

**SPOUSES ROSALIA HACHUELA ALLEGAR AND ARTHUR ALLEGAR,
PLAINTIFFS-APPELLANTS, VS. LRP REALTY AND DEVELOPMENT
CORPORATION, REPRESENTED BY ITS PRESIDENT ROSELLA DP.
BONGCO AND ROSEL...**

CV No. 71777, April 30, 2010

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Court of Appeals

Before this Court is an [*] appeal from the decision[1] dated July 18, 2000 of the Regional Trial Court, Third Judicial Region, Branch 73, Olongapo City, in Civil Case No. 389-0-91 for Breach of Contract, Return of Sums of Money and/or Damages, entitled "Spouses Rosalia Hachuela Allegar and Arthur A. Allegar, Plaintiffs vs. LRP Realty and Development Corporation, represented by its President, Rosella DP Bongco, and Rosella DP. Bongco joined by her husband Rosauo Bongco, in her personal capacity, Defendants," the dispositive portion of which reads:

"Wherefore, in view of the foregoing, this case is hereby dismissed for lack of merit. The counterclaim of the defendant is also dismissed for lack of merit.

SO ORDERED."[2]

The facts are:

On July 13, 1990, a Complaint[3] for Breach of Contract, Return of Sums of Money and/or Damages was filed by plaintiffs-appellants Spouses Rosalia Hachuela Allegar and Arthur A. Allegar (Sps. Allegar for brevity) against defendants-appellees LRP Realty and Development Corporation (LRP for brevity) represented by its President Rosella DP. Bongco (Bongco for brevity), who was also sued in her personal capacity and was joined by her husband Rosauo Bongco, alleging that: on November 20, 1989, plaintiff-appellant Rosalia and defendant-appellee Bongco, in her personal capacity, entered into a contract denominated as "Deed of Transfer of Rights"[4], the latter being the transferor: defendant-appellee Bongco violated the terms thereof; on January 15, 1990, both parties entered into a "Project Management and Labor Service Contract"[5] with plaintiffs-appellants Sps. Allegar as Owner and defendant-appellee LRP as Project Manager/Contractor involving subject matter lot, Lot No. 4, Block 10, Sta. Monica Subdivision; this lot is the same lot where the residential house of plaintiffs-appellants Sps. Allegar was supposed to be built by defendant-appellee LRP; this contract was also violated by defendant-appellee LRP; the amount of US\$58,000.00 or its peso equivalent of P1,160,000.00 was "paid and overpaid" to defendant-appellee LRP, initially paying the amount of US\$55,000.00 or its peso equivalent of P1,100,000.00 as indicated in the Project Management Contract, yet the structure remained uninhabitable and required the amount of US\$15,000.00 or P300,000.00 to make it livable; to completely finish the house, more funding was needed; in spite of the overpayment, defendant-appellee LRP demanded an additional sum of P48,431.34, which will not be used to finish the house but as funds due her for arrears; considering that the house was far from being completed on its scheduled date, May 15, 1990, plaintiff-appellant Arthur asked defendant-appellee LRP through its President, defendant-appellee Bongco, how much more would be needed, the latter was not able to give an estimate; hence, he advised her to stop all works until further notice; eventually, they

sent defendant-appellee LRP a letter[6] terminating the contract effective April 4, 1990; they engaged another contractor to finish the job incurring US\$15,000.00 or P300,000.00 as additional expenses; defendant-appellee LRP also received the amount of P45,918.00 to purchase Saniware items which were supposed to be used in the said house, but the former failed to do so nor return the money despite demand; defendant-appellee LRP said that the same were applied to their obligations to her which off-setting has no basis; the house was defective because that wall and floor in the guest room were separated which required the hiring of another contractor to do the repairs; plaintiffs-appellants Sps. Allegar also turned over to defendant-appellee LRP a pressure water pump to be used in the construction of the subject house, however, this pump was removed from the storage without their consent when plaintiffs-appellants Spouses Allegar terminated the contract; there were also excess purchases of electrical supplies by defendant-appellee LRP; the roofing of the house was poorly done and upon examination, there were over 1,500 fasteners missing from the roof which were later located in a box at the storage area; plaintiffs-appellants Sps. Allegar incurred additional expenses for plumbing in the amount of P6,000.00; defendant-appellee Bongco, in her personal capacity, obligated herself to inform them of the monthly payments they were supposed to pay Sta. Monica Industrial and Development Corporation, but she reneged in her obligation; plaintiffs-appellants Sps. Allegar were willing to settle the case amicably but defendant-appellee LRP did not bother to respond and ignored them; plaintiffs-appellants Sps. Allegar were forced to litigate and are entitled to attorney's fees in the amount of 20,000.00 plus P10,000.00 for litigation expenses; and they are also entitled to moral damages in the amount of P50,000.00 and exemplary damages of P15,000.00.

