

ERNESTO DEIPARINE, JR., PETITIONER, VS. THE HON. COURT OF APPEALS, CESARIO CARUNGAY AND ENGR. NICANOR TRINIDAD, RESPONDENTS.*G.R. No. 96643. April 23, 1993*

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-96643/>**CRUZ, J.:**

This case involves not only the factual issue of breach of contract and the legal questions of jurisdiction and rescission. The basic inquiry is whether the building subject of this litigation is safe enough for its future occupants. The petitioner says it is, but the private respondents demur. They have been sustained by the trial court and the appellate court. The petitioner says they have all erred.

The spouses Cesario and Teresita Carungay entered into an agreement with Ernesto Deiparine, Jr. on August 13, 1982, for the construction of a three-story dormitory in Cebu City.[1] The Carungays agreed to pay P970,000.00, inclusive of contractor's fee, and Deiparine bound himself to erect the building "in strict accordance to (sic) plans and specifications." Nicanor Trinidad, Jr., a civil engineer, was designated as the representative of the Carungay spouses, with powers of inspection and coordination with the contractor.

Deiparine started the construction on September 1, 1982.[2] On November 6, 1982, Trinidad sent him a document entitled General Conditions and Specifications which inter alia prescribed 3,000 psi (pounds per square inch) as the minimum acceptable compressive strength of the building.[3]

In the course of the construction, Trinidad reported Cesario Carungay that Deiparine had been deviating from the plans and specifications, thus impairing the strength and safety of the building. On September 25, 1982, Carungay ordered Deiparine to first secure approval from him before pouring cement.[4] This order was not heeded, prompting Carungay to send Deiparine another memorandum complaining that the "construction works are faulty and done haphazardly ... mainly due to lax supervision coupled with ... inexperienced and unqualified staff." [5] This memorandum was also ignored.

After several conferences, the parties agreed to conduct cylinder tests to ascertain if the structure thus far built complied with safety standards. Carungay suggested core testing. Deiparine was reluctant at first but in the end agreed. He even promised that if the tests should show total failure, or if the failure should exceed 10%, he would shoulder all expenses; otherwise, the tests should be for the account of Carungay.

The core testing was conducted by Geo-Testing International, a Manila-based firm, on twenty-four core samples. On the basis of 3,000 psi, all the samples failed; on the basis of 2,500 psi, only three samples passed; and on the basis of 2,000 psi, nineteen samples failed.[6] This meant that the building was structurally defective.

In view of this finding, the spouses Carungay filed a complaint with the Regional Trial Court of Cebu for the rescission of the construction contract and for damages. Deiparine moved to dismiss, alleging that the court had no jurisdiction over construction contracts, which were now cognizable by the Philippine Construction

Development Board pursuant to Presidential Decree No. 1746. The motion was denied in an order dated April 12, 1984.

After trial on the merits, Judge Juanito A. Bernad rendered judgment: a) declaring the construction agreement rescinded; b) condemning Deiparine to have forfeited his expenses in the construction in the sum of P244,253.70; c) ordering Deiparine to reimburse to the spouses Carungay the sum of P15,104.33 for the core testing; d) ordering Deiparine to demolish and remove all the existing structures and restore the premises to their former condition before the construction began, being allowed at the same time to take back with him all the construction materials belonging to him; and e) ordering Deiparine to pay the Carungay spouses attorney's fees in the amount of P10,000.00 as well as the costs of the suit.[7]

On appeal, the decision was affirmed in toto by the respondent court on August 14, 1990.[8] His motion for reconsideration having been denied, petitioner Ernesto Deiparine, Jr. has come to this Court to question once more the jurisdiction of the regular courts over the case and the power of the trial court to grant rescission. He will lose again.

The challenge to the jurisdiction of the trial court is untenable.

P.D. 1746 created the Construction Industry Authority of the Philippines (CIAP) as the umbrella organization which shall exercise jurisdiction and supervision over certain administrative bodies acting as its implementing branches. The implementing body in this case is the Philippine Domestic Construction Board (PDCB) and not the inexistent Philippine Construction Development Board as maintained by Deiparine.

Among the functions of the PDCB under Section 6 of the decree are to:

x x x

3. Adjudicate and settle claims and disputes in the implementation of public construction contracts and for this purpose, formulate and adopt the necessary rules and regulations subject to the approval of the President;

x x x

5. Formulate and recommend rules and procedures for the adjudication and settlement of claims and disputes in the implementation of contracts in private construction; (Emphasis supplied)

Deiparine argues that the Philippine Construction Development Board (that is, the Philippine Domestic Construction Board) has exclusive jurisdiction to hear and try disputes arising from domestic constructions. He invokes the above-mentioned functions to prove his point.

