

**RISER AIRCONDITIONING SERVICES CORPORATION, REPRESENTED
BY FERNANDO C. RAYMUNDO, PETITIONER, VS. CONFIELD
CONSTRUCTION DEVELOPMENT CORPORATION, RESPONDENT.**

G.R. No. 143273. September 20, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals dated November 5, 1999 in CA-G.R. CV No. 55731, reversing the Decision of the Regional Trial Court (RTC), Quezon City, Branch 98, in Civil Case No. Q-95-25181. Also assailed in this petition is the Appellate Court's Resolution[2] dated May 29, 2000 denying petitioner's motion for reconsideration.

The factual antecedents as borne out by the records are:

Early in 1994, ABS-CBN Broadcasting Corporation entered into a contract with Confield Construction Development Corporation (CONFIELD), respondent, to install air-conditioning and ventilation systems in its facilities in Quezon City.

On August 10, 1994, respondent CONFIELD, in turn, entered into a Sub-Contract with Riser Airconditioning Services Corporation (RISER), petitioner, to supply and install the air-conditioning and ventilation systems at the ABS-CBN Main Building as well as its Studios 4 and 5 for a total consideration of P15,700,000.00.

Under the terms of the Sub-Contract, petitioner agreed to work on the ABS-CBN project from August 1994 until the end of June 1995[3] using its own manpower and capital.

The parties likewise stipulated that should petitioner incur delay or its work is found unsatisfactory by respondent, the latter shall have the right to take over the work and be entitled to liquidated damages, thus:

“Article V

FAILURE TO COMPLETE; LIQUIDATED DAMAGES:
RIGHT TO TAKE OVER WORK

Whereas time being of the essence in this Agreement and it is agreed that the CONTRACTOR would suffer losses by the delay or failure of the SUB-CONTRACTOR to have the work contracted for completed in all parts within the time stipulated in Article IV above, the SUB-CONTRACTOR hereby expressly covenants and agrees to pay to the CONTRACTOR for each day of delay, Sundays and Holidays included, the sum of ONE THOUSAND FIVE HUNDRED SEVENTY PESOS (P1,570.00) only Philippine Currency, per day as liquidated damages notwithstanding, if as assessed by the CONTRACTOR, the progress of work is slow or that from all indications as adjudged by the CONTRACTOR, the SUB-CONTRACTOR will not be able to complete the work in all parts within the stipulated time or that construction and/or installations are not in accordance with the approved plans and specifications, the CONTRACTOR shall have the right to take over the construction and/or installation work either by itself or through another SUB-CONTRACTOR charging

against the SUB-CONTRACTOR and its sureties any excess cost occasioned the CONTRACTOR, thereby, together with any liquidated damages that may be due to the CONTRACTOR under this Article.

Any sum which may be payable to the CONTRACTOR under this Agreement may be deducted and retained by the CONTRACTOR from any balance which may be due to the SUB-CONTRACTOR when said work shall have been finished and accomplished as herein provided.

This written Agreement may be suspended by the CONTRACTOR, in whole or in part, after a prior written notice to the SUB-CONTRACTOR. It is apparent that the SUB-CONTRACTOR shall not be able to complete the work called for under this agreement within the agreed and required schedule.[4]

The parties also agreed that payments shall be made based upon the actual quantity of work accomplished. Petitioner shall submit a progress billing every 15[th] and 30[th] day of the month, thus:

Article III

CONTRACT SUM

The CONTRACTOR, for and in consideration of fulfilling this agreement, will compensate the SUB-CONTRACTOR in the amount of FIFTEEN MILLION SEVEN HUNDRED THOUSAND (PHP 15,700,000.00), Philippine Currency, the basis of payment will be the actual quantities of works carried out or measured by the contractor subjected to the submitted provisional and estimated bill of quantities.

x x x

Article X

PROGRESS PAYMENT

The CONTRACTOR shall make payments on account of this Agreement as follows:

- 10% downpayment
- By progress billing every 15[th] and 30[th] day of the month
- All progress payment shall be subjected to ten percent (10%) retention and the usual Expanded Withholding Tax (EWT). One Hundred percent (100%) of the retention to be released three (3) months after final inspection and acceptance of the project.
- No payment on the contract cost shall be made unless a statement under oath is submitted by the SUB-CONTRACTOR to the effect that all bills for labors, other than current wages, and all bills for materials ordered and used in the project, shall have been fully paid by the SUB-CONTRACTOR.”[5]

Upon evaluation by the Design Coordinator, Inc. (DCI), ABS-CBN Project Manager, substantial changes were made in the original plan of the ABS-CBN project requiring additional works. These additional works entailed the installation of air-conditioning and ventilation systems at Studios 2, 3, 6 and 7 of ABS-CBN at a total cost of P4,078,155.15. Respondent also engaged petitioner to undertake these additional works.

