

HEIRS OF RAMON C. GAITE, CYNTHIA GOROSTIZA GAITE AND RHOGEN BUILDERS, PETITIONERS, VS. THE PLAZA, INC. AND FGU INSURANCE CORPORATION, RESPONDENTS.

G.R. No. 177685. January 26, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, which seeks to reverse and set aside the Decision[1] dated June 27, 2006 and Resolution[2] dated April 20, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 58790. The CA affirmed with modification the Decision[3] dated July 3, 1997 of the Regional Trial Court (RTC) of Makati City, Branch 63, in Civil Case Nos. 1328 (43083) and 40755.

The facts are as follows:

On July 16, 1980, The Plaza, Inc. (The Plaza), a corporation engaged in the restaurant business, through its President, Jose C. Reyes, entered into a contract[4] with Rhogen Builders (Rhogen), represented by Ramon C. Gaité, for the construction of a restaurant building in Greenbelt, Makati, Metro Manila for the price of P7,600,000.00. On July 18, 1980, to secure Rhogen's compliance with its obligation under the contract, Gaité and FGU Insurance Corporation (FGU) executed a surety bond in the amount of P1,155,000.00 in favor of The Plaza. On July 28, 1980, The Plaza paid P1,155,000.00 less withholding taxes as down payment to Gaité. Thereafter, Rhogen commenced construction of the restaurant building.

In a letter dated September 10, 1980, Engineer Angelito Z. Gonzales, the Acting Building Official of the Municipality of Makati, ordered Gaité to cease and desist from continuing with the construction of the building for violation of Sections 301 and 302 of the National Building Code (P.D. 1096) and its implementing rules and regulations.[5] The letter was referred to The Plaza's Project Manager, Architect Roberto L. Tayzon.

On September 15, 1980, Engr. Gonzales informed Gaité that the building permit for the construction of the restaurant was revoked for non-compliance with the provisions of the National Building Code and for the additional temporary construction without permit.[6] The Memorandum Report of Building Inspector Victor Gregory enumerated the following violations of Rhogen in the construction of the building:

- 1) No permit for Temporary Structure.
- 2) No notice of concrete pouring.
- 3) Some workers have no safety devices.
- 4) The Secretary and Construction Foreman refused to [receive] the Letter of Stoppage dated September 10, 1980.
- 5) Mr. Ramon Gaité [is] questioning the authority of the Building Official's Inspector.

6) Construction plans use[d] on the job site is not in accordance to the approved plan.[7]

On September 19, 1980, the Project Manager (Tayzon) in his Construction Memo #23 reported on his evaluation of Progress Billing #1 submitted by Rhogen. Tayzon stated that actual jobsite assessment showed that the finished works fall short of Rhogen's claimed percentage of accomplishment and Rhogen was entitled to only P32,684.16 and not P260,649.91 being demanded by Rhogen. Further, he recommended that said amount payable to Rhogen be withheld pending compliance with Construction Memo #18, resolution of cases regarding unauthorized withdrawal of materials from jobsite and stoppage of work by the Municipal Engineer's Office of Makati.[8]

On October 7, 1980, Gaité wrote Mr. Jose C. Reyes, President of The Plaza regarding his actions/observations on the stoppage order issued. On the permit for temporary structure, Gaité said the plans were being readied for submission to the Engineering Department of the Municipality of Makati and the application was being resent to Reyes for his appropriate action. As to the notice for concrete pouring, Gaité said that their construction set-up provides for a Project Manager to whom the Pouring Request is first submitted and whose job is to clear to whoever parties are involved (this could still be worked out with the Building Inspector). Regarding the safety devices for workers, Gaité averred that he had given strict rules on this but in the course of construction some workers have personal preferences. On the refusal of the secretary and construction foreman to receive the stoppage order dated September 10, 1980, Gaité took responsibility but insisted it was not a violation of the National Building Code. Likewise, questioning the authority of the Building Inspector is not a violation of the Code although Gaité denied he ever did so. Lastly, on the construction plans used in the jobsite not being in accordance with the approved plan, Gaité said he had sent Engr. Cristino V. Laurel on October 3, 1980 to Reyes' office and make a copy of the only approved plan which was in the care of Reyes, but the latter did not give it to Engr. Laurel. Gaité thus thought that Reyes would handle the matter by himself.[9]

