

RAMON ARENAS AND ROSEMARIE J. ARENAS, PETITIONERS, VS. THE COURT OF APPEALS AND GUIDO M. CRUZ, RESPONDENTS.

G.R. No. 56524. January 27, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Assailed in this appeal by certiorari with the view to its reversal is the decision of the Court of Appeals in CA-G.R. No. 64692-R[1] affirming with modification the decision of the former Court of First Instance of Manila[2] against the herein petitioners, defendants- appellants therein, as well as its resolution denying their motion for reconsideration.[3]

From the conflicting claims of the parties, the respondent court found the following facts to have been established by the evidence for the appellee therein:

"Sometime in January, 1970 the appellants solicited the services of the appellee to prepare the architectural plans, specifications and bill of materials of their proposed house at No. 2056 Lumbang, Dasmariñas Village, Makati, Metro Manila and to supervise and administer its construction. The parties agreed that the appellee would charge his professional fees in accordance with the National Code of Architects Services and Fees in the Philippines (Exh. J) which provides as follows:

For regular services which include supervision, preparation of plans and specifications -- 10% of the project costs.

For administration -- an additional 10% of the project costs.

"For this job, the appellee prepared the following:

1. The architectural plan (Exhs. A, A-1).
2. Secured the approval of the plan by the municipal authorities of Makati and Dasmariñas Village Association (Exhs. B, B-1, B-2).
3. Prepared another plan to accommodate the alterations made by the appellant Mrs. Arenas.
4. Executed the final plans and bill of materials which defendants approved (Exhs. C, C-1 to C-5; F).
5. Approved the pre-cast plan and air-conditioning system plan (Exhs. E, E-1 to E-2).

"The construction of the house of the appellants began in March, 1980 (sic) under the administration and supervision of the appellee who made purchases of some of the construction materials which the appellants paid. (Exhs. G, G-1 to G-76).

"On the request of the appellant Mrs. Arenas, the appellee looked for an interior decorator to do the interior design and decoration of the house. So appellee brought to the house of appellants a certain Lorenzo L. Calma who on June 30, 1970 submitted to appellant Mrs. Arenas his interior decoration plan which the latter accepted.

"The construction of the house was finished about June, 1971. Appellee secured the necessary occupancy permit from the municipal government of Makati (Exhs. H, H-1) and had pictures taken of the new house. (Exhs. I, I-1 to I-4).

The appellants paid the appellee P10,000.00 for his professional services. The appellee demanded P100,000.00 as his professional fees under the National Code of Architects Services (Exh. J) because the building cost of the house was over P500,000.00. The appellants refused to pay the balance of P90,000.00 to the appellee despite the demand letter of the latter. (Exhs. K, K-1 to K-2)." [4]

The respondent court duly took into account the contrary position taken by the therein appellants –

“x x x that it was the appellee who offered his services to them at a fixed compensation of not more than P30,000.00; that these services included the preparation of the architectural plan, specifications, bill of materials and the administration and supervision in connection with the construction of appellants’ house x x x ; that their agreement was drafted on March 24, 1970 (Exh. 1, 1-A; 2, 2-A, 2-B); that the house was to be completed within 180 working days; that it was further agreed between the parties that every detail of the architectural plan shall be approved by and to the taste of the appellants; that in March, 1970 the appellee submitted the architectural plan but without the specifications and bill of materials; that said plan did not conform to certain details which were to the taste and liking of the appellants so that the latter had to hire the services of other architects to construct their house and incur additional expenses; that because of the inadequate and incomplete architectural services rendered by the appellee the construction of the house of the appellants was unduly delayed; that for the minimal services rendered by the appellee as an architect and as supervisor in the construction of their house, the appellants have paid him P10,000.00 and other payments in the amount of P48,000.00 which are more than enough for his services (Exhs. 3, 4, 5 and 6).”[5]

Of relevance to the evaluation of these conflicting versions of the parties is their stipulation of facts, embodied in the pre-trial order of the lower court, providing, among others, that "there is a schedule of fees approved by the Philippine Institute of Architects which governs the claim for professional fees of plaintiff.”[6]

The court a quo ordered herein petitioners, jointly and severally, to pay private respondent the sum of P90,000.00, representing the balance of his professional fees, with interest at the rate of 12% per annum from July 1, 1971 until fully paid; P20,000.00 as moral damages; P10,000.00 as attorney's fees; and the costs of suit. On appeal, the respondent court affirmed said decision after eliminating the award of P20,000.00 as moral damages.