Starting August 1994, petitioner submitted to respondent six (6) billings based on the actual extent of its accomplishment. Respondent then paid the amounts due.

In addition to the ABS-CBN project, respondent also engaged the services of petitioner for the installation of air-conditioning facilities at various commercial establishments in Greenbelt, Makati City in the amount of P1,385,000.00. Like the ABS-CBN project, additional works were required in the various projects. Again, respondent availed of petitioner’s services for these additional works. Upon completion of these projects,

petitioner sent a billing to respondent for an unpaid balance of P620,140.32.[6]

On April 6, 1995, respondent sent petitioner a letter[7] informing the latter that it was terminating their contract concerning the installation of the air-conditioning and ventilation systems of Studios 2, 3, 6 and 7 of ABS-CBN.

In its letter[8] dated April 8, 1995, petitioner questioned respondent's unilateral termination of their agreement, claiming that the ground relied upon does not fall under any of the valid causes under Article V of the Sub-Contract.

In the meantime, DCI sent a letter to respondent stating that in the course of its on-site inspection, it found that the project works were not only behind schedule, they were also poorly done.[9] DCI then issued a Memorandum dated June 7, 1995 to respondent calling its attention to the poor workmanship of its sub-contractor.[10]

On June 16, 1995, respondent sent another letter to petitioner conveying its intention to terminate the agreement and to take over the ABS-CBN project, stressing that petitioner failed to meet the deadline due to its poor workmanship. Respondent then gave petitioner until June 17, 1995 to "start on full blast," otherwise, respondent would send its own personnel to finish the project and that any cost incurred would be charged to petitioner.

In response, petitioner stated that it has never been informed about the deadline set by ABS-CBN, but nonetheless it assured respondent it will finish the job as scheduled.

On June 20, 1995, petitioner submitted its 7[th] billing to respondent for P870,058.06 and informed it that 78.71271% of the ABS-CBN project has been completed.

Still, respondent terminated its Sub-Contract with petitioner.

Thereafter, respondent, through its Executive Vice-President, Martin Co, and petitioner, through its President, Sergio Rivera, orally agreed that respondent would issue to petitioner six (6) Allied Bank checks for P3,100,000.00 as payment for the ABS-CBN project, including the additional works, but excluding respondent's outstanding obligation in connection with the various projects undertaken in Greenbelt, Makati City.[11] The parties likewise agreed that petitioner will not deposit the checks until respondent shall have re-evaluated the work accomplished.

Only two of the checks in the sum of P1,000,000.00 were made good by respondent. It instructed the bank to stop payment of the other four checks after its re-evaluation showed that the work accomplished by petitioner was not commensurate with the settlement amount.

Petitioner then made repeated demands on respondent to pay the outstanding settlement amount of P2,100,000.00 as well as the unpaid balance of P620,140.32 for the projects undertaken in Greenbelt, Makati City. Respondent, however, refused to comply with petitioner's demands.

On September 29, 1995, petitioner filed with the RTC of Quezon City a complaint for collection of a sum of money with damages against respondent, docketed as Civil Case No. 95-25181.

On March 19, 1997, the trial court decided Civil Case No. 95-25181 in favor of petitioner, thus:

"WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter –

- To pay plaintiff the amount of P2,740,140.32, representing the unpaid obligation by the defendant;
- To pay plaintiff interest at the legal rate on the amount of P2,740,140.32 per annum which is P438,422.45 from September 20, 1995;

- To pay plaintiff the amount of P210,000.00 as actual damages;
- To pay plaintiff 10% on the total amount of P3,388,562.77 which is P338,856.22 as and by way of attorney's fees; and
- To pay plaintiff the amount of P100,000.00 as exemplary damages. Plus costs of suit.

The counterclaim is ordered dismissed for lack of merit.

