

ELEVENTH DIVISION

[CA-G.R. CV. NO. 93172, February 14, 2014]

**ARCH. EUSEBIO BERNAL, DOING BUSINESS UNDER THE NAME
AND STYLE CONTEMPORARY BUILDERS, PLAINTIFF-APPELLEE,
VS. DR. VIVENCIO VILLAFLOR & DRA. GREGORIA VILLAFLOR,
DEFENDANTS-APPELLANTS.**

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the appeal from the Decision^[1] dated 28 January 2009 ("assailed Decision")^[2] of the Regional Trial Court, Branch 41, Dagupan City ("RTC"), in Civil Case No. 98-02678-D, for sum of money and damages, with prayer for the issuance of a writ of preliminary attachment.

THE FACTS

The following facts are undisputed: In 1995, the spouses Vivencio Villaflor and Gregoria Villaflor ("defendants-appellants Villaflor"), retained the services of Architect Eusebio Bernal ("plaintiff-appellee contractor") for the construction of the Medical Arts Building at Caranglaan, Dagupan City, for the original contract price of Php7,800,000.00, and executed the Construction Agreement ("Agreement"), which stipulated that upon signing of the Agreement, the defendants-appellants Villaflor were to advance the amount of Php2,000,000.00, as downpayment; in November 1995, after the defendants-appellants Villaflor gave ten (10) post-dated checks to the plaintiff-appellee contractor, in the total amount of Php2,500,000.00, the construction of the Medical Arts Building started; during the course of the construction of the Medical Arts Building, the defendants-appellants Villaflor caused 18 change orders^[3] to be made, which were not covered by the Agreement; the defendants-appellants Villaflor made several payments to the plaintiff-appellee contractor, the total of which amounted to Php14,355,016.94.

On 16 November 1998, plaintiff-appellee contractor filed the Complaint^[4] for sum of money and damages, with prayer for the issuance of a writ of preliminary attachment against the defendants-appellants Villaflor. The Complaint alleged: On 14 February 1995, the defendants-appellants Villaflor and plaintiff-appellee contractor, executed the Agreement for the construction of the Medical Arts Building, but the defendants-appellants Villaflor did not pay the stipulated downpayment on that date, because the release of the proceeds of the defendants-appellants Villaflors' loan from the bank was delayed; in November 1995, after the proceeds of the defendants-appellants Villaflors' loan was released, and after the defendants-appellants Villaflor issued post-dated checks in the total amount of Php2,500,000.00, the construction of the Medical Arts Building started; during the construction of the Medical Arts Building, the defendants-appellants Villaflor made 18 change orders (*i.e.*, alterations), which were not part of the original

Specifications/Plan; plaintiff-appellee contractor did not require the defendants-appellants Villaflor to execute change order request forms, because they were close family friends, and plaintiff-appellee contractor feared that it might antagonize the defendants-appellants Villaflor, who were well known doctors in the city, although plaintiff-appellee contractor reminded the defendants-appellants Villaflor that the change orders were not included in the original Agreement, and that he (plaintiff-appellee contractor) would have to collect additional charges; the defendants-appellants Villaflor assured the plaintiff-appellee contractor that they were going to pay for the cost of the change orders, and instructed plaintiff-appellee contractor to proceed with the requested change orders; the 18 change orders requested by defendants-appellants Villaflor amounted to a total of Php9,796,816.94; the total construction cost of the entire Medical Arts Building, including the 18 change orders, amounted to Php17,596,816.94; the defendants-appellants Villaflor made some payments to the plaintiff-appellee contractor, and left an unpaid balance of Php4,784,861.59; plaintiff-appellee contractor made several written and verbal demands to the defendants-appellants Villaflor for the payment of the Php4,784,861.59; after receipt of the first letter of demand, the defendants-appellants Villaflor paid Php1,543,061.59, which left the amount of Php3,241,800.00, unpaid; plaintiff-appellee contractor made several demands on defendants-appellants Villaflor for the payment of the Php3,241,800.00, but defendants-appellants Villaflor did not pay; the controversy was referred to arbitration, but the defendants-appellants Villaflor did not honor the decision of the arbitrators (*i.e.*, the arbitrators ordered defendants-appellants Villaflor to pay the plaintiff-appellee contractor); the plaintiff-appellee contractor complied with the specifications provided by the defendants-appellants Villaflor; plaintiff-appellee contractor turned over all the pertinent documents (*i.e.*, certificate of occupancy; completion of electrical, plumbing, sanitary, and other relevant permits) to the defendants-appellants Villaflor; plaintiff-appellee contractor suffered sleepless nights, besmirched reputation, and mental anguish because of the defendants-appellants Villaflors' malicious and fraudulent act of not honoring their obligations.

In support of plaintiff-appellee contractor's prayer for the issuance of the writ of preliminary attachment, plaintiff-appellee contractor alleged that the defendants-appellants Villaflor were guilty of incipient fraud from the time the Agreement was executed, until the time the construction of the Medical Arts Building was completed and terminated.

