

## THIRD DIVISION

[ G.R. NO. 163915, October 16, 2006 ]

### ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONER, VS. COMFAC CORPORATION, RESPONDENT.

#### DECISION

##### QUISUMBING, J.:

This petition for review assails the Decision<sup>[1]</sup> dated March 12, 2003 and the Resolution dated June 2, 2004 of the Court of Appeals in CA-G.R. CV No. 69123, which affirmed with modification the trial court's decision and denied the motion for reconsideration, respectively.

The antecedent facts of the case are as follows:

Petitioner Asian Construction and Development Corporation (ASIAKONSTRUCT) awarded respondent COMFAC Corporation a contract for raised flooring system for the PNOC-EDC, LGPP HVAC Marshalling Station Building, in Ormoc, Leyte, and another contract for airconditioning and ventilation system for the PNOC-EDC Marshalling and Relay Building of Leyte HVAC Switchyard Project, costing P1,698,635 and P4,000,000, respectively. On November 28, 1996, COMFAC turned over the project to PNOC, and issued the Certificates of Completion, which were confirmed by Rene T. Soriao, Group Manager of ASIAKONSTRUCT.

On May 5, 8, and 11, 1998, COMFAC sent ASIAKONSTRUCT demand letters for the unpaid balance of P1,969,863.50. But, ASIAKONSTRUCT failed to pay the amount, prompting COMFAC to file a complaint for collection with the Regional Trial Court of Makati City. It also prayed for attorney's fees equivalent to 20% of the amount demanded, plus P2,000 attorney's fee per appearance, and exemplary damages of P500,000.

In its defense, ASIAKONSTRUCT alleged that COMFAC had no cause of action; COMFAC's claim had been paid, waived, abandoned and/or extinguished; the Certificates of Completion were unauthorized; the projects were not completed; no demand for payment was made; the amount claimed was not yet due; the amount claimed was bloated because ASIAKONSTRUCT did not receive all the labor, materials, tools, equipment, and the technical expertise that were being charged; COMFAC did not deduct the withholding taxes, material charges and the payments made; and it did not agree to pay interests, penalty, attorney's fees and court costs.

After the admission of COMFAC's evidence, the trial court, in an order dated November 23, 1999, deemed ASIAKONSTRUCT to have waived its right to present its evidence due to its counsel's continued absence during trial despite notice. Thereafter, judgment was rendered as follows:

Wherefore, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay plaintiff as follows:

1. the amount of P1,969,863.[50] as actual damages plus interest at fourteen percent (14%) per annum and penalty at twenty-five [percent] (25%) per annum from January 2, 1998, date of the final statement of account, until fully paid;
2. the amount of P50,000.00 as attorney's fees; and
3. costs and expenses of litigation.

SO ORDERED.[2]

ASIAKONSTRUCT elevated the case to the Court of Appeals on the following grounds: (a) the invoices, Exhibits "K" to "O", and other documentary exhibits were not properly proved and authenticated; (b) the full completion of the works on the project was not proven; (c) the 10% retention and 1% expanded withholding tax was not deducted from the alleged balance of P 1,969,863.50; (d) the parties did not expressly stipulate in writing the interest and penalties; (e) the imposition of the 14% interest plus 25% penalty was unconscionable; and (f) the award of attorney's fees was not proper in the absence of proof of bad faith.[3]

The Court of Appeals upheld the admissibility of the invoices, Exhibits "K" to "O", as these were properly presented by COMFAC during the trial and not objected to by ASIAKONSTRUCT. Moreover, the appellate court held that it was enough that the invoices were identified during the trial since the subject of the inquiry was not their contents but a fact to which these were merely collateral or incidental. The appellate court also upheld (1) the validity of the Certificates of Completion as these were confirmed and signed by the representative of the project owner; (2) the correctness of COMFAC's accounting with respect to the deduction of the 10% retention money and withholding tax; and (3) the award of attorney's fees. The appellate court ruled, however, that in the absence of stipulation, the proper interest payable should only be 6%. The decretal portion of the decision reads:

**WHEREFORE, IN VIEW OF THE FOREGOING**, the decision appealed from is hereby AFFIRMED, with the following modifications:

- a) a six percent (6%) legal interest per annum on the amount of P1,969,863.50 as damages is imposed in lieu of the 14% interest and penalty of 25%; and
- b) the 1% withholding tax should be deducted from the balance of each of the contracts.

SO ORDERED.[4]

ASIAKONSTRUCT moved for reconsideration but it was denied. Now before us, it challenges the conclusion reached by the Court of Appeals and raises the following issues for resolution:

- I. WHETHER OR NOT EXHIBITS "K" TO "O" WERE PROPERLY AUTHENTICATED IN ACCORDANCE WITH THE RULES OF COURT;

II. WHETHER OR NOT RESPONDENT WAS ABLE TO PROVE COMPLETION OF THE PROJECT;

III. WHETHER OR NOT RESPONDENT IS ENTITLED TO ATTORNEY'S FEES; AND

IV. WHETHER OR NOT THE 6% ... INTEREST SHOULD BE BASED ON THE BALANCE AFTER DEDUCTING THE 1% ... WITHHOLDING TAX.

[5]

We will discuss the first two issues jointly.

ASIAKONSTRUCT maintains that the invoices were not properly authenticated as COMFAC's witness, Mrs. Erlinda Rolda, merely testified on checking the invoices and did not identify the signatories to these. It reiterates its assertion that the project was not yet complete and that the Certificates of Completion were unauthorized.

On the other hand, COMFAC contends that the invoices were deemed admitted as ASIAKONSTRUCT did not object to them. It also argues that its witnesses duly testified to the completion of the projects.

The rule is that failure to object to the offered evidence renders it admissible,<sup>[6]</sup> and the court cannot, on its own, disregard such evidence. We note that ASIAKONSTRUCT's counsel of record before the trial court, Atty. Bernard Dy, who actively participated in the initial stages of the case stopped attending the hearings when COMFAC was about to end its presentation. Thus, ASIAKONSTRUCT could not object to COMFAC's offer of evidence nor present evidence in its defense; ASIAKONSTRUCT was deemed by the trial court to have waived its chance to do so.

Note also that when a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal.<sup>[7]</sup> Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.<sup>[8]</sup>

ASIAKONSTRUCT also questions the authenticity of the Certificates of Completion. However, it has been uniformly held that findings of facts by the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.<sup>[9]</sup> The appellate court's conclusion on the authenticity of the Certificates of Completion binds us now.

On the issue of attorney's fees, ASIAKONSTRUCT contends that attorney's fees, being in the nature of actual damages, must be proved by sufficient evidence. It argues that since COMFAC failed to present proof of actual damage, there is no factual justification for the award. COMFAC, on the other hand, counters that if ASIAKONSTRUCT had paid its claim, it would have not resorted to litigation, hence the award is justified.

We agree with ASIAKONSTRUCT on the matter of attorney's fees. Attorney's fees