

JOSE V. LAGON, PETITIONER, VS. HOOVEN COMALCO INDUSTRIES, INC., RESPONDENT.

G.R. No. 135657. January 17, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for review on certiorari seeks to set aside the Decision of the Court of Appeals of 28 April 1997 which in turn set aside the decision of the Regional Trial Court of Davao City and ordered petitioner Jose V. Lagon to pay respondent Hooven Comalco Industries, Inc. (HOOVEN) the amount of P69,329.00 with interest at twelve percent (12%) per annum computed from the filing of the complaint until fully paid, plus attorney's fees and costs,[1] as well as the Resolution of the appellate court denying reconsideration thereof.[2]

Petitioner Jose V. Lagon is a businessman and owner of a commercial building in Tacurong, Sultan Kudarat. Respondent HOOVEN on the other hand is a domestic corporation known to be the biggest manufacturer and installer of aluminum materials in the country with branch office at E. Quirino Avenue, Davao City.

Sometime in April 1981 Lagon and HOOVEN entered into two (2) contracts, both denominated Proposal, whereby for a total consideration of P104,870.00 HOOVEN agreed to sell and install various aluminum materials in Lagon's commercial building in Tacurong, Sultan Kudarat.[3] Upon execution of the contracts, Lagon paid HOOVEN P48,00.00 in advance.[4]

On 24 February 1987 respondent HOOVEN commenced an action for sum of money with damages and attorney's fees against petitioner Lagon before the Regional Trial Court of Davao City. HOOVEN alleged in its complaint that on different occasions, it delivered and installed several construction materials in the commercial building of Lagon pursuant to their contracts; that the total cost of the labor and materials amounted to P117,329.00 out of which P69,329.00 remained unpaid even after the completion of the project; and, despite repeated demands, Lagon failed and refused to liquidate his indebtedness. HOOVEN also prayed for attorney's fees and litigation expenses, and in support thereof, presented its OIC, Alberto Villanueva, and its employee, Ernesto Argente, and other witnesses, as well as several documentary evidence consisting mainly of the two (2) proposals, invoices and delivery receipts.

Lagon, in his answer, denied liability and averred that HOOVEN was the party guilty of breach of contract by failing to deliver and install some of the materials specified in the proposals; that as a consequence he was compelled to procure the undelivered materials from other sources; that as regards the materials duly delivered and installed by HOOVEN, they were fully paid. He counterclaimed for actual, moral, exemplary, temperate and nominal damages, as well as for attorney's fees and expenses of litigation.

On 9 October 1987, upon request of both parties, the trial court conducted an ocular inspection of Lagon's commercial building to determine whether the items alleged in the complaint and appearing in the invoices and delivery receipts had been delivered and installed on the premises. The result of the ocular inspection was -

1) with respect to the items covered by Exhibit "A" and submarkings that there are only seventeen (17) light diffusers, 13 in the ceiling of the ground and 4 on the mezzanine (Ocular Inspection, TSN, pp. 5 to 6); 2) on Exhibit "B" and submarkings, there are only twenty-three (23) light aluminum boxes, 14 aluminum boxes in the ceiling of the mezzanine and 9 on the ceiling of the ground floor (Ocular Inspection, TSN, p. 7); 3) on Exhibit "C-1," the items are missing in the area where they were supposed to be installed; 4) on Exhibit "C-2," admitted by defendant Lagon when he stated that "I will admit that these were installed by the plaintiff but I do not know exactly the materials, but I really accept that these were installed sometime in 1981, before the occupation of the DBP. But I have paid that already in 1981. I could not identify the materials delivered in 1981 because I do not know the exact names of those materials." (Ocular Inspection, TSN, p. 12); 5) on Exhibit "C-2," the glasses are not tinted but plain white; on Exhibit "C-3," the materials cannot be formed (sic) in the place where they are supposed to be (Ocular Inspection, TSN, p.7); 6) Exhibit "D" and "D-1," that the materials were supplied by plaintiff but they did not install them. It was the defendant who caused the installation thereof (Ocular Inspection, TSN, p. 13.); and 7) Exhibit "E-1," as NU- Main and Cross-Runners and supplied by plaintiff but plaintiff did not install. They had it installed (Ocular Inspection, TSN, p. 14).

