

OWEN PROSPER A. MACKAY, PETITIONER, VS. SPOUSES DANA CASWELL AND CERELINA CASWELL, RESPONDENTS.

G.R. No. 183872. November 17, 2014

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This Petition for Review on Certiorari[1] assails the April 30, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 97146 which granted the Petition for Review[3] filed therewith, reversed and set aside the October 31, 2006 Decision[4] of the Regional Trial Court (RTC), Branch 70, Iba, Zambales in Civil Case No. RTC-2426-I, and reinstated the June 29, 2006 Decision[5] of the Municipal Trial Court (MTC), San Narciso, Zambales in Civil Case No. 538. The MTC Decision dismissed petitioner Owen Prosper A. Mackay's (Owen) claims against respondents spouses Dana Caswell and Cerelina Caswell (the Caswells) and ordered him to pay the latter P46,205.00 representing the expenses they incurred for the rectification of the defective work he did for them. The Petition also assails the July 24, 2008 Resolution[6] of the CA denying Owen's Motion for Reconsideration[7] thereto.

Factual Antecedents

In their search for someone who could provide electrical installation service in their newly built home in San Narciso, Zambales, the Caswells asked the sole distributor of electricity in the area, Zambales II Electric Cooperative (Zameco II), thru its sub-office manager, Engr. Victor Pulangco (Engr. Pulangco), how much its service for the installation would be. Engr. Pulangco quoted an estimate of P456,000.00.

However, the Caswells hired Owen who offered to do the job for only P250,000.00. With the help of Cesar Badua (Badua) and Albert Galeng, Owen claimed that the installation was completed and ready for power service connection as of August 1998. By then, the Caswells had paid him P227,000.00.

At Cerelina Caswell's (Cerelina) request, Zameco II inspected the installation work and tested the distribution transformers.[8] The inspection showed the following defects as specified in Engr. Pulangco's letter dated August 11, 1998:[9]

- For A-5 Construction
- No guying
- Improper use of deadend materials for neutral line
- Lack of armor tape
- Lack of clamp loop deadend materials
- No locknuts on all bolts.
- For A-2 construction

- Improper use of materials for pole top pin
- Lack of pole top pin
- No guying
- Improper use of materials for neutral line
- Wrong phasing of pole top pin
- Lack of armor rod (single & double support)
- For Grounding:
 - [Substandard] grounding wire
 - Wrong installation of pole grounding wire
 - Lack of grounding rods
- Tapping Point:
 - Lack of fuse cut-out with lightning arrester combination at the tapping point.
- For Transformer Installation:
 - Wrong distance of the transformer from the neutral line.[10]

Because of the deficiencies and other incomplete requirements, Zameco II refused to provide energization to the Caswells home. The Caswells thus looked for Owen but he could not be found. Hence, they were constrained to ask Zameco II to correct all the problems it found. After the single phase distribution system was completed in accordance with the standard specifications of Zameco II in January 1999,[11] only then did the Caswells finally have electricity.

On September 4, 1998, the Caswells executed a Joint Affidavit[12] to charge Owen and his group of swindling them of P227,000.00. The Caswells alleged that Owen and his group misrepresented themselves to be people from the National Power Corporation (NAPOCOR). By reason of the misrepresentation, the Caswells suffered damage as the electrical installation made were replete with deficiencies such that no electricity can properly flow to their house. This led to the filing of an Estafa case under Article 315 paragraph 2(a) of the Revised Penal Code[13] against Owen, docketed as Criminal Case No. RTC-2533-I.[14] However, on ground of reasonable doubt, Owen was acquitted on May 15, 2003.[15]

Still unpaid for the remaining P23,000.00 for his installation work, Owen in turn filed a Complaint[16] for Collection of Sum of Money with Damages against the Caswells before the MTC, docketed as Civil Case No. 538.

Owen alleged that out of the P250,000.00 contract price for the installation of an electrical line, the Caswells have only paid him P227,000.00. He thus wanted to recover from the Caswells the remaining balance of P23,000.00, as well as damages on account of sleepless nights, serious anxiety and social humiliation he suffered due to the Caswells' malicious filing of estafa case against him.

The Caswells, on the other hand, maintained that Owen is not entitled to any money. They pointed out that Owen failed to finish the job and walked out of the contract. Hence, they are the ones entitled to reimbursement of expenses incurred to correct Owen's defective work. As proof of their expenses, the Caswells submitted as evidence a) Engr. Pulangco's handwritten receipt of P15,400.00 as partial payment for the materials needed to correct the deficiencies in Owen's installation work;[17] b) an undated Sales Invoice No. 2029 issued by Peter A.

Eduria Enterprises itemizing nine electrical materials Dana Caswell (Dana) bought, their quantities, and the total price of P53,805.00.00[18] and; c) a list of all the materials obtained for Zameco's corrective work with the corresponding unit prices, labor cost and the total price charged.[19]

Owen and Badua testified that they rectified all the discrepancies that Zameco II found. After the corrections, Owen informed Engr. Pulangco that the Caswell home was ready for electrical connection. He did not know what Engr. Pulangco did next. Owen likewise asserted that he even reminded Cerelina to submit to Zameco II all the documentary requirements for power connection.[20]

Ruling of the Municipal Trial Court

Finding the contract entered into by the parties to be a contract for a piece of work, the MTC relied upon Article 1715 of the Civil Code, viz:

The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost.

The MTC held that since it was proven that the work of Owen suffers from deficiencies, the Caswells, pursuant to the above-quoted provision, have the right to require him to remove the defect or execute another work. It did not give credence to Owen's claim that he corrected the deficiencies for lack of evidence to substantiate the same. The MTC likewise held that the Caswells had no chance to demand from Owen the removal of the defect or the execution of another work as he was then nowhere to be found. On the other hand, the Caswells' evidence clearly showed that they caused the Zameco II people to rectify the defects for which they spent P69,205.00.

By virtue of Article 1167[21] of the Civil Code, the MTC ruled that the said P69,205.00 should be borne by Owen. From the P69,205.00, the said court then deducted the P23,000.00 Owen was seeking to collect from the Caswells. The dispositive portion of the MTC's June 29, 2006 Decision[22] reads:

WHEREFORE, viewed from all the foregoing, judgment is hereby rendered in favor of the [Caswells] and against [Owen] as follows:

- Dismissing [Owen's] claims for lack of merit, and
- Ordering [Owen] to pay the [Caswells] the amount of P46,205.00 representing the rectification cost.

SO ORDERED.[23]

Owen appealed to the RTC.

Ruling of the Regional Trial Court

In a Decision[24] dated October 31, 2006, the RTC reversed and set aside the MTC Decision. The RTC opined that the Caswells should have first filed a judicial action for specific performance where there could have been an exhaustive determination of the quality and acceptability of Owen's installation work. By immediately resorting to the service of Zameco II, the Caswells never afforded Owen the opportunity to correct the deficiencies in accordance with Article 1715 of the Civil Code. It noted Cerelina's testimony during the trial before the MTC where she was asked if she confronted Owen about the unfinished work. She answered that Owen did not come to her so she went to Zameco II when she could no longer wait for electricity.[25]

Furthermore, the RTC was convinced that Owen kept up his end of the bargain as shown by Engr. Pulangco's

testimony on cross-examination that even without replacing the fuse cut-out connection, electricity will still flow smoothly and will function in the Caswell home.[26]

Opining that Owen must be given what is actually due him, the RTC disposed of the case as follows:

WHEREFORE, the decision of the Municipal Trial Court of San Narciso is reversed and set aside and judgment is hereby rendered as follows:

1. Ordering the defendants to pay unto the plaintiff the amount of Twenty Three Thousand Pesos (P23,000.00) representing the balance of the price or consideration for his services in the installation of electrical lines in the defendants' home, with legal interest at the rate of six (6%) [per annum] from the time of the filing of the complaint until it is fully paid;

2. Ordering the defendants to pay to the plaintiff moral damages in the amount of TWENTY FIVE THOUSAND PESOS (P25,000.00) for their willful non-compliance with their contractual obligation to the plaintiff, and exemplary damages in the amount of TWENTY THOUSAND PESOS (P20,000.00) by way of example or correction for the public good;

3. Ordering the defendants[,] spouses DANA and CERELINA CASWELL[,] to pay attorney's fees to the plaintiff in the amount of THIRTY THOUSAND PESOS (P30,000.00), the latter having been haled to court to enforce his contractual rights;

[4.] Ordering the defendants to pay the costs of this suit.

