

BIENVENIDO M. CASIÑO, JR., PETITIONER, VS. THE COURT OF APPEALS AND OCTAGON REALTY DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. NO. 133803. September 16, 2005

Ponente: GARCIA, J.

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GARCIA, J.

Via this petition for review on certiorari under Rule 45 of the 1997 Rules of Court, petitioner Bienvenido M. Casiño, Jr. seeks the annulment and setting aside of the following issuances of the Court of Appeals (CA) in C.A. - G.R. CV No. 47702, to wit:

- Decision dated January 21, 1997,[1] affirming an earlier decision of the Regional Trial Court at Pasig which upheld private respondent's rescission of its contract with petitioner; and
- Resolution dated May 20, 1998,[2] denying petitioner's motion for reconsideration.

On October 2, 1991 in the Regional Trial Court at Pasig City, respondent Octagon Realty Development Corporation, a corporation duly organized and existing under Philippine laws, filed a complaint for rescission of contract with damages against petitioner Bienvenido M. Casiño, Jr., owner and proprietor of the Casiño Wood Parquet and Sanding Services, relative to the parties' agreement for the supply and installation by petitioner of narra wood parquet ordered by respondent.

As recited by the Court of Appeals in the decision under review, the parties' principal pleadings in the Regional Trial Court disclose the following:

In its complaint, [respondent] alleges that on December 22, 1989, it entered into a contract with [petitioner] for the supply and installation by the latter of narra wood parquet (kiln dried) to the Manila Luxury Condominium Project, of which [respondent] is the developer, covering a total area of 60,973 sq. ft. for a total price of P1,158,487.00; that the contract stipulated that full delivery by [petitioner] of labor and materials was in May 1990; that in accordance with the terms of payment in the contract, [respondent] paid to [petitioner] the amount P463,394.50, representing 40% of the total contract price; that after delivering only 26,727.02 sq. ft. of wood parquet materials, [petitioner] incurred in delay in the delivery of the remainder of 34,245.98 sq. ft.; that [petitioner] misrepresented to [respondent] that he is qualified to do the work contracted when in truth and in fact he was not and, furthermore, he lacked the necessary funds to execute the work as he was totally dependent on the funds advanced to him by [respondent]; that due to [petitioner's] unlawful and malicious refusal to comply with its obligations, [respondent] incurred actual damages in the amount of P912,452.39 representing estimated loss on the new price, unliquidated damages and cost of money; that in order to minimize losses, the [respondent] contracted the services of Hilvano Quality Parquet and Sanding Services to complete the [petitioner's] unfinished work, [respondent] thereby agreeing to pay the latter P1,198,609.30.

The [respondent] in its complaint prays for rescission of contract, actual damages of P912,452.39, reimbursement in the amount of P1,198,609.30, moral damages of P200,000.00, and attorney's fees of

P50,000.00 plus a fee of P1,000.00 per appearance and other expenses of the suit.

In his answer to the complaint, the [petitioner] admits the execution of the December 22, 1989 contract with the [respondent], the terms thereof relating to total price and scope of work, as well as the payment by the [respondent] of the 40% downpayment. He, however, avers that the manner of payment, period of delivery and completion of work and/or full delivery of labor and materials were modified; that the delivery and completion of the work could not be done upon the request and/or representations by the [respondent] because he failed to make available and/or to prepare the area in a suitable manner for the work contracted, preventing the [petitioner] from complying with the delivery schedule under the contract; that [petitioner] delivered the required materials and performed the work despite these constraints; that the [petitioner] delivered a total of 29,209.82 sq. ft. of wood parquet; that the [respondent] failed to provide for a safe and secure area for the materials and work in process or worked performed, thus exposing them to the elements and destroying the materials and/or work; that the [respondent] failed to pay the [petitioner's] second and third billings for deliveries and work performed in the sum of P105,425.68, which amount the [petitioner] demanded from the [respondent] with the warning of suspension of deliveries or rescission for contract for non-payment; that the [petitioner] was fully qualified and had the experience of at least nine years to perform the work; and that it was the [respondent], after failing to prepare the area suitable for the delivery and installation of the wood parquet, [respondent] xxx who advised or issued orders to the [petitioner] to suspend the delivery and installation of the wood parquet, which created a storage problem for the [petitioner].

Set up by the [petitioner] as special and affirmative defenses, are that the filing of the case is premature; that the [respondent] has no cause of action; that the obligation has been waived/extinguished; that the [respondent's] failure to accept deliveries compelled the [petitioner] to store the materials in his warehouse/s and to use valuable space in his premises, which he could have utilized for the storage of materials for other customers, and also prevented him from accepting new orders from other customer causing him actual and potential losses of income; that the [respondent's] extrajudicial rescission of contract is void since there is no breach or violation thereof by the [petitioner]; and that it was [respondent] which violated the terms/conditions of the contract, entitling [petitioner] to have the same judicially rescinded.

