

ARCH. EUSEBIO BERNAL, DOING BUSINESS UNDER THE NAME AND STYLE CONTEMPORARY BUILDERS, PLAINTIFF-APPELLEE, VS. DR. VIVENCIO VILLAFLOR & DRA. GREGORIA VILLAFLOR, DEFENDANTS-APPELLA...

Ponente: ANTONIO-VALENZUELA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5dbe39ab8297/>

ANTONIO-VALENZUELA, J.:

This is the appeal from the Decision[1] dated 28 January 2009 ("assailed Decision")[2] of the Regional Trial Court, Branch 41, Dagupan City ("RTC"), in Civil Case No. 98-02678-D, for sum of money and damages, with prayer for the issuance of a writ of preliminary attachment.

THE FACTS

The following facts are undisputed: In 1995, the spouses Vivencio Villaflor and Gregoria Villaflor ("defendants-appellants Villaflor"), retained the services of Architect Eusebio Bernal ("plaintiff-appellee contractor") for the construction of the Medical Arts Building at Caranglaan, Dagupan City, for the original contract price of Php7,800,000.00, and executed the Construction Agreement ("Agreement"), which stipulated that upon signing of the Agreement, the defendants-appellants Villaflor were to advance the amount of Php2,000,000.00, as downpayment; in November 1995, after the defendants-appellants Villaflor gave ten (10) post-dated checks to the plaintiff-appellee contractor, in the total amount of Php2,500,000.00, the construction of the Medical Arts Building started; during the course of the construction of the Medical Arts Building, the defendants-appellants Villaflor caused 18 change orders[3] to be made, which were not covered by the Agreement; the defendants-appellants Villaflor made several payments to the plaintiff-appellee contractor, the total of which amounted to Php14,355,016.94.

On 16 November 1998, plaintiff-appellee contractor filed the Complaint[4] for sum of money and damages, with prayer for the issuance of a writ of preliminary attachment against the defendants-appellants Villaflor. The Complaint alleged: On 14 February 1995, the defendants-appellants Villaflor and plaintiff-appellee contractor, executed the Agreement for the construction of the Medical Arts Building, but the defendants-appellants Villaflor did not pay the stipulated downpayment on that date, because the release of the proceeds of the defendants-appellants Villaflors' loan from the bank was delayed; in November 1995, after the proceeds of the defendants-appellants Villaflors' loan was released, and after the defendants-appellants Villaflor issued post-dated checks in the total amount of Php2,500,000.00, the construction of the Medical Arts Building started; during the construction of the Medical Arts Building, the defendants-appellants Villaflor made 18 change orders (i.e., alterations), which were not part of the original Specifications/Plan; plaintiff-appellee contractor did not require the defendants-appellants Villaflor to execute change order request forms, because they were close family friends, and plaintiff-appellee contractor feared that it might antagonize the defendants-appellants Villaflor, who were well known doctors in the city, although plaintiff-appellee contractor reminded the defendants-appellants Villaflor that the change orders were not included in the original Agreement, and that he (plaintiff-appellee contractor)

would have to collect additional charges; the defendants-appellants Villaflor assured the plaintiff-appellee contractor that they were going to pay for the cost of the change orders, and instructed plaintiff-appellee contractor to proceed with the requested change orders; the 18 change orders requested by defendants-appellants Villaflor amounted to a total of Php9,796,816.94; the total construction cost of the entire Medical Arts Building, including the 18 change orders, amounted to Php17,596,816.94; the defendants-appellants Villaflor made some payments to the plaintiff-appellee contractor, and left an unpaid balance of Php4,784,861.59; plaintiff-appellee contractor made several written and verbal demands to the defendants-appellants Villaflor for the payment of the Php4,784,861.59; after receipt of the first letter of demand, the defendants-appellants Villaflor paid Php1,543,061.59, which left the amount of Php3,241,800.00, unpaid; plaintiff-appellee contractor made several demands on defendants-appellants Villaflor for the payment of the Php3,241,800.00, but defendants-appellants Villaflor did not pay; the controversy was referred to arbitration, but the defendants-appellants Villaflor did not honor the decision of the arbitrators (i.e., the arbitrators ordered defendants-appellants Villaflor to pay the plaintiff-appellee contractor); the plaintiff-appellee contractor complied with the specifications provided by the defendants-appellants Villaflor; plaintiff-appellee contractor turned over all the pertinent documents (i.e., certificate of occupancy; completion of electrical, plumbing, sanitary, and other relevant permits) to the defendants-appellants Villaflor; plaintiff-appellee contractor suffered sleepless nights, besmirched reputation, and mental anguish because of the defendants-appellants Villaflors' malicious and fraudulent act of not honoring their obligations.

In support of plaintiff-appellee contractor's prayer for the issuance of the writ of preliminary attachment, plaintiff-appellee contractor alleged that the defendants-appellants Villaflor were guilty of incipient fraud from the time the Agreement was executed, until the time the construction of the Medical Arts Building was completed and terminated.

The Complaint prayed that: a writ of preliminary attachment be issued against defendants-appellants Villaflor; and that defendants-appellants Villaflor be ordered to pay Php3,241,800.00 (actual damages), Php1,000,000.00 (moral damages), Php500,000.00 (exemplary damages), Php200,000.00 (attorney's fees), and costs of suit.

