

THIRTEENTH DIVISION

[CA-G.R. CV NO. 63497, September 26, 2006]

**CARAG BUILDERS, INC., PLAINTIFF-APPELLANT, VS. AMADO SY,
DEFENDANT-APPELLEE.**

D E C I S I O N

CRUZ, J.:

Before the Regional Trial Court of Quezon City (Branch 77) was an action for sum of money and damages, with an application for preliminary injunction, filed by Carag Builders, Inc. (or "appellant") against Amado Sy (or "appellee").

It appears that on December 12, 1990, appellant and appellee entered into a Building Agreement (or "contract") whereby, in consideration of the sum of P329,000.00 payable under a progress billing schedule, the former undertook to construct a two-bedroom bungalow house (or "building") for the latter in accordance with the agreed plan and specifications.

Pursuant to the contract, appellee remitted to appellant the amount of P98,700.00 as downpayment.

On January 7, 1991, appellant started the construction of the building.

The abovementioned action was predicated on the averments that without valid and justifiable reason, appellee stopped the construction; that as of the stoppage, appellant had incurred expenses totaling P186,684.32, of which only P98,700.00 was paid by appellee, leaving a balance of P87,984.32; and that despite oral and written demands, appellee failed to pay the amount of P87,984.32.

In answer, appellee alleged that appellant acted with dishonesty and in bad faith and had violated the substantial aspect of the contract; that the construction is substandard; that he has the right to demand work stoppage for breach of contractual obligation; and that the amount sought to be recovered is payable only after construction of the roof beam which has not yet been done. Appellee interposed a counterclaim for actual, moral and exemplary damages.

Upon joint motion of the parties, the lower court created a committee which conducted an ocular inspection of the project. The committee was composed of Engr. Sergio Pontiveros (or "Engr. Pontiveros"; representative of the Office of the Building Official), as chairman, and Engr. Gilbert Sano, (or "Engr. Sano"), Engr. Joey R. Higgins (or "Engr. Higgins") and Deputy Sheriff Angel L. Daroni (or "Sheriff Daroni"), representatives of appellant, appellee and the court, respectively, as members (orders dated June 6, 1991 and July 19, 1991).

After trial, the lower court rendered a decision dated January 22, 1999, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. Dismissing the complaint for lack of merit;
2. Ordering he (sic) plaintiff to refund to defendant the amount of P108,700.00 as and by way of actual damages;
3. Rescinding the Building Agreement for the construction of defendant's 2-bedroom bungalow;
4. Directing the plaintiff to demolish the construction work at his expense; and
5. Ordering plaintiff to pay to the defendant P25,000.00 as and by way of exemplary damages, and P15,000.00 as and by way of attorney's fees.

SO ORDERED."

Aggrieved, appellant appealed the decision to this Court ascribing errors to the trial court –

1. "WHEN IT RULED THAT THE DEVIATIONS FROM THE PLAN AND SPECIFICATIONS SHOW THE IRREGULAR PERFORMANCE BY (APPELLANT) OF ITS CONTRACTED OBLIGATIONS";
2. "WHEN IT RULED THAT (APPELLANT) RELIED ON UNCORROBORATED CLAIM THAT IT COMPLIED WITH THE BUILDING PLAN";
3. "WHEN IN RULED THAT (APPELLEE) DOWNPAYMENT (sic) OF P10,000 AND THEN ANOTHER AMOUNT OF P98,700";
4. "WHEN IT RULED THAT (APPELLANT) DEMOLISH THE FINISHED WORK AT ITS EXPENSE";
5. "WHEN IT RULED THAT (APPELLANT) PAYS (sic) (APPELLEE) P25,000 EXEMPLARY DAMAGES AND P15,000 ATTORNEY'S FEES"; and
6. "WHEN IT DID NOT AWARD THE MONETARY CLAIM OF (APPELLANT) FOR DAMAGES AGAINST (APPELLEE)."

We now resolve.

The lower court ruled in favor of appellee on the basis of these findings:

"From the evidence presented, it appears that plaintiff committed serious and substantial deviations from the plan. It did not comply with the specifications in the approved building plan. The technical reports of the defendant's representative and the court's representative on the ocular inspection (Exhibits '26' and '27') conducted as part of the trial of this case bolster the findings of deviations from and failure to comply with the

specifications.

The deviations from the plan and specifications show the irregular performance by the plaintiff of its contracted obligation.