On the same day, Gaité notified Reyes that he is suspending all construction works until Reyes and the Project Manager cooperate to resolve the issue he had raised to address the problem.[10] This was followed by another letter dated November 18, 1980 in which Gaité expressed his sentiments on their aborted project and reiterated that they can still resolve the matter with cooperation from the side of The Plaza.[11] In his reply-letter dated November 24, 1980, Reyes asserted that The Plaza is not the one to initiate a solution to the situation, especially after The Plaza already paid the agreed down payment of P1,155,000.00, which compensation so far exceeds the work completed by Rhogen before the municipal authorities stopped the construction for several violations. Reyes made it clear they have no obligation to help Rhogen get out of the situation arising from non-performance of its own contractual undertakings, and that The Plaza has its rights and remedies to protect its interest.[12]

Subsequently, the correspondence between Gaité and Reyes involved the custody of remaining bags of cement in the jobsite, in the course of which Gaité was charged with estafa for ordering the removal of said items. Gaité complained that Reyes continued to be uncooperative in refusing to meet with him to resolve the delay. Gaité further answered the estafa charge by saying that he only acted to protect the interest of the owner (prevent spoilage/hardening of cement) and that Reyes did not reply to his request for exchange.[13]

On January 9, 1981, Gaité informed The Plaza that he is terminating their contract based on the Contractor's Right to Stop Work or Terminate Contracts as provided for in the General Conditions of the Contract. In his letter, Gaité accused Reyes of not cooperating with Rhogen in solving the problem concerning the revocation of the building permits, which he described as a "minor problem." Additionally, Gaité demanded the payment of P63,058.50 from The Plaza representing the work that has already been completed by Rhogen.[14]

On January 13, 1981, The Plaza, through Reyes, countered that it will hold Gaité and Rhogen fully responsible for failure to comply with the terms of the contract and to deliver the finished structure on the stipulated date. Reyes

argued that the down payment made by The Plaza was more than enough to cover Rhogen's expenses.[15]

In a subsequent letter dated January 20, 1981, Reyes adverted to Rhogen's undertaking to complete the construction within 180 calendar days from July 16, 1980 or up to January 12, 1981, and to pay the agreed payment of liquidated damages for every month of delay, chargeable against the performance bond posted by FGU. Reyes invoked Section 121 of the Articles of General Conditions granting the owner the right to terminate the contract if the contractor fails to execute the work properly and to make good such deficiencies and deducting the cost from the payment due to the contractor. Reyes also informed Gaité that The Plaza will continue the completion of the structure utilizing the services of a competent contractor but will charge Rhogen for liquidated damages as stipulated in Article VIII of the Contract. After proper evaluation of the works completed by Rhogen, The Plaza shall then resume the construction and charge Rhogen for all the costs and expenses incurred in excess of the contract price. In the meantime that The Plaza is still evaluating the extent and condition of the works performed by Rhogen to determine whether these are done in accordance with the approved plans, Reyes demanded from Gaité the reimbursement of the balance of their initial payment of P1,155,000.00 from the value of the works correctly completed by Rhogen, or if none, to reimburse the entire down payment plus expenses of removal and replacement. Rhogen was also asked to turn over the jobsite premises as soon as possible.[16] The Plaza sent copy of said letter to FGU but the latter replied that it has no liability under the circumstances and hence it could not act favorably on its claim against the bond.[17]

On March 3, 1981, The Plaza notified Gaité that it could no longer credit any payment to Rhogen for the work it had completed because the evaluation of the extent, condition, and cost of work done revealed that in addition to the violations committed during the construction of the building, the structure was not in accordance with plans approved by the government and accepted by Ayala. Hence, The Plaza demanded the reimbursement of the down payment, the cost of uprooting or removal of the defective structures, the value of owner-furnished materials, and payment of liquidated damages.[18]

On March 26, 1981, The Plaza filed Civil Case No. 40755 for breach of contract, sum of money and damages against Gaité and FGU in the Court of First Instance (CFI) of Rizal.[19] The Plaza later amended its complaint to include Cynthia G. Gaité and Rhogen.[20] The Plaza likewise filed Civil Case No. 1328 (43083) against Ramon C. Gaité, Cynthia G. Gaité and/or Rhogen Builders also in the CFI of Rizal for nullification of the project development contract executed prior to the General Construction Contract subject of Civil Case No. 40755, which was allegedly in violation of the provisions of R.A. No. 545 (Architectural Law of the Philippines).[21] After the reorganization of the Judiciary in 1983, the cases were transferred to the RTC of Makati and eventually consolidated.