On 11 February 1999, the RTC granted plaintiff-appellee contractor's prayer for the issuance of the writ of preliminary attachment.[5] After plaintiff-appellee contractor posted the required bond, the RTC issued the Writ of Preliminary Attachment dated 26 February 1999.[6]

The defendants-appellants Villaflor filed the verified Answer with Compulsory Counterclaim,[7] averring: In March 1995, plaintiff-appellee contractor won the bid to construct the Medical Arts Building of defendants-appellants Villaflor; in November 1995, plaintiff-appellee contractor and defendants-appellants Villaflor, signed the Agreement prepared by the plaintiff-appellee contractor, which, at that time, was not dated; on the same day that the parties signed the Agreement, the defendants-appellants Villaflor delivered to plaintiff-appellee contractor post-dated checks in the total amount of Php2,500,000.00, representing downpayment, which amount was Php500,000.00 in excess of the amount required in the Agreement; the construction of the Medical Arts Building began in November 1995 because it was only then that the Agreement was executed; contrary to the allegations of the plaintiff-appellee contractor, the defendants-appellants Villaflors' loan with the Development Bank of the Philippines ("DBP") was released in March 1996, and not in November 1995, and the Php2,500,000.00 downpayment came from the personal funds of the defendants-appellants Villaflor; after the plaintiff-appellee contractor made the first demand letter, the defendants-appellants Villaflor paid the amount of Php1,543,061.59, upon the assurance of plaintiff-appellee contractor that the construction will be finished, and that an itemized costing of each change order would be made; through the letter dated 12 March 1998, the defendants-appellants Villaflor made a demand on the plaintiff-appellant contractor, that he submit the

detailed costing of the project, including the change orders, but the plaintiff-appellee contractor did not comply; the defendants-appellants Villaflor made the demand for the itemized costing, because the plaintiff-appellee contractor was sending only lump sum billings for each of the change orders; after the plaintiff-appellee contractor made a second demand for the payment of the alleged outstanding balance, the defendants-appellants Villaflor informed plaintiff-appellee contractor that they had paid in full the contract price, and reiterated their demand for an itemized costing with respect to the change orders; the controversy was never referred to a board of arbitrators; after receiving the payment of Php1,543,061.59, plaintiff-appellee contractor never returned, and did not finish the project, so the defendants-appellants Villaflor undertook the completion of the Medical Arts Building, which was left five percent (5%) unfinished; the plaintiff-appellee contractor short-changed the defendants-appellants Villaflor by reducing the area of the Medical Arts Building by approximately 63 square meters; the lump sum billings sent by the plaintiff-appellee contractor were not only erroneous, but were indicative of the fraudulent scheme employed by the plaintiff-appellee contractor.

The defendant-appellants Villaflor pleaded as compulsory counterclaim: the defendants-appellants Villaflor spent the amount of Php60,000.00 to finish the remaining 5% of the uncompleted works in the Medical Arts Building; plaintiff-appellee contractor should reimburse the defendants-appellants Villaflor the amount of Php630,000.00 because plaintiff-appellee contractor fraudulently reduced the area of the Medical Arts Building by 63 square meters; due to the malicious imputations and accusations made by the plaintiff-appellee contractor, the defendants-appellants Villaflors' reputation and social standing were besmirched, and they suffered sleepless nights, mental anguish, social humiliation, moral shock, and were constrained to engage the services of their counsel to protect their rights.

The Answer with Compulsory Counterclaim prayed that: plaintiff-appellee contractor be ordered to pay Php60,000.00 (reimbursement for the value of the 5% unfinished project), Php630,000.00 (reimbursement for the 63 square meters fraudulently reduced), Php20,000,000.00 (moral damages), Php5,000,000.00 (exemplary damages), Php494,180.00 (attorney's fees), Php5,000.00 for every appearance of their legal counsel (appearance fee), and costs of suit.

Plaintiff-appellee contractor's Reply with Answer to Counterclaim[8], denied the allegations and counterclaims made by the defendants-appellants Villaflor, and alleged: the Medical Arts Building was already finished and functional, and was already being occupied by the defendants-appellants Villaflor for the purpose for which it was built, when the defendants-appellants Villaflor made the payment in the amount of Php1,543,061.59; defendants-appellants Villaflors' 5% assessment of the alleged uncompleted works was arbitrary, and without basis; the plaintiff-appellant contractor followed the original plan, design, and specifications of the Medical Arts Building.

On 01 July 1999, an ocular inspection was conducted on the Medical Arts Building.[9]

In the Order dated 14 January 2000, the RTC granted the joint motion[10] of the parties, and created the Fact Finding Committee composed of Architect Aquilino Pastoral Jr., as the chairman ("Arch. Pastoral"), Engineer Gerino Tactaquin ("Engr. Tactaquin", representative of the plaintiff-appellee contractor), and Engr. Artemio Paragas ("Engr. Paragas", representative of the defendants-appellants Villaflor), as members; directed the Fact Finding Committee to conduct an ocular inspection on the Medical Arts Building, and in the course thereof, to: 1) dwell on the technical aspect of the plan, as approved by the building official; 2) dwell on matters as appearing on the building and the materials used; 3) determine whether there was compliance with the specifications duly approved by the building official; 4) determine whether the change orders being claimed by the plaintiff-appellee appear in the building; and 5) dwell on such other matters relative to the technical aspect of the building, the structure, and the interpretation of the technical aspect of the plan; directed the Fact Finding Committee to submit

its written report, and state clearly and distinctly the facts on which they unanimously agreed upon, as well as the disputed facts; ordered that those facts unanimously agreed upon by the members of the Fact Finding Committee shall be considered final, and binding upon both the plaintiff-appellee contractor and the defendants-appellants Villaflor.[11]

On 05 May 2000, upon motion[12] of the parties, the RTC directed the Fact Finding Committee to give their respective assessments, and opinions as to the costs and value of the materials, labor, and works or items done or not done on the Medical Arts Building, and on such other items or areas where the members of the committee have varying assessments or opinions.[13]

On 08 May 2000, the Fact Finding Committee submitted the Fact Finding Committee Report dated 06 May 2000 on the ocular inspection conducted on the Medical Arts Building.[14]

On 01 March 2002, the RTC directed the members of the Fact Finding Committee to convene again, and determine the costs of the materials mentioned in Item "B" (those items billed but do not exist in the Medical Arts Building), and Item "C" (those items which were discovered existing in the Medical Arts Building but were not billed) of the Fact Finding Committee Report, and submit its report thereon.[15]

On 18 March 2002, the Fact Finding Committee submitted the separate reports of Engr. Tactaquin, and Engr. Paragas pertaining to the costs of bill of materials for the change orders done at the Medical Arts Building.[16]

Trial proceeded.