In due course the trial court rendered a decision partly on the basis of the result of the ocular inspection finding that the total actual deliveries and installations made by HOOVEN cost P87,140.00. Deducting therefrom P48,000.00 which Lagon paid in advance upon execution of their contracts with no further payments appearing to have been made thereafter, only P39,140.00 remained unpaid and where Lagon incurred in delay. The trial court also awarded HOOVEN P3,255.00 as attorney's fees, but sustained Lagon's counterclaims and awarded him P26,120.00 as actual damages representing the value of the undelivered and uninstalled materials, and P30,000.00 as attorney's fees in addition to litigation expenses of P45,534.50. According to the court a quo[5]-

As a result of the partial breach of contract on plaintiff's (Hooven Comalco) part, the defendant is entitled to actual damages only to the extent of the undelivered materials and undone labor or to the amount of P26,120.00. This P26,120.00 will be partially offsetted (sic) to the P39,140.00 unpaid balance of the defendant (Lagon), so that the difference that remain (sic) payable to plaintiff is P13,020.00. Evidence is insufficient to show that bad faith existed in the filing of the instant complaint for collection against the defendant. Plaintiff's obstinate conduct in prosecuting its claim spending for litigation expenses and for its lawyers negate the existence of bad faith. The fact alone that the findings of fact show an unpaid account of the defendant is proof that the complaint is not completely unfounded though evidence shows also that plaintiff is guilty of partial breach of contract by reason of failure to completely deliver and install the materials defendant ordered pursuant to the contract so that plaintiff is liable for damages. As plaintiff acted in good faith in the filing of the instant complaint in the belief that it has a valid cause of action against the defendant to enforce its claim, engaging a lawyer to prosecute it, plaintiff is entitled to a reasonable attorney's fees equivalent to 25% of the collectible amount of P13,020.00 or the amount of P3,225.00. Defendant's claim of attorney's fees in the amount of P152,629.15 is in the opinion of the court clearly unreasonable and unconscionable considering the nature of the action and the amount involved. The court has the power to reduce it to render it reasonable and conscionable whether the contract for attorney's fees is written or oral. The attorney's fees is fixed at P30,000.00. The defendant presented evidence of litigation expenses incurred in the course of the trial for plane fare of its lawyer in coming to Davao City from Manila from 1987 up to July 1990 in the total amount of P34,730.50 as evidenced by Exhibit "11" to "11-E." The records show that the defendant's counsel came to Davao City from Manila to attend eleven (11) hearings of the case and the plane fare from 1987 up to August, 1989 is P2,524.50 and from August 1989 to June 1990 is P3,007.50. Hotel expenses of defendant's counsel at the Maguindanao Hotel where he was billeted everytime he came to Davao City to attend the trial amounted to P11,824.00 as evidenced by Exhibit "17," the certification issued by the said hotel management. So that the total amount of the actual damage suffered by defendant is P45,534.50. Said amount of P45,534.50 is partially offsetted (sic) by the amount of P13,020.00 representing the unpaid obligation of the defendant to the plaintiff so that the plaintiff is still liable to pay the defendant the difference in the amount of P32,514.50.

Both parties appealed to the Court of Appeals. In its Decision of 28 April 1997, the appellate court set aside the judgment of the trial court and resolved the case in favor of HOOVEN. It held that the trial court erred in relying solely on the results of the ocular inspection since the delivery and installation of the materials in question started as early as 1981, while the ocular inspection was conducted only in 1987 or six (6) years later, after the entire mezzanine was altered and the whole building renovated. The appellate court also stressed that the testimonies of HOOVEN's witnesses were straightforward, categorical and supported by documentary evidence of the disputed transactions, and that all Lagon could offer was a mere denial, uncorroborated and self-serving statements regarding his transactions with HOOVEN. The decretal portion of the assailed decision of the Court of Appeals reads -

ACCORDINGLY, finding the decision of August 26, 1991 appealed from afflicted by reversible errors, the same is hereby SET ASIDE, and a new one entered ordering the defendant-appellant (Lagon) to pay plaintiff-appellant (Hooven Comalco):

The amount of P69,329.00 plus interest of 12% per annum computed from the date of the filing of the complaint, until fully paid.

