

**MARQUEZ AND SONS CONSTRUCTION INC., PLAINTIFF-APPELLEE,
VS. VILLAGE EAST HOMEOWNERS ASSOCIATION, INC. AND
RODRIGO E. PANGLINAN, DEFENDANTS, VILLAGE EAST
HOMEOWNERS ASSOCIATION, ...**

Ponente: VILLON, J.

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VILLON, J.:

This is an ordinary appeal under Rule 41, Section 2 (a) of the 1997 Rules of Civil Procedure, as amended, from the decision[1] dated August 26, 2009 and order[2] dated May 28, 2010 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 100, Quezon City in Civil Case No. Q-04-51497, for Damages.

The factual and procedural antecedents of the case are as follows:

On June 27, 2003, appellee was awarded the contract for the construction of appellant's clubhouse (hereafter "the project") at the price of P8,450,000.00.[3] However, in a letter[4] dated June 30, 2003, one Atty. Roberto P. Paras, representing himself as counsel for several concerned homeowners, warned appellee not to proceed with the construction due to the pendency of a case filed by them against appellant with the Housing and Land Use Regulatory Board (HLURB) and docketed as HLURB Case No. NCR-HOA-O51603-279.[5] Subsequently, appellant informed appellee that there was no more legal obstacle to the construction of the project since the Temporary Restraining Order (TRO) issued by the HLURB, relative thereto, had already expired. Appellant also declared that it would assume all the risks that may arise by reason of the said pending case.[6] Appellant then served upon appellee, a notice to proceed[7] with the construction, contingent upon the execution of a formal contract between them.

Pursuant to Resolution No. 0072-03, Series of 2003[8] of its Board of Directors, appellant, on July 23, 2003, entered into a formal agreement[9] with appellee for the construction of the project. Along with appellant's down payment in the amount of P1,690,000.00, or 20% of the contract price, the parties agreed that the project must be completed within a period of 180 days or until January 19, 2004. In order to guarantee the performance of its obligation to appellant, appellee secured a surety bond[10] and a performance bond,[11] each for the amount of P1,690,000.00, in favor of appellant and agreed to the latter's retention of 10% of the construction cost. Appellee then commenced work at the construction site.

Thereafter, appellant received a progress billing[12] dated August 29, 2003 from appellee stating that 14.34% of the project, worth P969,250.54, had already been completed by appellee. However, following a joint evaluation by the parties, Progress Billing No. 1 was revised to reflect only a 10.82% accomplishment worth P640,003.00.[13] Appellant paid the said amount notwithstanding appellee's failure to meet the projected 15% accomplishment of the project.

Then, on September 27, 2003, appellee submitted to appellant another progress billing[14] claiming that the actual accomplishment was to the extent of 27.99% of the project, which was worth P2,365,155.00. Another joint evaluation by the parties, however, reduced appellee's accomplishment to only 27.23% of the project entitling

appellee to the amount of P2,300,935.00.[15] Appellant likewise paid said amount.[16]

On October 29, 2003, appellee served appellant with its third progress billing,[17] informing the latter that it had already accomplished 38.46% of the project, thus entitling it to the amount of P3,249,870.00.[18]

Earlier, the HLURB rendered a decision dated October 6, 2003 in HLURB Case No. NCR-HOA-O51603-279, disposing as follows:

“WHEREFORE, PREMISES CONSIDERED, a judgment is hereby rendered, thus:

1. Immediately and permanently enjoining the respondents, and/or any person, entity, agent, contractor acting with, for and in their behalf, from performing any act in pursuance of the construction of the new clubhouse in the Village East Executive Homes, and from implementing and enforcing any act, resolution, order, directive, memorandum, or contract for the purpose or any other purpose which seeks to set aside the subdivision's priority development as per approved subdivision plan;

2 Ordering the respondents-members of the Board of Directors of VEHAI to, jointly and severally, return or restore to VEHAI the properties, funds and other assets of the association as a result of its implementation of its herein-declared illegal construction of the clubhouse; and, ordering the Treasurer of VEHAI to make an accurate accounting and turn-over of the reimbursements to the association, including the conduct of extensive and detailed external audit of VEHAI's financial activities, including its monthly report on receipts and reimbursements.

