

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
FOURTH JUDICIAL REGION
Branch 122
IMUS CITY, CAVITE
rtc1imu122@judiciary.qov.ph

SPS. JASMIN MOSADA AND REGENALD MOSADA, represented by SPS. GEMMA DIGNOS & JOSEPH DIGNOS,

Plaintiffs,

-versus -

CIVIL CASE NO. 7276-22
FOR: Breach of Contract
and/or Rescission of Contract,
both with Claim of Damages

JP LLAMOSO HOME BUILDERS &
JEAN PAUL LLAMOSO,

Defendants,

X ----- X

SUMMONS
(By Publication)

TO: JP LLAMOSO HOME BUILDERS
JEAN PAUL LLAMOSO

1023 Hirmington St., cor. Sunrise Brookside Subd.,
Ortigas Ave. Extension, Cainta, Rizal

GREETINGS:

A verified complaint was filed in this Court which aver that:

SPOUSES JASMIN MOSADA and REGENALD MOSADA as represented by GEMMA DIGNOS & JOSEPH DIGNOS ("Spouses Dignos" and/or "Plaintiffs"), who are Filipino citizens, of legal ages, with residence address at Phase 3 Block 3 Lot 24, ACM Subdivision Alapan 1-A, Imus, Cavite, by counsel, and by way of this Complaint ("Complaint"), respectfully state:

I.

FACTUAL ANTECEDENTS

1.1. Spouses Jasmin Mosada & RegenalD Mosada constituted GEMMA DIGNOS and/or JOSEPH DIGNOS as their lawful attorneys-in-fact in relation to the construction of a two-storey house (the "Project"). Specifically, they were authorized to do all acts, matters and things whatsoever with respect to the Project.

1.1.1. The Special Power of Attorney granted to Ms. Gemma Dignos and/or Mr. Joseph Dignos by Spouses RegenalD M. Mosada & Jasmin F. Mosada, notarized 26 December 2019, is marked and attached herein as Plaintiffs' Annex "A".

1.2. Spouses Jasmin Mosada & RegenalD Mosada likewise constituted GEMMA DIGNOS and/or JOSEPH DIGNOS as their lawful attorneys-in-fact in relation to the above-captioned case, with full power and authority to appear in all proceedings, meetings, hearings, conferences and negotiations involving this case, to appear at any and all mediation proceedings, pre-trial or preliminary conference or any meeting before the court and/or a court-appointed commissioner, to sign, verify, deliver and receive any and all agreements, instruments, pleadings, motions, notices, affidavits, and other documents and papers, execute the verification and certification of non-forum shopping, and other documents in relation to the matter at hand, and perform any and all acts incidental and necessary to accomplish the foregoing.

1.2.1. The Special Power of Attorney granted to Ms. Gemma Dignos and/or Mr. Joseph Dignos by Ms. Jasmin Mosada, as apostilled on 3 February 2022 by Hon. Roussel R. Reyes, Consul-General of the Republic of the Philippines to Qatar, is marked and attached herein as Plaintiffs Annex "B".

1.2.2. The Apostilled Special Power of Attorney granted to Ms. Gemma Dignos and/or Mr. Joseph Dignos by Mr. RegenalD Mosada, as apostilled on 3 February 2022 by Hon. Roussel R. Reyes, Consul-General of the Republic of the Philippines to Qatar, is marked and attached herein as Plaintiffs Annex "C".

1.3. On 5 December 2019, Spouses Mosada and JP Llamoso Home Builders ("JP Llamoso Builders"), as represented by its owner and herein defendant Mr. Jean Paul Llamoso entered

into a Construction Contract.

1.3.1. A copy of the said Construction Contract dated 5 December 2019 is attached herein as Plaintiffs' Annex "D".

1.4. Under the aforementioned Construction Contract, JP Llamoso Builders is obliged to construct, build, and complete a two-storey house (the "Project"). 1 JP Llamoso Builders was given thirty two (32) weeks or one hundred ninety two (192) working days from the execution of the Construction Contract and acquisition of the Building Permit. 2

1.4.1. The Building Permit was issued by the Bacoor City Office of the Building Official on 15 January 2020. A copy of the said Building Permit is attached herein as Plaintiffs Annex "E".

