

## SECOND DIVISION

**[ G.R. No. 171312, February 04, 2008 ]**

**SPS. LINO FRANCISCO & GUIA FRANCISCO, Petitioners, vs.  
DEAC CONSTRUCTION, INC. and GEOMAR A. DADULA,  
Respondents.**

### **D E C I S I O N**

**TINGA, J,:**

The Spouses Lino and Guia Francisco (Spouses Francisco) assail the Decision<sup>[1]</sup> of the Court of Appeals dated 28 July 2005, rendered in favor of respondents DEAC Construction, Inc. (DEAC) and Geomar Dadula (Dadula), upholding the latter's monetary claims against the Spouses Francisco. The appellate court's decision reversed and set aside the Decision<sup>[2]</sup> of the Regional Trial Court of Manila, Branch 28, dated 2 February 1998 which ordered the partial rescission of the 13 September 1994 Construction Contract between the parties and awarded moral and exemplary damages and attorney's fees to the Spouses Francisco.

The findings of fact of the trial court and the Court of Appeals are in conflict on the question of whether the Spouses Francisco authorized the deviations on the building plan, particularly with regard to the closing of the open space and the reduction of the setback from the property line. They are, however, in agreement as to the following antecedents quoted from the appellate court's decision:

Plaintiffs-appellees Lino Francisco and Guia Francisco obtained the services of defendant-appellant DEAC Construction, Inc. (DEAC) to construct a 3-storey residential building with mezzanine and roof deck on their lot located at 118 Pampanga Street, Gagalangin, Tondo, Manila for a contract price of P3,500,000.00. As agreed upon, a downpayment of P2,000,000.00 should be paid upon signing of the contract of construction, and the remaining balance of P1,500,000.00 was to be paid in two equal installments: the first installment of P750,000.00 should be paid upon completion of the foundation structure and the ground floor, which amount would be used primarily for the construction of the second floor to the roof deck while the final amount of P750,000.00 should be paid upon completion of the second floor up to the roof deck structure to defray the expenses necessary for finishing and completion of the building. To undertake the said project, DEAC engaged the services of a sub-contractor, Vigor Construction and Development Corporation, but allegedly without the plaintiffs-appellees' knowledge and consent.

On September 12, 1994, even prior to the execution of the contract, the plaintiffs-appellees had paid the downpayment of P2,000,000.00. The amount of P200,000.00 was again paid to DEAC on February 27, 1995 followed by the payment of P550,000.00 on April 2, 1995. Plaintiff-

appellant Guia Francisco likewise paid the amount of P80,000.00 on June 5, 1995 for the requested "additional works" on the project.

The construction of the residential building commenced in October 1994 although DEAC, upon which the obligation pertained, had not yet obtained the necessary building permit for the proposed construction. It was on this basis that the owner Lino Francisco was charged with violation of Section 301, Chapter 3 (Illegal Construction) of [P.D. No.] 1096 otherwise known as the National Building Code of the Philippines with the Metropolitan Trial Court of Manila, Branch 12.

On March 7, 1995, the Office of the Building Official of the City of Manila finally issued the requisite Building Permit. Thus, the complaint against owner Lino Francisco was accordingly dismissed. As admitted by DEAC, the release of the said permit was withheld because of the erroneous designation of the location of the lot in one of the building plans. Thus, DEAC had to make the necessary adjustment. However, before the Office of the Building Official finally approved the amended building plan, it made some necessary corrections therein. And to facilitate the said approval and the subsequent release of the building permit, the signatures of plaintiff-appellee Guia Francisco in the said amended and corrected building plans were forged by DEAC's representative.

But aside from [the] lack of building permit, the building inspector also observed, after periodic inspections of the construction site, that the contractor deviated, on some specifications, from the approved plans. Thus, on April 7, 1995, the Office of the Building Official of Manila issued another Notice of Violation against owner Lino Francisco, while at the same time calling the attention of the contractor, on account of the following deviations and violations, to wit:

1. *The 1.00 mt. setback from the property line instead of 1.45 mts. as per approved plan was not followed in violation [of] Sec. 306, Chapter 3 [PD 1096, otherwise known as the National Building Code (NBC)];*
2. *The [excessive] projection of 0.50 mt. from 3<sup>rd</sup> floor level to [roof] deck in violation [of] Sec. 306, Chapter 3 of the NBC (PD 1096);*
3. *The required open patio was covered in pursuant (sic) to Sec. 306[,], Chapter 3 [of PD 1096];*
4. *Provision of window opening along the right-side firewall in pursuant (sic) to Sec. 1007 Chapter 10 of [PD 1096];*
5. *Stockpiling of [construction materials] along the street/sidewalk area in violation [of] Sec. 5[,], Rule VI of the IRR;*
6. *Please provide minimum safety and protection in pursuant (sic) 2.3, 2.4, and 2.5 of Rule XX of the IRR.*

The said notice was received on April 11, 1995 by Engr. Mike Marquez of DEAC Construction, Inc. The plaintiffs-appellees, however, denied having received any notice from the Office of the Building Official of Manila regarding the on-going construction.

In a letter dated July 1, 1995, the plaintiffs-appellees, through their counsel, suddenly complained of several infractions emanating from the construction of the project allegedly committed by DEAC, to wit:

- a. *Implementation of the project was started immediately after signing of the contract on 15 September 1994 without any building permit and approved plans.*
- b. *Building permit was released only on (sic) March 1995 together with the approved plans with necessary corrections made by the Office of the Building Official. You did not inform the owners about the corrections. The signatures of Mrs. Guia Francisco appearing on the building plans were forgeries.*
- c. *[The] Approved [C]onstruction [P]lans were not strictly followed during the actual implementation of the project. Open space/patio which is 20% of lot area (based on National Building Code) for inside lot was deleted.*
- d. *No written formal approval from the owners for the alteration of plans.*
- e. *Poor workmanship.*
  - i. *Marble slabs installed were not approved by the owner.*
  - ii. *Beam below the 1<sup>st</sup> landing at the ground floor is too low.*
  - iii. *Ground floor Finish floor line is below the ordinary flood level in the area. The contractor has been repeatedly instructed to raise the ground floor finish elevation but insisted on their decision.*
- f. *Poor supervision of the construction works.*

The plaintiffs-appellees demanded that DEAC must comply with the approved plan, construction contract, National Building Code, and the Revised Penal Code, otherwise, they would be compelled to invoke legal remedies. In the meantime that the necessary works and construction were demanded to be undertaken, the last and final installment was withheld. DEAC responded, also through a letter prepared by its counsel, that it had faithfully complied with its obligation under the contract, thus, to demand for further compliance would be improper. It said that if somebody had breached the contract, it was the plaintiffs-appellees, because the last installment of P750,000.00 which was supposed to have been paid after the second floor and the roof deck structure was completed, which allegedly had long been accomplished, was not yet

paid. To settle their differences, DEAC had given the plaintiffs-appellees the option to either pay the full amount of P750,000.00, so that the finishing stage of the project would be completed, or just pay the worth of the work already done, which was assessed at P250,000.00.

On July 21, 1995, a Work Stoppage Order was issued against the plaintiff-appellee Lino Francisco pursuant to the previous April 7, 1995 Notice of Violations. Having learned of such order, the plaintiffs-appellees allegedly immediately proceeded to the Office of the Building Official of Manila to explain that DEAC was the one responsible for such violations, and that the deviations of the approved plan being imputed against Lino Francisco were unilateral acts of DEAC. They also filed a complaint for "Non-Compliance of the Building Plan, Illegal Construction, abandonment and other violations of the Building Code" against DEAC with the said Office. The said complaint was endorsed to the City Prosecutor of Manila which culminated in the filing of a criminal case against Geomar A. Dadula and DEAC project engineer Leoncio C. Alambra for deviation and violation of specification plan.

The plaintiffs-appellees also filed this civil case for Rescission of Contract and Damages on September 21, 1995 with the Regional Trial Court of Manila, Branch 28, against DEAC and its President Geomar A. Dadula.

After due proceedings, the defendants-appellants were found to have breached their contractual obligation with the plaintiffs-appellees. Among their violations were: (1) the construction of the building without the necessary building permit, which violated Section 3, Article IV of the Construction Contract; and (2) the deviation or revision of the approved building plan in the actual construction. On the other hand, the trial court said that the refusal of the plaintiffs-appellees to pay the final installment of P750,000.00 was only justified because of the defendants-appellants' violations of the contract. Thus, on account of such violations, rescission of the contract was warranted. However, since the subject building was already 70% to 75% completed, only partial rescission was ordered. Pursuant thereto, DEAC was ordered to refund the sum of P205,000.00 to the plaintiffs-appellees after considering the following computations:

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| Contract price                       | - | P3.5 Million       |
| % of work completed                  | - | 75%                |
| Contract Price x % of work completed | - | P3.5 Million x 75% |
|                                      | = | P2,625,000.[00]    |
| Actual Payment                       | - | 2,830,000.00       |
| Less cost of work completed          | - | 2,625,000.00       |
| Difference                           | - | 205,000.00         |

In addition, damages was awarded based on par. 2, Article 1191 of the New Civil Code which provides for the award of damages in case of rescission of contract. Geomar Dadula, being the President of DEAC, was likewise held solidarily liable with the latter.<sup>[3]</sup>