

TENTH DIVISION

[CA-G.R. CV NO. 101639, March 19, 2015]

**JOSE CO LEE, DOING BUSINESS UNDER THE NAME AND STYLE OF
JC LEE CONSTRUCTION, PLAINTIFF-APPELLEE, VS. M & H
(SUBIC), INCORPORATED AND/OR ITS PRESIDENT MIN KYUNG
HOON, DEFENDANTS-APPELLANTS.**

D E C I S I O N

DIMAAMPAO, J.:

Impugned in this *Appeal* is the *Decision*^[1] dated 14 May 2013 of the Regional Trial Court, Third Judicial Region, Olongapo City, Branch 74, for *Sum of Money*, in Civil Case No. 204-0-06. The court *a quo* adjudged as follows:

"IN VIEW THEREOF, judgment is rendered in favor of the plaintiff Jose Co Lee under the name JC Lee Construction and against the defendant Min Kyung Hoon, President of M & H (Subic) Inc. who is hereby directed to pay the plaintiff:

1. Php1,276,698.35 representing 10% retention fees;
2. Php450,308.50 for the Final Billing; and
3. Php297,692.94 as payment for additional works;
4. Php20,000.00 as attorney's fees, the plaintiff having been constrained to go to Court to collect a just, valid and demandable claim;
5. And costs of this suit.

The defendant's counterclaim is DISMISSED."^[2]

The factual backdrop is uncomplicated.

Plaintiff-appellee Jose Co Lee (appellee), doing business under the name and style of JC Lee Construction (JC Lee), entered into a contract with appellant M & H, Incorporated (M & H) relative to the construction of a two-storey hotel building (Bayfront Hotel) for the original price of P21,700,000.00.^[3] Subsequently, the actual project cost was reduced to P16,116,078.21.^[4] The *Contract Agreement Proforma* was signed by Rolando Kua, owner of JC Lee, and defendant-appellant Min Kyung Hoon (Hoon), President of M & H. The hotel project was duly completed^[5] but M & H and Hoon (collectively, appellants) refused to pay the balance of P2,364,522.64. Appellants turned a deaf ear to demands to pay the outstanding balance of the contract price. Ensuingly, appellee lodged a collection suit.^[6]

Au contraire, appellants averred that they had paid P14,546,692.80 and P1,780,519.10 representing the advances appellee made. Thus, their total payment was P16,327,211.90, with an overpayment of P21,113.00 inasmuch as the total

project cost was only P16,116,078.21.^[7]

In due course, the court a quo rendered the repugned *Decision*.

Nonplussed, appellants are now before Us asseverating that the court *a quo* erred—

I

IN FINDING THE APPELLEE ENTITLED TO A RETENTION FEE SANS ANY PROVISION FOR RETENTION FEE IN THE CONTRACT AGREEMENT PROFORMA OF THE PARTIES CONTRARY TO JURISPRUDENCE ON THE MATTER.

II

IN FINDING THE APPELLEE ENTITLED TO THE AMOUNT OF PHP450,308.50 REPRESENTING FINAL BILLING AND PHP297,692.94 FOR ADDITIONAL WORKS AS THESE ARE NOT BORNE BY THE EVIDENCE.

III

IN GRANTING ATTORNEY'S FEES TO THE APPELLEE.

The Appeal is meritless.

Appellants intransigently assert that the court a quo fumbled in declaring them liable to pay appellee the amount of P1,276,698.35 which they allegedly deducted as 10% retention fee. They avow that the additional works done at the cost of P297,692.94 were without prior approval.

Appellants' stance is specious.

We echo with approbation the findings of the court a quo that appellee had preponderantly demonstrated appellants' deduction of 10% retention money from the progress billings, and that the additional works were undertaken and completed with their express consent, *viz*:

"As to the ten percent (10%) retention fee, it is clear that defendant did not deny that they have retained the same in their custody. While this court may agree that there was no provision for retention fee in the Contract Agreement Proforma dated 18 June 2004, however, it bears pointing out that defendant's witness Lizadel Rivera identified progress billings and even affirmed that the amount of the retention fee were never returned to the plaintiff. The Court finds that plaintiff was only able to establish the amount of P1,276,698.40 equivalent to the sum of retention fee stated in the progress billings (Exhibits 'L' to 'L-6') and not Php1,616,521.20."

x x x

x x x

x x x It is worthy to note that the **billing for additional works in the**

amount of P297,692.94 (Exh. "C-11"-proposed storage area and employees quarter-Php150,000.00, change order at swimming pool area-Php112,692.94, concreting of parking area-P35,000.00) was duly supported by bill of quantities and quotations (Exhs. "D"- "F") **which were signed by the defendant.**"^[8] (Emphases Ours)

Invariably, We find the court *a quo's* appreciation and evaluation of evidence concordant with law and evidence adduced. Well-ensconced is the rule that factual findings of the trial court deserve a high degree of respect and will not be disturbed on Appeal^[9] except for strong and valid reasons because the trial court is in a better position to examine the demeanor of the witnesses while testifying. In a civil case, final and conclusive are the factual findings of the court, if supported by clear and convincing evidence on record.^[10]

In the construction industry, the 10 percent retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work—if any—becomes necessary.^[11] The testimony of appellants' witness speaks volumes that appellants withheld the retention fee of 10% from the progress billings—

"Q Let us go back to Exhibit L, you mentioned about this amount P2,249,915.60, this is actually the net amount of the billing, am I correct?

A Yes, Attorney.

Q But the actual amount of the bill is P2,744,634.99, am (I) correct?

A Yes, billing to date.

Q From this amount of P2,744,634.00, the defendant corporation **deducted a retention equivalent to 10% of this amount**, am I correct which is equivalent to P274,463.40, am I correct?

A **Yes, Attorney.**

Q Meaning that **this amount was retained by the defendant corporation?**

A **Yes, Attorney.**

X X X

X X X

Q Madam Witness, you said that this Exhibit L is now the basis for your payment as evidenced by official receipt. no. 0679, am I correct?

A Yes, Attorney.

Q Can you now read how much was the billing of the plaintiff in this case?

A For that period it's P2,618(,)713.75.