On September 11, 1990, defendants-appellees filed their Answer[7], alleging that: the complaint states no cause of action; the "Project Management Agreement" was novated and/or amended by the parties upon the insistence of plaintiffs-appellants Sps. Allegar while the work was being performed; they changed and modified the principal conditions of the previous agreement with respect to the plans and specifications, i.e., increase of the floor area, adding another bedroom, etc., thus the corresponding increase in payment to defendant-appellee LRP; although the changes were not reduced in writing, the same were actually made and accomplished; defendant-appellee LRP did not incur delay in the performance of its obligations, May 15, 1990 being the date of completion of the house; as early as April 4, 1990, plaintiff-appellant Arthur sent a letter instructing defendant-appellee LRP to discontinue work on the house which prevented the latter from fulfilling its obligation on time; defendant-appellee Bongco exercised the diligence of a good father of a family in the performance of her obligation; even before plaintiffs-appellants Sps. Allegar gave the funds for the project, defendant-appellee Bongco used her own personal funds for the purchase of construction materials at wholesale prices to save on cost and to prevent any delay; she also went to Manila several times to purchase materials at very low prices for plaintiffs-appellants Sps. Allegar's benefit; in fact, when the agreement was signed by the parties, the project was already forty (40%) percent complete; plaintiffs-appellants Sps. Allegar violated their agreement by failing to pay in full the amount of Ninety Five Thousand Four Hundred Ninety Nine Pesos and 79/100 (P95,499.79) for labor despite demands; because of the extra services made which are beyond the scope of their agreement by defendant-appellee Bongco in favor of plaintiffs-appellants Sps. Allegar, the former should be compensated in an amount not less than P100,000.00; defendant-appellee Bongco suffered sleepless nights, besmirched reputation, wounded feelings, embarrassment and similar sufferings due to plaintiffs-appellants Sps. Allegar's violation of their obligations for which the former is entitled to moral damages of not less than P500,000.00 plus attorney's fees of P20,000.00 and appearance fee of P5,000.00 per hearing plus litigation expenses of P10,000.00.

On December 11, 1990, the lower court issued a Pre-Trial Order[8], thus:

* * * * *

Aside from the stipulations and admissions appearing on their respective pleadings, no other stipulation of fact was made. Plaintiffs however admitted the existence of a letter dated April s 1991.

The plaintiffs proposed the following issues-

- Whether or not Annex A (Possessory Right Document) was violated by defendant Rosella Bongco in her personal capacity.
- Whether or not the Annex B (Project Management and Labor Service Contract) was violated by defendant corporation, particularly, but not limited, to the following items:
 - Total cost of the undertaking
 - Time specified to accomplish the same
 - Workmanship
 - Scope of works
 - liquidated damages
 - use of payments
 - terms and specifications of documents made integral parts of said contract namely (1) architectural drawings, (2) structural drawings, (3) electrical drawings, (4) plumbing drawings, (5) mechanical drawings and others.
- The amount of damages, in all the nine causes of action.
- Whether or not the counter claim ought to be dismissed for failure to pay mandatory docket fees.
- Whether or not the project management agreement was novated and/or amended with respect to changing or modifying the principal conditions thereof by the changes insisted upon by the plaintiffs while the work was going on.
- Whether or not defendant Rodella Bongco used her own personal funds to purchase construction materials at wholesale prices and even in advance in order to save on costs and to prevent any delay arising from the failure of the plaintiffs no (sic) provide the necessary funds on time.
- Whether or not the plaintiffs violated the Project Management Agreement by failing to complete payment of the 35% of the total material costs plus interest and 10% retention.
- Whether or not plaintiffs are liable for actual and moral damages under the counterclaim and attorney's fees and expenses of litigation.

