SIXTEENTH DIVISION

[CA-G.R. CV NO. 95917, June 27, 2014]

MARQUEZ AND SONS CONSTRUCTION INC., PLAINTIFF-APPELLEE, VS. VILLAGE EAST HOMEOWNERS ASSOCIATION, INC. AND RODRIGO E. PANGLINAN, DEFENDANTS, VILLAGE EAST HOMEOWNERS ASSOCIATION, INC., DEFENDANT-APPELLANT

DECISION

VILLON, J.:

This is an ordinary appeal under *Rule 41, Section 2 (a)* of the *1997 Rules of Civil Procedure*, *as amended*, from the decision[1] dated August 26, 2009 and order[2] dated May 28, 2010 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 100, Quezon City in Civil Case No. Q-04-51497, for Damages.

The factual and procedural antecedents of the case are as follows:

On June 27, 2003, appellee was awarded the contract for the construction of appellant's clubhouse (hereafter "the project") at the price of P8,450,000.00.[3] However, in a letter[4] dated June 30, 2003, one Atty. Roberto P. Paras, representing himself as counsel for several concerned homeowners, warned appellee not to proceed with the construction due to the pendency of a case filed by them against appellant with the Housing and Land Use Regulatory Board (HLURB) and docketed as HLURB Case No. NCR-HOA-O51603-279.[5] Subsequently, appellant informed appellee that there was no more legal obstacle to the construction of the project since the Temporary Restraining Order (TRO) issued by the HLURB, relative thereto, had already expired. Appellant also declared that it would assume all the risks that may arise by reason of the said pending case.[6] Appellant then served upon appellee, a notice to proceed[7] with the construction, contingent upon the execution of a formal contract between them.

Pursuant to Resolution No. 0072-03, Series of 2003[8] of its Board of Directors, appellant, on July 23, 2003, entered into a formal agreement[9] with appellee for the construction of the project. Along with appellant's down payment in the amount of P1,690,000.00, or 20% of the contract price, the parties agreed that the project must be completed within a period of 180 days or until January 19, 2004. In order to guarantee the performance of its obligation to appellant, appellee secured a surety bond[10] and a performance bond,[11] each for the amount of P1,690,000.00, in favor of appellant and agreed to the latter's retention of 10% of the construction cost. Appellee then commenced work at the construction site.

Thereafter, appellant received a progress billing[12] dated August 29, 2003 from appellee stating that 14.34% of the project, worth P969,250.54, had already been completed by appellee. However, following a joint evaluation by the parties,

Progress Billing No. 1 was revised to reflect only a 10.82% accomplishment worth P640,003.00.[13] Appellant paid the said amount notwithstanding appellee's failure to meet the projected 15% accomplishment of the project.

Then, on September 27, 2003, appellee submitted to appellant another progress billing[14] claiming that the actual accomplishment was to the extent of 27.99% of the project, which was worth P2,365,155.00. Another joint evaluation by the parties, however, reduced appellee's accomplishment to only 27.23% of the project entitling appellee to the amount of P2,300,935.00.[15] Appellant likewise paid said amount.[16]

On October 29, 2003, appellee served appellant with its third progress billing,[17] informing the latter that it had already accomplished 38.46% of the project, thus entitling it to the amount of P3,249,870.00.[18]

Earlier, the HLURB rendered a decision dated October 6, 2003 in HLURB Case No. NCR-HOA-O51603-279, disposing as follows:

> "WHEREFORE, PREMISES CONSIDERED, a judgment is hereby rendered, thus:
>
> > 1. Immediately and permanently enjoining the respondents, and/or any person, entity, agent, contractor acting with, for and in their behalf, from performing any act in pursuance of the construction of the new clubhouse in the Village East Executive Homes, and from implementing and enforcing any act, resolution, order, directive, memorandum, or contract for the purpose or any other purpose which seeks to set aside the subdivision's priority development as per approved subdivision plan;
> >
> > 2 Ordering the respondents-members of the Board of Directors of VEHAI to, jointly and severally, return or restore to VEHAI the properties, funds and other assets of the association as a result of its implementation of its herein-declared illegal construction of the clubhouse; and, ordering the Treasurer of VEHAI to make an accurate accounting and turn-over of the reimbursements to the association, including the conduct of extensive and detailed external audit of VEHAI's financial activities, including its monthly report on receipts and reimbursements.
> >
> > 3. Declaring the general assembly meeting and the referendum conducted by the respondents on January 26, 2003, including any resolution, directive, or order adopting, approving, enforcing, and awarding the construction of the clubhouse as null and void and of no force and effect;
> >
> > 4. Declaring the construction contract VEHAI entered into with Marquez & Sons Construction, Inc. as *ultra vires* and contrary to law and public policy, and therefore, null and void;

5. Ordering the respondents to strictly observe and implement the terms of the Memorandum of Agreement with API with respect to its obligation to complete the unfinished/undelivered provisions, facilities, and improvements like the water supply system, drainage system, electrical, perimeter wall, rip-rap, and other essential development projects of the subdivision;

6. Ordering the respondents to disclose/publish to all association members the financial statements of VEHAI for the last and current fiscal year and to account for all the properties under its custody, including the titles to open spaces and assigned unsold lots, and the proceeds of sold lots under the Memorandum of Agreement with API, including their strict compliance with the VEHAI By-Laws and pertinent government regulations regarding its reportorial duties, the custody and submission of VEHAI's corporate books, records, and the minutes of meetings and resolutions, and to make the same available for inspection and viewing by all the members and officers of the association during reasonable working hours;

7.Ordering the respondents to pay moral damages in the amount of P50,000.00; exemplary damages in the amount of P20,000.00; and attorney's fees in the amount of P30,000.00 plus cost of suit;

