



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**ENGR. RUBEN Y. YU, doing business G.R. No. 248495**  
**under the name and style RYU**  
**CONSTRUCTION,**

*Petitioner, Present:*

- versus -

GESMUNDO, *CJ.*, Chairperson  
 HERNANDO,  
 ZALAMEDA,  
 ROSARIO, and  
 MARQUEZ, *JJ.*

**HEIRS OF MANUEL SIA,**  
**represented by MAYOR**  
**ROSEMARIE H. SIA,**

*Respondents.*

Promulgated:

**JUL 06 2022**

X-----X

**DECISION**

**ZALAMEDA, J.:**

This is a Petition for Review on *Certiorari*<sup>1</sup> from the Decision<sup>2</sup> dated 29 March 2019 and the Resolution<sup>3</sup> dated 18 July 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107708. The CA reversed and set aside the Decision<sup>4</sup> dated 08 August 2016 of Branch 2, Regional Trial Court (RTC) of Legaspi City in Civil Case No. 10577 for Recovery of Sum of Money with Damages.

<sup>1</sup> *Rollo*, pp. 12-45.

<sup>2</sup> *Id.* at 47-85; penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Ramon M. Bato Jr. and Ramon A. Cruz of the Eight (8<sup>th</sup>) Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 87-89.

<sup>4</sup> *Id.* at 134-143; penned by Judge Ignacio N. Almodovar, Jr.

### Antecedents

On 18 March 2002, respondents Heirs of Manuel Sia, represented by Rosemarie Sia (Rosemarie; collectively respondents), and Ryu Construction, represented by its owner Engr. Ruben Y. Yu (Ruben), entered into a Construction Contract.<sup>5</sup> The contract reads in part:

1. Subject Matter of the Contract. This agreement pertaining to the construction of [a] 4-Storey Commercial Building, hereafter referred to as PROJECT and more adequately described as follows:

**THE PROPOSED CONSTRUCTION OF FOUR STOREY  
COMMERCIAL BUILDING FOR HEIRS OF MANUEL SIA  
REPRESENTED BY MAYOR ROSEMARIE SIA LOCATED AT F.  
IMPERIAL ST., LEGAZPI CITY**

The specifications of the said project shall be strictly in accordance with the plans and program of work hereto attached and signed separately by the parties which shall form part of this agreement. *CONTRACTOR* shall furnish the Labor & Materials Only.

2. Contract Price. The consideration of this agreement shall be in the lump sum amount of PESOS, *NINE MILLION EIGHT HUNDRED FOURTY EIGHT THOUSAND & TWO HUNDRED FORTY PESOS Only, (PHP 9,842,240.00)*. Upon execution of this contract, the *Owner* would pay the *contractor* an ADVANCE PAYMENT in the mount [sic] of PESOS, *THREE MILLION PESOS Only, (PHP 3,000,000.00)*, and the remaining amount will be paid in progress billing on every 30 days of accomplishment thereafter,

a.	Initial payment-Advance payment of 30%/upon signing contract	PHP 3,000,000.00
b.	1 <sup>st</sup> billing/upon accomplishment of 30 days after .....	1,000,000.00
c.	2 <sup>nd</sup> billing/ upon accomplishment of 30 days after .....	1,000,000.00
d.	3 <sup>rd</sup> billing/ upon accomplishment of 30 days after .....	1,000,000.00
e.	4 <sup>th</sup> billing/ upon accomplishment of 30 days after .....	1,000,000.00
f.	5 <sup>th</sup> billing/ upon accomplishment of 30 days after .....	1,000,000.00
g.	6 <sup>th</sup> billing/ upon accomplishment of 30 days after .....	1,000,000.00
h.	Final payment/ upon remittance of occupancy permit .....	842,240.00 <sup>6</sup>

<sup>5</sup> Id. at 90-91.

<sup>6</sup> Id. at 90.

