

## SECOND DIVISION

[ G.R. No. 159795, July 30, 2004 ]

**SPOUSES ROBERTO & EVELYN DAVID AND COORDINATED GROUP, INC., PETITIONERS, VS. CONSTRUCTION INDUSTRY AND ARBITRATION COMMISSION AND SPS. NARCISO & AIDA QUIAMBAO, RESPONDENTS.**

### DECISION

**PUNO, J.:**

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court, assailing the Decision and Resolution of the Court of Appeals, dated June 30, 2003 and August 27, 2003, respectively, in CA-G.R. SP No. 72736.

Petitioner COORDINATED GROUP, INC. (CGI) is a corporation engaged in the construction business, with petitioner-spouses ROBERTO and EVELYN DAVID as its President and Treasurer, respectively.

The records reveal that on October 7, 1997, respondent-spouses NARCISO and AIDA QUIAMBAO engaged the services of petitioner CGI to design and construct a five-storey concrete office/residential building on their land in Tondo, Manila. The Design/Build Contract of the parties provided that: (a) petitioner CGI shall prepare the working drawings for the construction project; (b) respondents shall pay petitioner CGI the sum of Seven Million Three Hundred Nine Thousand Eight Hundred Twenty-One and 51/100 Pesos (₱7,309,821.51) for the construction of the building, including the costs of labor, materials and equipment, and Two Hundred Thousand Pesos (₱200,000.00) for the cost of the design; and (c) the construction of the building shall be completed within nine (9) months after securing the building permit.

The completion of the construction was initially scheduled on or before July 16, 1998 but was extended to November 15, 1998 upon agreement of the parties. It appears, however, that petitioners failed to follow the specifications and plans as previously agreed upon. Respondents demanded the correction of the errors but petitioners failed to act on their complaint. Consequently, respondents rescinded the contract on October 31, 1998, after paying 74.84% of the cost of construction.

Respondents then engaged the services of another contractor, RRA and Associates, to inspect the project and assess the actual accomplishment of petitioners in the construction of the building. It was found that petitioners revised and deviated from the structural plan of the building without notice to or approval by the respondents.

[1]

Respondents filed a case for breach of contract against petitioners before the Regional Trial Court (RTC) of Manila. At the pre-trial conference, the parties agreed

to submit the case for arbitration to the CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC). Respondents filed a request<sup>[2]</sup> for arbitration with the CIAC and nominated Atty. Custodio O. Parlade as arbitrator. Atty. Parlade was appointed by the CIAC as sole arbitrator to resolve the dispute. With the agreement of the parties, Atty. Parlade designated Engr. Loreto C. Aquino to assist him in assessing the technical aspect of the case. The RTC of Manila then dismissed the case and transmitted its records to the CIAC.<sup>[3]</sup>

After conducting hearings and two (2) ocular inspections of the construction site, the arbitrator rendered judgment against petitioners, thus:

### **AWARD**

In summary, award is hereby made in favor of the Quiambaos against the Respondents, jointly and severally, as follows:

Lost Rentals	- P1,680,000.00
Cost to Complete, Rectification, etc.	- 2,281,028.71
Damages due to erroneous staking	- 117,000.00
Professional fees for geodetic surveys, etc.	- 72,500.00
Misc. expenses/ professional fees of engineers	- 118,642.50
Bills for water and electricity, PLDT	- 15,247.68
Attorney's Fees	- 100,000.00
Moral Damages	- 250,000.00
Exemplary Damages	- 250,000.00
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<b>TOTAL</b>	<b>P4,884,418.89</b>

There is likewise an award in favor of the Respondents (petitioners herein) and against the Claimants (respondents herein) for the value of the materials and equipment left at (the) site (in) the amount of P238,372.75. Respondent CGI is likewise credited with an 80% accomplishment having a total value of P5,847,857.20.

All other claims and counterclaims are hereby dismissed for lack of merit.

To recapitulate:	Payments already made to CGI	-P5,275,041.00
	Amount awarded above to Claimants	- 4,864,418.89
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	<b>Total</b>	<b>10,159,459.89</b>
	Payments due CGI for 80% work accomplishment	-P5,847,857.20
	Cost of materials and equipment	- 238,372.75
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Total : P6,086,299.95

Deducting this amount of P6,086,229.95 from P10,159,459.89, the result is a net award in favor the Claimants of (sic) the amount of P4,073,229.94.

WHEREFORE, the Respondents are hereby ordered to pay, jointly and severally, the Claimants the amount of P4,073,229.94 with interest at 6% per annum from the date of the promulgation of this Award, and 12% per annum of the net award, including accrued interest, from the time it becomes final and executory until it is fully paid.

Each party is hereby directed to pay to the Commission P15,000.00 as such party's share in the expert's fees paid to Engr. Loreto C. Aquino.

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

Petitioners appealed to the Court of Appeals which affirmed the arbitrator's Decision but deleted the award for lost rentals.<sup>[5]</sup>

Unsatisfied, petitioners filed this petition for review on certiorari, raising the following issues:

- I. THERE WAS NO BASIS, IN FACT AND IN LAW, TO ALLOW RESPONDENTS TO UNILATERALLY RESCIND THE DESIGN/BUILT CONTRACT, AFTER PETITIONERS HAVE (SIC) SUBSTANTIALLY PERFORMED THEIR OBLIGATION UNDER THE SAID CONTRACT.
- II. THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONERS JOINTLY AND SEVERALLY LIABLE WITH CO-PETITIONER COORDINATED (GROUP, INC.), IN CLEAR VIOLATION OF THE DOCTRINE OF SEPARATE JURIDICAL PERSONALITY.

We find no merit in the petition.

Executive Order No. 1008 entitled, "Construction Industry Arbitration Law" provided for an arbitration mechanism for the speedy resolution of construction disputes other than by court litigation. It recognized the role of the construction industry in the country's economic progress as it utilizes a large segment of the labor force and contributes substantially to the gross national product of the country.<sup>[6]</sup> Thus, E.O. No. 1008 vests on the Construction Industry Arbitration Commission (CIAC) original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties who have agreed to submit their case to voluntary arbitration. **Section 19 of E.O. No. 1008 provides that its arbitral award shall be appealable to the Supreme Court only on questions of law.**<sup>[7]</sup>

There is a **question of law** when the doubt or difference in a given case arises as to what the law is on a certain set of facts, and there is a **question of fact** when the doubt arises as to the truth or falsity of the alleged facts.<sup>[8]</sup> Thus, for a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the parties and there must be no doubt as to the veracity or

falsehood of the facts alleged.<sup>[9]</sup>

In the case at bar, it is readily apparent that **petitioners are raising questions of fact**. In their first assigned error, petitioners claim that at the time of rescission, they had completed 80% of the construction work and still have 15 days to finish the project. They likewise insist that they constructed the building in accordance with the contract and any modification on the plan was with the consent of the respondents.

These claims of petitioners are refuted by the evidence on record. In holding that respondents were justified in rescinding the contract, the **Court of Appeals upheld the factual findings of the sole arbitrator**, thus:

x x x

**(A)s the Building was taking shape, they noticed deviations from the approved plans and specifications for the Building. Most noticeable were two (2) concrete columns in the middle of the basement which effectively and permanently obstructed the basement for the parking of vehicles x x x. In addition, three (3) additional concrete columns were constructed from the ground floor to the roof deck x x x which affected the overall dimension of the building such as altering the specified beam depths, passageways and windows.** In addition, Mrs. Quiambao provided a virtual litany of alleged defects, to wit: (a) the Building was not vertically plumbed xxx; (b) provisions for many architectural members were not provided for, such as, (i) the recesses for window plant boxes are lacking xxx, (ii) provisions for precast molding are lacking xxx, (iii) canopies are also lacking x x x; (c) misaligned walls, ugly discrepancies and gaps; (d) skewed walls to floors/landings; (e) low head clearances and truncated beams x x x; (f) narrow and disproportionate stairs xxx one (1) instead of two (2) windows at the fire exit x x x, (g) absence of water-proofing along the basement wall x x x and at the roof deck which caused leaks that damages the mezzanine floor x x x; (h) the use of smaller diagonal steel trusses at the penthouse. x x x There were others which were shown during the site inspection such as: (1) L-shaped kitchen counters instead of the required U-shaped counters x x x; (2) failure to provide marble tops for the kitchen counters; (3) installation of single-tub sinks where the plans called for double-type stainless kitchen sinks x x x; (4) installation of much smaller windows than those required; (5) misaligned window easements to wall, (6) floors were damaged by roof leaks, (6) poor floor finish, misaligned tiles, floors with "kapak" and disproportionate drawers and cabinets. A more comprehensive list of alleged defects, deviations and complaints of the Quiambaos is found in a report marked Exhibit C-144. **Many of these defects were seen during the site inspection and the only defense and comment of CGI was that these were punch-list items which could have been corrected prior to completion and turn-over of the Building had the Contract not been terminated by the Claimants** (respondents here). x x x Thus, x x x (petitioner) CGI argued that: *"In any construction work, before a contractor turns-over the project to the owner, punchlisting of defects is done so as to ensure compliance and*

satisfaction of both the contractor and the owner. Punch listing means that the contractor will list all major and minor defects and rectifies them before the turnover of the project to the owner. After all defects had been arranged, the project is now turned over to the owner. For this particular project, no turn over was made by the contractor to the owner yet. Actually, we were already pinpointing these defects for punch listing before we were terminated illegally. As alleged by the owner, the deficiencies mentioned are stubouts of water closets at toilets, roofing and framing, doors, cabinets, ceiling and stairs and other were not yet completed and rectified by us. In fact we were counting on our project engineer in charge x x x to do this in as much as this is one of his duties to do for the company. x x x" Confirmatory of this assertion of CGI that it was willing to undertake the appropriate corrective works (whether or not the items are punch-list items) is Exhibit C-88 which is a letter prepared by CGI's Windell F. Vizconde, checked by CGI's Gary M. Garcia and noted by CGI's Benjie Lipardo, addressed to the Quiambaos which stated that:

"As per our discussion during the last meeting dated Sept. 28, 1998 the following items was (sic) confirmed and clarified. These are described as follows:

"1. All ceiling cornices shall be installed as per plan specification which is 1" x 4" in size.

"2. All baseboards shall be installed as per plan specification which is wood 1" x 4" in size.

"3. Electrical Meter center and main panel breaker should be retained to its present location.

"4. Elevation of office, dining and stair lobby of ground floor shall be 4" higher than the elevation of parking area (subject for verification).

"5. All door jambs at C.R. has (sic) to be replaced with concrete framing jambs.

"6. All ceilings mailers should be 2 x 2 in size.

"7. All plywood ceiling that was damaged by rain water shall be replaced.

"8. Provide a pipe chase for the enclosure of soil stack pipe and water line pipe at the ground floor level between grid line 3-4 along the light well area.

"9. Front side elevation view shall be follow (sic) as per plan specialy (sic) at 4<sup>th</sup> flr.

"10. One column at basement floor along grid line 2# B has to be verified by the structural designer if ever it is safe to removed (sic) the column and what will be their (sic) recommendation to support the load.