

## NINETEENTH DIVISION

[ CA-G.R. CV NO. 04319, January 26, 2015 ]

**CAROLINA L. ORDOÑEZ, PLAINTIFF-APPELLANT, VS. JONATHAN U. LIM, DEFENDANT-APPELLEE.**

### DECISION

**LOPEZ, J.:**

Sought to be reversed in this appeal is the December 15, 2011 *Decision*<sup>[1]</sup> of the Regional Trial Court, Branch 33 of Dumaguete City in Civil Case No. 13872 for *Breach of Contract with Damages* dismissing her complaint, the decretal portion of which reads;

"WHEREFORE, from the foregoing, judgment is hereby rendered ordering plaintiff to pay the defendant the balance of PhP450,000.00 and for the defendant to make rectifications on the flaws and defects as recommended by Engrs. Uymatiao and Ramientos, to wit:

- a. installation of a wider drainage;
- b. reinforce the stairs; and
- c. install a canopy or waterproof the walls.

ORDERED."<sup>[2]</sup>

### **UNDISPUTED FACTS**

Plaintiff Carolina L. Ordoñez, as the owner of Lot 745-b-2<sup>[3]</sup> located at Angatan, Tabuctubig, Dumaguete City, engaged, sometime in January 2003, the services of contractor and Civil Engineer defendant Jonathan Lim, who happens to be her first cousin, to construct a three-storey warehouse with a floor area of 2,094 square meters sometime on January 2003 at a cost of 7.6 Million Pesos which was originally set at 10.1 Million but was reduced after several negotiations.

No written contract was executed for the construction of the subject warehouse as both parties merely signed a Cost Estimate<sup>[4]</sup> coupled with a Building Plan duly approved by the City Engineer's Office in the year 2003.

The construction started in February 2003 after the payment of One Million Pesos<sup>[5]</sup> on February 20, 2003. Thereafter, plaintiff deposited the following payments to defendant Lim, to wit:

- a. PhP500,000.00 on May 22, 2003
- b. PhP500,000.00 on May 26, 2003
- c. PhP600,000.00 on July 4, 2003
- d. PhP600,000.00 on July 8, 2003

- e. PhP600,000.00 on September 16, 2003
- f. PhP600,000.00 on September 19, 2003
- g. PhP600,000.00 on November 6, 2003
- h. PhP600,000.00 on November 20, 2003
- i. PhP600,000.00 on January 19, 2004
- j. PhP100,000.00 on February 23, 2004
- k. PhP100,000.00 on March 16, 2004
- l. PhP500,000.00 on April 13, 2004
- m. PhP100,000.00 on May 21, 2004
- n. PhP150,000.00 on July 23, 2004

When the construction is almost completed, defendant turned over the warehouse to plaintiff for inspection. Upon doing so, plaintiff discovered several defects on the building, among others are the following:

- a. Thin GI sheets on the roof
- b. Small truss angle bar
- c. GI sheet was used on the door instead of steel plate
- d. Too many cracks on the walls that water can seep in
- e. Cracks on the floor
- f. Electrical wirings installed are smaller than the ones drawn as on the building plan
- g. Drainage
- h. Railings are not sturdy
- i. Windows and doors have no canopy

Due to the foregoing defects, plaintiff refused to pay the balance of Four Hundred Fifty Thousand Pesos (PhP450,000.00) to defendant. Plaintiff likewise sent defendant a Letter<sup>[6]</sup> dated July 14, 2005 specifying in details her complaints on the project and the costs for the damaged items that were stored on the warehouse amounting to PhP34,323.00.

Defendant Lim responded stating that:

- a. The GI roof installed is gauge #26
- b. The trusses are based on structural design
- c. Doors are made of gauge #18 which is not even included in his quotation
- d. Minor cracks are common in any concrete surface. Normal walls are known to damp when one side is without waterproofing and without painting. The contract does not include waterproofing membrane or painting.
- e. The incident where water from the third floor went to drip to the first floor was when the roofing was not yet installed.
- f. Construction of canopy on the windows and doors are not included in the quotation

As the parties failed to settle the matter, plaintiff filed a Complaint before the Punong Barangay for an amicable settlement. This however failed prompting the plaintiff to file a Complaint for Breach of Contract with Damages against defendant before the Regional Trial Court of Dumaguete City.