On July 3, 1997, Branch 63 of the RTC Makati rendered its decision granting the claims of The Plaza against Rhogen, the Gaités and FGU, and the cross-claim of FGU against Rhogen and the Gaités. The trial court ruled that the Project Manager was justified in recommending that The Plaza withhold payment on the progress billings submitted by Rhogen based on his evaluation that The Plaza is liable to pay only P32,684.16 and not P260,649.91. The other valid grounds for the withholding of payment were the pending estafa case against Gaité, non-compliance by Rhogen with Construction Memorandum No. 18 and the non-lifting of the stoppage order.[22]

Regarding the non-lifting of the stoppage order, which the trial court said was based on simple infractions, the same was held to be solely attributable to Rhogen's willful inaction. Instead of readily rectifying the violations, Rhogen continued with the construction works thereby causing more damage. The trial court pointed out that Rhogen is not only expected to be aware of standard requirements and pertinent regulations on construction work, but also expressly bound itself under the General Construction Contract to comply with all the laws, city and municipal ordinances and all government regulations. Having failed to complete the project within the stipulated

period and comply with its obligations, Rhogen was thus declared guilty of breaching the Construction Contract and is liable for damages under Articles 1170 and 1167 of the Civil Code.[23]

The dispositive portion of the trial court's decision reads:

WHEREFORE, in Civil Case No. 40755, defendants Ramon Gaite, Cynthia Gaite and Rhogen Builders are jointly and severally ordered to pay plaintiff:

- the amount of P525,422.73 as actual damages representing owner-furnished materials with legal interest from the time of filing of the complaint until full payment;
- the amount of P14,504.66 as actual damages representing expenses for uprooting with interest from the time of filing the complaint until full payment;
- the amount of P1,155,000.00 as actual damages representing the downpayment with legal interest from the time of filing the complaint until full payment;
- the amount of P150,000.00 for moral damages;
- the amount of P100,000.00 for exemplary damages;
- the amount of P500,000.00 as liquidated damages;
- the amount of P100,000.00 as reasonable attorney's fees; and,
- the cost of suit.

Under the surety bond, defendants Rhogen and FGU are jointly and severally ordered to pay plaintiff the amount of P1,155,000.00 with legal interest from the time of filing the complaint until full payment. In the event [that] FGU pays the said amount, third-party defendants are jointly and severally ordered to pay the same amount to FGU plus P50,000.00 as reasonable attorney's fees, the latter having been forced to litigate, and the cost of suit.

Civil Case No. 1328 is hereby ordered dismissed with no pronouncement as to cost.

SO ORDERED.[24]

Dissatisfied, Ramon and Cynthia Gaite, Rhogen and FGU appealed to the CA.[25] In view of the death of Ramon C. Gaite on April 21, 1999, the CA issued a Resolution dated July 12, 2000 granting the substitution of the former by his heirs Cynthia G. Gaite, Rhoel Santiago G. Gaite, Genevieve G. Gaite and Roman Juan G. Gaite.[26]

In their appeal, the heirs of Ramon C. Gaite, Cynthia G. Gaite and Rhogen assigned the following errors, to wit:

