

SECOND DIVISION

[G.R. No. 200759, March 25, 2015]

**FAJ CONSTRUCTION & DEVELOPMENT CORPORATION,
PETITIONER, VS. SUSAN M. SAULOG, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

This case illustrates the oft-quoted principle that the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during trial.

This Petition for Review on *Certiorari*^[1] seeks to set aside the November 29, 2011 Decision^[2] and February 24, 2012 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 88385 affirming with modification the January 30, 2006 Decision^[4] of the Regional Trial Court (RTC) of Quezon City, Branch 220 in Civil Case No. Q-02-45865 and denying petitioner's Partial Motion for Reconsideration,^[5] respectively.

Factual Antecedents

On June 15, 1999, petitioner FAJ Construction and Development Corporation and respondent Susan M. Saulog entered into an Agreement^[6] (construction agreement) for the construction of a residential building in San Lorenzo Village, Makati City for a contract price of P12,500,000.00. Payment to petitioner contractor shall be on a progress billing basis, after inspection of the work by respondent.

Construction of the building commenced, and respondent made a corresponding total payment to petitioner in the amount of P10,592,194.80. However, for the October 31 and November 6, 2000 progress billing statements sent by petitioner in the total amount of P851,601.58, respondent refused to pay. After performing additional work, petitioner made another request for payment, but respondent again refused to pay, prompting petitioner to terminate the construction contract pursuant to Article 27(b) of the Uniform General Conditions of Contract for Private Construction (or Document 102) of the Construction Industry Authority of the Philippines, Department of Trade and Industry.^[7]

Petitioner then sent demand letters to respondent on November 24, 2000 and September 28, 2001. In reply, respondent claimed that petitioner's work was defective, and that it should instead be made liable thereon.

Petitioner thus filed with the RTC of Quezon City a civil case for collection of a sum of money with damages against respondent. Docketed as Civil Case No. Q-02-45865 and assigned to Branch 220, the Complaint^[8] alleged that despite faithful compliance with the construction agreement, respondent refused to pay the

outstanding balance of P851,601.58, which prompted it to stop construction of the building. Petitioner thus prayed that respondent be ordered to pay the amounts of P851,601.58 representing the unpaid billings; P625,000.00 representing the retention amount; P50,000.00 for litigation expenses; 20% attorney's fees and appearance fees, or P170,000.00; and costs of suit.

In her Answer with Compulsory Counterclaim,^[9] respondent claimed that while she religiously paid petitioner pursuant to their construction agreement, petitioner's work was defective and delayed; that petitioner failed to remedy said defects; that as a result, rainwater seeped through the building and caused extensive damage to the unfinished building; and that she had to incur additional substantial expenses for the repair of the building, to remedy the defects caused by petitioner, and to finish construction of the building. By way of counterclaim, respondent prayed for an award of actual damages in the amount of P3,213,575.91; lost rentals amounting to P5,391,456.00; additional consequential damages of P1,600,000.00 because she could not devote herself to her work; additional costs of ongoing repair; P5,000,000.00 moral damages; P5,000,000.00 exemplary damages; P1,387,500.00 as penalties for delay; attorney's fees and P4,000.00 appearance fees per hearing; interest; and costs of suit.

After pre-trial, the case was set for trial on the merits.

Petitioner presented its first witness on March 11, 2003. However, the presentation of the witness's testimony was not concluded as petitioner's counsel did not have the required documentary evidence.^[10] Thus, petitioner moved for a continuance.

After several opportunities for the presentation of its first witness, petitioner failed to proceed with trial. Its counsel moved and asked for several postponements of trial, which the trial court granted despite respondent's opposition. However, petitioner's counsel and witness failed to appear during the scheduled April 29, 2003 hearing, prompting the trial court, upon respondent's motion, to dismiss the case for failure to prosecute.^[11]

Petitioner filed an unverified motion for reconsideration^[12] of the April 29, 2003 dismissal order, claiming that its counsel was unable to attend the scheduled hearing because he suffered arthritis of the knee; however, the motion was not accompanied by an affidavit or certification to the effect that the character of petitioner's counsel's illness is such as to render his non-attendance excusable. Respondent opposed the motion.^[13] In a June 23, 2003 Order,^[14] the trial court granted petitioner's motion for reconsideration, thus recalling its April 29, 2003 dismissal order and setting the case for hearing on July 29, 2003 for the continuation of the presentation of petitioner's evidence.