SO ORDERED.”[12]

On appeal, the Court of Appeals reversed the trial court's Decision by dismissing the complaint and ordering petitioner to refund respondent the sum of P2,752,611.73, representing overpayment. The Appellate Court held:

“Moreover, it appears that on several occasions, ABS-CBN has called the attention of CONFIELD that during their site inspections, it was observed that the project works were delayed and poorly done. RISER does not deny the delay but merely states that it was not informed of the deadline set by ABS-CBN and that CONFIELD was also delayed in paying RISER. Of course, it is natural for RISER to defend its workmanship, but the ABS-CBN's observation is more acceptable and objective, being the owner who does not have to take side with either the contractor or sub-contractor.

x x x

With respect to the first up to sixth billing, CONFIELD has paid RISER substantially on time. It was with regard to the seventh billing by RISER that the controversy arose. CONFIELD refused to pay the amount demanded by RISER. After CONFIELD agreed to pay P3.1 million, it refused to honor four (4) of the six (6) checks it previously issued to RISER because after re-evaluation of their work accomplished, it was found out that only 60%, not 80% of the entire project was done. Again, such refusal is not unjustified. After the work re-evaluation, it appears that CONFIELD has even made an overpayment. The accuracy or correctness of the re-evaluation report has not been rebutted. It is in consonance with their stipulation that –‘The basis of payment will be the actual quantities work carried out or measured by the contractor subjected to the submitted provisional and estimated bill of quantities.’

x x x

The agreement upon which the balance of RISER's claim in the amount of P2,740,140.32 is premised turned out to be vitiated by mistake. It does not correspond to its actual accomplishment. In RISER's own computation, the amount of P2,329,434.05 was deducted representing the materials supplied by CONFIELD, ABS-CBN Deductions and works of other contractors. Subtracting it from the value of its total accomplishment of P9,659,800.00 will yield the amount of P7,330,365.95.

Considering that CONFIELD has already paid RISER P10,703,118.00, the overpayment amounts to P3,372,752.05. However, since CONFIELD still owes RISER the amount of P620,140.32 on the Makati Greenbelt project, the net total amount it overpaid is P2,752,611.75.”

Petitioner filed a motion for reconsideration but the Appellate Court denied the same in its Resolution dated May 29, 2000.

Hence, the instant petition for review on certiorari raising the following assignments of error:

“THE COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE APPLICABLE LAWS AND JURISPRUDENCE OF THE HONORABLE COURT, CONSIDERING THAT:

I

CONTRARY TO THE DECISION OF THE COURT OF APPEALS, RESPONDENT CONFIELD IMPROPERLY TERMINATED THE SUBJECT AGREEMENT.

II

CONTRARY TO THE DECISION OF THE COURT OF APPEALS, RESPONDENT CONFIELD BREACHED THE SUBJECT AGREEMENT BY DEFAULTING IN THE PAYMENT OF THE SEVENTH BILLING.

III

CONTRARY TO THE DECISION OF THE COURT OF APPEALS, THERE WAS A VALID COMPROMISE AGREEMENT BETWEEN THE PARTIES WHICH RESPONDENT CONFIELD WAS BOUND TO COMPLY WITH.

IV

CONTRARY TO THE DECISION OF THE COURT OF APPEALS, THE SETTLEMENT AMOUNT WAS COMMENSURATE WITH THE WORK ACCOMPLISHMENT OF PETITIONER RISER WHICH WAS APPROXIMATELY 78%.

V

CONTRARY TO THE DECISION OF THE COURT OF APPEALS, THE DAMAGES AWARDED BY THE TRIAL COURT ARE PROPER AND HAVE FACTUAL AND LEGAL BASES.”

Petitioner’s assignments of error may be reduced to three issues: whether or not the Court of Appeals erred in finding that respondent validly terminated its Sub-Contract with petitioner; in holding that the payment of the settlement amount was subject to respondent’s re-evaluation of petitioner’s work; and in not finding that petitioner is entitled to recover damages.

On the first issue, petitioner contends that it was not notified of respondent’s intention to terminate the Sub-Contract in violation of Article V of the Sub-Contract providing that respondent may not terminate the contract without prior notice. Thus, the unilateral termination by respondent is void.

We are not convinced. The record shows that respondent sent a letter dated April 6, 1995 to petitioner, informing the latter of its intention to terminate their Sub-Contract. On June 16, 1995, respondent sent another letter to petitioner terminating their contract and stating it would take over the unfinished construction work. Respondent gave petitioner a chance to “start on full blast” in order to finish the job. We agree with the Court of Appeals that these two letters constitute sufficient notice of respondent’s intention to terminate the Sub-Contract.

Petitioner, however, contends that the causes mentioned in the letters are not those provided in Article V of the agreement; and that since it was not informed of the project schedule, it did not incur delay.

