

RENATO C. SALVADOR, PETITIONER, VS. COURT OF APPEALS, MARIA ROMAYNE MIRANDA AND GILBERT MIRANDA, RESPONDENTS.

G.R. No. 124899. March 30, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] of 30 April 1996 of the Court of Appeals in CA-G.R. CV No. 39661. The Court of Appeals set aside the Decision[3] of 18 August 1992 of the Regional Trial Court of San Mateo, Rizal, Branch 76, in Civil Case No. 754. The trial court dismissed petitioner's complaint and respondents' counterclaims for insufficiency of basis. The appellate court found for respondents, and directed petitioner to pay damages.

Antecedent Facts

Maria Romaine Miranda ("Romaine") is the owner of a parcel of land ("Property") with an area of 17,748 square meters in Cabcaben, Mariveles, Bataan. The Property is registered with the Register of Deeds of Bataan under TCT No. T-129442.

Romaine appointed her cousin, Gilbert Miranda ("Gilbert"), as her attorney-in-fact under a General Power of Attorney[4] dated 15 April 1990. Romaine authorized Gilbert to execute contracts on her behalf and to manage her properties, including the Property subject of the present case, and to perform other acts in her place.

On 9 July 1990, Gilbert, as Romaine's agent, entered into a Development and Construction Contract[5] ("Contract") with Renato C. Salvador ("Salvador"), a duly licensed contractor and proprietor of Montariza Construction. The Contract was for the development of the Property into the Haven of Peace Memorial Park ("Project") and the construction of several structures for that purpose. Salvador agreed to undertake the Project for the consideration of P3,986,643.50 ("Contract Price").

Salvador undertook to complete the Project within 180 working days from receipt of the down payment, with a grace period of 45 working days. The Contract also contained the following provisions:

- In case of changes, alterations or deviations in the plans, specifications and bill of materials hereinabove mentioned as may be necessary in the course of the implementation of the development and construction, the same shall be mutually agreed upon by the herein parties in writing;
- In case of substantial increase/s of prices of the materials, like cement, G.I. corrugated sheets, the said contract price shall be adjusted accordingly as to the particular item/s of (sic) material/s involved in the increase/s of prices;

XXX

- All other matters relating to the project not stipulated in this contract are deemed not included herein unless the parties may agree on said matters in writing;

xxx.[6]

Work on the Project began sometime in July 1990 upon Gilbert's payment of P797,328.70 as twenty per cent (20%) down payment. Salvador periodically submitted progress billings, which Gilbert promptly paid. The billings included work on the structures stipulated in the Contract, as well as additional works and change orders.

In December 1990, however, Salvador demanded that Gilbert pay the following amounts in addition to the Contract Price: (1) P39,000 or a 20% fee on P196,000 worth of filling materials respondents themselves supplied for the Project; (2) a 20% escalation or adjustment of the unpaid balance of the Contract Price in the amount of P637,862.96; and (3) billing for alleged additional works in the amount of P399,190.46.

Salvador was particularly insistent on the escalation of the Contract Price. In his first letter dated 18 December 1990, Salvador informed Gilbert that the prices of construction materials had increased by "about forty (40%) percent." [7] Two days later, Salvador wrote again to advise Gilbert that although the Project was almost 90% completed, the latter's failure to grant the escalation would leave Salvador with "no choice but to stop operation and wait for you (Gilbert) to initiate a renegotiation." [8]

Gilbert responded by requesting for a detailed computation of the proposed escalation. On 25 December 1990, Salvador submitted a breakdown of the services and construction work done on the Project. The breakdown included the total cost of each service and the portion of the Contract Price still due for each service. To arrive at the proposed escalation of P637,862.96, the computation merely imposed a uniform increase of 20% on the outstanding balance still payable on each service. [9]

Dissatisfied with the computation, Gilbert required Salvador to submit receipts showing the purchase of construction materials used in the Project, the dates of purchase of these materials, and the increase in their prices. Gilbert pointed out that he had already paid a total of P3,775,804.80 for work on the Project and that the remaining balance due under the Contract was P210,838.71. Salvador agreed to submit the required documents while Gilbert agreed to release an additional P120,065.80. Thus, only P90,772.91 of the Contract Price remained unpaid.

