

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

Ponente: LOPEZ, J.

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LOPEZ, J.:

Sought to be reversed in this appeal is the December 15, 2011 Decision[1] 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:

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

ORDERED.”[2]

UNDISPUTED FACTS

Plaintiff Carolina L. Ordoñez, as the owner of Lot 745-b-2[3] 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[4] 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[5] on February 20, 2003. Thereafter, plaintiff deposited the following payments to defendant Lim, to wit:

- PhP500,000.00 on May 22, 2003
- PhP500,000.00 on May 26, 2003
- PhP600,000.00 on July 4, 2003
- PhP600,000.00 on July 8, 2003
- PhP600,000.00 on September 16, 2003
- PhP600,000.00 on September 19, 2003
- PhP600,000.00 on November 6, 2003

- PhP600,000.00 on November 20, 2003
- PhP600,000.00 on January 19, 2004
- PhP100,000.00 on February 23, 2004
- PhP100,000.00 on March 16, 2004
- PhP500,000.00 on April 13, 2004
- PhP100,000.00 on May 21, 2004
- 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:

- Thin GI sheets on the roof
- Small truss angle bar
- GI sheet was used on the door instead of steel plate
- Too many cracks on the walls that water can seep in
- Cracks on the floor
- Electrical wirings installed are smaller than the ones drawn as on the building plan
- Drainage
- Railings are not sturdy
- 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[6] 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:

- The GI roof installed is gauge #26
- The trusses are based on structural design
- Doors are made of gauge #18 which is not even included in his quotation
- 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.
- The incident where water from the third floor went to drip to the first floor was when the roofing was not yet installed.
- 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[7], in the person of Engr. Gregorio Uymatiao, Jr. replacing Engr. Kirit after he duly inhibited himself from the case.[8] 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[9] 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.[10]

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.[11]

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[12]; the substandard roofing; sagging purlins; doors made of thin sheets; defective drainage; and small wires used for the electrical system[13]. 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.[14] 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.[15]

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.[16]

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.[17]

Subsequent to her inspection, Engr. Patinga prepared a proposal[18] 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.[19]

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.[20]

After the presentation of the witnesses for the plaintiff, she submitted her exhibits[21] “A” to “FF” on January 20, 2010, duly objected[22] 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.[23]

Defendant likewise insisted that the basis of the building plan he prepared was the 10.1 Million cost estimate for the building[24]. When the same was reduced, defendant explained to Edward Ordoñez that the changes will only be upon the aesthetic part of the building which includes the roofs, walls and floors. The structural integrity of the building, meaning the recommended steel bars, size of the columns, footings and beams, as declared in the building plan, will be maintained.[25]

Defendant expounded that the walls of the building was supposed to be six (6) inches with waterproofing. With the reduction of the price, it was changed to four (4) inches without waterproofing. The handrails were supposed to be made of stainless steel, but he used GI. He also reduced the budget for the electrical system as approved by Engr. Loo. These changes that defendant made were not specifically explained to Edward nor to plaintiff as Edward told him that he just wanted a simple building at a cost of 7.6 Million pesos as that is all the money he had.[26]

Defendant declared that, contrary to the allegations of plaintiff, the building is structurally sound as found by the Court commissioner.[27] He denied plaintiff’s insistence that he used substandard materials. For the roofing, he used both GI and galvalume. The steel gate and the jalousies installed in the windows were even additional works which were not included in the plan. The cracks, he asserted, were merely shrinkage cracking which can be remedied by retouching it with concrete epoxy.[28]

Defendant also declared that the reason for the non-issuance of the Certificate of Occupancy in favor of plaintiff was the fact that he withdrew the Application for the Certificate of Occupancy as plaintiff refused to pay the full payment of the price.[29] He explained that at the time of the construction of the warehouse, the owner was very passive and he received no complaints up until his application for a Certificate of Occupancy.[30]

As a counterclaim for the costs incurred for the additional works on the building – the double wall, the front door gate, and the canal outside the building leading to the street canal, defendant seeks for a compensation of the same. Also, he demands for payment of damages for the tainted reputation he acquired as a result of the suit against him.

After the presentation of the witnesses for the defendant, he submitted a Memorandum of Exhibits and Formal Offer of Evidence[31] on April 5, 2011, objected[32] to by the plaintiff but were admitted[33] by the Court on April 27, 2011.

On December 15, 2011, the Regional Trial Court ruled for the dismissal of the Complaint as the pieces of evidence presented by both parties are in equipoise. The court found doubts on which side the pieces of evidence preponderates. The plaintiff, as the party who has the burden of proving her claims, failed to establish her case. As a consequence, the Court left them as they were before the institution of the case.

Aggrieved of the dismissal of her complaint, plaintiff-appellant files the instant appeal submitting the following assignment of errors, to wit:

I.

THE RTC INCORRECTLY RULED THAT THE ONLY DEFECTS TO BE RECTIFIED ARE (A) INSTALLATION OF A WIDER DRAINAGE, (B) REINFORCE THE STAIRS AND (C) INSTALL A CANOPY OR WATERPROOF THE WALLS

II.

THE COURT INCORRECTLY RELIED ON THE SUPPOSED USUAL EXPERIENCE THAT NOT ALL BUILDING PLANS ARE STRICTLY FOLLOWED IN ORDER TO JUSTIFY THE APPELLEE'S DEVIATIONS FROM IT WITHOUT APPELLANT'S AUTHORIZATION IN WRITING;

III.

THE COURT INCORRECTLY RELIED ON THE FINDINGS OF THE COMMISSIONER AND ENGR. RAMIENTOS AS THE BASIS FOR ITS JUDGMENT WHICH WERE OBJECTED TO BY APPELLANT AND WHO, TOGETHER WITH ENGINEERS HIRED BY APPELLEE, WERE NOT PRESENTED BY APPELLEE AS WITNESSES IN COURT DURING A HEARING PRESIDED BY THE COMMISSIONER;

IV.

THE COURT INCORRECTLY RULED THAT THE APPELLANT SHOULD PAY DEFENDANT THE BALANCE OF PHP450,000.00;

V.

THE COURT INCORRECTLY RULED THAT THE RECTIFICATION SHOULD BE DONE BY APPELLEE;

VI.

THE COURT INCORRECTLY RULED AGAINST A FINDING FOR DAMAGES.[34]

OUR RULING

Plaintiff-appellant contends that while there was no written contract for the warehouse construction, the Building Plans submitted to the City Engineer's Office and Cost Estimate of the warehouse construction already constituted the written agreement between them. The fact that defendant-appellee admitted before the trial court that he failed to follow the specifications indicated on the Building Plan already constitutes a breach of the terms agreed upon by the parties.

Also, while defendant-appellee would justify that such non-compliance of the specifications on the building plans was due to the reduction of the cost of the project from 10 Million to 7.6 Million Pesos; and that he insisted that the Building Plan submitted to the City Engineer's Office was based on the 10 Million Peso Cost Estimate he prepared, a careful review of the records would show no proof of such contention other than his self-serving testimony. Defendant-appellee manifestly failed to show proof of his claim that the Building Plan was actually based on the 10.1 Million original cost of the project.

In addition, granting that defendant-appellee modified his original Building Plan to conform to the reduced cost of the construction, still these changes cannot be considered valid as these were done without the required authority from plaintiff-appellant. In fine, plaintiff-appellant assails the ruling of the RTC in finding only three (3) defects of the building which is due for repair.

Plaintiff-appellant likewise assails the Order of the trial court for the payment of the remaining balance of PhP450,000.00 as the work undertaken by defendant-appellee was not consistent with the terms agreed upon – that is, on the Cost Estimate and the Building Plan.

In fine, plaintiff-appellant assails the trial court's ruling of dismissing her Complaint and finding no breach of contract and left the parties to where they were at the time prior the execution of the contract.

The appeal is partly meritorious.

A contract is a meeting of the minds between two persons whereby one binds himself to the other to give something or render some service.[35] Accordingly, for a contract to be valid, it must have three (3) essential elements: (1) consent of the contracting parties, (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[36] In the instant case, the contract between plaintiff Ordoñez and defendant Lim was the Cost Estimate and the Building Plan. Plaintiff-appellant imputes breach of such contract committed by defendant-appellee when the building revealed several defects due to the non-compliance of the specifications indicated in the Building Plan.

We partly agree.

A breach of contract is defined as the failure without legal reason to comply with the terms of a contract. It is also defined as the failure, without legal excuse, to perform any promise which forms the whole or part of the contract.[37] While it was admitted that defendant-appellee modified some specifications in the Building Plan to correspond to the agreed cost, the initial question left for determination is - - was there an actual perfection of a contract, which could be the basis of the present action for breach of contract.

It is elementary that, being consensual, a contract is perfected by mere consent. From the moment of a meeting of the offer and the acceptance upon the object and the cause that would constitute the contract, consent arises. However, "the offer must be certain" and "the acceptance seasonable and absolute; if qualified, the acceptance would merely constitute a counter-offer." [38]

Equally important are the three distinct stages of a contract -- its "preparation or negotiation, its perfection, and finally, its consummation." [46] Negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. The perfection or birth of the contract occurs when they agree upon the essential elements thereof. The last stage is its consummation, wherein they "fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof." [39]

In the instant case, records revealed that the parties did not get past the perfection stage of the contract as they did not actually agree on the essential elements of the contract. What was clearly agreed upon by the parties was merely the cost estimate of the construction. The details on the building plan, which is equally important as the cost, was patently not settled as the building plan was actually signed by plaintiff Carolina Ordoñez but the name printed as the signatory therein was Edward Ordoñez. It is quite clear that defendant-appellee was not able to communicate to plaintiff-appellant that the building plan presented to her corresponds to the initial cost of 10 Million. Plaintiff-appellant, on the other hand, was not able to disclose to defendant-appellee that she was the one who signed the contract when defendant-appellee believed that he negotiated with plaintiff's brother, Edward.

The fact that the details of the building plan and the owner of the building remained indeterminate at the time of the negotiation of the contract bolsters the fact that no meeting of the minds occurred between the parties insofar

as the essential conditions of the contract are concerned. Plaintiff-appellant's acceptance varied from defendant-appellee's offer. Thus, the element of consent is wanting. The parties were not able to come up to a final arrangement containing the elements of a contract. Clearly, no meeting of minds was established.

Despite the clear lack of perfection of the construction contract, the parties nevertheless proceeded with their respective obligations – the plaintiff-appellant, for her part, deposited the payments and the defendant-appellee went off constructing the warehouse. Hence, the contract is deemed ratified and validated.

Ratification of a voidable contract is defined under Article 1393 of the Civil Code as follows:

Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[40] Here, the records of the case revealed that both parties partially performed their respective obligations thereby retaining the benefits from such contract. Patently, they ratified the construction contract.

However, during the latter part of the construction, when it was almost done, both parties persistently failed to perform the remaining obligations for the consummation of the contract. Plaintiff-appellant failed to pay the remaining balance of the construction cost while defendant-appellee failed to comply with the demands of plaintiff-appellant as regards the defects of the building. Hence, both parties were equally in default.

The next issue for resolution therefore is who between the two parties should be made liable for their respective breaches of the construction contract.

The first sentence of Article 1192 of the Civil Code provides:

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (emphasis supplied)

Under this provision, the second infractor is not liable for damages at all; the damages for the second breach, which would have been payable by the second infractor to the first infractor, being compensated instead by the mitigation of the first infractor's liability for damages arising from his earlier breach. The first infractor, on the other hand, is liable for damages, but the same shall be equitably tempered by the courts, since the second infractor also derived or thought he would derive some advantage by his own act or neglect.[41]

In this case, defendant-appellee is to be considered the first infractor because, being the builder/contractor of the warehouse, he has the bounden duty, under the law, to execute his work with efficiency and quality. Such obligations of a contractor for a piece of work are set forth in Articles 1714 and 1715 of the Civil Code, which provide:

Art. 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and transfer dominion over the thing. This contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale.

Art. 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another

work executed, at the contractor's cost.

However, the apparent and ascertainable defects in the warehouse – (a) the cracks in the slabs and walls, (b) the faulty catch basins, (c) the defective electrical system, (d) problematic drainage system and (e) the weak foundation in the stairs – which were duly proven by the Court Commissioners clearly established the fact that defendant-appellee was remiss on his duty to provide quality work for plaintiff-appellant. As a result, plaintiff-appellant deliberately refused to comply with her obligation to pay for the remaining balance of the contract price. In fine, both parties committed breaches in their respective obligations. Yet, as between the two (2) parties, defendant-appellee Lim was the one who initiated the breach. Applying the foregoing jurisprudential rulings, he should be deemed liable.

Care must, however, be judiciously taken when applying Article 1192 of the Civil Code to contracts such as this where there has been partial performance on the part of either or both reciprocal obligors. Article 1192, in making the first infractor liable for mitigated damages and in exempting the second infractor from liability for damages, presupposes that the contracting parties are on equal footing with respect to their reciprocal principal obligations. Actual damages representing deficiencies in the performance of the principal obligation should be taken out of the equation.[42]

In the present case, both parties have not completely consummated their respective obligations. To place them on equal footing with respect to their reciprocal principal obligations, it is appropriate and reasonable for them to fully perform their respective obligations – that is – the payment of the remaining balance of PhP450,000.00 on the part of the plaintiff; and in the case of defendant-appellee, for the introduction of repairs on the defects duly pointed out by the Court appointed Commissioners. Hence, this Court is one with the trial court in ruling for the payment of the balance of PhP450,000.00 on the part of plaintiff-appellant; and for the defendant to make the necessary rectifications and repairs on the defects found by the Commissioners – 1.) installation of wider drainage; 2.) reinforcement of the stairs; 3.) installation of canopy on the windows and waterproofing on the slabs and walls. In addition, defendant-appellee is required to repair the drainage and electrical systems of the building and to fully seal the building's catch basin.

Moreover, as defendant-appellee was the first infractor, he should be held liable for damages. However, We agree with the trial court that plaintiff-appellant failed to present sufficient evidence to prove her claim for actual, moral and exemplary damages.

Under Article 2220 of the Civil Code, moral damages may be awarded in cases of breach of contract provided that there was fraud or bad faith[43], to wit:

Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

To warrant the award of exemplary damages, "the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner."[44]

In this case, plaintiff-appellant failed to prove, by preponderance of evidence, the fact of bad faith on the part of defendant-appellee during the construction of the warehouse. Hence, the award of moral and exemplary damages is not proper.

Plaintiff-appellant, however, was able to prove the fees relevant to the filing of the instant case, to wit:

Filing Fee in Civil Case No. 13872 — PhP36,706.00[45]

Other Fees — 1,000.00[46]

Mediation Fee — 500.00[47]

Filing Fee in Civil Case No. 13872 — 32,374.00[48]

R.A. 3870 in Civil Case No. 13872 — 706.00[49]

Legal Fees — PhP100,000.00[50]

TOTAL — PhP171,286.00

WHEREFORE, premises considered, the appeal is **PARTIALLY GRANTED**. The assailed Decision of the Regional Trial Court, Branch 33 of Dumaguete City dated December 15, 2011 in Civil Case No. 13872 for Breach of Contract with Damages is hereby **AFFIRMED** with **MODIFICATIONS**. Defendant-appellee Jonathan Lim is hereby **ORDERED**:

1. To make the necessary repairs and rectifications, in addition to the one ordered by the trial court, on the following:

- Electrical system of the subject warehouse;
- Drainage system of the subject warehouse;
- Catch basin of the warehouse.

2. To pay plaintiff-appellant the amount of One Hundred Seventy One Thousand Two Hundred Eighty Six Pesos (PhP171,286.00) as damages for the costs of the suit.

SO ORDERED.

Delos Santos, E.L., Chairperson, and Lagura-Yap, M.B., JJ., concur.

[1] Penned by Judge Fe Lualhati D. Bustamante, Rollo, pp. 60-74; Record, pp. 464-478

[2] Id, p. 477

[3] Covered by Transfer Certificate of Title No. 8735, Record, pp. 31-32

[4] Exhibit “A”, Id, pp. 11-12

[5] Exhibit “B”, Id, p. 13

[6] Exhibit “J”, Id, pp. 56-57

[7] Pre-Trial Order, Id, pp. 177-179

[8] Order dated November 21, 2006, Id, p. 184

[9] Ocular Inspection Report, Id, pp. 236-238

[10] TSN (Ordoñez) August 19, 2008, Record, pp. 5-6

[11] TSN (Ordoñez) August 19, 2008, Record, p. 6

[12] TSN (Ordoñez) September 15, 2008, Record, p. 5

- [13] TSN (Ordoñez) September 15, 2008, Record, pp. 24-31
- [14] TSN (Ordoñez) September 15, 2008, pp. 5-6
- [15] TSN (Ordoñez) September 15, 2008, Record, p. 23
- [16] TSN (Ordoñez) September 15, 2008, Record, p. 28
- [17] TSN (Patinga) March 12, 2009, Record, p. 6
- [18] Exhibit “FF” Proposed Augmentation/Repair of the Three-Storey Bodega Building, Record
- [19] TSN (Patinga) September 9, 2009, Record, pp. 3-33
- [20] TSN (Edward Ordoñez) April 7, 2009, Record, p. 7; May 4, 2009, Record, p. 5-9
- [21] Memorandum of Exhibits, Record, pp. 375-380
- [22] Comments/Objections to Memorandum of Exhibits (Of Plaintiff), Id, pp. 383-388
- [23] TSN (Lim) February 18, 2010, Record, pp.
- [24] TSN (Lim) February 18, 2010, Record, p. 20
- [25] TSN (Lim) February 18, 2010, Record, pp. 11-12
- [26] TSN (Lim) February 18, 2010, Record, p. 18
- [27] TSN (Lim) March 11, 2010, Record, p. 3
- [28] TSN (Lim) February 18, 2010, Record, pp. 25-32
- [29] TSN (Lim) February 18, 2010, Record, p. 38
- [30] TSN (Lim) June 3, 2010, Record, p. 6
- [31] Record, pp. 430-433
- [32] Comments, Id, pp. 435-438
- [33] Order dated April 27, 2011, Id, p. 440
- [34] Rollo, p. 22
- [35] Article 1305 of the Civil Code of the Philippines
- [36] Article 1159 of the Civil Code of the Philippines
- [37] Spouses Guanio vs. Makati Shangri-la Hotel and Resort Inc., G.R. No. 190601, February 7, 2011
- [38] The Insular Life Assurance Company vs. Asset Builders Corporation, G.R. No. 147410, February 5, 2004
- [39] Id
- [40] Spouses Vilorio vs. Continental Airlines, Inc., G.R. No. 188288, January 16, 2012
- [41] Ong vs. Bogñalbal, et. al., G.R. No. 149140, September 12, 2006
- [42] Id
- [43] Adriano, et. al. vs. Lasala, et. al., G.R. No. 197842, October 9, 2013

[44] Id

[45] Exhibit “DD-1”

[46] Exhibit “DD”

[47] Exhibit “DD-2”

[48] Exhibit “DD-3”

[49] Exhibit “DD-4”

[50] Exhibit “EE”

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