

THIRD DIVISION

[G.R. No. 112998, December 06, 1999]

**FRANCIS HERVAS, PETITIONER, VS. HON. COURT OF APPEALS
AND EDGARDO DOMINGO, RESPONDENTS.**

DECISION

GONZAGA-REYES, J.:

Petition for review on certiorari from the decision of the Court of Appeals^[1] affirming with modification of the amount of attorney's fees the decision of the Regional Trial Court, Branch 125, Caloocan City in Civil Case No. 10274, an action for sum of money plus damages.

Edgardo C. Domingo, plaintiff, together with Francisco Torno, Jr. entered into a "Contract Agreement"^[2] dated November 26, 1981, with Francis M. Hervas for the "complete construction" of a residential house for and in consideration of two hundred seventy five thousand pesos (P275,000.00) payable as follows:

P 68,750.00 25% upon signing of this contract	
P 68,750.00 on or before the 50% Accomplishment)	based on
P 68,750.00 on or before the 70% Accomplishment)	releases
P 68,750.00 on or before turning of keys)	of loan
P275,000.00 Total consideration	

The Agreement stipulated that the job shall last for six (6) months to commence upon approval of the DBP loan and to terminate upon six (6) months from said date of approval subject to further extension, depending on the mutual agreement of both parties.

On April 28, 1982, plaintiff Domingo and Francisco Torno, Jr. entered into a "Memorandum of Agreement" whereby the latter was released from the above-mentioned contract. Hence, Domingo assumed sole and full responsibility for the completion of the project.^[3]

In an Addendum dated July 6, 1982^[4], all the three parties agreed, for and in consideration of an additional sum of ten thousand pesos (P10,000.00), that Domingo will undertake to finish the construction and deliver the completed building. However, the house was not completed on or before June 10, 1982. Both the trial court and the Court of Appeals found that the parties stipulated on an extension of time to finish the construction, with an agreed penalty of P1,000.00 for each day of delay^[5]. On June 28, 1982, the house was turned over to Hervas. Domingo was able to secure a Certification of Completion^[6] from the Metropolitan

Manila Commission and a Certificate of Occupancy was issued by the Office of the Building Official on July 7, 1982^[7]

Hervas failed to pay the balance of P68,750.00. Hence, this action for collection of said amount plus damages.

Hervas alleged in his defense that plaintiff acted in bad faith and refused to complete the construction of the house and that the Certificate of Completion was secured through misrepresentation.

After considering the evidence of both parties, the trial court upheld the version of plaintiff Domingo and rendered judgment as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

(1) Ordering defendant to pay plaintiff the sum of P66,900.00 with interest at 12% per annum from the commencement of this action until fully paid;

(2) Ordering the defendant to pay plaintiff 25% of the total amount due as and for attorney's fees; and

(3) Costs of suit.

SO ORDERED."^[8]

On appeal, the Court of Appeals affirmed the judgment of the Regional Trial Court except for the amount of attorney's fees, thus:

"ACCORDINGLY, except for the amount of attorney's fees which is reduced to 10% of the total amount due, the assailed decision is AFFIRMED in all other respects. No costs."^[9]

In his petition for review on certiorari, Francis Hervas assails the decision of the Court of Appeals on the grounds that the court:

"A. ERRED IN ARRIVING AT CONCLUSIONS ON UNDISPUTED SET OF FACTS; and

B. ITS CONCLUSIONS ARE MANIFESTLY MISTAKEN, ABSURD AND/OR SPECULATIVE."^[10]

Briefly, it is petitioner Herva's position that the court erred by (1) concluding that respondent Domingo was granted an extension to finish the house subject to the payment by petitioner of 50% of the balance, which was not paid; (2) in ignoring the receipts^[11] presented by petitioner, which were not undisputed by the respondent; (3) in not considering the stipulation in Exhibit "3" that respondent would pay petitioner P1,000.00 per day as penalty; and (4) in not upholding petitioner's contention that respondent failed to complete the works, that the construction was done in bad and defective manner, and that the petitioner has made full payment of his obligation.

The petition is meritorious in part.

The core issues raised in plaintiff Domingo's action is whether the contractor Domingo had completed the construction of the house of defendant Hervas as agreed upon by the parties, and whether Hervas had paid his obligation under the contract. Plaintiff (herein respondent) alleged that on July 2, 1982, said house was completed and delivered to defendant (herein petitioner) but the latter refused to pay the balance of P68,750.00 due on or before the "turning of the keys" of the said house. Defendant alleged in his affirmative defenses that the subject house was not finished on July 2, 1982, and that plaintiff agreed to deliver the house on or before June 10, 1982 upon payment by defendant of an additional sum of P10,000.00; by way of counterclaim for damages, defendant alleged that the plaintiff secured the Certificate of Completion from the Metro Manila Commission through misrepresentation, and executed the works in a defective manner so that defendant had to engage the services of another contractor to execute the necessary repairs and finishing works.

The "Contract Agreement" dated November 26, 1981^[12] as well as the "Addendum" dated July 6, 1982^[13] are not disputed. What is disputed is the alleged agreement that petitioner Hervas would pay respondent Domingo 50% of the remaining balance of the contract price, in order to extend the construction period, which agreement was the subject of respondent Domingo's testimony during cross-examination, but is denied by petitioner Hervas.

On the issue of the date of completion of the house, the trial court found that respondent Domingo delivered the house to petitioner Hervas on June 28, 1982. The court relied on the Certificate of Completion^[14], which bears the signatures of both petitioner and respondent, and the Certificate of Occupancy^[15] dated July 7, 1982.

We affirm the findings of the trial court as follows:

"The contention of the defendant that plaintiff failed to complete the works and that the construction was done in bad and defective manner is devoid of merit. If this is true, defendant should not have signed the Certificate of Completion and instead demanded that plaintiff should undo what has been poorly done (Art. 1167 of the Civil Code). He should not have occupied the house to show and manifest that he is not satisfied with its construction. By these actuations defendant should be estopped from complaining for he had already accepted and enjoyed the benefits of living in said house. As the legal maxim goes 'no man should enrich himself at the expense of others'.^[16]

As correctly observed by the respondent court, the above finding of the trial court on the first factual issue carries a "strong presumption of correctness".^[17] Petitioner Hervas was unable to prove his claim that his signature on the Certificate of Completion was forged, a burden that properly pertains to him in view of his affirmative allegation of forgery. It was similarly Hervas' burden to prove his allegation that the house was completed only at the end of July and that he transferred thereto only in the month of August, a contention that is self-serving. Although respondent Domingo testified on cross-examination that as of July 7, 1982, Hervas was not yet occupying the subject residential house, he affirmed that