



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

EDRON CONSTRUCTION CORPORATION and EDMER Y. LIM,

Petitioners,

- versus -

THE PROVINCIAL GOVERNMENT OF SURIGAO DEL SUR, represented by GOVERNOR VICENTE T. PIMENTEL, JR.,

Respondent.

G.R. No. 220211

Present:

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

Promulgated:

JUN 05 2017

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated November 26, 2014 and the Resolution³ dated September 8, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 99539, which reversed and set aside the Decision⁴ dated December 28, 2010 and the Order⁵ dated September 16, 2011 of the Regional Trial Court of Quezon City, Branch 77 (RTC) in Civil Case No. Q-08-63154, and consequently, dismissed the complaint filed by petitioners Edron Construction Corporation and Edmer Y. Lim (petitioners) against respondent the Provincial Government of Surigao Del Sur, represented by Governor Vicente T. Pimentel, Jr. (respondent).

¹ Rollo, pp. 9-37.

² Id. at 73-81. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda concurring.

³ Id. at 95-97. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Rodil V. Zalameda and Samuel H. Gaerlan concurring.

⁴ Id. at 39-47. Penned by Judge Vivencio S. Baclig.

⁵ Id. at 53-54. Penned by Acting Presiding Judge Ma. Belen Ringpis-Liban.

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The Facts

The instant petition stemmed from a Complaint⁶ for specific performance and damages filed by petitioners Edron Construction Corporation and Edmer Y. Lim (Lim; collectively, petitioners) against respondent before the RTC. Petitioners alleged that they entered into three (3) separate construction agreements⁷ with respondent for the construction of the Learning Resource Center of Tandag, Tandag Bus/Jeepney Terminal, and Tandag Public Market. Petitioners claimed that despite their completion and respondent's consequent acceptance of the works as evidenced by Certificates of Final Acceptance,⁸ the latter had yet to pay them the aggregate amount of ₱8,870,729.67, despite numerous oral and written demands. Thus, they filed the instant complaint to claim the aforesaid amount, plus ₱500,000.00 as actual damages and ₱250,000.00 as attorney's fees.⁹

In its Answer with Counterclaim¹⁰ dated January 6, 2009, respondent admitted the existence of the aforesaid construction contracts. However, it nevertheless maintained, *inter alia*, that: (a) there is no unpaid balance; (b) petitioners are in fact liable for underruns and defective works; (c) petitioners had already waived or abandoned their right to collect any amount on the ground of prescription; and (d) petitioners are guilty of non-observance of the specifications indicated in the construction contracts.¹¹

More than a year after the filing of its Answer, respondent filed a Motion to Dismiss¹² dated May 24, 2010 on the ground of failure to state a cause of action. It argued that under Paragraph 4.3, Article IV of the construction agreements, final payment to petitioners shall be made only after the submission of a sworn statement attesting to the fact that all of the latter's obligations for labor and materials under the contracts have been fully paid. In this regard, respondent contended that since petitioners have yet to submit such sworn statement, then the latter do not have a cause of action against it.¹³ The motion was, however, denied in an Order¹⁴ dated August 11, 2010.

Meanwhile, during trial, Lim testified that: (a) petitioners referred the instant matter to a Presidential Flagship Committee, which valued respondent's alleged arrears at ₱4,326,174.50, and that the former accepted such valuation and agreed to be paid such reduced amount, but respondent

⁶ *Rollo*, pp. 55-61.

⁷ See records, pp. 9-20, 21-33, and 34-44.

⁸ See *id.* at 107-109.

⁹ *Rollo*, pp. 55-61. See also *rollo*, pp. 39 and 74-75.

¹⁰ Records, pp. 58-66.

¹¹ *Id.* See also *rollo*, pp. 39-40 and 75-76.

¹² *Rollo*, pp. 64-70.

