

**JESUS B. CHUA, ALSO KNOWN AS JESS,
PLAINTIFF-APPELLEE/PLAINTIFF-APPELLANT, VS. LARA'S
GIFT & DECOR, INC. AND LUIS F. VILLAFUERTE, JR.,
DEFENDANTS,**

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court are appeals from the Decision[1] dated December 23, 2013 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 195, Parañaque City in Civil Case No. 04-0057 for sum of money and damages, entitled “JESUS B. CHUA, also known as JESS, Plaintiff, versus LARA'S GIFT & DECOR, INC. and LUIS F. VILLAFUERTE, JR., Defendants.”, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered, ordering defendant LGDI to pay plaintiff the following:

1. Two Million Ninety Thousand Pesos (Php2,090,000.00) as actual damages plus legal interest from October 13, 2003 when the final demand was made on defendant LGDI thru its president, defendant Villafuerte, Jr., until the same is paid in full;
2. Fifty Thousand Pesos (Php 50,000.00) as attorney's fees;
3. Three Thousand Pesos (Php3,000.00) as appearance fee per court hearing; and
4. Costs of suit.

The complaint as against defendant Luis F. Villafuerte, Jr. is hereby ordered Dismissed for lack of cause of action.

Defendants' counter claims are likewise Dismissed for lack of merit.

SO ORDERED.”[2]

The facts are:

On February 17, 2004, plaintiff-appellant Jesus B. Chua (Chua for brevity) filed a Complaint[3] for collection of sum of money plus damages against defendant-appellant Lara's Gifts & Decor, Inc. (LGDI for brevity) and defendant Luis F. Villafuerte, Jr. (Villafuerte for brevity) averring that: on October 29, 2001, the said parties entered into an Agreement[4] for the design, fabrication, installation, and test run of “Proposed Spray Pre-Treatment, Wet Painting and Powder Coating Facilities”, the total price of which amounted to P13,500,000.00; out of the said contract price, the defendants have paid plaintiff-appellant Chua the amount of P12,150,000.00, as reflected in plaintiff-appellant Chua's demand letter dated September 2, 2002[5]; hence, the outstanding balance due to plaintiff-appellant Chua is P1,350,000.00; thereafter, on January 4, 2002, defendants issued Purchase Order No. 10477[6] to plaintiff-appellant Chua for the supply of labor and materials on the design, fabrication, installation, and test run of acid fume scrubber for the existing acid pickling tanks of pre-treatment facilities, at a total cost of P1,400,000.00; defendants made a downpayment of P560,000.00, leaving

an unpaid balance of P840,000.00; later on, on November 4, 2002, defendants made another partial payment of P100,000.00; thus, for the two (2) projects, the total amount due and collectible is P2,090,000.00; plaintiff-appellant Chua made verbal demands to DTI Undersecretary Nelly Villafuerte, mother of defendant Villafuerte, to collect the said amount but to no avail; plaintiff-appellant Chua was compelled to refer the matter to his counsel, who wrote defendant Villafuerte a final demand letter[7] dated October 13, 2003; the unreasonable attitude of defendant Villafuerte to refuse to even personally talk with plaintiff-appellant Chua for the settlement of defendant-appellant LGDI's obligations smacks of fraud, malice, bad faith, unfairness, and illegality, making him personally liable therefor; and, as a result of defendants' failure to comply with the final demand letter, plaintiff-appellant Chua was prejudiced in the amount of P2,090,000.00 plus legal interest. Plaintiff-appellant Chua likewise demanded P100,000.00 as moral damages, P30,000.00 as nominal damages, P50,000.00 as exemplary damages, and legal fees.

Summons⁸ were served on defendant-appellant LGDI and defendant Villafuerte on May 4, 2004.[9]

On June 24, 2004, defendants filed their Answer with Counterclaim[10] alleging that: defendant-appellant LGDI is engaged in the business of manufacturing, selling, and exporting handicraft and decorative products; the subject Agreement dated October 29, 2001 was only between plaintiff-appellant Chua and defendant-appellant LGDI; defendant Villafuerte was not involved in his personal capacity and participated in its execution only as President of defendant-appellant LGDI; as plaintiff-appellant Chua has no cause of action against defendant Villafuerte, the complaint against him must be immediately dismissed; it was plaintiff-appellant Chua who breached his obligations and dishonored his commitments resulting in tremendous damage on the part of defendant-appellant LGDI; as an exporter, defendant-appellant LGDI has always been quality-driven and strictly time-bound; on or about November 8, 1999, defendant-appellant LGDI commissioned plaintiff-appellant Chua to design, fabricate, and install its first Powder Coating System[11] in its production plant; consequently, on March 30, 2000, defendant-appellant LGDI issued to plaintiff-appellant Chua Purchase Order No. 5697[12] for the spray guns to be used in the first Powder Coating System; the spray guns, however, did not operate and function to the expected level; these turned out to be defective and were used only for two (2) months; defendant-appellant LGDI asked plaintiff-appellant Chua to either fix or replace the said spray guns, which he never did; later on, when defendant-appellant LGDI underwent an expansion in June 2001, the company had to install a bigger powder coating system in its plant; upon learning of the same, plaintiff-appellant Chua approached defendant-appellant LGDI and asked to grant him the contract for the second Powder Coating System, subject of this case, and made a commitment to repair the spray guns of the first System immediately and for free.