Gilbert also paid Salvador an additional P100,000 [10] and P150,000 [11] as advances on the escalation of the Contract Price. However, citing paragraph 17 of the Contract, Gilbert contended that further demands for additional costs and escalation were baseless and unreasonable.

On 11 January 1991, Salvador reiterated his "last and final demand" that Gilbert pay within 5 days a total of P1,076,253.32 – representing the 20% charge on filling materials, the 20% escalation of the Contract Price and the latest billing for additional works. Otherwise, Salvador would stop work on the Project because he had "no more funds and resources to continue the operation." [12] Salvador ceased construction work on the Project on 14 January 1991.

In a letter dated 16 January 1991, Salvador informed Gilbert that his office had received a notice of illegal construction ("DPWH Notice") from the Balanga, Bataan district office of the Department of Public Works and Highways. The DPWH Notice, [13] copy of which Salvador attached to his letter, was dated 8 January 1991 and received by one of Salvador's engineers on 15 January 1991. [14] The DPWH Notice stated that the Project had no building permit and ordered Salvador to stop immediately all building activities and to contact the district office within 3 days. Salvador reminded Gilbert that it was the latter's responsibility under the Contract to secure the necessary permits and licenses for the Project.

A few days later, Gilbert received a demand letter from Salvador's counsel requiring the payment of P1,076,253.32 and 10% attorney's fees within 3 days. On 31 January 1991, Salvador filed before the trial court a complaint for collection of sum of money and damages or for declaration of claim as lien against Romaine and Gilbert ("respondents").

In March 1991, Gilbert replaced Salvador with a new contractor and ejected Salvador's crew from the Project site.

The Ruling of the Trial Court

After trial on the merits, the trial court dismissed Salvador's complaint and respondents' counterclaims for insufficiency of basis.

The trial court observed that the escalation clause in the Contract required Salvador to specify the materials the prices of which had increased. Since the documents submitted by Salvador did not specify these materials, the trial court held that there was no basis for an adjustment or escalation of the Contract Price.

The trial court likewise ruled that Salvador failed to prove that the parties had agreed on the P399,190.46 worth of additional work performed on the Project. There was neither a written agreement nor notice to respondents that Salvador would undertake such additional work.

The trial court denied Salvador's claim for P39,000 or 20% of the cost of filling materials for lack of basis. The evidence showed that respondents themselves purchased the filling materials for P196,000 and had them delivered to the Project site. Salvador merely caused the spreading of the filling materials. The trial court ruled that no provision in the Contract or subsequent written agreement justified the 20% charge on materials not procured or delivered by Salvador.

The salient portion of the trial court's decision reads as follows:

The totality of the evidence adduced in this case would show the need for the herein parties to make a true and honest accounting of all the expenses incurred in the implementation of the subject construction contract, in the presence of an independent third party. As it now stands, plaintiff's cause of action herein is insufficiently supported, wanting in fact [and] in credible and competent basis, as afore-discussed.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant case for insufficiency of basis. No pronouncement as to costs.

Defendants' counterclaims are likewise dismissed for insufficiency of basis.

SO ORDERED.[15]

Salvador appealed the trial court's decision to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals upheld the denial of Salvador's claims. However, the appellate court ruled that the receipts submitted by respondents during the trial adequately established the damage respondents sustained when Salvador ceased work on the Project. The Court of Appeals also found Salvador in bad faith for stopping the construction of the Project without valid reasons.

The Court of Appeals granted respondents' counterclaims and awarded damages:

WHEREFORE, premises considered, the judgment of the lower court is hereby REVERSED and SET ASIDE and a new one is entered:

a)

Dismissing the Complaint;

b)

Ordering plaintiff to reimburse defendant the amount of P1,685,532.48 representing the amount spent by the defendant in completing the project herself less the P90,772.91 that defendant admitted to be the balance of her obligation to plaintiff as of December 28, 1990;

c)

Ordering plaintiff to pay defendant P100,000.00 moral damages and P50,000.00 exemplary damages;

d)

Ordering plaintiff to pay defendant P20,000.00 as attorney's fees.