Plaintiff relies more on its uncorroborated claim that it complied with the plan. It did not exert effort to present its personnel or representatives who dealt with defendant during the execution of the agreement. Plaintiff, through its representatives, promised to rectify the breaches. It did not do so. On the technical aspect, it relied heavily on the unsubstantiated conclusions of Engineer Sano. There was no attempt to explain all the pictures which were shown by defendant.

x x x. Defendant's evidence reflected visually and by actual measurement and other proofs its claim of deviations and violations committed by plaintiff."

Well-settled is the rule that conclusions and findings of facts of a trial court, as well as the assessment of the credibility of witnesses, are binding on appellate courts except when there are facts and circumstances of weight and influence overlooked by the former which could alter the result (*People vs. Paglinawan*, 324 SCRA 97). The exception is obtaining in the case at bench.

We observed that after reciting the testimony of appellee, the trial court immediately concluded that appellant "committed serious and substantial deviations from the plan" without even stating the particulars of those "deviations". In other words, contrary to the rule that "(t)rial courts should not merely reproduce the respective testimonies of witnesses of both parties and come out with its decretal conclusion", the court *a quo* did not "set out in its decision the facts which had been proved and its conclusions culled therefrom" (*People vs. Lizada*, 396 SCRA 62).

Moreover, the alleged "serious and substantial deviations" were anchored on the inspection reports (Exhs. "26" and "27") of Engr. Higgins and Sheriff Doroni. However, those reports are hearsay because the two were not called to the witness stand in order to testify thereon, thereby depriving appellant of the right to cross-examine them (*Lea Mer Industries, Inc. vs. Malayan Insurance Co., Inc.* 471 SCRA 698; *Teknika Skills and Trade Services, Inc. vs. National Labor Relations Commission*, 212 SCRA 132). Hearsay evidence, whether objected to or not, has no probative value (*Liberato vs. People*, 446 SCRA 74).

Given the absence of a finding in the appealed decision on "the facts which had been proved and (the trial court's) conclusions culled therefrom" and the hearsay nature of the inspection reports of Engr. Higgins and Sheriff Doroni, there is absolutely nothing upon which it could have validly rendered a judgment sustaining appellee's theory.

The trial court committed another egregious error when it did not consider appellant's evidence, one of the essential requirements of due process (*Alliance of Democratic Free Labor Organization vs. Laguesma*, 254 SCRA 565). The reasons given were: (i) appellant "did not exert effort to present its personnel or representatives who dealt with (appellee) during the execution" of the contract; and (ii) it "relied heavily on the unsubstantiated conclusions of Engineer Sano."

Contrary to the trial court's statement, appellant presented the project engineer, Engr. Sano, who supervised the construction of the building and whose testimony was, on essential points, corroborated by Engr. Pontiveros. Both engineers rendered inspection reports (Exhs. "L" and "N") and agreed that the building is structurally safe. The reports pertinently read:

Report of Engr. Sano (Exh. "L"). -

"Findings:

I. One column with 4-12 mm dia. vertical reinforcement 15 cm. x 30 cm. was constructed near the center along the masonry walls which is not reflected in plans.

II. An additional roof beam with 6-12 mm dia. horizontal reinforcement 15 cm. x 30 cm. in size was constructed across the center which is not also reflected in plans. This adds to the structural stability of the structure.

III. The size and depth of excavation of column footing foundation which were measured at 75 cm. x 75 cm. x 30 cm. thick and 80 cm. in depth, but in plans are 80 cm. x 80 cm. x 30 cm. thick and 90 cm. in depth.

IV. Two columns with 4-12 mm dia. vertical reinforcements each are already concreted. The approved Building Officials correction on the plan reflects a 6-12 mm dia. vertical reinforcement. To complete the number of bars and with the Owner's consent, item (1) was constructed.

REMARKS AND CONCLUSIONS:

Items 1 & 2 were not reflected in the plans and specifications but were done by Carag Builders, Inc. to strengthen further the structure of the residential unit, upon the instruction of the owner. The structure as a whole is stable and safe, considering that it has only a floor area of 52.5 sq.m., which is supported by 9 columns and perimeter roof beams plus an additional roof beam across the center which reinforces support to the trusses and masonry walls.

As a Project Engineer of Carag Builders, Inc. and being the one who prepared and signed the structural reinforcement of the plans of Mr. Amado Sy, I now certify that the structure is structurally safe. Some deficiencies (sic) are considered to be minor and do not affect the structural stability of the said unit.

ACCOMPLISHMENTS as per inspection conducted last August 31, 1991 of the proposed two bedroom residential unit.

1. Soil poisoning
2. Excavation of foundation wall and column footing