Plaintiff-appellee contractor presented himself, and Engr. Tactaquin, as witnesses. Plaintiff-appellee contractor's evidence is summarized thus: On 14 February 1995, defendants-appellants Villaflor and plaintiff-appellant contractor executed the Agreement,[17] which stated that the construction of the Medical Arts Building was to be based on the Specification Plan, approved by the building official;[18] in February 1996, during the construction of the Medical Arts Building, the defendants-appellants Villaflor requested 18 change orders, with the total cost of Php9,796,816.94;[19] the total construction cost of the Medical Arts Building, including the 18 change orders, was Php17,596,816.94;[20] in January 1997, the construction of the Medical Arts Building was finally completed;[21] the defendants-appellants Villaflor made several payments to the plaintiff-appellee contractor, but left unpaid the amount of Php4,784,861.59;[22] on 18 August 1997, plaintiff-appellee contractor made a written demand on the defendants-appellants Villaflor for the payment of the Php4,784,861.59;[23] after receipt of the written demand made by the plaintiff-appellee contractor, the defendants-appellants Villaflor delivered to plaintiff-appellee contractor post-dated checks in the amount of Php1,400,000.00;[24] plaintiff-appellee contractor turned over all the pertinent documents (i.e., certificate of occupancy; completion of electrical, plumbing, sanitary, and other relevant permits) to the defendants-appellants Villaflor;[25] on 04 May 1998, plaintiff-appellee contractor made another written demand on the defendants-appellants Villaflor for the payment of the unpaid amount of Php3,241,800.00;[26] while the defendants-appellants Villaflor made attempts to negotiate the payment of the unpaid amount, subsequently, through the letter dated 23 June 1998, they denied their outstanding obligation, and refused to pay;[27] due to the unjust refusal of the defendants-appellants Villaflor to pay their outstanding obligation, plaintiff-appellee contractor was constrained to hire the services of a legal counsel,[28] and suffered sleepless nights, besmirched reputation, and mental anguish.[29]

Defendants-appellants Villaflor presented the following persons as witnesses: Engr. Paragas; defendant-appellant Dr. Vivencio Villaflor; defendant-appellant Dra. Gregoria Villaflor; Conrado Estrella; and Dr. Generoso Torres. The defendants-appellants Villaflors' evidence is summarized, thus: Plaintiff-appellee contractor won the bid to construct the Medical Arts Building;[30] when defendants-appellants Villaflor and plaintiff-appellee contractor signed the Agreement in November 1995, the instrument was not dated;[31] the construction of the Medical Arts

Building started in November 1995, because it was only then that the Agreement was executed;[32] the downpayment in the amount of Php2,500,000.00 came from the personal funds of the defendants-appellants Villaflor,[33] and not from the proceeds of the loan with the Development Bank of the Philippines ("DBP"), which was only released in March 1996;[34] the defendants-appellants Villaflor always paid the billings sent by the plaintiff-appellee contractor, and they kept on making payments on their balance even if there were no billings sent by the plaintiff-appellee contractor;[35] the comparison chart made by defendant-appellant Dr. Vivencio Villaflor, as to the costings made by the plaintiff-appellee contractor before and after the filing of the Complaint, showed that there were several discrepancies[36] (i.e., the total cost of items which were included in the billings, but were not actually existing in the Medical Arts Building is Php1,577,116.78);[37] there were no sun breakers constructed on the additional three spans on the right wing;[38] the true and actual cost of the Medical Arts Building, inclusive of the 18 change orders, is Php11,991,537.58;[39] there were defective works on the construction of the Medical Arts Building, which the plaintiff-appellee contractor did not fix;[40] on 12 March 1998, defendant-appellant Dr. Vivencio Villaflor made a written request[41] to the plaintiff-appellee contractor for an itemized costing, but instead of giving the defendantsappellants Villaflor the requested itemized costing, plaintiff-appellee contractor made a final demand for the payment of the alleged outstanding balance,[42] and later on filed the Complaint; defendants-appellants Villaflor suffered sleepless nights, social humiliation, mental anguish, and besmirched reputation because of the unfounded Complaint filed by the plaintiffappellee contractor against them;[43] the defendants-appellants Villaflor were constrained to retain the services of a legal counsel because of the Complaint filed by the plaintiff-appellee contractor.[44]

On 28 January 2009, the RTC issued the assailed Decision.[45] Its dispositive portion read:

WHEREFORE, premises considered judgment is hereby rendered as follows:

1. Ordering the defendants to pay plaintiff the amount of Two Million Eight Hundred Forty Eight Thousand Pesos (Php2,848,000.00) plus interest thereon at the legal rate from March 4, 2008 until the amount is fully paid.
2. Ordering the defendants to pay plaintiff the amount of Php200,000.00 as and for attorney's fees. Dismissing all other claims and counterclaims for lack of basis.