On 27 July 2006, Ruben instituted a Complaint<sup>7</sup> against Rosemarie<sup>8</sup> for the collection of ₱448,240.00, representing the remaining balance from the contract price. Ruben alleged that the subject building has been completed in accordance with the plans and specifications and the same has been turned over to Rosemarie in 2003. However, Rosemarie refused to pay the remaining balance despite written demand.<sup>9</sup>

Rosemarie, on the other hand, admitted non-payment of the remaining balance but argued that the same could not be released until the issuance of the occupancy permit and the repair of the defects in the 3<sup>rd</sup> and 4<sup>th</sup> [floors] of the subject building, specifically the undersized rooms, which failed to meet the minimum standards under Presidential Decree No. (PD) 1096<sup>10</sup> or the National Building Code.<sup>11</sup>

In 2009, counsel for Rosemarie inquired with the Office of the City Engineer of Legazpi City about the supposed violation of PD 1096 so that the same may be corrected. The office responded with an Inspection Report<sup>12</sup> enumerating the following violations:

1. The following guest rooms/hotel rooms did not complied [sic] with the minimum requirement as per Rule XVI – 5.1 and 6.3 of PD 1096. Room numbers: 304, 305, 306, 314, 315, 316, 317, 318, 319, 413, 414, 415, 416, 417, 418 and 419.
2. Toilets and baths of guest rooms 303 and 308 have no ventilation which is a violation of Rule XVI – 7.1.
3. Modifications were made in the layout of rooms 406 and 407 wherein windows and A.C.U. openings on firewalls were introduced.<sup>13</sup>

The report was allegedly communicated to Ruben for the necessary corrective measures, but he failed to act on it. Consequently, to address the violations in the Inspection Report, Rosemarie secured the services of one (1) Architect Leo Del Rosario (Del Rosario) for the renovation plan, which was submitted to and approved by the Office of the City Engineer of Legazpi City. The renovations were implemented in 2013 by Del Rosario and one (1) Engr. Fernando Joquico, the proprietor of J-Squared Construction, who were paid ₱1,576,163.86. After the renovations, a certificate of oc-

<sup>7</sup> *Rollo*, pp. 94-96.

<sup>8</sup> The Complaint named as defendants the “Heirs of Manuel Sia, represented by Rosemarie Sia” without naming the other heirs.

<sup>9</sup> *Rollo*, p. 48.

<sup>10</sup> Entitled “Adopting a National Building Code of the Philippines (NBCP) thereby Revising Republic Act Numbered Sixty-Five Hundred Forty-One (RA No. 6541),” approved on 19 February 1977.

<sup>11</sup> *Rollo*, p. 49.

<sup>12</sup> Records, Vol. 3, pp. 1513-1515.

<sup>13</sup> *Id.* at 1513.

cupancy was finally issued for the third and fourth floors of the subject building in 2014.<sup>14</sup>

Meanwhile, sometime in 2012, Ruben filed an amended complaint naming as defendants Rosemarie, Theresa, Emilyne, Dianne, Emmanuel, Michael, and Manuel, all surnamed Sia. The RTC admitted the Amended Complaint and accordingly ordered the issuance of summons. Except for Rosemarie, all the other respondents raised want of consent and minority as defense in their respective answers. On 12 March 2013, the RTC issued an Order<sup>15</sup> dropping all the other defendants except Rosemarie.<sup>16</sup>

### Ruling of the RTC

After trial on the merits, the RTC rendered the Decision dated 08 August 2016, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff Engr. Ruben U. Yu, doing business under the name and style (sic), RYU Construction and against the defendants Heirs of Manuel sia (sic), represented by Mayor Rosemarie Sia, as follows:

1. Ordering the defendants to pay to the plaintiff the amount of FOUR HUNDRED FORTY EIGHT THOUSAND TWO HUNDRED FORTY (P448,240.00) PESOS plus legal interest of six (6%) percent per annum from June 19, 2006 until the finality hereof. From the finality hereof, the entire amount due shall likewise earn legal interest of six (6%) percent per annum until fully paid.
2. Ordering the defendants to pay TWENTY FIVE THOUSAND (P25,000.00) PESOS as reasonable attorney's fees, and
3. Ordering the defendants to pay the cost of suit.

SO ORDERED.<sup>17</sup>

The RTC ruled that Ruben complied with his obligations under the Construction Contract. As such, he is entitled to the unpaid balance, the existence of which was admitted by the respondents. The trial court also made the following findings: (1) Ruben constructed the building in accordance with the approved plans and specifications prepared by Architect Allan Luzuriaga (Luzuriaga); (2) the non-issuance of full occupancy permit

<sup>14</sup> *Rollo*, p. 52.

<sup>15</sup> Records, Vol. 2, pp. 941-942.

<sup>16</sup> *Id.*

<sup>17</sup> *Rollo*, pp. 142-143.

could not be attributed to Ruben since the supposed undersized rooms were built in accordance with the plans and instructions of respondents; (3) it was the ventilation, not the size, that was not compliant with the requirements of PD 1096, which defect can be remedied by an artificial ventilation, the obligation over which does not fall upon Ruben under the contract; and (4) the subject building was accepted as early as 2003 and had been continuously used, as evidenced by the business permit issued since 2005 for the operation of the hotel, notwithstanding the absence of a full occupancy permit.<sup>18</sup>

### Ruling of the CA

On appeal, the CA rendered the assailed Decision dated 29 March 2019, the dispositive portion of which reads:

**WHEREFORE**, the appeal from the Decision dated 8 August 2016 of the Regional Trial Court, 5<sup>th</sup> Judicial Region, Branch 2, Legazpi City in Civil Case No. 10577 is **GRANTED**. The said Decision is **REVERSED** and **SET ASIDE**. Let a new Judgment be **ENTERED, ORDERING** Ruben U. Yu to pay Rosemarie H. Sia the following amounts:

1. **One Million One Hundred Twenty Seven Thousand Nine Hundred Twenty Three Pesos and Eighty Six Centavos (P1,127,923.86)** as reimbursement for the amount Rosemarie H. Sia spent for the renovation of the subject building. This amount shall earn interest at the rate of 6% per *annum* from the time this judgment is promulgated until the same becomes final.
2. **Two Hundred Thousand Pesos (P200,000.00)** as moral damages.
3. **Two Hundred Thousand Pesos (P200,000.00)** as exemplary damages.
4. **Fifty Thousand Pesos (P50,000.00)** as attorney's fees, plus the amount of **Two Thousand Five Hundred Pesos (P2,500)** for every court appearance.
5. Costs of suit.

Thereafter, upon the finality of this *Decision*, the total monetary award shall earn interest at the rate of 6% per *annum* until its satisfaction.

**SO ORDERED.**<sup>19</sup>

The CA ruled that Rosemarie was not obliged to release the remaining balance of the contract price since payment of the same was conditioned upon the remittance of the occupancy permit, which was not obtained by Ruben. Contrary to the findings of the RTC, the CA found that Rosemarie

<sup>18</sup> Id. at 138-142.

<sup>19</sup> Id. at 84; Emphasis in the original.



was not the party responsible for preparing the plans and programs for the subject building and held that Ruben, as a contractor, should have been aware that the plans and programs submitted to him did not comply with PD 1096. The CA took notice of the fact that Ruben was found administratively and criminally liable for the construction of the subject building in violation of PD 1096. Consequently, Rosemarie was justified in hiring the services of another to remedy the defects in the project and was thus entitled to reimbursement for the renovation costs less the remaining balance from the Construction Contract.<sup>20</sup>

Aggrieved, Ruben filed the present Petition.<sup>21</sup>

### Issue

The sole issue submitted for consideration of the Court is whether or not the CA seriously erred in reversing the Decision dated 08 August 2016 of the RTC, which found that the defects in the subject building were not the fault of Ruben, and in finding that the latter is entitled to his monetary claims.

### Ruling of the Court

At the outset, it is noted that the Petition raises questions of fact, which are generally beyond the purview of an appeal by *certiorari* under Rule 45 of the Rules of Court.<sup>22</sup> However, jurisprudence established exceptions to said rule, one of which is when the findings of the CA are contrary to those by the trial court,<sup>23</sup> as in this case.

The RTC and the CA made differing findings on the compliance of each party with their respective obligations under the Construction Contract. The RTC found that Ruben complied with his obligations under the Construction Contract with the delivery of the subject building in 2003. It rejected the claim that Ruben was responsible for the non-issuance of the occupancy permit since he merely built the rooms in accordance with the building plan.

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<sup>20</sup> Id. at 58-83.

<sup>21</sup> In our Resolution dated 01 October 2019, the Motion for Extension filed by Ruben was granted and respondents were required to file a Comment on the said petition. However, respondents merely filed an Opposition to the motion for extension instead of a Comment to the petition, notwithstanding the reiteration of the said order for comment in our Resolution dated 27 July 2020.

<sup>22</sup> RULES OF COURT, Rule 45, Sec. 1.

<sup>23</sup> *Unera v. Shin Heung Electro Digital, Inc.*, G.R. No. 228328, 11 March 2020, citing *Heirs of Feraren v. Court of Appeals*, 674 Phil. 358-370 (2011).