1.5. Also pursuant to the Construction Contract, Spouses Mosada were obliged to pay to JP Llamoso Builders the amount of Two Million Seven Hundred Seventy Thousand Pesos (Php2,770,000.00) (the "Contract Price") in different tranches. 3

1.6. Of the Contract Price, Spouses Dignos, on behalf of Spouses Mosada, has as of even date paid Two Million Five Hundred Fourteen Thousand Five Hundred Pesos (Php2,514,500.00), detailed as follows:

1.6.1. On 28 November 2019, a payment was made in the amount of Six Hundred Ninety Two Thousand Five Hundred Pesos (Php692,500.00), for the payment of the downpayment as stated in the Construction Contract. A copy of the Acknowledgment Receipt issued by Jean Paul Llamoso pertaining to the foregoing is attached herein and marked as Plaintiffs' Annex "F".

1.6.2. Subsequently, a payment was made in the amount of Thirty Thousand Pesos (Php30,000.00), for the full payment of the Building Plan. A copy of the Acknowledgment Receipt issued by Jean Paul Llamoso pertaining to the foregoing is attached herein and marked as Plaintiffs' Annex "G".

1.6.3. A payment was likewise made in the amount of Eight Hundred Thirty One Thousand Pesos (Php831,000.00), for the full payment of the first billing. A copy of the Acknowledgment Receipt issued by Jean Paul Llamoso pertaining to the foregoing is attached herein and marked as Plaintiffs' Annex "H".

1.6.4. Also, a payment was made in the amount of One Hundred Thirty Thousand Pesos (Php130,000.00), for the partial payment for the gate and fence. A copy of the Acknowledgment Receipt issued by Jean Paul Llamoso pertaining to the foregoing is attached herein and marked as Plaintiffs' Annex "I".

1.6.5. Moreover, a payment was made in the amount of One Hundred Thirty Thousand Pesos (Php130,000.00), for the advanced payment for the second billing. A copy of the Acknowledgment Receipt issued by Jean Paul Llamoso pertaining to the foregoing is attached herein and marked as Plaintiffs' Annex "J".

1.6.6. Lastly, a payment was made in the amount of Seven Hundred One Thousand Pesos (Php701,000.00), for the full payment of the second billing. A copy of the Acknowledgment Receipt issued by Jean Paul Llamoso pertaining to the foregoing is attached herein and marked as Plaintiffs' Annex "K".

1.7. Despite the faithful and consistent payment by the Plaintiffs of the Contract Price, the work constructed by the Defendants in relation to the Project remained bare and unsatisfactory, not to mention that the Defendants failed to observe the period of construction agreed upon, as discussed in Paragraph 1.4 and its sub-paragraph of this Complaint.

1.8. Pursuant to such non-compliance, the Plaintiffs sent an Official Demand Letter dated 12 May 2021 to demand the return of the sums of money they paid in relation to the failure of the Defendants to construct the Project. A copy of the said demand letter is attached herein and marked as Plaintiffs' Annex "L".

1.9. The Plaintiffs also sent a Final Demand Letter dated 23 October 2021, again reiterating the refund of the sums of money they paid. Notably at this juncture, the Defendants already refunded Seventy Thousand Pesos (Php70,000.00) sometime in March 2021 to the Plaintiffs. A copy of the said final demand letter is attached herein and marked as Plaintiffs' Annex "M".

1.10. Failure to heed the said demands, the Plaintiffs were given no choice but to institute this instant action.

1.11. It is of note that the promise of the Defendants to refund is contained in their Facebook Messenger message addressed to Spouses Mosada which they share to the Spouses Dignos as their attorneys-in-fact. In the said Facebook message, the Defendant Llamoso mentioned that the Spouses Mosada had the option to either continue with the project but there will be a delay of an additional three (3) months, or stop the same and seek refund. A printout of this Facebook Messenger message is attached herein and marked as Plaintiffs' Annex "N".

1.12. In another Facebook Messenger message, Defendant Llamoso mentioned that he will issue post-dated checks for the refund. However, no such checks were remitted. A printout of this Facebook Messenger message is attached herein and marked as Plaintiffs' Annex "O".

II.
RESCISSON

2.1. As held by the Supreme Court in the case of George C. Fong vs. Jose V. Duenas4, "as a contractual remedy, rescission is available when one of the parties substantially fails to do what he has obligated himself to perform. It aims to address the breach of faith and the violation of reciprocity between two parties in a contract. Moreover, the Court had the occasion to state that "the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him."

⁴ George C. Fong vs. Jose V. Duenas, G.R. No. 185592, June 15, 2015.

2.2. As applied in the instant Complaint, the Defendants are already in substantial breach of its obligations under the Construction Contract dated 5 December 2019 for-failing to construct the Project within the specified period and for failing to make substantial and satisfactory construction works for the Project. It must be noted that it has almost been three (3) years since the execution of the aforementioned agreement, and also the acquisition of the Building Permit. The construction is now far beyond the period contained in the Construction Contract, as discussed in Paragraph 1.4 of this Complaint.

2.3. Under Article 1191(2) of the Civil Code of the Philippines,5 "the injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible."

2.4. In this instant case, the relief sought by the aggrieved Plaintiffs is that of rescission, instead of fulfillment, as the Defendants made themselves scarce when being confronted about the matter.

III.
DAMAGES

3.1. It is likewise provided in the provision of law cited that rescission may be coupled with damages.6

3.2. Likewise as held by the Supreme Court in the case of Spouses Luigi M. Guanio and Anna Hernandez-Guanio vs. Makati Shangri-la Hotel and Resort, Inc.,7 • the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief."

3.3. Also as discussed in the aforementioned case, "a breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered" (emphasis supplied). The remedy serves to preserve the interests of the promisee that may include his "expectation interest" - the interest in having the benefit of his bargain by being put in as good a position as he would have been in the contract being performed; his "reliance interest" - which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been had the contract not been made; or his "restitution interest" - which is his interest in having restored to him any benefit that he has conferred to the other party.

3.4. In this case, it is not hard to see that all the three interests mentioned above need preservation. The Plaintiffs expected that their dream two storey house when they return home from working abroad will come to fruition when they entered into the

Construction Contract with the Defendants. Their reliance on the Defendants on the construction of the same is also apparent and hard to deny, as they were the ones in possession and control of the property all this time. Lastly, the Plaintiffs deserve restitution on the sums of money they paid since the Defendants fail to deliver on their promises under the Construction Contract.

IV.
WITNESSES

4.1. The Plaintiffs, through the undersigned counsel, shall present as its testimonial evidence-in-chief the Judicial Affidavit executed by the following witnesses:

⁵An Act to Ordain and Institute the Civil Code of the Philippines [Civil Code of the Philippines], Republic Act No. 386, June 18, 1949.
⁶Supra note 5.
⁷Spouses Luigi M. Guanio and Anna Hernandez-Guanio vs. Makati Shangri-law Hotel and Resort, Inc., G.R. No. 190601, February 7, 2011.

Name of Witness	Summary of Testimony
Gemma Dignos	a. To establish and prove that: i) Spouses Jasmin Mosada and RegenalD Mosada ("Spouses Mosada"), through Spouses Gemma Dignos and Joseph Dignos ("Spouses Dignos") entered into a valid Construction Contract with JP Llamoso Home Builders ("JP Llamoso") as represented by its owner Mr. Jean Paul Llamoso; b. payments were made by Spouses Mosada to JP Llamoso; c. JP Llamoso is in breach of the Construction Contract, and d. Spouses Mosada sustained damages and incurred losses due to the defendants' failure to perform their obligations under the Construction Contract.
Atty. Endozo	a. To establish and prove that the Plaintiffs engaged the services of legal counsel; b. To establish the existence of the lawyer-client relationship; c. To establish the amounts spent by the Plaintiffs for legal representation and its related costs in relation to this matter; and d. To identify and authenticate documentary exhibits.

4.2. The Defendants respectfully reserve the right to amend the Judicial Affidavit and to call witnesses other than that mentioned above to testify on matters summarized above.

V.
DOCUMENTARY EVIDENCE

5.1. The Defendants, through the undersigned counsel, shall present the following documents as her evidence-in-chief:

Annex	Description
A	Special Power of Attorney granted to Ms. Gemma Dignos and/or Mr. Joseph Dignos by Spouses RegenalD M. Mosada & Jasmin F. Mosada, notarized 26 December 2019
B	Special Poer of Attorney granted to Ms. Gemma Dignos and/or Mr. Joseph Dignos by Ms. Jasmin Mosada, as apostilled on 3 February 2022 by Hon. Roussel R. Reyes Consul-General of the Republic of the Philippines to Qatar
C	Special Power of Attorney granted to Ms. Gemma Dignos and/or Mr. Joseph Dignos by Mr. RegenalD Mosada, as apostilled on 3 February 2022 by Hon. Roussel R. Reyes, Consul-General of the Republic of the Philippines to Qatar
D	Construction Contract dated 5 December 2019
E	Building Permit issued by the Bacoor City Office of the Building Official dated 15 January 2020

F	Acknowledgment Receipt for Php692,500.00
G	Acknowledgment Receipt for Php30,000.00
H	Acknowledgment Receipt for Php831,000.00
I	Acknowledgment Receipt for Php130,000.00
J	Acknowledgment Receipt for Php130,000.00
K	Acknowledgment Receipt for Php701,000.00 (full payment of second billing)
L	Official Demand Letter dated 12 May 2021
M	Final Demand Letter dated 23 October 2021
N	A printout of a Facebook Messenger message
O	A printout of a Facebook Messenger message

5.2. The Defendants respectfully reserve the right to present or adopt, for the purposes stated above, or other purposes, documents other than those listed above.

5.3. The Defendants respectfully submit that the copies of Annexes "A" to "O" and its sub-markings are attached to the Judicial Affidavit of the witness and/or the Complaint.

5.4. The Defendants further submit that the originals/certified true copies shall be presented during pre-trial and/or trial proper.

PRAYER

WHEREFORE, premises considered, Plaintiffs SPOUSES JASMIN MOSADA and REGENALD MOSADA as represented by GEMMA DIGNOS & JOSEPH DIGNOS respectfully pray for the Honorable Court the following reliefs:

(1) The rescission of the Construction Contract dated 5 December 2019 for the substantial failure of the Defendants to comply with their obligations under the same;

(2) After taking such proceedings as ii may find necessary, RENDER judgment in its favor ordering Plaintiffs, jointly and solidarily liable for the payment of;

(i) Ordering the Defendants for the refund of Two Million Five Hundred Fourteen Thousand Five Hundred Pesos (Php2,514,500.00), as actual damages;

(ii) Ordering the Defendants for the payment of One Million Pesos (Php1,000,000.00) as actual damages for the preservation of the expectation interest, reliance interest, and restitution interest of the Plaintiffs;

(iii) Ordering the Defendants to pay the Defendants attorney's fees amounting to not less than Two Hundred Fifty Thousand Pesos (Php250,000.00), and litigation expenses and cost of suit.

The Defendants likewise pray for such other relief as the Honorable Court may deem just or equitable.

Respectfully submitted,
Morong, Rizal for Imus, Cavite. 30 August 2022.

