

SECURITY BANK & TRUST COMPANY AND ROSITO C. MANHIT, PETITIONERS, VS. COURT OF APPEALS AND YSMAEL C. FERRER, RESPONDENTS.

G.R. No. 117009. October 11, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioners seek a review and reversal of the decision* of respondent Court of Appeals in CA-G.R. CV No. 40450, entitled "Ysmael C. Ferrer v. Security Bank and Trust Company, et.al." dated 31 August 1994, which affirmed the decision** of the Regional Trial Court, Branch 63, Makati in Civil Case No. 42712, a complaint for breach of contract with damages.

Private respondent Ysmael C. Ferrer was contracted by herein petitioners Security Bank and Trust Company (SBTC) and Rosito C. Manhit to construct the building of SBTC in Davao City for the price of P1,760,000.00. The contract dated 4 February 1980 provided that Ferrer would finish the construction in two hundred (200) working days. Respondent Ferrer was able to complete the construction of the building on 15 August 1980 (within the contracted period) but he was compelled by a drastic increase in the cost of construction materials to incur expenses of about P300,000.00 on top of the original cost. The additional expenses were made known to petitioner SBTC thru its Vice-President Fely Sebastian and Supervising Architect Rudy de la Rama as early as March 1980. Respondent Ferrer made timely demands for payment of the increased cost. Said demands were supported by receipts, invoices, payrolls and other documents proving the additional expenses.

In March 1981, SBTC thru Assistant Vice-President Susan Guanio and a representative of an architectural firm consulted by SBTC, verified Ferrer's claims for additional cost. A recommendation was then made to settle Ferrer's claim but only for P200,000.00. SBTC, instead of paying the recommended additional amount, denied ever authorizing payment of any amount beyond the original contract price. SBTC likewise denied any liability for the additional cost based on Article IX of the building contract which states:

"If at any time prior to the completion of the work to be performed hereunder, increase in prices of construction materials and/or labor shall supervene through no fault on the part of the contractor whatsoever or any act of the government and its instrumentalities which directly or indirectly affects the increase of the cost of the project, OWNER shall equitably make the appropriate adjustment on mutual agreement of both parties."

Ysmael C. Ferrer then filed a complaint for breach of contract with damages. The trial court ruled for Ferrer and ordered defendant SBTC and Rosito C. Manhit to pay:

- a) P259,417.23 for the increase in price of labor and materials plus 12% interest thereon per annum from 15 August 1980 until fully paid;
- b) P24,000.00 as actual damages;
- c) P20,000.00 as moral damages;

- d) P20,000.00 as exemplary damages;
- e) attorney's fees equivalent to 25% of the principal amount due; and
- f) costs of suit.

On appeal, the Court of Appeals affirmed the trial court decision.

In the present petition for review, petitioners assign the following errors to the appellate court:

"x x x IN HOLDING THAT PLAINTIFF-APPELLEE HAS, BY PREPONDERANCE OF EVIDENCE SUFFICIENTLY PROVEN HIS CLAIM AGAINST THE DEFENDANTS-APPELLANTS

x x x IN INTERPRETING AN OTHERWISE CLEAR AND UNAMBIGUOUS PROVISION OF THE CONSTRUCTION CONTRACT

x x x IN DISREGARDING THE EXPRESS PROVISION OF THE CONSTRUCTION CONTRACT, THE LOWER COURT VIOLATED DEFENDANTS-APPELLANTS' CONSTITUTIONAL GUARANTY OF NON-IMPAIRMENT OF THE OBLIGATION OF CONTRACT.[1]

Petitioners argue that under the aforequoted Article IX of the building contract, any increase in the price of labor and/or materials resulting in an increase in construction cost above the stipulated contract price will not automatically make petitioners liable to pay for such increased cost, as any payment above the stipulated contract price has been made subject to the condition that the "appropriate adjustment" will be made "upon mutual agreement of both parties". It is contended that since there was no mutual agreement between the parties, petitioners' obligation to pay amounts above the original contract price never materialized.

