

SELWYN LAO, PLAINTIFF-APPELLEE, VS. SKRENE PROPERTIES, INC., AND NORMAN M. ESPINA, DEFENDANTS-APPELLANTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal[1] to review the Decision[2] dated January 20, 2012 of the Regional Trial Court of Manila, Branch 50 finding appellants jointly and severally liable to pay appellee the amount of One Million Three Hundred Eleven Thousand Five Hundred Fifty Eight Pesos (P1,311,558.00) with legal interest reckoned from date of the said Decision.

Appellants likewise assail the trial court's Order[3] dated December 21, 2012 denying their motion for reconsideration.

The facts are as follows:

Defendant-appellant Skrene Properties, Inc. [or Skrene] is a corporation duly organized and existing under Philippine laws while defendant-appellant Norman M. Espina [or Mr. Espina] is the corporation's Chairman of the Board. Plaintiff-appellee Selwyn Lao [or Mr. Lao] is a civil and sanitary engineer and owner-proprietor of a construction firm.

Sometime in January 2004, Mr. Lao was approached by Mr. Espina for construction of a six (6) storey building intended for Skrene at a contract price of Eleven Million Nine Hundred Thousand Pesos (P11,900,000.00). However, before the execution of a written contract, Mr. Espina convinced Mr. Lao to divide the whole project into two phases to reduce the amount of advance payments. Each phase of the construction project shall cost Five Million Nine Hundred Fifty Thousand Pesos (P5,950,000.00). Mr. Espina represented that both phases of the project will be given to Mr. Lao. On February 24, 2004, they entered into a Construction Contract[4] involving the first phase at a contract price of Five Million Nine Hundred Fifty Thousand pesos (P5,950,000.00). It was stipulated therein that Lao shall build the Skrene's building in Emilia Street corner Cuenca Street, Makati City within a period of two hundred ten (210) days.

On July 24, 1995, which is within the 210-day period stipulated in the contract, the building was completed and accepted by Mr. Espina's architect. It was also accepted and approved by Mr. Espina himself. A Certificate of Completion and Acceptance[5] was executed by the parties. Thereafter, plaintiff made several written demands[6] to defendants to pay the unpaid bills. As his demand remained unheeded, Mr. Lao and his driver went to the office of defendants sometime in November 2005 to personally demand the payment of the unpaid bills. Mr. Espina threw invectives and pushed him outside the office.

In order to collect the unpaid balance, Mr. Lao engaged the services of a counsel who sent a demand letter to defendants dated February 15, 1996 to pay plaintiff Seven Hundred Sixty Six Thousand One Hundred Ninety Nine Pesos and Twenty One Centavos (P766,199.21) representing the unpaid balance of the contract price. On March 06, 1996, defendants through their counsel acknowledged their unpaid obligation but only for P120,000.00. In a Letter[7] dated March 07, 1996, Mr. Espina requested Mr. Lao for the breakdown of the

amount being collected from him. In a letter dated March 11, 1996, the counsel of Mr. Lao furnished Mr. Espina the breakdown of the unpaid obligation. Despite the exchange of correspondence and final written demand[8] for the settlement of the sum of P766, 199.21, Mr. Espina still refused to pay. Mr. Lao instituted this Complaint[9] for Sum of Money and Damages against Skrene Properties, Inc. and Mr. Espina, docketed as Civil Case No. 98-90824 before the Regional Trial Court of Manila, Branch 50.

On October 30, 1998, defendants filed their Answer with Counterclaim[10] alleging that the complaint states no cause of action against them. Initially, the case was dismissed for failure of the parties to appear at the pre-trial conference but upon plaintiff's motion, the case was reinstated and was set anew for pre-trial conference on April 16, 1999. The pre-trial was terminated on May 12, 1999. Due to the retirement of the presiding judge of RTC, Branch 50 and upon the motion of the plaintiff's new counsel, the case was referred to the pairing judge (RTC, Branch 49). On December 11, 2000, Atty. Teresito A. Andoy, Branch Clerk of Court of RTC, Branch 49 was appointed to act as commissioner to assist the parties in arriving at the correct amount due to plaintiff.

On September 25, 2001, the newly appointed judge of RTC, Branch 50 issued an Order directing Atty. Andoy to submit his report. Atty. Andoy submitted his Commissioner's Report[11] dated November 26, 2001 finding Three Hundred Ninety One thousand Six Hundred Seventy Two Pesos and Thirty Eight Centavos (P391,672.38) as the total liability of defendants to plaintiff. Due to the disagreement of the parties on the commissioner's report, the trial court set anew the pre-trial conference. The case was also referred to the Mediation Center for possible conciliation and mediation but the parties did not reach a settlement. Thereafter, trial was reset several times for varied reasons.

On May 18, 2009, in order to abbreviate the proceedings and as manifested and agreed upon by counsel for both parties, the trial court issued an Order[12] that would govern the presentation of evidence, to wit:

1. Counsel for plaintiff will present his evidence only in so far as he vehemently takes exception from the commissioner's report item number 4 thereof (page 17 to 18 of report) – cost of pump, labor cost of pump and installation; item number 10 (page 25 to 26 of report) – cistern tank; the 5% remaining retention fee in the amount of P295,500.00 which was allegedly not released in favor of the plaintiff and was not tackled in the report; and the matter pertaining to damages and attorney's fees.
2. Counsel for defendants will be presenting evidence in order to contradict matters contained in the commissioner's report as follows: Item number 2 – variation order no. 2 (page 15 to 16 of report); Item number 3 – overhead water tank (page 16 to 17 of report); Item number 5 – occupancy permit (page 18 to 19 of report); Item number 6 (page 19 of report) – facilitation fee for occupancy permit, representation expense for building officials; Item number 8 (page 20 to 21 of report) – architectural fee for preparation of as-built plan; and Item number 9 (page 21 to 25 of report) – liquidated damages.

Plaintiff testified[13] on the matters he contested in the Commissioner's Report, particularly Item #4 (cost of pump, labor cost of pump and installation) and Item #10 (cistern tank). According to him, the installation of the water pump and cistern tank were not part of their original contract but additional works requested by Mr. Espina. He acceded to perform the additional works because Mr. Espina promised him that after completion of these works, he would be paid the balance of the contract price including the payments for additional works. Plaintiff likewise testified that the 5% remaining retention fee in the amount of Two Hundred Ninety Seven Thousand Five Hundred Pesos (P297,500.00) was not released to him. He explained that such retention fee is covered under Article 5 of the Construction Contract but Mr. Espina refused to release the retention fee even after the completion of the building. Plaintiff further testified that he incurred damages in the form of unrealized profits, moral damages and attorney's fees.

The presentation of defendants' evidence was reset several times due to non-availability of their witness. On May

11, 2011, the trial Court issued an Order[14] declaring that defendants had waived their right to present their evidence. Defendants moved for reconsideration which was denied in the Order[15] dated October 19, 2011. In the same Order, the trial court submitted the case for decision.

On January 20, 2012, the trial court issued the assailed Decision, the dispositive portion of which reads as follows:

“WHEREFORE, in view of the foregoing, this Court finds in favor of the plaintiff and against defendants, Skrene Properties, Inc. and Norman M. Espina, holding them jointly and severally liable to pay the plaintiff, Mr. Selwyn Lao, the amount of One Million Three Hundred Eleven Thousand Five Hundred Fifty Eight Pesos (P1,311,558.00), with legal interest to be reckoned from the date of this Decision.

SO ORDERED.”

Hence, the present appeal with the following assigned errors:

I. ALTHOUGH THE DECISION IS BASED ON THE COMMISSIONER'S REPORT, THERE IS A DISCREPANCY IN THE COMPUTATION ARRIVED AT BETWEEN THE COMMISSIONER'S REPORT AND THE FIGURES AWARDED BY THE DECISION.

II. THE AWARD IN THE AMOUNT OF ONE MILLION THREE HUNDRED ELEVEN THOUSAND FIVE HUNDRED FIFTY EIGHT PESOS (P1,311,588.00) HAS NO FACTUAL BASIS.

The appeal is partly meritorious.

The Appellants' Brief reproduced almost verbatim the defendants-appellants' arguments in their Motion for Reconsideration[16] filed before the trial court. Upon careful reading of the Commissioner's Report and a thorough review of the evidence on record, We agree with the trial court's award pertaining to the payments of: 1] P35,443.00 for Variation Order No. 2, 2] P125,000.00 for overhead water tank, 3] P73,615.00 for facilitation fee for occupancy permit/representation expense for building officials, 4] P25,000.00 for architectural fee for preparation of as-built plan, 5] P160,000.00 for the value of cistern tank and 6] P297,500.00 representing the retention fee which was not released to plaintiff-appellee. The first to fourth items were based on the commissioner's report while the fifth and sixth items were proved by plaintiff-appellee when he testified in court. Defendants-appellants failed to present contrary evidence on these matters. Thus, the total liability of defendants-appellants due to plaintiff is Seven Hundred Sixteen Thousand Five Hundred Fifth Eight Pesos (P716,558.00), which is the sum of the first to sixth items. The difference of Five Hundred Ninety Five Thousand Pesos (P595,000.00) is in the form of liquidated damages.

However, the award of liquidated damages is without factual basis. In the Commissioner's Report, the court-appointed commissioner did not state that plaintiff-appellee is entitled to liquidated damages. What was discussed under Item No. 9 (Re: Liquidated Damages) in the Commissioner's Report is the non-entitlement of defendants-appellants to liquidated damages, subject of their Compulsory Counterclaim. In fact, plaintiff-appellee did not claim liquidated damages in his complaint; and, he never raised it as an issue against the Commissioner's Report. As clearly stated in the trial court's Order dated May 18, 2009, plaintiff-appellee merely contested items No. 4 and 10 of the Commissioner's Report. Even when he testified in court, plaintiff did not claim liquidated damages.

WHEREFORE, the instant appeal is PARTLY GRANTED by deleting the amount of P595,000.00 as liquidated damages awarded to plaintiff-appellee. The rest of the Decision is AFFIRMED.

SO ORDERED.

Gonzales-Sison and Sorongon, JJ., concur.

- [1] Under Rule 41 of the 1997 Rules of Civil Procedure
- [2] Record, pp. 511-530
- [3] Record, pp. 555-557
- [4] Record, pp. 425-431 – [Exhibit “A”]
- [5] Record, p. 432 – [Exhibit “C”]
- [6] Record, pp. 433-438 – [Exhibit “D”]; p. 439 – [Exhibit “E”]; p. 440 – [Exhibit “F”]
- [7] Record, p. 442 – [Exhibit “H”]
- [8] See Letter dated March 22, 1996 [Exhibit “I”] – Record, pp. 443-444
- [9] Record, pp. 1-6
- [10] Record, pp. 28-35
- [11] Record, pp. 147-175 – [Exhibit “B”]
- [12] Record, p. 384
- [13] TSN dated June 1, 2009
- [14] Record, p. 483
- [15] Record, pp. 507-508
- [16] Record, pp. 531-544

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