

FIRST DIVISION

[G.R. No. 166857, September 11, 2009]

**D.M. WENCESLAO & ASSOCIATES, INC., PETITIONER, VS.
FREYSSINET PHILIPPINES, INC., RESPONDENT.**

DECISION

CARPIO, J.:

The Case

This is a petition for review^[1] of the 10 August 2004 Decision^[2] and 21 January 2005 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 58093. In its 10 August 2004 Decision, the Court of Appeals affirmed the 17 April 1997 Decision^[4] of the Regional Trial Court of Manila, Branch 34 (trial court), with modification that only petitioner D.M. Wenceslao & Associates, Inc. (DMWAI) shall be liable to pay respondent Freyssinet Philippines, Inc. (FPI) P322,413.15 with interest at 6% per annum from the date of the filing of the complaint. The Court of Appeals also deleted the awards of attorney's fees and expenses of litigation. In its 21 January 2005 Resolution, the Court of Appeals denied DMWAI's motion for reconsideration.

The Facts

Sometime in January 1989, DMWAI undertook the construction of the National Historical Institute Building (NHI project). On 6 January 1989, Delfin J. Wenceslao, Jr. (Wenceslao, Jr.) accepted the contract proposal submitted by FPI for the fabrication and delivery of pre-stressed piles for the NHI project for P2,600,000.^[5] The contract provided for a 30% down payment upon the signing of the contract and the balance of 70% shall be by progress payment based on work accomplished. The contract also provided for an interest rate of 18% per annum on delinquent accounts.

On 5 August 1993, FPI filed a complaint^[6] against Wenceslao, Jr. doing business under the name and style of D.M. Wenceslao & Associates and/or D.M. Wenceslao Construction. According to FPI, the NHI project had been completed in November 1989 but Wenceslao, Jr. has not fully paid FPI for the pre-stressed piles. FPI prayed that Wenceslao, Jr. be ordered to pay FPI P322,413.15 plus interest at 18% per annum from November 1989 until full payment and 25% of the award as attorney's fees and the cost of the suit.

On 29 March 1994, FPI filed a motion with leave of court to admit amended complaint.^[7] In the amended complaint,^[8] FPI impleaded DMWAI as a party defendant. Wenceslao, Jr. opposed the motion on the ground that the amended complaint sought to create a new cause of action against him. In its 12 July 1994 Order,^[9] the trial court admitted the amended complaint.

On 17 April 1997, the trial court rendered a decision in FPI's favor. The dispositive portion of the 17 April 1997 Decision provides:

WHEREFORE, in view of the above findings, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter to jointly and severally pay the plaintiff the sum of P322,413.15 with interest at 18% per annum from November 1989 until full payment and to pay the sum equivalent to 25% of the principal balance as litigation expenses and attorney's fees and to pay the cost of the suit.

The counterclaim interposed by the defendants is hereby DISMISSED for lack of merit.

SO ORDERED.^[10]

DMWAI appealed to the Court of Appeals. DMWAI alleged that the trial court erred in admitting FPI's amended complaint. DMWAI also questioned the trial court's ruling that DMWAI is liable for the IBRD account and in holding Wenceslao, Jr. severally and jointly liable with DMWAI for the monetary awards. DMWAI added that the trial court erred in awarding interest at 18% per annum, attorney's fees, litigation expenses and the cost of the suit.

On 10 August 2004, the Court of Appeals affirmed with modification the trial court's 17 April 1997 Decision. The dispositive portion of the 10 August 2004 Decision provides:

WHEREFORE, the decision appealed from is MODIFIED by deleting the award of attorney's fees and expenses of litigation and holding defendant-appellant D.M. Wenceslao & Associates, Inc. solely liable to plaintiff-appellee Freyssinet Philippines, Inc. for the payment of the amount of P322,413.15, with interest at six percent (6%) per annum from the date of filing of the complaint. However, the interest rate shall be twelve percent (12%) per annum from the time the judgment in this case becomes final and executory and until such amount is fully paid.

SO ORDERED.^[11]

DMWAI filed a motion for reconsideration. In its 21 January 2005 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The Ruling of the Trial Court

While ruling that DMWAI had fully paid FPI for the NHI project, the trial court still found DMWAI liable to FPI for the International Bank for Reconstruction and Development (IBRD) account. According to the trial court, even after the excess

payments from the NHI project were applied, DMWAI's statement of account showed a balance of P322,413.15 from the IBRD account. The trial court said that, based on Section 5, Rule 10^[12] of the Rules of Court, it acquired jurisdiction over the issue of the unpaid balance on the IBRD account when FPI presented evidence to prove its claim and Wenceslao, Jr. admitted that he still had an outstanding account with FPI. The trial court added that DMWAI did not object when FPI presented evidence with respect to the IBRD account.

The Ruling of the Court of Appeals

The Court of Appeals stated that the trial court did not err in admitting FPI's amended complaint because the amendment was only a matter of form as it merely impleaded DMWAI as an additional defendant and did not change or add another issue in the case.

The Court of Appeals affirmed the trial court's ruling that while the NHI project has been fully paid, DMWAI is still liable to FPI for the IBRD account. The Court of Appeals noted that DMWAI did not object to FPI's Exhibit "J" showing that DMWAI has an outstanding balance of P618,796 for the IBRD account and even adopted the same as its Exhibit "7." According to the Court of Appeals, DMWAI's failure to object to the evidence presented by FPI on the IBRD account meant that DMWAI gave its implied consent to have the trial court pass upon the issue.

The Court of Appeals also ruled that Wenceslao, Jr. should not be held jointly and severally liable with DMWAI because Wenceslao, Jr. signed the contract, not in his personal capacity, but as President of DMWAI.

However, the Court of Appeals modified the interest rate from 18% to 6% per annum. The Court of Appeals said that the interest rate of 18% per annum on delinquent accounts pertained only to the NHI project, which has been fully paid. Since the unpaid balance of P322,413.15 concerned the IBRD account and no evidence was presented to show the interest rate on the IBRD account, the Court of Appeals ruled that the interest rate should be 6% per annum pursuant to Article 2209^[13] of the Civil Code to be computed from the date of the filing of the complaint. However, the interest rate shall be 12% per annum from the time the judgment becomes final and executory until it is satisfied.

The Court of Appeals deleted the awards of attorney's fees and expenses of litigation because there was no proof that DMWAI acted in gross and evident bad faith in denying its liability to FPI on the NHI project.

The Issues

DMWAI raises the following issues:

1. Whether the trial court had jurisdiction over the IBRD account; and
2. Whether DMWAI is liable to pay interest on the IBRD account.