Cost against plaintiff-appellant.[16]

Hence, the instant petition.

The Issues

The petition contends that:

- THE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING PETITIONER TO REIMBURSE THE PRIVATE RESPONDENTS OF P1,685,532.48[17] ALLEGEDLY SPENT IN COMPLETING THE PROJECT;
- THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM FOR ADJUSTMENT OR ESCALATION OF THE CONTRACT PRICE HAD NO REASONABLE BASIS, IN THE LIGHT OF THE ADMISSION OF THE OBLIGATION BY PRIVATE RESPONDENTS AND CLEAR EVIDENCE;
- THE COURT OF APPEALS ERRED IN HOLDING THAT THE ADDITIONAL WORKS OF PETITIONER WERE NOT AUTHORIZED, IN THE LIGHT OF THE ADMISSION OF THE OBLIGATION BY PRIVATE RESPONDENTS AND THE CLEAR EVIDENCE.
- THE COURT OF APPEALS ERRED IN HOLDING THAT THE ACT OF PETITIONER IN STOPPING WORK IN THE PROJECT WAS DUE TO NON-PAYMENT OF THE ESCALATED PRICE AND ADDITIONAL WORKS, CONTRARY TO THE CLEAR EVIDENCE.[18]

The central issues left for the resolution of this Court are: (1) whether Salvador's claims for additional work, including the 20% charge on filling materials, and escalation of the Contract Price are valid; and (2) whether respondents are entitled to their counterclaim and damages.

The Ruling of the Court

The petition is partly meritorious.

The Claims for Additional Works Done on the Project
and for Escalation of the Contract Price

It is evident from the issues raised that the petition seeks a review of some of the factual findings of the Court of Appeals.

Petitions for review on certiorari under Rule 45 are generally limited to questions of law. Moreover, factual findings of the Court of Appeals, particularly when they affirm those of the trial court, are binding on this Court.[19]

Upon examining the evidence, the trial and appellate courts found that: (1) respondents did not authorize additional works on the Project nor agree to a price for such works; and (2) Salvador did not specify the particular items or materials which had increased in price. The Court will not disturb these factual findings absent compelling or exceptional reasons.[20]

Given these facts, we rule that the law and the Contract do not allow petitioner's claims for additional works and escalation of the Contract Price.

There are two requisites in order that a contractor may claim additional costs:

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1)

Such change has been authorized by the proprietor in writing; and

(2)

The additional price to be paid to the contractor has been determined in writing by both parties.[21]

Compliance with both of these requirements is a condition precedent to the recovery of additional costs.[22] Even the absence of one of the elements required by Article 1724 bars recovery.[23]

In the present case, Salvador failed to present any written authority from respondents for any change in the plans or specifications agreed upon in the Contract. Salvador also failed to present any agreement on the price for such additional work. Salvador did not notify respondents in advance of the additional work he performed on the Project. The Contract did not authorize Salvador to determine unilaterally the changes to be made in the Project, or what price to charge for such changes. Not having fulfilled any of the requirements in Article 1724, Salvador's claim of P399,190.46 for alleged additional works has no legal basis.

On the other hand, Salvador's demand for an escalation of the Contract Price hinges on paragraph 18[24] of the Contract.

Construction contracts may provide for the escalation or increase of the price originally agreed upon by the parties in certain instances. As the Court explained in *Baylen Corporation v. Court of Appeals*:[25]

Escalation clauses in construction contracts commonly provide for increases in the contract price under certain specified circumstances, e.g., as the cost of selected commodities (cement, fuel, steel bars) or the cost of living in the general community (as measured by, for instance, the Consumer Price Index officially published regularly by the Central Bank) move up beyond specified levels. (Emphasis supplied)

The parties may validly agree on an escalation clause.[26] However, the enforceability of an escalation clause is subject to the conditions stipulated in the contract.[27]

Paragraph 18 of the Contract expressly provides for the escalation or adjustment of the Contract Price in the event of “substantial increase/s of prices of the materials, like cement, G.I. corrugated sheets.”[28] Clearly, paragraph 18 of the Contract authorizes an escalation of the Contract Price only if there are substantial increases in the prices of materials such as cement and G.I. corrugated sheets. Absent substantial increases in the prices of materials used in the Project, paragraph 18 would not apply.

