

THIRD DIVISION

[G.R. No. 156038, October 11, 2010]

**SPOUSES VICTORIANO CHUNG AND DEBBIE CHUNG,
PETITIONERS, VS. ULANDAY CONSTRUCTION, INC.,
RESPONDENT.**

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by petitioners Spouses Victoriano Chung and Debbie Chung (*petitioners*) to challenge the decision^[2] and resolution^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 61583.^[4]

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

In February 1985, the petitioners contracted with respondent Ulanday Construction, Inc. (*respondent*) to construct, within a 150-day period,^[5] the concrete structural shell of the former's two-storey residential house in Urdaneta Village, Makati City at the contract price of P3,291,142.00.^[6]

The Contract^[7] provided that: (a) the respondent shall supply all the necessary materials, labor, and equipment indispensable for the completion of the project, except for work to be done by other contractors;^[8] (b) the petitioners shall pay a P987,342.60^[9] downpayment, with the balance to be paid in progress payments based on actual work completed;^[10] (c) the Construction Manager or Architect shall check the respondent's request for progress payment and endorse it to the petitioners for payment within 3 days from receipt;^[11] (d) the petitioners shall pay the respondents within 7 days from receipt of the Construction Manager's or Architect's certificate; (e) the respondent cannot change or alter the plans, specifications, and works without the petitioners' prior written approval;^[12] (f) a penalty equal to 0.01% of the contract amount shall be imposed for each day of delay in completion, but the respondent shall be granted proportionate time extension for delays caused by the petitioners;^[13] (g) the respondent shall correct, at its expense, defects appearing during the 12-month warranty period after the petitioners' issuance of final acceptance of work.^[14]

Subsequently, the parties agreed to exclude from the contract the roofing and flushing work, for P321,338.00,^[15] reducing the contract price to P2,969,804.00. On March 17, 1995, the petitioners paid the P987,342.60 downpayment,^[16] with the balance of P1,982,461.40 to be paid based on the progress billings. While the

building permit was issued on April 10, 1995,^[17] actual construction started on March 7, 1995.^[18]

As the actual construction went on, the respondent submitted 12 progress billings.^[19] While the petitioners settled the first 7 progress billings, amounting to P1,270,641.59,^[20] payment was made beyond the seven (7)-day period provided in the contract. The petitioner subsequently granted the respondent a P100,000.00 cash advance,^[21] leaving the unpaid progress billings at P445,922.13.^[22]

During the construction, the respondent also effected 19 change orders

without the petitioners' prior written approval, amounting to P912,885.91.^[23] The petitioners, however, paid P42,298.61 for Change Order No. 1^[24] and *partially* paid P130,000.00 for Change Order Nos. 16 and 17.^[25] Petitioner Debbie Chung acknowledged in writing that the balance for Change Order Nos. 16 and 17 would be paid upon completion of the contract.^[26] The outstanding balance on the change orders totaled P740,587.30.

On July 4, 1995, the respondent notified the petitioners that the delay in the payment of progress billings delays the accomplishment of the contract work.^[27] The respondent made similar follow-up letters between July 1995 to February 1996.^[28] On March 28, 1996, the respondent demanded full payment for progress billings and change orders.^[29] On April 8, 1996, the respondent demanded payment of P1,310,670.56 as outstanding balance on progress billings and change orders.^[30]

In a letter dated April 16, 1996, the petitioners denied liability, asserting that the respondent violated the contract provisions by, among others, failing to finish the contract within the 150-day stipulated period, failing to comply with the provisions on change orders, and overstating its billings.^[31]

On May 8, 1996, the respondent filed a complaint with the Regional Trial Court (RTC), Branch 145, Makati City, for collection of the unpaid balance of the contract and the unpaid change orders, plus damages and attorney's fees.^[32]

In their answer with counterclaim,^[33] the petitioners complained of the respondent's delayed and defective work. They demanded payment of liquidated damages for delay in the completion, the construction errors, loss or non-usage of specified construction materials, unconstructed and non-completed works, plus damages and attorney's fees.

THE RTC RULING

In a decision^[34] dated December 11, 1997, the RTC found that both parties have not complied strictly with the requirements of the contract. It observed that change orders were made without the parties' prescribed written agreement, and that each party should bear their respective costs. It noted that the respondent could not demand from the petitioners the payment for change orders undertaken upon instruction of the project architect without the petitioners' written approval. Applying

Article 1724 of the Civil Code, the RTC found that when the respondent performed the change orders without the petitioners' written agreement, it did so at its own risk and it could not compel the petitioners to pay.

The RTC noted that the petitioners were nonetheless liable for P130,000.00 under Change Order Nos. 16 and 17, because petitioner Debbie Chung ratified and acknowledged that such amount was still due upon completion. It also noted that the respondent should not be faulted or penalized for the delay in the completion of the contract within the 150-day period due to the petitioners' delay in the payment of the progress billings. It found, however, that the petitioners are liable for the construction defect on the roof leak traceable to the shallow concrete gutter.

Thus, the RTC ordered the respondent to repair, at its expense, the defective concrete gutter of the petitioners' house and to restore other affected structures according to the architectural plans and specifications. It likewise ordered the petitioners to pay the respondent P629,819.84 as unpaid balance on the progress billings and P130,000.00 as unpaid balance on the ratified change orders.

Both parties elevated the case to the CA by way of ordinary appeal under Rule 41 of the Rules of Court. The respondent averred that the RTC failed to consider evidence of the petitioners' bad faith in violating the contract, while the petitioners argued that the RTC should have quantified the cost of the repairs and simply ordered the respondent to reimburse the petitioners' expenses.

THE CA RULING

The CA decided the appeal on June 28, 2002.^[35] It found Article 1724 inapplicable because the provision pertains to disputes arising from the higher cost of labor and materials, while the respondent demands payment of change order billings and there was no demand for increase in the costs of labor and materials. Applying the principle of estoppel *in pais*, the appellate court noted that the petitioners impliedly consented or tacitly ratified the change orders by payment of several change order billings and their inaction or non-objection to the construction of the projects covered by the change orders.

Thus, the CA affirmed the RTC decision, but increased the payment on the unpaid balance of the change orders to P740,587.11. It likewise ordered the petitioners to pay 6% interest on the unpaid amounts from the day of formal demand and until the finality of the decision, and 12% interest after finality of the decision, plus P50,000.00 as exemplary damages.

Both parties filed motions for reconsideration. On November 15, 2002, the CA issued a resolution denying the petitioners' motion for reconsideration, but partially granting the respondent's motion for reconsideration by awarding it attorney's fees equal to 10% of the total award.^[36]

Hence, the petitioners came to us through the present petition.

THE PETITION

The petitioners insist that the CA should have quantified the cost of the repairs on

the defective gutter and simply ordered the respondent to reimburse the petitioners' expenses because repairing the defective gutter requires the demolition of the existing cement gutter, the removal of the entire roofing and the dismantling of the second floor steel trusses; they are entitled to liquidated damages for the unjust delay in the completion of the construction within the 150-day contract period; the award of P629,819.84 for progress billings is unwarranted since only P545,920.00 is supported by the respondent's evidence; the respondent's construction errors should set-off or limit the petitioners' liability, if any; the CA misinterpreted Article 1724 of the Civil Code and misapplied the principle of estoppel *in pais* since the contract specifically provides the petitioners' prior written approval for change orders; the respondent is not entitled to exemplary damages and attorney's fees since the respondent was at fault for the defective gutter.

THE CASE FOR THE RESPONDENT

The respondent submits that the petition is merely dilatory since it seeks to review the lower courts' factual findings and conclusions, and it raised no legal issue cognizable by this Court.^[37]

THE ISSUE

The core issue is whether the CA erred in: (a) affirming the RTC decision for payment of progress billings; (b) in increasing the amount due for change orders; and, (c) in awarding exemplary damages and attorney's fees to the respondent.

OUR RULING

We find the petition meritorious.

This Court is not a trier of facts. However, when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can review the evidence to allow us to arrive at the correct factual conclusions based on the record.^[38]

Contract is the law between the parties

In contractual relations, the law allows the parties leeway and considers their agreement as the law between them.^[39] Contract stipulations that are not contrary to law, morals, good customs, public order or public policy shall be binding^[40] and should be complied with in good faith.^[41] No party is permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.^[42] In the present case, we find that both parties failed to comply strictly with their contractual stipulations on the progress billings and change orders that caused the delays in the completion of the project.

Amount awarded for unpaid progress billings is unsupported by evidence

There is no dispute that the petitioners failed to pay progress billings nos. 8 to 12. However, we find no basis to hold the petitioners liable for P629,819.84, the balance of the total contract price, without deducting the discount of P18,000.00 granted by the respondent. The petitioners likewise cannot be held liable for the balance of the

total contract price because that amount is clearly unsupported by the evidence; only P545,922.13^[43] is actually supported by progress billings nos. 8 to 12. Deducting the respondent's P100,000.00 cash advance,^[44] the unpaid progress billings amount to only P445,922.13.

Article 1724 of the Civil Code applies

The CA erred in ruling that Article 1724 of the Civil Code does not apply because the provision pertains to disputes arising from the higher cost of labor and materials and there was no demand for increase in the costs of labor and materials.

Article 1724^[45] governs the recovery of additional costs in contracts for

a stipulated price (such as fixed lump-sum contracts), and the increase in price for additional work due to change in plans and specifications. Such added cost can only be allowed upon the: (a) written authority from the developer or project owner ordering or allowing the written changes in work, and (b) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Compliance with these two requisites is a condition precedent for the recovery. The absence of one or the other condition bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence.^[46]

In the present case, Article I, paragraph 6, of the Contract incorporates this provision:

The CONTRACTOR shall make no change or alteration in the plans, and specifications as well as in the works subject hereof without the prior written approval of the OWNER. A mere act of tolerance shall not constitute approval.^[47]

Significantly, the respondent did not secure the required written approval of the petitioners before making the changes in the plans, specifications and works. Thus, for undertaking change orders without the stipulated written approval of the petitioners, the respondent cannot claim the additional costs it incurred, save for the change orders the petitioners accepted and paid for as discussed below.

CA misapplied the principle of estoppel in pais

The petitioners' payment of Change Order Nos. 1, 16, and 17 and their non-objection to the other change orders effected by the respondent cannot give rise to estoppel *in pais* that would render the petitioners liable for the payment of all change orders.

Estoppel *in pais*, or equitable estoppel, arises when one, by his acts, representations or admissions or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts.^[48] The real office of the equitable