Defendants further stated that: under the October 29, 2001 Agreement for the second Powder Coating System, plaintiff-appellant Chua had until January 30, 2002 to completely fabricate, deliver, and install the same; he performed initial repairs on the spray guns of the first system; plaintiff-appellant Chua incurred delay as the second Powder Coating System was installed and finished only on September 2, 2002; as for the second subject contract, plaintiff-appellant Chua offered defendant-appellant LGDI that it purchase scrubbers from him, equipment that cleanse the bad air produced by the first system; as a result, Purchase Order No. 10477 dated January 4, 2002 was issued by defendant-appellant LGDI in favor of plaintiff-appellant Chua for the said scrubbers; plaintiff-appellant Chua had until January 30, 2002 to deliver the scrubbers, but he was able to complete delivery only on October 14, 2002; worse, plaintiff-appellant Chua failed to repair the spray guns, which forced defendant-appellant LGDI to purchase another set of spray guns for 100,627.50 Swiss Francs[13], equivalent to US\$ 59,840.96; further, due to the delay in the installation of the second Powder Coating System, defendant-appellant LGDI's production was also delayed forcing the company to airfreight product items at its own expense, amounting to US\$ 206,705.51[14]; likewise, because of plaintiff-appellant Chua's failure to repair the spray guns; the operation of the first Powder Coating System was stopped for thirteen (13) months causing

defendant-appellant LGDI to incur depreciation expenses in the amount of P1,056,180.74, as well as warehousing rent for the said period in the amount of P1,287,000.00.

The parties submitted their respective Pre-Trial Briefs.[15] The lower court thereafter forwarded the case to the Philippine Mediation Center[16], but it was later returned to the court as the proposals and counter-proposals were not acceptable to both parties.[17] On May 16, 2005, the parties were once again referred to mediation[18], but to no avail.[19]

Pre-Trial Conference[20] was held on January 9, 2006. On January 23, 2006, Judge Raul E. De Leon of the RTC, Branch 258, Parañaque City voluntarily inhibited himself from the case and ordered its re-affle.[21] The case was then re-raffled to RTC, Branch 195.[22]

Trial on the merits thereafter ensued.

Plaintiff-appellant Chua testified[23] that: he is engaged in the fabrication and painting of facilities; he has known defendant Villafuerte since 1999, the latter being the President of defendant-appellant LGDI; plaintiff-appellant Chua had a total of fourteen (14) projects[24] with defendant-appellant LGDI: the first was on October 5, 1999 while the last was on August 4, 2002; defendant-appellant LGDI commissioned him to install a “powder coating system” to be used for the mechanized painting of the company's decorative handicraft items for export; “powder coating” is a new system of finishing, where instead of using the conventional wet paint, powder paint is being used; he was commissioned by defendant-appellant LGDI for the purchase and sale of spray guns used under the first Powder Coating System; these spray guns were supplied by a local dealer in the Philippines, and not supplied directly by plaintiff-appellant Chua's company, JBC Engineering Specialists; defendant Villafuerte, however, approached him so that he could approach the dealer in case of a maintenance problem; plaintiff-appellant Chua's company was therefore only used as an intermediary; the spray guns are not the product of his company, and as far as maintenance was concerned, this was undertaken by the dealer and not by plaintiff-appellant Chua, as they merely coordinated; for maintenance problem, it is the dealer who should answer for the same since the spray guns were under warranty for one (1) year; it is not true that there was delay in the delivery of spray guns; these products were imported and the delivery was dependent on the dealer and not on plaintiff-appellant Chua, a fact known to defendant Villafuerte.

Plaintiff-appellant Chua further testified that: the projects subject of the instant case are the second Powder Coating Line under the Agreement[25] dated October 29, 2001, and the scrubbers for the old line under Purchase Order No. 10477[26] dated January 4, 2002; the said projects are the twelfth (12[th]) and thirteenth (13[th]) project, respectively, out of the fourteen (14) he did for defendant-appellant LGDI; except for these two, he encountered no problems with the other projects, as all were paid, including the 14[th] or the last project; the total amount for the two (2) projects is P14,900,000.00; defendant-appellant LGDI was able to pay 90% for the second Powder Coating Line and 30% for the second project for scrubbers, leaving a total balance of P2,090,000.00; in order to collect the said amount from the defendants, plaintiff-appellant Chua sent a request for billing dated September 2, 2002, a letter dated October 14, 2002, fax messages, a demand letter to defendant Villafuerte dated November 4, 2002, and a Statement of Account dated January 21, 2003; he likewise approached defendant Villafuerte's mother, DTI Undersecretary Nelly Villafuerte, to help him collect from her son, sending her a letter dated September 22, 2003; however, nothing was heard from defendant Villafuerte or from his mother; and, consequently, plaintiff-appellant Chua's then lawyer, retired Judge Job Madayag, sent a final demand letter to defendant Villafuerte but there was still no response.