The records show that respondents were amenable to an escalation of the Contract Price, and that they in fact paid Salvador P250,000 in anticipation of the escalation. Respondents were merely insisting that Salvador comply with what the Contract required, that is, specify the increase in the prices of particular materials purchased for the Project. Under paragraph 18, Salvador had the obligation to show that there were substantial increases in the prices of particular materials used in the Project. The trial and appellate courts found, and the records support the finding, that Salvador did not comply with this obligation.

Salvador contends that the computation[29] he submitted dated 25 December 1990 sufficiently complied with the conditions of paragraph 18. He alleges that the 20% increase in the cost of the services enumerated in the computation necessarily included the increase in the prices of the materials used. He had also informed respondents earlier that the prices of construction materials had increased by as much as 40%. Salvador further argues that the burden of proof had shifted to respondents to present a “counter-computation” as to what they considered the correct escalation of the Contract Price.

We do not agree.

Salvador supplied the materials for the construction of the Project.[30] Salvador would thus be in the best position to provide the actual increases in the prices of the materials. Salvador also alleged that the prices of construction materials rose substantially since the Project began in July 1990. The rule is that he who alleges a fact has the burden of proving it.[31] Salvador never presented receipts, billings from suppliers or similar documents substantiating his claim. Indeed, Salvador’s obdurate refusal to provide the simple details required by the Contract puzzles the Court.

A contract is the law between the parties and they are bound by its stipulations.[32] If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[33]

Under the terms of paragraph 18 of the Contract, the Contract Price “shall be adjusted accordingly as to the particular item/s or materials involved in the increase/s of prices.”[34] This stipulation is plainly worded, requiring no interpretation. The Contract Price could be adjusted only up to the actual increase in the prices of “particular item/s or materials” used in the Project.

Paragraph 18 of the Contract did not give Salvador the right to determine arbitrarily the proportion or amount of the escalation in the Contract Price. The Contract requires that any escalation in the Contract Price must result from “substantial increase/s” in the prices of “particular item/s or materials” used in the Project. This certainly excludes escalation based on estimates or blanket increases. The computation Salvador provided failed to identify the particular materials that had increased in price and the amount of such price increases. His general claim that the prices of construction materials had increased by 40% was not sufficient under the terms of paragraph 18. There was thus no basis for Salvador’s demand of a blanket 20% increase on all materials.

Assuming arguendo that the Contract authorized Salvador to determine unilaterally the escalation of the Contract Price, such a provision would be void for violating the principle of mutuality.[35] In *Philippine National Bank v. Court of Appeals*, the Court struck down the increases in interest rates unilaterally imposed by Philippine National

Bank pursuant to an escalation clause, and declared that:

In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (*Garcia vs. Rita Legarda, Inc.*, 21 SCRA 555). Hence, even assuming that the P1.8 million loan agreement between the PNB and private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (*Qua vs. Law Union & Rock Insurance Co.*, 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.[36]

Moreover, the computation Salvador submitted plainly shows a 20% increase in the cost of services. The Contract does not authorize any escalation in the cost of services Salvador would render to the Project.

We agree with the trial court that Salvador has no basis to charge respondents a fee of 20% or P39,000 on filling materials that respondents supplied to the Project. Salvador himself testified that: (1) respondents ordered and purchased the filling materials for P196,000; and (2) respondents caused the delivery of the materials to the Project site.[37] Neither the Contract nor any other document presented during trial provided for a 20% charge on materials that respondents supplied to the Project. On the contrary, under paragraph 20 of the Contract, "matters relating to the Project not stipulated in this contract are deemed not included herein unless the parties may agree on said matters in writing." Under the Contract, Salvador had the obligation to supply the materials for the construction of the Project.[38] We cannot penalize respondents and reward Salvador for respondents' act in assuming part of Salvador's obligation under the Contract when Salvador himself did not object to such act.