No pronouncement as to cost.

SO ORDERED.

Aggrieved, defendants-appellants Villaflor file this Appeal, and make the following assignment of errors:

ASSIGNMENT OF ERRORS

I.

THE TRIAL COURT ERRED IN ITS COMPUTATION OF THE TOTAL AMOUNT OF WORK PERFORMED BY THE PLAINTIFF-APPELLEE.

II.

THE TRIAL COURT ERRED IN CONCLUDING THAT THE DEFENDANTSAPPELLANTS ARE LIABLE TO PAY THE AMOUNT OF Php 2,848,000.00.

III.

THE TRIAL COURT FAILED TO CONSIDER THE DEFENDANTS-APPELLANTS ARGUMENTS ON THE FRAUD COMMITTED BY THE PLAINTIFF-APPELLEE.

IV.

THE TRIAL COURT ERRED IN DISMISSING THE COUNTER-CLAIMS OF DEFENDANTSAPPELLANTS[46]

The issues are: 1) whether the RTC erred in ruling that the defendants-appellants Villaflor were liable to pay the amount of Php2,848,000.00 to plaintiff-appellee contractor; 2) whether plaintiff-appellee contractor committed fraud in the performance of his obligation to the defendants-appellants Villaflor; and 3) whether the RTC erred in dismissing the counterclaims of the defendants-appellants Villaflor.

BRIEF FOR THE APPELLANTS[47]

With respect to the first issue, the defendants-appellants Villaflor answer in the affirmative. The RTC erred in ruling that the defendants-appellants Villaflor were liable for the amount of Php2,848,000.00 to the plaintiff-appellee contractor. Defendants-appellants Villaflor thrust: as correctly found by Engr. Paragas, the total value of the work performed by the plaintiff-appellee contractor was only Php11,991,537.58, and not Php17,735,181.40; defendants-appellants Villaflor are entitled to the reimbursement of the overpayment they made; plaintiff-appellee contractor cannot recover the additional cost incurred on the 18 change orders, because these were not covered by a written agreement.

Anent the second issue, defendants-appellants Villaflor answer in the affirmative. Plaintiff-appellee contractor committed fraud in the performance of his obligations to the defendants-appellants Villaflor. Defendants-appellants Villaflor thrust: Plaintiff-appellee contractor's fraudulent intent was established by the large discrepancies in the various billings sent to the defendants-appellants Villaflor, brought about by plaintiff-appellee contractor's fraudulent act of overbilling, ghost-billing, and the sub-standard quality of his work.

Anent the third issue, defendants-appellants Villaflor answer in the affirmative. The RTC erred in dismissing the counterclaims of the defendants-appellants Villaflor. Defendants-appellants Villaflor's Brief thrusts: The evidence presented by the defendants-appellants clearly established that they were entitled to the damages claimed.

APPELLEE'S BRIEF[48]

With respect to the first issue, plaintiff-appellee contractor answers in the negative. The RTC did not err in ruling that the defendants-appellants Villaflor were liable to pay the amount of Php2,848,000.00 to the plaintiff-appellee contractor. Plaintiff-appellee contractor parries: The RTC was correct in not giving credence to the testimony of Engr. Paragas, as to the actual construction cost of the Medical Arts Building, including the 18 change orders made, because the computation made by Engr. Paragas was unrealistic, without any basis, and the figures used were merely speculative.

Anent the second issue, plaintiff-appellee contractor answers in the negative. Plaintiff-appellee contractor did not commit fraud in the performance of his obligations to the defendants-appellants Villaflor. Plaintiff-appellee contractor parries that there was no manipulation or juggling of billings, nor was there overpricing on the part of the plaintiff-appellee contractor.

With respect to the third issue, plaintiff-appellee contractor answers in the negative. The RTC did not err in

dismissing the counterclaims of the defendants-appellants Villaflor. Plaintiff-appellee contractor parries that defendants-appellants failed to substantiate their counterclaims.

THE COURT'S RULING

Defendants-appellants Villaflor are liable to the plaintiff-appellee contractor for the unpaid amount of the construction cost of the Medical Arts Building.

With respect to the first issue, we rule in the negative. The RTC did not err in finding that the defendants-appellants Villaflor are liable to the plaintiff-appellee contractor.

Plaintiff-appellee contractor, in his Complaint, sought to collect from the defendants-appellants Villaflor the sum of Php3,241,800.00, representing the unpaid amount of the construction cost of the Medical Arts Building, including the 18 change orders made.

To prove his claim for Php3,241,800.00, plaintiff-appellee contractor presented, as evidence, the following: the testimony of plaintiff-appellee contractor Arch. Eusebio Bernal;^[49] the testimony of Engr. Tactaquin;^[50] the Detailed Report of Engr. Tactaquin ("Tactaquin Report");^[51] the Detailed Report of Engr. Tactaquin on the Ocular Inspection;^[52] Minutes of the Meeting dated 19 February 1996;^[53] the Affidavit of Merit executed by plaintiff-appellee contractor;^[54] the Details of Costs^[55] prepared by the plaintiff-appellee contractor; the Letter dated 18 August 1997;^[56] the Letter dated 04 May 1998;^[57] the Letter dated 23 June 1998;^[58] and the Letter dated 05 July 1998.^[59]

It is elementary that in civil cases, a preponderance of evidence is necessary.^[60] Preponderance of evidence is the evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Therefore, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment.^[61]

There is here a preponderance of evidence to justify the claim of plaintiff-appellee contractor that the defendants-appellants Villaflor are liable to pay for the unpaid amount of the construction cost of the Medical Arts Building, including the 18 change orders made.