SO ORDERED.[27]

Refusing to accept the RTC judgment and heavily relying on the MTC Decision, the Caswells elevated the case to the CA by way of a Petition for Review.[28]

Ruling of the Court of Appeals

In its Decision[29] of April 30, 2008, the CA reinstated the MTC Decision. It reasoned:

The RTC opined that [the Caswells] should have given the contractor the chance to rectify the flaw in his work. To Our mind, however, the effort to communicate with [Owen] effectively served as [the Caswells'] request for the former to rectify the flaws in the contracted work. In fact, [the Caswells'] act of demanding that [Owen] secure the permit and to subject the transformer to testing can already be construed as a substantial compliance with Article 1715. It must be emphasized that it was [Owen's] refusal to secure the necessary permits and to comply with the requirements of Zameco [II] as well as his refusal to communicate with [the Caswells] that impelled the latter to file a case for estafa against him. Had he been willing to make good his obligation, then it would not have been necessary for [the Caswells] to file the said criminal case. Instead of complying with his end of the bargain, [Owen] opted to file a case for collection of sum of money with damages. Thus, any effort to require [Owen] either to rectify his flawed work or to remove the same would have been futile since [Owen's] act of demanding payment through the said complaint showed his belief that his work in the house was done.

Clearly, the RTC erred in stating that [the Caswells'] failure to file an action for specific performance led to the presumption that [Owen] performed his obligations in accordance with their agreement. Said presumption could not have prevailed in view of the nature of the contracted work, the ultimate goal of which was to have electricity flowing into [the Caswell] house. Thus, the thing speaks for itself. *Res ipsa loquitur*. This, the RTC failed to consider. Therefore, this Court finds the decision of the MTC more in accord with law and jurisprudence.[30]

His Motion for Reconsideration[31] having been denied by the CA,[32] Owen argues in this Petition for Review

on Certiorari that: 1) he has done the installation job and that it was not his duty but that of the Caswells to secure the necessary permits from Zameco II; 2) his acquittal in the criminal case should have been considered; 3) there is no basis for the award of the rectification costs as the sales receipt for the alleged materials used is inadmissible and; 4) the Caswells never demanded that he remove the defects or execute another work in accordance with Article 1715 of the Civil Code.

Our Ruling

We deny the Petition.

Owen failed to execute his work in such a manner that it has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use.

Owen insists that as far as he is concerned, he had done what was required of him. i.e., the installation of electrical materials in the Caswell home. Anent the permits, he avers that securing the same is not part of his work but is the responsibility of the Caswells.

Considering all the undisputed facts, the Court, however, finds that the Caswells were not only after securing permits. They suffered other major problems as shown by their narration in their Joint Affidavit, viz:

5. That we think they were done in three days, that same week. The contact man, Owen Mackay, had told us that he would take care of all permits. He asked us to get a paper done for the permission on one piece of land. No permits were shown to us. No ZAMECO authorization [was] ever shown to us. He went to ZAMECO, to tell them it was ready [for connection]. ZAMECO did not connect because: (1) no permits [were] requested or [were] given by ZAMECO; (2) transformer allegedly brand new [and] had to run through testing laboratory. Owen[’s] group [neither] did the testing nor caused a testing; (3) complete inspection of installation was [yet] to be done x x x; (4) no installation layout was provided or presented to ZAMECO; (5) nobody [from Owen’s group was] around for 4-5 days to x x x talk about our problems. Owen called, sent word to [us] and we have gone down (3) occasions at night to try to find him. The three did [a] vanishing act. Finally, [they came] to take the transformer for testing. [The] one day testing told us by Pulangco turned into 1 ½ weeks x x x. I had to go pick it up myself at test complex. Brought the transformer home from Castillejos, August [10,] 1998 with the test results. No response from the people who called themselves NAPOCOR. After [chasing after] Owen Mackay x x x and [after] empty promises we were referred to Atty. Pacis, [and] the rest is still unsettled;[33]

These circumstances, together with the deficiencies enumerated in Engr. Pulangco’s August 10, 1998 letter, sufficiently explain the delay in the energization of the Caswell home. Engr. Pulangco’s testimony that electricity will still work without replacing the fuse cut-out connection is not enough to negate the fact that Owen’s overall work is not satisfactory.