3. Declaring the general assembly meeting and the referendum conducted by the respondents on January 26, 2003, including any resolution, directive, or order adopting, approving, enforcing, and awarding the construction of the clubhouse as null and void and of no force and effect;

4. Declaring the construction contract VEHAI entered into with Marquez & Sons Construction, Inc. as ultra vires and contrary to law and public policy, and therefore, null and void;

5. Ordering the respondents to strictly observe and implement the terms of the Memorandum of Agreement with API with respect to its obligation to complete the unfinished/undelivered provisions, facilities, and improvements like the water supply system, drainage system, electrical, perimeter wall, rip-rap, and other essential development projects of the subdivision;

6. Ordering the respondents to disclose/publish to all association members the financial statements of VEHAI for the last and current fiscal year and to account for all the properties under its custody, including the titles to open spaces and assigned unsold lots, and the proceeds of sold lots under the Memorandum of Agreement with API, including their strict compliance with the VEHAI By-Laws and pertinent government regulations regarding its reportorial duties, the custody and submission of VEHAI's corporate books, records, and the minutes of meetings and resolutions, and to make the same available for inspection and viewing by all the members and officers of the association during reasonable working hours;

7.Ordering the respondents to pay moral damages in the amount of P50,000.00; exemplary damages in the amount of P20,000.00; and attorney's fees in the amount of P30,000.00 plus cost of suit;

All other claims and counterclaims are denied for lack of merit.”[19]

On December 11, 2003, appellee submitted to appellant its fourth progress billing, claiming that it had already finished 48.49% of the project, thereby entitling it to the amount of P4,097,405.00.[20] However, a joint evaluation of the stage of construction again adjusted the actual accomplishment to only 43.86% of the project.[21]

Then, in a letter dated December 13, 2003, appellee informed appellant that, upon verification with the HLURB,

the said administrative body did not issue any cease and desist order to stop the construction of the project. Moreover, the petition for review filed by appellant before the Office of the President stayed the execution of the foregoing decision of the HLURB. Appellee then proposed revisions to the terms of their agreement, thus:

“xxx xxx xxx

We are willing to continue working on the project subject to the following conditions:

1.0

Submitted billings shall be paid within 7 days from date of receipt.

2.0

The 10% limit of the accomplishment of work before billing shall be considered and not strictly implemented.

3.0

MASCON reserves the rights to suspend the work if payment/s of billings are not made within three [3] days notice.

4.0

The period of the contract duration shall be revised accordingly.

These terms are requested by MASCON, INC. due to the possibility that if (sic) may be at the losing end of (sic) the contract will be finally declared as illegal. We are willing to sit down for a conference in order to tresh out details.

xxx xxx xxx”[22]

On December 19, 2003, appellant informed appellee that the former could not process the latter's December 11, 2003 billing for the reason that the additional amount indicated therein was less than 10% of the entire contract price.[23] It must be noted that, at this point, appellant's accomplishment of the project increased by only 5.4% or from 38.46% to 43.86% thereof.

On January 3, 2004, Project Manager Engineer Leopoldo B. Bugal informed appellant of appellee's failure to comply with the terms of the construction contract, thus:

“xxx xxx xxx

Please be informed that Marquez and Sons Construction had not yet resumed works as of date. They had ceased construction activities effective December 24, 2003.

During the last week of their operation they maintained an average of twenty [20] workforce which is very much below the required sixty [60] manpower level as indicated in the manpower utilization schedule. Secondly, no delivery of vital materials and building components had been made to the site and we could not elicit commitment and cooperation from the contractor on its delivery. These resulted (in) the dismal increment in the physical accomplishment of the project.

The projected accomplishment as of date is 95%, however, the actual accomplishment is only 43.86%. After careful evaluation, there is no way the contractor can complete the project as per contract.

xxx xxx xxx”[24]

Acting on said report, appellant on January 5, 2004 forwarded Engineer Bugal's report to appellee and directed the latter to explain within 48 hours why its surety bond, performance bond and 10% of the project cost that was

retained by the former should not be forfeited.[25] In its January 6, 2004 letter, appellee, through counsel, replied in this wise:

“xxx xxx xxx

Our client acknowledge (sic) the terms of the agreement dated July 23, 2003. However, you are fully aware that the Housing and Land Use Regulatory Board [HLURB] declared this contract as illegal. This is precisely the reason why our client slow (sic) down the construction of the project pending resolution of your petition for review of the HLURB decision.

It is our position that there is no legal basis for the VEHA I to forfeit the Surety and Performance Bond posted by our client. The decision is specific that the contract between Mascon, Inc. and VEHA I is declared as illegal and we are put on notice of the said decision by your office.