While we agree that the defendants-appellants Villaflor are liable for the unpaid amount of the construction cost of the Medical Arts Building, we do not agree with the RTC's computation.

During the proceedings before the RTC, plaintiff-appellee contractor was able to prove that the total cost of the 18 change orders was Php9,836,505.32. We find it necessary, however, to fix the total cost of the 18 change orders to the amount claimed in the Complaint, i.e., Php9,796,816.94.^[62]

In the same wise, we cannot allow the amount of Php271,915.99 (Item C, items which were found on the building but were not billed by the plaintiff-appellee contractor) to be credited, since this was never alleged, nor prayed for by the plaintiff-appellee contractor in the Complaint.

It was also erroneous for the RTC to use the amount of Php13,528,200.00, as the total amount of payment made by the defendants-appellants Villaflor to the plaintiff-appellee contractor. The Complaint alleged that the sum of Php17,596,816.94 represents the total construction cost of the Medical Arts Building under the original Agreement (Php7,800,000.00) and the 18 change orders (Php9,796,816.94). The Complaint also alleged that after the payments made to the plaintiff-appellee contractor, the remaining balance of the defendants-appellants Villaflor is the sum of Php3,241,800.00. The Answer admitted the total payments made to the plaintiff-appellee

contractor.[63] Thus, the correct amount of total payments made by the defendants-appellants Villaflor should be Php14,355,016.94.

Thus, the total balance due to the plaintiff-appellee contractor should be Php1,710,271.21, computed as follows:

Total Credits to Plaintiff-appellee contractor:

Contract Price:

Php7,800,000.00

Total cost of 18 change orders (As alleged in the Complaint, since this is lesser than what was actually proved):

9,796,816.94

17,596,816.94

Total Deductions:

Item C (Items billed but not found)

173,239.93

Item D (Other items billed but not found, and items with discrepancies)[64]

1,358,288.86

(1,531,528.79)

Total value of the Medical Arts Building:

16,065,288.15

Less: Total Payments Made by the defendants-appellants

14,355,016.94

(14,355,016.94)

BALANCE:

Php1,710,271.21

The defendants-appellants Villaflor argue that the RTC erred in disregarding the testimony of Engr. Paragas, as well as the Detailed Cost Estimate prepared by Engr. Paragas ("Paragas Report"),[65] which stated that the total cost of the 18 change orders made on the building is Php4,191,537.58. Thus, the defendants-appellants Villaflor contend that the actual construction cost of the Medical Arts Building (Php7,800,000.00), including the 18 change orders made (Php4,191,537.58), is Php11,991,537.58.[66]

We are not convinced.

We affirm the findings of the RTC that the actual cost (of the Medical Arts Building including the 18 change orders made) arrived at by the Paragas Report is unrealistic, and thus cannot be given much weight.[67] We believe that Php4,191,537.58, as determined by the Paragas Report, is not enough to cover the cost of construction of all the 18 change orders made.

It is worthy to note that while Engr. Paragas certified, that in his experience as a contractor, both in private and government projects, costing of additional works (such as the 18 change orders made) should be computed based on the costing used in the original contract involving the same materials,[68] he testified at cross-examination that he did not use the original costing under the Agreement (Php7,428.57 per square meter) to compute the construction cost of the 18 change orders. Engr. Paragas' testimony was as follows:

Q

I am clear to say that as appearing in the report, the area is 1,050 and with the addition of the span, the total area is 1,603.24, is that correct?

A

Yes, sir.

Q

In other words, minus the additional span the area is 1.050 only, is that correct?

A

Yes, sir.

Q

And all you have to do now is that the P7.8 million divided by 1.050, is that your formula, what is your answer now after dividing the total area?

A

The amount is 7,428.57, sir.

Q

And according to your certification on additional change order must be based on the original plan the one entered into by plaintiff and Dr. Villaflor in the amount of P7.8 million, is that correct?

A

What I mean is...[69]

xxx

Q

I am asking if you can show us in your report the basis of your computation is 7,428, did you use that as your basis or there is none?

A I used it, sir.

Q Where?

A I just add 20%, sir.

Q I am only looking for this figure of 7,000 something in your computation, where is that?

A I do not have that amount of P7.8 million but that was based on my old estimate of P6.5 million which I added 20%, sir.

Q If there is none, Mr. Witness, please say so, so that we can continue?

COURT

Make on record that the witness cannot show any.[70]

xxx

(Emphasis supplied.)

It is clear from the testimony of Engr. Paragas that he could not properly substantiate, nor could he support his own findings, as stated in the Paragas Report. As such, we cannot give weight on the Paragas Report in determining the actual cost of the Medical Arts Building.

On the contrary, we find the Tactaquin Report[71] adequately substantiated. Engr. Tactaquin's testimony during his direct, cross, and re- direct examination, remained consistent, and reasonable.

In an attempt to deny their liability, defendants-appellants Villaflor cite Article 1724 of the New Civil Code. It reads:

Article 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.

Under the above cited provision of law, the contractor is barred from recovering the cost of additional works absent compliance with the two requisites: 1) that the owner authorized the changes in writing; and 2) that the additional price to be paid to the contractor has been determined by both parties in writing. The absence of one of the requisites bars recovery for the additional cost. Thus, neither the authority for the changes made nor the additional price to be paid may be proved by any other evidence.[72]

We cannot allow this defense.

A perusal of the records reveals that the defendants-appellants Villaflor did not raise Article 1724 as a defense in the Answer with Compulsory Counterclaim,[73]nor in the Pre-Trial Brief[74] submitted before the RTC. In fact, the defendants-appellants Villaflor only raise this defense for the first time in this appeal.

Rule 9, Section 1 of the Rules of Court is applicable. It provides:

Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on

record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Defendants-appellants Villaflor cannot, on appeal, change their theory of the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court a quo, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[75]

Defendants-appellants Villaflor cannot deviate now from the theory they adopted before the RTC, that they have fully settled their obligations, and that the plaintiff-appellee contractor was overbilling them.

Under the principle of quantum meruit, plaintiff-appellee contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of written agreement in order to avoid unjust enrichment. Quantum meruit entails that payment shall be made in such amount as the plaintiff-appellee contractor reasonably deserves for the work done on the Medical Arts Building.[76]

Thus, as previously discussed, defendants-appellants Villaflor are liable to the plaintiff-appellee contractor for the unpaid amount of Php1,710,271.21 of the construction cost of the Medical Arts Building, including the 18 change orders made.

Plaintiff-appellee contractor did not commit fraud.

Anent the second issue, we rule in the negative. Plaintiff-appellee contractor did not commit fraud in the performance of his obligations.

The party who alleges fraud affecting a transaction must substantiate his allegation because it is presumed that a person takes ordinary care of his concerns, and that private transactions have been fair and regular. Fraud is never presumed, but must be proved by clear and convincing evidence.[77]

There is here, no clear and convincing evidence that plaintiff-appellee contractor committed fraud in the performance of his obligations.

Defendants-appellants Villaflor contend that the fraudulent intent of the plaintiff-appellee contractor was established by the following: a) the manipulated and juggled costs in the billings sent by plaintiff-appellee contractor; 2) the fraudulent reduction of the area of the contracted building; 3) the failure of the plaintiff-appellant contractor to complete the construction; and 4) the failure of the plaintiff-appellant contractor to correct the defective works in the building.[78]

We are not convinced.

The alleged manipulation and large discrepancies in the billings sent by the plaintiff-appellee contractor were adequately refuted, and explained by the evidence submitted by the plaintiff-appellee contractor.

Plaintiff-appellee contractor submitted Engr. Tactaquin's Summary of Billing and Tally of Attachments,[79] which attributed the discrepancies to adjustments of costs to accommodate defendants-appellants' requests for discounts, increase in unit cost, increase in actual quantity, increase in actual weight, added items, deletion, decrease in quantity, items not installed, etc.

The claim of defendants-appellants Villaflor, that plaintiff-appellee contractor manipulated and juggled the billings, was belied by the unwavering testimony of Engr. Tactaquin during his cross-examination, which we find to be consistent with the Summary of Billing and Tally of Attachments. Engr. Tactaquin testified:

Q

Now on December 8, 2003 on page 30 of the said transcript of stenographic notes you were asked about Change Order No. 3 and accordingly on March 3, 1997 billing you were trying to collect the amount of P3,153,391.00 and on the same question on July 16, 1997 Change Order No. 3 you billed the defendants in the amount of P3,189,195.40 or the difference of P335,804.14, what can you say about that?

A

The difference of which was due to the request of Dr. Villaflor to re-evaluate our billing, details of which could be seen on the report of Comparative Chart Billing which was submitted to this Honorable Court on September 2, 2002.[80]

xxx

Q

Now you made mention that there was this request from Dr. Villaflor for the re-evaluation, what do you mean request for re-evaluation?

A

The request of Dr. Villaflor is to make possible adjustments on the discounts from our billings, sir.[81]

xxx

Q

When you say re-evaluation, in your world of construction business, what do you mean by that?

A

When our client asked us to re-evaluate for them, maybe they want more discount but for us if we will re-evaluate it we will base it on the situation. It is with the discretion of the contractor whether to give them the discount or maintain such amount of items or increase a certain amount.[82]

xxx

Anent the allegation of the defendants-appellants Villaflor that plaintiff-appellee contractor fraudulently reduced the area of the constructed building by 63 square meters, we find this untenable and without any factual basis. The defendants-appellants Villaflor failed to submit any evidence to substantiate their claim.

On the other hand, as found by the RTC, the written Report of the Fact Finding Committee clearly showed that

the members of the committee (including defendants-appellants Villaflors' witness, Engr. Paragas), after ocular inspection of the Medical Arts Building, unanimously agreed that the total area of the building, as originally planned (1,050 square meters), increased to a total area of 1,603 square meters, after the additional spans were constructed.[83] The defendants-appellants Villaflor also failed to submit any evidence to substantiate this claim.

As regards the allegations of the defendants-appellants Villaflor that plaintiff-appellee contractor did not finish the construction of the Medical Arts Building, and that plaintiff-appellee contractor failed to correct the defective works therein, we find that these allegations were unsubstantiated.

These allegations were belied by the fact the Medical Arts Building had undergone a final inspection before it was turned over to the defendants-appellants Villaflor.[84] We also agree with the findings of the RTC that the alleged defects, as appearing in the Medical Arts Building, were caused by ordinary wear and tear, considering the lapse of time the building was completed until the time the Complaint was filed.[85]

Without any clear and convincing evidence, the defendants-appellants Villaflors' imputation of fraud on the part of the plaintiff-appellee contractor must necessarily fail.

Defendants-appellants Villaflor are not entitled to their counterclaims.

Anent the third issue, we rule in the negative. The RTC did not err in dismissing the counterclaims of the defendants-appellants Villaflor.

There is here no preponderance of evidence to justify the award in favor of the defendants-appellants Villaflor regarding their counterclaims.