* * * * *

To assist the Court in appreciating the voluminous documentary exhibits marked by both parties, it was agreed that a commission, composed of one accountant or with accounting background, one engineer or with engineering background, to be headed by Atty. Emiluz Pascasio-Reyes, the Branch Clerk of Court of this Court, be created to ensure impartiality in the accounting. The cost would accordingly be borne share and share alike.

* * * * *

During the hearing, plaintiff-appellant Arthur testified that: on January 15, 1990, he and his wife signed a Project Management and Labor Service Contract with defendant-appellee LRP where the latter will construct a four-bedroom, three-bathroom residential house for US\$55,000.00 on Lot 4, Block 10, Sta. Monica Subdivision, Subic, Zambales; however, such project was not completed, although they overpaid the contractor in the amount of US\$58,000.00; the lot on which the house was constructed was bought from defendant-appellee Bongco by his wife when she was still single, and there was a remaining balance which was not yet paid; he could not determine the amount of the remaining balance because defendant-appellee Bongco told him that he should not pay yet

because defendant-appellee Bongco was arranging for a special price and payment will be made on a later date; however, defendant-appellee Bongco did not inform him about it; when he asked Sta. Monica Land Development Corporation, the seller of the lot, he was informed that there were payments in arrears and penalties amounting to over P250,000.00, and he informed defendant-appellee Bongco about it; he was aware that the Deed of Transfer of Rights over the said lot was done by defendant-appellee Bongco in her personal capacity; the house, which should be completed on May 15, 1990 as provided on the contract, was not finished on time; he asked defendant-appellee Bongco for an explanation, but she told him that it required more money to finish; he then asked her how much more was needed, but she could not determine the amount needed; he wrote her a letter informing her to stop the construction so that he could look for another contractor to finish the job; defendant-appellee Bongco also asked for the payment of Saniware products for P48,000.00 but when he asked the Saniware dealer about it, he was informed that the products were not yet paid, so he paid for them again; when he terminated the contract with her, the latter gave no reaction, but after several weeks, when he had already hired someone to finish the job, defendant-appellee Bongco approached him; the house was approximately 2/3 complete when he terminated the contract, but it still required another US\$30,000.00 to finish it; he gave defendant-appellee Bongco a total of US\$64,000.00 or about P1.6 million; he tried to set up a meeting with defendant-appellee Bongco to settle the matter, but she did not come; he and his wife were newly married and they put all their money in the construction of the said house, but all their money is now gone and they have to borrow money in order to finish the house; they had nightmares because of what happened; they hired the services of a lawyer for P20,000.00 with additional P10,000.00 for litigation expenses; and they also spent additional US\$30,000.00 to finish the construction of the house.

On cross-examination, he stated that: all the interior finishings of the house such as the windows, doors and frames were put by him and his workers; he and his workers removed and replaced all the plumbing as well as the electrical wirings, interior and exterior painting, the fence and the tiles in all the floors and the landscaping; as of the date he testified, the house was not yet complete because the flooring in the bedrooms was still bare cement and he did not have enough money to finish it; one of the changes made was to increase the master's bedroom area by taking a part of the corridor; and the tiles and plumbing used in the master's bedroom were Class A and not ordinary materials.