1. Contrary to the representations of petitioners, the respondent court found that it was the private respondent who prepared the structural plans, specifications and bill of materials of the house involved and supervised and administered its construction until it was finished. In arriving at such factual findings, the respondent court was sufficiently informed and convinced by the records that private respondent did in fact prepare several sets of plans at the instance of and to comply with the changes desired generally by petitioner Rosemarie Arenas. Thus, for instance, a first plan was prepared (Exhibit A), then another one incorporating some desired alterations (Exhibit A-1), followed by another set of plans for approval by the Dasmariñas Village Association (Exhibits B, B--1 to B-2). Eventually, a different set of plans was again prepared and which were the ones actually used at the job site (Exhibits C, C-1 to C-5) while still another set had to be prepared, with some more changes, for approval by the Engineer's Office of Makati. It was further established that, aside from said plans and specifications, he also prepared the bill of materials.[7]

The foregoing documents completed his undertaking for the rendition of architectural services. As noted by respondent court, the testimony of private petitioner on this point was in fact, corroborated by petitioner's own witness, Roberto Cericos,[8] and by petitioner Rosemarie Arenas herself when she admitted, contrary to her earlier pretension, that said Roberto Cericos did not in fact prepare either the basic or architectural plans.[9]

Significantly, petitioners never presented in evidence any other plans, specifications or bill of materials prepared by another architect. This renders well-nigh conclusive the claim of private respondent that the plans and specifications he prepared were the ones used and followed in the construction of petitioners' residence. As aptly observed by the court *a quo*, the best evidence to refute the plaintiff's contention on this issue would have been the plans and specifications prepared by another architect. There was, however, no presentation of such plans and specifications, nor even a showing why these had not been or could not be presented despite the fact that in the answer of the defendants they alleged that they had hired another architect to prepare the plans and specifications of their residential house.[10] Evidentially, the non-production of such vital proof under these circumstances necessarily inveighs against the stance of petitioners.

2. Private respondent claims as his lawful fees, in accordance with the National Code of Architects Services and Fees in the Philippines, a compensation equivalent to ten percent (10%) of the project costs, for regular services which include supervision, preparation of plans and specifications; and an additional ten percent (10%) of the project costs for special services known as project administration.[11]

As hereinbefore stated, respondent court's factual findings are to the effect that private respondent did render the administration services until the completion of the house. Thus, it noted that from July, 1970 to December, 1971, it was the private respondent who made the purchases of the construction materials for the house, which petitioners paid for, and it was also private respondent who obtained the occupancy permit after the completion of the construction.[12]

For all these services, private respondent has been paid only the sum of P10,000.00. The P48,000.00 on which petitioners harp was the amount actually paid for the labor contracted by the private respondent,[13] and not for his architectural or administration fees.

3. In the computation of said fees, it is the theory of petitioners that since the aforesaid plans (Exhibits 1, 1-A, 2, 2-A and 2-B) refer to a total estimated cost of P290,550.00 for the then projected construction, that amount should be the basis in arriving at private respondent's fees on the percentage schedule heretofore stated. This ignores the fact that the original plans on which that cost had been estimated had been repeatedly amended, inevitably with resultant enlargement and alterations in the project and concomitant appreciation in the cost.

Ironically, it was petitioner Rosemarie Arenas' admission which infused credence in private respondent's claim that the cost of the house, as finally completed with the aforesaid expansions and alterations, was at least P500,000.00. It will be recalled that said petitioner, to give substance to her testimony on the supposed failings of private respondent, claimed that she had to engage the services of others who, as it turned out, were Roberto Cericos and Lorenzo Calma and both of whom testified that their fees were each fixed at 10% of the estimated cost.[14]

Witness the revelatory findings of the respondent court on this point:

"By her own admission, appellant Mrs. Arenas said:

1. She paid Roberto Cerico (sic) P50,000.00 for his fee in administering and supervising the construction of her house.
2. She paid Lorenzo Calma P50,000.00 for his fee in helping her in the construction of this house (Tsn, pp. 8, 32-34, Jan. 14, 1977).

