of Urban. By way of compulsory counterclaim, Insular claimed liquidated damages in the amount of P19,014,765.00; moral damages; exemplary damages; attorney's fees; and litigation costs.

On May 5, 1989, the Regional Trial Court of Makati City, Branch 145 rendered its decision, the dispositive portion of which, reads:

WHEREFORE, premises considered judgment is hereby rendered in favor of plaintiff Urban Consolidated Constructors Phils., Inc. and as against defendant, Insular Life Assurance Co., Ltd., ordering the latter to pay the former the following actual damages:

[a.] P4,000,000.00 as amount representing the excess construction costs;

[b.] P1,454,799.90 representing the unpaid construction costs of all completed change orders;

[c.] P2,134,908.80 representing the amount for over-due and unpaid retention money;

[d.] P500,000.00 as the amount representing opportunity losses; and

[e.] P100,000.00 as reasonable attorney's fees.

Cost against defendant.

SO ORDERED.^[4]

Insular appealed to the Court of Appeals which found that the increase in the costs claimed by Urban was already covered and taken into consideration when the parties executed the GCA, which among others, increased the contract price from P30,498,689.00 to P38,885,000.00. The appellate court debunked the claim of Urban that Insular caused the delay in the completion of the project, holding that it was Urban, as contractor, which has the obligation to procure the construction materials and that Insular's commitment was only to give financial assistance.

The appellate court thus found Insular entitled to an award of liquidated damages. Under the GCA, the liquidated damages is set at 1/10 of 1% of P38,885,000.00, which is P38,885.00 per day or P11,432,190.00 for the 294 days of delay from October 1, 1991 to July 21, 1992 when Urban turned over the building. For equitable considerations, however, the Court of Appeals reduced the same to P2,940,000.00 computed at a penalty of P10,000.00 per day.

Likewise, the Court of Appeals directed Insular to pay Urban P1,144,030.94 representing the balance of the costs of several change orders or modification of the plan for which no payment was proven to have been made. Insular was also ordered to release to Urban the P2,134,908.80 retention money, considering that it failed to substantiate the works it purportedly performed to improve the building.

Offsetting^[5] the amounts decreed against Urban with the amount payable by Insular, the latter is still liable to pay Urban P338,939.40. The dispositive portion of the decision of the Court of Appeals, reads:

WHEREFORE, in view of the above considerations, the instant appeal is GRANTED. The assailed decision dated May 5, 1999 is REVERSED and SET ASIDE and a new one is hereby rendered ORDERING:

I. Insular Life Assurance, Co., Ltd TO PAY Urban Consolidated Contractors Philippines, Inc.

1) P1,144,030.94 representing the balance on the change orders; and

2) P2,134,908.80 representing the unpaid retention money.

II. Urban Consolidated Contractors Philippines, Inc. TO PAY Insular Life Assurance, Co., Ltd. P2,940,000.00 as liquidated damages.

The amounts due from both parties shall be subject to offsetting pursuant to Section 2, Article XIV of the General Construction Agreement.

ORDERED.^[6]

Both parties respectively filed motions for reconsideration but were denied on December 5, 2007.^[7] Insular no longer assailed the decision of the Court of Appeals directing it to pay the balance of the change orders and to return to Urban the

balance of the retention money.

On the other hand, Urban filed the present petition contending that it cannot be made liable for liquidated damages for the completion of the project beyond the September 30, 1991 deadline because the delay was caused by Insular who requested several change orders and who failed to procure all the major construction materials it undertook to provide.

The sole issue for resolution is whether Urban is liable to pay liquidated damages.

We rule in the affirmative.

The Court sustains the finding of the Court of Appeals that the communications between Insular and Urban prior to and after the execution of the GCA on February 19, 1991 never varied the obligation of Urban to provide the materials for the construction of the building. Section 1, Article V of the GCA reads:

Section 1 - x x x For this purpose, the CONTRACTOR [Urban] **shall furnish and supply all necessary materials**, labor, equipment and tools, plant, supervision for the complete works and all other facilities needed, and shall accordingly perform everything necessary for the complete and successful construction of the aforesaid office building and facilities.^[8] (Emphasis supplied)

While Insular's January 14, 1991 letter^[9] to Urban stated that the former will purchase in advance the major construction materials, the same was never reflected in the January 28, 1991 minutes of the meeting which culminated in the execution of the aforequoted provision vesting Urban the obligation to **supply and furnish** all the construction materials. Pertinent portion of said minutes of meeting provides:

9. It was also agreed that cost of major materials purchase[d] by Urban shall be paid directly by Insular Life upon presentation of Invoice duly certified and verified by TAP Resident Engineer.^[10]

It was never agreed that Insular would assume the obligation of procuring the materials from the suppliers and delivering them at the construction site. Moreover, Insular's March 14, 1991 letter^[11] to Urban approved only a direct payment scheme and not an undertaking to provide the construction materials. As explained by Insular in its September 30, 1991 letter, the support it extended to Urban was not a commitment to furnish the materials but merely to pay the same in the agreed scheme. Thus:

We would like to point out that the above extension of deadline and financial assistance on the part of Insular Life are mere accommodations and are extended to Urban in our desire to have the building completed as early as possible. This should not be misconstrued that Insular Life is committed to supply all major materials in order finish the building.^[12]