

CHUA TIONG TAY, PETITIONER, VS. HONORABLE COURT OF APPEALS, AND GOLDROCK CONSTRUCTION AND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 112130. March 31, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

In this petition for review, Chua Tiong Tay seeks the reversal of the decision of the Court of Appeals in “Goldrock Construction & Development Corporation v. Chua Tiong Tay,” (CA G.R. CV No. 31580)[1] affirming the trial court's decision[2] in favor of private respondent herein Goldrock Construction & Development Corporation.

Petitioner (“Chua”) and private respondent (“Goldrock”) entered into a Memorandum of Agreement on February 14, 1980 for the construction of a 12-door apartment building at a cost of P1.8 Million. They likewise signed an Addendum and Amendment to this Memorandum of Agreement on February 27, 1980. Apart from additional project specifications which raised the cost of construction to P2,060,000.00, the Addendum & Agreement also provided that the construction shall be under the supervision of an architect, civil engineer or electrical engineer to be designated and assigned by Chua and whose decision upon all matters affecting the work and the interpretation of the plans and specifications shall be final and binding upon both parties.

Construction of the building began on March 28, 1980 after the permit to build was issued. Pending construction, a number of additional work orders, not specified in the Memorandum of Agreement or in the Addendum & Amendment referred to above, were executed by Goldrock. In particular, the mezzanine was converted into a second floor,[3] the ground floor extended by 1.5 meters,[4] the exterior walls finished with pebble wash instead of paint[5] and the second floor comfort rooms increased in length.[6]

The certificate of occupancy was delivered to and accepted by petitioner on December 16, 1980. The payments made by Chua amounting to P1,963,000.00 not being adequate to compensate for the additional works, Goldrock sued Chua on June 20, 1983 to recover P330,442.00, the cost of the same, as well as for liquidated damages and attorney's fees. Petitioner claimed that said additional works were unauthorized, not having been approved by himself as owner but by a mere project supervisor. He likewise contended that since Goldrock did not finish the job after the agreed 240-day period, it is liable for the P2,000 per day penalty. Moreover, he claimed that the building had several defects which Goldrock refused to repair, thereby necessitating additional cost to him which should now be deducted from the amount due to Goldrock.

The trial court initially ruled in favor of plaintiff Goldrock on August 3, 1989, as follows:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay the plaintiff the sum of P229,201.72 with interest thereof at the legal rate from February 5, 1983 until the same is fully paid, and for the defendant to further pay the plaintiff the sum of P20,000.00 as and by way of attorney's fees. Cost against the defendant.”

Upon plaintiff Goldrock's partial motion for reconsideration, the trial court modified its decision on October 10, 1989, with the dispositive portion now reading:

“PREMISES CONSIDERED, the dispositive portion of the Decision in this case dated August 3, 1989 is hereby modified to read as follows:

“WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant ordering the defendant to pay the plaintiff the sum of P809,401.72 plus interest thereon at the legal rate from February 5, 1983 until the same is fully paid, and the further sum of P50,000.00 as and by way of attorney's fees and expenses of litigation. Cost against the defendant.”

Chua lost no time in appealing the above decision to the Court of Appeals. On June 11, 1993, respondent appellate court rendered its decision dismissing Chua's appeal and affirming the appealed decision in toto.[7]

His motion for reconsideration having been denied by the Court of Appeals on October 5, 1993,[8] petitioner Chua seeks relief by way of reversal of the appellate court's decision on basically the same grounds raised before the trial court and the Court of Appeals.

Finding no reversible error in the decision of respondent court, we deny the petition.

Petitioner contends that the alterations/additional works, not being authorized by him, Goldrock is liable for the penalty agreed upon in case of delay in completing the project; and that he has the right to withhold 10% of the price agreed upon for Goldrock's refusal to repair the defects in the building.

Obviously, petitioner's assignment of errors is improper in this petition for review for being questions of fact and not of law.