The Complaint prayed that: a writ of preliminary attachment be issued against defendants-appellants Villaflor; and that defendants-appellants Villaflor be ordered to pay Php3,241,800.00 (actual damages), Php1,000,000.00 (moral damages), Php500,000.00 (exemplary damages), Php200,000.00 (attorney's fees), and costs of suit.

On 11 February 1999, the RTC granted plaintiff-appellee contractor's prayer for the issuance of the writ of preliminary attachment.^[5] After plaintiff-appellee contractor posted the required bond, the RTC issued the Writ of Preliminary Attachment dated 26 February 1999.^[6]

The defendants-appellants Villaflor filed the verified Answer with Compulsory Counterclaim,^[7] averring: In March 1995, plaintiff-appellee contractor won the bid to construct the Medical Arts Building of defendants-appellants Villaflor; in November 1995, plaintiff-appellee contractor and defendants-appellants Villaflor, signed the

Agreement prepared by the plaintiff-appellee contractor, which, at that time, was not dated; on the same day that the parties signed the Agreement, the defendants-appellants Villaflor delivered to plaintiff-appellee contractor post-dated checks in the total amount of Php2,500,000.00, representing downpayment, which amount was Php500,000.00 in excess of the amount required in the Agreement; the construction of the Medical Arts Building began in November 1995 because it was only then that the Agreement was executed; contrary to the allegations of the plaintiff-appellee contractor, the defendants-appellants Villaflors' loan with the Development Bank of the Philippines ("DBP") was released in March 1996, and not in November 1995, and the Php2,500,000.00 downpayment came from the personal funds of the defendants-appellants Villaflor; after the plaintiff-appellee contractor made the first demand letter, the defendants-appellants Villaflor paid the amount of Php1,543,061.59, upon the assurance of plaintiff-appellee contractor that the construction will be finished, and that an itemized costing of each change order would be made; through the letter dated 12 March 1998, the defendants-appellants Villaflor made a demand on the plaintiff-appellant contractor, that he submit the detailed costing of the project, including the change orders, but the plaintiff-appellee contractor did not comply; the defendants-appellants Villaflor made the demand for the itemized costing, because the plaintiff-appellee contractor was sending only lump sum billings for each of the change orders; after the plaintiff-appellee contractor made a second demand for the payment of the alleged outstanding balance, the defendants-appellants Villaflor informed plaintiff-appellee contractor that they had paid in full the contract price, and reiterated their demand for an itemized costing with respect to the change orders; the controversy was never referred to a board of arbitrators; after receiving the payment of Php1,543,061.59, plaintiff-appellee contractor never returned, and did not finish the project, so the defendants-appellants Villaflor undertook the completion of the Medical Arts Building, which was left five percent (5%) unfinished; the plaintiff-appellee contractor short-changed the defendants-appellants Villaflor by reducing the area of the Medical Arts Building by approximately 63 square meters; the lump sum billings sent by the plaintiff-appellee contractor were not only erroneous, but were indicative of the fraudulent scheme employed by the plaintiff-appellee contractor.

The defendant-appellants Villaflor pleaded as compulsory counterclaim: the defendants-appellants Villaflor spent the amount of Php60,000.00 to finish the remaining 5% of the uncompleted works in the Medical Arts Building; plaintiff-appellee contractor should reimburse the defendants-appellants Villaflor the amount of Php630,000.00 because plaintiff-appellee contractor fraudulently reduced the area of the Medical Arts Building by 63 square meters; due to the malicious imputations and accusations made by the plaintiff-appellee contractor, the defendants-appellants Villaflors' reputation and social standing were besmirched, and they suffered sleepless nights, mental anguish, social humiliation, moral shock, and were constrained to engage the services of their counsel to protect their rights.

The Answer with Compulsory Counterclaim prayed that: plaintiff-appellee contractor be ordered to pay Php60,000.00 (reimbursement for the value of the 5% unfinished project), Php630,000.00 (reimbursement for the 63 square meters fraudulently reduced), Php20,000,000.00 (moral damages), Php5,000,000.00 (exemplary damages), Php494,180.00 (attorney's fees), Php5,000.00 for every appearance of their legal counsel (appearance fee), and costs of suit.

Plaintiff-appellee contractor's Reply with Answer to Counterclaim^[8], denied the allegations and counterclaims made by the defendants-appellants Villaflor, and alleged: the Medical Arts Building was already finished and functional, and was already being occupied by the defendants-appellants Villaflor for the purpose for which it was built, when the defendants-appellants Villaflor made the payment in the amount of Php1,543,061.59; defendants-appellants Villaflors' 5% assessment of the alleged uncompleted works was arbitrary, and without basis; the plaintiff-appellant contractor followed the original plan, design, and specifications of the Medical Arts Building.