Fifteen percent (15%) of the amount due, as and by way of attorney's fees.

Defendant-appellant to pay costs.

Petitioner's motion for reconsideration having been denied he now hopes to secure relief from this Court by contending that: (a) The Court of Appeals erred in holding that the trial court could not rely on the results of the ocular inspection conducted on his commercial building in Tacurong, Sultan Kudarat; and, (b) The assailed decision of the appellate court is based on speculations and contrary to the evidence adduced during the trial.

The arguments in the petition ultimately boil down to the sole issue of whether all the materials specified in the contracts had been delivered and installed by respondent in petitioner's commercial building in Tacurong, Sultan Kudarat. The question is basically factual involving as it does an evaluation of the conflicting evidence presented by the contending parties, including the existence and relevance of specific surrounding circumstances, to determine the truth or falsity of alleged facts.

While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*,^[6] nevertheless, the Court has the authority to review and, in proper cases, reverse the factual findings of lower courts in these instances: (a) when the findings of fact of the trial court are in conflict with those of the appellate court; (b) when the judgment of the appellate court is based on misapprehension of facts; and, (c) when the appellate court manifestly overlooked certain relevant facts which, if properly considered, would justify a different conclusion.^[7] This case falls squarely within the foregoing exceptions.

Before delving into the merits of this case, we find it necessary to describe and detail the nature and contents of the vital documentary exhibits upon which respondent HOOVEN based its claims, thus -

Exhibit "F" - Undated Proposal:

I. For the supply of materials and installation of suspended aluminum ceiling runners:

Area: 2,290 sq. ft.

Materials: NU- Main & Cross runners

NU-5 Perimeter mouldings

G.I. wire hangers

Aluminum straps stiffeners

Blind Rivets and Screws P14,110.00

Labor charge 4,230.00

18,440.00

II. One (1) set: 65 x 68 YP aluminum cladding 1,150.00

P19,590.00

Delivery and Installation charge 1,860.00

P21,450.00

Exhibit "F-1" - Proposal dated 3 April 1981

"Hooven" Aluminum Casement Windows Anolok Finish Manually Operated, with 6.0 mm Bronzepane Tinted Glass

Five (5) sets: 65" x 126-1/2" (w/ transom)

One (1) set: 65" x 126-1/2" (w/ AC provision)

Two (2) sets: 39-1/2" x 125-1/2" -do-

One (1) set: 39-1/2" x 87" -do-

One (1) set: 39-1/2" x 223" -do-

One (1) set: 65" x 57-1/2" (w/ transom)

One (1) set: 65" x 4" -do-

"Hooven" Aluminum Entrances and Fixed Windows Anolok Finish, with 6.0 mm Bronzepane Tinted Glass

One (1) set: 100-1/2" x 76-1/2", double sash, double acting swing door, with transom.

Two (2) sets: 80" x 278", fixed panels 21,740.00

"Hooven" Aluminum Sliding Windows Fabricated From SD-Sections, Anolok Finish, with 6.0 mm Bronzepane Tinted Glass

One (1) set: 54 x 191

One (1) set: 45 x 302 11,650.00

75,920.00

Add: Delivery and Installation charge 7,500.00

P83,420.00

Exhibit "A" - Invoice No. 11094 dated 29 December 1982

Eighty Six (86) Pieces, 2.0 mm Hishilite P3,440.00

Diffusers

Exhibit "B" - Invoice No. 11095 dated 29 December 1982

Forty-Three Pieces: For the Supply and

Installation of Light Boxes Fabricated from

GA. 032 Aluminum Plain Sheet

Delivery and Installers' subsistence P5,718.50

Exhibit "C" - Invoice No. 14349 dated 29 December 1984

Five (5) sets 1.651m 3.213m Hooven Aluminum Casement windows, Anolok finish, manually operated with 6.0 Bronzepane tinted glass.