On July 29, 2003, both petitioner and its counsel again failed to appear. The trial court reset the hearing to September 4, 2003, with a warning that further postponement will not be tolerated.^[15]

Petitioner once more moved for the postponement of the September 4, 2003 hearing, citing conflict of schedule.^[16] Respondent opposed the motion, claiming that there was a pattern on petitioner's part to delay the disposition of the case

despite the trial court's admonition that no further postponement will be allowed.

On September 4, 2003, petitioner and counsel again failed to appear for the continuation of trial. The trial court, noting respondent's manifestation, issued another Order dismissing the case for failure to prosecute, ordering that the direct testimony of petitioner's witness be stricken off the record, and setting the case for hearing on respondent's counterclaim.^[17]

Petitioner again filed a motion for reconsideration^[18] of the above September 4, 2003 dismissal order, which respondent opposed,^[19] and which the trial court denied in a December 16, 2003 Order.^[20] Petitioner filed a second motion for reconsideration,^[21] but the same was denied in a January 14, 2004 Order.^[22]

Petitioner filed a petition for *certiorari*^[23] with the CA questioning the above December 16, 2003 and January 14, 2004 Orders of the trial court, claiming that they were issued with grave abuse of discretion; that the trial court erred in denying a postponement of trial, in striking off the testimony of its witness, and in declaring that petitioner had the propensity to delay the case. The Petition was docketed as CA-G.R. SP No. 82239.

On September 30, 2004, the CA issued its Decision^[24] in CA-G.R. SP No. 82239 dismissing the petition for *certiorari* and affirming the trial court's action, declaring that petitioner adopted a pattern of delay and was guilty of employing dilatory maneuvers, trifling with respondent's right to a speedy dispensation of justice, abusing the patience of the trial court and wasting its time, squandering the people's money, and impeding the administration of justice. It held further that the trial court acted rightly in its resolution of the case, treating petitioner with liberality despite its trifling with the expeditious administration of justice; that petitioner's complaint was correctly dismissed for failure to prosecute after it was given all the opportunity to present its evidence; that said dismissal operates as an adjudication on the merits; that petitioner's right to due process was not violated; and that petitioner's second motion for reconsideration is not allowed under Section 5, Rule 37 of the 1997 Rules of Civil Procedure.^[25] In addition, the appellate court admonished petitioner's counsel, reminding the latter not to delay his case, but rather to observe the rules of procedure and not misuse them to defeat the ends of justice.

Petitioner took the matter to this Court, via a petition for review on *certiorari* docketed as G.R. No. 166336. However, in a March 7, 2005 Resolution,^[26] the Petition was denied for failure to submit a verified statement of material date of filing the motion for reconsideration of the assailed CA judgment, and for failure to show that the appellate court committed any reversible error. In several other Resolutions^[27] of this Court, petitioner's motions for reconsideration and to refer the case to the Court *en banc* were denied on the ground, among others, that it failed to sufficiently show that the CA committed any reversible error.

On January 17, 2006, an Entry of Judgment^[28] was issued by the Court stating that on August 16, 2005, its March 7, 2005 Resolution in G.R. No. 166336 became final and executory.

Ruling of the Regional Trial Court

In Civil Case No. Q-02-45865, respondent was allowed to present her evidence on the counterclaim. As found by the CA, respondent's evidence is as follows:

x x x. She presented the testimony of Rhodora Calinawan, the architect who conducted a complete inspection of the project first in September 2000, and, second, in November 2000, after typhoon Seniang. Rhodora Calinawan narrated her findings and identified the photographs submitted as proofs of appellant's^[29] substandard work. Among the defects she pointed out were the sloppily done flooring, the unaligned electrical outlet and switch, dried cement and paint stained flooring, incorrect colored cement used to fill the gap between the tiles, need to repair door jamb, sloppily done grouting of tiles, incorrect luggage compartment doors, bubbles in the varnishing works, unaligned sanding of parquet flooring, poor termination of shower and enclosure and bull nose wood moulding, dirty window sill, lack of screws and rubber on the window, damaged roof panels, need for plashing and installation of drift edges, and improper installation of asphalt shingles on the roof. After the typhoon, appellee^[30] also requested her to make a second inspection. She prepared another report which listed the following additional defects: the second floor parquet flooring was wet due to the typhoon because the windows were not properly sealed, lacked sealant and rubber protector.

