

**WILSON G. CHUA, DOING BUSINESS UNDER THE NAME AND STYLE
WIN MULTIRICH BUILDERS, PLAINTIFF-APPELLANT, VS. SPS.
LOWELL TANGI AND ELVIRA TANGI, DEFENDANTS-APPELLEES,**

Ponente: SORONGON, J.

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SORONGON, J.:

This is an appeal by Wilson G. Chua (plaintiff-appellant) from the Decision[1] dated December 17, 2009 of the Regional Trial Court of Manila, Branch 20, dismissing the case for Sum of Money and Damages against defendants-appellees Sps. Lowell and Elvira Tangi (defendant-appellees) in Civil Case No. 07-117340. The fallo of the assailed decision reads:

"Premised on the forgoing, the Court finds for the defendants and judgment is hereby rendered DISMISSING the case as well as defendants' counterclaims."

The facts as found from the records run this way:

Sometime in May 2005, defendants-appellees engaged the services of plaintiff-appellant to construct their three-storey with deck residence at 1569-1571 G. Tuazon St. Sampaloc, Manila. The initial contract price was Two Million Eight Hundred Fifty Thousand Pesos (P2,850,000.00) payable thru progress billing and with a down payment of 30%. The construction is to be completed within 150 working days to commence after procurement of the necessary government permits. In July 2006, defendants-appellees requested for additional furnishing works for a contract price of One Million Four Hundred Seven Thousand Seven Pesos and 10/100 (P1,407,007.10). Again in August 2006, defendants-appellees requested for additional ground floor extension for a contract price of Two Hundred Thirty-One Thousand Three Hundred Sixty-Four & 95/100 (P231,364.95). These additional works were promptly accommodated by plaintiff-appellant.

Progress billings were sent by plaintiff-appellant to the defendants-appellees which the latter also paid except for the remaining bill of Seven Hundred Forty Eight Thousand Four Hundred Sixty-Six Pesos and 76/100 (P748,466.76), which defendants-appellees, to date and despite demand, refused and failed to pay.

In their Answer[2], defendants-appellees alleged the following: (i) they disputed the legal personality of Win Multi Rich Builders because plaintiff-appellant never represented himself to them as doing business under such trade name. They engaged the services of plaintiff-appellant for the construction of their three-storey residential structure and never with Win Multi Rich Builders; (ii) the construction of their house started on June 8, 2005. For the first two months, work was fast but slowed down on the third month because there were no materials to work on so the laborers were left idle. A month after the downpayment was given, defendant-appellee Elvira Tangi (Mrs. Tangi) gave P500,000.00 to plaintiff-appellant; (iii) plaintiff-appellant did not finish the construction works despite having been paid the total amount of Three Million Two Hundred Thousand Pesos (P3,200,000.00) more than the construction price agreed upon. The project was estimated to be only 50% to 60% finished in terms of accomplished work. As a result, PAG-IBIG did not release their remaining loan balance because the house was not 90% completed; (iv) the delay and stoppage of work had compelled defendants-appellees to hire the services

of new workers to complete the construction of the house. For this purpose they have to sell their house in Antipolo to meet the expenses these additional works entail; (v) plaintiff-appellant did not issue any official receipt or provisional receipt for the payments they made except for a few pieces of commercially printed cash vouchers. Save for the Progress Billing dated October 5, 2006, they did not receive any progress billing.

After trial on the merits, the court a quo rendered the now assailed decision.

Via this appeal plaintiff-appellant seeks a reversal arguing that:

- THE COURT A QUO COMMITTED GRIEVOUS ERROR WHEN IT FAILED TO CONSIDER THE EXISTENCE OF SEPARATE CONTRACTS, INDEPENDENT AND DISTINCT FROM EACH OTHER, BETWEEN THE PARTIES WITH RESPECT TO THE CONSTRUCTION BY APPELLANT OF THE RESIDENTIAL BUILDING OF APPELLEES, PARTICULARLY THE ROUGHING-IN WORKS, THE ADDITIONAL WORKS AND THE FINISHING WORKS;
- THE COURT A QUO COMMITTED GRIEVOUS ERROR WHEN IT FAILED TO CONSIDER THE OBLIGATIONS OF APPELLEES TO APPELLANT ARISING FROM CONTRACTS SEPARATE AND DISTINCT FROM EACH OTHER;
- THE COURT A QUO COMMITTED GRIEVOUS ERROR WHEN IT APPLIED ARTICLE 1724 OF THE CIVIL CODE AND DISMISSED THE INSTANT CASE;
- THE COURT A QUO COMMITTED ERROR WHEN IT DENIED THE RELIEFS SOUGHT BY APPELLANT AS PRAYED FOR IN THIS COMPLAINT AND SUBSTANTIATED DURING TRIAL.

Briefly, plaintiff-appellant insists that his contract to construct the three-storey residence of defendants-appellees consists of four parts, which are independent and distinct from each other. The first contract refers to the main or original contract the cost of which amounted to P2,850,000.00; the second, pertains to the first additional works in the amount of P71,700.00; the third, to the ground floor extension in the amount of P231,364.95; and the fourth, to the finishing works for the ground floor extension amounting to P1,407,007.30.

In fine, plaintiff-appellant submits that these four (4) contracts are independent from each other there being separate and distinct consent, object, cause or consideration and obligation.

To drive home its point, plaintiff-appellant said that the change in the plans and specifications of the original works, resulted in the increase of the cost of the project. These changes in the plans and specifications was due to the fact that defendants-appellees requested for the same. These changes (referring to the second, third and fourth works) are therefore additional works which are not part and parcel of the original plan, hence, considered a different contract. In fact defendants-appellees agreed to this kind of agreement as they even complied with their obligation by paying these additional works.

The question now is whether the three additional works which consist of roughing-in works, floor extension and finishing works were separate and distinct works from the original contract.

For the defendants-appellees there was never a new contract for the additional works agreed upon by the parties. The additional works were merely proposed by plaintiff-appellant to Mrs. Tangi to which she agreed after being assured that it would not cost much as it was only a "petty amount" (barya-barya lang)[3]. In fact, defendants-appellees do not know the extent and nature of these additional works.

We have here two conflicting assertions. It is an old and well settled rule of the court that the burden of proof of the action is upon the plaintiff who initiated the action or proceedings. In an action on a contract, the plaintiff has the burden of establishing the execution of the existence of the same. The burden of proof of obligation devolves

upon the one who seeks to enforce their performance, and that of their extinction upon the one opposing it.[4] It is the duty of the party seeking to enforce a right to prove that the right actually exists.[5] The burden to prove their existence of the additional contract lies with herein plaintiff-appellant and defendants-appellees are under no obligation to prove their negative averments. *Ei incumbit probatio qui dicit, non qui negat.* (He who asserts, not he who denies, must prove) Indisputably, there is paucity of evidence as to the existence of the alleged new contracts persistently asserted by herein plaintiff-appellant.

Contrary to the claim of plaintiff-appellant, there is no additional or separate work to be undertaken by the latter. In fact, the record of the case is wanting of any agreement or contract for additional works by defendants-appellees. Also, the requisite of a written agreement and consent under Article 1724 of the Civil Code is very clear on this matter and it provides-

"Art. 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:

Such change has been authorized by the proprietor in writing; and

The additional price to be paid to the contractor has been determined in writing by both parties."

Recovery for additional costs may be allowed in the following instances: 1) such change has been authorized and the authorization is in writing; and 2) the additional price to be paid has been determined in writing by both parties. The evident purpose of these requirements is to prevent litigation for additional costs incurred by reason of additions or changes in the original plan. Undoubtedly, it was adopted to serve as a safeguard or a substantive condition precedent to recovery[6].

In this case, the absence of any written authority from the defendants-appellees for the alleged additional price to be paid to plaintiff-appellant, as required by Article 1724, the recovery of the cost for these alleged additional works is clearly nil.

Jurisprudentially, Article 1724 governs the recovery of additional costs in contracts for a stipulated price (such as fixed lump-sum contracts), and the increase in price for additional work due to change in plans and specifications. Such added cost can only be allowed upon the: (a) written authority from the developer or project owner ordering or allowing the written changes in work, and (b) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Compliance with these two requisites is a condition precedent for the recovery. The absence of one or the other condition bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence[7].

That being said, the trial court correctly applied Article 1724 of the Civil Code. Indeed, the mandatory requirement of written consent to any change in the original plan is explicit in Article 1724. Mere act of tolerance or even defendants-appellees' act of accepting or paying any amount demanded from them cannot do away with the application of Article 1724 of the Civil Code.

In fine, plaintiff-appellant asserted that he has been in the construction business since 1979 but we find it rather strange that contracts of such significance have not been reduced into writing. Accordingly, there is no other way the trial court could have disposed of this case other than it did, hence, we sustain its assailed judgment.

WHEREFORE, the appealed decision of the Regional Trial Court of Manila Branch 20 is **AFFIRMED** in toto.

SO ORDERED.

Carandang, (Chairperson), and Gonzales-Sison, JJ., concur.

[1] Rollo, pp. 121-141

[2] Id., pp. 1-4

[3] Assailed decision, Supra at note 1

[4] Art. 1213, Old Civil Code.

[5] Evidence Rule 128-134, p.387

[6] San Diego v. Sayson, 112 Phil. 1073

[7] Spouses Victoriano Chung and Debbie Chung vs. Ulanday Construction, Inc. G.R. No. 156038, October 11, 2010; Titan-Ikeda Construction & Development Corporation v. Primetown Properties Group, Inc., G.R. No. 158768, February 12, 2008, 544 SCRA 466, 489-490; Powton Conglomerate, Inc. v. Agcolicol, 448 Phil. 643, 655 (2003).

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