¹³ *Id.*

¹⁴ *Id.* at 71.

still failed to pay the same;¹⁵ and (b) petitioners no longer executed a separate affidavit referred to in Paragraph 4.3, Article IV of the construction agreements, maintaining that everything that was needed in claiming full payment from respondent were already attached in the final billings they submitted to the latter.¹⁶ On the other hand, witnesses for respondent testified, among others, that respondent accepted the projects subject of the construction agreements, free from major defects and deficiencies, but nonetheless resisted making payments due to discrepancies in the valuations arising from petitioners' alleged deviations from project specifications.¹⁷

The RTC Ruling

In a Decision¹⁸ dated December 28, 2010, the RTC ruled in petitioners' favor, and accordingly, ordered respondent to pay them: (a) ₱4,326,174.50 with interests of six percent (6%) per annum computed from June 20, 2000, and thereafter, twelve percent (12%) per annum from the filing of the complaint on August 5, 2008; (b) ₱50,000.00 as attorney's fees; and (c) the costs of suit.¹⁹ The RTC found that in light of respondent's admission that the construction works were satisfactorily completed, free from major defects, and that it has accepted the same, petitioners have amply proven their entitlement to the payment of their claim in the reduced amount of ₱4,326,174.50 based on the Presidential Flagship Committee's valuation, which petitioners had accepted. On the other hand, the RTC pointed out that respondent's witnesses had not shown the alleged deviations, much less submitted the list of defects and deficiencies on the projects subject of the construction agreements, on which respondent justified its reason for non-payment of petitioners' claims.²⁰

Respondent moved for reconsideration²¹ which was denied in an Order²² dated September 16, 2011. Aggrieved, respondent appealed to the CA.²³

The CA Ruling

In a Decision²⁴ dated November 26, 2014, the CA reversed and set aside the RTC ruling, and consequently, dismissed the complaint for lack of cause of action.²⁵ It held that by the very terms of the construction

¹⁵ Id. at 42-43.

¹⁶ Id. at 78. See also Transcript of Stenographic Notes dated February 10, 2010, p. 22 (Records, p. 526).

¹⁷ See id. at 44-46.

¹⁸ Id. at 39-47.

¹⁹ Id. at 47.

²⁰ Id. at 46-47.

²¹ Dated January 27, 2011; records, pp. 410-414.

²² *Rollo*, pp. 53-54.

²³ See Notice of Appeal dated October 11, 2011; records, pp. 430-430-A.

²⁴ *Rollo*, pp. 73-81.

²⁵ Id. at 80.

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agreements, specifically Paragraph 4.3, Article IV thereof, the contractor's submission of the sworn statement attesting that all its obligations for labor and materials under the contracts have been fully paid is a condition *sine qua non* in demanding final payment from the owner. Hence, in view of petitioners': (a) admission in open court that no such sworn statement was submitted; and (b) failure to submit evidence showing that a sworn statement was submitted to respondents, petitioners could not validly make a demand for final payment from respondent. In other words, petitioners' cause of action against respondent has not yet accrued.²⁶

Undaunted, petitioners moved for reconsideration,²⁷ which was, however, denied in a Resolution²⁸ dated September 8, 2015; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly reversed and set aside the RTC ruling, and consequently, dismissed petitioners' complaint for lack of cause of action.

The Court's Ruling

The petition is meritorious.

At the outset, the Court notes that the CA's dismissal of petitioners' complaint is heavily-grounded on the latter's alleged non-submission of the sworn statement required in Paragraph 4.3, Article IV²⁹ of the construction agreements.

Such reliance is misplaced.

Section 1, Rule 9 of the Rules of Court reads:

Section 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject

²⁶ Id. at 78-80.

²⁷ Dated December 10, 2014; id. at 82-88.

²⁸ Id. at 95-97.

²⁹ Paragraph 4.3, Article IV of the Construction Agreements uniformly read:

4.3. Final Payment: Final payment to the CONTRACTOR shall be subject to the issuance of a Certificate of Acceptance of the contract work by the OWNER. The OWNER shall then effect the final payment to the CONTRACTOR; provided, however, that the CONTRACTOR has submitted a sworn statement attesting that all its obligations for labor and materials under the Contract have been fully paid.

matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

It may be gleaned from the said provision that except for the defenses of: (a) lack of jurisdiction over the subject matter of the case; (b) *litis pendentia*; (c) *res judicata*; and/or (d) prescription, other defenses must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver thereof. Otherwise stated, if a defendant fails to raise a defense not specifically excepted in Section 1, Rule 9 of the Rules of Court either in a motion to dismiss or in the answer, such defense shall be deemed waived, and consequently, defendant is already estopped from relying upon the same in further proceedings.³⁰