Respondents' Counterclaim and the Damages

Awarded by the Court of Appeals

The trial court ruled that respondents' counterclaim had no basis. On appeal, the Court of Appeals reversed this ruling and ordered Salvador to reimburse respondents P1,594,759.57, representing the amount allegedly spent by respondents in completing the Project less the P90,772.91 balance of the Contract Price. On the ground that Salvador was in bad faith, the appellate court also awarded respondents P100,000 in moral damages, P50,000 in exemplary damages and P20,000 in attorney's fees.

While factual findings of the lower courts are generally conclusive on this Court, the rule is subject to certain exceptions, as when the findings of fact of the trial court and Court of Appeals diverge.[39]

The Court of Appeals concluded that Salvador stopped work on the Project due to respondents' failure to accede to his demand for payment of the price escalation. The evidence on record supports this. Salvador sent respondents several letters threatening to halt construction of the Project precisely for this reason.

Salvador maintains, however, that he was merely complying with the DPWH Notice when he stopped all construction activities on 14 January 1991. This argument does not convince us. Despite Salvador's claim that he received the DPWH Notice on 14 January 1991, the DPWH Notice itself shows that a certain Dennis Coronado received the notice on 15 January 1991,[40] the day after Salvador ceased to work on the Project.

In a contract involving reciprocal obligations, the rules on when a party may be declared in default are found in Article 1169:

Art. 1169. Those obliged to deliver or to do something, incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

x x x

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.[41] (Emphasis supplied.)

Although Salvador stopped work on the Project in breach of the Contract and in violation of the law,[42] respondents were likewise remiss in their obligations under the Contract. Paragraph 7 of the Contract states:

- The project owner shall be responsible in applying for and obtaining at his/her own expens/es (sic) whatever permits, licenses and/or documents as may be necessary from the Government or any of its agencies, or otherwise; xxx

The National Building Code requires a building permit on all construction projects.[43] In the present case, the parties were able to start and even almost complete the Project without a building permit. The failure of respondents to secure the required building permit constitutes a breach of their obligation under the Contract. Even if Salvador did not voluntarily stop working on the Project, he would not have been able to complete the Project because of the cease-and-desist order from the DPWH.

Thus, we cannot attribute Salvador's failure to complete the Project within the contract period solely to his voluntary work stoppage. Paragraph 6 of the Contract provides:

- That should there be any restraining order and/or injunction from the court or any legal authority which will cause stoppage of the work of the CONTRACTOR relating to the said project, the same should be considered as [a] fortuitous event and/or force majeure, and the time of stoppage of work shall be deducted from the agreed time of completion of the project;[44] (Emphasis supplied)

The DPWH Notice suspended the running of the period given to Salvador to complete the Project. Respondents were not able to show that the DPWH lifted the cease-and-desist order, or that they subsequently secured a building permit. Since respondents failed to prove that they had fulfilled their obligation under the Contract, Salvador's failure to complete the Project within the contract period cannot be attributed solely to his voluntary work stoppage. There is, therefore, no legal basis to grant respondents' counterclaim for P1,685,532.48, the amount they allegedly spent to complete the Project.

Respondents point out that when a new contractor took over to complete the Project, no one from the DPWH stopped the Project, showing that Salvador could also have completed the Project even without the required building permit.[45] Respondents betray a disturbingly cavalier attitude towards the strict requirements of the law, including the Sanitation Code,[46] in establishing a memorial park or cemetery. The State strictly regulates the establishment of memorial parks or cemeteries because they affect public health. Memorial parks or cemeteries must be located and constructed without contaminating rivers, underground water tables and the surrounding areas.[47]

We also find untenable the award of moral and exemplary damages, as well as attorney's fees to respondents. A breach of contract may give rise to an award of moral damages if the party guilty of the breach acted fraudulently or in bad faith.[48] In this case, both parties did not comply with their obligations under the Contract. Respondents must share part of the blame for the stoppage of work on the Project, as the stoppage was partly due to respondents' failure to obtain the necessary building permit. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent

manner.[49] Neither the records nor the decisions of the trial and appellate courts indicate that Salvador behaved in such a manner and to such degree as to warrant the grant of exemplary damages. We also delete the award of attorney's fees since none of the grounds for awarding attorney's fees under Article 2208 of the Civil Code applies to the present case.