The Court has consistently held that the factual findings of the trial court, as well as the Court of Appeals, are final and conclusive and may not be reviewed on appeal.[9] Among the exceptional circumstances where a reassessment of facts found by the lower courts is allowed are when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; when the inference made is manifestly absurd, mistaken or impossible; when there is grave abuse of discretion in the appreciation of facts; when the judgment is premised on a misapprehension of facts; when the findings of fact are conflicting; and when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both appellant and appellee.[10] After a careful study of the case at bench, we find none of the above grounds present to justify the re-evaluation of the findings of fact made by the courts below.

In connection with petitioner's assertion that the additional works executed by Goldrock are unauthorized, the appellate court quoted the following provisions in the Memorandum of Agreement and Addendum and Agreement thereto, for a better appreciation of the issue.[11]

“7. That, any diviation (sic), alteration or addition to be made by the OWNER which is not in accordance with the above plan and specification hereto attached as Annexes ‘A’ and ‘B’, the OWNER shall notify the CONTRACTOR and whatever additional expenses to be incurred thereto shall be borned (sic) by the OWNER. [Stipulation No. 7 of Memorandum of Agreement]

The parties hereto have agreed that all work to be done by the CONTRACTOR pursuant to the foregoing MEMORANDUM OF AGREEMENT shall be under the supervision of an Architect, Civil Engineer or Electrical Engineer to be designated and assigned by the OWNER, whose decision upon all matter affecting the work and the interpretation of the specifications and plans shall be final and binding upon both parties. [First stipulation in Addendum and Agreement]” (Notes in brackets ours)

Respondent court quoted with approval the trial court's rationale in disbelieving petitioner's claims.

“Defendant claims that there was no agreement with respect to Project Amendment No. 2 x x x, Project Amendment No. 3 x x x, and Project Amendment No. 4 x x x. The Court is not inclined to take the claim of the defendant as the gospel truth. From the very nature of the proposed changes in the said Project Amendments, the work to be undertaken thereunder involved is substantial costs of construction without the conformity of the defendant. Also, the Court is not disposed to believe the claim of the defendant that his overseer or inspector Joey Gozum signed the Project Amendments without authority considering the cost involved in the Project Amendments. The Court is more inclined to believe that Joey Gozum signed the same upon prior consultation with the defendant. And since plaintiff has completely effected the changes under the terms of the Project Amendment, the defendant is bound, at least on equitable considerations, in accordance with the stipulation thereof.”[12]

It also correctly held:

“We are not persuaded by the appellant's contention that the questioned deviations and alterations were made upon the appellee's suggestion without the appellant's conformity. The modifications were all to the advantage of the appellant and to the disadvantage of the appellee. No contractor in his right mind would have effected such alterations which entail spending considerable amounts of money without being assured that he would be paid the costs thereof. What a contractor normally does is to scrimp, while staying within the limitations of the contract in order to allow for himself a wider margin of profit.

Stipulation No. 7 of Exh. A is the only provision in the memorandum of agreement that touches on any deviation, alteration or addition in/to the project. The fact that it refers only to any deviation, alteration or addition to be made by the owner (the appellant) limits the option therefore to the appellant and not to the appellee. It would have been foolhardy for the appellee to have made the alterations without the knowledge and conformity of the appellant and in the light of the aforesaid provision in the agreement.