Significantly, at the time of the construction of this house, Roberto Cerico (sic) was not a licensed architect yet and he did not execute any plan, specifications or bill of materials for this project. Neither did Lorenzo Calma.

x x x

xxx xxx xxx

"If the appellant Mrs. Arenas paid each (sic) Cericos and Calma the sum of P50,000.00, the cost of this house must be as stated by the appellee - P500,000.00. It is beyond dispute that the appellee has rendered more professional services not only as an architect but also in the administration and supervision of the construction of the house of the appellants more than Cericos and Calma. There is no reason why the appellants should decline to pay him on the same level as Cericos who is (sic) not even a licensed architect then, and Calma, the interior decorator. Evidently, the balance of the appellants on the professional fees of the appellee is still P90,000.00 on the basis of Exhibit J. x x x "[15]

Petitioners cannot seek comfort in their dilemma from Article 1724 of the Civil Code which they invoke and which provides:

"Art. 1724. The contractor, who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid has been determined in writing by both parties."

Evidently, this provision cannot apply to the case at bar since it refers to contractors who undertake to build a structure or any other work and contemplates disputes arising from increased costs of labor and materials.[16] In the instant case, private respondent is claiming payment for his professional fees as an architect, a point admitted by petitioners even in the statement of the facts in their basic petition.[17]

4. Respondent court modified the judgment of the trial court by nullifying the award of P20,000.00 as moral damages, on its finding that petitioners did not act in bad faith in resisting the claim of the private respondent. From parity of reasoning and as a matter of logical consistency, neither should the private respondent be allowed to recover attorney's fees as an item of damages. Paragraphs (2) and (5) of Article 2208 of the Civil Code, relied on by both lower courts, obviously do not apply under the facts of this case. Furthermore, as the Court has held in a long line of decisions, it is not a sound policy to place a penalty on the right to litigate, nor should counsel's fees be awarded every time a party wins a suit.[18] The award of P10,000.00 as attorney's fees to private petitioner is accordingly eliminated.

WHEREFORE, as thus modified, the decision of the respondent court is AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Guido M. Cruz, Plaintiff-Appellee, vs. Ramon Arenas, et al., Defendants-Appellants, penned by Justice Pedro D. Cenzon, with the concurrence of Justices Hugo E. Gutierrez, Jr. and Onofre A. Villaluz. Rollo, 26-48.

[2] Branch XXIV, Civil Case No. 99547, presided over by Judge Augusto M. Amores. Rollo, 88-108.

[3] Rollo, 49-50.

[4] Decision, 7-9; Rollo, 32-34.

[5] Ibid., 9-10; *ibid.*, 34-35.

[6] Record on Appeal, 42-43; Rollo, 122.

- [7] Rollo, 36-42.
- [8] TSN, November 18, 1976, 12-13; Rollo, 42-43.
- [9] TSN, January 14, 1977, 33-34; Rollo, 43.
- [10] Rollo, 103-104.
- [11] Exh. J, Original Exhibits, Vol. II, 145-152.
- [12] Rollo, 42.
- [13] Exhs. 3, 4, 5 and 6, Original Exhibits, Vol. II, 190-193. Rollo, 46.
- [14] Rollo, 46-48.
- [15] Rollo, 46-48.
- [16] Weldon Construction Corporation vs. Court of Appeals, et al., 154 SCRA 618, 631-632 (1987).
- [17] Rollo, 11.
- [18] Phoenix Publishing House, Inc. vs. Jose T. Ramos, et al., G.R. No. L-32339, Mar. 29, 1988.
- [18] Phoenix Publishing House, Inc. vs. Jose T. Ramos, et al., G.R. No. L-32339, Mar. 29, 1988.

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