Respondent Ysmael C. Ferrer, through counsel, on the other hand, opposed the arguments raised by petitioners. It is of note however that the pleadings filed with this Court by counsel for Ferrer hardly refute the arguments raised by petitioners, as the contents of said pleadings are mostly quoted portions of the decision of the Court of Appeals, devoid of adequate discussion of the merits of respondent's case. The Court, to be sure, expects more diligence and legal know-how from lawyers than what has been exhibited by counsel for respondent in the present case. Under these circumstances, the Court had to review the entire records of this case to evaluate the merits of the issues raised by the contending parties.

Article 22 of the Civil Code which embodies the maxim, *Nemo ex alterius incommodo debet lecupletari* (no man ought to be made rich out of another's injury) states:

"Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as "basic principles to be observed for the rightful relationship between human beings and for the stability of the social order, x x x designed to indicate certain norms that spring from the fountain of good conscience, x x x guides for human conduct [that] should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice." [2]

In the present case, petitioners' arguments to support absence of liability for the cost of construction beyond the original contract price are not persuasive.

Under the previously quoted Article IX of the construction contract, petitioners would make the appropriate adjustment to the contract price in case the cost of the project increases through no fault of the contractor (private

respondent). Private respondent informed petitioners of the drastic increase in construction cost as early as March 1980.

Petitioners in turn had the increased cost evaluated and audited. When private respondent demanded payment of P259,417.23, petitioner bank's Vice-President Rosito C. Manhit and the bank's architectural consultant were directed by the bank to verify and compute private respondent's claims of increased cost. A recommendation was then made to settle private respondent's claim for P200,000.00. Despite this recommendation and several demands from private respondent, SBTC failed to make payment. It denied authorizing anyone to make a settlement of private respondent's claim and likewise denied any liability, contending that the absence of a mutual agreement made private respondent's demand premature and baseless.

Petitioners' arguments are specious.

It is not denied that private respondent incurred additional expenses in constructing petitioner bank's building due to a drastic and unexpected increase in construction cost. In fact, petitioner bank admitted liability for increased cost when a recommendation was made to settle private respondent's claim for P200,000.00. Private respondent's claim for the increased amount was adequately proven during the trial by receipts, invoices and other supporting documents.

Under Article 1182 of the Civil Code, a conditional obligation shall be void if its fulfillment depends upon the sole will of the debtor. In the present case, the mutual agreement, the absence of which petitioner bank relies upon to support its non-liability for the increased construction cost, is in effect a condition dependent on petitioner bank's sole will, since private respondent would naturally and logically give consent to such an agreement which would allow him recovery of the increased cost.

Further, it cannot be denied that petitioner bank derived benefits when private respondent completed the construction even at an increased cost.

Hence, to allow petitioner bank to acquire the constructed building at a price far below its actual construction cost would undoubtedly constitute unjust enrichment for the bank to the prejudice of private respondent. Such unjust enrichment, as previously discussed, is not allowed by law.

Finally, with respect to the award of attorney's fees to respondent, the Court has previously held that, "even with the presence of an agreement between the parties, the court may nevertheless reduce attorney's fees though fixed in the contract when the amount thereof appears to be unconscionable or unreasonable."^[3] As previously noted, the diligence and legal know-how exhibited by counsel for private respondent hardly justify an award of 25% of the principal amount due, which would be at least P60,000.00. Besides, the issues in this case are far from complex and intricate. The award of attorney's fees is thus reduced to P 10,000.00.

WHEREFORE, with the above modification in respect of the amount of attorney's fees, the appealed decision of the Court of Appeals in CA G.R. CV No. 40450 is AFFIRMED.

SO ORDERED.

Davide, Jr., Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

* Justice Lourdes K. Tayao-Jaguros, ponente, with Justices Jesus M. Elbiñas and Bernardo Ll. Salas, concurring.

** Penned by Judge Julio R. Logarta.

[1] Rollo, p. 13.

[2] Report of the Code Commission, p. 39, cited in Padilla, Ambrosio, Civil Code Annotated, Vol. 1, 1975.

[3] Roldan v. Court of Appeals, G.R. No. 97006, 9 February 1993, 218 SCRA 713.

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