

FIRST DIVISION

[G.R. No. 147614, January 29, 2004]

H.L. CARLOS CONSTRUCTION, INC., PETITIONER, VS. MARINA PROPERTIES CORPORATION, JESUS K. TYPOCO SR. AND TAN YU, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

There is unjust enrichment when a building contractor is denied payment for increased labor cost validly incurred and additional work validly rendered with the owner's express or implied agreement.

The Case

The Petition for Review^[1] before the Court, filed under Rule 45, seeks the reversal of the Decision^[2] dated March 29, 2001, issued by the Court of Appeals^[3] in CA-GR CV No. 60975. The assailed Decision disposed as follows:

"WHEREFORE, the judgment appealed from is hereby **REVERSED** and **SET ASIDE**, and a new one entered **DISMISSING** the [petitioner's] Complaint, AND PARTIALLY GRANTING THE [RESPONDENT-CORPORATION'S] COUNTERCLAIM, IN THAT THE [PETITIONER] IS DIRECTED TO PAY UNTO THE [RESPONDENT-CORPORATION] THE SUM OF P4,604,579.00 IN ACTUAL DAMAGES PLUS P3,549,416.00 AS AND FOR LIQUIDATED DAMAGES."^[4]

The Facts

The facts of the case, summarized by the Court of Appeals (CA), are as follows:

"[Respondent] MARINA PROPERTIES CORPORATION (MPC for brevity) is engaged in the business of real estate development. On May 10, 1988, MPC entered into a contract^[5] with [Petitioner] H.[L.] CARLOS CONSTRUCTION, INC. (HLC) to construct Phase III of a condominium complex called MARINA BAYHOMES CONDOMINIUM PROJECT, consisting of townhouses and villas, totaling 31 housing units, for a total consideration of P38,580,609.00, within a period of 365 days from receipt of 'Notice to Proceed'. The original completion date of the project was May 16, 1989, but it was extended to October 31, 1989 with a grace period until November 30, 1989."^[6]

"The contract was signed by Jovencio F. Cinco, president of MPC, and Honorio L. Carlos, president of HLC.

"On December 15, 1989, HLC instituted this case for sum of money against not only MPC but also against the latter's alleged president, [Respondent] Jesus K. Typoco, Sr. (Typoco) and [Respondent] Tan Yu (Tan), seeking the payment of various sums with an aggregate amount of P14 million pesos, broken down as follows:

- a) P7,065,885.03 for costs of labor escalation, change orders and material price escalation;
- b) P2,000,000.00 as additional compensatory damages, exclusive of the cost of suit.
- c) P3,147,992.00 representing retention money allegedly withheld by MPC on HLC's Progress Billings as of January 1990, and
- d) P2,000,000.00 representing the value of construction materials allegedly withheld/detained by MPC.

"Traversing the allegations of the complaint, [respondents] filed separate answers, whereby the two individual [respondents] alleged that they are not parties to the Construction Contract and Amendatory Contract and are therefore not liable to HLC. [Respondent] MPC on the other hand alleged that the [petitioner] has no cause of action against it and that it (HLC) is not entitled to its various claims. MPC interposed a counterclaim in the aggregate sum of P68,296,227.14 for actual and compensatory damages, liquidated damages, unliquidated advances, and attorney's fees."^[7]

On May 15, 1997, the trial court^[8] ruled as follows:^[9]

"WHEREFORE, premises above considered, judgment is hereby rendered for [Petitioner] H.L. CARLOS CONSTRUCTION, INC. and as against [Respondents] MARINA PROPERTIES CORPORATION, TAN YU, and JESUS K. TYPOCO, SR., who are hereby ordered to pay, jointly and severally, the [petitioner], as follows:

"1. the amount of P7,065,885.03, representing unpaid labor escalation costs, change orders and material price escalations, plus 12% interest per annum from date of filing of the complaint, until fully paid;

"2. the amount of P3,147,992.39 representing the 10% retention money withheld by the [respondents] [from] [petitioner's] progress billing as of January 1990, plus 12% interest per annum from the date of filing of the complaint, until fully paid;

"3. the amount of P2,000,000.00 representing the value of construction materials and the like detained by the [respondents], plus 12% legal interest from the date of filing of the complaint, until fully paid;

"4. the sum equivalent to 15% of the principal sum as and by way of attorney's fees; and to

"5. [p]ay the costs of this suit.

"The counterclaim for liquidated damages, are hereby DISMISSED for lack of evidence. Liquidated damages can only be awarded under paragraph 2 of the amended construction contract that extended the completion period and mainly on the finding of the 85% substantial completion of the project, and that the delay and stoppage of the project was caused by [respondents'] default in payment of [the] progress billings that would have allowed [petitioner] to have the capability to continue and complete the project."

Ruling of the Court of Appeals

On appeal, the CA held that respondents were not liable for escalations in the cost of labor and construction materials, because of the following reasons: (1) the contract between the parties was for a lump sum consideration, which did not allow for cost escalation; and (2) petitioner failed to show any basis for the award sought.

Respondents were also absolved from paying for change orders and extra work, inasmuch as there was no supplemental agreement covering them as required in the main Construction Contract. Although Progress Billing No. 24 apparently indicates that extra work was rendered by petitioner, this claim is not supported by sufficient evidence.