The parties stipulated on the intended testimony of Atty. Madayag on the matter of identification of the demand letter he made and sent to the defendants.[27]

On September 5, 2006, plaintiff-appellant Chua filed his Formal Offer of Evidence.[28]

The defense, for their part, offered the testimonies of Reginald Arellano, Leo Aguilar, and Gina Servita.

Reginald Arellano testified[29] that: he is the Production Manager of defendant-appellant LGDI since 1995 up to the present; he knows plaintiff-appellant Chua because the latter installed the two (2) powder coating systems of defendant-appellant LGDI; the components of a powder coating system are: oven conveyor, oven dryer, metal treatment, and spray booth, where spray guns are used to apply paint on the items; the spray guns for the first Powder Coating System installed in early 2000 were supplied by plaintiff-appellant Chua; there were two (2) types of spray guns which he supplied: wet paint spray gun and powder coat spray gun; the wet paint spray gun lasted for only two (2) months; these were not fixed nor replaced by plaintiff-appellant Chua; on the other hand, the powder paint spray gun worked for almost two (2) years; plaintiff-appellant Chua sent a group to fix the spray guns but these were not fixed; as both types of spray guns were already broken, defendant-appellant LGDI's production stopped for about eight (8) months; to remedy the situation, they bought new spray guns from another supplier to continue their operation; the second Powder Coating System was installed by plaintiff-appellant Chua in September 2002; he also supplied defendant-appellant LGDI with scrubbers; scrubbers are the absorbing materials of fumes of chemicals coming from the metal treatment; plaintiff-appellant Chua was able to completely deliver the scrubbers in October 2002; and, there was a big delay and defendant-appellant LGDI, instead of the usual shipment by sea freight, was forced to incur expenses for airfreight to be able to meet the deadline of their buyers abroad.

Leo Aguilar testified[30] that: he is an employee of defendant-appellant LGDI since 1991 up to the present; he is defendant Villafuerte's uncle and confidential assistant; defendant Villafuerte held his position as President of defendant-appellant LGDI before he ran as Governor of Camarines Sur in 2004, at which time he was replaced as President of the company by his wife, Lara; and, defendant-appellant LGDI purchased a new set of spray guns from Switzerland as shown in Purchase Order No. 11674 in the amount of 100,627.50 Swiss Francs.

Gina Servita testified[31] that: she is the import and export documentation officer of defendant-appellant LGDI; for the first Powder Coating System, defendant-appellant LGDI issued a Purchase Order to plaintiff-appellant Chua for the spray guns with a delivery date of June 13, 2000; the sprays guns, however, were not delivered on time and were defective; later on, defendant-appellant LGDI entered into an agreement with plaintiff-appellant Chua for another powder coating system; defendant-appellant LGDI likewise placed a Purchase Order for scrubbers in the amount of P1,400,000.00 with an expected date of delivery on or before January 30, 2002; the scrubbers, however, were not delivered on time as it was only on October 14, 2002 that there was 100% completion of the delivery; plaintiff-appellant Chua also did not complete the repair of the powder coating system despite demands; due to the defective spray guns, defendant-appellant LGDI was forced to purchase another set of spray guns from a different supplier in the amount of 100,627.50 Swiss Francs; further, the items were shipped to the United States via air freight, costing defendant-appellant LGDI US\$206,705.51; and, the company likewise stored the goods for a longer period than usual, which entailed additional warehousing expenses.

Defendants filed their Formal Offer of Exhibits[32] on January 20, 2010.

On rebuttal, plaintiff-appellant Chua testified[33] that: powder coating facilities consist of so many equipments, spray gun is only one equipment; he supplied the facilities and the "powder paint gun", but not the "wet paint gun", which were the ones alleged to be defective; the powder paint gun and the wet paint gun are of the same brand, Nordson; Apassi is the local distributor of Nordson U.S.A.; defendant-appellant LGDI ordered the wet spray gun directly from Apassi; it was defendant-appellant LGDI who paid Apassi, not him; plaintiff-appellant Chua did not undertake to repair the wet spray guns if these were defective because these are not their units and

he is not authorized to touch the same; he was not paid the 10% balance for the second Powder Coating System because of the problem defendant-appellant LGDI claimed regarding the wet spray gun, which he did not supply; the exhaust system of the first line was ordered together with the second Powder Coating System; when these spray guns were delivered, there was no complaint from defendant-appellant LGDI as to the delay or the delivery; there was no instance that defendant-appellant LGDI ever complained of any delay before the filing of the case; as for the powder spray guns, the allegations of defendant-appellant LGDI are not true because they in fact used the same for two (2) years; when plaintiff-appellant Chua was informed by defendant-appellant LGDI that the powder spray guns became defective after two (2) years, he asked the local supplier, the dealer, to fix the same since he was not authorized to fix them; accordingly, the said supplier made their quotation on the spare parts, but defendant-appellant LGDI never acted on the same; and, as for the scrubbers, these were delivered even before January 20, 2002 but were finished in October due to the pre-treatment that defendant-appellant LGDI was doing at that time.