Defendants-appellants Villaflor, by way of counterclaim, sought to collect the following: 1) Php60,000.00, representing the actual damages incurred by the defendants-appellants Villaflor in finishing the remaining 5% of the construction of the Medical Arts Building; 2) Php630,000.00, representing the cost of the 63 square meter area of the Medical Arts Building, that was fraudulently reduced by the plaintiff-appellee contractor; 3) Php20,000,000.00, representing moral damages; 4) Php5,000,000.00, representing exemplary damages; 5) Php494,180.00, representing attorney's fees; 6) Php5,000.00 for every appearance of the defendants-appellants Villaflors' counsel; and 7) costs of suit.

Insofar as actual and compensatory damages are concerned, Article 2199 of the New Civil Code is applicable. It reads:

Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Well settled is the rule that in order to recover actual or compensatory damages, there must be pleading and proof of actual damages suffered. The party claiming the damage suffered must adduce the best evidence available in support thereof.[86]

As earlier discussed, plaintiff-appellee contractor did not reduce the area of the building, nor did he leave the construction project unfinished. Besides, the records of the case are bereft of any evidence presented by the defendants-appellants Villaflor to justify the award of Php60,000.00, allegedly spent to finish the remaining 5% of the construction of the Medical Arts Building. The defendants-appellants Villaflor failed to prove that the total value of the 63 square meters area, allegedly reduced by plaintiff-appellee contractor, is Php630,000.00.

Defendants-appellants Villaflor anchored their claim for moral damages, exemplary damages, and attorney's fees,

on the alleged fraud committed by the plaintiff-appellee contractor.

As previously discussed, we find no clear and convincing evidence to prove that plaintiff-appellee contractor committed fraud in the performance of his obligation with defendants-appellants Villaflor. Thus, defendants-appellants Villaflors' claim for moral damages, exemplary damages, and attorney's fees have no legal leg to stand on.

Plaintiff-appellee contractor is entitled to the award of attorney's fees.

We uphold the RTC's award of Php200,000.00, as attorney's fees, in favor of plaintiff-appellee contractor.

Article 2208 of the New Civil Code is relevant. It reads:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied.)

As a general rule, attorney's fees and expenses of litigation cannot be recovered in the absence of stipulation for such. However, the law provides specific exceptions as to when attorney's fees and expenses of litigation may be recovered. Thus, when the circumstances of the case deem it just and equitable to warrant the award of attorney's fees, the same may be awarded.

There is no doubt that plaintiff-appellee contractor was forced to litigate in order to protect his interest (i.e. to recover the unpaid amount of the construction cost of the Medical Arts Building). The defendants-appellants Villaflor, despite causing the 18 change orders to be made, refused to settle their outstanding obligation with the plaintiff-appellee contractor, notwithstanding the fact that they (defendants-appellants Villaflor) already occupied and utilized the Medical Arts Building for the purpose for which it was constructed. Thus, under the circumstances, we find it just and equitable to uphold the RTC's award of attorney's fees in favor of plaintiff-appellee contractor.

We MODIFY the Decision dated 28 January 2009 of the Regional Trial Court, Branch 41, Dagupan City, in Civil Case No. 98-02678-D, as follows: 1) we ORDER the defendants-appellants Dr. Vivencio Villaflor and Dra. Gregoria Villaflor, to pay plaintiff-appellee contractor Arch. Eusebio Bernal the amount of Php1,710,271.21, plus legal interest rate at the rate of six percent (6%) per annum,[87] computed from the finality of the judgment until full satisfaction; 2) we AFFIRM the award of Php200,000.00, as attorney's fees, in favor of plaintiff-appellee contractor Arch. Eusebio Bernal; 3) we AFFIRM the dismissal of the defendantsappellants Dr. Vivencio Villaflor and Dra. Gregoria Villaflors' counterclaims.

IT IS SO ORDERED.

Veloso (Chairperson) and Lantion, JJ., concur.

[1] Penned by Hon. Emma M. Torio

[2] Records, vol. II, pp. 1450-1474.

[3] a) Change order no. 1: construction of additional sun breaker instead of the original plant box design; b) Change order no. 2: additional construction of the left wing span; c) change order no. 3: additional construction of two right wing spans; d) change order no. 4: replacement of glass jalousie windows to sliding aluminum windows; e) change order no. 5: replacement of flush door with PVC vinyl door; f) change order no. 6: additional construction of electrical works; g) change order no. 7: change of floor marbles and vinyl tiles to 18x18 vetrified Mariwasa on all corridors, rooms, doctors' offices, and miscellaneous rooms; h) change order no. 8: construction of additional sun breakers for the added left and right wings for the additional spans; i) change order no. 9: construction of the additional sliding window along the stairway at the left wing of the third floor; j) change order no. 10: construction of additional tile works at the stairs from pebbles wash out finish to 18X18 rustic green Mariwasa along all the stairs from ground floor to roof deck; k) change order no. 11: construction of additional service entry post and barbed wire fence, and additional black concrete masonry wall; l) change order no. 12: construction of an additional wheel guard, path walk, FHC and fire alarm system; m) change order no. 13: additional security grilles at the ground level; n) change order no. 14: proposed stainless top rail and stair railings; o) change order no. 15: proposed security roll up doors along the ground and second floor hallways; p) change order no. 16: additional construction of bridge to connect the buildings; q) change order no. 17: additional security roll up door along the ground floor of the left side entry; and r) change order no. 18: construction of an additional sliding steel door at the roof deck level.

[4] Dated 10 November 1998, Records, vol. I, pp. 1-19.

[5] Order, Records, vol. I, pp. 53-68.

[6] Records, vol. I, pp. 90-92.

[7] Dated 24 March 1999, Records, vol. I, pp. 141-159.

[8] Dated 26 April 1999, Records, vol. I, pp. 177-185.