- THE TRIAL COURT ERRED IN DECLARING THAT THE GROUNDS RELIED UPON BY DEFENDANT-APPELLANT RHOGEN BUILDERS IN TERMINATING THE CONTRACT ARE UNTENABLE;
- THE TRIAL COURT ERRED IN DECLARING THAT THE NON-LIFTING OF THE STOPPAGE ORDER OF THE THEN MUNICIPAL GOVERNMENT OF MAKATI WAS SOLELY ATTRIBUTABLE TO DEFENDANT-APPELLANT RHOGEN'S WILLFUL INACTION;
- THE TRIAL COURT ERRED IN FAILING TO CONSIDER THAT IT WAS THE WILLFUL INACTION OF PLAINTIFF-APPELLEE WHICH MADE IT IMPOSSIBLE FOR DEFENDANT-APPELLANT RHOGEN TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT;
- THE TRIAL COURT ERRED IN AWARDING ACTUAL DAMAGES AS WELL AS MORAL, EXEMPLARY, AND LIQUIDATED DAMAGES AND ATTORNEY'S FEES SINCE THERE WERE NO

FACTUAL AND LEGAL BASES THEREFOR; AND

- THE TRIAL COURT ERRED IN FAILING TO AWARD ACTUAL, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF DEFENDANTS-APPELLANTS.[27]

For its part, FGU interposed the following assignment of errors:

- THE REGIONAL TRIAL COURT ERRED IN NOT RULING THAT DEFENDANT-APPELLANT RAMON GAITE VALIDLY TERMINATED THE CONTRACT BETWEEN HIM AND PLAINTIFF-APPELLEE.

- THE REGIONAL TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT RAMON GAITE RESPONSIBLE FOR THE STOPPAGE OF THE CONSTRUCTION.

- THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT RAMON GAITE TO PAY THE AMOUNT OF P525,422.73 FOR THE OWNER FURNISHED MATERIALS.

- THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT RAMON GAITE TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF P14,504.66 AS ALLEGED EXPENSES FOR UPROOTING THE WORK HE PERFORMED.

- THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT RAMON GAITE TO REFUND THE DOWN PAYMENT OF P1,155,000.00 PLAINTIFF-APPELLEE PAID HIM.

- THE REGIONAL TRIAL COURT ERRED IN AWARDING MORAL DAMAGES TO PLAINTIFF-APPELLEE.

- THE REGIONAL TRIAL COURT ERRED IN AWARDING EXEMPLARY DAMAGES TO PLAINTIFF-APPELLEE.

- THE REGIONAL TRIAL [COURT] ERRED IN AWARDING LIQUIDATED DAMAGES TO PLAINTIFF-APPELLEE.

- THE REGIONAL TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES TO PLAINTIFF-APPELLEE.

- THE REGIONAL TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT FGU INSURANCE CORPORATION LIABLE TO PLAINTIFF-APPELLEE.[28]

On June 27, 2006, the CA affirmed the Decision of the trial court but modified the award of damages as follows:

WHEREFORE, the Decision dated July 3, 1997 rendered by the Regional Trial Court of Makati City, Branch 63 in Civil Case Nos. 40755 and 1328 is AFFIRMED with the modification that: (a) the award for actual damages representing the owner-furnished materials and the expenses for uprooting are deleted, and in lieu thereof, the amount of P300,000.00 as temperate damages is awarded; and (b) the awards for moral, exemplary, liquidated and attorney's fees are likewise deleted.

SO ORDERED.[29]

According to the CA, The Plaza cannot now be demanded to comply with its obligation under the contract since Rhogen has already failed to comply with its own contractual obligation. Thus, The Plaza had every reason not to pay the progress billing as a result of Rhogen's inability to perform its obligations under the contract. Further, the stoppage and revocation orders were issued on account of Rhogen's own violations involving the construction as found by the local building official. Clearly, Rhogen cannot blame The Plaza for its own failure to comply with its contractual obligations. The CA stressed that Rhogen obliged itself to comply with "all the laws, city and

municipal ordinances and all government regulations insofar as they are binding upon or affect the parties [to the contract] , the work or those engaged thereon." [30] As such, it was responsible for the lifting of the stoppage and revocation orders. As to Rhogen's act of challenging the validity of the stoppage and revocation orders, the CA held that it cannot be done in the present case because under Section 307 of the National Building Code, appeal to the Secretary of the Department of Public Works and Highways (DPWH) - whose decision is subject to review by the Office of the President -- is available as remedy for Rhogen. [31]

