

## THIRD DIVISION

[ G.R. No. 194507, September 08, 2014 ]

**FEDERAL BUILDERS, INC., PETITIONER, VS. FOUNDATION  
SPECIALISTS, INC., RESPONDENT,**

**[G.R. NO. 194621]**

**FOUNDATION SPECIALISTS, INC., PETITIONER, VS. FEDERAL  
BUILDERS, INC., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court are two consolidated cases, namely: (1) Petition for review on *certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 194507, filed by Federal Builders, Inc., assailing the Decision<sup>[1]</sup> and Resolution,<sup>[2]</sup> dated July 15, 2010 and November 23, 2010, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 70849, which affirmed with modification the Decision<sup>[3]</sup> dated May 3, 2001 of the Regional Trial Court (RTC) in Civil Case No. 92-075; and (2) Petition for review on *certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 194621, filed by Foundation Specialists, Inc., assailing the same Decision<sup>[4]</sup> and Resolution,<sup>[5]</sup> dated July 15, 2010 and November 23, 2010, respectively, of the CA in CA-G.R. CV No. 70849, which affirmed with modification the Decision<sup>[6]</sup> dated May 3, 2001 of the RTC in Civil Case No. 92-075.

The antecedent facts are as follows:

On August 20, 1990, Federal Builders, Inc. (FBI) entered into an agreement with Foundation Specialists, Inc. (FSI) whereby the latter, as sub-contractor, undertook the construction of the diaphragm wall, capping beam, and guide walls of the Trafalgar Plaza located at Salcedo Village, Makati City (the *Project*), for a total contract price of Seven Million Four Hundred Thousand Pesos (P7,400,000.00).<sup>[7]</sup> Under the agreement,<sup>[8]</sup> FBI was to pay a downpayment equivalent to twenty percent (20%) of the contract price and the balance, through a progress billing every fifteen (15) days, payable not later than one (1) week from presentation of the billing.

On January 9, 1992, FSI filed a complaint for *Sum of Money* against FBI before the RTC of Makati City seeking to collect the amount of One Million Six Hundred Thirty-Five Thousand Two Hundred Seventy-Eight Pesos and Ninety-One Centavos (P1,635,278.91), representing Billings No. 3 and 4, with accrued interest from August 1, 1991 plus moral and exemplary damages with attorney's fees.<sup>[9]</sup> In its complaint, FSI alleged that FBI refused to pay said amount despite demand and its completion of ninety-seven percent (97%) of the contracted works.

In its Answer with Counterclaim, FBI claimed that FSI completed only eighty-five percent (85%) of the contracted works, failing to finish the diaphragm wall and component works in accordance with the plans and specifications and abandoning the jobsite. FBI maintains that because of FSI's inadequacy, its schedule in finishing the Project has been delayed resulting in the Project owner's deferment of its own progress billings.<sup>[10]</sup> It further interposed counterclaims for amounts it spent for the remedial works on the alleged defects in FSI's work.

On May 3, 2001, after evaluating the evidence of both parties, the RTC ruled in favor of FSI, the dispositive portion of its Decision reads:

WHEREFORE, on the basis of the foregoing, judgment is rendered ordering defendant to pay plaintiff the following:

1. The sum of P1,024,600.00 representing billings 3 and 4, less the amount of P33,354.40 plus 12% legal interest from August 30, 1991;
2. The sum of P279,585.00 representing the cost of undelivered cement;
3. The sum of P200,000.00 as attorney's fees; and
4. The cost of suit.

Defendant's counterclaim is denied for lack of factual and legal basis.

SO ORDERED.<sup>[11]</sup>

On appeal, the CA affirmed the Decision of the lower court, but deleted the sum of P279,585.00 representing the cost of undelivered cement and reduced the award of attorney's fees to P50,000.00. In its Decision<sup>[12]</sup> dated July 15, 2010, the CA explained that FSI failed to substantiate how and in what manner it incurred the cost of cement by stressing that its claim was not supported by actual receipts. Also, it found that while the trial court did not err in awarding attorney's fees, the same should be reduced for being unconscionable and excessive.