[9] TSN, dated 01 July 1999, Records, vol. I, pp. 311-345.

[10] Joint Motion, dated 29 October 1999, Records, vol. I., pp. 413-415.

[11] Order, dated 14 January 2000, Records, vol. I, pp. 430-433.

[12] Ex-Parte Motion For Approval of That Joint Motion Dated Oct. 29, 1999, Records, vol. I, pp. 474-478.

- [13] Order, Records, vol. I, pp. 532-534.
- [14] Records, vol. I, pp. 485-527; also marked by defendants-appellants as Exhibit "55" (and sub-markings).
- [15] Order, Records, vol. II, p. 846.
- [16] Exhibits "I" to "L" (and sub-markings)
- [17] Exhibit "A" (and sub-markings).
- [18] Exhibit "O" (and sub-markings).
- [19] Exhibit "U" (and sub-markings); and Exhibits "J-1" to "J-118."
- [20] Ibid.
- [21] Exhibit "V"; Exhibit "T"
- [22] Exhibit "C."
- [23] Ibid.
- [24] Exhibits "R" to "R-7."
- [25] Exhibits "G" to "I" (and sub-markings); Exhibits "K" to "M" (and sub-markings); Exhibit "N" (and submarkings)
- [26] Exhibit "D"
- [27] Exhibit "E"
- [28] Exhibit "C"; TSN, dated 11 July 2003, p. 16.
- [29] TSN, ibid.
- [30] TSN, supra note 28, p. 15.
- [31] TSN, 13 July 2007, p. 7.
- [32] Exhibit s"68" to "69-D
- [33] TSN, supra note 28, pp. 30-34.
- [34] Exhibit "71" (and sub-markings)
- [35] Exhibits "72" to "85-C"
- [36] Exhibits "87" to "88-11"
- [37] Exhibit "56" (and sub-markings)
- [38] Exhibits "24" to "26"
- [39] Exhibits "60" to "60-GGG"
- [40] Exhibits "90" to "104-A"
- [41] Exhibit "105" (and sub-markings); TSN, dated 13 July 2006, pp. 49-50.
- [42] Exhibit "106" (and sub-markings); TSN, id., pp. 52.

- [43] TSN, dated 10 August 2006, pp. 10-32; TSN dated 13 July 2007, pp. 12-14.
- [44] Exhibit "108"; TSN, dated 09 November 2006, pp. 2-4
- [45] Decision, *supra* note 2.
- [46] Brief for the Appellants, C.A. Rollo, p. 136-221, at pp. 140-141.
- [47] *Ibid.*
- [48] C.A. Rollo, p. 255.
- [49] TSN, dated 20 August 1999; TSN, dated 04 July 2003; TSN, dated 11 July 2003.
- [50] TSN, dated 01 March 2002, pp. 25-30.
- [51] Exhibits "J" and sub-markings
- [52] Exhibit "J-1" and sub-markings.
- [53] Exhibit "P" and sub-markings.
- [54] Exhibit "U" and sub-markings.
- [55] Exhibit "W"
- [56] Exhibit "C" and sub-markings
- [57] Exhibit "D" and sub-markings.
- [58] Exhibit "E" and sub-markings.
- [59] Exhibit "F" and sub-markings.
- [60] Rule 133, Section 1, 1997 Rules of Court.
- [61] *Peñalber v. Ramos*, G.R. No. 178645, 30 January 2009.
- [62] *Public Estates Authority v. Chu*, G.R. No. 145291, 21 September 2005, citing *Makabali v. Court of Appeals*, G.R. No. L-46877, 22 January 1988.
- [63] Answer, *supra* note 7.
- [64] As found after the ocular inspection conducted by the RTC in 2004; Decision, *supra* note 2, p. 1472.
- [65] Exhibits "60" to "60-GGG"
- [66] Exhibits "60" to "60-A"
- [67] Decision, *supra* note 2, p. 1470.
- [68] Exhibit "60-C"
- [69] TSN, dated 30 September 2005, p. 6.
- [70] *Ibid.*, pp. 7-8.
- [71] Exhibit "J" (and sub-markings)
- [72] *Leighton Contractors Philippines, Inc., v. CNP Industries, Inc.*, G.R. No. 160972, 09 March 2010, citing

Titan-Ikeda Construction & Development Corporation v. Primetown Properties Group, Inc., G.R. No. 158768, 12 February 2008.

[73] Supra note 7.

[74] Dated 09 June 1999, Records, vol. I, pp. 239-243.

[75] Licomcen, Inc. v. Abainza, G.R. No. 199781, 18 February 2013.

[76] H.L. Carlos Construction, Inc. v. Marina Properties Corporation, G.R. No. 147614, 29 January 2004.

[77] Ibid., citing Mindanao State University v. Roblett Industrial and Construction Corporation, G.R. No. 138700, 09 June 2004.

[78] Brief for the Appellants, supra note 47.

[79] Exhibit "X"

[80] TSN, dated 09 August 2004, pp. 4-5.

[81] Ibid., p. 7.

[82] Ibid., pp. 12-13

[83] Decision, supra note 2, p. 1471.

[84] Exhibits "G", "H", and "I", "K", "L", and "N"

[85] Decision, supra note 2, p. 1472.

[86] Oceaneering Contractors (Phils), Inc. v. Barreto, G.R. No. 184215, 09 February 2011, citing Canada v. All Commodities Marketing Corporation, G.R. No. 146141, 17 October 2008; and MCC Industrial Sales Corporation v. Ssangayong Corporation, G.R. No. 153051, 18 October 2007.

[87] Nacar v. Gallery Frames and/or Bordey, Jr., G.R. No. 189871, 13 August 2013.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.