The [petitioner] pleaded counterclaims of rescission of contract and payment by the [respondent] of P597,392.90 with legal interest from the filing of the complaint until fully paid or, in the alternative payment of the cost of the billings in the sum of P105,425.68 plus legal interest; actual and compensatory damages of P600,000.00 and P30,000.00, respectively; moral damages of P100,000.00, attorney's fees of P40,000.00; and litigation expenses and costs of the suit.[3] (Words in bracket ours).

In a decision dated June 2, 1994, the trial court, upon a finding that petitioner is the one who breached the parties' agreement, rendered judgment for respondent, to wit:

WHEREFORE, based on the foregoing, this Court finds and so holds that the rescission of contract effected by [respondent] is valid, and [petitioner] it is thereby ordered to pay the [respondent] the following:

- P2,111,061.69 by way of actual and compensatory damages; and,
- P50,000.00, as attorney's fees.

No pronouncement as to cost.

SO ORDERED.[4]

Explains the trial court in its decision:

xxx [T]he contract clearly and categorically stipulates that full delivery by [petitioner] of labor and materials was to be in May 1990. However, as of January 30, 1991, no deliveries have been made by [petitioner] necessitating the sending by [respondent] of a demand letter xxx. Thereafter, while [petitioner] started

mobilization, the workers assigned were insufficient resulting in the very slow progress of the works for which reason Engr. Alcain sent a letter to [petitioner] instructing [petitioner] to make 'full-blast delivery' of the materials. This, incidentally, effectively negates [petitioner's] contention that [respondent] had requested for the suspension of deliveries.

xxx xxx xxx

Finally, it was established that out of the total 60,973 sq. ft. of wood parquet, [petitioner] was able to deliver only 26,727.02 sq. ft.. In this connection [petitioner] denied this and insisted that he was actually able to deliver 29,109.82 sq. ft. Whichever of the two figures is correct, the fact remains that [petitioner] was unable to deliver the full quantity contracted by [respondent]. For purposes of the record, however, this Court believes the figure given by [respondent], which is supported by [petitioner's] own statements of account where the total amount of deliveries jibes with [respondent's] alleged figure.

On the basis of the foregoing findings, this Court hereby finds that [respondent] has established its right to rescind the contract dated December 22, 1989, on the strength of Art. 1191 of the Civil Code.

In this case, [respondent], after [petitioner's] breach of his contractual obligations, considered the contract as rescinded and proceeded to contract with Hilvano Quality Parquet & Sanding Services, in order to minimize losses in view of the delay in the completion schedule of its condominium project.[5] (Words in bracket ours).

On petitioner's appeal to the Court of Appeals in CA-G.R. CV No. 47702, the appellate court, in the herein assailed Decision[6] dated January 21, 1997, affirmed that of the trial court but modified the same by reducing the amount of damages awarded, thus:

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION that the [petitioner] be made to pay the [respondent] as actual and compensatory damages, the amount of P1,662,003.80, with interest thereon at the legal rate from the finality of this judgment until fully paid.

SO ORDERED. (Words in bracket ours).

In time, petitioner and respondent filed their respective Motion for Reconsideration and Motion for Partial Reconsideration. In its Resolution dated May 20, 1998,[7] the appellate court denied petitioner's motion for lack of merit but found that of respondent as well-grounded. Accordingly, and noting that "the amount of P97,699.67 xxx had already been factored in, in the computation of the amount of P912,452.39, under the decision of the court a quo", the Court of Appeals amended its original Decision by affirming in toto the decision of the trial court, as follows:

WHEREFORE, [petitioner's] appeal is dismissed. The Decision appealed from is AFFIRMED IN TOTO. With costs against the [petitioner]. SO ORDERED. (Words in bracket ours).

Undaunted, petitioner is now with us via the present recourse on his submissions that:

- THE SUBJECT DECISION DECLARING THE RESCISSION OF THE QUESTIONED CONTRACT BY PRIVATE RESPONDENT AS VALID AND HOLDING THE PETITIONER LIABLE FOR BREACH OF CONTRACT IS CONTRARY TO OR IN VIOLATION OF ART. 1191, NEW CIVIL CODE;
- THE AWARD TO PRIVATE RESPONDENT OF ACTUAL AND COMPENSATORY DAMAGES OF P1,662,003.80 WITH LEGAL INTEREST WAS NOT LEGALLY JUSTIFIED, OR PROVEN WITH REASONABLE DEGREE OF CERTAINTY; and
- THE SAME WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION, AND/OR CONTRARY TO THE FACTS, EVIDENCE, JURISPRUDENCE AND LAW.[8]

The petition lacks merit.