Moreover, Owen, in contending that his acquittal in the estafa case should have been a factor for a favorable decision in this civil case, relied on a remark by the RTC that referred to an opinion mentioned in the judgment in the estafa case, i.e., that the delay in supplying power to the Caswell home could possibly be due to the resentment harbored by certain employees of Zameco II as they were not chosen to do the work.[34] A perusal, however, of the judgment in Criminal Case No. RTC-2533-I[35] would show that this statement is only a mere obiter. The RTC cannot hinge on this opinion as this is mere conjecture. Notably, the Zameco II people were not even parties or witnesses in the estafa case.

Suffice it to say that Owen’s job was not only to finish the electrical installation work. It was likewise his obligation to do quality work and to provide quality materials to ensure that electricity would flow in the Caswell

home. For the Caswells to avail of this utility, it is definitely expected that the electrical materials used should meet the technical requirements for a service entrance as imposed by the only distributor of the electricity in the area, Zameco II, so that the latter can supply residential electric service efficiently and safely to the Caswells. However, as shown above, Owen failed to execute his work in such a manner that it has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use.

The CA correctly ruled that Caswells' effort to communicate with Owen effectively served as a demand to rectify the latter's work.

Under Article 1715 of the Civil Code, if the work of a contractor has defects which destroy or lessen its value or fitness for its ordinary or stipulated use, he may be required to remove the defect or execute another work. If he fails to do so, he shall be liable for the expenses by the employer for the correction of the work. The demand required of the employer under the subject provision need not be in a particular form. In the case at bar, we agree with the CA that Owen was given the opportunity to rectify his work. Subsequent to Zameco II's disapproval to supply the Caswells electricity for several reasons, the Court gives credence to the latter's claim that they looked for Owen to demand a rectification of the work, but Owen and his group were nowhere to be found. Had Owen really been readily available to the Caswells to correct any deficiency in the work, the latter would not have entertained the thought that they were deceived and would not have been constrained to undergo the rigors of filing a criminal complaint and testifying therein. Without doubt, the Caswells exercised due diligence when they demanded from Owen the proper rectification of his work. As correctly held by the CA, the Caswells substantially complied with the requirement of Article 1715 of the Civil Code, viz:

To Our mind, however, the effort to communicate with [Owen] effectively served as [the Caswells'] request for the former to rectify the flaws in the contracted work. In fact, [the Caswells'] act of demanding that [Owen] secure the permit and to subject the transformer to testing can already be construed as a substantial compliance with Article 1715. It must be emphasized that it was [Owen's] refusal to secure the necessary permits and to comply with the requirements of Zameco [II] as well as his refusal to communicate with [the Caswells] that impelled the latter to file a case for estafa against him. Had he been willing to make good his obligation, then it would not have been necessary for [the Caswells] to file the said criminal case. Instead of complying with his end of the bargain, [Owen] opted to file a case for collection of sum of money with damages. Thus, any effort to require [Owen] either to rectify his flawed work or to remove the same would have been futile since [Owen's] act of demanding payment through the said complaint showed his belief that his work in the house was done.[36]

Furthermore, to require the Caswells to file an action for specific performance, as opined by the RTC, not only deprives them of hiring someone else to rectify the work, but also defeats the very purpose of the contracted work, i.e., to immediately have electricity in their home. In this situation, time is of the essence.

For Owen's failure to provide quality work, he is to reimburse the rectification costs the Caswells had shouldered as the latter's actual damages; the unpaid compensation Owen is claiming shall be set-off from the Caswells' monetary claims supported by receipts.

The Court recognizes that in view of the substandard work done, the Caswells necessarily incurred expenses by purchasing materials to finally get a supply of electricity in their home.

One is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly

proved.[37] “To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.”[38] The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable.[39] In the case at bar, we give credence to the documents relied upon by the CA and the MTC in arriving at the rectification cost, i.e., a) Engr. Pulangco’s handwritten receipt of P15,400.00, to which he had testified before the court that he had indeed received such amount and b) the Sales Invoice No. 2029 issued by Peter A. Eduria Enterprises reflecting the total cost of P53,805.00.00.

Notably, Owen assails the admissibility of the Sales Invoice, contending that said document is insufficient to be a basis for computation of damages as the respective unit price for each item enumerated therein are lacking. Furthermore, he attempts to highlight that Peter A. Eduria Enterprises is a non-existing business establishment by submitting the negative certification of a business name issued by the Department of Trade and Industry,[40] the certification of no record issued by Business Permit and License Office of Valenzuela City,[41] and the certification of non-registration of corporation/partnership by the Securities and Exchange Commission.[42]

The failure to indicate the unit price of each item in the sales invoice does not defeat the claim of the Caswells for reimbursement. In most cases in the ordinary course of business, sellers issue handwritten receipts that are perfunctorily filled out without completely stating all the details of the purchase. This ‘flaw’ should not be taken against the Caswells. Besides, if the unit price per item is an issue, a perusal of Dana’s separate list[43] will show the unit prices of the items in the sales invoice.

With regard to the documentary evidence Owen adduced in his attempt to show the alleged non-existence of Peter A. Eduria Enterprises, the negative certifications presented however only highlight the probable liability of the store with the government for non-compliance with business registration. Regardless of whether the latter had registered itself as a business entity with the proper authorities, the documents Owen relies upon fail to overcome the point of the receipt: that a sale of electrical items for installation had transpired between the Caswells and the seller. With the relevant facts established that Zameco II rejected the quality of Owen’s work and that rectifications were made by installing the necessary materials to meet the electric distributor’s specifications, the said invoice cannot be considered as bereft of evidentiary value.

It must be noted en passant that Cerelina herself admitted that the contract price agreed upon was the lump sum of P250,000.00, and that she only paid Owen P227,000.00,[44] while the dispositive portion of the MTC Decision stated that Owen’s claims are dismissed, the lower court implies that the P23,000.00 unpaid compensation he sought to recover from the Caswells shall not be given directly to him, offsetting the said amount from the rectification cost that the Caswells had prayed for. In effect, under the circumstances, we deem this fair and just to measure the actual damages due the Caswells by reducing the cost they shouldered to repair the defects with the unpaid amount of the contract price due Owen.

WHEREFORE, the instant petition is DENIED. The April 30, 2008 Decision and July 24, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 97146, which reinstated the June 29, 2006 Decision of the Municipal Trial Court, San Narciso, Zambales, in Civil Case No. 538, are AFFIRMED in toto. No costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 9-24.

[2] CA rollo, pp. 74-82; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Josefina Guevara-Salonga and Normandie B. Pizarro.

[3] Id. at 2-14.

[4] Id. at 24-30; penned by Judge Clodualdo M. Monta.

[5] Id. at 15-23; penned by Judge Renier P. Concepcion.

[6] Id. at 95-96.

[7] Id. at 85-90.

[8] Rollo, p. 156.

[9] Id. at 76.

[10] Id.

[11] Id. at 152.

[12] Id. at 66-67.

[13] Article 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

4[th]. By arresto mayor in its medium and maximum periods if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

x x x x

[14] Rollo, pp. 68-69.

[15] Id. at 46-61.

[16] CA rollo, pp. 55-57.

[17] Rollo, p. 181.

[18] Id. at 182.

[19] Id. at 183.

[20] Id. at 120-121.

[21] Article 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.

[22] CA rollo, 15-23.

[23] Id. at 23.

[24] Id. at 24-30.

[25] Id. at 27-28.

[26] Id. at 29.

[27] Id. at [unpaginated]-30.

[28] Id. at 2-14.

[29] Id. at 74-82.

[30] Id. at 80-81.

[31] Id. at 85-90.

[32] Id. at 95-96.

[33] Rollo, p. 67.

[34] CA rollo, p. 29. The RTC said, “As opined by the Presiding Judge of Branch 71 of this Court in the case where the plaintiff was acquitted of the crime of estafa, the delay in tapping or connection of power line to the house of the defendants could possibly be due to the resentment harbored by certain employees of ZAMECO in not having been awarded the project of electrical installation in the house of the Caswells at the price offered by them.”

[35] Rollo, pp. 60-61.

[36] CA rollo, p. 80.

[37] CIVIL CODE, Article 2199.

[38] Viron Transportation Company Inc. v. Delos Santos, 399 Phil. 243, 255 (2000).

[39] G.Q. Garments, Inc., v. Miranda, 528 Phil. 341, 358 (2006).

[40] Rollo, p. 94.

[41] Id. at 95. N.B. The invoice indicates that Peter Eduria Enterprises’ address is located at #41 Silangan Park, Marulas, Valenzuela City.

[42] Id. at 96.

[43] Id. at 183.

[44] See MTC Decision, CA rollo, pp. 15-23.

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