However, our client is willing to take the risk and comply with its contractual obligation provided some of the items of the contract shall be amended specially the supply of materials and terms of billing. Hence, we submitted our request for amendment of the contract as per our letter dated December 13, 2003.

xxx xxx xxx”[26]

Dissatisfied with the above explanation, appellant, on January 12, 2004, terminated their July 23, 2003 agreement and forfeited the remaining balance of the unliquidated cash advance in the amount of P1,040,026.00 covered by Surety Bond No. 001281,[27] Performance Bond No. BDHOMY030081964[28] covering the amount of P1,690,000.00 and the retained ten percent (10%) of the project cost amounting to P324,987.00.

On the same day, appellee instituted before the RTC an action for Declaratory Relief with Prayer for Preliminary Injunction and/or Temporary Restraining Order[29] against appellant. Thereafter, on January 21, 2004, appellee informed appellant of the filing of the said action, its objection to the forfeiture of the aforementioned bonds and retention money, and demanded payment of its December 11, 2003 billing.[30] These were all rejected by appellant.[31] Then, appellee's unpaid utility bills[32] were discovered by appellant. After the joint evaluation by the respective representatives of appellant and appellee, it was finally determined that the actual accomplishment of the project was only 41.53% thereof which was worth P3,720,880.58.[33]

On February 4, 2004, appellee amended its complaint before the court a quo, converting its nature into an action for Damages.[34] Meanwhile, appellant proceeded with the construction of the project, thereby incurring additional costs estimated at P569,277.00.[35]

On October 17, 2005, the Office of the President (OP) ruled on the petition for review of the October 6, 2003 decision of the HLURB, declaring the July 23, 2003 contract between appellant and appellee merely as voidable and not null and void.[36] Appellee filed a motion for reconsideration of the OP decision which was still unresolved during the pendency of the instant case before the court a quo.

On August 26, 2009, the RTC rendered the assailed decision, ratiocinating, viz.:

“Although the plaintiff is not absolved of its delay in the construction of the clubhouse of defendant VEHA I, it cannot be totally faulted for the delay. First, it cannot be denied that because of the placards and streamers placed on the construction site, the materials supplier of the plaintiff did not deliver materials on credit. Second, defendant VEHA I withheld to the plaintiff the existence of the decision of the HLURB that nullified the construction contract showing bad faith on the defendants. And when the plaintiff learned of the decision, it is but natural for it to be worried of the effects of the decision as regards its rights arising from the construction contract causing it to be hesitant to continue with the construction. Plaintiff requested for a meeting to discuss the decision of the HLURB and requested for an extension of the period considering the supervening events. But defendants refused to extend the period of the contract. The filing of the action for declaratory relief

showed good faith on the part of the plaintiff to seek the aid of the courts to declare its rights and obligations arising from the nullified Agreement.

Considering that pursuant to the latest joint evaluation conducted by the parties after the plaintiff pulled out from the construction, the accomplishment was rated at 43.86%, thus Article 1229 of the New Civil Code has application to the instant case. xxx

xxx xxx xxx

The partial compliance by the plaintiff, the events that happened and the acts of the parties warrant the reduction of the penalty imposed upon the plaintiff.

xxx xxx xxx

However, the plaintiff should pay defendant VEHAI the unliquidated down payment or mobilization fund in the amount of One Million Forty Thousand, Twenty-Six Pesos (P1,040,026.00). Thus, the forfeiture of defendant VEHAI of the plaintiff's surety bond in the same amount is justified. Plaintiff should likewise pay defendant VEHAI for its unpaid utility bills amounting to Thirteen Thousand Four Hundred Fourteen Pesos (P13,414.00) which defendant VEHAI paid.

Also, defendant VEHAI is not justified in withholding the construction materials and equipment of the plaintiff as appearing in the inventory conducted on 14 January 2004. These materials and equipment should be returned to the plaintiff.

xxx xxx xxx

WHEREFORE, premises considered, judgment is hereby rendered:

- Ordering the reduction of the amount defendant VEHAI is entitled to from the performance bond posted by the plaintiff to the amount of One Million Fourteen Thousand Pesos (P1,014,000.00);
- Declaring the forfeiture by defendant VEHAI of the retention money of the plaintiff as void. Defendant VEHAI is ordered to return to the plaintiff the amount of Three Hundred Twenty-Four Thousand Nine Hundred Eighty Seven Pesos (P324,987.00).
- Ordering defendant VEHAI to pay the plaintiff the amount of Four Hundred Fifty-Six Thousand Three Hundred Pesos (P456,300.00) or 5.4% of the contract price representing the unpaid accomplishment;
- Ordering defendant VEHAI to return to the plaintiff the latter's construction equipment and materials as appearing in the Inventory dated 14 January 2004. If there is impossibility of returning the construction equipment and materials, defendant VEHAI is ordered to pay the plaintiff the corresponding value thereof based on a joint evaluation by defendant VEHAI and the plaintiff; and
- Ordering plaintiff to pay defendant VEHAI the amount of Thirteen Thousand Four Hundred Fourteen Pesos (P13,414.00) representing the unpaid utility bills.

The complaint against defendant Rodrigo E. Pangilinan is ordered dismissed for lack of merit and basis.

SO ORDERED.”[37]

On November 24, 2009, appellant sought a partial reconsideration[38] of the aforementioned ruling. On May 28, 2010, the court a quo issued the assailed order decreeing as follows:

“WHEREFORE, premises considered, the Partial Motion for Reconsideration of the Decision dated 26 August 2009 filed by defendant Village East Homeowners' Association (VEHAI) is partly granted.

Accordingly, the decretal portion of the afore-mentioned Decision is amended as follows:

“xxx xxx xxx.

- Finding the forfeiture by defendant VEHA of the surety bond posted by the plaintiff to be proper and valid.”

SO ORDERED.”[39]

Hence the present recourse, appellant ascribing to the court a quo the following errors, to wit:

I.

THE COURT A QUO ERRED IN RULING THAT DEFENDANT-APPELLANT VEHA'S FOREFEITURE OF PLAINTIFF'S PERFORMANCE BOND, SURETY BOND, AND THE RETENTION MONEY, AS WELL AS THE WITHHOLDING OF THE RELEASE OF PLAINTIFF'S (SIC) EQUIPMENT AND MATERIALS WAS EXCESSIVE.

II.

THE TRIAL COURT A QUO ERRED IN DISMISSING DEFENDANT-APPELLANT'S CLAIMS FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[40]

Appellant argues that the mitigation of the penalty imposed upon appellee pursuant to the terms of the construction agreement was unwarranted; that under the contract, appellant could validly forfeit the performance bond and the surety bond; that it is entitled to the retention money equivalent to ten percent (10%) of the construction cost and to use the same in the completion of the project; and that it is the true owner of the materials being claimed by appellee. Likewise, appellant asserts its claims for moral damages, exemplary damages and attorney's fees.

On the other hand, appellee contends that the delay in the construction of the project was justified considering the October 6, 2003 decision of the HLURB; that the court a quo was correct in its application of Article 1229 of the Civil Code, as amended; and that it was already the owner of the amount equivalent to 20% of the construction cost as down payment that it received from appellant, as well as of the materials that were purchased using the said amount.

The appeal is partly meritorious.

The resolution of the issues presented to Us hinges on the applicability of Article 1229 of the Civil Code, as amended, which provides:

“Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable”,

in relation to Article 2227, viz.:

“Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.”

It is rudimentary that the application of Article 1229 is essentially addressed to the sound discretion of the court.[41] In exercising this power to determine what is iniquitous and unconscionable, courts must consider the circumstances of each case since what may be iniquitous and unconscionable in one may be totally just and equitable in another.[42] The determination of whether the penalty is iniquitous or unconscionable is addressed to the sound discretion of the court and depends on several factors such as the type, extent, and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences,[43] the supervening realities, the standing and relationship of the parties, and the like.[44]

The July 23, 2004 agreement between appellant and appellee included penal clauses that provided for the liquidated damages that appellee may be held liable for in case of breach of the terms thereof, thus:

“8.1 Should the CONTRACTOR fails (sic) to complete the work within the original or extended period under this contract, the CONTRACTOR shall pay the OWNER a (sic) liquidated damages equivalent to ONE TENTH OF ONE PERCENT (1/10 of 1%) of the total contract price for every day of delay. In any event, the total amount of damages shall not exceed twenty percent (20%) of the total contract price. Provided, that such amount of liquidated damages shall be deducted by the OWNER from the retention money or surety bond posted by the CONTRACTOR, at the exclusive discretion of the OWNER;

8.2 In case of delay in the completion of the works exceed a time duration equivalent to ten percent (10%) of the specified contract time including extension thereof, the OWNER may impose supervision on the CONTRACTOR's disbursement of all payment under this contract including salaries of its construction workers;

8.3 In case of delay in the completion of the works exceed the time duration equivalent to twenty percent (20%) of the specified contract time including extension thereof, the OWNER may, at its discretion, cancel this contract, forfeit the CONTRACTOR'S Performance Bond and retention money; and take over the prosecution of the unfinished job or negotiate the same with other qualified contractor, without prejudice to such other legal actions that OWNER may take against the CONTRACTOR as may be warranted under the premises;”[45]

A penal clause is an accessory undertaking to assume greater liability in case of breach and is attached to an obligation in order to secure its performance. The penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance.[46] It is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. The amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project.[47]

As a general rule, courts are not at liberty to ignore the freedom of the parties to agree on such terms and conditions as they see fit as long as they are not contrary to law, morals, and good custom, public policy or public order.[48] While the Court recognizes the right of the parties to enter into contracts and are expected to comply with the terms and obligations, this rule is not absolute.[49] Courts may equitably reduce a stipulated penalty in the contracts in two instances: (1) if the principal obligation has been partly or irregularly complied with; and (2) even if there has been no compliance if the penalty is iniquitous, unconscionable[50] or leonine.[51]

After due consideration of all the factual circumstances obtaining in the case at bar, We find that the lower court erred when it reduced the penalty charges against appellee for being highly and grossly unconscionable pursuant to Article 1229 of the Civil Code.

Records show that appellee admitted that it committed breach of the terms of the contract, having only completed 43.86% of the project when construction was stopped. Worth noting is the fact that this was appellee's accomplishment as of December 16, 2003, although the scheduled date of completion of the project was January 19, 2004.[52] This dismal and slow progress of work was in contravention of the tenor of appellee's obligation. Moreover, appellee completely ceased its operations without giving notice to appellant. Thus, Articles 1167, 1170 and 2201 of the Civil Code are applicable in this case,[53] to wit:

“Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

XXX XXX XXX

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

XXX XXX XXX

Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.”

Furthermore, appellee's excuse, that it incurred delay in the performance of its obligation due to the October 6, 2003 decision of the HLURB, (which, supposedly was the reason for the homeowners' objection to the construction of the project), is unavailing. The demonstrators' streamers and placards[54] at the construction site, referred to in the RTC decision, did not actually or physically prevent the regular performance of the work therein. These signs did not pose any harm or threat upon appellee and its employees. Neither were they harassed by anyone while they were working on the project. What is more, these placards and streamers appear to be in support of the construction of appellant's clubhouse.

Then, too, appellee cannot feign ignorance at the HLURB decision. In fact, it was aware of the pendency of the case when the parties entered into the July 23, 2003 contract.[55] Worthy to note is the affidavit dated November 7, 2005 executed by Engineer Patrocenio M. Marquez, Jr., the President of appellee company, which states that:

“Q – What happened next after execution of the Agreement?

A – On October 6, 2003, I got hold of a copy of the Decision [Exhibit 'C'] rendered by the HLURB in a case entitled Eutropio Migrino, et al. vs. VEHA, et al.

Q – What was said about that Decision?

A – The said Decision, declares, among others, the general assembly meeting and the referendum conducted on January 26, 2003, including any resolution, directive or order adopting, approving, enforcing, and awarding the construction of the clubhouse as null and void and of no force and effect and the construction contract entered into by the plaintiff and the defendant as ultra vires and contrary to law and public policy, and therefore null and void.

Q – When did you learn about the decision?

A – Sometime in December 2003 and when there were placards and streamers at the construction site.”[56] (emphasis ours)

In his testimony when he took the stand, Engineer Marquez declared that

“Q: You also mentioned in your affidavit that you got hold of a decision of the HLURB in this case that you mention filed against the homeowners association, is that correct?

A: Yes, sir.

Q: Who gave you a copy of that decision?

A: It was given to me by an attorney.

COURT INTERPRETER: Witness pointing to a lawyer seated beside Atty. Recidoro at the lawyer's table before the presiding judge.

Q: This decision that you mention dated October 6, 2003, is that correct?

A: Yes, sir.

Q: On page 2 of your affidavit, you mention that you got hold of a copy of the decision also on October 6, 2003, is that correct?

