

MERYVIC LUIS, PLAINTIFF-APPELLEE, VS. DJHOANNA N. DONASCO, DEFENDANT-APPELLANT.

Ponente: CAMELLO, J.

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CAMELLO, J.:

On appeal is the Decision dated 6 January 2012 of the Regional Trial Court (RTC), Branch 15,[1] Davao City, in Civil Case No. 29,573-2003, the fallo of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant by ordering the latter:

- To pay the plaintiffs P100,000.00 representing the cost of the completion of the plaintiff's house; and

- To pay the Cost of Suit.

- The plaintiff's prayer for moral damages, attorney's fees, and litigation expenses are DENIED for lack of evidence.

SO ORDERED.

The following are the factual antecedents as summarized and found by the trial court.

In September 2002, plaintiff Meryvic Luis entered into an agreement with defendant Djhoanna Donasco (contractor) for the construction of her house at Doña Mercedes Village, Panacan, Davao City. For Four Hundred Thousand Pesos (P400,000.00) as consideration, Donasco agreed to complete the construction and to deliver the house on or before 28 December 2002.

Unfortunately, despite the payment of P406,715.00, Donasco stopped and abandoned the house construction, leaving it unfinished and uninhabitable. Plaintiff was thus constrained to hire another contractor to finish the job in the amount of P187,000.00.

Defendant Donasco admitted the agreement and the non-completion of the construction. She justified that the construction was stopped because plaintiff Luis made some substantial modification and alterations in the original plan and yet failed to provide the necessary funding for those variations, which included elevation of the flooring, changing the size of the master's bedroom, changing the walling from plywood to concrete, and extension of the kitchen. The requested alterations were not, however, reduced to writing. Donasco claimed that she personally shouldered the additional cost of P92,177.95 because plaintiff at that time had limited funds. And because plaintiff would not reimburse her the amount, not to mention that the P400,000.00 budget had been depleted, she stopped the construction.

Plaintiff Luis herself admitted that she asked Donasco to make few alterations and modifications in some portions

of the house, but she paid for the cost of the necessary materials and labor to Donasco. After Donasco abandoned the construction, Luis made an ocular inspection and discovered that not only were there unfinished portions but there were also several defects in the construction. Consequently, she filed a complaint for breach of contract.

After trial, the lower court rendered the assailed Decision in favor of plaintiff-appellee. Applying Article 1724 of the New Civil Code, the trial court ruled that defendant Donasco was not justified in stopping or abandoning the construction of the house. Hence, she should be liable for the additional expense for the completion of the house to make it habitable.

Aggrieved, defendant interposed this ordinary appeal seeking the reversal of the assailed Decision.

She assigned the following errors, to wit:

I. THE COURT A QUO ERRED IN APPLYING ARTICLE 1724 OF THE NEW CIVIL CODE IN FAVOR OF PLAINTIFF-APPELLEE.

II. THE COURT A QUO ERRED IN FINDING THAT DEFENDANT-APPELLANT BREACHED HER CONTRACT WITH PLAINTIFF-APPELLEE.

The crux of the controversy is whether or not defendant-appellant committed a breach of contract.

We sustain the trial court.

Article 1724 of the New Civil Code provides:

ART. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specification 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.

Defendant-appellant now alleges that the cited provision applies only when there has been an increase in cost of labor and material, but not when the owner of the house made requests for alteration of the construction without furnishing the necessary funds, as in the present case. According to her, since no refund was made by the owner for these substantial changes, there can be no breach of contract when she in turn failed to finish the construction of the house. Basic principles of justice and equity cry out against such unjust enrichment and inequity.

We disagree.

In *Spouses Chung v. Ulanday Construction, Inc.*,^[2] the Supreme Court has categorically stated that –

The CA erred in ruling that Article 1724 of the Civil Code does not apply because the provision pertains to disputes arising from the higher cost of labor and materials and there was no demand for increase in the costs of labor and materials.

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.[3]

In other words, by Article 1724, no less than a written authorization from the owner is required before the contractor can validly recover his claim. The evident purpose of the provision is to avoid litigation for added 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.[4] Significantly, in this case, defendant-appellant did not secure the required written approval of plaintiff-appellee before making the changes in the plans, specifications and works. Thus, without the written approval of plaintiff-appellee, the defendant-appellant cannot claim the additional costs she incurred.

On the other hand, evidence shows that indeed defendant-appellant stopped the construction of the house and left it inhabitable. Not only that, some portions were found to be defective. Under paragraph 6.0 of their Agreement, should any defects or imperfections be discovered by the owner due to the defective or improper workmanship of the contractor, the latter shall immediately repair/correct such defects/imperfections at her own expense. Without finishing the construction of the house, defendant-appellant has definitely breached her contract with plaintiff-appellees, for which the actual or compensatory damages, as found by the court below, are owing.

The lower court's award of compensatory damages are not unreasonable. A provision in their Agreement particularly states that any changes and additional works which are not included in the contract are additional payment of the owner to the contractor. Thus, assuming for the sake of argument that the requirement of a written agreement under Article 1724 may be dispensed with, defendant-appellant claims that she personally spent P92,177.95[5] to cover the expenses for the changes made, and admits that she received P9,500.00[6] for these alterations. On the other hand, while plaintiff-appellee was able to prove that the cost of completing the house was about P187,000.00 as shown by the receipts[7] and as found by the trial court, the plaintiff-appellee however seeks payment of this additional cost only to the extent of P100,000.00. The court thus finds the award of compensatory damages reasonable.

FOR THIS REASON, the lower court's Decision is AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Lopez and Inting, JJ., concur.

[1] Hon. Ridgway M. Tanjil, Presiding.

[2] G.R. No. 156038, October 11, 2010.

[3] Italics supplied.

[4] Uy v. Public Estates Authority, G.R. No. 147825-26, June 8, 2009.

[5] Exhibits "4" to "4-A".

[6] Exhibit "3".

[7] Exhibits "I" to "I-43".

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