FRANCIS HERVAS, PETITIONER, VS. HON. COURT OF APPEALS AND EDGARDO DOMINGO, RESPONDENTS.

G.R. No. 112998. December 06, 1999

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-112998/

GONZAGA-REYES, J.:

Petition for review on certiorari from the decision of the Court of Appeals[1] affirming with modification of the amount of attorney's fees the decision of the Regional Trial Court, Branch 125, Caloocan City in Civil Case No. 10274, an action for sum of money plus damages.

Edgardo C. Domingo, plaintiff, together with Francisco Torno, Jr. entered into a "Contract Agreement"[2] dated November 26, 1981, with Francis M. Hervas for the "complete construction" of a residential house for and in consideration of two hundred seventy five thousand pesos (P275,000.00) payable as follows:

P 68,750.00 25% upon signing of this contract

P 68,750.00 on or before the 50% Accomplishment) based on

P 68,750.00 on or before the 70% Accomplishment) releases

P 68,750.00 on or before turning of keys) of loan

P275,000.00 Total consideration

The Agreement stipulated that the job shall last for six (6) months to commence upon approval of the DBP loan and to terminate upon six (6) months from said date of approval subject to further extension, depending on the mutual agreement of both parties.

On April 28, 1982, plaintiff Domingo and Francisco Torno,Jr. entered into a "Memorandum of Agreement" whereby the latter was released from the above-mentioned contract. Hence, Domingo assumed sole and full responsibility for the completion of the project.[3]

In an Addendum dated July 6, 1982[4], all the three parties agreed, for and in consideration of an additional sum of ten thousand pesos (P10,000.00), that Domingo will undertake to finish the construction and deliver the completed building. However, the house was not completed on or before June 10, 1982. Both the trial court and the Court of Appeals found that the parties stipulated on an extension of time to finish the construction, with an agreed penalty of P1,000.00 for each day of delay[5]. On June 28, 1982, the house was turned over to Hervas. Domingo was able to secure a Certification of Completion[6]from the Metropolitan Manila Commission and a Certificate of Occupancy was issued by the Office of the Building Official on July 7, 1982[7]

Hervas failed to pay the balance of P68,750.00. Hence, this action for collection of said amount plus damages.

Hervas alleged in his defense that plaintiff acted in bad faith and refused to complete the construction of the house

and that the Certificate of Completion was secured through misrepresentation.

After considering the evidence of both parties, the trial court upheld the version of plaintiff Domingo and rendered judgment as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered as follows:
> (1) Ordering defendant to pay plaintiff the sum of P66,900.00 with interest at 12% per annum from the commencement of this action until fully paid;
>
> (2) Ordering the defendant to pay plaintiff 25% of the total amount due as and for attorney's fees; and
>
> (3) Costs of suit.
>
> **SO ORDERED."[8]**

On appeal, the Court of Appeals affirmed the judgment of the Regional Trial Court except for the amount of attorney's fees, thus:

> "ACCORDINGLY, except for the amount of attorney's fees which is reduced to 10% of the total amount due, the assailed decision is AFFIRMED in all other respects. No costs."[9]

In his petition for review on certiorari, Francis Hervas assails the decision of the Court of Appeals on the grounds that the court:

> "A. ERRED IN ARRIVING AT CONCLUSIONS ON UNDISPUTED SET OF FACTS; and
>
> B. ITS CONCLUSIONS ARE MANIFESTLY MISTAKEN, ABSURD AND/OR SPECULATIVE." [10]

Briefly, it is petitioner Herva's position that the court erred by (1) concluding that respondent Domingo was granted an extension to finish the house subject to the payment by petitioner of 50% of the balance, which was not paid; (2) in ignoring the receipts[11] presented by petitioner, which were not undisputed by the respondent; (3) in not considering the stipulation in Exhibit "3" that respondent would pay petitioner P1,000.00 per day as penalty; and (4) in not upholding petitioner's contention that respondent failed to complete the works, that the construction was done in bad and defective manner, and that the petitioner has made full payment of his obligation.

The petition is meritorious in part.

The core issues raised in plaintiff Domingo's action is whether the contractor Domingo had completed the construction of the house of defendant Hervas as agreed upon by the parties, and whether Hervas had paid his obligation under the contract. Plaintiff (herein respondent) alleged that on July 2, 1982, said house was completed and delivered to defendant (herein petitioner) but the latter refused to pay the balance of P68,750.00 due on or before the "turning of the keys" of the said house. Defendant alleged in his affirmative defenses that the subject house was not finished on July 2, 1982, and that plaintiff agreed to deliver the house on or before June 10, 1982 upon payment by defendant of an additional sum of P10,000.00; by way of counterclaim for damages, defendant alleged that the plaintiff secured the Certificate of Completion from the Metro Manila Commission through misrepresentation, and executed the works in a defective manner so that defendant had to engage the services of another contractor to execute the necessary repairs and finishing works.

The "Contract Agreement" dated November 26, 1981[12] as well as the "Addendum" dated July 6, 1982[13] are not disputed. What is disputed is the alleged agreement that petitioner Hervas would pay respondent Domingo 50% of the remaining balance of the contract price, in order to extend the construction period, which agreement was the subject of respondent Domingo's testimony during cross-examination, but is denied by petitioner Hervas.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

On the issue of the date of completion of the house, the trial court found that respondent Domingo delivered the house to petitioner Hervas on June 28, 1982. The court relied on the Certificate of Completion[14], which bears the signatures of both petitioner and respondent, and the Certificate of Occupancy[15] dated July 7, 1982.

