322 Phil. 161

THIRD DIVISION

[G.R. No. 52267, January 24, 1996]

ENGINEERING & MACHINERY CORPORATION, PETITIONER, VS. COURT OF APPEALS AND PONCIANO L. ALMEDA, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Is a contract for the fabrication and installation of a central air-conditioning system in a building, one of "sale" or "for a piece of work"? What is the prescriptive period for filing actions for breach of the terms of such contract?

These are the legal questions brought before this Court in this Petition for review on certiorari under Rule 45 of the Rules of Court, to set aside the Decision[1] of the Court of Appeals[2] in CA-G.R. No. 58276-R promulgated on November 28, 1978 (affirming *in toto* the decision[3] dated April 15, 1974 of the then Court of First Instance of Rizal, Branch II,[4] in Civil Case No. 14712, which ordered petitioner to pay private respondent the amount needed to rectify the faults and deficiencies of the air-conditioning system installed by petitioner in private respondent's building, plus damages, attorney's fees and costs).

By a resolution of the First Division of this Court dated November 13, 1995, this case was transferred to the Third. After deliberating on the various submissions of the parties, including the petition, record on appeal, private respondent's comment and briefs for the petitioner and the private respondent, the Court assigned the writing of this Decision to the undersigned, who took his oath as a member of the Court on October 10, 1995.

The Facts

Pursuant to the contract dated September 10, 1962 between petitioner and private respondent, the former undertook to fabricate, furnish and install the air-conditioning system in the latter's building along Buendia Avenue, Makati in consideration of P210,000.00. Petitioner was to furnish the materials, labor, tools and all services required in order to so fabricate and install said system. The system was completed in 1963 and accepted by private respondent, who paid in full the contract price.

On September 2, 1965, private respondent sold the building to the National Investment and Development Corporation (NIDC). The latter took possession of the building but on account of NIDC's noncompliance with the terms and conditions of the deed of sale, private respondent was able to secure judicial rescission thereof. The ownership of the building having been decreed back to private respondent, he re-acquired possession sometime in 1971. It was then that he learned from some NIDC employees of the defects of the air-conditioning system of the building.

Acting on this information, private respondent commissioned Engineer David R. Sapico to render a technical evaluation of the system in relation to the contract with petitioner. In his report, Sapico enumerated the defects of the system and concluded that it was "not capable of maintaining the desired room temperature of 76°F - 2°F (Exhibit C)"[5]

On the basis of this report, private respondent filed on May 8, 1971 an action for damages against petitioner with the then Court of First Instance of Rizal (Civil Case No. 14712). The complaint alleged that the air-conditioning system installed by petitioner did not comply with the agreed plans and specifications. Hence, private respondent prayed for the amount of P2 10,000.00 representing the rectification cost, P100,000.00 as damages and P15,000.00 as attorney's fees.

Petitioner moved to dismiss the complaint, alleging that the prescriptive period of six months had set in pursuant to Articles 1566 and 1567, in relation to Article 1571 of the Civil Code, regarding the responsibility of a vendor for any hidden faults or defects in the thing sold.

Private respondent countered that the contract dated September 10, 1962 was not a contract of sale but a contract for a piece of work under Article 1713 of the Civil Code. Thus, in accordance with Article 1144 (1) of the same Code, the complaint was timely brought within the ten-year prescriptive period.

In its reply, petitioner argued that Article 1571 of the Civil Code providing for a six-month prescriptive period is applicable to a contract for a piece of work by virtue of Article 1714, which provides that such a contract shall be governed by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale.[6]

The trial court denied the motion to dismiss. In its answer to the complaint, petitioner reiterated its claim of prescription as an affirmative defense. It alleged that whatever defects might have been discovered in the air-conditioning system could have been caused by a variety of factors, including ordinary wear and tear and lack of proper and regular maintenance. It pointed out that during the one-year period that private respondent withheld final payment, the system was subjected to "very rigid inspection and testing and corrections or modifications effected" by petitioner. It interposed a compulsory counterclaim suggesting that the complaint was filed "to offset the adverse effects" of the judgment in Civil Case No. 71494, Court of First Instance of Manila, involving the same parties, wherein private respondent was adjudged to pay petitioner the balance of the unpaid contract price for the air-conditioning system installed in another building of private respondent, amounting to P138,482.25.

Thereafter, private respondent filed an ex-parte motion for preliminary attachment on the strength of petitioner's own statement to the effect that it had sold its business and was no longer doing business in Manila. The trial court granted the motion and, upon private respondent's posting of a bond of P50,000.00, ordered the issuance of a writ of attachment.

In due course, the trial court rendered a decision finding that petitioner failed to

install certain parts and accessories called for by the contract, and deviated from the plans of the system, thus reducing its operational effectiveness to the extent that 35 window-type units had to be installed in the building to achieve a fairly desirable room temperature. On the question of prescription, the trial court ruled that the complaint was filed within the ten-year prescriptive period although the contract was one for a piece of work, because it involved the "installation of an air-conditioning system which the defendant itself manufactured, fabricated, designed and installed."