The CA, on the other hand, ruled that Ruben failed to prove that the subject building was constructed in accordance with the agreed plan, adding that Ruben was responsible for the rectification of the defects since he knew or should have known that the plans and programs submitted to him did not comply with the provisions of PD 1096.

In this case, the Construction Contract imposed upon the contractor the obligation to construct the project strictly in accordance with the plans and program of work signed by the parties. Meanwhile, the owner is under the obligation to pay the contract price, the final payment of which is conditioned upon remittance of the occupancy permit. Aside from the Construction Contract, however, the parties also have obligations arising from law,<sup>24</sup> specifically PD 1096. This is consistent with the principle that laws are deemed written in every contract.<sup>25</sup>

Upon meticulous examination of the records, the Court finds that Ruben and Rosemarie are *in pari delicto* and thus have no action against each other pursuant to Article 1411 of the Civil Code.<sup>26</sup>

*In pari delicto* is “a universal doctrine which holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation; and where the parties are *in pari delicto*, no affirmative relief of any kind will be given to one against the other.”<sup>27</sup> While there are recognized exceptions,<sup>28</sup> none obtains in this case.

Section 213 of the PD 1096 makes it unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or

<sup>24</sup> CIVIL CODE, Article 2257.

<sup>25</sup> See *Werr Corp. International v. Highlands Prime, Inc.*, 805 Phil. 415, 435 (2017).

<sup>26</sup> Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

<sup>27</sup> *Hulst v. PR Builders, Inc. (Hulst)*, 558 Phil. 683, 700 (2007), citing Moreno, *Philippine Law Dictionary* (1988), p. 451; *Rellosa v. Gaw Chee Hun*, 93 Phil. 827, 831, (1953).

<sup>28</sup> In *Hulst*, the Court enumerated the following exceptions to the “*in pari delicto*” rule which permits the return of that which may have been given under a void contract: (a) the innocent party (Arts. 1411-1412, Civil Code); (b) the debtor who pays usurious interest (Art. 1413, Civil Code); (c) the party repudiating the void contract before the illegal purpose is accomplished or before damage is caused to a third person and if public interest is subserved by allowing recovery (Art. 1414, Civil Code); (d) the incapacitated party if the interest of justice so demands (Art. 1415, Civil Code); (e) the party for whose protection the prohibition by law is intended if the agreement is not illegal *per se* but merely prohibited and if public policy would be enhanced by permitting recovery (Art. 1416, Civil Code); and (f) the party for whose benefit the law has been intended such as in price ceiling laws (Art. 1417, Civil Code) and labor laws (Arts. 1418-1419, Civil Code).

structure or cause the same to be done contrary to or in violation of any provision thereof. Verily, a contractor who erects or constructs a building in violation of PD 1096, as well as the owner who caused the construction thereof, may be found criminally liable under this provision.

Here, it is undisputed that the subject building was erected in violation of the minimum air space requirements in PD 1096.<sup>29</sup> It must be emphasized, however, that from the very start, the building plan approved by Rosemarie and implemented by Ruben does not conform with the minimum standard requirements under PD 1096. This can be gleaned from the judicial affidavit of City Engineer Orlando Rebato (Rebato):

Q36 How about as to the rooms in the fourth (4th) floor?

A36 The rooms in the fourth (4th) floor, appears in the building plan were approved as non-aircon, or we called this as with natural ventilation. This should therefore comply with the fourteen cubic meter (14 m<sup>3</sup>) requirement of the National Building Code. However, the rooms in the fourth floor only has [sic] an average size of Ten Cubic Meters (10 m<sup>3</sup>). However, before we approved the building plan, we have already advised Arch. Allan Luzuriaga that the rooms were to be corrected.<sup>30</sup>

Luzuriaga likewise stated in his judicial affidavit that the building plan he designed and submitted was not compliant with PD 1096, to wit:

Q21 Would you confirm that there were rooms that that [sic] you draw [sic] in your plan to be below the said minimum requirement of the National Building Code?

A21 Yes, Sir. Actually Sir, when I draw [sic] the plan I was not really particular about the measurements because I merely followed the instruction of Engr. Ruben U. Yu to maximize the lot area where the building will be built, and hence, to make small rooms only as any, it was also the desire of the owner.

Q22 So you were really aware that they were below the minimum requirements?

Q22 [sic] Yes, but I really did not mind at that time because I was not even sure that it will be my plan that will be chosen by the owner.

Q23 Did you not bring it out with Engr. Ruben U. Yu after he said it was your plan that was chosen?

Q23 [sic] Actually, I told him that, even when I finalized my building plan. But Engr. Ruben U. Yu told me that he is in a hurry already to start with the project and then everything will just be implemented and we will just make an "as-built-plan" later on and the defects will just be remedied, so anyway, if there are corrections by the City Engineer it will be returned to us for correction then that [sic] the time we will make the corrections. So I

<sup>29</sup> Under Section 807 of PD 1096, the minimum airspace requirement per person for habitable rooms is 14.00 cubic meters.

<sup>30</sup> Records, Vol. 3, p. 457.



acceded.

x x x x

Q55 From your measurement and computation based on the building plan itself, you will agree with me that indeed those rooms were below the minimum requirement under the National Building Code.

A55 Yes, Sir.

Q56 In fact, both measurements as appearing in the building plan and as a [sic] constructed, they are both below the minimum volume requirement under the National Building Code, is that correct?

A56 Yes, Sir.<sup>31</sup>

Based on the foregoing and as will be further discussed below, Ruben and Rosemarie agreed to construct, and has in fact constructed, a building in violation of the minimum standards under PD 1096. To the mind of this Court, such agreement constitutes an illegal contract within the purview of Article 1411 of the Civil Code.

As evidence of such illegality, We take note that Ruben has already been found guilty of violation of PD 1096 in relation to the subject building, which finding of guilt was affirmed by the CA and this Court.<sup>32</sup> While the courts, as a general rule, are not authorized to take judicial notice of the contents of the records of other cases, this admits of exceptions, such as when the other case has a close connection with the matter in controversy in the case at hand.<sup>33</sup>

Indeed, the RTC erred in concluding that Ruben cannot be faulted for the non-issuance of the occupancy permit because he merely implemented the building plan submitted and approved by the building official.

In furtherance of the declared policy of PD 1096 to “**safeguard life, health, property, and public welfare**,”<sup>34</sup> the law provides minimum standards and requirements to regulate and control all buildings and structures’ location, site, design quality of materials, construction, use, occupancy, and maintenance.

To ensure compliance with said minimum standards and requirements, PD 1096 requires a person intending to erect or construct building or structure to first secure a building permit,<sup>35</sup> which shall be issued when the building official is satisfied that the work described in the application and

<sup>31</sup> Id. at 21-22, 27.

<sup>32</sup> *Yu v. People*, G.R. No. 241907, 07 January 2019.

<sup>33</sup> *See Trinidad v. People*, G.R. No. 239957, 18 February 2019.

<sup>34</sup> Presidential Decree No. 1096, Sec. 2.

<sup>35</sup> Presidential Decree No. 1096, Sec. 301.

the plans and specifications submitted therewith conform with the requirements of the law and pertinent rules.<sup>36</sup> As an additional safeguard, the law also requires a certificate of occupancy issued by a building official after final inspection and submission of a certificate of completion before a building may be used or occupied.<sup>37</sup> Considering the requirements for the application of a building permit and certificate of occupancy,<sup>38</sup> the task of securing the same requires the joint effort of the owner, architect, or civil engineer who designed the plans and specifications and supervised the construction, and the contractor. This in fact is reflected in the building permit<sup>39</sup> in this case, which is signed by Rosemarie, Luzuriaga, and Ruben.

Further, the implementing rules and regulations (IRR) of PD 1096 provides that “[w]hen the construction is undertaken by contract, the work shall be done by a duly licensed and registered contractor pursuant to the provisions of the Contractor’s License Law (RA 4556).”<sup>40</sup> In turn, RA 4556 and its IRR require an applicant for a contractor’s license to show, among others, at least two years of experience in the construction industry and knowledge of Philippine construction-building codes and ordinances.<sup>41</sup>

As a licensed contractor and an engineer himself, Ruben is thus expected to know and follow the provisions of PD 1096. More so, considering that Ruben was informed of the defects as testified by Luzuriaga:

Atty. Belarmino: You said that it was your plan that was chosen by the building owner. Now, how about after it was chosen and during the time that the construction was about to be made, what communication or information did you give to the building owner as to the fact that the rooms in the 3<sup>rd</sup> and 4<sup>th</sup> floors are way below the requirements under the National Building Code.

x x x x

Witness: Well, I already informed the contractor, sir.<sup>42</sup>

<sup>36</sup> Presidential Decree No. 1096, Sec. 304.

<sup>37</sup> Presidential Decree No. 1096, Sec. 309.

<sup>38</sup> Under Sections 304(5)(c)(iv) and 309(1) of the IRR of PD 1096, upon completion of the construction, the owner shall submit an application of Certificate of Occupancy together with a duly notarized Certificate of Completion stating that the construction of the building/structure conform to the provision of the Code, its IRR, as well as the construction logbook, as-built plans and specifications and the Building Inspection Sheet all signed by whoever is the contractor (if the construction is undertaken by contract) and signed and sealed by the Owner’s duly licensed Architect or Civil Engineer who undertook the full time inspection and supervision of the construction works, stating that the construction of the building/structure conform to the provision of the Code, its IRR as well as the plans and specifications

<sup>39</sup> Records, Vol. 3, p. 462.

<sup>40</sup> 2005 Implementing Rules and Regulations of Presidential Decree No. 1096, Sec. 304(5)(f)

<sup>41</sup> Republic Act No. 4556, Sec. 20; Implementing Rules and Regulations of Republic Act No. 4556, Rule 4, Sec. 4.1.

<sup>42</sup> TSN, 25 November 2013, p. 57.

Ruben should not have blindly agreed with the construction of the subject building knowing that the same does not comply with PD 1096.

Rosemarie is likewise not an innocent party here. The Court cannot subscribe to the dangerous proposition that Rosemarie is supposedly faultless because, as a layperson, she merely relied on the expertise of Luzuriaga and Ruben in relation to the design and construction of the building. As the owner of the subject building, Rosemarie undoubtedly has the responsibility of ensuring that her building is built in accordance with the provisions of PD 1096.

It is settled that ignorance of the law excuses no one from compliance therewith.<sup>43</sup> As such, when Rosemarie approved the building plan, she is deemed to have done so with the knowledge of the minimum standard requirements under PD 1096.

Even if We accept the premise that Rosemarie is a layperson with limited appreciation and understanding of a building plan, it is incumbent upon Rosemarie to discuss the building plan with the architect and the contractor to afford her full understanding of the same with the view of ensuring compliance with all pertinent laws. This, Rosemarie failed to do based on the statements of her own witnesses, Luzuriaga and Theresa Sia (Theresa), that Luzuriaga only met with the owners of the subject building “when the building permit was already on process with the City Engineering Office.”<sup>44</sup>

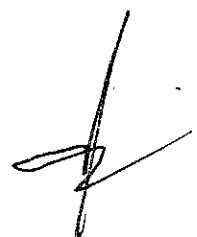
Rosemarie’s contention that she merely trusted the expertise of Luzuriaga and Ruben cannot be appreciated in her favor when she did not even bother to meet with, or even attempted to know the identity and credentials of, the architect she claims to have trusted. Had Rosemarie exercised prudence, Luzuriaga would have had the opportunity to raise the matter considering that based on his testimony, he knew of the defects but was unable to communicate the same to the owners because he did not know them prior to construction.<sup>45</sup> Rosemarie was not blindsided. Indeed, the failure to exercise due diligence and prudence cannot be used to justify or exculpate oneself from non-compliance with the law. This is especially true here where the subject building is a hotel.

It is well to note at this point that the provision of small rooms in the subject building was in accordance with the wishes of the owner as can be

<sup>43</sup> CIVIL CODE, Article 3.

<sup>44</sup> Records, Vol. 3, pp. 179-180; Records, Vol. 2, p. 1505.

<sup>45</sup> TSN, 25 November 2013, pp. 56-57.



inferred from the admission of Theresa that they chose the plan with the most number of rooms.<sup>46</sup> The testimony of Luzuriaga has the same import:

Atty. Ajero: Mr. witness, you made mention in answer # 21 and I quote: "I merely followed the instructions of Engr. Ruben Yu to maximize the lot area where the building will be built and hence, to make smaller rooms only as any and it was also the desire of the owner." So Mr. witness, this mention of small rooms was also confirmed by the building owner, am I correct?

Witness: Yes, sir.

Atty. Ajero: Do you recall during [sic] the time that you were constructing the 3<sup>rd</sup> floor and 4<sup>th</sup> floor of the building?

Witness: Yes, sir.