We affirm the findings of the trial court as follows:

> "The contention of the defendant that plaintiff failed to complete the works and that the construction was done in bad and defective manner is devoid of merit. If this is true, defendant should not have signed the Certificate of Completion and instead demanded that plaintiff should undo what has been poorly done (Art. 1167 of the Civil Code). He should not have occupied the house to show and manifest that he is not satisfied with its construction. By these actuations defendant should be estopped from complaining for he had already accepted and enjoyed the benefits of living in said house. As the legal maxim go4es 'no man should enrich himself at the expense of others'.[16]

As correctly observed by the respondent court, the above finding of the trial court on the first factual issue carries a "strong presumption of correctness".[17] Petitioner Hervas was unable to prove his claim that his signature on the Certificate of Completion was forged, a burden that properly pertains to him in view of his affirmative allegation of forgery. It was similarly Hervas' burden to prove his allegation that the house was completed only at the end of July and that he transferred thereto only in the month of August, a contention that is self-serving. Although respondent Domingo testified on cross-examination that as of July 7, 1982, Hervas was not yet occupying the subject residential house, he affirmed that Hervas signed the Certificate of Completion upon his (Domingo) request.[18] Needless to state, the Certificate of Completion as of June 28, 1982 is not inconsistent with the fact that the house was actually occupied on a much later date.

As regards the outstanding balance of the contract price, the court a quo relied on the statement of account[19] presented by respondent showing an outstanding balance of P66,900.00 as of July, 1982, after deducting several installment payments totalling P39,500.00. The trial court held that Hervas failed to adduce competent proof that he indeed had effected full payment of what was due to Domingo.

In his petition, Hervas claims that the trial court should have considered the payments evidenced by the receipts marked as Exhibits "2" to "2-H" totalling P51,000.00, excluding upon his suggestion the amounts covered by Exhibits "2-B", "2-D", and "2-E" dated May 2, January 14, and June 7, 1982 totalling P13,500.00.[20] Our cursory examination of the receipts marked as Exhibits "2" to "2-H" compared to the payments itemized in Exhibit "D" shows that several payments, (as indicated in Exhs. "2", "2-C", "2-F", "2-G", "2-H"), are indeed reflected in the statement of account. Moreover, some receipts, i.e. Exh. "2", "2-A", "2-B", indicated that the payment was denominated as "additional payment for the finishing touches of (his) residence" and do not clearly appear as part of payment for the final balance for the construction.

The point that must be stressed is that this Court is not a trier of facts, and we need not delve into the records to determine the probative value of the evidence supporting the trial court's finding, which was affirmed by the Court of Appeals that petitioner Hervas had an outstanding unpaid balance of P66,900.00. The conclusion is consistent with, and not palpably contrary to the evidence on record[21] and we find no cogent justification to disturb or overturn the same.

As regards the penalty for delay in the completion of the house, the alleged oral agreement to extend the period for completion of the construction upon payment of 50% of the balance of the contract price is controverted. The imposition of liquidated damages of P1,000.00 per day of delay was also not reduced to an agreement. It was contained in the letters of counsel for petitioner Hervas dated June 14, 1982[22] and August 2, 1982.[23] However, Domingo testified that he was amenable to the extension of eight (8) days from June 10, 1982 subject to

the payment of P1,000.00 per day of delay.[24] As above stated and admitted by Domingo himself,[25] he finished construction on June 28, 1982. We are constrained to sustain petitioner Hervas' contention, which was not resolved in the appealed judgment, that he is entitled to liquidated damages of P1,000.00 per day for eight (8) days. We are also inclined to agree with petitioner's theory that respondent Domingo would not logically have agreed to pay the penalty of P1,000.00 per delay if petitioner had indeed an unfulfilled obligation to pay him 50% of the balance as a consideration for the first extension of the period of completion.

Accordingly, we hold that the respondent court committed no reversible error in affirming the judgment of the trial court, with the modification that respondent Domingo is liable to pay the stipulated penalty of P1,000.00 per day of delay.

WHEREFORE, the judgment appealed from is affirmed with modification that respondent Domingo shall pay liquidated damages of P8,000.00. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.
Purisima, J., no part.

---

[1] Penned by Justice Justo P. Torres, Jr. concurred in by Justices Fidel P. Purisima and Bernardo P. Pardo, all of whom later became justices of the Supreme Court.

[2] Exh. "A", p. 72, Record.

[3] Exh. "B", p. 74, Ibid.

[4] Exh. "1", p. 88, Ibid.

[5] See Exh. "3", p. 99, Ibid.

[6] Exh. "C-1", p. 75, Ibid.

[7] Exh. "C", p. 76, Ibid.

[8] p. 200, Ibid.

[9] Rollo, p. 8.

[10] Rollo, p. 15.

[11] Exhs. "2" to "2-H", pp. 90-98, Record.

[12] Exh. "A", Ibid.

[13] Exh. "1", Ibid..

[14] Exh. "C-1", Ibid.

[15] Exh. "C", Ibid.

[16] Decision dated May 25, 1989, p. 199, Record.

[17] p. 3, Decision of the Court of Appeals.

[18] Tsn., October 17, 1985, pp. 5-6.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

[19] “Exh. “D”.

[20] Petition, p. 37

[21] See Tan, et al. vs. Lim, et al., 296 SCRA 455; Polotan, Sr. vs. Court of Appeals, 296 SCRA 247.

[22] Exhibit “3”, Ibid.

[23] Exh. “8”.

[24] Tsn., July 24, 1985, pp. 14-15.

[25] Tsn., July 24,1985, p. 15.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.