

## THIRD DIVISION

[ G.R. No. 155174, August 04, 2009 ]

**D.M. CONSUNJI, INC., PETITIONER, VS. DUVAZ CORPORATION,  
RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This Petition for Review on Certiorari under Rule 45 seeks to reverse and set aside the Decision<sup>[1]</sup> dated May 28, 2002 of the Court of Appeals (CA) in CA-G.R. No. 67126 entitled *D.M. Consunji, Inc. v. Honorable Tranquil P. Salvador, Jr., presiding judge, Branch 63, Regional Trial Court, Makati City and DUVAZ Corporation*, and its Resolution<sup>[2]</sup> of September 12, 2002 denying petitioner's motion for reconsideration.

#### The Facts

On August 30, 1996, petitioner D.M. Consunji, Inc. (DMCI) and respondent Duvaz Corporation (Duvaz) entered into a contract, denominated as Construction Contract No. AP-CC-A-0007,<sup>[3]</sup> whereby DMCI undertook to construct, for Duvaz, the substructure/foundation of the *Alfaro's Peak* building project located on 106 Alfaro St., Salcedo Village, Makati City. Actual construction works on the project started in early 1997.

Immediately adjacent to the *Alfaro's Peak* site is a condominium building, called the *Peak*, which was constructed in 1990-1993, with DMCI as the general construction contractor. Ownership of the *Peak*--formerly developed by RDR Property Holdings, Inc., once a subsidiary of Duvaz--eventually became vested in the latter.

By virtue of a Certificate of Completion and Acceptance of Work<sup>[4]</sup> Duvaz issued, the foundation project was deemed completed on October 31, 1997 and, as stated in the certificate, the one-year defect liability period would end on October 31, 1998. As DMCI claimed, at the time of project completion, there was an unpaid balance on the contract price in the amount of PhP 29,209,735.85.

On December 22, 1997, Duvaz filed with the Securities and Exchange Commission (SEC) a petition<sup>[5]</sup> for the declaration of a state of suspension of payments, docketed as SEC Case No. 12-97-5850. In the petition in which DMCI was listed as "admitted creditor" for the amount of PhP 29,209,735.85, Duvaz claimed having more than sufficient assets to satisfy its debts but cannot answer its maturing obligations as they fall due. In due time, SEC granted the petition.

To protect its interest, DMCI filed on January 29, 1998 with the Regional Trial Court

(RTC), Branch 66 in Makati City a petition<sup>[6]</sup> for the annotation of contractor's lien on TCT No. 200089 registered in the name of Duvaz, docketed as LRC No. M-3839. TCT No. 200089 covered the landsite of the *Alfaro's Peak*. In this petition, DMCI alleged that Duvaz's indebtedness, as of January 12, 1998, arising from the foundation project was in the amount of PhP 32,422,387.11, inclusive of interest, an allegation which Duvaz, in a Manifestation<sup>[7]</sup> dated September 23, 1998, controverted, albeit it admitted having "an account with [DMCI] in the amount of [PhP] 29,209,735.85." By Order dated October 28, 1998<sup>[8]</sup> the Makati City RTC directed the annotation of a contractor's lien on TCT No. 200089 in the amount of PhP 29,209,735.85.

Later, Duvaz withdrew its petition before the SEC, prompting DMCI to demand from Duvaz payment of the unpaid balance of the contract price. In one of those demand-letters,<sup>[9]</sup> the amount of PhP 32,422,387.11 appeared as the outstanding unpaid balance.

In a letter of January 21, 1999<sup>[10]</sup> in reply to DMCI's demand-letter dated January 19, 1999, Duvaz, without indicating any specific amount representing its supposed indebtedness, proposed to pay DMCI PhP 1 million a year for at least next three years and larger payments afterwards. DMCI obviously found the settlement proposal unacceptable, for, on July 22, 1999, it filed a suit with the RTC in Makati City against respondent for a sum of money. In its complaint<sup>[11]</sup> docketed as Civil Case No. 99-1354 and raffled to Branch 63, DMCI prayed for the recovery of the sum of PhP 38,765,956.53 plus interests, attorneys' fees, and litigation expenses.

