

FIRST DIVISION

[G.R. No. 150978, April 03, 2003]

**POWTON CONGLOMERATE^[1], INC., AND PHILIP C. CHIEN,
PETITIONERS, VS. JOHNNY AGCOLICOL, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

In a contract to build a structure or any other work for a stipulated price, the contractor cannot demand an increase in the contract price on account of higher cost of labor or materials, unless there has been a change in the plan and specification which was authorized in writing by the other party and the price has been agreed upon in writing by both parties.^[2]

This is a petition for review on certiorari assailing the September 3, 2001 Decision^[3] of the Court of Appeals in CA-G.R. CV No. 65100, and its December 5, 2001 Resolution^[4] denying petitioner's motion for reconsideration.

Sometime in November 1990, respondent Johnny Agcolicol, proprietor of Japerson Engineering, entered into an "Electrical Installation Contract" with Powton Conglomerate, Inc. (Powton), thru its President and Chairman of the Board, Philip C. Chien. For a contract price of P5,300,000.00, respondent undertook to provide electrical works as well as the necessary labor and materials for the installation of electrical facilities at the Ciano Plaza Building owned by Powton, located along M. Reyes Street, corner G. Mascardo Street, Bangkal, Makati, Metro Manila.^[5] In August 1992, the City Engineer's Office of Makati inspected the electrical installations at the Ciano Plaza Building and certified that the same were in good condition. Hence, it issued the corresponding certificate of electrical inspection.

On December 16, 1994, respondent filed with the Regional Trial Court of Pasay City, Branch 115, the instant complaint for sum of money against the petitioners.^[6] He alleged that despite the completion of the electrical works at Ciano Plaza Building, the latter only paid the amount of P5,031,860.40, which is equivalent to more than 95% of the total contract price, thereby leaving a balance of P268,139.80. Respondent likewise claimed the amount of P722,730.38 as additional electrical works which were necessitated by the alleged revisions in the structural design of the building.^[7]

In their answer, petitioners contended that they cannot be obliged to pay the balance of the contract price because the electrical installations were defective and were completed beyond the agreed period.^[8] During the trial, petitioner Chien testified that they should not be held liable for the additional electrical works allegedly performed by the petitioner because they never authorized the same.^[9]

At the pre-trial conference, the parties stipulated, *inter alia*, that the unpaid balance claimed by the respondent is P268,139.60 and the cost of additional work is P722,730.38.^[10]

On August 16, 1999, a decision was rendered awarding the respondent the total award of P990,867.38 representing the unpaid balance and the costs of additional works. The dispositive portion thereof reads:

Wherefore, this Court renders its judgment in favor of the plaintiff and orders the defendants Powton Congolmerate and Philip C. Chien to pay the plaintiff, jointly and severally, the amount of P990,867.38 representing their total unpaid obligations plus legal interest from the time of the filing of this complaint. No pronouncement as to costs.

SO ORDERED.^[11]

Aggrieved, petitioners appealed to the Court of Appeals which, however, affirmed the decision of the trial court.^[12] The motion for reconsideration was likewise denied.^[13]

Hence, the instant petition.

Is the petitioner liable to pay the balance of the contract price and the increase in costs brought about by the revision of the structural design of the Ciano Plaza Building?

The petition is partly meritorious.

We agree with the findings of both the trial court and the Court of Appeals that petitioners failed to show that the installations made by respondent were defective and completed beyond the agreed period. The justification cited by petitioners for not paying the balance of the contract price is the self-serving allegation of petitioner Chien. Pertinent portion of his testimony, reads:

COURT:

Q: You are telling the Court that you did not accept the job because it is not yet complete. That is [a] general statement.

ATTY. FLORENCIO:

Q: Why did you say that the job was not yet complete?

COURT: Specify.

WITNESS:

A: I am not an electrical engineer but my men...we also get independent engineer to certify that

the job was not complete, your Honor.

COURT:

Q: You mean to say you hired an independent electrical engineer and he certified that the job is not yet complete and there is danger?

WITNESS:

A: Yes, your Honor.

COURT:

Q: You have to present that engineer.

ATTY. FLORENCIO:

A: Yes, your Honor.^[14]

Notwithstanding the above promise, petitioners never presented the engineer or any other competent witness to testify on the matter of delay and defects. Having failed to present sufficient proof, petitioners' bare assertion of unsatisfactory and delayed installation will not justify their non-payment of the balance of the contract price. Hence, we affirm the ruling of the trial court and the Court of Appeals ordering petitioners to pay the balance of P268,139.80.

In awarding additional costs to respondent, both the trial court and the Court of Appeals sweepingly applied the principle of unjust enrichment without discussing the relevance in the instant case of Article 1724 of the Civil Code, which provides:

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties.

Article 1724 of the Civil Code was copied from Article 1593 of the Spanish Civil Code,^[15] which provided as follows:

No architect or contractor who, for a lump sum, undertakes the construction of a building, or any other work to be done in accordance with a plan agreed upon with the owner of the ground, may demand an increase of the price, even if the costs of the materials or labor has increased; but he may do so when any change increasing the work is made in the plans, provided the owner has given his consent thereto.^[16]