WHEREFORE, the Decision of 30 April 1996 of the Court of Appeals in CA-G.R. CV No. 39661 is REVERSED. The Decision of 18 August 1992 of the Regional Trial Court of San Mateo, Rizal, Branch 76, in Civil Case No. 754, dismissing petitioner Renato C. Salvador's complaint as well as respondents Maria Romaine Miranda and Gilbert Miranda's counterclaims, is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Artemon D. Luna and Ramon A. Barcelona concurring.

[3] Penned by Judge Jose C. Reyes, Jr.

[4] Exhibit "B," Records, p. 14.

[5] Exhibit "A," *ibid.*, p. 9.

[6] *Ibid.*

[7] Exhibit "C," Records, p. 16.

[8] Exhibit "D," *ibid.*, p. 18.

[9] Exhibit "F" to "F-2," *ibid.*, p. 19. The salient portion of the computation states:

SCOPE OF WORK

BALANCE

20%

ADJUSTMENT

Mobilization

P 64,000.00

P 12,800.00

Relocation, Lay-out, etc.

210,528.00

42,105.60

Relocation, Lay-out, etc.

210,528.00

42,105.60

Drainage, Manhole

316,332.80

63,266.56

Road, Sidewalk

827,683.10

165,536.62

Chapel, Adm. Building

763,840.00

152,768.00

Gate, Perimeter Fence

274,631.20

54,926.24

Electrical/Street Lights

113,288.00

22,657.60

Electrical/Street Lights

113,288.00

22,657.60

Painting

37,548.00

7,509.60

Landscaping

129,856.00

25,971.20

Bone Crypt, Etc.

113,443.20

22,688.64

Demobilization

12,000.00

2,400.00

TOTAL

P 3,189,314.30

P 637,862.86

vvvvvvvvvvvvvvvv

vvvvvvvvvvvvvvvv

[10] Exhibit “2,” Defendants’ exhibit folder.

[11] Exhibit “17,” *ibid.*

[12] Exhibit “I,” Records, p. 24.

[13] Exhibit “K,” *ibid.*, p. 26.

[14] Exhibit “K-1-B,” *ibid.*

[15] CA Rollo, pp. 160-161.

[16] Rollo, pp. 42-43.

[17] The Court of Appeals actually ordered petitioner to reimburse respondents P1,685,532.48 less P90,772.91, or a total of P1,594,759.57.

[18] Rollo, p. 8.

[19] *Manila Electric Company v. Court of Appeals*, 413 Phil. 338 (2001).

[20] See *Fuentes v. Court of Appeals*, G.R. No. 109849, 26 February 1997, 268 SCRA 703.

[21] Civil Code, Art. 1724.

[22] *Weldon Construction Corporation v. Court of Appeals*, No. L-35721, 12 October 1987, 154 SCRA 618.

[23] *Ibid.*

[24] See note 5.

[25] No. L-76787, 14 December 1987, 156 SCRA 505.

[26] *Concepcion v. CA*, G.R. No. 122079, 27 June 1997, 274 SCRA 614; *Banco Filipino Savings and Mortgage Bank v. Navarro*, No. L-46591, 28 July 1987, 152 SCRA 346.

[27] *Insular Bank of Asia and America v. Salazar*, No. L-82082, 25 March 1988, 159 SCRA 133.

[28] See note 5.

[29] See note 9.

[30] Paragraph 3 of the Contract provides that “the Contractor shall provide and use his/its own materials, equipment, manpower, supervision and administration as may be necessary of the completion of the project.”

[31] *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 991 (1999).

[32] *R & M General Merchandise, Inc. v. Court of Appeals*, 419 Phil. 131 (2001).

[33] Civil Code, Art. 1370.

[34] See note 5.

[35] Article 1308 of the Civil Code provides: “The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.”