However, the CA modified the award of damages holding that the claim for actual damages of P525,422.73 representing the damaged owner-furnished materials was not supported by any evidence. Instead, the CA granted temperate damages in the amount of P300,000.00. As to moral damages, no specific finding for the factual basis of said award was made by the trial court, and hence it should be deleted. Likewise, liquidated damages is not proper considering that this is not a case of delay but non-completion of the project. The Plaza similarly failed to establish that Rhogen and Gaité acted with malice or bad faith; consequently, the award of exemplary damages must be deleted. Finally, there being no bad faith on the part of the defendants, the award of attorneys' fees cannot be sustained. [32]

The motion for reconsideration of the aforesaid Decision was denied in the Resolution dated April 20, 2007 for lack of merit. Hence, this appeal.

Before us, petitioners submit the following issues:

I.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when it found that Petitioner Rhogen had no factual or legal basis to terminate the General Construction Contract.

II.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when, as a consequence of its finding that Petitioners did not have valid grounds to terminate the Construction Contract, it directed Petitioners to return the downpayment paid by The Plaza, with legal interest.

III.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when, in addition thereto, it awarded temperate damages to The Plaza.

IV.

Whether or not the Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, when it failed to award damages in favor of Petitioners. [33]

Petitioners contend that the CA gravely erred in not holding that there were valid and legal grounds for Rhogen to terminate the contract pursuant to Article 1191 of the Civil Code and Article 123 of the General Conditions of the Construction Contract. Petitioners claim that Rhogen sent Progress Billing No. 1 dated September 10, 1980 and demanded payment from The Plaza in the net amount of P473,554.06 for the work it had accomplished from July 28, 1980 until September 7, 1980. The Plaza, however, failed to pay the said amount. According to petitioners, Article 123 of the General Conditions of the Construction Contract gives The Plaza seven days from notice within which to pay the Progress Billing; otherwise, Rhogen may terminate the contract. Petitioners also invoke Article

1191 of the Civil Code, which states that 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.

We deny the petition.

Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other. Respondent The Plaza predicated its action on Article 1191[34] of the Civil Code, which provides for the remedy of "rescission" or more properly resolution, a principal action based on breach of faith by the other party who violates the reciprocity between them. The breach contemplated in the provision is the obligor's failure to comply with an existing obligation. Thus, the power to rescind is given only to the injured party. The injured party is the party who has faithfully fulfilled his obligation or is ready and willing to perform his obligation.[35]

The construction contract between Rhogen and The Plaza provides for reciprocal obligations whereby the latter's obligation to pay the contract price or progress billing is conditioned on the former's performance of its undertaking to complete the works within the stipulated period and in accordance with approved plans and other specifications by the owner. Pursuant to its contractual obligation, The Plaza furnished materials and paid the agreed down payment. It also exercised the option of furnishing and delivering construction materials at the jobsite pursuant to Article III of the Construction Contract. However, just two months after commencement of the project, construction works were ordered stopped by the local building official and the building permit subsequently revoked on account of several violations of the National Building Code and other regulations of the municipal authorities.

Petitioners reiterate their position that the stoppage order was unlawful, citing the fact that when the new contractor (ACK Construction, Inc.) took over the project, the local government of Makati allowed the construction of the building using the old building permit; moreover, the basement depth of only two meters was retained, with no further excavation made. They cite the testimony of the late Ramon Gaite before the trial court that at the time, he had incurred the ire of then Mayor of Makati because his (Gaite) brother was the Mayor's political opponent; hence, they sought to file whatever charge they could against him in order to call the attention of his brother. This "political harassment" defense was raised by petitioners in their Amended Answer. Gaite's testimony was intended to explain the circumstances leading to his decision to terminate the construction contract and not to question the revocation of the building permit. As the available remedy was already foreclosed, it was thus error for the CA to suggest that Rhogen should have appealed the stoppage and revocations orders issued by the municipal authorities to the DPWH and then to the OP.[36]

Article 123 of the Articles of General Conditions states the grounds for the termination of the work or contract by the Contractor:

123. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If work should be stopped under order of any court, or other public authority, for period of three (3) months through no act or fault of Contractor or of anyone employed by him, or if Owner's Representative should fail to issue any certificate of payment within seven (7) days after its maturity and presentation of any sum certified by Owner's Representative or awarded arbitrator, then contractor, may, stop work or terminate Contract, recover from Owner payment for work executed, loss sustained upon any plant or materials, reasonable profit, damages.[37] (Emphasis supplied.)