All other claims and counterclaims are denied for lack of merit."[19]

On December 11, 2003, appellee submitted to appellant its fourth progress billing, claiming that it had already finished 48.49% of the project, thereby entitling it to the amount of P4,097,405.00.[20] However, a joint evaluation of the stage of construction again adjusted the actual accomplishment to only 43.86% of the project.[21]

Then, in a letter dated December 13, 2003, appellee informed appellant that, upon verification with the HLURB, the said administrative body did not issue any cease and desist order to stop the construction of the project. Moreover, the petition for review filed by appellant before the Office of the President stayed the execution of the foregoing decision of the HLURB. Appellee then proposed revisions to the terms of their agreement, thus:

"xxx xxx xxx

We are willing to continue working on the project subject to the following conditions:

1.0 Submitted billings shall be paid within 7 days from date of receipt.
2.0 The 10% limit of the accomplishment of work before billing shall be considered and not strictly implemented.
3.0 MASCON reserves the rights to suspend the work if

payment/s of billings are not made within three [3] days notice.

4.0 The period of the contract duration shall be revised accordingly.

These terms are requested by MASCON, INC. due to the possibility that if (sic) may be at the losing end of (sic) the contract will be finally declared as illegal. We are willing to sit down for a conference in order to tresh out details.

xxx xxx xxx"[22]

On December 19, 2003, appellant informed appellee that the former could not process the latter's December 11, 2003 billing for the reason that the additional amount indicated therein was less than 10% of the entire contract price.[23] It must be noted that, at this point, appellant's accomplishment of the project increased by only 5.4% or from 38.46% to 43.86% thereof.

On January 3, 2004, Project Manager Engineer Leopoldo B. Bugal informed appellant of appellee's failure to comply with the terms of the construction contract, thus:

"xxx xxx xxx

Please be informed that Marquez and Sons Construction had not yet resumed works as of date. They had ceased construction activities effective December 24, 2003.

During the last week of their operation they maintained an average of twenty [20] workforce which is very much below the required sixty [60] manpower level as indicated in the manpower utilization schedule. Secondly, no delivery of vital materials and building components had been made to the site and we could not elicit commitment and cooperation from the contractor on its delivery. These resulted (in) the dismal increment in the physical accomplishment of the project.

The projected accomplishment as of date is 95%, however, the actual accomplishment is only 43.86%. After careful evaluation, there is no way the contractor can complete the project as per contract.

xxx xxx xxx"[24]

Acting on said report, appellant on January 5, 2004 forwarded Engineer Bugal's report to appellee and directed the latter to explain within 48 hours why its surety bond, performance bond and 10% of the project cost that was retained by the former should not be forfeited.[25] In its January 6, 2004 letter, appellee, through counsel, replied in this wise:

"xxx xxx xxx

Our client acknowledge (sic) the terms of the agreement dated July 23, 2003. However, you are fully aware that the Housing and Land Use Regulatory Board [HLURB] declared this contract as illegal. This is precisely the reason why our client slow (sic) down the construction of

> the project pending resolution of your petition for review of the HLURB decision.
>
> It is our position that there is no legal basis for the VEHAI to forfeit the Surety and Performance Bond posted by our client. The decision is specific that the contract between Mascon, Inc. and VEHAI is declared as illegal and we are put on notice of the said decision by your office.
>
> However, our client is willing to take the risk and comply with its contractual obligation provided some of the items of the contract shall be amended specially the supply of materials and terms of billing. Hence, we submitted our request for amendment of the contract as per our letter dated December 13, 2003.
>
> xxx xxx xxx"[26]

Dissatisfied with the above explanation, appellant, on January 12, 2004, terminated their July 23, 2003 agreement and forfeited the remaining balance of the unliquidated cash advance in the amount of P1,040,026.00 covered by Surety Bond No. 001281,[27] Performance Bond No. BDHOMY030081964[28] covering the amount of P1,690,000.00 and the retained ten percent (10%) of the project cost amounting to P324,987.00.

On the same day, appellee instituted before the RTC an action for Declaratory Relief with Prayer for Preliminary Injunction and/or Temporary Restraining Order[29] against appellant. Thereafter, on January 21, 2004, appellee informed appellant of the filing of the said action, its objection to the forfeiture of the aforementioned bonds and retention money, and demanded payment of its December 11, 2003 billing.[30] These were all rejected by appellant.[31] Then, appellee's unpaid utility bills[32] were discovered by appellant. After the joint evaluation by the respective representatives of appellant and appellee, it was finally determined that the actual accomplishment of the project was only 41.53% thereof which was worth P3,720,880.58.[33]

On February 4, 2004, appellee amended its complaint before the court *a quo*, converting its nature into an action for Damages.[34] Meanwhile, appellant proceeded with the construction of the project, thereby incurring additional costs estimated at P569,277.00.[35]

On October 17, 2005, the Office of the President (OP) ruled on the petition for review of the October 6, 2003 decision of the HLURB, declaring the July 23, 2003 contract between appellant and appellee merely as voidable and not null and void. [36] Appellee filed a motion for reconsideration of the OP decision which was still unresolved during the pendency of the instant case before the court *a quo*.

On August 26, 2009, the RTC rendered the assailed decision, ratiocinating, *viz.*:

> "Although the plaintiff is not absolved of its delay in the construction of the clubhouse of defendant VEHAI, it cannot be totally faulted for the delay. First, it cannot be denied that because of the placards and streamers placed on the construction site, the materials supplier of the plaintiff did not deliver materials on credit. Second, defendant VEHAI withheld to the plaintiff the existence of the decision of the HLURB that