

## SECOND DIVISION

[ G.R. No. 83106, December 21, 1998 ]

**ADELAIDA KALUBIRAN, PETITIONER, VS. COURT OF APPEALS  
AND J. RUBY CONSTRUCTION AND MAINTENANCE SERVICES  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Court of Appeals, dated February 4, 1988, affirming *in toto* the decision of the Regional Trial Court of Quezon City, Branch 89, which ordered petitioner to pay private respondent temperate damages, exemplary damages, and attorney's fees in the total amount of P75,000.00, plus the costs of the suit.

The facts are as follows:

Petitioner Adelaida Kalubiran is the owner of Kalmar Construction, a Cebu-based single proprietorship engaged in the construction business. Private respondent J. Ruby Construction and Maintenance Services (JRCM) is a corporation which is likewise engaged in the construction business.

The Philippine Long Distance Telephone Company (PLDT) entered into an agreement with private respondent JRCM for restoration work at Gen. Maxilom Avenue, Cebu City in line with PLDT's expansion program. On June 9, 1982, the project was considered completed and was accepted by the Cebu City Engineer. It was stated in the acceptance letter of the Cebu City Engineer, however, that the acceptance of the project did not relieve JRCM of its obligation to "undertake repair works on any failure that may occur in any section of the project within one (1) year from the date of acceptance."<sup>[2]</sup>

On March 9, 1983, PLDT wrote the Cebu City Engineer requesting a permit for a right-of-way in Cebu City.<sup>[3]</sup> The City Engineer informed PLDT that a permit would be granted only "upon restoration of the previously restored section affected by PLDT's expansion programs along Gorordo Avenue, General Maxilom Avenue, D. Jakosalem Street and M.J. Cuenco Avenue." He called attention to "some failures and sagging of the restored areas which need immediate repair to avoid further deterioration."<sup>[4]</sup>

PLDT referred the complaint to private respondent JRCM as its project engineer. It called attention to the substandard quality of the materials used and the poor workmanship which it alleged was not in accordance with standard engineering practice.<sup>[5]</sup>

On May 4, 1983, the PLDT wrote to the City Engineer requesting reconsideration of the denial of its application for a permit,<sup>[6]</sup> but the Cebu City Engineer stood pat on his demand for immediate restoration of the areas affected as condition for the issuance of a permit.<sup>[7]</sup>

There is a dispute as to who did the repair work, but the fact remains that it was done and the PLDT was finally granted on July 19, 1983 a permit for its expansion project.<sup>[8]</sup>

On November 4, 1983, petitioner Adelaida Kalubiran and Kalmar Construction, through their counsel, wrote PLDT a letter claiming credit for the restoration work and demanding payment of P28,000.00 on the ground that private respondent JRCM refused to pay the amount. The letter reads:<sup>[9]</sup>

November 4, 1983

Philippine Long Distance  
Telephone Company  
Makati General Office Building  
Makati, Metro Manila

Attention: Mr. Ceasar Campos  
Senior Vice-President

S i r:

This is written in behalf of our client KALMAR CONSTRUCTION, in connection with the repair of restoration works of J. Ruby Construction and Maintenance Services Corporation and Communication Construction Incorporated undertaken by our client, xerox copy of the restoration work is hereto attached and made an integral part of this letter. The work has been done with the express approval of J. Ruby Construction and Maintenance Services Corporation and Communication Construction Incorporated and with the conformity of the City Engineer of Cebu.

The total claim of our client to J. Ruby Construction and Maintenance Services Corporation and Communication Construction Incorporated is in the amount of P28,000.00 more or less.

At present, J. Ruby Construction and Maintenance Services Corporation and Communication Construction Inc. refused to pay our client because Philippine Long Distance Telephone Company has not paid them for the works undertaken by said companies.

We are therefore directing our claim direct to your end so that whatever amount collectible by J. Ruby Construction and Maintenance Services Corp. and Communication Construction Inc. be deducted from our claim.

Trusting for your immediate attention on this matter.

Very truly yours,

(SGD.) ROLANDO M.

Counsel of Kalmar

LIM

Construction

Copy furnished:

- 1) J. Ruby Const. and Maintenance Services Corp.
- 2) Communication Construction, Inc.
- 3) City Engineer's Office Cebu City

On December 19, 1983, private respondent JRMC filed a complaint for damages and attorney's fees against Adelaida M. Kalubiran and/or Kalmar Construction, alleging that it never authorized Kalmar Construction to undertake the repair work on PLDT's project. JRMC further claimed that as a result of the letter of Kalmar Construction's counsel to PLDT, the latter ceased giving them major contracts. JRMC also claimed that by writing to PLDT Kalmar Construction engaged in unfair competition because PLDT had a policy prohibiting its contractors to sub-contract work to third persons. A violation of the policy could result in the withdrawal of PLDT's accreditation and disqualification from its construction projects.<sup>[10]</sup>

In her answer, petitioner claimed that the letter to PLDT was sent pursuant to the agreement of the parties, among which were PLDT and private respondent JRMC, at a conference held in the Office of the City Engineer of Cebu City in June 1983 and was not motivated by malice or a desire to place petitioner JRMC in a bad light. Petitioner filed a counterclaim for the sum of P20,004.00, for maintenance services allegedly rendered by her company, plus interest, and P500,000.00 as moral, actual, and exemplary damages, and P100,000.00 as attorney's fees.<sup>[11]</sup>

On February 25, 1986, the trial court rendered a decision finding petitioner liable to private respondent for damages. The dispositive portion of its decision reads:<sup>[12]</sup>

ACCORDINGLY, judgment is hereby rendered ordering the defendants to pay to the plaintiff jointly and severally the sum of P25,000.00, as temperate damages, and the additional sum of P25,000.00, by way of exemplary damages, plus reasonable attorney's fees in the amount of P25,000.00, with costs against the defendants. The counterclaim of the defendants is dismissed for lack of merit.