In the instant case, a judicious review of the records reveals that respondent's Answer with Counterclaim³¹ dated January 6, 2009 did not raise as an issue or as a defense petitioners' non-execution of the sworn statement pertained to in Paragraph 4.3, Article IV of the construction agreements. In fact, such matter was only raised in its Motion to Dismiss³² filed more than a year later after the Answer, or on May 24, 2010, to support the ground relied upon in the said Motion, which is failure to state a cause of action. However, it must be pointed out that the Motion and the arguments supporting it can no longer be considered since it was filed out of time as Section 1, Rule 16 of the Rules of Court explicitly provides that motions to dismiss should be filed "[w]ithin the time for but before the filing the answer to the complaint or pleading asserting a claim." More importantly, such matter/defense raised in the motion does not fall within the exceptions laid down in Section 1, Rule 9 of the Rules of Court. As such, respondent was already precluded from raising such issue/defense. Hence, the RTC cannot be faulted in: (a) issuing an Order³³ dated August 11, 2010 denying the Motion to Dismiss; and (b) not including a discussion of said issue/defense in its Decision³⁴ dated December 28, 2010 and Order³⁵ dated September 16, 2011.

In light of the foregoing, the CA erred in dismissing petitioners' complaint on a ground belatedly and improperly raised by respondent. Thus, the Court is constrained to overturn said dismissal and in turn, uphold the RTC's finding of liability on the part of respondents, especially considering that it issued Certificates of Final Acceptance³⁶ essentially stating that the projects were satisfactorily completed, free from major defects, and that it was formally accepting the same. As a result, respondent is hereby adjudged to be liable to petitioners in the amount of ₱4,326,174.50, which is the

³⁰ See *Boston Equity Resources, Inc. v. CA*, 711 Phil. 451 (2013).

³¹ Records, pp. 58-66.

³² *Rollo*, pp. 64-70.

³³ *Id.* at 71.

³⁴ *Id.* at 39-47.

³⁵ *Id.* at 53-54.

³⁶ Records, pp. 107-109.

valuation of such liability according to the Presidential Flagship Committee's valuation accepted by petitioners.

Finally and in line with prevailing jurisprudence, such amount shall earn legal interest of twelve percent (12%) per annum, computed from first demand on June 20, 2000 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of the Decision. Said sum, as well as the other amounts awarded by the RTC (*i.e.*, ₱50,000.00 as attorney's fees and the costs of suit) shall then earn legal interest of six percent (6%) per annum from finality of the Decision until fully paid.³⁷


WHEREFORE, the petition is **GRANTED**. The Decision dated November 26, 2014 and the Resolution dated September 8, 2015 of the Court of Appeals in CA-GR. CV No. 99539 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated December 28, 2010 and the Order dated September 16, 2011 of the Regional Trial Court of Quezon City, Branch 77 in Civil Case No. Q-08-63154 are hereby **REINSTATED** with **MODIFICATION**, in that respondent the Provincial Government of Surigao Del Sur, represented by Governor Vicente T. Pimentel, Jr., is liable to petitioners Edron Construction Corporation and Edmer Y. Lim for the amounts of: (a) ₱4,326,174.50 plus legal interest of twelve percent (12%) per annum, computed from first demand on June 20, 2000 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of the Decision; (b) ₱50,000.00 as attorney's fees; and (c) the costs of suit. Furthermore such amounts shall earn an additional six percent (6%) per annum from finality of the Decision until fully paid.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

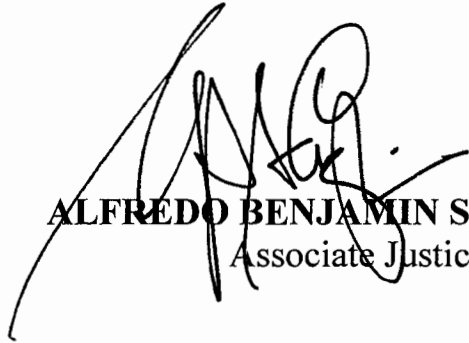
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


³⁷ See *Nacar v. Gallery Frames*, 716 Phil. 267, 275-283 (2013).



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice