

NINTH DIVISION

[CA-G.R. CV NO. 85769, August 18, 2006]

**JULIETA R. LAGONERA MARRIED TO HONESTO G. LAGONERA,
PLAINTIFFS-APPELLEES, VS. DANILO CONSTRUCTION AND
TRADING REPRESENTED BY ITS MANAGER, DANILO S.
ESTRELLA, DEFENDANT-APPELLANT.**

D E C I S I O N

DACUDAO, J.:

Appeal from the Decision of the Regional Trial Court of Manila^[1] in Civil Case No. 03-106860, the decretal portion whereof reads:

"WHEREFORE, judgment is hereby rendered ordering defendant Danilo Estrella to pay plaintiffs:

"1. the sum of P550,000.00 corresponding to the amount needed to complete the construction of the 2-storey house subject of this action;

"2. the sum of P750.00 (1/10 of 1% of P750,000.00) per calendar day from the filing of this complaint on June 1, 2003 until fully paid;

"3. the sum of P100,000.00 for moral damages;

"4. the sum of P100,000.00 as exemplary damages & corrective damages;

"5. the sum of P20,000.00 as attorney's fees; and

"6. to pay the costs.

"SO ORDERED.

"Manila, July 11, 2005.

"ANTONIO I. DE CASTRO
"Presiding Judge"

On June 10, 2003, a complaint for specific performance and damages, the material portions of which we find it necessary to quote hereunder verbatim, was filed by "Julieta R. Lagonera married to Honesto G. Lagonera" against the "Danilo Construction and Trading, represented by its manager, Danilo S. Estrella," to wit:^[2]

"COMPLAINT

"COMES NOW, the plaintiff, thru counsel, unto this Honorable Court, most respectfully avers the following, to wit:

"1. That plaintiff spouses are Filipino, of legal age, married and residents of 1829 Almeda St., Tondo, Manila while defendant Danilo Construction and Trading, a sole proprietorship registered with the Department of Trade and Industry, represented by its manager, Danilo S. Estrella, Filipino, of legal age, married, and whose last known address is located at 1059 E. Santos Compound, Tramo Road, Manuyo Uno, Las Pinas, Metro Manila where service of summons, notices, orders, and other Court processes may be served;

"2. That sometime on September 2001, plaintiff had a talk with the wife of the first cousin of her husband, named Dalisay E. Sintaco, and discussed offhand her plan to build a 2-storey house with an area of 120 square meters in her lot located at Lot 11, Block 61 (LRC) PSD-15-0699, Muntinlupa City to be sourced from her retirement pay she received a month ago or sometime on August 2001;

"3. That Dalisay E. Sintaco undertook to inquire from her brother, Danilo Estrella, a contractor how much would be the construction cost of the aforescribed intended 2 storey-house project. The former thereafter relayed to her that the necessary amount for construction cost was P860,000.00 and thus, relegated the intended project aside as she does not have enough funds to sustain a very exorbitant project;

"4. That siblings Dalisay E. Sintaco thru a phone call offered the services of her brother, Danilo S. Estrella for a much lower rate than the previous quotation with an added incentive of constructing a store adjacent to the intended two storey building of the plaintiffs for free or without any extra cost. The former even told plaintiff-wife that the price given is a gift, they being relatives. Thus, plaintiff, prevailed upon by the siblings, entered into a construction agreement with defendant for the construction of a two storey house in the sum of P750,000.00 inclusive of labor materials with the expressed assurance that the construction will be completed within a period of 75 days or during Christmastime of 2001 as embodied in the Construction Agreement xxx;

"5. That plaintiff-wife and defendant agreed that the contract price shall be paid as follows:

"a. The owner shall pay fifty percent (50%) THREE HUNDRED SEVENTY FIVE THOUSAND PESOS (P375,000.00) down payment computed from the Total Contracted Amount to the Contractor upon signing of this contract.

"b. The Contractor shall agree to complete fifty percent (50%) project accomplishment and should bill another twenty five percent (25%) ONE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED PESOS (P187,500.00) computed from the total contracted amount.

"c. The Contractor agrees to complete seventy five percent (75%) project accomplishment and should bill another twenty percent (20%) one hundred fifty thousand pesos (P150,000.00) computed from the total contracted amount.

"d. The Contractor shall agree to complete one hundred percent (100%) project completion and the five percent (5%) thirty seven thousand five hundred pesos (P37,500.00) remaining balance shall be paid by the owner.

"6. That plaintiff-wife withdrawn (sic) the sum of P375,000.00 from Landbank, U.N. Ave., and handed the same to siblings Danilo S. Estrella and Dalisay E. Sintaco on October 4, 2001 as evidenced by a receipt issued on even date by defendant, xxx.

"7. That on the 1st week of November 2001, respondent visited plaintiff spouses home and directed plaintiff-wife to buy tiles they intend to place at the ground floor of the two storey building project as the construction of the same will be completed before Christmastime. Thus, as directed, she bought the required tiles on November 27, 2001 xxx.

"8. That on November 19, 2001, Dalisay E. Sintaco, thru a phone call, relayed to plaintiff-wife that almost 50% of the house has been completed and that defendant needed the sum of P100,000.00. Thus, on November 20, 2001, plaintiff-wife handed the sum of P100,000.00 to respondent xxx;

"9. That on the 3rd week of November 2001, plaintiffs' son named Honesto Pio R. Lagonera, Jr. went to the construction site to inspect and found out that the roofs respondent intended to place were short in size and thus, he asked for a longer span roof. Respondent verbally acceded to the request.

"10. That plaintiff on November 30, 2001 handed the sum of P87,500.00 to defendants xxx. Thus, as of said date, plaintiff-wife has given defendant the aggregate sum of P562,500.00 representing 75% of the total cost as defendant misrepresented that the construction of the building is almost through;

"11. That due the misrepresentations of defendants that the house has been 75% completed, plaintiff-wife, believing such misrepresentations handed the sum of P150,000.00 on December 22, 2001 (sic) xxx;

"12. That upon receipt of the sum of P150,000.00, defendant reiterated to plaintiff-wife his assurance that the latter together with her family will be spending Christmas in their new home. The latter responded by telling the former that she is not inclined to transfer during Christmastime for being new in the place, her family will surely not enjoy the celebration without their old neighbors;

"13. That when plaintiff visited the site on January 5, 2002, she found

out, much to her dismay, that the projected 75% completion of the two-storey house was entirely untrue. Anyone who will see the construction site would readily say that even 50% of the construction has not been completed as there was no roof yet;"14. That as plaintiff-wife was given the round-around by defendant, she sought the assistance of the Iglesia ni Cristo. When confronted, defendant acknowledged his delay and executed an addendum to the aforementioned Construction Agreement wherein he expressly sought for an extension of 60 days from the signing of the addendum on February 3, 2002 or until March 31, 2002 within which to complete the construction xxx;

"15. With the signing of the addendum, plaintiff-wife anxieties vanished for a while until she received news sometime on the last week of February 2002 that defendant Danilo Estrella abandoned the construction of the two-storey house. Hence, she again looked for defendant, who having heard of her exhaustive search of his whereabouts wrote a letter dated March 19, 2002 requesting for an extension of time 30 days or until April 30, 2002 to finish the construction xxx;

"16. As the construction was not completed on April 30, 2002, plaintiff sent a demand letter dated June 19, 2002 to defendant directing him to finish the construction of the house within a month but the same proved futile xxx;

"17. That when nothing came out the aforementioned demand letter, she personally talked with defendant for the recovery of the sum of P712, 500.00 representing the amounts received by him for the construction of plaintiff's two storey house and P30,000.00 representing the amounts received by him for the construction of the fence.

"18. That defendant failed to return the aforestated sums of money despite his undertaking as embodied in his letter, xxx, to pay his liability the moment he has received payments from his receivables and other contracts;

"19. That plaintiff was constrained to seek an assessment from a reputable engineering firm as to the actual percentage of completion of the two storey house project and presented to said firm several pictures xxx'

"20. That plaintiff was so devastated when she learned from the aforesaid reputable engineering firm that only 40% has been completed by defendant despite having paid almost 100% of the total construction cost and that plaintiff will still be spending around P550,000.00 in order to finish the project. Xxx;

"21. That this non-completion of the construction of the two storey house has subjected plaintiff to mental anguish, serious anxiety, wounded feelings, moral shock and thus must be awarded moral damages in the sum of P300,000.00

"22. That as a deterrent to people similarly minded as the defendant and

to set an example for the public good, plaintiff must be awarded the sum of exemplary and corrective damages in the sum of P200,000.00; and

"23. That for acting in gross and evident bad faith in refusing to satisfy plaintiff's plaintively valid, just and demandable claim, defendant should pay the sum of P20,000.00 as attorney's fees."WHEREFORE, premises considered, it is respectfully prayed that a judgment be issued by the Honorable Court in favor of the plaintiffs, ordering defendant:

"1. To pay the sum of P550,000.00 representing the sum of money needed to finish the project per assessment of a reputable engineering firm;

"2. To pay the amount equivalent to one tenth (1/10) of one percent (1%) of Contract Price for every calendar day of delay;

"3. To pay the sum of P200,000.00 as damages for breach of the obligation to finish the construction of a two-storey building;

"4. To pay the sum of P300,000.00 as moral damages;

"5. To pay the sum of P200,000.00 as exemplary damages;

"6. To pay the sum of P20,000.00 as attorney's fees;

"7. To pay cost. (Underscorings supplied.)

"Manila, Philippines, June 3, 2003."

Attached to the complaint was the required verification and certification signed by the spouses Honesto G. Lagonera and Julieta R. Lagonera, who used or employed therein the term "we" (pronoun, first person, plural) in referring to themselves.^[3]

Summons was issued on July 31, 2003, and the same was served on the defendant Danilo Estrella through substituted service on August 6, 2003. Per return of the process server, "efforts to serve the said summons upon defendant was made xxx but the same were ineffectual and unavailing for the reason that defendant is always out of their residence," thus service of summons was effected upon defendant's wife, Celia Estrella.^[4]

On August 21, 2003, Rolando Sintaco, a "Representative of the Defendant" filed a motion for extension of time to file answer, thereunder praying for an extension of fifteen (15) days to file answer, for the reason that the lawyer whom the defendant hired "has not yet finished his answer."^[5] The motion was denied because it did not contain a notice of hearing.^[6]

On September 4, 2003, Atty. Elmer A. Galicia entered his appearance as counsel for the defendant, and asked for an additional 15-day extension of time to file a responsive pleading, (or until September 20, 2003), thereunder claiming that his services were retained only on September 3, 2003.^[7] The motion was by the court