[36] *Philippine National Bank v. Court of Appeals*, G.R. No. 88880, 30 April 1991, 196 SCRA 536, reiterated in *Philippine National Bank v. Court of Appeals*, G.R. No. 109563, 9 July 1996, 258 SCRA 549.

[37] TSN, 6 January 1992, pp. 4-5.

[38] See note 30.

[39] *Aclon v. Court of Appeals*, G.R. No. 106880, 20 August 2002, 387 SCRA 415.

[40] Exhibit “K-1-B,” *supra*, note 14.

[41] Civil Code, Art. 1169.

[42] See note 21. The relevant portion of Article 1724 states that, “The contractor who undertakes to build a structure or any other work for a stipulated price xxx can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials xxx”

[43] Section 301 of Presidential Decree No. 1096 provides:

Sec. 301. Building Permits

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

[44] See note 5.

[45] Comments to the Petition, Rollo, p. 223.

[46] Sections 90, 100 and 101, Chapter XXI of the Sanitation Code of the Philippines (PD No. 856) provide as follows:

SECTION 90. Burial Grounds Requirements. — The following requirements shall be applied and enforced:

- It shall be unlawful for any person to bury remains in places other than those legally authorized in conformity with the provisions of this Chapter.
- A burial ground shall at least be 25 meters distant from any dwelling house and no house shall be constructed within the same distance from any burial ground.
- No burial ground shall be located within 50 meters from either side of a river or within 50 meters from any source of water supply.

x x x

SECTION 100. Responsibility of the Local Health Authority. — The local health authority shall:

- Administer city or municipal cemeteries;
- issue permits to inter, disinter or transfer remains;

x x x

SECTION 101. Responsibility of Local Government. — Local governments shall:

- Reserve appropriate tracts of land under their jurisdiction, for cemeteries subject to approval of Regional Directors concerned;

x x x

- Close cemeteries under their jurisdiction subject to approval of the Regional Director.

[47] The current Implementing Rules and Regulations of Chapter XXI of PD No. 856 (promulgated on 30 September 1996 by the Department of Health) provide in part:

SECTION 3. Burial Ground Requirements. —

3.1 The following are the requirements for securing an initial clearance from the Department of Health in establishing and opening of a public cemetery or memorial park:

3.1.1 Application for establishing and opening of a cemetery or a memorial park.

3.1.2 Resolution of the city/municipal council for the cemetery site embodying therein the strict compliance to these rules and regulations.

3.1.3 Map of the proposed cemetery in triplicate copies indicating the dimensions of the cemetery in length and width and the 25-50 meter zones, the dwelling places and sources of water supply within said zones.

3.1.4 Title of ownership of the land proposed to be utilized as a cemetery, duly registered with the office of the register of deeds of the province/city.

3.1.5 Certification from the sanitary engineer of the Department of Health with regards to the suitability of the land proposed to be utilized as a cemetery, as to the depth of water table during the dry and rainy seasons, highest flood level, direction of run-off, drainage disposal, the distance of any dwelling house within the 25 meter zone and drilling of a well or any source of potable water supply within the 50 meter zone.

3.1.6 Plan for the construction of a reinforced concrete wall or steel grille or combination thereof with a minimum height of two (2) meters around the cemetery with a steel grille main door provided with a lock.

x x x

3.1.8 Plan for the construction of a 4-meter wide main road from the gate to the rear and the 1-meter minimum cross roads which divide the cemetery in lots and sections.

3.1.9 Topographic map of the cemetery zone.

3.1.10 Technical description of the proposed cemetery showing the following:

- The name of the cemetery or memorial park or in case of private burying ground, the name of applicant, and the barangay, municipality or city or province where the proposed site is located;
- Exact dimension of all the sides of the proposed cemetery site;
- The area of said site;
- The 25 meter zone around the property delimited;

- The name of all the land or residential owners within the 25 meter zone, indicating the portion/s belonging to each owner;
- The direction of the compass, the top of the plan be the North; and
- The distance of the corners of the proposed cemetery site proper from some known and permanent topographical objects, or some characteristics of the place which will facilitate the accurate identification of the cemetery site proper even if its fence or wall is removed.