The CA further failed to find any basis for the release of the 10 percent retention fee. The Construction Contract had provided that such release would be made only under certain conditions, none of which was complied with, as petitioner failed to complete the work required. Furthermore, MPC was not held liable for detained or withheld construction materials, since petitioner had eventually withdrawn them.

Nothing in the records indicated any personal liability on the part of Typoco and Tan. Moreover, they had nothing to assume, as MPC was not held liable to petitioner.

Furthermore, the CA ruled that petitioner was liable for actual and liquidated damages. The latter had abandoned the project prior to its completion; hence, MPC contracted out the work to another entity and incurred actual damages in excess of the remaining balance of the contract price. In addition, the Construction Contract had stipulated payment of liquidated damages in an amount equivalent to 1/1000 of the contract price for each calendar day of delay.

Hence, this Petition.^[10]

Issues

In its Memorandum, petitioner raises the following issues:

- "a. Whether or not the respondents are liable to pay the petitioner its claim for price escalation of construction materials and labor cost escalation.
- "b. Whether or not the respondents are liable to the petitioner for cost of change orders and extra works.

- "c. Whether or not the respondents are liable to the petitioner for the ten percent retention money.
- "d. Whether or not the respondents are liable to pay the petitioner attorney's fees.
- "e. Whether or not the respondents are liable to the petitioner for the cost of illegally detained materials.
- "f. Whether or not the respondents Jesus Typoco Sr., and Tan Yu are jointly and solidarily liable to the petitioner for the latter's claims.
- "g. Whether or not the petitioner is liable to the respondents for actual and liquidated damages."^[11]

In simpler terms, the issues to be resolved are as follows:

- (1) Whether petitioner is entitled to (a) a price escalation for labor and material cost, (b) the cost of change orders and extra work, (c) the release of the 10 percent retention money, (d) the cost of illegally detained materials, and (e) attorney's fees
- (2) Whether Typoco and Tan are solidarily liable with MPC
- (3) Whether petitioner is liable for actual and liquidated damages

The Court's Ruling

The Petition is partly meritorious.

First Issue: **Liability for Additional Costs**

Petitioner argues that it is entitled to price escalation for both labor and materials, because MPC was delayed in paying for its obligations. The former admits that it is *normally* not entitled to any price increase for labor and materials, because a contractor is expected to build into its price a contingency factor to protect it from cost increases that may occur during the contract period.^[12] It justifies its claim, however, on the ground that a contractor cannot be expected to anticipate price increases *beyond* the original contract period. Respondents, on the other hand, aver that it was delayed in finishing the project; hence, it is not entitled to any price increase.

It must be pointed out that the reason for the CA's denial of petitioner's claim was that the contract between the parties was for a lump sum consideration, and petitioner was guilty of delay in completing the project.

Labor and Material **Cost Escalation**

We agree with petitioner that it is entitled to price escalation, but only for the labor

component of Progress Billing No. 24. The Construction Contract contains the following provision on the considerations therefor:

"6.1 For and in consideration of the true and faithful performance of the work by the CONTRACTOR, the OWNER shall pay the Lump Sum Contract Price of PESOS: THIRTY EIGHT MILLION FIVE HUNDRED EIGHTY THOUSAND SIX HUNDRED NINE (P38,580,609.00) broken down as shown in the Bid Form. No cost escalation shall be allowed except on the labor component of the work x x x." [13]

Since the Contract allows escalation only of the "labor component," the implication is that material cost escalations are barred. There appears to be no provision, either in the original or in the amended contract, that would justify billing of increased cost of materials. Furthermore, no evidence -- like official economic data showing an increase in the price index of construction materials -- was even adduced by petitioner to prove that there had indeed been increases in material costs. [14]

Petitioner attempts to pass off these cost escalations as a form of damages suffered by it as a natural consequence of the delay in the payment of billings and claims for additional work. It argues that the baseless and malicious refusal to pay for those claims renders respondents liable for damages under Article 2201 of the Civil Code.

We disagree. Without tackling the issue of delay, we find that the contentious Progress Billing No. 24 contains no claim for material cost escalation. The other unsettled bills claimed by petitioner are those for change orders or extra work, which have not been shown to be related to the increase in cost of materials. Dealt with in separate contracts between the parties were such claims, the costs of which were to be determined and agreed upon only when required by MPC. Materials used for those additional jobs were to be purchased only when the work was contracted, not prior thereto. As admitted by petitioner, expenses for change orders/additional work were not included in the agreed contract price [15] and, hence, were not subject to increases.

MPC admits that the labor cost escalation clause was adopted by the parties to safeguard the contractor against losses in the event that, during the execution of the Contract, the government would order a minimum wage adjustment, which would then inflate the labor cost. [16] Respondents deny liability for this added expense because, according to the Contract, the allowance for labor cost escalation is available only within the duration of the original construction period.

We clarify. The claimed cost of labor escalation pertains to the period September 1 to December 15, 1989, in the amount of P170,722.10; and December 16 to January 27, 1990, P45,983.91. During those periods, petitioner had not yet incurred any delay in the project, originally stipulated to be finished by May 16, 1989. But by mutual agreement, the period was extended up to October 31, 1989, with a grace period until November 30, 1989.

Furthermore, a legislated wage increase became effective after the expiration of the original period. [17] Respondents are, therefore, liable for this increase in labor cost, because they allowed petitioner to continue working on the project until April 20, 1990 (even beyond November 30, 1989).