The trial court found that petitioner indeed made repairs on the restoration work of private respondent JRMC. However, the trial court said she did so without authority because the person (Ben Sayson) who told her to proceed with the repairs at a conference held in June 1983 was a mere laborer who had no authority to speak for private respondent. In addition, the trial court found that, contrary to petitioner's claim, PLDT had already paid private respondent for the work done at the time petitioner's counsel sent the letter to PLDT on November 4, 1983.

Petitioner appealed to the Court of Appeals, which on February 4, 1988, rendered a decision affirming that of the Regional Trial Court. The Court of Appeals found, however, that the repairs on the restoration work were actually made by private

respondent and not by petitioner. It agreed with the trial court that in writing PLDT petitioner acted in bad faith.<sup>[13]</sup>

Hence, this petition.

**First.** Petitioner contends that the Court of Appeals erred in reversing the trial court's finding that repairs on the restoration work were made by her although without authority of private respondent JRCM. Petitioner claims that this finding could no longer be revised by the Court of Appeals considering that private respondent JRCM never appealed from the decision of the trial court and did not even file an appellee's brief in the Court of Appeals.

This contention has no merit.

The question of who actually did the repairs is relevant to the appeal of petitioner because she claimed she had done the work but had been refused payment for her services. In determining, therefore, whether her claim from PLDT for payment for such work placed private respondent JRCM in a bad light since, as far as PLDT was concerned, the repairs were to be made by JRCM, it was necessary for the appellate court to pass on the question whether petitioner actually did the repairs. Moreover, it is settled that the appellate court can consider issues, although not specifically raised in the pleadings filed before it, as long as they were raised in the trial court or are matters of record having some bearing on the issues submitted which the parties failed to raise or the lower court ignored.<sup>[14]</sup>

Indeed, the questions who actually repaired the restoration work previously done by private respondent JRCM and whether a conference actually took place in June 1983 during which petitioner was allegedly asked by private respondent JRCM to make the repairs are questions which were raised in the lower court. These questions have a bearing not only on petitioner's claim for P20,004.00, for costs of repair that it had allegedly performed, but also on petitioner's claim that in demanding payment of this amount from PLDT her purpose was not to place JRCM in a bad light in view of PLDT's prohibition against subcontracting of jobs being undertaken for it. Nor is there any dispute that, in reviewing the findings of the trial court on these issues, the Court of Appeals relied on the records of this case.

**Second.** Indeed, the records show that the restoration work was performed by private respondent and not by petitioner and it is doubtful whether a conference was really held in June 1983 during which petitioner was tasked with the repairs of the restoration work.

What happened was that private respondent JRCM purchased asphalt from petitioner and rented the latter's road roller which was operated by petitioner's employee in order to undertake the repairs. Engineer Rodolfo Marcia, project engineer of private respondent JRCM, testified:<sup>[15]</sup>

**ATTY.  
PORMENTO:**

**Q :** Do you remember whether on May 16, 1983 you went to Cebu City?

**A :** Yes, sir.

**Q :** And why did you go to Cebu City?  
**A :** I was sent to by my employer, J. Ruby Construction to undertake a repair.  
**Q :** What kind of repair was that?  
**A :** Restoration of the asphalt pavement.  
**Q :** Where did you come from when you went to Cebu City?  
**A :** From Manila  
**Q :** And what kind of transportation did you take?  
**A :** By boat.  
**Q :** Did you have a ticket.  
**A :** Yes, sir.  
**Q :** Will you be able to recognize that ticket if shown to you.  
**A :** Yes, sir.  
**Q :** Showing to you a freight ticket of Sulpicio Lines, Inc., already marked as Exhibit H, dated May 16, 1983, received from R. Marcia in the amount of P896.75, Receipt No. 529926 and also in the name of R. Marcia, do you recognize this receipt?  
**A :** Yes, sir.  
**Q :** Who is this R. Marcia?  
**A :** I am the one.  
**Q :** Did you arrive at Cebu City?  
**A :** Yes, sir.  
**Q :** When you arrived there, what did you do after you arrived there?  
**A :** I went to the Office of Local Manager of PLDT to coordinate with him and to deliver the letter coming from my employer, J. Ruby Construction.  
**Q :** And were you able to do that?  
**A :** Yes, sir.  
**Q :** Now, after you have delivered that letter and having presented yourself with the Local officer of the PLDT what did you do?  
**A :** I went to the jobsite, because I was then carrying the plan in order to examine and investigate the failure of the restoration.  
**Q :** Were you able to go to the jobsite and see for yourself the failure and investigate the failure of the project?  
**A :** Yes, sir.  
**Q :** Are you referring to the Project Estimate found at Gen. Maxillom Cebu City?

**COURT:**

Is that marked already?

**ATTY.  
PORMENTO:**