On 01 July 1999, an ocular inspection was conducted on the Medical Arts Building.^[9]

In the Order dated 14 January 2000, the RTC granted the joint motion^[10] of the parties, and created the Fact Finding Committee composed of Architect Aquilino Pastoral Jr., as the chairman ("Arch. Pastoral"), Engineer Gerino Tactaquin ("Engr. Tactaquin", representative of the plaintiff-appellee contractor), and Engr. Artemio Paragas ("Engr. Paragas", representative of the defendants-appellants Villaflor), as members; directed the Fact Finding Committee to conduct an ocular inspection on the Medical Arts Building, and in the course thereof, to: 1) dwell on the technical aspect of the plan, as approved by the building official; 2) dwell on matters as appearing on the building and the materials used; 3) determine whether there was compliance with the specifications duly approved by the building official; 4) determine whether the change orders being claimed by the plaintiff-appellee appear in the building; and 5) dwell on such other matters relative to the technical aspect of the building, the structure, and the interpretation of the technical aspect of the plan; directed the Fact Finding Committee to submit its written report, and state clearly and distinctly the facts on which they unanimously agreed upon, as well as the disputed facts; ordered that those facts unanimously agreed upon by the members of the Fact Finding Committee shall be considered final, and binding upon both the plaintiff-appellee contractor and the defendants-appellants Villaflor.^[11]

On 05 May 2000, upon motion^[12] of the parties, the RTC directed the Fact Finding Committee to give their respective assessments, and opinions as to the costs and value of the materials, labor, and works or items done or not done on the Medical Arts Building, and on such other items or areas where the members of the committee have varying assessments or opinions.^[13]

On 08 May 2000, the Fact Finding Committee submitted the Fact Finding Committee Report dated 06 May 2000 on the ocular inspection conducted on the Medical Arts Building.^[14]

On 01 March 2002, the RTC directed the members of the Fact Finding Committee to convene again, and determine the costs of the materials mentioned in Item "B" (those items billed but do not exist in the Medical Arts Building), and Item "C" (those items which were discovered existing in the Medical Arts Building but were not billed) of the Fact Finding Committee Report, and submit its report thereon.^[15]

On 18 March 2002, the Fact Finding Committee submitted the separate reports of Engr. Tactaquin, and Engr. Paragas pertaining to the costs of bill of materials for the change orders done at the Medical Arts Building.^[16]

Trial proceeded.

Plaintiff-appellee contractor presented himself, and Engr. Tactaquin, as witnesses. Plaintiff-appellee contractor's evidence is summarized thus: On 14 February 1995, defendants-appellants Villaflor and plaintiff-appellant contractor executed the Agreement,^[17] which stated that the construction of the Medical Arts Building was to be based on the Specification Plan, approved by the building official;^[18] in February 1996, during the construction of the Medical Arts Building, the defendants-appellants Villaflor requested 18 change orders, with the total cost of Php9,796,816.94;^[19] the total construction cost of the Medical Arts Building, including the 18 change orders, was Php17,596,816.94;^[20] in January 1997, the construction of the Medical Arts Building was finally completed;^[21] the defendants-appellants Villaflor made several payments to the plaintiff-appellee contractor, but left unpaid the amount of Php4,784,861.59;^[22] on 18 August 1997, plaintiff-appellee contractor made a written demand on the defendants-appellants Villaflor for the payment of the Php4,784,861.59;^[23] after receipt of the written demand made by the plaintiff-appellee contractor, the defendants-appellants Villaflor delivered to plaintiff-appellee contractor post-dated checks in the amount of Php1,400,000.00;^[24] plaintiff-appellee contractor turned over all the pertinent documents (*i.e.*, certificate of occupancy; completion of electrical, plumbing, sanitary, and other relevant permits) to the defendants-appellants Villaflor;^[25] on 04 May 1998, plaintiff-appellee contractor made another written demand on the defendants-appellants Villaflor for the payment of the unpaid amount of Php3,241,800.00;^[26] while the defendants-appellants Villaflor made attempts to negotiate the payment of the unpaid amount, subsequently, through the letter dated 23 June 1998, they denied their outstanding obligation, and refused to pay;^[27] due to the unjust refusal of the defendants-appellants Villaflor to pay their outstanding obligation, plaintiff-appellee contractor was constrained to hire the services of a legal counsel,^[28] and suffered sleepless nights, besmirched reputation, and mental anguish.^[29]

Defendants-appellants Villaflor presented the following persons as witnesses: Engr. Paragas; defendant-appellant Dr. Vivencio Villaflor; defendant-appellant Dra. Gregoria Villaflor; Conrado Estrella; and Dr. Generoso Torres. The defendants-appellants Villaflors' evidence is summarized, thus: Plaintiff-appellee contractor won the bid to construct the Medical Arts Building;^[30] when defendants-appellants Villaflor and plaintiff-appellee contractor signed the Agreement in November 1995, the instrument was not dated;^[31] the construction of the Medical Arts Building started in November 1995, because it was only then that the Agreement was executed;^[32] the downpayment in the amount of Php2,500,000.00 came from the personal funds of the defendants-appellants Villaflor,^[33] and not from the proceeds of the loan with the Development Bank of the Philippines ("DBP"), which was only released in March 1996;^[34] the defendants-appellants Villaflor always paid the billings sent by the plaintiff-appellee contractor, and they kept on making payments on their balance even if there were no billings sent by the plaintiff-appellee contractor;^[35] the comparison chart made by defendant-appellant Dr. Vivencio Villaflor, as to the costings made by the plaintiff-appellee contractor before and after the filing of the Complaint, showed that there were several discrepancies^[36] (*i.e.*,