



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

SEP 09 2016

THIRD DIVISION

FRILOU CONSTRUCTION, INC.,
 Petitioner,

G.R. No. 191088

Present:

- versus -

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

**AEGIS INTEGRATED STRUCTURE
 CORPORATION,**
 Respondent.

Promulgated:

August 17, 2016

X-----X

DECISION

PEREZ, J.:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision¹ of the Court of Appeals in CA-G.R. CV No. 92108 which reversed and set aside the Decision² of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 05-711, a suit for a Sum of Money filed by respondent Aegis Integrated Structure Corporation against petitioner Frilou Construction, Inc.

Respondent's Complaint alleged, in pertinent part:

¹ *Rollo*, pp. 47-57; Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Isaias P. Dicdican and Romeo F. Barza concurring.

² *Id.* at 101-103; Penned by Judge Eugene C. Paras.

x x x x

2. On October 5, 2004, [petitioner] engaged the services of [respondent] to supply, fabricate, deliver and erect the structural steel requirements of [petitioner] for the proposed Exhibit Building for and in consideration of ₱5,000,000.00 under Purchase Order No. 0461, x x x.

3. On November 19, 2004, [petitioner], again, engaged the services of [respondent] to supply, fabricate, deliver and erect the structural requirements of [petitioner] for the proposed Residential Bldg. for and in consideration of ₱1,024,306.00 under Purchase Order No. 0500, x x x;

4. Payment of the sum of ₱6,024,306.00 has long been overdue in that [respondent] had long supplied, fabricated, delivered and erected the structural steel requirements of [petitioners] but the latter has paid [respondent] the sum of ₱4,490,014.32 only thereby leaving an unpaid balance of ₱1,534,291.68;

5. [Respondent] made repeated demands for the sum of ₱1,534,291.68 but [petitioner] failed/refused to pay, hence, it was necessary for [respondent] to institute the instant suit for which it incurred attorney's fee of ₱150,000.00;

WHEREFORE, it is respectfully prayed that judgment be rendered ordering [petitioner] to pay [respondent] the following:

1. ₱1,534,291.68 plus interest thereon at the legal rate from May 25, 2005 until fully paid;
2. ₱150,000.00 as attorney's fee;
3. Cost of suit;

[Respondent] prays for such other relief as may be deemed just and equitable under the foregoing premises.³

Petitioner filed its Answer and countered that:

x x x x

2. [Petitioner] likewise ADMITS paragraphs 2 and 3 of the Complaint, the truth of the matter being those stated in the Special and Affirmative Defenses;

3. Similarly, [petitioner] also DENIES paragraphs 4 and 5 for being contrary to the facts and circumstances surrounding the case;

4. As and by way of Special and Affirmative Defenses, [petitioner] respectfully states:

³ Id. at 61-62.



SPECIAL AND AFFIRMATIVE DEFENSES

5. While [petitioner] does not deny having engaged [the] services of [respondent] for the supply and delivery of steel requirements, such delivery had already been paid in the amount of Php4,490,014.32 as of March 2005;

6. [Respondent] failed to show evidence that indeed [petitioner] still owes the balance of ₱1,534,291.68 as alleged in the Complaint;

7. No demand whatsoever was made against herein [petitioner] for the alleged balance complained of.

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court to DISMISS and DENY the aforementioned Complaint for lack of merit in fact and in law.

[Petitioner] further prays for such other reliefs and remedies just and equitable under the premises.⁴

During trial, respondent presented its Sales Engineer, Geronimo S. Mangubat, whose testimony was summarized by the Court of Appeals, thus:

[Respondent] supplies and fabricates building materials for its clients. [Mangubat's] duties include offering the services of [respondent] to clients and negotiating with the latter. He knows [petitioner] which contracted their services for the supply and delivery of construction materials. The first transaction worth ₱5,000,000.00 took place on October 5, 2004, covered by Purchase Order No. 0461, while the second under Purchase Order No. [0]500 with a consideration of ₱1,024,306.00 happened on November 19, 2004. The purchase orders were signed for and in behalf of [petitioner] by Architect George Matunog, the Vice-President for Operations. After receipt of the purchase orders, [respondent] supplied the materials and erected the same at the construction site. They submitted billings and [petitioner] issued checks in payment thereof. All in all, [petitioner] paid a total of ₱4,490,014.32 out of the total contract price of ₱6,024,306.00. With respect to the balance in the amount of ₱1,534,291.68, the same remains unpaid, thus they sent two (2) demand letters, both signed by Filomeno H. Castillo, Jr., [respondent's] Vice-President, informing [petitioner] of the deficiency and inviting its representative to a meeting. When [petitioner's] representative failed to show up in the meeting, [respondent] referred the matter to its lawyer, Atty. Jose F. Manacop, who sent a demand letter to [petitioner] and filed this case in court against the latter. For the filing of this case, [respondent] Aegis incurred expenses in the amount of ₱150,000.00.

⁴ Id. at 67-68.



On cross-examination, Engr. Mangubat testified that [petitioner] Frilou signed a Certificate of Completion, but he did not present it as evidence. He also stated that he personally delivered one of the letters to [petitioner] through a staff of Architect Matunog.⁵

For its part, petitioner only had one witness, its employee, Jess de Guia, Jr. (De Guia), who, since 2003, has been in charge of petitioner's warehouse and responsible for receiving deliveries of materials at the construction site. De Guia testified that he received the deliveries of respondent and signed receipt thereof. De Guia further testified that he does not know the value of the materials delivered by respondent; only that petitioner had already paid for these deliveries.

The trial court dismissed the complaint for insufficiency of evidence sustaining petitioner's contention that respondent failed to show evidence of petitioner's supposed remaining liability for the balance amount of ₱1,534,291.68. The trial court rejected respondent's stance that petitioner already admitted its liability for the total amount of the two (2) Purchase Orders when petitioner stated in paragraph 2 of its Answer that: "[it] ADMITS paragraphs 2 and 3 of the Complaint, the truth of the matter being those stated in the Special and Affirmative Defenses." For the trial court, the admission was qualified in that petitioner had already paid the amount of ₱4,490,014.32 and respondent did not show further evidence of petitioner's liability for the remaining balance. The trial court sustained petitioner's argument that the existence of the Purchase Orders in the amount of ₱6,024,306.00 was not equivalent to respondent's delivery of the materials to petitioner in the same amount. In all, the trial court ruled that respondent did not discharge the requisite burden of proof in civil case, *i.e.* preponderance of evidence.

On appeal by respondent, the appellate court reversed and set aside the trial court's ruling on the sole issue of whether [respondent] established its claim of the balance amount of ₱1,534,219.68 even absent presentation of delivery receipts. The appellate court ruled that:

(1) Petitioner's judicial admission of the existence of the Purchase Orders worked to establish respondent's claim of the balance amount of ₱1,534,291.68 by a preponderance of evidence;

⁵ Id. at 9-10.



(2) In failing to specifically deny respondent's allegation that respondent supplied, delivered and erected the structural steel requirements of petitioner in the amount of ₱6,024,306.00, the latter is deemed to have admitted the same;

(3) Consequently of paragraphs 1 and 2, respondent's material allegations thereon need not be proven;

(4) The Purchase Orders numbered 0461 and 0500 evidence a meeting of the minds such that a valid contract existed and became the law between the parties;

(5) Petitioner's contention that the contract price was actually only ₱4,490,014.32, the amount petitioner has already paid, is inconsistent with its confirmation of the Purchase Orders in the amount of ₱6,024,306.00 as the original contract price;

(6) Petitioner is thus estopped from claiming a reduced amount of the contract price; and

(7) Petitioner itself failed to present evidence that respondent only partially complied with its obligation under the Purchase Orders for just the amount of ₱4,490,014.32.

Hence, this appeal by *certiorari* of petitioner insisting on the appellate court's error in granting respondent's complaint and holding petitioner liable to respondent for the balance amount of ₱1,534,291.68.

Petitioner quibbles that it did not admit liability for the entire amount of the Purchase Orders, but only for the value of the actual deliveries by respondent hereunder in the amount of ₱4,490,014.32. Petitioner asseverates that such constituted a specific denial when it further set forth the substance of the matters upon which it relied to support its denial, *i.e.* respondent had no evidence that it owed the balance of ₱1,534,291.68.

We disagree with petitioner and completely subscribe to the appellate court's ruling.



Indeed, petitioner admitted and failed to specifically deny the material averments in respondent's complaint that respondent complied with its obligation under the Purchase Orders for the complete amount of ₱6,024,306.00.

Section 10, Rule 8 of the Rules of Court on Manner of Making Allegations in Pleading contemplates three (3) modes of specific denial: 1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.

The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table.⁶

Thus, the disingenuousness of petitioner becomes apparent to this Court.

First. Petitioner did not make a specific denial, but a general one to the effect that it no longer has any remaining liability to respondent.

Respondent's averment in paragraph 4 of its complaint reads:

4. Payment of the sum of ₱6,024,306.00 has long been overdue in that [respondent] had long supplied, fabricated, delivered and erected the structural steel requirements of [petitioners] but the latter has paid [respondent] the sum of ₱4,490,014.32 only thereby leaving an unpaid balance of ₱1,534,291.68;⁷

Petitioner denied this by stating, thus:



⁶ *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 58 (2011).
⁷ *Rollo*, pp. 61-62.

3. Similarly, [petitioner] also DENIES paragraphs 4 and 5 for being contrary to the facts and circumstances surrounding the case;⁸

However, petitioner did not state “the facts and circumstances surrounding the case,” the matters which it relies on to support its denial of its liability in the amount of ₱1,534,291.68. Petitioner only asserted that respondent failed to show evidence of its supposed remaining liability. This is not an assertion of the truth and substance of the matter. It is merely a statement that as far as petitioner is concerned, respondent does not have evidence to prove its claim.

Notably, there were four (4) material averments in paragraph 4 of respondent’s complaint: (1) petitioner contracted with respondent to fabricate and deliver the former’s structural steel requirements in the amount of ₱6,024,306.00; (2) respondent completely performed the agreement under the Purchase Orders; (3) petitioner has only paid the amount of ₱4,490,014.32; and (4) thus, petitioner had an unpaid balance to respondent in the amount of ₱1,534,291.68.

Petitioner should have, **and could have easily**, specifically denied each and every averment under the foregoing paragraph as required by Section 10 of Rule 8 and then asserted the substance of the matter which it relies on to support its denial. Petitioner’s last clause about respondent’s allegations being “contrary to the facts and circumstances surrounding the case” is hardly anything which petitioner can rely on to support its case. The statement is not evidence for petitioner as defendant.⁹ Petitioner’s assertion of contrariety of the facts to respondent’s position is a conclusion that is made by the court after trial.

Petitioner is plainly splitting hairs. As a result of its failure to make a specific denial, it was deemed to have admitted all the material averments in paragraph 4.¹⁰ Consequently, the judicial admission of petitioner’s remaining liability need not be proved.¹¹

⁸ Id. at 67.

⁹ Evidence is defined under Section 1 of Rule 128 as the means, sanctioned by [the] rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact.

¹⁰ Section 11, Rule 8: *Allegations not specifically denied deemed admitted.*— Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. x x x

¹¹ Section 4, Rule 129: *Judicial admissions.*—An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. x x x

Second. The generality of the denial betrays the absence of specific facts that can prove payment.¹² If untrue, the falsity of the alleged remaining balance in the amount of ₱1,534,291.68 is wholly within petitioner's knowledge which it should have delineated in its Answer. Petitioner could have given specifics on why the original contract price of ₱6,024,306.00 as evidenced by the Purchase Orders was performed only partially, thus prompting petitioner to pay only the amount of ₱4,490,014.32.

Since respondent alleged its complete performance of its obligation under the Purchase Orders, petitioner should have asserted respondent's partial and incomplete performance, specifying the deliveries that were not made. In particular, petitioner ought to have alleged in the Answer itself the structural steel requirements that were not erected such that it rightfully only paid for the lesser amount of ₱4,490,014.32. Yet, petitioner did not do so and only insisted that respondent did not have evidence of completion and delivery.

We further note that petitioner did not even attempt to allege, *via* the third mode of specific denial, that it had no knowledge or information sufficient to form a belief as to the truth or falsity of respondent's averments because the knowledge or information on the issue at hand was clearly known to it. Petitioner simply avoided a direct answer to the allegations of respondent.

We fail to read or see an Affirmative Defense in the following:

5. While [petitioner] does not deny having engaged services of [respondent] for the supply and delivery of steel requirements, such delivery had already been paid in the amount of Php4,490,014.32 as of March 2005;

6. [Respondent] failed to show evidence that indeed [petitioner] still owes the balance of ₱1,534,291.68 as alleged in the Complaint;

7. No demand whatsoever was made against herein [petitioner] for the alleged balance complained of.¹³

Section 5(b), Rule 5 of the Rules of Court reads:

¹² *Venzon v. Rural Bank of Buenavista*, 716 Phil. 607, 615 (2013).
¹³ *Rollo*, p. 68.

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

As previously discussed, petitioner did not set forth a new matter in its Answer because respondent's Complaint already categorically stated in Paragraphs 2, 3 and 4 of the Complaint that petitioner had only paid for the amount of ₱4,490,014.32 of a total indebtedness of ₱6,024,306.00. Simply petitioner did not dispute the allegations as regards the balance.

Lastly, we agree with the appellate court's imposition of legal interest of twelve percent (12%) from the date of extra-judicial demand, 11 April 2005, the unpaid deliveries being a forbearance of money and there being no stipulation between the parties on the payment of interest. However, we divide the applicable legal interest into two periods: (1) where the prevailing rate of interest on 11 April 2005 to 30 June 2013 is twelve percent (12%) *per annum* before the advent of Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 and (2) the reduced rate of interest of six percent (6%) *per annum* from 1 July 2013 to date when this Decision becomes final and executory.¹⁴

We also agree that respondent failed to present adequate proof of its entitlement to attorney's fees in the amount of ₱150,000.00. While it is a sound policy not to set a premium on the right to litigate,¹⁵ we, however, find that respondent is entitled to reasonable attorney's fees for having been compelled to go to court in order to assert his right. Thus, we affirm the Court of Appeal's grant of ₱25,000.00 as attorney's fees.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CV No. 92108 is **AFFIRMED** with **MODIFICATION**. Petitioner Frilou Construction, Inc. is ordered to pay respondent Aegis Integrated Structure Corporation the following amounts: (1) ₱1,534,291.00 plus legal interest of (a) twelve percent (12%) *per annum* from 11 April 2005 to 30 June 2013 and (b) six percent (6%) *per annum* from 1 July 2013 to date when this Decision becomes final and executory; and (2) ₱25,000.00 as attorney's fees. The foregoing shall likewise earn

¹⁴ See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.

¹⁵ *BPI Family Bank v. Franco*, 563 Phil. 495, 515 (2007).


legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction thereof.

SO ORDERED.




JOSE PORTUGAL PEREZ
Associate Justice


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



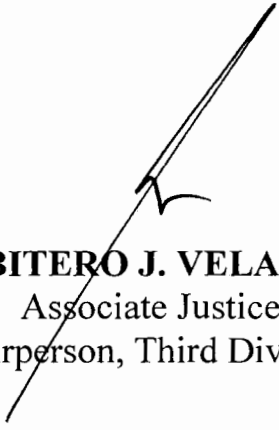
BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

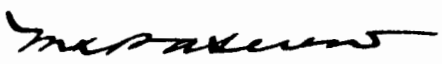
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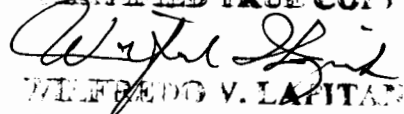
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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