On FBI's rejection of the 12% annual interest rate on the amount of Billings 3 and 4, the CA ruled that the lower court did not err in imposing the same in the following wise:

x x x The rule is well-settled that when an obligation is breached, and it consists in the payment of a sum of money, the interest due shall itself earn legal interest from the time it is judicially demanded (*BPI Family Savings Bank, Inc. vs. First Metro Investment Corporation*, 429 SCRA 30). When there is no rate of interest stipulated, such as in the present case, the legal rate of interest shall be imposed, pursuant to Article 2209 of the New Civil Code. In the absence of a stipulated interest rate on a loan due, the legal rate of interest shall be 12% per annum.<sup>[13]</sup>

Both parties filed separate Motions for Reconsideration assailing different portions of

the CA Decision, but to no avail.<sup>[14]</sup> Undaunted, they subsequently elevated their claims with this Court via petitions for review on *certiorari*.

On the one hand, FSI asserted that the CA should not have deleted the sum of P279,585.00 representing the cost of undelivered cement and reduced the award of attorney's fees to P50,000.00, since it was an undisputed fact that FBI failed to deliver the agreed quantity of cement. On the other hand, FBI faulted the CA for affirming the decision of the lower court insofar as the award of the sum representing Billings 3 and 4, the interest imposed thereon, and the rejection of his counterclaim were concerned. In a Resolution<sup>[15]</sup> dated February 21, 2011, however, this Court denied, with finality, the petition filed by FSI in G.R. No. 194621 for having been filed late.

Hence, the present petition filed by FBI in G.R. No. 194507 invoking the following arguments:

I.

THE COURT OF APPEALS COMMITTED A CLEAR, REVERSABLE ERROR WHEN IT AFFIRMED THE TRIAL COURT'S JUDGMENT THAT FEDERAL BUILDERS, INC. WAS LIABLE TO PAY THE BALANCE OF P1,024,600.00 LESS THE AMOUNT OF P33,354.40 NOTWITHSTANDING THAT THE DIAPHRAGM WALL CONSTRUCTED BY FOUNDATION SPECIALIST, INC. WAS CONCEDEDLY DEFECTIVE AND OUT-OF-SPECIFICATIONS AND THAT PETITIONER HAD TO REDO IT AT ITS OWN EXPENSE.

II.

THE COURT OF APPEALS COMMITTED SERIOUS, REVERSABLE ERROR WHEN IT IMPOSED THE 12% LEGAL INTEREST FROM AUGUST 30, 1991 ON THE DISPUTED CLAIM OF P1,024,600.00 LESS THE AMOUNT OF P33,354.40 DESPITE THE FACT THAT THERE WAS NO STIPULATION IN THE AGREEMENT OF THE PARTIES WITH REGARD TO INTEREST AND DESPITE THE FACT THAT THEIR AGREEMENT WAS NOT A "LOAN OR FORBEARANCE OF MONEY."

III.

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS REVERSABLE ERROR WHEN IT DISMISSED THE COUNTERCLAIM OF PETITIONER NOTWITHSTANDING OVERWHELMING EVIDENCE SUPPORTING ITS CLAIM OF P8,582,756.29 AS ACTUAL DAMAGES.

The petition is partly meritorious.

We agree with the courts below and reject FBI's first and third arguments. Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and considered conclusive between the parties, save for the following exceptional and meritorious circumstances: (1) when the factual findings of the

appellate court and the trial court are contradictory; (2) when the findings of the trial court are grounded entirely on speculation, surmises or conjectures; (3) when the lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (6) when there is a misappreciation of facts; (7) when the findings of fact are themselves conflicting; and (8) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. [16]

None of the aforementioned exceptions are present herein. In the assailed Decision, the RTC meticulously discussed the obligations of each party, the degree of their compliance therewith, as well as their respective shortcomings, all of which were properly substantiated with the corresponding documentary and testimonial evidence.