A: Yes, sir.

Q: You are telling this court that you got hold of the copy of the decision of the HLURB on the same day they released a copy to a non-party to this case?

A: No, sir. What I mean is that when I got hold of a copy of the decision, it was already mid-October.

xxx xxx xxx

Q: You said earlier that you received a copy of the decision of the HLURB on October 6, 2003. Despite having secured a copy of this decision, you continue to work on a project, is that correct?

A: Yes, sir.

Q: Now, in fact on October 29, you submitted a third Progress Billing, is that correct? A: Yes, sir.”[57] (emphasis ours)

Needless to state, appellant could not have been faulted for withholding a matter (i.e., the October 6, 2003 HLURB decision) which was, in any event, already known to appellee. We should not lose sight of the fact that appellant was still an obligor which suffered from appellee's unjustifiable non-performance of the latter's contractual obligations. While equitable considerations may be given to a deserving party, such cannot be said of appellee and its actions. Hence, in addition to the forfeiture of appellee's surety and performance bonds which was sanctioned by the court a quo, We likewise deem as proper, the forfeiture of appellee's retention of the amount equivalent to ten percent (10%) of the project cost.

On the premises discussed above, We likewise award appellant moral damages in the amount of P50,000.00, exemplary damages in the amount of P50,000.00 and the further sum of P50,000.00 by way of attorney's fees.

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock.[58] However it was held in the case of *Mambulao Lumber Company v. Philippine National Bank*[59] that a “corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages”. Appellant's cause of action finds further support in Article 2219[60] in relation to Articles 19[61] and 21[62] of the Civil Code.

Finally, exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[63] Exemplary damages may be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner which would justify such an award under Article 2232[64] of the Civil Code. And since the award of exemplary damages is proper in this case, attorney's fees may also be recovered as provided for under Article 2208[65] of the Civil Code.[66]

The well-settled rule that factual findings of trial courts deserve respect, sometimes even finality, is based on the postulate that they had the distinct opportunity, not available to the reviewing courts, to hear the testimonies of witnesses and to observe their conduct and demeanor on the stand. But where the factual assessments refer to documents that are available to the scrutiny of appellate courts in the same manner that they were to the lower courts, this reliance does not apply,[67] as in this case.

WHEREFORE, in light of all the foregoing, the decision dated August 26, 2009 and order dated May 28, 2010 of Branch 100, Regional Trial Court of Quezon City in Civil Case No. Q-04-51497 are hereby MODIFIED in that

the retention of the amount equivalent to 10% of the construction cost pursuant to the July 23, 2003 agreement is hereby declared FORFEITED in favor of appellant Village East Homeowners Association, Inc.

Appellee is further ordered to indemnify appellant the amounts of P50,000.00 as moral damages, P50,000.00 as exemplary damages and P50,000.00 by way of attorney's fees.

In all other respects, the assailed decision and order are hereby AFFIRMED.

SO ORDERED.

Macalino and Corales, JJ., concur.

[1] Rollo, pp. 9-22; penned by Judge Marie Christine A. Jacob, now a member of this Court.

[2] Rollo, pp. 98-99; Records, Vol. II, pp. 715-716.

[3] Records, Vol. I, pp. 240-241.

[4] Records, Vol. II, p. 449.

[5] Entitled, "Eutropio Migrino, Josefina Manzano, Roger Edgar Haduca, Arnulfo Ancheta, Heinz Manhart, Karl Frankenberger, Manuel Mateo, Alfredo Calderon, Froebel Solanoy, Romeo Zamora, Frederick Buenaobra, representing the homeowners of Areas 1, 2 3, 4, and 5 of the Village East Homeowners Association, Inc., Complainants, versus Village East Homeowners Association, Inc. (VEHAI), Rodrigo E. Pangilinan, in his capacity as President, Salustiano Madali, Jr., Guadalupe Alejandro, Ernesto Mercado, Edgardo Herrera, Rogelio Arroyo, Reynato Quintos, Arnel Querubin, Raymundo Budomo, Pablo Ayson, and Sonny Raymundo Francisco, all as members of the Board of Directors, Jimmy Ong (Auditor), Teresita Castillo (Treasurer), and Esmeraldo Vicedo (Vice President), Respondents," for Permanent Injunction with Prayer for Damages.

[6] Records, Vol. I, pp. 242-243.

[7] Records, Vol. I, p. 244.

[8] Records, Vol. I, pp. 11-16.

[9] Records, Vol. I, pp. 6-10.

[10] Records, Vol. I, pp. 184-186.

[11] Records, Vol. I, pp. 187-188.

[12] Records, Vol. II, p. 514.

[13] Records, Vol. II, pp. 515-516.

[14] Records, Vol. II, p. 517.

[15] Records, Vol. II, p. 518.

[16] Records, Vol. II, p. 519.

[17] Records, Vol. II, p. 520.

[18] Records, Vol. II, p. 521.

[19] Records, Vol. I, pp. 35-36.

- [20] Records, Vol. I, p. 251.
- [21] Records, Vol. I, p. 261.
- [22] Records, Vol. II, p. 522.
- [23] Records, Vol. I, p. 262.
- [24] Records, Vol. I, p. 263.
- [25] Records, Vol. I, p. 264.
- [26] Records, Vol. I, p. 49.
- [27] Records, Vol. I, p. 185.
- [28] Records, Vol. I, pp. 187-188.
- [29] Records, Vol. I, pp. 1-4.
- [30] Records, Vol. I, p. 189.
- [31] Records, Vol. I, p.269
- [32] Records, Vol. I, pp. 270-279.
- [33] Records, Vol. I, p. 286.
- [34] Records, Vol. I, pp. 132-135.
- [35] Records, Vol. I, p. 280.
- [36] Records, Vol. II, pp. 418-430.
- [37] Rollo, pp. 18-20.
- [38] Records, Vol. II, pp. 660-673.
- [39] Records, Vol. II, p. 716.
- [40] Rollo, p. 66.
- [41] Filinvest Land, Inc. v. Court of Appeals, G.R. No.138980, September 20, 2005.
- [42] Dr. Ilenea Macalinao v. Bank of the Philippine Islands, G.R. No. 175490, September 17, 2009.
- [43] Elpidio S. Uy v. Public Estates Authority, G.R. Nos. 147925-26 , June 8, 2009.
- [44] Pryce Corporation v. Philippine Amusement and Gaming Corporation, G.R. No. 157480, May 6, 2005.
- [45] Records, Vol. I, p. 8.
- [46] Banco Filipino Savings and Mortgage Bank v. Juanita B. Ybañez, G.R. No. 148163, December 6, 2004.
- [47] Atlantic Erectors, Inc. v. Court of Appeals, G.R. No. 170732, October 11, 2012.
- [48] Urban Consolidated Constructors Philippines v. The Insular Life Assurance Co., Inc., G.R. No. 180824, August 28, 2009.
- [49] State Investment House, Inc. v. Court of Appeals, G.R. No. 112590, July 12, 2001.

- [50] *Ermina F. Florentino v. Supervalu, Inc.*, G.R. No. 172384, September 12, 2007.
- [51] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009.
- [52] TSN, January 24, 2006, p. 23.
- [53] *Continental Cement Corporation v. Asea Brown Boveri, Inc.*, G.R. No. 171660, October 17, 2011.
- [54] Records, Vol. I, pp. 169-170.
- [55] TSN, January 23, 2006, p. 21.
- [56] Records, Vol. II, p. 432.
- [57] TSN, January 24, 2006, pp. 11-12, 27-28.
- [58] *Herman C. Crystal v. Bank of the Philippine Islands*, G.R. No. 172428, November 28, 2008.
- [59] G.R. No. L-22973, January 30, 1968.
- [60] Article 2219. Moral damages may be recovered in the following and analogous cases:
- (1) A criminal offense resulting in physical injuries;
 - (2) Quasi-delicts causing physical injuries;
 - (3) Seduction, abduction, rape, or other lascivious acts;
 - (4) Adultery or concubinage;
 - (5) Illegal or arbitrary detention or arrest;
 - (6) Illegal search;
 - (7) Libel, slander or any other form of defamation;
 - (8) Malicious prosecution;
 - (9) Acts mentioned in article 309;
 - (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.
- [61] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
- [62] Article 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.
- [63] *Leticia Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011.
- [64] Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.
- [65] 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;
xxx xxx xxx
- [66] *Doris U. Sunbanun v. Aurora B. Go*, G.R. No. 163280, February 2, 2010.
- [67] *Nora T. Jimenez v. Commission on Ecumenical Mission and Relations of the United Presbyterian Church in the United States of America*, G.R. No. 140472, June 10, 2002.

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