One (1) set 1.651 m 3.367m - do - with a/c provision

Two (2) sets 1.00 m 3.188m - do - - do -

One (1) set 1.00 m 2.210 m - do - - do -

One (1) set 1.00 m 5.664 m - do - - do -

One (1) set 1.651m 1.461 m - do - - do - with transom

One (1) set 1.651m 1.880 m - do - with transom

One (1) set 1.651m 1.524 m - do - - do -

One (1) set 2.553m 1.943 m Hooven aluminum double sash, double acting swing door, with transom, with 6.0 mm Bronze-pane tinted glass.

Two (2) sets 2.032m 7.061 m Fixed windows, Anolok finish.

One (1) set .737 m 7.061 m Aluminum tubulars with aluminum YP-100 cladding, Anolok finish.

One (1) set 1.143m 4.851m Hooven aluminum sliding windows fabricated from SD sections, Anolok finish, with 6.0 mm Bronzepane tinted glass, with 1.88 m tubular posts.

One (1) set 1.143m 7.671m - do - P75,291.83

4% tax 3,011.67

78,303.50

Delivery & Subs. 7,500.00

P85,803.50

Exhibit "D" - Invoice No. 14265 dated 29 September 1984

For the supply of materials and installation of aluminum stucco embossed sheet on spiral staircase P5,310.00

Exhibit "E" - Invoice No. 14264 dated 29 November 1984

For the supply of materials and installation of suspended aluminum ceiling system.

Materials: NU-4 main and cross runners

NU-5 perimeter mouldings

GI wire hangers

Alum strap stiffeners

Blind rivets and screws P17,057.00

Exhibit "A-1" - Delivery Receipt dated 9 June 1981

Twenty (20) pieces Light boxes fabricated from aluminum sheets

Forty (40) pieces 2.0 mm x 24" x 24" Hishilite Diffusers

Lump sum cost including discount and Delivery and

Installer Subsistence

P4,340.00

Exhibit "A-2" - Delivery Receipt dated 8 August 1981

Twenty (20) pieces Light boxes fabricated from .032" aluminum plain sheet

Twenty Seven (27) 2.0 mm x 24" x 24" Hishilite Diffusers

Add: Delivery & Installers Subsistence P180.00

Exhibit "A-3" - Delivery Receipt, dated 8 December 1981

19 pcs. 2.0 mm x 2" x 2" Hishilite Diffusers P40.00

Exhibit "B-1" - Delivery Receipt dated 25 June 1981

Additional three (3) pcs. Light boxes fabricated from .032 Aluminum sheets

P140.00

Exhibit "C-1" - Delivery Receipt dated 25 August 1983

To change alum tubular frames for sliding windows (item 10 & 11) from 45" L x to 94" x 74."

To change width of one (1) set: item 1 from 126-1/2 to 132-1/2.

To add: one (1) set 65"H x 60" aluminum casement windows with 6.0 mm tinted glass.

To extend alum tubulars of fixed windows on 2nd floor by 29"L and installation of YP-aluminum cladding
P8,640.00

Exhibit "C-2" - Delivery Receipt dated 25 August 1983

Hooven Alum Casement Windows Anolok Finish Manually Operated with 6.0 mm Bronzepane Tinted Glass:

Five (5) sets: 65" x 126-1/2" with transom

One (1) set: 65" x 126-1/2" with AC provision

Two (2) sets: 39-1/2 x 125-1/2 - do -

One (1) set: 39-1/2" x 87" - do -

One (1) set: 39-1/2" x 223" - do -

One (1) set: 65" x 57-1/2" with transom

One (1) set: 65" x 74" - do -

P42,530.00

Hooven Alum Entrances & Fixed Windows Anolok Finish with 6.0 mm Bronzepane Tinted Glass:

One (1) set: 100-1/2 x 76-1/2, double sash, double acting swing door, with transom

Two (2) sets: 80" x 278" fixed panels P21,740.00

Exhibit "C-3" - Delivery Receipt dated 25 August 1983

Hoven Alum Sliding Windows Fabricated from SD Sections Anolok Finish with 6.0 mm Bronzepane Tinted Glass:

One (1) set: 45" x 191"

One (1) set: 45" x 302" P11,650.00

Add: Delivery and Installation 7,500.00

Less: 7% Discount 6,256.50

P77,163.50

Exhibit "D-1" - Delivery Receipt dated 25 August 1983

For the supply of materials and installation of aluminum stucco embossed sheet on spiral staircase: One (1) set 32" H x 304" WL P5,310.00

Exhibit "E-1" - Delivery Receipt dated 25 August 1983

NU- main and cross runners

NU-5 Perimeter mouldings

G.I. Wire Hangers

Aluminum straps stiffeners

Blind rivets and screws P17,057.00

We have carefully and diligently considered the foregoing exhibits and we are fully convinced that the mass of documentary evidence adduced by respondent suffers from patent irregularities and material inconsistencies on their faces, raising serious questions requiring cogent explanations. These flaws inevitably deplete the weight of its evidence, with the result that for lack of the requisite quantum of evidence, respondent dismally failed in the lower court to discharge its burden necessary to prevail in this case.

Firstly, the quantity of materials and the amounts stated in the delivery receipts do not tally with those in the invoices covering them, notwithstanding that, according to HOOVEN OIC Alberto Villanueva, the invoices were based merely on the delivery receipts.[8] For instance, only eleven (11) items were listed in Exhs. "C-2" and "C-3" with a total worth of P77,163.50. But in Exh. "C," which was the invoice for Exhs. "C-2" and "C-3," there were thirteen (13) items enumerated for a total worth of P85,803.50. If Exh. "C" is supposed to be based on Exhs. "C-2" and "C-3," we cannot understand the apparent discrepancy in the items listed in those documents when they all referred to the same materials.

Secondly, the total value of the materials as reflected in all the invoices is P117,329.00 while under the delivery

receipts it is only P112,870.50, or a difference of P4,458.00. Moreover, the materials listed in the two (2) Proposals, upon which HOOVEN based its claims, is only for the total sum of P104,870.00. Curiously then, why would the materials supposedly delivered by HOOVEN be more than what was contracted and purchased by Lagon? This circumstance underscores the need to reexamine the strength, if not weakness, of respondent's cause.

Thirdly, under the Proposals HOOVEN bound itself to invoice the materials "when complete and ready for shipment." Oddly, the records show that the invoices were prepared several years after the materials were allegedly delivered and installed completely on petitioner's building. Alberto Villanueva testified that their project with petitioner was completed sometime in August 1981 and that thereafter no further installation was done in the building.[9] But the disputed invoices marked Exhs. "A" and "B" were prepared only on 29 December 1982; Exhs. "C" and "D" were prepared only on 29 December 1984; and, Exh. "E" was prepared only on 29 November 1984. As for the delivery receipts, Exhs. "C-1," "C-2," "C-3" and "E-1" were prepared only on 25 August 1983 or two (2) years after the completion of the project, while Exh. "A-3" was prepared only on 8 December 1981 or some four (4) months after the date of completion.

Even more strange is the fact that HOOVEN instituted the present action for collection of sum of money against Lagon only on 24 February 1987, or more than five (5) years after the supposed completion of the project. Indeed, it is contrary to common experience that a creditor would take its own sweet time in collecting its credit, more so in this case when the amount involved is not miniscule but substantial.

Fourthly, the demand letter of 25 August 1983[10] sent to petitioner by respondent further betrays the falsity of its claims -

Dear Mr. Lagon:

The bearer, Mr. Fermin Piñero, is an authorized representative of this company. He will arrange for your acceptance of the complete aluminum and glass installation we have undertaken for your building. He has with him the delivery receipts for your signature so with a statement of account showing your balance. Kindly favor us with a partial payment to cover our operation costs. Also kindly relay to him all other installations you wish us to undertake.

Hoping for your favorable action, we shall remain.

Very Truly Yours,
Hooven Comalco Industries, Inc.
Davao Branch

(Sgd.) Alberto P. Villanueva

If, as claimed by HOOVEN, all the materials were completely delivered and installed in petitioner's building as early as August 1981, why then would it demand partial payment only two (2) years later? This circumstance is very significant especially considering that under the Proposals the terms of payment should be 50% down "and the balance to be paid in full" upon completion. Moreover, it is surprising that the partial payment demanded was only "to cover operation costs." As correctly observed by petitioner, demand for payment of operation costs is typical of a still on-going project where the contractor needs funds to defray his expenses. If there was complete installation, why would respondent demand payment for operation costs only? Why not enforce the whole amount of indebtedness? All these clearly suggest that there was no full and complete delivery and installation of materials ordered by petitioner.

Fifthly, all the delivery receipts did not appear to have been signed by petitioner or his duly authorized representative acknowledging receipt of the materials listed therein. A closer examination of the receipts clearly

showed that the deliveries were made to a certain Jose Rubin, claimed to be petitioner's driver, Armando Lagon, and a certain bookkeeper. Unfortunately for HOOVEN, the identities of these persons were never been established, and there is no way of determining now whether they were indeed authorized representatives of petitioner. Paragraph 3 of each Proposal is explicit on this point -

- x x x the seller's responsibility ends with delivery of the merchandise to carrier in good condition, to buyer, or to buyer's authorized "Receiver/Depository" named on the face of this proposal (underscoring supplied).

As above specifically stated, deliveries must be made to the buyer or his duly authorized representative named in the contracts. In other words, unless the buyer specifically designated someone to receive the delivery of materials and his name is written on the Proposals opposite the words "Authorized Receiver/Depository," the seller is under obligation to deliver to the buyer only and to no other person; otherwise, the delivery would be invalid and the seller would not be discharged from liability. In the present case, petitioner did not name any person in the Proposals who would receive the deliveries in his behalf, which meant that HOOVEN was bound to deliver exclusively to petitioner.

Sixthly, it is also obvious from the contested delivery receipts that some important details were not supplied or were left in blank, i.e., truck numbers, persons who delivered the materials, invoice and s. o. numbers. The persons who delivered the materials were potential witnesses who could shed light on the circumstances surrounding the alleged deliveries of the materials to petitioner. Moreover, it could have been easier for HOOVEN to pinpoint responsibility to any of its employees for the non-delivery of the materials.

We are not unaware of the slipshod manner of preparing receipts, order slips and invoices, which unfortunately has become a common business practice of traders and businessmen. In most cases, these commercial forms are not always fully accomplished to contain all the necessary information describing the whole business transaction. The sales clerks merely indicate a description and the price of each item sold without bothering to fill up all the available spaces in the particular receipt or invoice, and without proper regard for any legal repercussion for such neglect. Certainly, it would not hurt if businessmen and traders would strive to make the receipts and invoices they issue complete, as far as practicable, in material particulars. These documents are not mere scraps of paper bereft of probative value but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts.

Given this pathetic state of respondent's evidence, how could it be said that respondent had satisfactorily proved its case? Essentially, respondent has the burden of establishing its affirmative allegations of complete delivery and installation of the materials, and petitioner's failure to pay therefor. In this regard, its evidence on its discharge of that duty is grossly anemic. We emphasize that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof.

The Court of Appeals however faulted the trial court for supposedly relying solely on the results of the ocular inspection on the premises, which were not conclusive since the inspection was conducted several years after the disputed materials were allegedly installed therein.