On sur-rebuttal, Reginald Arellano testified[34] that the wet spray guns, which malfunctioned after two (2) months, and the powder spray guns were both supplied by plaintiff-appellant Chua. However, when asked again by the court, he said that he does not know who supplied defendant-appellant LGDI with the wet spray guns, although he saw plaintiff-appellant Chua's company install them.

Gina Servita testified[35] that: they do not have any documents showing that defendant-appellant LGDI ordered the wet spray guns directly from Apassi; defendant-appellant LGDI did not have any transaction with Apassi; and, there was no pre-treatment undertaken by defendant-appellant LGDI and the scrubbers were delivered late, as shown in the October 14, 2002 letter of plaintiff-appellant Chua.

On February 11, 2013, defendants filed their Formal Offer of Sur-rebuttal Exhibits.[36] The parties thereafter filed their respective Memorandum.[37]

On December 23, 2013, the lower court rendered the assailed Decision[38] in favor of plaintiff-appellant Chua, ordering defendant-appellant LGDI to pay the balance of P2,090,000.00 plus legal interest, attorney's fees, appearance fees, and costs of suit. The lower court noted that there is no dispute regarding the existence of the two (2) subject contracts and that there was an outstanding balance of P2,090,000.00, which defendant-appellant LGDI never claimed to have paid. As for its counterclaims on the cost of new spray guns, air freight expenses, depreciation expenses, and warehouse rentals, the lower court ruled that these allegations were not substantiated by clear and convincing evidence. These counterclaims are mere afterthoughts to avoid defendant-appellant LGDI's unpaid obligations to plaintiff-appellant Chua. As for defendant Villafuerte, the lower court held that plaintiff-appellant Chua has no cause of action against him, as the former transacted business with him only in his capacity as President of defendant-appellant LGDI.

Defendant-appellant LGDI filed a Notice of Appeal[39], while plaintiff-appellant Chua filed a Notice of Partial Appeal.[40]

Defendant-appellant LGDI raises the following errors[41]:

- I. THE TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO PAY PLAINTIFF-APPELLEE PHP2,090,000.00 REPRESENTING THE BALANCE OF THE PROGRESS BILLING FOR THEIR CONTRACTED PROJECTS, PLUS LEGAL INTEREST COMPUTED FROM OCTOBER 13, 2003.
- II. THE TRIAL COURT ERRED IN RULING THAT DEFENDANT-APPELLANT FAILED TO SUBSTANTIATE WITH CLEAR AND CONVINCING EVIDENCE ITS COUNTERCLAIMS.

III. THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES IN FAVOR OF PLAINTIFF-APPELLEE.

Plaintiff-appellant Chua, for his part, raised the following assignment of errors[42]:

I. THE COURT A QUO OR TRIAL COURT ERRED IN NOT TAKING INTO ANY CONSIDERATION THE ADMISSION OF DEFENDANT LUIS F. VILLAFUERTE, JR. THAT HE IS NOT ONLY THE PRESIDENT OF CO-DEFENDANT LARA'S GIFTS AND DECORS, INC. BUT IS ALSO THE OWNER;

II. THE COURT A QUO OR TRIAL COURT ERRED IN NOT CONSIDERING THE ADMISSION BY DEFENDANT LUIS F. VILLAFUERTE, JR. THAT HE IS THE OWNER OF CO-DEFENDANT LARA'S GIFTS AND DECORS, INC. IN THE STIPULATION OF FACTS DURING PRE-TRIAL CONFERENCE;

III. THE COURT A QUO OR TRIAL COURT ERRED IN NOT CONSIDERING THAT DEFENDANT LUIS F. VILLAFUERTE, JR. HAS NOT PRESENTED ANY EVIDENCE TO PROVE THAT HE ACTED ONLY IN BEHALF OF HIS CO-DEFENDANT LARA'S GIFT AND DECORS, INC. IN ENTERING INTO AGREEMENT WITH THE PLAINTIFF/APPELLANT; and

IV. FROM THE FOREGOING, THE COURT A QUO OR REGIONAL TRIAL COURT, BRANCH 195, PARAÑAQUE CITY, WITH DUE RESPECT, HAS CLEARLY COMMITTED A REVERSIBLE ERROR IN NOT HOLDING DEFENDANT LUIS F. VILLAFUERTE, JR. JOINTLY AND SEVERALLY LIABLE TOGETHER WITH HIS CO-DEFENDANT LARA'S GIFTS AND DECORS, INCORPORATED.

Defendant-appellant LGDI's appeal is partly meritorious.