During the pre-trial conference on October 3, 2006, both parties submitted their respective admissions and denials. So as to assist the parties and the Court, they likewise agreed to retain a commissioner<sup>[7]</sup>, in the person of Engr. Gregorio

Uymatiao, Jr. replacing Engr. Kirit after he duly inhibited himself from the case.<sup>[8]</sup>  
Pre-trial was suspended pending the approval of the Commissioner's Report.

The following are the findings of the Court appointed Commissioner, to wit:

"1. Overall, the building is structurally sound. Reinforced Column, Beams and slabs has (sic) not exhibited any signs of structural failure or excessive deflection. Slabs were designed as one-way slab, with beams of sufficient depth. A more in-depth testing will involve physical loading and the use of precision instruments to test for allowable deflections which is unavailable in Dumaguete. Use of higher grade reinforcement is not an issue as the furnished structural analysis only calls for Grade 33 deformed bars.

2. Cracks in slab and walls are evident and therefore needs rectification. It hampers the functionality of the building. Repairs of the concrete-hollow blocks (CHB) wall will need two stages. First, on the cracks with concrete epoxy or waterplugs, secondly, the walls need to be waterproof (sic) with cement slurry which is of the brush-on type in two or more coatings. Likewise, concrete slabs' shrinkage cracks can also be rectified with concrete epoxy and the uneven floors with adhesive-type cement. Any "Sika" products appropriate for use in the above-defects are good substitutes.

3. Catch basins are not fully sealed and could be the cause of sippage on ground floor. I suggest that the catch basin floor and sides be fully sealed to channel all water from downspout to drainage. Some windows/openings may need canopies to be properly protected from strong rain.

4. On the electrical system, individual panel board at each floor is advisable.

The cost of the building by market standards is very reasonable. However, the contractor has the responsibility to rectify defects especially when it hampers the safe and functional use of the structure without extra cost especially when the defect is on the workmanship. Demolition for some unverified structural defects would not be the solution."

As seen in the report of Engr. Uymatiao, he recommended a more in-depth testing involving physical loading and the use of precision instruments to test for allowable deflections. Hence, the appointment of Engr. Capistrano Ramientos, Jr., the results of his inspection and loading test are as follows:

#### Observations & Recommendations:

The results of the actual load test shows that the actual deflection of the loaded members were very close to that of the theoretical deflections. Although total actual deflections are slightly higher than the theoretical deflections based on elastic theory, the elastic component of the actual deflections in fact are slightly lower than the theoretical values. During the actual load test, there were no additional cracks that were noted nor

was there an increase in an existing crack. Maximum deflections at full load (100 lbs/sq.ft = 4,788 Pascals) are very much lower than those permitted by the National Structural Code of the Philippines (NSCP 2001). **Therefore the building in general is safe under the original design live load of 100 lbs/sq.ft (4,788 Pa).**

As observed, the building problem that prompted the owner to have the building design and construction evaluated was due to the inadequate drainage system, i.e. from the gutter to the downspouts and to the drain pipe.

The drainage pipe is seemed to be very small to handle the amount of water from the gutter that resulted in the high hydrostatic pressure within the down spout as well as the drain pipe. The high pressure causes water to leak to the concrete hollow block-wall then to the floor, aside from those that overflows from the gutter. The only logical solution is to make the drain pipe large enough to reduce the pressure build-up, and this must have to be solved using principles of hydraulics rather than just guess work. Changing the drain pipe to a rectangular box culvert or covered canal with cross-sectional area not less than twice the gutter area seemed to be a long-lasting solution assuming the receiving street sewer line is adequate.