Petitioners may not justify Rhogen's termination of the contract upon grounds of non-payment of progress billing and uncooperative attitude of respondent The Plaza and its employees in rectifying the violations which were the

basis for issuance of the stoppage order. Having breached the contractual obligation it had expressly assumed, i.e., to comply with all laws, rules and regulations of the local authorities, Rhogen was already at fault. Respondent The Plaza, on the other hand, was justified in withholding payment on Rhogen's first progress billing, on account of the stoppage order and additionally due to disappearance of owner-furnished materials at the jobsite. In failing to have the stoppage and revocation orders lifted or recalled, Rhogen should take full responsibility in accordance with its contractual undertaking, thus:

In the performance of the works, services, and obligations subject of this Contract, the CONTRACTOR binds itself to observe all pertinent and applicable laws, rules and regulations promulgated by duly constituted authorities and to be personally, fully and solely liable for any and all violations of the same.[38] (Emphasis supplied.)

Significantly, Rhogen did not mention in its communications to Reyes that Gaité was merely a victim of abuse by a local official and this was the primary reason for the problems besetting the project. On the contrary, the site appraisal inspection conducted on February 12 and 13, 1981 in the presence of representatives from The Plaza, Rhogen, FGU and Municipal Engineer Victor Gregory, disclosed that in addition to the violations committed by Rhogen which resulted in the issuance of the stoppage order, Rhogen built the structure not in accordance with government approved plans and/or without securing the approval of the Municipal Engineer before making the changes thereon.[39]

Such non-observance of laws and regulations of the local authorities affecting the construction project constitutes a substantial violation of the Construction Contract which entitles The Plaza to terminate the same, without obligation to make further payment to Rhogen until the work is finished or subject to refund of payment exceeding the expenses of completing the works. This is evident from a reading of Article 122 which states:

122. OWNER'S RIGHT TO TERMINATE CONTRACT

- If Contractor should be adjudged bankrupt, or if he should make general assignment for benefit of his creditors, or if receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Sub-Contractors or for materials of labor, or persistently disregard laws, ordinances, or instructions of Owner's Representative or otherwise be guilty of substantial violation of any provision of [the] Contract, then Owner, upon certification by Owner's Representative that sufficient cause exists to justify such action, may, without prejudice to any right or remedy, after giving Contractor seven days written notice, terminate contract with Contractor, take possession of premises, materials, tools, appliances, thereon, finish work by whatever method he may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until work is finished.

- If unpaid balance of Contract sum shall exceed expense of finishing work including compensation for additional managerial and administrative services, such excess, paid to Contractor. Refund the difference to Owner if such expense shall exceed unpaid balance.[40] (Emphasis supplied.)

Upon the facts duly established, the CA therefore did not err in holding that Rhogen committed a serious breach of its contract with The Plaza, which justified the latter in terminating the contract. Petitioners are thus liable for damages for having breached their contract with respondent The Plaza. Article 1170 of the Civil Code provides that those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages.

Petitioners assail the order for the return of down payment, asserting that the principle of quantum meruit demands that Rhogen as contractor be paid for the work already accomplished.

We disagree.

Under the principle of quantum meruit, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment. Quantum meruit means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor.[41]

Rhogen failed to finish even a substantial portion of the works due to the stoppage order issued just two months from the start of construction. Despite the down payment received from The Plaza, Rhogen, upon evaluation of the Project Manager, was able to complete a meager percentage much lower than that claimed by it under the first progress billing between July and September 1980. Moreover, after it relinquished the project in January 1981, the site inspection appraisal jointly conducted by the Project Manager, Building Inspector Engr. Gregory and representatives from FGU and Rhogen, Rhogen was found to have executed the works not in accordance with the approved plans or failed to seek prior approval of the Municipal Engineer. Article 1167 of the Civil Code is explicit on this point that if a person obliged to do something fails to do it, the same shall be executed at his cost.