It is undisputed that under their contract, petitioner and respondent had respective obligations, i.e., the former to supply and deliver the contracted volume of narra wood parquet materials and install the same at respondent's condominium project by May, 1990, and the latter, to pay for said materials in accordance with the terms of payment set out under the parties' agreement. But while respondent was able to fulfill that which is incumbent upon it by making a downpayment representing 40% of the agreed price upon the signing of the contract and even paid the first billing of petitioner,[9] the latter failed to comply with his contractual commitment. For, after delivering only less than one-half of the contracted materials, petitioner failed, by the end of the agreed period, to deliver and install the remainder despite demands for him to do so. Doubtless, it is petitioner who breached the contract.

Petitioner asserts that while he was ready to comply with his obligation to deliver and install the remaining wood parquet, yet respondent was not ready to accept deliveries due to the unsuitability of the work premises for the installation of the materials. Petitioner's contention flies in the light of the following observations of the appellate court, to which we are in full accord:

xxx no sufficient proof was presented by the [petitioner] to substantiate his allegation. On the other hand, the [respondent] was able to prove by substantial evidence that as of May, 1990, the time when the [petitioner] was supposed to make complete delivery 'there was already available in the condominium building any space from the basement to the fourteenth floor', and the [petitioner] could have chosen from any of those. (Words in bracket ours).

Indeed, there can be denying of petitioner's breach of his contractual obligation, more so when, as here, the two courts below were one in holding so. This brings to mind the settled rule of jurisprudence that factual findings of the Court of Appeals, particularly when affirmatory of those of the trial court, are binding upon this Court.[10] Unless the evidence on record clearly do not support such findings or that the same were arrived at based on a patent misunderstanding of facts,[11] situations which do not obtain in this case, this Court is not at liberty to disturb what has been found below and supplant them with its own.

This is, as it should be. For, in petitions for review on certiorari as a mode of appeal under Rule 45, only questions of law[12] may be raised. This Court is not the proper venue to consider factual issues as it is not a trier of facts.[13]

With the reality that petitioner has failed to comply with his prestations under his contract with respondent, the latter is vested by law with the right to rescind the parties' agreement, conformably with Article 1191 of the Civil Code, which partly reads:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible.

xxx xxx xxx

Explicit it is from the foregoing that "in reciprocal obligations", or those which arise from the same cause, and in which each party is a debtor and a creditor of the other, in the sense that the obligation of one is dependent upon the obligation of the other,[14] the right to rescind is implied such that "absent any provision providing for a right to rescind, the parties may nevertheless rescind the contract should the other obligor fail to comply with its

obligations".[15]

It must be stressed, though, that the right to rescind a contract for non-performance of its stipulations is not absolute. The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.[16]

Here, contrary to petitioner's asseveration, the breach he committed cannot, by any measure, be considered as "slight or casual". For sure, petitioner's failure to make complete delivery and installation way beyond the time stipulated despite respondent's demands, is doubtless a substantial and fundamental breach, more so when viewed in the light of the large amount of money respondent had to pay another contractor to complete petitioner's unfinished work. Again, to quote from the challenged decision of the appellate court:

The [petitioner] also asserts that the breach was merely casual that does not warrant a rescission. While apparently, the [petitioner] agreed to complete delivery and installation of the narra wood parquet to the [respondent's] condominium project by May, 1990, yet on three occasions the [respondent's] counsel sent letters demanding compliance with the [petitioner's] obligation. At that time, only 26,727.02 sq. ft. of parquet out of a total of 60, 973 sq. ft., or less than one half of the contracted volume, had been delivered. Hence, the [respondent] was finally forced to contract the services of another company and had to pay the sum of P1,198,609.30 for the completion of the unfinished work. The large cost of completion of the [petitioner's] unfinished work can only evidence the gravity of the [petitioner's] failure to comply with the terms of the contract.[17] (Words in bracket ours).

Likewise, contrary to petitioner's claim, it cannot be said that he had no inkling whatsoever of respondent's recourse to rescission. True, "the act of a party in treating a contract as cancelled or resolved on account of infractions by the other party must be made known to the other".[18] In this case, however, petitioner cannot feign ignorance of respondent's intention to rescind, fully aware, as he was, of his non-compliance with what was incumbent upon him, not to mention the several letters[19] respondent sent to him demanding compliance with his obligation.

