

**SPS. RUFINO ANGEL AND EMERITA ANGEL, PETITIONERS, VS.
SIMPLICIO ALEDO AND FELIXBERTO MODALES, RESPONDENTS.**

G.R. No. 145031. January 22, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The facts material to the decision of the present petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. CV No. 44679 are as follows:

In November 1984, the spouses Rufino and Emerita Angel (spouses Angel or the Angels), herein petitioners, engaged the services of respondent Felixberto Modales (Modales) to construct a two-storey residential building at GSIS La Mesa Homesite in Novaliches, Quezon City.

In their November 22, 1984 contract denominated “Construction Agreement,”[1] since Modales was at the time an engineer under the employ of the Department of Public Works and Highways, the parties made it appear that the contractor was Modales’ father-in-law, his herein co-respondent Simplicio Aledo (Aledo). The said agreement was for the construction of the building up to its “rough finish” stage.

After the completion of the building in its “rough finish” stage,[2] another “Construction Agreement” dated February 11, 1985[3] was forged by the spouses Angel and Aledo for effecting the “finishing touches” of the building.

Completion of the “finishing touches” was certified[4] to by Mrs. Angel on April 31, 1985.

On September 27, 1988, Aledo filed before the Quezon City Regional Trial Court (RTC) a Complaint[5] for collection of sum of money against the spouses Angel, alleging that despite the completion of the construction of their building and their acceptance thereof, they failed to pay, demands notwithstanding, the amount of P22,850.00 representing the balance of “the consideration of the contract” and P6,713.00 representing the cost of materials supplied by him.

In their Answer,[6] the spouses Angel claimed that Aledo has no cause of action as he is only a dummy of his son-in-law Modales who was “the actual contractor” with whom they contracted for the construction of their residential building; and that, in any event, there were defects in the construction and some of the materials “deposited” by Modales in the construction site were not used. By way of counterclaim, the Angels alleged that as a result of the filing of the unfounded complaint, they were forced to retain the services of counsel with whom they agreed to pay P10,000.00 as attorney’s fees and they stood to incur P5,000.00 as litigation expenses.

In July 1989, the spouses Angel filed a Third Party Complaint[7] against Modales, alleging that he failed to comply with his obligation under the “Construction Agreements” as, among other things, the building had a lot of defects, to correct or remedy which would cost them the amount of Eighty Five Thousand (P85,000.00) Pesos, hence, Modales should be held liable for moral damages and attorney’s fees.

Modales in his Answer to the Third Party Complaint [8] alleged that the Angels have no cause of action against him as he had nothing to do with the contracts; and that “[he] (sic) never acted as a ‘dummy’” and, in any event, the Angels never complained of any defect in the construction, hence, they are in estoppel and are guilty of laches.

During the pre-trial of the case, only the defendant-third party plaintiff spouses Angel showed up. The plaintiff Aledo did not show up, albeit their counsel had priorly filed a motion to withdraw as counsel in view of his appointment as Special Prosecutor and to postpone the pre-trial to afford his client ample time to seek the services of a new counsel, which motion was not, however, passed upon by the trial court, Branch 97 of the Quezon City RTC. Neither did third party defendant Modales who, by his claim, was not duly notified thereof as, indeed, the Order of January 31, 1991[9] shows that only the plaintiff Aledo and the defendants-third party plaintiffs spouses Angel and their respective counsels were furnished copies thereof.

On motion of the Angels, the trial court declared the plaintiff Aledo non-suited and accordingly dismissed his complaint by Order made in open court on March 1, 1991.[10] On a subsequent motion of the Angels, they prayed that third party defendant Modales be declared as in default and that the dismissal Order of March 1, 1991 should apply only to the original complaint.

The plaintiff Aledo later filed a Motion for Reconsideration of the March 1, 1991 Order of the trial court.

By Order of April 16, 1991,[11] the trial court clarified its Order of March 1, 1991, stating that the latter order “shall be for the dismissal of the original complaint but reserving to the defendant[s] [-] third party plaintiffs the right to prove their counterclaim and third party complaint against the plaintiff and third party defendant, respectively.” (Emphasis and underscoring supplied)

The defendants-third party plaintiffs spouses Angel were thus allowed to present before the branch clerk of court evidence ex-parte consisting of the testimony of an engineer (whom the Angels claimed to have hired regarding the alleged defects in the construction) and documentary evidence including the “Construction Agreements.”

The trial court, by Decision of March 30, 1993,[12] rendered judgment in favor of the defendants-third party plaintiffs Angels, the dispositive portion of which judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering plaintiff to pay defendants/third-party plaintiffs P10,000.00 for attorney’s fees and P5,000.00 for litigation expenses and cost of suit and third-party defendant to pay third-party plaintiffs the sum of P85,000.00 as actual damages and P50,000.00 by way of moral damages. (Emphasis and underscoring supplied)

Aledo and Modales appealed to the Court of Appeals. Aledo’s appeal was dismissed, however, for failure to file Appellant’s Brief within the reglementary period. He filed a motion for reconsideration of the resolution of dismissal but as it was belatedly filed, it was denied.

As for Modales, since he failed to file Appellant’s Brief, the Court of Appeals likewise dismissed his appeal by Resolution of February 6, 1996.[13] He received on February 21, 1996 a copy of the said Resolution of the Court of Appeals dismissing his appeal, and filed by mail on March 11, 1996[14] a “Verified Motion for Reconsideration [thereof] and To Admit [his] Appellant’s Brief” which was granted.

By the now assailed Decision of September 7, 2000,[15] the Court of Appeals reversed and set aside the decision of the trial court and entered a new one dismissing the Angels’ Counterclaim and Third-Party Complaint.

In dismissing the Counterclaim and Third-Party Complaint, the Court of Appeals held that the “Construction Agreements,” which were entered into by the parties “with the knowledge that [Modales] [wa]s prohibited from contracting without the requisite permission from the proper government authorities,” were contrary to law and

public policy, hence, following Article 1412 of the Civil Code which reads:

ART. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise (Underscoring supplied),

they were in *pari delicto* and, therefore, they have “no action against each other.”

Thus spawned the present petition for review on certiorari filed by the spouses Angel (hereinafter referred to as petitioners), assigning the following errors to the Court of Appeals:

- THE COURT OF APPEALS HAD DEPARTED FROM THE ADOPTED COURSE OF JUDICIAL PROCEEDINGS BY REVERSING THE DECISION OF THE TRIAL COURT WHICH HAD LONG BEEN FINAL AND EXECUTORY.

- THE COURT OF APPEALS, IN ITS DECISION DATED SEPTEMBER 7, 2000, DECIDED A QUESTION OF SUBSTANCE IN A MANNER THAT IS NOT IN ACCORD WITH THE LAW AND APPLICABLE JURISPRUDENCE,

and proffering the following as grounds for the allowance of the petition:

- THE COURT OF APPEALS ERRED AND ACTED WITHOUT JURISDICTION WHEN IT REVERSED A DECISION OF THE TRIAL COURT WHICH HAD LONG BEEN FINAL AND EXECUTORY.

- THE COURT OF APPEALS ERRED IN HOLDING THAT THE PARTIES WERE IN *PARI DELICTO*, HENCE, THEY SHALL HAVE NO ACTION AGAINST EACH OTHER AND SHOULD BE LEFT AS THEY ARE.

Petitioners argue that the Court of Appeals erred in taking jurisdiction over the case of the plaintiff Aledo, given its dismissal of his appeal which had long become final and executory.

And they argue that the Court of Appeals had no jurisdiction over the appeal of the third party defendant Modales because his Motion for Reconsideration of the Resolution of the Court of Appeals dismissing his appeal was filed beyond the reglementary period.

On petitioners' argument that it was error for the Court of Appeals to still consider the appeal of Aledo as it had long dismissed it and had become final and executory: There was nothing for Aledo to appeal from, for the counterclaim of petitioners, which was compulsory, hence, could not remain pending for independent adjudication by the court,[16] was, along with Aledo's complaint, dismissed on the counterclaimant-defendants' motion on March 1, 1991. The trial court's Order of April 16, 1991 clarifying that only Alejo's "original complaint" was dismissed and accordingly giving due course to petitioners' counterclaim was thus null and void. It being void ab initio, the Order of April 16, 1991 had no legality from its inception, and the decision of the trial court against the plaintiff Aledo was itself void as it emanated from a void order.[17]

With respect to petitioner's argument that the Motion for Reconsideration of Modales from the Court of Appeals' Resolution of dismissal of his appeal was filed beyond the reglementary period. As reflected above, the motion was mailed on March 7, 1996,[18] albeit received by the Court of Appeals on March 11, 1996. It bears stressing that it is the date of mailing, not the date of receipt, of the mail matter, which shall be considered as the date of

filing.[19]

In sum, since admittedly it was with respondent Modales that petitioners contracted to construct their residential building but that his father-in-law co-respondent Aledo, his “mere” dummy, was named in the “Construction Agreements,” the Court of Appeals did not err in holding that said agreements were contrary to law and public policy, hence, petitioners and respondents Aledo and Modales were in *pari delicto*, and in accordingly pronouncing the dismissal of petitioners’ Counterclaim and dismissing their Third-Party Complaint. *Ex dolo malo non oritur actio*. In *pari delicto potior est conditio defendentis*.

WHEREFORE, the petition is, in light of the foregoing discussions, hereby DISMISSED.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Records at 5-7. It was later Amended (Id. at 151-155) and Re-amended (Id. at 195-199).

[2] Id. at 9.

[3] Id. at 10-12.

[4] Id. at 15.

[5] Id. at 1-4.

[6] Id. at 65-70.

[7] Id. at 43-46.

[8] Id. at 87-89.

[9] Record at 227.

[10] Vide April 16, 1991 Order, Id. at 262.

[11] Ibid.

[12] Id. at 303-310.

[13] Court of Appeals Rollo at 27.

[14] Vide brown envelope stapled to p. 53 of Court of Appeals Rollo which bears the stamp mark showing that it was sent by registered mail on March 11, 1996.

[15] Rollo at 41-50.

[16] Sec. 2 of Rule 17, Revised Rules of Court which was in force at the time the March 1, 1991 Order was issued, reads:

Dismissal by order of the court. - Except as provided in the preceding section, an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff’s motion to dismiss, the action shall not be dismissed against the defendant’s objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. (Underscoring supplied)

[17] Vide *Casañas v. Rosales, et al.*, 19 SCRA 463 (1967).

[18] Vide note 13.

[19] Sec. 1, Rule 13, Revised Rules of Court, now Sec. 3, Rule 13 of the 1997 Rules of Civil Procedure.

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