His counsel is obviously trying to mislead the Court. First, he purposely misquotes Section 6(b), paragraph 3, substituting the word "the" for "public," thus:

3. Adjudicate and settle claims and disputes in the implementation of the construction contracts and for this purpose, formulate and adopt the necessary rules and regulations subject to the approval of the President;
(Underscoring ours)

Second, he makes the wrong emphasis in paragraph 5, thus:

5. Formulate and recommend rules and procedures for the ADJUDICATION and SETTLEMENT of CLAIMS and DISPUTES in the implementation of CONTRACTS in PRIVATE CONSTRUCTIONS.

For deliberately changing the language of the above-quoted paragraph 3, Atty. Gregorio B. Escasinas has committed contempt of this Court and shall be disciplined. As for paragraph 5, the correct stress should be on the words "formulate and recommend," which is all the body can do, rather than on "adjudication and settlement."

The wording of P.D. 1746 is clear. The adjudicatory powers of the Philippine Domestic Construction Board are meant to apply only to public construction contracts. Its power over private construction contracts is limited to the formulation and recommendation of rules and procedures for the adjudication and settlement of disputes involving such (private) contracts. It therefore has no jurisdiction over cases like the one at bar which remain cognizable by the regular courts of justice.

On the issue of rescission, Deiparine insists that the construction agreement does not specify any compressive strength for the structure nor does it require that the same be subjected to any kind of stress test. Therefore, since he did not breach any of his covenants under the agreement, the court erred in rescinding the contract.

The record shows that Deiparine commenced the construction soon after the signing of the contract, even before Trinidad had submitted the contract documents, including the General Conditions and Specifications.

According to Eduardo Logarta, the petitioner's own project engineer, Deiparine actually instructed him and some of the other workers to ignore the specific orders or instructions of Carungay or Trinidad relative to the construction.[9] Most of these orders involved safety measures such as: (1) the use of two concrete vibrators in the pouring of all columns, beams and slabs; (2) making PVC pipes well-capped to prevent concrete from getting inside them; (3) the use of 12-mm reinforcement bars instead of 10-mm bars; (4) the use of mixed concrete reinforcements instead of hollow block reinforcements; and (5) securing the approval of the owner or his representative before any concrete-pouring so that it could be determined whether the cement mixture complied with safety standards. Deiparine obviously wanted to avoid additional expenses which would reduce his profit.

Parenthetically, it is not disputed that Deiparine is not a civil engineer or an architect but a master mariner and former ship captain;[10] that Pio Bonilla, a retainer of Deiparine Construction, was not the supervising architect of the project;[11] that the real supervisor of construction was Eduardo Logarta, who was only a third year civil engineering student at the time;[12] that his understudy was Eduardo Martinez, who had then not yet passed the board examinations;[13] and that the supposed project engineer, Nilo Paglinawan, was teaching full-time at the University of San Jose Recoletos, and had in fact entered the construction site only after November 4, 1982, although the construction had already begun two months earlier.[14]

It was after discovering that the specifications and the field memorandums were not being followed by Deiparine that Carungay insisted on the stress tests.

There were actually two sets of specifications. The first "Specifications" are labeled as such and are but a general summary of the materials to be used in the construction. These were prepared by Trinidad prior to the execution of the contract for the purpose only of complying with the document requirements of the loan application of Cesario Carungay with the Development Bank of the Philippines. The other specifications, which were also prepared by Trinidad, are entitled "General Conditions and Specifications" and laid down in detail the requirements of the private respondent in the construction of his building.

In his testimony, Deiparine declared that when the contract was signed on August 13, 1982, it was understood that the plans and specifications would be given to him by Trinidad later.[15] Deiparine thus admitted that the plans and specifications referred, to in the construction agreement were not the first Specifications but the General Conditions and Specifications submitted by Trinidad in November 1982. This second set of specifications required a structural compressive strength of 3,000 psi.[16] It completely belies Deiparine's contention that no compressive strength of the dormitory was required.

Deiparine further argues that by following the concrete mixture indicated in the first specifications, that is, 1:2:4, the structure would still attain a compressive strength of 2,500 psi, which was acceptable for dormitories.

According to him, the 3,000 psi prescribed in the General Conditions and Specifications was recommended for roads, not for buildings. In so arguing, he is interpreting the two specifications together but applying only the first and rejecting the second.

Deiparine also avers that the contract does not also require any kind of test to be done on the structure and that, test or no test, he has not violated the agreement. Nevertheless, he subjected the building to a cylinder test just to convince Carungay that the unfinished dormitory was structurally sound.

A cylinder test is done by taking samples from fresh concrete, placing them in a cylinder mold and allowing them to harden for a maximum of 28 days, following which they are subjected to compression to determine if the cement mixture to be poured conforms to accepted standards in construction.[17] Carungay was not satisfied with the results of the cylinder test because they were inconsistent and could easily be falsified by the simple expedient of replacing the samples with a good mixture although a different mixture had been used in the actual pouring. Consequently, Carungay requested core testing, a more reliable procedure because the specimens obtained by extracting concrete from the hardened existing structure would determine its actual strength. The core test is less prone to manipulation than the cylinder test because the samples in the former are taken from the building which is already standing.[18]

Deiparine vehemently refused to go along with the core test, insisting that the results of the cylinder test earlier made were conclusive enough to prove that the building was structurally sound. What was the real reason for this refusal? After all, Carungay would shoulder the expenses if the specimens passed the core test, unlike the cylinder test, which was for the petitioner's account. The only logical explanation would be that Deiparine was not sure that the core test would prove favorable to him.

We see no reason to disturb the factual finding of the courts below that Deiparine did not deal with the Carungays in good faith. His breach of this duty constituted a substantial violation of the contract correctible by judicial rescission.

The petitioner challenges the application by the lower court of Article 1191 of the Civil Code in rescinding the construction agreement. His position is that the applicable rules are Articles 1385 and 1725 of the Civil Code.

Article 1385 states:

Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Article 1725 provides that in a contract for a piece of work:

The owner may withdraw at will from the construction of the work, although it may have been commenced, indemnifying the contractor for all the latter's expenses, work, and the usefulness which the owner may obtain therefrom, and damages.

Deiparine seems to be confused over the right of rescission, which is used in two different contexts in the Civil Code.

Under the law on contracts, there are what are called "rescissible contracts" which are enumerated in Article 1381 thus:

- (1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
- (2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding

number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendants without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contrasts specially declared by law to be subject to rescission.

Article 1385, upon which Deiparine relies, deals with the rescission of the contracts enumerated above, which do not include the construction agreement in question.

There is also a right of rescission under the law on obligations as granted in Article 1191, providing as follows:

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.

This was the provision the trial court and the respondent court correctly applied because it relates to contracts involving reciprocal obligations like the subject construction contract. The construction contract falls squarely under the coverage of Article 1191 because it imposes upon Deiparine the obligation to build the structure and upon the Carungays the obligation to pay for the project upon its completion.

Article 1191, unlike Article 1385, is not predicated on economic prejudice to one of the parties but on breach of faith by one of them that violates the reciprocity between them.[19] The violation of reciprocity between Deiparine and the Carungay spouses, to wit, the breach caused by Deiparine's failure to follow the stipulated plans and specifications, has given the Carungay spouses the right to rescind or cancel the contract.

Article 1725 cannot support the petitioner's position either, for this contemplates a voluntary withdrawal by the owner without fault on the part of the contractor, who is therefore entitled to indemnity, and even damages, for the work he has already commenced. There is no such voluntary withdrawal in the case at bar. On the contrary, the Carungays have been constrained to ask for judicial rescission because of the petitioner's failure to comply with the terms and conditions of their contract.

The other applicable provisions are:

Article 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and transfer dominion over the thing. This contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale.

Article 1715. 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.

Article 1727. The contractor is responsible for the work done by persons employed by him.

While it is true that the stress test was not required in any of the contract documents, conducting the test was the only manner by which the owner could determine if the contractor had been faithfully complying with his prestations under their agreement. Furthermore, both parties later agreed in writing that the core test should be conducted. When the structure failed under this test, the Carungay spouses were left with no other recourse than to rescind their contract.

It is a basic principle in human relations, acknowledged in Article 19 of the Civil Code, that "every person must, in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." This admonition is reiterated in Article 1159, which states that "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." The petitioner has ignored these exhortations and is therefore not entitled to the relief he seeks.

WHEREFORE, the challenged decision is hereby **AFFIRMED** and the instant petition for review is **DENIED**, with costs against the petitioner. For deliberately changing the language of Section 6(b), paragraph 3, of P.D. No. 1746, Atty. Gregorio B. Escasinas is hereby fined P1,000.00, with the warning that repetition of a similar offense will be dealt with more severely. It is so ordered.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Exhibit "A," Records, p. 7.

[2] TSN, June 9, 1983, p. 19.

[3] Exhibits "B" and "19," Records, Bundle of Exhibits, p. 31.

[4] Exhibit "D," Records, Vol. I, p. 2.

[5] Exhibits "E" and "E-1," Records, Vol. I, p. 4.

[6] Exhibits "H" to "H-6," Records, Vol. I, pp.14-19.

[7] Rollo, pp. 362-376.

[8] Ibid., pp. 30-37A. Decision penned by Justice Antonio M. Martinez, with Melo and Lapeña, JJ., concurring.

[9] TSN, January 16, 1985, pp. 77-87; 93-94.

[10] TSN, August 17, 1984, pp. 4, 47.

[11] TSN, March 17, 1986, pp. 36-40.

[12] TSN, January 16, 1985, p. 13.

[13] Ibid., pp. 42, 46.

[14] Id., pp. 48-51; 104.

[15] TSN, August 30, 1984, pp. 70-72.

[16] Exhibits "B" and "19," Records, Bundle of Exhibits, p. 31.

[17] TSN, January 3, 1984, p. 21. The definitions are derived from the 1980 Annual Book of ASTM Standards, Part 14.

[18] Ibid., pp. 21, 28, 48.

[19] Universal Food Corporation v. Court of Appeals, L-29155, May 13, 1970.

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