



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**FAJ CONSTRUCTION &  
 DEVELOPMENT CORPORATION,**

*Petitioner,*

**G.R. No. 200759**

Present:

BRION, *Acting Chairperson*,\*  
 DEL CASTILLO,  
 MENDOZA,  
 PERLAS-BERNABE,\*\* *and*  
 LEONEN, *JJ.*

- versus -

**SUSAN M. SAULOG,**  
*Respondent.*

Promulgated:  
 MAR 25 2015

*Handwritten signature: H. A. Salazar-Fernando*

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**DECISION**

**DEL CASTILLO, J.:**

This case illustrates the oft-quoted principle that the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during trial.

This Petition for Review on *Certiorari*<sup>1</sup> seeks to set aside the November 29, 2011 Decision<sup>2</sup> and February 24, 2012 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88385 affirming with modification the January 30, 2006 Decision<sup>4</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 220 in Civil Case No. Q-02-45865 and denying petitioner's Partial Motion for Reconsideration,<sup>5</sup> respectively.

***Factual Antecedents***

On June 15, 1999, petitioner FAJ Construction and Development *M. C.*

\* Per Special Order No. 1955 dated March 23, 2015.

\*\* Per Special Order No. 1956 dated March 23, 2015.

<sup>1</sup> *Rollo*, pp. 8-39.

<sup>2</sup> *Id.* at 42-61; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Remedios A. Salazar-Fernando and Sesonando E. Villon.

<sup>3</sup> *Id.* at 96.

<sup>4</sup> *Id.* at 98-104; penned by Judge Jose G. Paneda.

<sup>5</sup> *Id.* at 62-77.

Corporation and respondent Susan M. Saulog entered into an Agreement<sup>6</sup> (construction agreement) for the construction of a residential building in San Lorenzo Village, Makati City for a contract price of ₱12,500,000.00. Payment to petitioner contractor shall be on a progress billing basis, after inspection of the work by respondent.

Construction of the building commenced, and respondent made a corresponding total payment to petitioner in the amount of ₱10,592,194.80. However, for the October 31 and November 6, 2000 progress billing statements sent by petitioner in the total amount of ₱851,601.58, respondent refused to pay. After performing additional work, petitioner made another request for payment, but respondent again refused to pay, prompting petitioner to terminate the construction contract pursuant to Article 27(b) of the Uniform General Conditions of Contract for Private Construction (or Document 102) of the Construction Industry Authority of the Philippines, Department of Trade and Industry.<sup>7</sup>

Petitioner then sent demand letters to respondent on November 24, 2000 and September 28, 2001. In reply, respondent claimed that petitioner's work was defective, and that it should instead be made liable thereon.

Petitioner thus filed with the RTC of Quezon City a civil case for collection of a sum of money with damages against respondent. Docketed as Civil Case No. Q-02-45865 and assigned to Branch 220, the Complaint<sup>8</sup> alleged that despite faithful compliance with the construction agreement, respondent refused to pay the outstanding balance of ₱851,601.58, which prompted it to stop construction of the building. Petitioner thus prayed that respondent be ordered to pay the amounts of ₱851,601.58 representing the unpaid billings; ₱625,000.00 representing the retention amount; ₱50,000.00 for litigation expenses; 20% attorney's fees and appearance fees, or ₱170,000.00; and costs of suit.

In her Answer with Compulsory Counterclaim,<sup>9</sup> respondent claimed that while she religiously paid petitioner pursuant to their construction agreement, petitioner's work was defective and delayed; that petitioner failed to remedy said defects; that as a result, rainwater seeped through the building and caused extensive damage to the unfinished building; and that she had to incur additional substantial expenses for the repair of the building, to remedy the defects caused by

<sup>6</sup> Records, Vol. I, pp. 7-17.

<sup>7</sup> ART. 27: CONTRACTOR'S RIGHT TO SUSPEND WORK OR TERMINATE CONTRACT:

The Contractor may suspend work or terminate the Contract upon fifteen (15) days' written notice to the Owner for any of the following reasons:

a. If an order of any court or other public authority caused the work to be stopped or suspended for an aggregate period of ninety (90) days through no act or fault of the Contractor or his employees.

**b. If the Owner shall fail to pay the Contractor the approved Request for Payment as provided in Article 22.05.**

c. If the Owner shall fail to pay the Contractor any sum within thirty (30) days after its award by arbitration.

d. If the Owner suspends the work without just cause for more than the aggregate period of fifteen (15) days without the Contractor's consent. (Emphasis supplied)

<sup>8</sup> Records, Vol. I, pp. 1-6.

<sup>9</sup> Id. at 103-110.

petitioner, and to finish construction of the building. By way of counterclaim, respondent prayed for an award of actual damages in the amount of ₱3,213,575.91; lost rentals amounting to ₱5,391,456.00; additional consequential damages of ₱1,600,000.00 because she could not devote herself to her work; additional costs of ongoing repair; ₱5,000,000.00 moral damages; ₱5,000,000.00 exemplary damages; ₱1,387,500.00 as penalties for delay; attorney's fees and ₱4,000.00 appearance fees per hearing; interest; and costs of suit.

After pre-trial, the case was set for trial on the merits.

Petitioner presented its first witness on March 11, 2003. However, the presentation of the witness's testimony was not concluded as petitioner's counsel did not have the required documentary evidence.<sup>10</sup> Thus, petitioner moved for a continuance.

After several opportunities for the presentation of its first witness, petitioner failed to proceed with trial. Its counsel moved and asked for several postponements of trial, which the trial court granted despite respondent's opposition. However, petitioner's counsel and witness failed to appear during the scheduled April 29, 2003 hearing, prompting the trial court, upon respondent's motion, to dismiss the case for failure to prosecute.<sup>11</sup>

Petitioner filed an unverified motion for reconsideration<sup>12</sup> of the April 29, 2003 dismissal order, claiming that its counsel was unable to attend the scheduled hearing because he suffered arthritis of the knee; however, the motion was not accompanied by an affidavit or certification to the effect that the character of petitioner's counsel's illness is such as to render his non-attendance excusable. Respondent opposed the motion.<sup>13</sup> In a June 23, 2003 Order,<sup>14</sup> the trial court granted petitioner's motion for reconsideration, thus recalling its April 29, 2003 dismissal order and setting the case for hearing on July 29, 2003 for the continuation of the presentation of petitioner's evidence.

On July 29, 2003, both petitioner and its counsel again failed to appear. The trial court reset the hearing to September 4, 2003, with a warning that further postponement will not be tolerated.<sup>15</sup>

Petitioner once more moved for the postponement of the September 4, 2003 hearing, citing conflict of schedule.<sup>16</sup> Respondent opposed the motion, claiming that there was a pattern on petitioner's part to delay the disposition of the case despite the trial court's admonition that no further postponement will be allowed.

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<sup>10</sup> *Rollo*, p. 100.

<sup>11</sup> Records, Vol. I, pp. 197-198.

<sup>12</sup> *Id.* at 199-200.

<sup>13</sup> *Id.* at 207-211.

<sup>14</sup> *Id.* at 211.

<sup>15</sup> *Id.* at 213.

<sup>16</sup> *Id.* at 215-216.

On September 4, 2003, petitioner and counsel again failed to appear for the continuation of trial. The trial court, noting respondent's manifestation, issued another Order dismissing the case for failure to prosecute, ordering that the direct testimony of petitioner's witness be stricken off the record, and setting the case for hearing on respondent's counterclaim.<sup>17</sup>

Petitioner again filed a motion for reconsideration<sup>18</sup> of the above September 4, 2003 dismissal order, which respondent opposed,<sup>19</sup> and which the trial court denied in a December 16, 2003 Order.<sup>20</sup> Petitioner filed a second motion for reconsideration,<sup>21</sup> but the same was denied in a January 14, 2004 Order.<sup>22</sup>

Petitioner filed a petition for *certiorari*<sup>23</sup> with the CA questioning the above December 16, 2003 and January 14, 2004 Orders of the trial court, claiming that they were issued with grave abuse of discretion; that the trial court erred in denying a postponement of trial, in striking off the testimony of its witness, and in declaring that petitioner had the propensity to delay the case. The Petition was docketed as CA-G.R. SP No. 82239.

On September 30, 2004, the CA issued its Decision<sup>24</sup> in CA-G.R. SP No. 82239 dismissing the petition for *certiorari* and affirming the trial court's action, declaring that petitioner adopted a pattern of delay and was guilty of employing dilatory maneuvers, trifling with respondent's right to a speedy dispensation of justice, abusing the patience of the trial court and wasting its time, squandering the people's money, and impeding the administration of justice. It held further that the trial court acted rightly in its resolution of the case, treating petitioner with liberality despite its trifling with the expeditious administration of justice; that petitioner's complaint was correctly dismissed for failure to prosecute after it was given all the opportunity to present its evidence; that said dismissal operates as an adjudication on the merits; that petitioner's right to due process was not violated; and that petitioner's second motion for reconsideration is not allowed under Section 5, Rule 37 of the 1997 Rules of Civil Procedure.<sup>25</sup> In addition, the appellate court admonished petitioner's counsel, reminding the latter not to delay his case, but rather to observe the rules of procedure and not misuse them to defeat the ends of justice.

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<sup>17</sup> Id. at 218-219.

<sup>18</sup> Id. at 220-222.

<sup>19</sup> Id. at 229-236.

<sup>20</sup> Id. at 241-242.

<sup>21</sup> Id. at 247-248.

<sup>22</sup> Id. at 257.

<sup>23</sup> Id. at 258-273.

<sup>24</sup> *Rollo*, pp. 164-183; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a Member of this Court).

<sup>25</sup> RULE 37. NEW TRIAL OR RECONSIDERATION

Sec. 5. *Second motion for new trial.* A motion for new trial shall include all grounds then available and those not so included shall be deemed waived. A second motion for new trial, based on a ground not existing nor available when the first motion was made, may be filed within the time herein provided excluding the time during which the first motion had been pending.

No party shall be allowed a second motion for reconsideration of a judgment or final order.

Petitioner took the matter to this Court, via a petition for review on *certiorari* docketed as G.R. No. 166336. However, in a March 7, 2005 Resolution,<sup>26</sup> the Petition was denied for failure to submit a verified statement of material date of filing the motion for reconsideration of the assailed CA judgment, and for failure to show that the appellate court committed any reversible error. In several other Resolutions<sup>27</sup> of this Court, petitioner's motions for reconsideration and to refer the case to the Court *en banc* were denied on the ground, among others, that it failed to sufficiently show that the CA committed any reversible error.

On January 17, 2006, an Entry of Judgment<sup>28</sup> was issued by the Court stating that on August 16, 2005, its March 7, 2005 Resolution in G.R. No. 166336 became final and executory.

### ***Ruling of the Regional Trial Court***

In Civil Case No. Q-02-45865, respondent was allowed to present her evidence on the counterclaim. As found by the CA, respondent's evidence is as follows:

x x x. She presented the testimony of Rhodora Calinawan, the architect who conducted a complete inspection of the project first in September 2000, and, second, in November 2000, after typhoon Seniang. Rhodora Calinawan narrated her findings and identified the photographs submitted as proofs of appellant's<sup>29</sup> substandard work. Among the defects she pointed out were the sloppily done flooring, the unaligned electrical outlet and switch, dried cement and paint stained flooring, incorrect colored cement used to fill the gap between the tiles, need to repair door jamb, sloppily done grouting of tiles, incorrect luggage compartment doors, bubbles in the varnishing works, unaligned sanding of parquet flooring, poor termination of shower and enclosure and bull nose wood moulding, dirty window sill, lack of screws and rubber on the window, damaged roof panels, need for plashing and installation of drift edges, and improper installation of asphalt shingles on the roof. After the typhoon, appellee<sup>30</sup> also requested her to make a second inspection. She prepared another report which listed the following additional defects: the second floor parquet flooring was wet due to the typhoon because the windows were not properly sealed, lacked sealant and rubber protector.

Susan Saulog took the stand on February 15, 2005. She testified on appellant's defective work and the damage caused by typhoon "Seniang" to the unfinished work, notwithstanding the fact that she had already paid a total of ₱10,592,194.80. She refused to pay appellant the amount of ₱851,601.58 because the latter already collected advance payment but had a lot of unfinished

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<sup>26</sup> *Rollo*, p. 186.

<sup>27</sup> *Id.* at 187-189.

<sup>28</sup> *Id.* at 190-191.

<sup>29</sup> Herein petitioner.

<sup>30</sup> Herein respondent.

work before it abandoned the project. She made a counter-demand for ₱4,600,000.00 that excluded the lost revenue for unearned rentals, exemplary and moral damages. She was supposed to earn ₱160,000.00 per month from rentals starting July 2000. After appellant abandoned the project, she still spent ₱3,820,796.21 to rectify and complete the same. The accounts chargeable to appellant were listed in Exhibit 21, to wit:

ITEM NO.	PARTICULARS	AMOUNT
A	Bestbuilt Steel Builders	785,299.12
B	Sub-Contractor: Fizcon Enterprises	375,166.17
C	Labor Contracts & Quotations	243,461.40
D	Cash Advances for Materials by FAJ	186,236.62
E	Professional Fees	631,666.46
F	Rectification of Major Defective Works	422,563.77
G	Other Charges	647,629.71
H	Other Additional Construction Expenses for Rectification & Repair Works	<u>528,772.96</u>
	GRAND TOTAL AMOUNT	3,820,796.21

The penalty for delay is ₱12,500.00 per day. From July 30, 2000 up to November 17, 2000, the total penalty amounted to ₱1,387,500.00. She suffered sleepless nights because she started to experience frozen shoulder and trigger finger that necessitated the services of Dr. Alberto Lu, an acupuncturist. Exhibits 30-34 comprised five receipts issued by Alberto M. Lou, evidencing payment of ₱400 for services rendered. She claimed reimbursement for the amounts she paid to her counsel: ₱20,000.00 as acceptance fees; ₱4,000.00 per appearance and cost of suit which totaled ₱100,000.00. She spent ₱60,000.00 and ₱7,000.00, respectively, for the services of Architect Calinawan and an accountant to put the records in order. She claimed moral damages of ₱5,000,000.00.<sup>31</sup>

On January 30, 2006, the trial court rendered its Decision on respondent's counterclaim, declaring as follows:

After carefully studying all the above evidence, this court resolves that defendant<sup>32</sup> has proven her following allegations and counterclaims, to wit:

(1) That, in fact, the construction work of plaintiff<sup>33</sup> was not only delayed, but defective; and that plaintiff abandoned the construction work, incomplete and with many defects. The evidence on record is overwhelming and in addition to the testimonies of Arch. Rhodora Calinawan and the defendant herself; the same is proven by Exhs. 1 – 1-B-4; 2 – 2-A; 3; 4 – 4-H-2; 5 – 5-G-2; 6 – 6-G-2; 7 – 7-E-2; 8 – 8-C; 9 – 9-M; 9-N – 9-EE; 15 – 15-A<sup>2</sup>; 15-B – 15-B-5; 15-B<sup>2</sup> – 15-Z.

(2) That defendant paid plaintiff the total amount of ₱10,592,194.80 before plaintiff abandoned the work (Exhs. 16 – 16-Q).

<sup>31</sup> *Rollo*, pp. 48-51.

<sup>32</sup> Herein respondent.

<sup>33</sup> Herein petitioner.

(3) That defendant had to finish the work abandoned by plaintiff, incurring substantial additional expenses therefor. This is also supported not only by her testimony, but by documentary evidence presented by her (Exhs. 21; 20 – 20-A; 21 – 21-F; 22 – 22-CCC; 23 – 23-M; 24 – 24-JJJ; 25 – 25-S; 26 – 26-QQ; 28 – 28-AAAA-130; 29 – 29-JJJ).

(4) As to the claim of defendant for moral damages, the Court finds that she is entitled to moral damages, but not for the amount she is claiming. The testimony given by defendant on how the problems created by plaintiff affected her personally is believable; and furthermore, it is supported by official receipts of an Acupuncture Consultant (Exhs. 30-34). This is one of the cases wherein moral damages are allowed by Article 2220 of the New Civil Code. Breach of Contract where the defendant acted fraudulently or in bad faith.

(5) With respect to exemplary damages, the Court perceives that same should be granted, but moderates the same. Plaintiff being in the construction business to the public, should be deterred from doing to others, what it did to defendant. This is one of the situations envisioned by Article 2229 of the New Civil Code, for exemplary damages.

(6) The Court is convinced that attorney's fees should also be adjudicated, considering the work that counsel for defendant undertook. Attorney's fees should be adjudicated, in accordance with Article 2208 of the New Civil Code.

(7) The Court is also persuaded to grant penalties for delay, as provided for in the agreement between the parties (Exhs. 11-B-1 and 11-B-2).

(8) The Court, however, is not inclined to grant additional consequential damages of ₱1,600,000.00, because this court finds that this claim has not been properly supported.

(9) Finally, the Court is inclined to grant defendant's claim, for lost rentals, which is properly supported by the testimony of defendant and very plausible under the circumstances, because one of the duplex apartments was constructed for rental income purposes and its completion and rental was very much delayed, because of the fault of plaintiff.

IN VIEW OF ALL THE FOREGOING, plaintiff FAJ Construction & Development Corporation is hereby ordered to pay defendant Susan Saulog, the following amounts:

- (1) ₱3,213,575.91 as actual damages;
- (2) Lost rentals of ₱5,391,456.00;
- (3) Moral damages of ₱500,000.00;
- (4) Exemplary damages of ₱500,000.00;
- (5) Penalties for delay amounting to ₱1,387,500.00;
- (6) Attorney's fees of ₱20,000.00, plus appearance fee of ₱4,000.00 per appearance, payable to Atty. Alberto B. Guevara, Jr.;

- (7) This court also grants 6% interest, on all the above amounts, commencing from the date of the filing of the complaint, January 2, 2002.

This Court, however, dismisses the claim of Susan Saulog for additional consequential damages amounting to ₱1,600,000.00, which has not been proven.  
SO ORDERED.<sup>34</sup>

### ***Ruling of the Court of Appeals***

Petitioner filed an appeal with the CA. Docketed as CA-G.R. CV No. 88385, the appeal essentially argued that the trial court erred in holding petitioner liable to the respondent for the amounts stated in the decretal portion of the trial court's decision. In addition, petitioner contended that it was erroneous for the trial court to have dismissed its complaint for failure to prosecute, as it should not be penalized for the negligence of its counsel in the handling of Civil Case No. Q-02-45865, which is the sole reason for the dismissal thereof.

On November 29, 2011, the CA rendered the assailed Decision affirming with modification the January 30, 2006 Decision of the trial court, pronouncing thus:

Appellant<sup>35</sup> now questions anew the propriety of the dismissal of the complaint on ground of failure to prosecute. Appellant argues that it should not be made to suffer the consequences of the negligence or mistakes of its counsel.

This Court finds that any disquisition on this issue is improper for being barred by *res judicata*. x x x

More, appellant's case was dismissed for failure to prosecute because of the numerous delays caused by its counsel. Appellant cannot be excused from the actions of its counsel since it is likewise a settled rule that mistake[s] of counsel binds the client. It is only in case of gross or palpable negligence of counsel when courts must step in and accord relief to a client who suffered thereby. x x x

The next issue is: did appellee<sup>36</sup> adequately prove her right to actual damages for rectification of appellant's defective work? Article 1715 of the Civil Code provides:

Article 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply

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<sup>34</sup> *Rollo*, pp. 102-104.

<sup>35</sup> Herein petitioner.

<sup>36</sup> Herein respondent.



with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost.

Evidently, Article 1715 gives the employer the options to require the removal of the work, to rectify the flaws in their work, or to have the work done at the expense of the contractor.

Here, the defective workmanship was amply proven by Architect Rhodora Calinawan's testimony and documentary evidence i.e., photographs, receipts, and list of the expenses needed to rectify appellant's poorly crafted work. Hence, We sustain the award of actual damages based on these testimonial and documentary evidence.

Regarding the penalty for delay in the amount of One Million Three Hundred Eighty Seven Thousand Five Hundred Pesos (₱1,387,500.00), the same should also be sustained. A contract is the law between the parties, and they are bound by its stipulations so long as they are not contrary to law, customs, public policy and public morals. The penalty for delay is agreed upon by the parties themselves. The fact that appellant was already delayed in the completion of the duplex is undisputed. In fact, record shows that on January 24, 2000, appellee approved the extension requested by appellant. This request for extension, by itself, is already proof of delay. Thus, at the time appellant abandoned the project, it already incurred delay. Verily, it is only proper that appellant be made to pay the penalty for delay after appellee no longer agreed to any further extension.

We now go to the issue of damages.

Moral damages are recoverable for breach of contract where the breach was wanton, reckless, malicious or in bad faith, oppressive or abusive. However, moral damages are improperly awarded, absent a specific finding and pronouncement from the trial court that a party acted in such manner. Here, the only basis of the trial court in granting moral damages of ₱500,000.00 was appellee's gratuitous claim that she suffered sleepless nights for her frozen shoulder and trigger finger, supposedly evidenced by 5 official receipts issued by her acupuncturist whom she paid ₱400.00 per receipt. No evidence, however, was adduced showing that her frozen shoulder and trigger finger were the direct result of the delayed project. The basis for such award is too shallow and evidently untenable, hence, the same must be deleted.

As a consequence, the award of exemplary damages should also be vacated. x x x

Also, appellee does not dispute the fact that the total contract price was ₱12,500,000.00. After paying more than ₱10,500,000.00, appellee made several demands for the parts that did not meet the agreed specifications. On the other hand, appellant was of the firm belief that it had the right to work stoppage, as authorized under the contractor's manual. Both parties honestly believed that their respective actions were justified, hence, no bad faith can be attributed to either party to merit the award of damages.

Too, this Court finds that the trial court erred in holding appellant liable for lost rentals in the amount of Five Million Three Hundred Ninety One Thousand Four Hundred Fifty Six Pesos (₱5,391,456.00). Unrealized profits fall

under the category of actual or compensatory damages. If there exists a basis for reasonable expectation of profits had there been no breach of contract, indemnification for damages based on such expected profits is proper. Here, appellee did not present any evidence to show that there was already a potential lessee to one of the units of the duplex. Even assuming that appellee may have presented evidence to show the existence of a future lessee, she should have presented a contract of lease showing the contract price. She should have also shown that the rental rate, at that time and in that area was, similar or at least approximately close to the amount of ₱160,000.00 per month. Without any of these evidence, damages based on lost rental is purely speculative. In the same way that one could speculate that the unit will be rented out, a person cannot be precluded from speculating that the other unit may be occupied by a close relative for free. The court must rely on competent evidence and must avoid any speculation or give premium to self-serving allegations. As stated, the award of ₱5,391,456.00 is in the nature of actual damages. To be recoverable, actual damages must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture, or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts x x x. These are not present in the case at bar.

As for attorney's fees, it is well settled that the law allows judicial discretion to determine whether or not attorney's fees are appropriate. The surrounding circumstances of each case are to be considered. Here, We resolve to delete the award of attorney's fees since the trial court did not make any particular finding that any of the instances enumerated in Art. 2208 of the Civil Code exists. More, it is settled that the award of attorney's fees is the exception rather than the general rule. Counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.

The trial court correctly imposed 6% interest on all awarded amounts commencing from the date of the filing of the complaint. When an obligation, not constituting a loan or forbearance of money, is breached, interest on the amount of damages awarded may be imposed at the discretion of the court at 6% per annum.

ACCORDINGLY, the appealed decision is AFFIRMED WITH MODIFICATION, deleting the award of lost rentals, moral damages, exemplary damages, and attorney's fees, including appearance fee.

SO ORDERED.<sup>37</sup>

Petitioner filed a Partial Motion for Reconsideration, but in a February 24, 2012 Resolution, the CA denied the same. Hence, the present Petition.

### Issues

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<sup>37</sup> *Rollo*, pp. 53-61.

In a January 28, 2013 Resolution,<sup>38</sup> this Court resolved to give due course to the Petition, which raises the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT CONCLUDED THAT RES JUDICATA APPLIES IN THE INSTANT CASE.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT CONCLUDED THAT PETITIONER IS LIABLE FOR ACTUAL DAMAGES, AND IN IMPOSING THE PENALTY FOR DELAY AND AWARDING INTEREST ON ALL AMOUNTS DUE.<sup>39</sup>

***Petitioner's Arguments***

In its Petition and Reply<sup>40</sup> seeking to reverse and set aside the assailed CA dispositions and praying that judgment be rendered absolving it from the adjudged pecuniary liabilities or, in the alternative, that a new trial of its case be held, petitioner argues that *res judicata* cannot be made as basis to deny it the opportunity to question the dismissal of its case and to present its evidence because the dismissal of its Petition in G.R. No. 166336 was not an adjudication of the case on its merits; that the dismissal of Civil Case No. Q-02-45865 was not due to its fault, but solely the gross negligence of its counsel; that the case should not have been dismissed as it was not guilty of lack of diligence in failing to continue with trial with reasonable promptitude;<sup>41</sup> that it should not be made liable for the adjudged liabilities as they are bereft of factual and legal basis; that respondent's witness, architect Rhodora Calinawan (Calinawan), was not competent to testify, nor was she an objective, reliable, or trustworthy witness; that the supposed actual damages suffered by respondent have not been adequately proved; that when respondent refused to pay the outstanding balance, petitioner was justified in stopping work, and any damages suffered by respondent thereafter may not be attributed to it but constitute *damnum absque injuria*; that the adjudged penalty for its supposed delay is excessive; and that there is no basis to award interest.

***Respondent's Arguments***

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<sup>38</sup> Id. at 280-281.

<sup>39</sup> Id. at 19.

<sup>40</sup> Id. at 228-247.

In her Comment,<sup>42</sup> respondent contends that the issue of whether the trial and appellate courts correctly decided the amount of damages is a factual issue which is beyond the jurisdiction of this Court; that with respect to the dismissal of petitioner's case in Civil Case No. Q-02-45865 for failure to prosecute, *res judicata* applies; that petitioner's claim that it should not be bound by the negligence of its counsel cannot stand because it was itself negligent in the prosecution of its case despite having been given by the trial court all the opportunity to present evidence; that with respect to the issue of damages, the factual findings of the trial and appellate courts may not be disturbed; that petitioner failed to present evidence to controvert the trial and appellate courts' findings; that the pecuniary liabilities were justified as petitioner was guilty of delay, abandonment, and defective workmanship; that there is no ground to reduce the amount of penalties for petitioner's delay; and that the award of interest was proper.

### **Our Ruling**

The Court denies the Petition.

Petitioner's claim that *res judicata* cannot apply has no merit. This Court, in G.R. No. 166336, found nothing wrong in the judgment of the CA in CA-G.R. SP No. 82239 affirming the dismissal of petitioner's Complaint in Civil Case No. Q-02-45865 for failure to prosecute. In fact, the Court found that the appellate court had not committed any reversible error. This finding of lack of any reversible error is now final with the entry of judgment in G.R. No. 166336. Thus, petitioner could no longer prove its case, other than to present controverting evidence on respondent's counterclaim.

The Court has repeatedly said that minute resolutions dismissing the actions filed before it constitute actual adjudications on the merits. They are the result of thorough deliberation among the members of the Court. When the Court does not find any reversible error in the decision of the CA and denies the petition, there is no need for the Court to fully explain its denial, since it already means that it agrees with and adopts the findings and conclusions of the CA. The decision sought to be reviewed and set aside is correct. It would be an exercise in redundancy for the Court to reproduce or restate in the minute resolution denying the petition the conclusions that the CA reached.<sup>43</sup>

Next, petitioner's argument that it should not be punished for the negligence of its counsel deserves the same treatment. Suffice it to state that we have not seen any reason to reverse the CA's ruling on this matter; on the other hand, the record will disclose that petitioner was itself neglectful of its duties relative to its case, and it continued to retain the services of its counsel which it

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<sup>41</sup> Citing *Belonio v. Rodriguez*, 504 Phil. 126, 146 (2005).

<sup>42</sup> *Rollo*, pp. 121-156.

<sup>43</sup> *Agoy v. Araneta Center, Inc.*, G.R. No. 196358, March 21, 2012, 668 SCRA 883, 889.

now conveniently claims to be negligent, even after repeatedly suffering from the latter's claimed lack of care. It appears that despite witnessing firsthand the caliber of its lawyer during the initial presentation of its evidence in 2003, petitioner changed counsel only after the trial court's January 30, 2006 Decision on respondent's counterclaim.<sup>44</sup> The general rule still applies that the mistakes of counsel bind his client.

On the issue of liability, we find – relying on the identical findings of the trial and appellate courts – that petitioner is guilty of violating the construction agreement, for its defective and incomplete work, delay, and for unjustified abandonment of the project. Indeed, we find no reason to disturb the identical pronouncements of the trial court and the CA. The same holds true with respect to the issue of damages raised by petitioner; it requires an inquiry into the facts, which is no longer this Court's realm. In a case previously decided by this *ponente* concerning a construction contract and where similar allegations of abandonment, delay and defective workmanship were advanced, it was held that –

Petitioner endeavors to convince us to determine, yet again, the weight, credence, and probative value of the evidence presented. This cannot be done in this petition for review on certiorari under Rule 45 of the Rules of Court where only questions of law may be raised by the parties and passed upon by us. In *Fong v. Velayo*, we defined a question of law as distinguished from a question of fact, *viz*:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the [question] posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

It has already been held that the determination of the existence of a breach of contract is a factual matter not usually reviewable in a petition filed under Rule 45. We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those of the trial court, since we are not a trier of facts x x x.<sup>45</sup>

There is no ground either to doubt the testimony of Calinawan, who testified on the defective quality of petitioner's work and the state of construction

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<sup>44</sup> *Rollo*, pp. 139-140.

<sup>45</sup> *Engr. Dueñas v. Guce-Africa*, 618 Phil. 10, 18-19 (2009).

after the latter abandoned the project. Her testimony merely corroborates already existing evidence – such as photographs – as well as the testimony of respondent herself. All in all, these pieces of evidence collectively proved the facts in issue. Besides, Calinawan need not be qualified as an expert witness in order to testify on facts which are readily apparent to the eye, and even to the layman: it does not require an expert to conclude that flooring is sloppily done, or that the electrical outlet and switch are not aligned, or that the flooring is stained with paint, or that incorrect colored cement was used to fill the gap between tiles, or that a door jamb needs repair, or that grouting of tiles is sloppily done, or that there are unwanted bubbles in the varnishing works, or that the parquet flooring is unaligned or uneven, or that the window sills are dirty, or that windows lacked the necessary screws and rubber, or that the roof panels are damaged, or that the installation of asphalt shingles on the roof was improper. Any ordinary individual building a home would readily notice such defects.

Since respondent suffered damages as a result of petitioner's defective and delayed work and unjustified abandonment of the project, the principle of *damnum absque injuria* cannot apply. The principle cannot apply when there is an abuse of a person's right.<sup>46</sup>

Coming now to the issue of delay, we find that the trial and appellate courts' grant of ₱1,387,500.00 not excessive; it is, in fact, liberal. Construction period was agreed upon at 240 days from receipt by petitioner of a notice to proceed.<sup>47</sup> Said notice was issued on June 18, 1999,<sup>48</sup> thus giving petitioner approximately eight months from said date, or – roughly computed – up to February 18, 2000, to complete the project. Yet, petitioner was still working on the project as late as on November 22, 2000, after which it stopped work and abandoned the project; this fact is not denied by petitioner.<sup>49</sup> Thus, petitioner was already delayed for more than nine months – that is, beginning March 2000 and ending November of the same year – or approximately 270 days. At ₱12,500.00 agreed penalty imposed for each day of delay, petitioner should be correspondingly liable to respondent for ₱3,375,000.00 liquidated damages, more or less, under the construction agreement.<sup>50</sup> Yet, the courts below awarded a mere ₱1,387,500.00; this award is certainly not excessive and should remain, accepted as it is without question by the respondent.

Finally, the imposition of 6% interest *per annum* is proper. Indeed, as correctly held by the CA, when an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*,<sup>51</sup> from the filing of the complaint until its full satisfaction.

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<sup>46</sup> *Amonoy v. Sps. Gutierrez*, 404 Phil. 586, 593 (2001).

<sup>47</sup> Records, Vol. I, p. 8.

<sup>48</sup> *Rollo*, p. 151.

<sup>49</sup> Records, pp. 19-21, 24, 42.

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

**WHEREFORE**, the Petition is **DENIED**. The November 29, 2011 Decision and February 24, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 88385 are **AFFIRMED**.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ARTURO D. BRION**  
*Associate Justice*  
*Acting Chairperson*

  
**JOSE CATRAL MENDOZA**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*

### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ARTURO D. BRION**

*Associate Justice  
Acting Chairperson*

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

*Chief Justice*