Again, Exh. B-1 provides that any decision of the architect, civil engineer or electrical engineer to be designated and assigned by the appellant to supervise the work to be done, upon all matters affecting the work and the interpretation of the specifications and plans, shall be final and binding upon both parties. No matter how the appellant categorizes Joey Gozum and no matter how he denies the ‘authority of Gozum to ask, demand, allow or approved (sic) addition (sic) works to be done’, the fact remains that Gozum was the engineer the appellant assigned to supervise the subject construction ‘whose decision upon all matters affecting the work x x x shall be final and binding upon both parties,’ the appellant more specially, because Gozum was under his employ.”[13]

As regards the question of delay in finishing the project, the Court of Appeals satisfactorily explained:

“x x x We agree with the trial court in its ruling that there was no unreasonable delay in the completion of the construction. The appellant has used March 16, 1980 as reckoning point. Pursuant to Exh. A, the 240-day period for the project to be finished was to be ‘reckoned from the time the necessary building permit is issued by the proper authorities.’ The building permit, Exh. L, was admittedly issued on March 26, 1980 and released only on March 28, 1980 x x x, hence, the reckoning date should be March 28, 1980.

By starting from March 16, 1980, in the count of the 240-day contract period, the appellant claims the appellee to have incurred in a delay of 35 days, again erroneously using the date of the certificate of occupancy (Exh. 5), i.e., December 16, 1980, as the completion date of the project. Even then, counting from either March 26 or March 28, we get a period of delay of only either 25 or 28 days. On Change Order No. 1 (Exh. D), which the appellant has admitted and in fact marked as his own Exh. 20, however, the following provision appears:

‘ADDITIONAL TIME OF COMPLETION:

‘Additional THIRTY (30) days to the original contract time of TWO HUNDRED FORTY (240) DAYS, as specified in the original contract of agreement dated February 14, 1980.’

Under the foregoing provision alone, the project completion cannot be said to have been unduly delayed. What more if We are to give an allowance for the time required for the additional work on the other three project amendments?”[14]

Finally, petitioner fails to persuade us in his claim for reimbursement for the repairs he made, which he has withheld from the total cost of construction. Respondent appellate court correctly held that “there is nothing in the written agreements between the parties that says these expenses should be charged to the appellee.”[15] The trial court states:

“Defendant also wants to be credited with expenses incurred by him in the form of materials x x x and labor x x x for the repairs incurred by him of the defects in the building. This claim is of doubtful validity for the following reason. There is no showing that he has ever seasonably presented his claim to plaintiff. Moreover, it appears that the alleged repairs were effected after March 9, 1981 or almost three months after he has taken possession of the building. Considering the amount involved in the repairs, the Court is inclined to believe that the repairs may have become necessary because of damages that may have been (sic) occurred (sic) through or due to causes attributable to the occupants thereof.”[16]

WHEREFORE, the instant petition is DENIED. The decision of the Court of Appeals in CA G.R. CV No. 31580 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] Thirteenth Division, Penned by Associate Justice Cezar D. Francisco, with Justices Pedro A. Ramirez and Corona Ibay-Somera, concurring; dated June 11, 1993, Rollo, p. 21.

[2] Dated August 3, 1989, Regional Trial Court Manila, Branch 41, Civil Case No. 83-18292, with same title.

[3] Change Order No. 1, at an additional cost of P260,000.

[4] June 1, 1980, at a cost of P82,495.00.

[5] September 1, 1980, at a cost of P95,947.00.

[6] December 5, 1980, at a cost of P33,749.00. Rollo, pp. 33-34.

[7] Rollo, p. 21.

[8] Rollo, p. 35.

[9] Somodio v. CA, G.R. No. 82860, August 15, 1994, 235 SCRA 307; Mercado v. CA, G.R. No. 108802, July 12, 1994, 234 SCRA 98; Tapalla v. CA, G.R. No. 100862, May 31, 1993, 222 SCRA 825.

[10] Verendia v. CA, G.R. Nos. 75606, 76399, January 22, 1993, 217 SCRA 417; Geronimo v. CA, G.R. No. 105540, July 5, 1993, 224 SCRA 494.

[11] Rollo, pp. 28-29.

[12] From the trial court decision, pp. 8-9; Rollo, pp. 29-30.

[13] Rollo, pp. 30-31.

[14] Rollo, pp. 31-32.

[15] Rollo, p. 32.

[16] Rollo, p. 32.

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