Atty. Ajero: Do you recall that Theresa Rose Sia, one of the representatives of the defendants in this case, was particularly attending during that time in the construction of the 3<sup>rd</sup> and 4<sup>th</sup> floors?

Witness: Yes, sir.

Atty. Ajero: Will you also agree with me that she was there when you were about to partition the room? Am I right?

Witness: During the time that we are going to measure the size of the rooms, she was there, sir.

Atty. Ajero: As a matter of fact, she made instructions to you to make the rooms fit a particular size of beds, am I right?

Witness: Yes, sir.

x x x x

Court: Alright, question from the court. When Ms. Theresa Sia instructed you to make these rooms, did she tell you any dimension of a bed to fit that room?

x x x x

Witness: Yes, Your honor.

Court: Proceed.

Atty. Ajero: Do you know the reason why the owner would want you to fill a smaller [sic], did the building owner ever related to you the purpose for such smaller rooms?

Witness: The purpose why it was built for smaller rooms [sic] because as far as I can recall, she said that it will be P100.00 rate for at least a short time, sir.<sup>47</sup>

<sup>46</sup> Records, Vol. 3, p. 180.

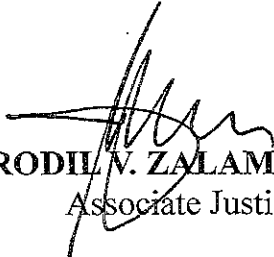
<sup>47</sup> TSN, 25 November 2013, pp. 30-34

Our conclusion would be different if the violations of PD 1096 was committed pursuant to deviations in the plan made by the contractor without the approval of the owner. In *Spouses Francisco v. DEAC Construction, Inc.*,<sup>48</sup> Court upheld the right of the owners therein to rescind the construction contract due to, among others, the unauthorized deviations in the building plan, which violated PD 1096. In this case, however, violation of PD 1096 is already reflected in the building plan approved by Rosemarie.

Moreover, the records reveal that while the partial occupancy permit was issued in 2004, Rosemarie only communicated with the building official to inquire about the non-issuance of the full occupancy permit in 2007.<sup>49</sup> Evidently, Rosemarie does not appear to be keen on observing compliance with the provisions of PD 1096. Worse, notwithstanding the lack of full occupancy permit and in violation of PD 1096, Rosemarie began operating the hotel in 2005 as duly noted by the RTC and stipulated during pre-trial.<sup>50</sup> Theresa even alleged that they received criticisms for “operat[ing] a hotel like a prison cell in the maximum security section that the occupant cannot freely move and that [they] have put into risk the lives of thousands of people”<sup>51</sup> as basis for their claim of moral damages. Clearly, Rosemarie is not as innocent as she would have this Court believe.

**WHEREFORE**, the foregoing premises considered, the Petition is **DENIED**. The Decision dated 29 March 2019 and the Resolution dated 18 July 2019 of the Court of Appeals in CA-G.R. CV No. 107708 are **REVERSED** and **SET ASIDE**. The Complaint of Ruben Yu and the Counterclaim of Rosemarie Sia in Civil Case No. 10577 are hereby **DISMISSED**.

**SO ORDERED.**

  
**RODIL N. ZALAMEDA**  
Associate Justice

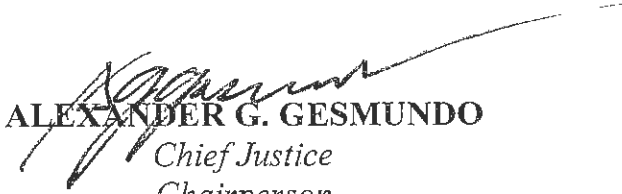
<sup>48</sup> 567 Phil. 610 (2008).

<sup>49</sup> Records, Vol 3, p. 453.

<sup>50</sup> *Rollo*, p. 135.

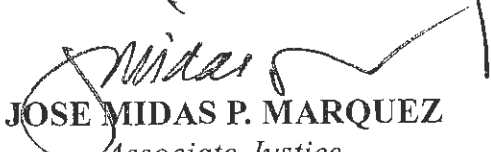
<sup>51</sup> Records, Vol. 3, p. 189.

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*  
*Chairperson*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

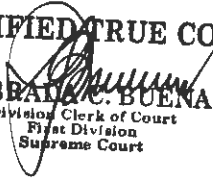
  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to the Section 13, Article VIII of the Constitution, 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.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

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 Supreme Court