Susan Saulog took the stand on February 15, 2005. She testified on appellant's defective work and the damage caused by typhoon "Seniang" to the unfinished work, notwithstanding the fact that she had already paid a total of P10,592,194.80. She refused to pay appellant the amount of P851,601.58 because the latter already collected advance payment but had a lot of unfinished work before it abandoned the project. She made a counter-demand for P4,600,000.00 that excluded the lost revenue for unearned rentals, exemplary and moral damages. She was supposed to earn P160,000.00 per month from rentals starting July 2000. After appellant abandoned the project, she still spent P3,820,796.21 to rectify and complete the same. The accounts chargeable to appellant were listed in Exhibit 21, to wit:

ITEM NO.	PARTICULARS	AMOUNT
A	Bestbuilt Steel Builders	785,299.12
B	Sub-Contractor: Fizcon Enterprises	375,166.17
C	Labor Contracts & Quotations	243,461.40
D	Cash Advances for Materials by FAJ	186,236.62
E	Professional Fees	631,666.46
F	Rectification of Major Defective Works	422,563.77
G	Other Charges	647,629.71
H	Other Additional Construction Expenses for Rectification & Repair Works	<u>528,772.96</u>
	GRAND TOTAL AMOUNT	3,820,796.21

The penalty for delay is P12,500.00 per day. From July 30, 2000 up to November 17, 2000, the total penalty amounted to P1,387,500.00. She

suffered sleepless nights because she started to experience frozen shoulder and trigger finger that necessitated the services of Dr. Alberto Lu, an acupuncturist. Exhibits 30-34 comprised five receipts issued by Alberto M. Lou, evidencing payment of P400 for services rendered. She claimed reimbursement for the amounts she paid to her counsel: P20,000.00 as acceptance fees; P4,000.00 per appearance and cost of suit which totaled P100,000.00. She spent P60,000.00 and P7,000.00, respectively, for the services of Architect Calinawan and an accountant to put the records in order. She claimed moral damages of P5,000,000.00. [31]

On January 30, 2006, the trial court rendered its Decision on respondent's counterclaim, declaring as follows:

After carefully studying all the above evidence, this court resolves that defendant [32] has proven her following allegations and counterclaims, to wit:

(1) That, in fact, the construction work of plaintiff [33] was not only delayed, but defective; and that plaintiff abandoned the construction work, incomplete and with many defects. The evidence on record is overwhelming and in addition to the testimonies of Arch. Rhodora Calinawan and the defendant herself; the same is proven by Exhs. 1 – 1-B-4; 2 – 2-A; 3; 4 – 4-H-2; 5 – 5-G-2; 6 – 6-G-2; 7 – 7-E-2; 8 – 8-C; 9 – 9-M; 9-N – 9-EE; 15 – 15-A2; 15-B – 15-B-5; 15-B2 – 15-Z.

(2) That defendant paid plaintiff the total amount of P10,592,194.80 before plaintiff abandoned the work (Exhs. 16 – 16-Q).

(3) That defendant had to finish the work abandoned by plaintiff, incurring substantial additional expenses therefor. This is also supported not only by her testimony, but by documentary evidence presented by her (Exhs. 21; 20 – 20-A; 21 – 21-F; 22 – 22-CCC; 23 – 23-M; 24 – 24-JJJ; 25 – 25-S; 26 – 26-QQ; 28 – 28-AAAA-130; 29 – 29-JJJ).

(4) As to the claim of defendant for moral damages, the Court finds that she is entitled to moral damages, but not for the amount she is claiming. The testimony given by defendant on how the problems created by plaintiff affected her personally is believable; and furthermore, it is supported by official receipts of an Acupuncture Consultant (Exhs. 30-34). This is one of the cases wherein moral damages are allowed by Article 2220 of the New Civil Code. Breach of Contract where the defendant acted fraudulently or in bad faith.

(5) With respect to exemplary damages, the Court perceives that same should be granted, but moderates the same. Plaintiff being in the construction business to the public, should be deterred from doing to others, what it did to defendant. This is one of the situations envisioned by Article 2229 of the New Civil Code, for exemplary damages.