In its Answer with Compulsory Counterclaims,<sup>[12]</sup> Duvaz specifically denied DMCI's averment that it owes the latter PhP 38,765,956.53, as of June 1999. And by way of affirmative defenses to support its counterclaims, Duvaz alleged serious defects in the construction of the substructure of both the *Alfaro's Peak* and the *Peak* for which it prayed that DMCI be ordered to pay PhP 35 million, more or less, for rectification works; USD 226,600 and PhP 2,015,235 to answer for additional costs and charges claimed by the project engineer and others, as a result of rectification-related delays; and attorneys fees, without prejudice to other quantifiable claims. With respect to the defects adverted to needing rectification, Duvaz alleged, among others, the following:

(1) In the course of the substructure construction in 1997 at the *Alfaro's Peak* Project, it was discovered that significant portions of the substructure of the *Peak* were encroaching and abutting beyond and into the property line of *Alfaro's Peak*. Rectification works undertaken by DMCI, as the *Peak's* construction contractor, to address the effects of the protruding substructure of the *Peak* resulted in the delay of the *Alfaro's Peak* Project;

(2) During the above rectification works, damages were incurred by the substructure and basement walls of the *Peak* that would require further rectification works; and

(3) The mal-execution of the construction works on the *Peak* and *Alfaro's Peak* and DMCI's substandard work practices created, among other things, underground water seepage problem and rendered necessary a determination of whether the

substructures of the *Alfaro's Peak* also encroached into the adjacent vacant lot.

Thereafter, on September 23, 1999, DMCI, as plaintiff *a quo*, moved for summary judgment,<sup>[13]</sup> alleging that there is no valid defense to its complaint. As DMCI argued in the motion, Duvaz' counterclaims have already prescribed, the construction of the *Peak* having been finished in 1993 and the *Alfaro's Peak* in 1997; thus, the respective defects' liability periods for both projects had already lapsed.

To the above motion, Duvaz interposed an opposition, appending, as exhibits, documents and photographs bearing on matters asserted in its defense and counterclaims. An exchange of pleadings then followed.

On May 2, 2000, in Civil Case No. 99-1354, the RTC issued an Order<sup>[14]</sup> denying the motion for summary judgment, pertinently stating:

After due consideration of plaintiff's motion for summary judgment together with defendant's opposition thereto and their respective pleadings that followed, this Court opts for a full-blown trial to determine the allegations of estoppels and warranty against hidden defects (relative to the subject construction contract) by plaintiff and defendant, respectively.

Another Order dated August 28, 2001<sup>[15]</sup> denied DMCI's motion for reconsideration.

Therefrom, DMCI went to the CA via a petition for certiorari, docketed as CA-G.R. SP No. 67126, and asked for the nullification of the twin orders of the RTC on the following stated grounds:

a. Respondent Judge acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in refusing to render a summary judgment despite the fact that on the basis of the pleadings, admissions, exhibits and documents extant on the records, there is no genuine issue as to any material fact and that petitioner is entitled to a summary judgment as a matter [of] law x x x.

On May 28, 2002, the CA issued the assailed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. Consequently, the assailed Orders dated May 2, 2000 and August 28, 2001 are hereby both AFFIRMED and REITERATED.

With costs against the petitioner.

SO ORDERED.

Subsequently, on September 12, 2002, the CA issued the assailed resolution denying DMCI's motion for reconsideration.

Hence, DMCI filed this petition.

### **The Issue**

The Honorable [CA] committed serious errors of law in dismissing the Petition for Certiorari which in effect denied petitioner's Motion for Summary Judgment considering that:

#### **I**

Petitioner's principal claim under the complaint is admitted by the respondent or is already a settled issue under the principle of res judicata, and therefore, can no longer be denied or controverted;

#### **II**

Respondent's defenses/counterclaims under the admitted facts and circumstances are sham, fictitious, or patently unsubstantial or speculative and/or were clearly contrived or concocted for purposes of delay only.

#### **III**

At any rate, even assuming arguendo that there was a defect in the work done, petitioner is not liable for such defect under the law and contract executed by the parties.

#### **IV**

The reasons cited by the Honorable [CA] for the dismissal of the Petition for Certiorari are untenable for being contrary to law and jurisprudence.<sup>[16]</sup>

### **The Ruling of the Court**

The issue in this case is really whether summary judgment in accordance with the Rules of Court is proper. We rule in the negative and, thus, deny the instant petition.

Sections 1 and 3, Rule 35 of the Rules on summary judgment provide:

Section 1. *Summary judgment for claimant.* - A party seeking to recover upon a claim, counterclaim, or cross-claim x x x may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor