

## THIRD DIVISION

[ G.R. No. 196383, October 15, 2012 ]

**ROBERT PASCUA, DOING BUSINESS UNDER THE NAME AND  
STYLE TRI-WEB CONSTRUCTION, PETITIONER, VS. G & G  
REALTY CORPORATION, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This resolves the Petition for Review on *Certiorari* filed by petitioner under Rule 45 of the Rules of Court which assails the Amended Decision<sup>[1]</sup> dated March 15, 2010 of the Court of Appeals in CA-G.R. CV No. 89480.

The factual antecedents follow:

On October 15, 1999, an Agreement was entered into between petitioner and respondent for the construction of a four-storey commercial building and two-storey kitchen with dining hall. Under said Agreement, petitioner undertook to provide all materials and adequate labor, technical expertise and supervision for the said construction, while respondent obligated itself to pay the amount of Eleven Million One Hundred Thousand Pesos (P11,100,000.00).

During the course of the construction project, respondent required petitioner to undertake several additional works and change order works which were not covered by the original agreement. Since respondent required petitioner to prioritize the change order and additional works, the construction of the four-storey building had to be temporarily halted.

Sometime in 2000, petitioner was able to finish the construction of the four-storey building and two-storey kitchen with dining hall, albeit behind the scheduled turnover date.

The parties then proceeded to punch list the minor repair works on the project. However, after completing all punch listing requirements, respondent refused to settle its outstanding obligation to petitioner. Hence, petitioner filed a Complaint for Sum of Money with Damages before the Regional Trial Court of Pasig City.

After trial on the merits, the trial court ruled in favor of petitioner, *viz.*:

Based on the evidence presented by plaintiff, this Court is convinced that the delay incurred by the plaintiff in the completion of the construction project was reasonable, and does not merit the defendant's claim for payment of Php5,000.00 penalty per day of delay. **Although plaintiff does not dispute that the work was completed beyond the given**

**deadline, he has sufficiently explained that the cause of delay were the additional works and change order works undertaken by the construction corporation in accordance with the instructions of defendant.** Defendant did not deny the existence of the said additional works. Plaintiff cannot be faulted in any shortage in the supply of labor, since the additional works are not contemplated in the original agreement of the parties.

That the punch listed repairs have been completed by the plaintiff is likewise sufficiently proved by the plaintiff through testimonial and documentary evidence. If there were remaining defects and uncompleted works, defendant should have pointed out the same when it received the list of the accomplished repairs.

x x x x

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff ROBERT PASCUA, doing business under the name and style of TRI-WEB CONSTRUCTION, and against defendant G & G REALTY CORPORATION, ordering the latter to pay plaintiff the following:

- 1.) The remaining balance of the contract price, less the cost of government permits and taxes which may have been shouldered by defendant, subject to documentary proof;
- 2.) Php50,000.00 by way of attorney's fees; and
- 3.) Cost of suit.

SO ORDERED.<sup>[2]</sup> (Emphasis supplied)

On appeal, the Court of Appeals (*appellate court*) affirmed the trial court's ruling in a Decision<sup>[3]</sup> dated May 11, 2009. The *fallo* of said decision states:

**WHEREFORE**, the instant appeal is **AFFIRMED WITH MODIFICATION** in that defendant-appellant G & G Realty Corporation is ordered to pay plaintiff-appellee Robert Pascua: (1) the remaining balance of the contract price, less the **penalty and other incidental expenses spent vis-à-vis the violations cited by BFP and Maynilad**, as well as the cost of government permits and taxes which may have been shouldered by defendant-appellant G & G in relation to said violations; and (2) costs of suit. The award of attorney's fees is **DELETED** for lack of basis.

SO ORDERED.<sup>[4]</sup>

Upon respondent's motion for reconsideration, the appellate court reconsidered and vacated its original decision.

In its Amended Decision, the appellate court ruled in favor of respondent. It held

that petitioner is not entitled to the unpaid balance of the contract price, since the cause of delay in the construction of the four-storey commercial building and two-storey kitchen with dining hall was due to petitioner's acceptance of two new other contracts for repair works. The dispositive portion of said decision states:

**WHEREFORE, Our May 11, 2009 Decision is RECONSIDERED and VACATED.** Setting aside the assailed Decision of the RTC of Pasig City, Branch 67 dated January 31, 2007, judgment is hereby rendered directing plaintiff-appellee Robert Pascua to pay defendant-appellant G & G Realty Corporation:

1. the amount of P160,107.07 as penalty and other incidental expenses vis-à-vis the violations cited by the BFP and Maynilad;
2. the amount of P177,360.10 as total refundable balance due G & G; and
3. Costs of suit.

SO ORDERED.<sup>[5]</sup>

Not satisfied with the appellate court's Amended Decision, petitioner appealed to this Court raising the following issues:

- I. The Court of Appeals committed a serious error when it overturned and reversed its original Decision dated 11 May 2009 and, instead, declared petitioner liable to respondent despite the existence of overwhelming proof supporting petitioner's claim for the unpaid balance of the contract price.**
- II. The Court of Appeals GROSSLY misconstrued and misinterpreted the facts of the case, while committing a serious misappreciation of the evidence as borne by the records, when it rendered judgment inconsistent with, if not contradictory to, the applicable rulings of the Supreme Court.**
- III. The Amended Decision is unjust, erroneous, oppressive and contrary to law, jurisprudence, and the facts of the case insofar as it found that the delays on the completion of the construction project were caused by the petitioner.**
- IV. The Court of Appeals violated the rules of evidence when it admitted hearsay testimony in arriving at a finding that petitioner is not entitled to the payment of the unpaid balance of the contract price.**
- V. The Court of Appeals committed a palpable error when it granted respondent's appeal notwithstanding the lack of authority on the part of respondent corporation to interpose**