Pedro Manalac, a witness for the plaintiffs-appellants, testified that: he is a mason and a base employee; he came to know plaintiff-appellant Arthur thru his boss Roland Hagland of the Public Works Center; he was introduced to plaintiff-appellant Arthur in July 1990 who told him to continue the construction of his house because the former contractor left; he accepted the job located at Sta. Monica Subdivision; he, together with three other masons worked in the master's bedroom, children's bedroom, servants quarters' bathroom, laundry room, washroom and the entire external wall of the house; they did some tiling in the master's bedroom including the repairing of the bathtub steps and replacing of the flooring tiles with non-skid tiles; they did a 100% job on the children's bedroom bathroom because it was not done; they did about 70% work on the guest bedroom which is similar to that of the master's bedroom; the labor cost for the three rooms is about P17,500.00; they also did the entire overlaying of uneven floor surface in the servants quarters and washroom area, the labor alone amounted to about P5,500.00; they did stucco finish in the house exterior; and they also applied water proofing in the west side wall of the house and spent P4,000.00 for materials and P22,500.00 for labor.

On cross-examination, he stated that: when he took over the job, some of the materials used were already there while they bought some materials; sometimes, he accompanied plaintiff-appellant Arthur in buying the materials; and he did the entire stucco finish on the exterior of the house Defendant-appellees presented Adorico Pagaduan as their first witness who testified that: he knows plaintiffs-appellants Sps Allegar as well as defendant-appellee Bongco because the latter was introduced to him; after their introduction, they had a meeting regarding the

construction of a four-bedroom house of plaintiffs-appellants Sps. Allegar at Sta. Monica Subdivision; he was the architect who prepared the plan for the said house; the structural plan was made by his draftsman as specified by civil engineer Johnny Labanpa; he also supervised the drafting of the lay-out plan, electrical lay-out as well as the preparation of the bills of materials and cost estimates; he also went to the site to monitor the progress of the work; he was always in contact with plaintiffs-appellants Sps. Allegar even after the project was finished; the structural and architectural plans of the project were the same with some revisions and changes; the area of the living room and the dining area were increased to about one meter and the wall was transferred near the property line; aside from that, the entrance door and a portion of the living room area was illuminated; these revisions entailed additional cost to the owner; structurally, the posts were already existing while the walls were also moved because of the revision; there was a modification or revision of the dining area and a portion of the living room; the wall of the dining room was extended to about one meter and there was a relocation of the wall between the master's bedroom and the living room; the lay out of the kitchen was revised; there were some changes in the guest room, toilet and bathroom in the master's bedroom; the carport was also changed in that, instead of an overhang canopy, the roof was extended to cover the carport; the door in the dining area was eliminated as well as the window in the living room; the entrance in the foyer was also changed wherein instead of a sliding door, a swing door was used; the original floor plan was 340 square meters, but this was extended to 360 square meters'; the change affected the time frame of the construction as well as the cost of the materials.

On cross-examination, he stated that: he prepared the original plan and the amendment and modifications; there was an increase in cost due to the modifications; the changes and modifications in the as-built plan were requested by plaintiff-appellant Arthur; it was an agreement between him and plaintiff-appellant Arthur; the plan was actually made after the house was almost finished at the instance of plaintiff-appellant Arthur and without the knowledge of defendants-appellees; the construction of the house was stopped by defendant-appellee LRP because it received a letter from plaintiff-appellant Arthur ordering it to stop the construction; both parties agreed that a certain percentage shall be paid by plaintiffs-appellants Sps. Allegar, but the latter did not fully pay the contractor for the changes; after the work stoppage, he continued to work as architect for plaintiff-appellant Arthur; the house was 80% finished based on the original plan when the construction was stopped; the roof was completed and only the finishing was not done but the materials needed were already there.

On July 18, 2000, the lower court issued the assailed decision. Hence, this appeal with the following assignment of errors:

I.

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NO BREACH OF CONTRACT COMMITTED BY THE DEFENDANTS-APPELLEES.

II.

THE TRIAL COURT ERRED IN FINDING THAT THE ADDITIONAL AMOUNT DEMANDED BY THE DEFENDANTS-APPELLEES IS NEEDED BECAUSE THERE WERE SOME STRUCTURAL CHANGES WHICH WAS (sic) DEMANDED TO BE MADE BY THE PLAINTIFFS-APPELLANTS.

III.

THE TRIAL COURT ERRED IN FINDING THAT THE PREMATURE TERMINATION OF THE CONTRACT BY THE PLAINTIFFS-APPELLANTS WITHOUT GIVING THE DEFENDANTS-APPELLEES THE CHANCE TO COMPLETE THE PROJECT ON THE TARGET DATE OF MAY 15, 1990 MAKES THE PLAINTIFFS AT FAULT AND NOT THE DEFENDANTS-APPELLEES.

IV.

THE TRIAL COURT ERRED IN FINDING AS NO BASIS THE ALLEGATIONS OF THE PLAINTIFFS-APPELLANTS THAT THE AMOUNT OF Php 48,431.34 FOR PAYMENT OF SANIWARE ITEMS WAS MISAPPROPRIATED BY THE DEFENDANTS APPELLEES.

V.

THE TRIAL COURT ERRED IN FINDING THAT THE CLAIM OF \$15,000.00 REPRESENTING PAYMENT TO THE NEW CONTRACTOR WHOM PLAINTIFFS-APPELLANTS HIRED AFTER TERMINATING THE SERVICES OF THE DEFENDANTS-APPELLEES IS UNJUST AND UNEQUITABLE.

VI.

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NO BREACH OF CONTRACT COMMITTED BY THE DEFENDANTS-APPELLEES.

The appeal has no merit.

Anent the first, second and third assignment of errors, plaintiffs-appellants Sps. Allegar argue that: defendants-appellees committed breach of contract when the house remained unfinished despite the fact that they already paid US\$58,000.00 when the contract price is for only US\$55,000.00; the findings of the lower court that there were some structural changes demanded by plaintiffs-appellants Sps. Allegar is without basis and was not proved during the trial; thus, defendants-appellees have no legal right to demand additional amount when in fact there were no structural changes made; the lower court failed to note that there was already a violation of the contract when plaintiffs-appellants terminated the services of defendants-appellees.

These arguments are untenable.

The main issue in this case is whether or not defendants-appellees committed breach of contract in order to entitle plaintiffs-appellants Sps. Allegar payment of damages.

This Court is convinced that defendants-appellees did not commit any breach of contract.

When parties have entered into a well-defined contractual relationship, it is imperative that they should honor and adhere to their rights and obligations thereunder; obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[9]

The obligatory nature of contracts implies that once a contract is perfected, the parties are bound by the terms and conditions thereof, hence, that they should comply with its provisions.

In this case, it is clear from the terms and conditions of the Project Management and Labor Service Contract[10] that the construction of the house shall be completed not later than May 15, 1990[11].

It is also clear from the records that plaintiff-appellant Arthur sent a letter[12] to defendant-appellee Bongco instructing the latter to discontinue work on the said project effective April 4, 1990.

From these facts, it can be deduced that plaintiffs-appellants Sps. Allegar are the ones who are guilty of breaching the terms and conditions of the Project Management and Labor Service Contract and not the other way around. As correctly pointed out by the lower court:

"This Court believes that there was no breach of contract. The agreement clearly states that the defendants have to finish the construction of the house of the plaintiff on or before May 15 1990 From the evidence presented and as admitted by the plaintiff, he wrote a letter to the defendant on April 4, 1990 to stop the construction of the residential house not because of anything else but because of the fact that the defendant demanded on

additional amount from the plaintiff. The additional amount, as proven during the trial of this case, was needed because there were some structural changes which was (sic) demanded to be made by the plaintiff. These changes entailed additional cost and the demand by the defendant for additional expenses was therefore justified. It would seem to indicate that the plaintiff was annoyed when the defendant was not able to tell how much more money was required to complete the residential house after the structural changes. * * * The premature termination of the contract by the plaintiff without giving the defendant the chance to complete the project on target date of May 15, 1990 makes the plaintiffs at fault and not the defendant-corporation.[13]

Plaintiffs-appellants Sps. Allegar's contention that there was in fact no structural change and that there was already a breach of contract made by defendants-appellees when he terminated the contract on April 4, 1990 is misleading and baseless.