(Signed) AUREA JEICELLE A. ENDOZO
Counsel for the Plaintiffs
168 Natividad St. San Pedro
Morong, Rizal 1960
PTR No.: 17236921/1-3-2022/Rizal
IBP/LRN No.: 168615/12-27-2021/Rizal
Roll No.: 74077
MCLE Compliance No. VII - 0008315
Email Address: aurea.endozolaw@gmail.com
Mobile No. 0927 340 1865

Republic of the Philippines)
Province of Rizal) S.S.
Municipality of Morong)

VERIFICATION WITH
(CERTIFICATION OF NON-FORUM SHOPPING)

We, SPOUSES JASMIN MOSADA and REGENALD MOSADA as represented by GEMMA DIGNOS & JOSEPH DIGNOS, Filipino citizen, of legal age, after having been sworn in accordance with law, hereby depose and state:

We are the petitioners in the foregoing Petition; We have caused the preparation and filing of the foregoing Petition; have read and understood the same; and we hereby certify that the allegations contained therein are true and correct based on my personal knowledge and on authentic records;

We hereby certify that we have not commenced any other action or proceedings involving the same issues subject matter of the foregoing Petition before the Supreme Court, or before the Court of Appeals, or different divisions thereof; or any other tribunal or agency thereof; that to the best of my knowledge, no other action or proceeding involving the same issues subject matter of the instant Petition is pending before the Supreme Court, the Court of Appeals or different divisions thereof; or in any other tribunal or agency except the above-referenced case; and if there is any action pending, we shall state the status of the same;

That if we should learn thereafter that a similar action or proceeding has been filed or is pending before the Supreme Court or any of its divisions, before the Court of Appeals or any of its divisions, or any other tribunal or agency, I shall notify this Honorable Court of such fact, within five (5) days from notice thereof;

IN WITNESS WHEREOF, I have hereunto signed my name this 29th day of June, 2022 in Morong, Rizal, Philippines.

(Signed) GEMMA DIGNOS Affiant
(Signed) JOSEPH DIGNOS Affiant

SUBSCRIBED AND SWORN TO before me this 29 June 2022 in Morang, Rizal, Philippines, affiant exhibiting to me their respective government identification cards described above.

(Signed)
ATTY. AUREA JEICELLE A ENDOZO
NOTARY PUBLIC FOR AND IN THE PROVINCE OF RIZAL
Commission Appointment No. 21-01-M
Until December 31, 2022
Doc No. 1243
Page No. 228
Book No. 2
Series of 2022
PTR No.: 17236921/1-3-2022/Rizal
IBP/LRN No.: 168615/12-27-2021/Rizal
Roll No.: 74077
MCLE Compliance No. VII - 0008315
168 Natividad St. San Pedro, Morang, Rizal

WHEREAS, on 15 March 2023, plaintiff, through counsel, filed a Motion to Allow Plaintiff To Cause Service of Summons By Publication, considering that the whereabouts of the defendants are unknown and cannot be ascertained by diligent inquiry.

WHEREAS, in an Order, dated 20 March 2023, the Court granted the said Motion, in accordance with Section 16, Rule 14 of the Rules of Court.

NOW, THEREFORE, you are hereby required to file with this Court, within sixty (60) days from last date of publication of this Summons, your Answer to the Complaint.

SO ORDERED.
Imus City, Cavite. 20 March 2023.

LE LAVORE
Presiding Judge

Copy furnished:
SPS. JASMIN MOSADA AND REGENALD MOSADA, represented by SPS. GEMMA DIGNOS & JOSEPH DIGNOS Plaintiffs
Phase 3 Block 3 Lot 24, ACM Subdivision Alapan 1-A, Imus City, Cavite

ATTY. AUREA JEICELLE A. ENDOZO
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168 Natividad St. San Pedro Morong, Rizal 1960
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JP LLAMOSO HOME BUILDERS JEAN PAUL LLAMOSO
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LDL/rbd

Publication: HANEP June 5, 12 & 19, 2023