Under the construction agreement, FSI's scope of work consisted in (1) the construction of the guide walls, diaphragm walls, and capping beam; and (2) the installation of steel props.[17] As the lower courts aptly observed from the records at hand, FSI had, indeed, completed ninety-seven percent (97%) of its contracted works and the non-completion of the remaining three percent (3%), as well as the alleged defects in the said works, are actually attributable to FBI's own fault such as, but not limited to, the failure to deliver the needed cement as agreed upon in the contract, to wit:

On March 8, 1991, plaintiff had finished the construction of the guide wall and diaphragm wall (Exh. "R") **but had not yet constructed the capping beam as of April 22, 1991 for defendant's failure to deliver the needed cement in accordance with their agreement** (Exhibit "I"). The diaphragm wall had likewise been concrete tested and was found to have conformed with the required design strength (Exh. "R").

Subsequently, plaintiff was paid the aggregate amount of P5,814,000.00. But as of May 30, 1991, plaintiff's billings numbers 3 and 4 had remained unpaid (Exhs. "L", "M", and "M-1").

x x x x

On the misaligned diaphragm wall from top to bottom and in-between panels, plaintiff explained that in the excavation of the soil where the rebar cages are lowered and later poured with concrete cement, the characteristics of the soil is not the same or homogenous all throughout. **Because of this property of the soil, in the process of excavation, it may erode in some places that may cause spaces that the cement may fill or occupy which would naturally cause bulges, protrusions and misalignment in the concrete cast into the excavated ground (tsn., June 1, 2000, pp 14-18). This, in fact was anticipated when the agreement was executed and included as provision 6.4 thereof.**

The construction of the diaphragm wall panel by panel caused misalignment and the chipping off of the portions misaligned is considered a matter of course. **Defendant, as the main contractor of the project, has the responsibility of chopping or chipping off of bulges** (tsn., ibid, pp 20-21).

**Wrong location of rebar dowels was anticipated by both contractor and subcontractor as the latter submitted a plan called "Detail of Sheer Connectors" (Exh "T") which was approved.** The plan provided two alternatives by which the wrong location of rebar dowels may be remedied. **Hence, defendant, aware of the possibility of inaccurate location of these bars, cannot therefore ascribe the same to the plaintiff as defective work.**

Construction of the capping beam required the use of cement. Records, however, show that from September 14, 1990 up to May 30, 1991 (Exhs. "B" to "L"), plaintiff had repeatedly requested defendant to deliver cement. Finally, on April 22, 1991, **plaintiff notified defendant of its inability to construct the capping beam for the latter's failure to deliver the cement as provided in their agreement** (Exh. "I"). Although records show that there was mention of revision of design, there was no evidence presented to show such revision required less amount of cement than what was agreed on by plaintiff and defendant.

**The seventh phase of the construction of the diaphragm wall is the construction of the steel props which could be installed only after the soil has been excavated by the main contractor. When defendant directed plaintiff to install the props, the latter requested for a site inspection to determine if the excavation of the soil was finished up to the 4<sup>th</sup> level basement. Plaintiff, however, did not receive any response.** It later learned that defendant had contracted out that portion of work to another subcontractor (Exhs. "O" and "P"). Nevertheless, plaintiff informed defendant of its willingness to execute that portion of its work.<sup>[18]</sup>

It is clear from the foregoing that contrary to the allegations of FBI, FSI had indeed completed its assigned obligations, with the exception of certain assigned tasks, which was due to the failure of FBI to fulfil its end of the bargain.

It can similarly be deduced that the defects FBI complained of, such as the misaligned diaphragm wall and the erroneous location of the rebar dowels, were not only anticipated by the parties, having stipulated alternative plans to remedy the same, but more importantly, are also attributable to the very actions of FBI. Accordingly, considering that the alleged defects in FSI's contracted works were not so much due to the fault or negligence of the FSI, but were satisfactorily proven to be caused by FBI's own acts, FBI's claim of P8,582,756.29 representing the cost of the measures it undertook to rectify the alleged defects must necessarily fail. In fact, as the lower court noted, at the time when FBI had evaluated FSI's works, it did not categorically pose any objection thereto, viz: