

ENGR. APOLINARIO DUEÑAS, PETITIONER, VS. ALICE GUCE-AFRICA, RESPONDENT.*G.R. No. 165679. October 05, 2009*

Ponente: DEL CASTILLO, J.

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Time and again, we have held that in a petition for review on certiorari filed under Rule 45 of the Rules of Court, we cannot review or pass upon factual matters, save under exceptional circumstances, none of which obtains in the present case. Petitioner endeavors in vain to convince us that the trial court and the Court of Appeals erred in finding him negligent in the construction of respondent's house and holding him liable for breach of contract.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the April 29, 2004 Decision[2] of the Court Appeals in CA-G.R. CV No. 70757, which affirmed the December 21, 2000 Decision[3] of the Regional Trial Court, Branch 157, Pasig City, in an action for breach of contract with damages[4] filed by respondent against petitioner.

THE FACTS

For respondent and her family, April 18, 1998 was supposed to be a special occasion and a time for family reunion. It was the wedding date of her sister Sally Guce, and respondent's other siblings from the United States of America, as well as her mother, were expected to return to the country. The wedding ceremony was set to be held at the family's ancestral house at San Vicente, Banay-banay, Lipa City, where respondent's relatives planned to stay while in the Philippines.

Respondent found the occasion an opportune time to renovate their ancestral house. Thus, in January 1998 she entered into a Construction Contract[5] with petitioner for the demolition of the ancestral house and the construction of a new four-bedroom residential house. The parties agreed that respondent would pay P500,000.00 to the petitioner, who obliged himself to furnish all the necessary materials and labor for the completion of the project. Petitioner likewise undertook to finish all interior portions of the house on or before March 31, 1998, or more than two weeks before Sally's wedding.

On April 18, 1998, however, the house remained unfinished. The wedding ceremony was thus held at the Club Victorina and respondent's relatives were forced to stay in a hotel. Her mother lived with her children, transferring from one place to another.

On July 27, 1998, respondent filed a Complaint[6] for breach of contract and damages against petitioner before the Regional Trial Court of Pasig City. She alleged, among others, that petitioner started the project without securing the necessary permit from the City Engineer's Office of Lipa City. Respondent likewise alleged that, all in all, she gave petitioner P550,000.00 (which is P50,000.00 more than the contract price). However, and despite knowledge that the construction of the house was intended for the forthcoming marriage of respondent's sister, petitioner unjustly and fraudulently abandoned the project leaving it substantially unfinished and incomplete.

Several demands were made, but petitioner obstinately refused to make good his contractual obligations. Worse, petitioner's workmanship on the incomplete residential house was substandard.

Respondent prayed for the return of the P50,000.00 overpayment. She also prayed for an award of P100,000.00 for the purpose of repairing what had been poorly constructed and at least P200,000.00 to complete the project.

In his Answer with Counterclaim,[7] petitioner asserted that it was respondent who undertook to secure the necessary government permits.[8] With regard to the alleged overpayment, petitioner claimed that the amount of P50,000.00 was in payment for the additional works which respondent requested while the construction was still on going. In fact, the estimated cost for the additional works amounted to P133,960.00, over and above the P500,000.00 contract price.

Petitioner likewise alleged that the delay in the construction of the house was due to circumstances beyond his control, namely: heavy rains, observance of Holy Week, and celebration of barangay fiesta. Ultimately, he was not able to complete the project because on May 27, 1998, respondent went to his house and told him to stop the work.

He maintained that he cannot be held liable for the amounts claimed by the respondent in her complaint considering that he had faithfully complied with the terms and conditions of the Construction Contract.

On February 19, 1999, pre-trial conference was conducted. Thereafter, trial ensued.

Respondent testified on the material points alleged in her complaint. She also presented the testimony of her brother Romeo Guce, who declared on the witness stand that petitioner confided to him that he had to stop the construction because he could no longer pay his workers. He also testified that petitioner asked for additional amount of about P20,000.00 to finish the house. He relayed this to the respondent who refused to release any additional amount because of petitioner's unsatisfactory and substandard work. But later on, respondent acceded and gave petitioner P20,000.00.

To establish the status of the project and determine the amount necessary for the repair and completion of the house, respondent presented Romeo Dela Cruz, a licensed realtor and a graduate of an engineering course at the Technological Institute of the Philippines. Dela Cruz testified that he conducted an ocular inspection on the construction site in November 1998 and found that only about 60% of the project had been accomplished. Some parts of the project, according to the witness, were even poorly done. He likewise testified that in order to repair the poorly constructed portion of the house, respondent would need to spend about P100,000.00 and another P200,000.00 to complete it.

Petitioner also took the witness stand and testified on matters relative to the defenses he raised in his answer.

On December 21, 2000, the RTC rendered a Decision[9] in favor of the

respondent and against the petitioner. The RTC gave more credence to respondent's version of the facts, finding that-

Clearly, Dueñas [herein petitioner] failed to tender performance in accordance with the terms and conditions of the construction contract he executed with Africa [herein respondent]. He failed to construct a four-bedroom residential house suitable and ready for occupancy on a stipulated date. Dueñas was fully aware that Africa needed the new house for a long scheduled family event precisely a completion date was included and specified in the transaction. Despite knowledge and receipt of payment from Africa, Dueñas failed to deliver what was incumbent upon him under the undertaking. He unjustifiably incurred delay in the construction of the new building and wrongfully deprived Africa and her family of the use and enjoyment of the subject property. Bad weather, observance of the Holy Week and barangay fiesta are insufficient excuses. As a building

contractor Dueñas should have provided for such contingencies. Mere inconvenience or unexpected impediments will not relieve a party of his obligation. Granting that he was not yet fully paid for the additional work by Africa, provisions or arrangements should have been made to ensure completion of the project within the agreed period.

Moreover, Dueñas negligently abandoned the unfinished structure shortly after a confrontation with Africa and family. Rain water sipped[sic] into the house because Dueñas failed to secure the roofing and wall flushing. The house remained [un]habitable because fixtures and devises were yet to be installed. Dueñas failed to exercise the required diligence as a contractor and is guilty of negligence and delay. He must be made responsible for the foreseen effect of the exposure of the new structure to the elements.

Significantly, the poor construction performance manifested in the structure after Dueñas in bad faith abandoned it. Indeed, the newly constructed edifice needs significant repairs if only to make it habitable for its occupants.[10]

Consequently, the fallo of the RTC decision reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff Alice G. Africa and against defendant Apolinario Dueñas who is hereby directed to pay plaintiff:

- P100,000.00 for the necessary repair of the structure;
- 200,000.00 for the completion of the construction;
- 50,000.00 as and for attorney's fees;
- and costs of suit.

Plaintiff's claim for moral, nominal and exemplary damages are hereby denied for lack of sufficient basis.

SO ORDERED.[11]

Both parties were unsatisfied. They thus brought the matter to the Court of Appeals assailing the Decision of the RTC. The appellate court, however, found no cogent reason to depart from the trial court's conclusion. Thus, on April 29, 2004, it rendered the herein assailed Decision[12] affirming with modification the RTC's ruling, viz:

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Pasig City, Branch 157, dated 21 December 2000, is hereby **AFFIRMED WITH MODIFICATION** that the award of attorney's fees is hereby **DELETED**.

SO ORDERED.[13]

ISSUES

Feeling aggrieved but still undeterred, petitioner interposes the present recourse anchored on the following grounds:

I.

THE COSTS OF ACTUAL DAMAGES AWARDED ARE BASED ON MERE SPECULATIONS AND CONJECTURES.[14]

II.

THE RULINGS THAT DUEÑAS ABANDONED THE WORK AND INCURRED DELAY ARE CONTRARY TO THE EVIDENCE.[15]

III.

THE DAMAGES CAUSED BY RAIN WATER WERE NOT DUE TO APOLINARIO DUEÑAS' FAULT OR NEGLIGENCE.[16]

OUR RULING

For purposes of clarity, we shall tackle simultaneously the second and third arguments raised by the petitioner.

Instant petition not available to determine whether petitioner violated the contract or abandoned the construction of the house

Petitioner contends that he neither abandoned the project nor violated the contract. He maintains that continuous rains caused the delay in the construction of the house and that he was not able to finish the project because respondent ordered him to stop the work. In fact, there was no reason for him to stop the project because he still had available workers and materials at that time, as well as collectibles from the respondent. Petitioner likewise contends that the Court of Appeals erred in upholding the trial court's finding that he was guilty of negligence.

The contentions lack merit.

Petitioner endeavors to convince us to determine, yet again, the weight, credence, and probative value of the evidence presented. This cannot be done in this petition for review on certiorari under Rule 45 of the Rules of Court where only questions of law may be raised by the parties and passed upon by us. In *Fong v. Velayo*,^[17] we defined a question of law as distinguished from a question of fact, viz:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the questioned posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

It has already been held that the determination of the existence of a breach of contract is a factual matter not usually reviewable in a petition filed under Rule 45.^[18] We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those of the trial court, since we are not a trier of facts.^[19] The established rule is that the factual findings of the Court of Appeals affirming those of the RTC are conclusive and binding on us. We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.^[20]

Except with respect to the first ground advanced by the petitioner which will be discussed later, none of the above exceptions obtain in this case. Hence, we find no cogent reason to disturb the findings of the RTC and affirmed by

the Court of Appeals that petitioner was negligent in the construction of respondent's house and thus liable for breach of contract.

Respondent not entitled to actual damages for want of evidentiary proof

Petitioner further argues that the appellate court erred in affirming the RTC's award of actual damages for want of evidentiary foundation. He maintains that actual damages must be proved with reasonable degree of certainty. In the case at bench, petitioner argues that the trial and the appellate courts awarded the amounts of P100,000.00 and P200,000.00 as actual damages based merely on the testimonies of respondent and her witness.

We agree. Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In *Ong v. Court of Appeals*,^[21] we held that "(a)ctual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement." To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. We cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages. Thus, it was held that before actual damages can be awarded, there must be competent proof of the actual amount of loss, and credence can be given only to claims which are duly supported by receipts.^[22]

Here, as correctly pointed out by petitioner, respondent did not present documentary proof to support the claimed necessary expenses for the repair and completion of the house. In awarding the amounts of P100,000.00 and P200,000.00, the RTC and the Court of Appeals merely relied on the testimonies of the respondent and her witness. Thus:

As to the award of P100,000.00 as cost of repair and P200,000.00 as the amount necessary to complete the house, the Court finds the same to be in the nature of actual damages. It is settled that actual damages must be supported by best evidence available x x x. In the case at bar, the Court finds that the testimony of the plaintiff-appellant in this regard is supported by the testimony of Romeo dela Cruz, a realtor, who inspected the structure after it remained unfinished. Said testimonies are sufficient to establish the claim. x x x

Respondent entitled to temperate damages in lieu of actual damages

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages. Articles 2216, 2224 and 2225 of the Civil Code provide:

Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

Art. 2225. Temperate damages must be reasonable under the circumstances.

Temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.^[23] The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. ^[24]

There is no doubt that respondent sustained damages due to the breach committed by the petitioner. The transfer

of the venue of the wedding, the repair of the substandard work, and the completion of the house necessarily entailed expenses. However, as earlier discussed, respondent failed to present competent proof of the exact amount of such pecuniary loss. To our mind, and in view of the circumstances obtaining in this case, an award of temperate damages equivalent to 20% of the original contract price of P500,000.00, or P100,000.00 (which, incidentally, is equivalent to 1/3 of the total amount claimed as actual damages), is just and reasonable.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated April 29, 2004 in CA-G.R. CV No. 70757 is **AFFIRMED** with modification that the award of actual damages is deleted and, in lieu thereof, petitioner is ordered to pay respondent temperate damages in the amount of P100,000.00.

SO ORDERED.

Corona[*], Carpio Morales, Brion, and Abad, JJ., concur.

[*] Additional member per Special Order No. 718 dated October 2, 2009.

[1] Rollo, pp. 3-15.

[2] CA rollo, pp. 96-103; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Danilo B. Pine and Edgardo F. Sundiam.

[3] Records, pp. 171-179; penned by Judge Esperanza Fabon-Victorino.

[4] Docketed as Civil Case No. 66930.

[5] Records, p. 6.

[6] Id. at 1-5.

[7] Id. at 19-24.

[8] During trial, however, petitioner declared on the witness stand that the parties agreed that he will secure the necessary permit only if the concerned government agency requires it. TSN, January 25, 2000, p. 7.

[9] Records, pp. 171-179.

[10] Supra note 3.

[11] Id. at 178-179.

[12] Supra note 2.

[13] Id. at 103.

[14] Rollo, p. 6

[15] Id. at 10.

[16] Id. at 12.

[17] G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

[18] Omengan v. Philippine National Bank, G.R. No. 161319, January 23, 2007, 512 SCRA 305, 309.

[19] Ledonio v. Capitol Development Corporation, G.R. No. 149040, July 4, 2007, 526 SCRA 379, 392.

[20] *College Assurance Plan v. Belfranlt Development, Inc.*, G.R. No. 155604, November 22, 2007, 538 SCRA 27, 37-38.

[21] G.R. No. 117103, January 21, 1999, 301 SCRA 387, 400.

[22] *Viron Transportation Co., Inc. v. Alberto Delos Santos*, G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519.

[23] Art. 2224, Civil Code of the Philippines.

[24] *Supra* note 20, at 40.

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