It appears that the house was already eighty percent (80%) finished when plaintiff-appellant Arthur terminated the contract. Besides, plaintiff-appellant Arthur failed to specify with certainty the breach committed by defendants-appellees when he terminated and demanded the stoppage of the construction work on April 4, 1990. Facts reveal that defendants-appellees would have finished the construction work on the target date, May 15, 1990.

Anent the fourth and fifth assignment of errors, plaintiffs-appellants Sps. Allegar argue that: the lower court failed to take note of the fact that the set-off made by the defendants-appellees was unilateral and that the same was not made known to them; it must be noted that when they paid the P48,431.34 to defendants-appellees, it did not create a debtor-creditor relationship, thus the provisions of the New Civil Code on compensation do not apply; their act of securing the services of another contractor to finish the project was in accordance with Article 1167 of the New Civil Code, thus, it is but proper that they be reimbursed the amount they spent in the amount of US\$15,000.00 for hiring a new contractor.

These arguments are untenable.

As correctly ruled by the lower court:

"As to plaintiffs' allegation of defendant-corporation misappropriating the amount of Php. 48,431.34 which was intended for payment of Saniwares items, the same has no basis. The said amount received by defendant-corporation was clearly applied to plaintiffs' balance of \$7,350.00 as payment for the lot, labor and construction materials as evidenced by a receipt dated 23 March 1990 issued by defendant-corporation to plaintiffs (Exhibit "C-10). It was likewise stated in a letter dated 02 May 1990 sent by plaintiffs' counsel to defendant-corporation, to wit... You have not bought said Saniware items and upon demand you responded to apply said amount as an off-set price for imagined obligations of our clients to you..."

As to the \$15,000.00 representing payment to the new contractor whom plaintiffs hired after terminating the services of the defendant-contractor is unjust and inequitable since it was plaintiffs' unilateral action to terminate the contract on April 4, 1990 and defendant-corporation was not given a chance to finish the construction of the house until May 15, 1990 as stipulated in the Contract. Likewise, plaintiffs did not actually hire a contractor as alleged by them but only four or five persons who were employed at the Public Works Center, Subic Naval Base were hired as part time masons. (TSN pages 4-5, May 9, 1991)."[14]

In an action for damages due to breach of contract, it is essential that the claimant proves (1) the existence of a perfected contract, (2) the breach thereof by the other contracting party, and (3) the damages which he/she sustained due to such breach.[15]

As earlier pointed out, there was no breach of contract committed by defendants-appellees considering that plaintiffs-appellants Sps. Allegar were the ones who informed the former, thru a letter, to stop the construction of the house. Hence, plaintiffs-appellants Sps. Allegar's claim that they should be reimbursed of the amount of

US\$15,000.00 has no basis considering that it was they who unilaterally stopped the construction.

Considering that the amount of Php48,431.34 was applied by defendants-appellees to plaintiffs-appellants Sps. Allegar's balance of the price of the lot, it will be inequitable if the same would be returned to them. Justice and equity demand that no one should enrich himself at the expense of another.

WHEREFORE, in view of the foregoing, the assailed decision dated July 18, 2000 of the Regional Trial Court, Branch 73, Olongapo City, in Civil Case No. 389-0-91 is hereby AFFIRMED.

SO ORDERED.

Librea-Leagogo and Elbinias, JJ., concur.

Judgment affirmed.

[*] Note: This case was submitted for decision and ordered re-raffled to another Justice for study and report on July 31, 2003. Pursuant to this Court's Zero Backlog Project, this case was raffled to this ponente and received on April 27, 2010.

[1] Records pp. 306-312 (Penned by Honorable Judge Alicia L. Santos).

[2] Ibid.

[3] Records, pp. 1-10.

[4] Records, 12.

[5] Records, 14.

[6] Records, p. 20.

[7] Records, pp. 34-40.

[8] Records, pp. 81-85.

[9] Premiere Development Bank vs Court of Appeals, 427 SCRA 686.

[10] Records pp. 14-17.

[11] Records p. 15 (Exh. B-8)

[12] Records p. 20.

[13] Records, pp. 308-309.

[14] Records p. 311.

[15] MCC Industrial Sales Corporation vs. Ssangyong Corporation, 536 SCRA 408.

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