x x x

3.5 The following are the requirements for securing an initial clearance from the Department of Health for private burial grounds or place of enshrinement (including sectarian burial areas, catacomb, mausoleum):

3.5.1 Compliance to Section 3, paragraph 3.1, sub-paragraphs 3.1.1, 3.1.3 - 3.1.6 and 3.1.9 -3.1.10 of these rules and regulations;

3.5.2 Resolution by the city/municipal council permitting the establishment of the private burial ground;

3.5.3 Certification by the city/municipal planning and development office with regards to the proposed site location;

3.5.4 Certification by the city/municipal engineer that the design of the proposed structures conforms to the National Building Code of the Philippines;

3.5.5 Size of the burial private ground shall be at least 1.2 hectares which includes a buffer zone of 50 meters around the niche or space for interment;

3.5.6 Burial shall be limited to 10 niches occupying an area not more than 30 square meters to be located at the center of the proposed site;

3.5.7 Additional burials shall not exceed or go beyond the 30 square meters designated site and shall be constructed only over and above the existing niches, but in no case more than 4 niches or 3.0 meter high whichever is lower;

3.5.8 All niches shall be totally enclosed with concrete or other impervious material strictly watertight and the flooring slightly sloped at the center; a 5 cm. noncorrosive “weep hole” shall be provided and constructed directly resting on the ground; the “weep hole” shall be located at the opposite side of the niche’s opening and not exposed to the atmosphere as a drain; a reverse of an air vent; (also applicable to apartment-type or honeycomb-type or capsule-type arrangement of niches).

3.6 The regional health director shall issue an initial clearance upon submission and review of the requirements stated in paragraph 3.1 for public cemetery/memorial park or paragraph 3.5 for private burial grounds.

3.7 Upon completion of the cemetery or memorial park or private burial ground and before its operation, a validation as to compliance to the requirements stated in paragraph 3.1 or paragraph 3.5, as the case may be, shall be conducted by the regional health office concerned. An operational clearance shall be issued by the regional health director which shall be the basis for issuance of the sanitary permit by the local health office.

3.8 Sanitary Requirements for Burial Grounds:

3.8.1 Toilet and Handwashing Facilities

- Adequate, clean and accessible toilet facilities for male, female and disabled persons/personnel shall be provided in properly located areas.
- Adequate lavatories with sufficient supply of soap and hand dryer shall be provided within or adjacent the

toilet rooms.

- Toilet rooms shall be completely enclosed, properly lighted and ventilated.
- All toilets shall have good ventilation either by windows or exhaust fans.
- Odor absorbent materials such as saw dust and activated carbon shall be installed in the toilet rooms.
- The walls of toilet rooms shall be painted or finished in light color.
- The number of water closets shall be provided in accordance with the following tables:

x x x .

3.8.2 Toilet Structural Requirements

- Approval of the local health officer based on the recommendation of the city/municipal engineer or sanitary engineer as to the following:
- Plans of the toilet
- Plumbing connection (in compliance with the National Plumbing Code of the Philippines)
- Individual sewage disposal system, sub-surface absorption system or other treatment device.
- Minimum Space Requirement:

Table 4. Comfort Room Space Requirement

x x x

3.8.3 Water Supply

- The water supply shall be adequate and potable whether from a public or from a private water supply system. The quality of water used shall be in accordance with the Philippine National Standards for Drinking Water.
- All water sources shall have a certificate of potability of drinking water issued by the local health officer.
- A minimum supply of forty (40) liters per capita per day shall be maintained.

x x x

3.8.5 Sewage Disposal and Drainage

- Sewage from the burial ground plumbing system shall be connected to a public sewerage system, or in the absence thereof, to a septic tank or other wastewater treatment facility and subsurface absorption field. A transition of one (1) year period shall be afforded to the owner of the burial ground to comply with these rules and regulations. No renewal of sanitary permit shall be issued after the transition period.
- Storm water shall be discharged to a storm sewer system in all areas where it exists.

3.8.6 Solid Waste Management

x x x.

[48] Civil Code, Art. 2220.

[49] Ibid., Art. 2232.

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