Petitioner appealed to the Court of Appeals, which affirmed the decision of the trial court. Hence, it instituted the instant petition.

The Submissions of the Parties

In the instant Petition, petitioner raised three issues. First, it contended that private respondent's acceptance of the work and his payment of the contract price extinguished any liability with respect to the defects in the air-conditioning system. Second, it claimed that the Court of Appeals erred when it held that the defects in the installation were not apparent at the time of delivery and acceptance of the work considering that private respondent was not an expert who could recognize such defects. Third, it insisted that, assuming arguendo that there were indeed hidden defects, private respondent's complaint was barred by prescription under Article 1571 of the Civil Code, which provides for a six-month prescriptive period.

Private respondent, on the other hand, averred that the issues raised by petitioner, like the question of whether there was an acceptance of the work by the owner and whether the hidden defects in the installation could have been discovered by simple inspection, involve questions of fact which have been passed upon by the appellate court.

The Court's Ruling

The Supreme Court reviews only errors of law in petitions for review on certiorari under Rule 45. It is not the function of this Court to re-examine the findings of fact of the appellate court unless said findings are not supported by the evidence on record or the judgment is based on a misapprehension of facts.[7]

> "The Court has consistently held that the factual findings of the trial court, as well as the Court of Appeals, are final and conclusive and may not be reviewed on appeal. Among the exceptional circumstances where a reassessment of facts found by the lower courts is allowed are when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; when the inference made is manifestly absurd, mistaken or impossible; when there is grave abuse of discretion in the appreciation of facts; when the judgment is premised on a misapprehension of facts; when the findings went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee. After a careful study of the case at bench, we find none of the above grounds present to justify the re-evaluation of the findings of fact made by the courts below." [8]

> "We see no valid reason to discard the factual conclusions of the appellate court. x x x (I)t is not the function of this Court to assess and

> evaluate all over again the evidence, testimonial and documentary, adduced by the parties, particularly where, such as here, *the findings of both the trial court and the appellate court on the matter coincide."*[9] (Italics supplied)

Hence, the first two issues will not be resolved as they raise questions of fact.

Thus, the only question left to be resolved is that of prescription. In their submissions, the parties argued lengthily on the nature of the contract entered into by them, viz., whether it was one of sale or for a piece of work.

Article 1713 of the Civil Code defines a contract for a piece of work thus:

"By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material."

A contract for a piece of work, labor and materials may be distinguished from a contract of sale by the inquiry as to whether the thing transferred is one not in existence and which would never have existed but for the order of the person desiring it.[10] In such case, the contract is one for a piece of work, not a sale. On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to some other person even if the order had not been given, then the contract is one of sale.[11]

Thus, Mr. Justice Vitug[12] explains that –

> "A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not is a *contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work (Art. 1467, Civil Code)*. The mere fact alone that certain articles are made upon previous orders of customers will not argue against the imposition of the sales tax if such articles are ordinarily manufactured by the taxpayer for sale to the public *(Celestino Co vs. Collector, 99 Phil. 841)*."

To Tolentino, the distinction between the two contracts depends on the intention of the parties. Thus, if the parties intended that at some future date an object has to be delivered, without considering the work or labor of the party bound to deliver, the contract is one of sale. But if one of the parties accepts the undertaking on the basis of some plan, taking into account the work he will employ personally or through another, there is a contract for a piece of work.[13]

Clearly, the contract in question is one for a piece of work. It is not petitioner's line of business to manufacture air-conditioning systems to be sold "off-the-shelf." Its business and particular field of expertise is the fabrication and installation of such systems as ordered by customers and in accordance with the particular plans and specifications provided by the customers. Naturally, the price or compensation for the system manufactured and installed will depend greatly on the particular plans and specifications agreed upon with the customers.

The obligations of a contractor for a piece of work are set forth in Articles 1714 and 1715 of the Civil Code, which provide:

> "Art. 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and transfer dominion over the thing. This contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale."

> "Art. 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost."

The provisions on warranty against hidden defects, referred to in Art. 1714 above-quoted, are found in Articles 1561 and 1566, which read as follows:

> "Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them."

> xxx xxx xxx

> "Art. 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

> "This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold."

The remedy against violations of the warranty against hidden defects is either to withdraw from the contract (redhibitory action) or to demand a proportionate reduction of the price (accion quanti minoris), with damages in either case.[14]

In *Villostas vs. Court of Appeals,*[15] we held that, "while it is true that Article 1571 of the Civil Code provides for a prescriptive period of six months for a redhibitory action, a cursory reading of the ten preceding articles to which it refers will reveal that said rule may be applied only in case of implied warranties"; and where there is an express warranty in the contract, as in the case at bench, the prescriptive period is the one specified in the express warranty, and in the absence of such period, "the general rule on rescission of contract, which is four years (Article 1389, Civil Code)