After a judicious review of the records of the case, as well as the law and jurisprudence pertinent thereto, this Court finds no reversible error on the part of the lower court in ordering defendant-appellant LGDI to pay the balance of P2,090,000.00 to plaintiff-appellant Chua. However, the award of attorney's fees, appearance fees, and costs of suit should be deleted for lack of factual basis.

For clarity, the subject of the complaint for collection of sum of money filed by plaintiff-appellant Chua is the second Powder Coating System under the Agreement[43] dated October 29, 2001 and the delivery of scrubbers under Purchase Order No. 10477.[44] The first contract is for P13,500,000.00 with an unpaid balance of P1,350,000.00, while the second contract for scrubbers amounts to P1,400,000.00 with an unpaid balance of P740,000.00.

Contrary to the insinuations of defendant-appellant LGDI, the demandability of the said balance is not in question as there is no dispute that the second Powder Coating System was installed and the scrubbers were delivered by plaintiff-appellant Chua. As to the need for demand, the fact that it is a "progress billing" already explains when the amount is due and demandable. Defendant-appellant LGDI in fact made payments on the basis of percentage of completion. Thus, when the second Powder Coating System was completed 100%, as can be gleaned from the Letters[45] to defendant-appellant LGDI both dated September 2, 2002, it goes without saying that the balance of P1,350,000.00 became due and demandable. It should be stressed that the completion of the second Powder Coating System was admitted by defendant-appellant LGDI. On the other hand, as for the demandability of the P740,000.00 balance for the scrubbers, it may be well to note that defendant-appellant LGDI itself introduced as its evidence the October 14, 2002 Demand Letter[46] which noted the 100% completion of the said contract. Therefore, defendant-appellant LGDI's contention to the effect that the said amounts are not due and demandable holds no water, a desperate attempt to defeat a valid and existing obligation. From a painstaking reading of the records, it is beyond dispute that the balance is still unpaid. Defendants never alleged, much less proved, to have paid the same. Since plaintiff-appellant Chua had performed his obligations under the said contracts, defendant-appellant LGDI should rightfully fulfill its end of the bargain.

On the purported delay of plaintiff-appellant Chua, this Court finds the same to be inconsequential. Firstly, there was never a demand from defendant-appellant LGDI for plaintiff-appellant Chua to comply with any given period. In contrast to the repeated demands of plaintiff-appellant Chua upon completion of the subject contracts, defendant-appellant LGDI never made a single demand to comply from the time plaintiff-appellant Chua supposedly incurred delay in January 2002, until more than two (2) years later when the instant case was filed. Succinctly, absent any semblance of demand from defendant-appellant LGDI, plaintiff-appellant Chua cannot be considered in default. On this matter, noteworthy is the pronouncement of the Supreme Court in *Solar Harvest, Inc. v. Davao Corrugated Carton Corporation*[47], thus:

“In reciprocal obligations, as in a contract of sale, the general rule is that the fulfillment of the parties' respective obligations should be simultaneous. Hence, no demand is generally necessary because, once a party fulfills his obligation and the other party does not fulfill his, the latter automatically incurs in delay. But when different dates for performance of the obligations are fixed, the default for each obligation must be determined by the rules given in the first paragraph of the present article, that is, the other party would incur in delay only from the moment the other party demands fulfillment of the former's obligation. Thus, even in reciprocal obligations, if the period for the fulfillment of the obligation is fixed, demand upon the obligee is still necessary before the obligor can be considered in default and before a cause of action for rescission will accrue.

Evident from the records and even from the allegations in the complaint was the lack of demand by petitioner upon respondent to fulfill its obligation to manufacture and deliver the boxes. The Complaint only alleged that petitioner made a "follow-up" upon respondent, which, however, would not qualify as a demand for the fulfillment of the obligation. Petitioner's witness also testified that they made a follow-up of the boxes, but not a demand. Note is taken of the fact that, with respect to their claim for reimbursement, the Complaint alleged and the witness testified that a demand letter was sent to respondent. Without a previous demand for the fulfillment of the obligation, petitioner would not have a cause of action for rescission against respondent as the latter would not yet be considered in breach of its contractual obligation.” (Emphasis supplied)

Further, in the same manner that there was no demand whatsoever from defendant-appellant LGDI for plaintiff-appellant Chua to perform its obligations under any time frame, the company likewise never replied to the demands of plaintiff-appellant Chua later on where it could have asserted the damages it supposedly incurred. It is quite odd that from the time of the supposed delay in January 2002, it is only after the complaint was filed on February 17, 2004, or more than two (2) years later, that defendant-appellant LGDI suddenly claimed that there was delay. If defendant-appellant LGDI really had a claim against plaintiff-appellant Chua for the delay incurred in January 2002, it could have easily brought the same to the latter's attention when he demanded the payment of the balance of P1,350,000.00 in his letter dated September 2, 2002[48], the balance of P840,000.00 for the scrubbers in his letter dated October 14, 2002[49], and the balance for the entire amount in his Letter[50] dated November 4, 2002. Incidentally, the Purchase Order for a set of spray guns from another supplier, which is one of defendant-appellant LGDI's counterclaims, was made as early as February 22, 2002[51] and yet the company never did anything for more than two (2) years to charge plaintiff-appellant Chua for the said expense.

Significantly, on November 4, 2002, almost a year after the supposed delay incurred in January 2002, defendant-appellant LGDI even paid P100,000.00, post-dated December 2002[52], to plaintiff-appellant Chua. This is hardly the actuation of a party prejudiced by delay. Why would defendant-appellant LGDI pay such amount if in its mind plaintiff-appellant Chua had already reneged in his obligation a year earlier, resulting to millions in damages? There was even a subsequent project entered into between the parties in August 2002.[53] In the same vein, defendant-appellant LGDI's payments[54] under the “progress billing” for the second Powder Coating System amounting to P12,150,000.00, presumably made even after the purported delay, also put into question whether there was really default on the part of plaintiff-appellant Chua, especially since there was never

a demand from defendant-appellant LGDI.

The said payment made by defendant-appellant LGDI in December 2002 was accordingly reflected in the January 21, 2003 Statement of Account.[55] Further, what is clear from the contents of plaintiff-appellant Chua's letter[56] to the Office of DTI Undersecretary Nelly Villafuerte dated September 22, 2003, his letter[57] on even date to Atty. Madayag, and the final demand letter[58] to defendant Villafuerte dated October 13, 2003, is that there were efforts to collect from defendant Villafuerte, which proved futile.

At any rate, as earlier discussed, defendant-appellant LGDI cannot dispute the demands of plaintiff-appellant Chua on September 2, 2002 with respect to the second Powder Coating System, and on October 14, 2002 as regards the scrubbers, considering that it cited the very same evidence as basis for its argument that there was delay. More importantly, defendant-appellant LGDI admitted the 100% completion of these projects. Article 1169 of the New Civil Code provides that in reciprocal obligations, from the moment one of the parties fulfills his obligation, delay by the other begins. Considering that there was already fulfillment by plaintiff-appellant Chua of his obligations on the aforesaid dates, the lower court cannot be said to have erred in computing interest from the date of final demand on October 13, 2003.

Anent defendant-appellant LGDI's counterclaims, this Court finds that the alleged default on the part of plaintiff-appellant Chua and, more importantly, its direct causal relation to expenses such as the cost for spray guns, airfreight, depreciation expenses, and warehouse rentals, were not sufficiently established. As a counterclaim, defendant-appellant LGDI bears the onus of proving the same. As to why it is plaintiff-appellant Chua who should shoulder these expenses voluntarily incurred by defendant-appellant LGDI was not convincingly shown. While documents were presented showing that defendant-appellant LGDI incurred such expenses for the same, the nagging question is plaintiff-appellant Chua's liability, to the exclusion of all others.

On the matter of defective spray guns of the first Powder Coating System, which contract was executed years back, noteworthy is the following provision under the November 8, 1999 Amended Offer of plaintiff-appellant Chua: "Guarantee period shall be valid within one (1) year upon acceptance but limited to defects caused by an oversight on our design, fabrication and installation. A defective part found on individual components within this guarantee period is not covered by this warranty." [59] Similarly, the October 29, 2001 Agreement states: "Defective parts found within the guarantee period on individual components is not covered by this warranty, but rather by our supplier's warranty as per agreement." [60]

These are consistent with plaintiff-appellant Chua's categorical declaration that he did not supply the spray guns [61] and that he was not the one answerable in case of a defect. Even Reginald Arellano did not know whether the wet spray guns were indeed supplied by plaintiff-appellant Chua. [62] The latter's statement that there was a local supplier whom he asked to fix the spray guns, but defendant-appellant LGDI did not act on the quotation it made [63], is corroborated by his Letter [64] to defendant Villafuerte dated November 4, 2002. It is also clear that it was not plaintiff-appellant Chua who supplied the spray guns for the second Powder Coating System. [65] Anent the scrubbers, plaintiff-appellant Chua maintained that these were delivered on time, but the installation was delayed due to the pre-treatment made by defendant-appellant LGDI. [66]

Considering the extent of damage [67] purportedly sustained by the defendants, it is highly unusual that they never lifted a finger to assert anything for more than two (2) years, despite allegedly spending millions in expenses while at the same time receiving repeated demands from plaintiff-appellant Chua. In all those times, defendant-appellant LGDI could have raised the damages it suffered, but it never did. Its acquiescence for years amidst the collection efforts of plaintiff-appellant Chua puts into question the veracity of its counterclaims. Unsurprisingly, plaintiff-appellant Chua was utterly unaware of the expenses which defendant-appellant LGDI

now claim from him.[68] Under the circumstances, this Court is convinced, as the lower court correctly found, that defendant-appellant LGDI's claim is a mere afterthought to renege and escape from its existing obligations to plaintiff-appellant Chua.

On that note, this Court quotes with approval the following disquisition of the lower court:

“At this juncture, the court noted that defendant LGDI had never mentioned either in its answer or thru its witnesses that the balance of Php2,090,000.00 had already been paid by it. What it alleged was that it was plaintiff who is liable to pay it, the following amounts, as actual damages: US\$206,705.51 – air freight expenses ; 100,627.50 Swiss Francs equivalent to US\$59,840.96 – the cost of new spray guns that it was forced to buy; Php1,056,180.74 – depreciation expenses; and Php1,287,000.00 – unnecessary warehouse rents, which it incurred by reason of defective spray guns for the 1[st] powder coating system and delay in the installation of the 2[nd] powder coating system and delivery of scrubbers. These allegations, however, were not substantiated by defendant LGDI with clear and convincing evidence, hence, cannot be given credence by this court. Mere allegations without competent proof are not worthy of belief.

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Moreover, there is nowhere either in the pleadings or testimonies of defendants' witnesses that would show that plaintiff was ever informed about defendants' counter claims much less demanded payment thereof at anytime before the filing of the instant complaint in February 2004. To the mind of the court, therefore, such counterclaims are mere afterthoughts raised by defendant LGDI in order to avoid payment of its valid and demandable obligations to plaintiff.”[69] (Emphasis supplied)

Nonetheless, while this Court agrees with the lower court's pronouncement ordering the payment of the aforesaid balance and the dismissal of defendant-appellant LGDI's counterclaims, the award for attorney's fees, appearance fees, and costs of suits should be set aside. Even a cursory reading of the assailed Decision readily shows that the factual and legal bases for the said awards were never set forth and explained by the lower court.

Well-entrenched is the legal tenet that the power of the court to award attorney's fees under Article 2208 of the New Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In all events, the court must explicitly state in the text of the decision, and not only in the decretal portion thereof, the legal reason for the award of attorney's fees.[70]

Indeed, in view of the declared policy of the law that awards of attorney's fees are the exception rather than the rule, it is necessary for the trial court to make express findings of facts and law that would bring the case within the exception and justify the grant of such award.[71] In this case, while defendant-appellant LGDI failed to act on the demands of plaintiff-appellant Chua and pay its obligations, which it indeed paid albeit partial, such actuation cannot be said to be tantamount to bad faith for it to be liable for attorney's fees and costs of suit.[72]

Lastly, this Court rejects plaintiff-appellant Chua's prayer to render defendant Villafuerte solidarily liable with defendant-appellant LGDI for lack of merit.

It appears that the basis of plaintiff-appellant Chua in going after defendant Villafuerte himself is simply because he was the President of defendant-appellant LGDI.[73] This Court finds such ground to be flimsy and tenuous. Plaintiff-appellant Chua's arguments disregard the most fundamental principle in corporate law, that a corporation has a juridical personality separate from its stockholders. While there are exceptions, plaintiff-appellant Chua failed to establish that the instant case falls under any of these. Truly, the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception[74], none of which are present

in this case. Corollarily, mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[75] A mere statement of being an owner, which plaintiff-appellant Chua makes a fuss about, does not throw out of the window this very essence of a corporation. As held in *Land Bank of the Philippines v. Court of Appeals, et al.*[76]:

“The burden is on petitioner to prove that the corporation and its stockholders are, in fact, using the personality of the corporation as a means to perpetrate fraud and/or escape a liability and responsibility demanded by law. In order to disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established. In the absence of any malice or bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities.

The mere fact that Oñate owned the majority of the shares of ECO is not a ground to conclude that Oñate and ECO is one and the same. Mere ownership by a single stockholder of all or nearly all of the capital stock of a corporation is not by itself sufficient reason for disregarding the fiction of separate corporate personalities. Neither is the fact that the name "ECO" represents the first three letters of Oñate's name sufficient reason to pierce the veil. Even if it did, it does not mean that the said corporation is merely a dummy of Oñate. A corporation may assume any name provided it is lawful. There is nothing illegal in a corporation acquiring the name or as in this case, the initials of one of its shareholders.”

WHEREFORE, premises considered, the assailed Decision dated December 23, 2013 of the RTC, Branch 195, Parañaque City in Civil Case No. 04-0057 is hereby **AFFIRMED** with the **MODIFICATION** that the awards for attorney's fees, appearance fees, and costs of suit are hereby ordered **DELETED**.

SO ORDERED.

Gonzales-Sison, M. B., and Cruz, R. A., JJ., concur.