We disagree. The ocular inspection was made by the judge himself, at the request of both petitioner and respondent, for the exclusive purpose of determining whether the materials subject of this case were actually delivered and installed. There is therefore no basis to give little evidentiary value on the results of the ocular inspection, as the Court of Appeals would, and charge the trial court with error for relying thereon. It is now rather late for any of the parties to disclaim them, especially when they are not in his or its favor. Furthermore, a cursory reading of the decision of the court a quo will at once show that it was not premised solely on the results

of the ocular inspection but was likewise predicated on other evidence presented by the parties and well-considered facts and circumstances discussed by the trial court in its ratio decidendi. We cannot ignore the factual findings of the trial court, which must carry great weight in the evaluation of evidentiary facts, and in the absence of any indication showing grave error committed by trial court, the appellate court is bound to respect such findings of fact.

We hasten to add however that petitioner is not entirely free from any liability to respondent. Petitioner admitted the delivery of materials under Exhs. "A" and its submarkings, "B" and its submarkings, "D," "D-1" and "E." With respect to Exh. "C-2," petitioner acknowledged his obligation under the first heading, Items Nos. 3, 4 and 5, and the second heading, and denied the rest. Consequently, he should be made liable therefor in the total amount of P58,786.65. From this amount, petitioner's down payment of P48,000.00 should be deducted.

It is insisted by petitioner in his appeal brief filed before the Court of Appeals that the second item under the second heading of Exh. "C-2" should be excluded in the computation since he never admitted liability therefor.

We are not persuaded. The transcript of stenographic notes shows that during the ocular inspection counsel for respondent manifested in effect that petitioner admitted the delivery and installation of the second item in his building, and petitioner did not interpose any objection to respondent's manifestation -

ATTY. QUIÑONES: We would like to make of record that defendant (Lagon) admits that plaintiff (Hooven Comalco) delivered and installed Item No. 1 under the second column of Exhibit "C-2" which is the front door of the ground floor.

ATTY. RICO: Defendant however adds that these were installed in 1981 and had already paid for the said item.

ATTY. QUIÑONES: I would like to make of record also that defendant admits the delivery and installation of Item No. 2 under the second column of Exhibit "C-2" as having been delivered and installed by the plaintiff in 1981 with the qualification, however, that he had already paid the same.

COURT: Are you stating that all these installed items on the ground floor were all paid by you?

MR. LAGON: Yes, Your Honor.[11]

Petitioner cannot now be heard to complain against its inclusion in the computation of his liability since his silence virtually amounted to acquiescence. The silence of one of the contracting parties and his failure to protest against the claims of the other party, when he is chargeable with the duty to do so, strongly suggest an admission of the veracity and validity of the other party's claims.

In sum, petitioner's total liability to respondent may be computed as follows:

(1)

Items under Exh. "A," consisting of 17 light diffusers at P40.00 each P
680.00

(2)

Items under Exh. "B," consisting of 23 light boxes at P40.00 each
3,220.00

(3)

Third, fourth and fifth items under the first heading of Exh. "C-2" which on the basis of their measurements constitute only 1/3 of the total costs of materials listed therein

14,176.65

(4) Items under the second heading of Exh. "C-2" 21,740.00

(5) Items under Exhs. "D" and "D-1" 4,860.00

(6) Items under Exh. "E-1" 14,110.00

P58,786.65

Less: Stipulated 7% discount 4,408.99

P54,377.66

Less: Advance payment made by petitioner to Hooven Comalco 48,000.00

Unpaid Balance of petitioner P6,377.66

Notwithstanding the breach of contract by respondent in failing to deliver and install in the premises of petitioner all the stipulated materials, we nevertheless accede to the right of respondent to recover the unpaid balance from petitioner for the materials actually delivered.

The next point of inquiry is the propriety of awarding damages, attorney's fees and litigation expenses.

We are not in accord with the trial court's ruling that petitioner is entitled to actual damages to the extent of the undelivered materials and undone labor in the amount of P26,120.00. There is no proof that petitioner already paid for the value of the undelivered and uninstalled materials to respondent. Therefore, petitioner may not be deemed to have suffered any such damage. We have declared in no uncertain terms that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty.[12] A court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the actual amount thereof.[13] It must point out specific facts that could provide the gauge for measuring whatever compensatory or actual damages were borne.

But we agree with petitioner that he is entitled to moral damages. HOOVEN's bad faith lies not so much on its breach of contract - as there was no showing that its failure to comply with its part of the bargain was motivated by ill will or done with fraudulent intent - but rather on its appalling temerity to sue petitioner for payment of an alleged unpaid balance of the purchase price notwithstanding knowledge of its failure to make complete delivery and installation of all the materials under their contracts. It is immaterial that, after the trial, petitioner was found to be liable to respondent to the extent of P6,377.66. Petitioner's right to withhold full payment of the purchase price prior to the delivery and installation of all the merchandise cannot be denied since under the contracts the balance of the purchase price became due and demandable only upon the completion of the project. Consequently, the resulting social humiliation and damage to petitioner's reputation as a respected businessman in the community, occasioned by the filing of this suit provide sufficient grounds for the award of P50,000.00 as moral damages.

Moreover, considering the fact that petitioner was drawn into this litigation by respondent and was compelled to hire an attorney to protect and defend his interest, and taking into account the work done by said attorney throughout the proceedings, as reflected in the record, we deem it just and equitable to award attorney's fees for petitioner in the amount of P30,000.00.[14] In addition, we agree with the trial court that petitioner is entitled to recover P46,554.50 as actual damages including litigation expenses as this amount is sufficiently supported by the evidence.[15]

WHEREFORE, the assailed Decision of the Court of Appeals dated 28 April 1997 is MODIFIED. Petitioner Jose V. Lagon is ordered to pay respondent Hooven Comalco Industries, Inc., P6,377.66 representing the value of the unpaid materials admittedly delivered to him. On the other hand, respondent is ordered to pay petitioner P50,000.00 as moral damages, P30,000.00 as attorney's fees and P46,554.50 as actual damages and litigation expenses.

SO ORDERED.

Mendoza, Quisumbing, Buena and DeLeon Jr., JJ., concur.

[1] Decision penned by Associate Justice B. A. Adefuin-de la Cruz, concurred in by Associate Justices Gloria C. Paras (now retired) and Ricardo P. Galvez (now Solicitor General).

[2] Resolution penned by Associate Justice B. A. Adefuin-de la Cruz, concurred in by Associate Justices Consuelo Ynares-Santiago (now Supreme Court Justice) and Presbitero J. Velasco, Jr.

[3] Exhs. "F" and "F-1."

[4] Exh. "G."

[5] 26 August 1991 Decision penned by Judge Romeo D. Marasigan, RTC-Br. 16, Davao City.

[6] See *Imperial v. Court of Appeals*, G.R. No. 102037, 17 July 1996, 259 SCRA 65, 71.

[7] *Reyes v. Court of Appeals*, G.R. No. 110207, 11 July 1996, 258 SCRA 651.

[8] TSN, 8 September 1988, p. 98.

[9] TSN, 2 June 1989, pp. 243-244.

[10] Exh. "H."

[11] TSN, 9 October 1987, pp. 12-13 (Ocular Inspection).

[12] *Del Mundo v. Court of Appeals*, G.R. No. 104576, 20 January 1995, 240 SCRA 348; *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 110053, 16 October 1995, 249 SCRA 331; *Del Rosario v. Court of Appeals*, G.R. No. 118325, 29 January 1997, 267 SCRA 158, 171.

[13] *Del Rosario v. Court of Appeals*, id.

[14] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded; (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; (3) In criminal cases of malicious prosecution against the plaintiff; (4) In case of a clearly unfounded civil action or proceeding against the plaintiff; (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's valid, just and demandable claim; (6) In actions for legal support; (7) In actions for the recovery of wages of household helpers, laborers and skilled workers; (8) In actions for indemnity under the workmen's

compensation and employer's liability laws; (9) In separate civil action to recover civil liability arising from a crime; (10) When at least double judicial costs are awarded; and (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable (New Civil Code).

[15] The trial court erroneously computed the amount of litigation expenses it awarded to petitioner; instead of P45,534.50 it should be P46,554.50.

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