It was also found out that the main stairs are inadequate for a load of 100 lbs/sq.ft (4,788 Pa) as the required steel rebars in this review should have been 12mm-rebars @ 12cm center to center bothways but the plan shows only 12mm-rebars @ 17.5 cm center to center (this figure is unclear in plan). The inner edge beams of the stairs would need 2-25mm – top rebars while only 2-12 mm for the bottom rebars. The easiest way to strengthen the stair is to make a circular column to support the landing slabs from ground to the third floor and have the system re-analyzed for the change in stresses”.

On October 26, 2007, the Court likewise conducted an ocular inspection<sup>[9]</sup> on the warehouse building. Thereafter, trial ensued.

### **Version of the Plaintiff-Appellant**

Plaintiff Carolina claimed that she is the owner of the subject warehouse constructed by defendant. Prior to the said project, plaintiff likewise engaged defendant's services for the construction of the fence surrounding the subject warehouse. When the fence was almost finished, defendant visited plaintiff's office and recommended a construction of a warehouse on the land. Plaintiff initially declined as she already spent her money for the purchase of the land and the construction of the fence. However, defendant would constantly go to the warehouse urging plaintiff to ask defendant to estimate the cost of the construction. Defendant then computed the cost and later informed plaintiff that it would cost 10.1 Million. Plaintiff declined. When defendant adjusted the cost to 7.6 Million Pesos, she accepted the offer.<sup>[10]</sup>

Defendant merely gave plaintiff a Cost Estimate for the warehouse construction. No written contract was drafted as defendant insisted that such would entail additional

expenses for the services of a lawyer.<sup>[11]</sup>

When the warehouse construction was almost complete sometime in May to June 2004, plaintiff inspected the warehouse and found several defects therein, including, among others, the unstable railings on the stairs; the cracks on the walls and the floors<sup>[12]</sup>; the substandard roofing; sagging purlins; doors made of thin sheets; defective drainage; and small wires used for the electrical system<sup>[13]</sup>. Plaintiff informed defendant about her complaints, but defendant exerted no effort to repair the same, except to put epoxy on the cracks on the walls and the floors.<sup>[14]</sup> Hence, plaintiff refused to pay the remaining balance of Four Hundred Fifty Thousand Pesos (PhP450,000.00) to defendant.

In addition, no Certificate of Occupancy has been issued on the warehouse building as, based on the inspection results of the City Engineer's Office, the building had several cracks and the electrical wires and panel boards used were too small for the building.<sup>[15]</sup>

Plaintiff claimed to have used the building only once sometime in June 2004 when she placed several stocks of her business consisting of school supplies on the warehouse. During such time, rain poured so hard that water seeped in through the walls and the canal overflowed resulting to the soaking of the stocks. Hence, she withdrew all of them.<sup>[16]</sup>

To provide an estimate of the cost for the repairs on the building, plaintiff hired Engr. Lilibeth P. Patinga, a civil engineer by profession. Upon inspection on the building, Engr. Patinga declared that the original plan and the cost estimate of the building did not conform with the actual building as she saw it.<sup>[17]</sup>

Subsequent to her inspection, Engr. Patinga prepared a proposal<sup>[18]</sup> for the augmentation and repair of the subject warehouse building amounting to a total of PhP4,338,827.20. She claimed that the building badly needs a repair as it is not structurally sound and has so many defects.<sup>[19]</sup>

Plaintiff likewise presented her brother, Edward Ordoñez, who asserted that he did not contract the services of defendant Lim. He merely referred the latter to his sister, plaintiff Carolina. However, he never took part in the process of the construction as the building belongs to his sister, not his.<sup>[20]</sup>

After the presentation of the witnesses for the plaintiff, she submitted her exhibits<sup>[21]</sup> "A" to "FF" on January 20, 2010, duly objected<sup>[22]</sup> to by defendant, but were all admitted in an Order dated February 18, 2010.

### **Version of the Defendant-Appellee**

Defendant Jonathan Lim denied that plaintiff was the one who hired his services. He claimed that it was plaintiff's brother, Edward Ordoñez who negotiated with him as regards the construction of the warehouse building and who instructed him to find a way to reduce the cost of the building.<sup>[23]</sup>