In fine, we thus rule and so hold that respondent acted well within its rights in unilaterally terminating its contract with petitioner and in entering into a new one with a third person in order to minimize its losses, without prior need of resorting to judicial action. As we once said in *University of the Philippines v. De los Angeles*,[20] involving the question of whether the injured party may consider the contract as rescinded even before any judicial pronouncement has been made to that effect:

xxx the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages xxx.

We see no conflict between this ruling and the previous jurisprudence of this Court invoked by respondent declaring that judicial action is necessary for the resolution of a reciprocal obligation; (*Ocejo, Perez & Co. v. International Banking Corp.*, 37 Phil. 631; *Republic v. Hospital de San Juan de Dios, et al.*, 84 Phil. 820) since in every case where the extrajudicial resolution is contested only the final award of the court of competent jurisdiction can conclusively settle whether the resolution was proper or not. It is in this sense that judicial action will be necessary, as without it, the extrajudicial resolution will remain contestable and subject to

judicial invalidation, unless attack thereon should become barred by acquiescence, estoppel or prescription.

This brings us to the propriety of the award for actual or compensatory damages, attorney's fees and litigation expenses.

Under Articles 2199 and 2200 of the Civil Code,[21] actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done.

Citing *Producers Bank of the Philippines vs. CA*,[22] this Court, in the subsequent case of *Terminal Facilities and Services Corporation vs Philippine Ports Authority*[23] ruled:

There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him x x x. In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred as 'ganacias frustradas' or 'lucrum cessans,' are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances.

Absolute certainty, however, is not necessary to establish the amount of "ganacias frustradas" or "lucrum cessans". As we have said in *Producers Bank of the Philippines*, supra:

When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for this reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover.

Gauged by the aforequoted test, the evidence adduced by respondent is sufficient enough to substantiate its claim for actual or compensatory damages in the amount of P 2,111,061. 69. As found by the trial court and affirmed by the Court of Appeals:

Clearly, [respondent] must be indemnified for the following damages it sustained by reason of [petitioner's] breach of contract. Finding [respondent's] claim justified, this court awards the following: P912, 452.39, representing [respondent's] estimated losses on new price, unliquidated damages and cost of money, as substantiated by Exhibit "Q"; and P 1,198,609.30, representing the cost incurred by [respondent] in engaging the services of Hilvano Quality Parquet and Sanding Services for the completion of the work unfinished by [petitioner] (Exhibit "C-4", par. 24) xxx.[24] (Words in bracket ours).

Finally, on the matter of attorney's fees, respondent's entitlement thereto is beyond cavil, what with the fact that respondent was compelled to litigate and incurred expenses relative thereto by reason of petitioner's breach of his contractual obligations.

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the appellate court AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Penned by Associate Associate Justice Gloria C. Paras (now ret.) with Associate Justices Conrado M. Vasquez and Romeo J. Callejo, Sr. (now a member of this Court), concurring; Rollo, pp. 42-51.

[2] Penned by then, now Supreme Court Justice Romeo J. Callejo, Sr. and concurred in by Associate Justices Ruben T. Reyes and Conrado M. Vasquez, Jr.; Rollo, p. 53.

[3] CA Decision; Rollo, pp. 42-44.

[4] Ibid, at p. 46.

[5] Ibid at pp. 45-46.

[6] Ibid at pp. 50-51.

[7] CA Resolution; Rollo, p. 53.

[8] Petition; Rollo, p. 16.

[9] CA Decision, Supra at p. 50.

[10] Salvador vs. CA, 426 SCRA 433, 443 [2004].

[11] Montecillo vs. Reynes and Spouses Abucay, 385 SCRA 246, 255-256 [2002].

[12] Ibid at p. 253.

[13] Ibid.

[14] Ong vs CA 310 SCRA 1, 9 [1999].

[15] Multinational Village Homeowners Association, Inc. vs. Ara Security & Surveillance Agency, Inc., 441 SCRA 126, 135 [2004].

[16] Barredo vs. Leano, 431 SCRA 107, 115 [2004].

[17] CA Decision; supra, p. 49.

[18] Jacinto vs. Kaparaz 209 SCRA 246,258 citing University of the Philippines vs. De los Angeles, 35 SCRA 102, 107 [1970].

[19] CA Decision, supra at p. 45.

[20] Supra, pp. 107-108.

[21] Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.

Art. 2200. Indemnification for damages shall comprehend not only the value of the loss suffered but also that of the profits which the obligee failed to obtain.

[22] 365 SCRA 326, 337 [2002].

[23] 378 SCRA 82, 114 [2002].

[24] Rollo, pp. 33 & 116.

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