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

In addition, Article 122 of the Articles of General Conditions provides that the contractor shall not be entitled to receive further payment "until the work is finished." As the works completed by Rhogen were not in accordance with approved plans, it should have been executed at its cost had it not relinquished the project in January 1981. The CA thus did not err in sustaining the trial court's order for the return of the down payment given by The Plaza to Rhogen.

As to temperate damages, Article 2224 of the Civil Code provides that 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. The rationale behind temperate damages is precisely that from the nature of the case, definite proof of pecuniary loss cannot be offered. When the court is convinced that there has been such loss, the judge is empowered to calculate moderate damages, rather than let the complainant suffer without redress from the defendant's wrongful act.[42] Petitioners' contention that such award is improper because The Plaza could have presented receipts to support the claim for actual damages, must fail considering that Rhogen never denied the delivery of the owner-furnished materials which were under its custody at the jobsite during the work stoppage and before it terminated the contract. Since Rhogen failed to account either for those items which it had caused to be withdrawn from the premises, or those considered damaged or lost due spoilage, or disappeared for whatever reason - there was no way of determining the exact quantity and cost of those materials. Hence, The Plaza was correctly allowed to recover temperate damages.

Upon the foregoing, we find petitioners' claim for actual, moral and exemplary damages and attorney's fees lacking in legal basis and undeserving of further discussion.

WHEREFORE, the petition is DENIED. The Decision dated June 27, 2006 and the Resolution dated April 20, 2007 of the Court of Appeals in CA-G.R. CV No. 58790 are AFFIRMED.

With costs against petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Nachura,[*] Brion, and Sereno, JJ., concur.

[*] Designated additional member per Special Order No. 937 dated January 24, 2011.

[1] Rollo, pp. 88-102. Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Josefina Guevara-Salonga and Normandie B. Pizarro, concurring.

[2] Id. at 85-86.

[3] Id. at 440-444. Penned by Judge Salvador S. Abad Santos.

[4] Records, pp. 202-210.

[5] Rollo, p. 139.

[6] Id. at 140.

[7] Id. at 141.

[8] Records, Exhibits "DD" to "HH".

[9] Rollo, pp. 368-370.

[10] Id. at 388.

[11] Id. at 389-390.

[12] Id. at 391-392.

[13] Id. at 393-396.

[14] Id. at 146-147.

[15] Id. at 149-150.

[16] Id. at 151-154.

[17] Id. at 156-158, 161-162.

[18] Id. at 159-160.

[19] Id. at 103-120.

[20] Id. at 299-319.

[21] Id. at 276-282.

[22] Id. at 442.

[23] Id. at 442-443.

[24] Id. at 444.

[25] Docketed as CA-G.R. CV No. 58790.

[26] CA rollo, p. 84.

[27] Rollo, pp. 450-451.

[28] Id. at 544-545.

[29] Id. at 101-102.

[30] Art. II, paragraph (4), General Construction Contract, records, pp. 733-734.

[31] Rollo, pp. 96-98.

[32] Id. at 98-101.

[33] Id. at 44.

[34] 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.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[35] Heirs of Antonio F. Bernabe v. Court of Appeals, G.R. No. 154402, July 21, 2008, 559 SCRA 53, 66, citing Ong v. Court of Appeals, 369 Phil. 243, 252 (1999), Sps. Velarde v. Court of Appeals, 413 Phil. 360, 373 (2001) and Almira v. Court of Appeals, 447 Phil. 467, 482 (2003).

[36] Rollo, pp. 55-58.

[37] Records, Exhibit "AAA".

[38] Art. IX, paragraph (2), General Construction Contract, records, p. 737.

[39] Records, Exhibits "T," "RR" and "SS".

[40] Id., Exhibit "AAA".

[41] H. L. Carlos Construction, Inc. v. Marina Properties Corporation, G.R. No. 147614, January 29, 2004, 421 SCRA 428, 439, citing Melchor v. Commission on Audit, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 713; Republic v. Court of Appeals, 359 Phil. 530, 640 (1998); and Eslao v. Commission on Audit, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 738-739.

[42] Government Service Insurance System v. Labung-Deang, G.R. No. 135644, September 17, 2001, 365 SCRA 341, 350.

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