[1] Rollo, pp. 128-136, penned by Judge Aida Estrella-Macapagal

[2] Rollo, pp. 135-136

[3] Records, Volume I, pp. 3-13

[4] Records, Volume I, pp. 8-10

[5] Records, Volume I, p. 11

[6] Records, Volume I, p. 12

[7] Records, Volume I, p. 13

[8] Records, Volume I, pp. 26-27

[9] Records, Volume I, p. 36

[10] Records, Volume I, pp. 67-94

[11] Records, Volume I, pp. 75-78

[12] Records, Volume I, pp. 80-81

[13] Records, Volume I, p. 89

[14] Records, Volume I, p. 94

- [15] Records, Volume I, pp. 141-143; 150-153
- [16] Records, Volume I, pp. 182, 185
- [17] Records, Volume I, p. 190
- [18] Records, Volume I, p. 204
- [19] Records, Volume I, p. 209
- [20] Records, Volume I, pp. 252-254
- [21] Records, Volume I, p. 258
- [22] Records, Volume II, p. 268
- [23] Records, Volume II, pp. 336-400; Transcript of Stenographic Notes dated May 18, 2006
- [24] Records, Volume II, p. 419
- [25] Records, Volume I, pp. 8-10
- [26] Records, Volume I, p. 12
- [27] Records, Volume II, pp. 310-312; Transcript of Stenographic Notes dated July 18, 2006
- [28] Records, Volume II, pp. 411-424
- [29] Records, Volume II, pp. 475-503, 504-525, 526-549; Transcript of Stenographic Notes dated October 19, 2006, January 30, 2007, April 26, 2007
- [30] Records, Volume II, pp. 587-602, 603-626; Transcript of Stenographic Notes dated October 4, 2007, November 6, 2007
- [31] Records, Volume II, pp. 666-717, 886- 911, 852-885; Transcript of Stenographic Notes dated June 5, 2008, November 27, 2008, September 17, 2009
- [32] Records, Volume II, pp. 788-810
- [33] Records, Volume III, pp. 1200-1239, 1170-1199, 1240-1251; Transcript of Stenographic Notes dated June 10, 2010, September 28, 2010, November 11, 2010
- [34] Records, Volume III, pp. 1261-1282; Transcript of Stenographic Notes dated February 22, 2011
- [35] Records, Volume III, pp. 1252-1260; Transcript of Stenographic Notes dated February 23, 2012
- [36] Records, Volume III, pp. 1067-1069
- [37] Records, Volume III, pp. 1096-1114, 1144-1166
- [38] Rollo, pp. 128-136; Records, Volume III, pp. 1283-1291
- [39] Records, Volume III, p. 1296
- [40] Records, Volume III, pp. 1303-1304
- [41] Rollo, pp. 65-66
- [42] Rollo, p. 118

- [43] Records, Volume I, pp. 8-10
- [44] Records, Volume I, p. 12
- [45] Records, Volume I, pp. 11, 86
- [46] Records, Volume I, p. 88
- [47] G.R. No. 176868. July 26, 2010.
- [48] Records, Volume I, p. 22
- [49] Records, Volume II, p. 421
- [50] Records, Volume II, p. 422
- [51] Records, Volume II, p. 798
- [52] Records, Volume II, p. 420
- [53] Transcript of Stenographic Notes dated May 18, 2006, pp. 47-48; Records, Volume II, p. 419
- [54] Records, Volume I, p. 11
- [55] Records, Volume II, p. 420
- [56] Records, Volume II, p. 423
- [57] Records, Volume II, p. 418
- [58] Records, Volume II, p. 416
- [59] Records, Volume I, p. 106
- [60] Records, Volume I, p. 21
- [61] Transcript of Stenographic Notes dated May 18, 2006, pp. 70-73; Records, Volume II, pp. 386-389
- [62] Transcript of Stenographic Notes dated February 22, 2011, p. 14; Records, Volume III, p. 1274
- [63] Transcript of Stenographic Notes dated June 10, 2010, pp. 38-39; Records, Volume III, pp. 1237-1238
- [64] Records, Volume II, p. 422
- [65] Transcript of Stenographic Notes dated October 19, 2006, p. 22; Transcript of Stenographic Notes dated April 26, 2007, p. 16; Records, Volume II, pp. 496, 541
- [66] Transcript of Stenographic Notes dated June 10, 2010, pp. 36-37; Records, Volume III, pp. 1235-1236
- [67] Records, Volume I, p. 71
- [68] Transcript of Stenographic Notes dated May 18, 2006, pp. 64-66
- [69] Rollo, p. 135
- [70] Central Azucarera De Bais v. Court of Appeals, G.R. No. 87597. August 3, 1990.
- [71] Purificacion and Romeo Buñing v. Cecilio Santos, G.R. No. 152544. September 19, 2006.
- [72] See Development Bank of the Philippines v. Traverse Development Corp., G.R. No. 169293. October 5,

2011.

[73] See Transcript of Stenographic Notes dated May 18, 2006, pp. 44-46; Records, Volume II, pp. 360-362

[74] Heirs of Fe Tan Uy v. International Exchange Bank, G.R. Nos. 166282 & 166283. February 13, 2013.

[75] Land Bank of the Philippines v. Court of Appeals, G.R. No. 127181. September 4, 2001; Construction & Development Corp. of the Phil. v. Rodolfo Cuenca, G.R. No. 163981. August 12, 2005.

[76] G.R. No. 127181. September 4, 2001.

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