It is hornbook law that a contract is the law between the contracting parties. In the interpretation of contracts, it is a cardinal rule that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.[13]

In the case at bar, the text of the parties’ agreement is as follows: – “...if as assessed by the CONTRACTOR, the progress of work is slow or that from all indications as adjudged by the CONTRACTOR, the SUB-CONTRACTOR will not be able to complete the work in all parts within the stipulated time or that construction and/or installations are not in accordance with the approved plans and specifications, the CONTRACTOR shall have the right to take over the construction and/or installation work either by itself or

through another SUB-CONTRACTOR.” This stipulation is plain, clear, and simple and leaves no room for doubt or interpretation. Indeed, respondent has the right to take over the project should petitioner fail to complete the project as scheduled or should its work fall short of the project standards.

As found by the Court of Appeals and as stated in the agreement, the ABS-CBN project was to last from August 1994 to June 1995. The Sub-Contract itself states that time is the essence. When it became obvious by early June 1995 that petitioner would not be able to complete the project on time, DCI informed respondent that not only was the work behind schedule, but it suffered from poor workmanship. Accordingly, respondent informed petitioner of these matters in its letter of June 16, 1995. Thereupon, petitioner should have taken the necessary measures to speed up and rectify its work to avoid a premature termination of the contract. But it did not. Under Article V of the Sub-Contract, petitioner’s delay in meeting the schedule and failure to comply with the project standards are grounds for termination of the contract. It has been repeatedly held that when the language of the contract is explicit, as in the case at bar, leaving no doubt as to the intention of the drafters thereof, the courts may not read into it any other intention that would contradict its plain import.[14]

Anent the second issue, petitioner maintains that the oral compromise agreement reached by the parties superseded their original Sub-Contract.[15] In other words, novation has set in and that, therefore, the original agreement must be deemed abrogated.

Petitioner’s stance is misplaced. First, a compromise agreement can be entered into without novating or supplanting existing contracts.[16] The whole essence of a compromise is that by making reciprocal concessions, the parties avoid litigation or put an end to one already commenced. In this case, the parties orally agreed to a settlement in order to avoid a litigious situation.

Second, there is no novation to speak of in the instant case. A novation is the substitution of a new contract, debt, or obligation for an existing one between the same or different parties.[17] Novation is never presumed.[18] In order for a new agreement to supersede the old one, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one.[19] It must be shown that all the parties consented to the substitution, resulting in the extinction of the old obligation and the creation of a valid new one.[20] Here, the parties did not enter into a new contract in order to supersede or supplant their original Sub-Contract. They merely made an arrangement wherein respondent would pay petitioner the settlement amount to enable it to continue the work, thus avoiding eventual delay in its completion. This was to insure that no damage would be caused to ABS-CBN. Evidently, the compromise agreement entered into by the parties co-exists with their original Sub-Contract and is a step to avoid litigation.

On petitioner’s claim that the settlement amount was commensurate with its 78% work accomplishment, suffice it to say that this is a factual issue. Time and again, we have ruled that “the Court’s jurisdiction in a petition for review is limited to reviewing or revising errors of law allegedly committed by the Appellate Court.”[21] It is not for us to weigh evidence all over again.

Anent the award of damages, it is the unilateral act, without any legal basis, of one party in terminating the contract without legal justification, which makes it liable for damages.[22] Respondent’s act in terminating the contract is in accordance with the stipulations in the Sub-Contract. Hence, respondent did not violate the agreement. Rather, by failing to complete its work as scheduled and in accordance with the specifications agreed upon, it was petitioner who gave reasons for the termination. Being the party at fault, petitioner cannot claim damages.

WHEREFORE, the petition is DENIED. The assailed Decision dated November 5, 1999 and Resolution dated May 29, 2000 of the Court of Appeals in CA-G.R. CV No. 55731 are hereby AFFIRMED IN TOTO.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), and Corona, JJ., concur.
Carpio-Morales, J., on leave.

[1] Penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Jainal D. Rasul and Remedios Salazar-Fernando; Rollo at 59-71.

[2] Rollo at 73.

[3] Id. at 11.

[4] Id. at 76.

[5] Id. at 75, 79.

[6] Id. at 84-85.

[7] Id. at 124.

[8] Id. at 126.

[9] Transcript of Stenographic Notes, November 12, 1996 at 6-8.

[10] Rollo at 82.

[11] Id. at 94.

[12] Id. at 199.

[13] Art. 1370, Civil Code; *Palmares vs. Court of Appeals*, G.R. No. 126490, March 31, 1998, 288 SCRA 422.

[14] *German Marine Agencies vs. NLRC, et al.*, G.R. No. 142049, January 30, 2001, 350 SCRA 629; *Cruz vs. Court of Appeals*, G.R. No. 126713, July 27, 1998, 293 SCRA 239.

[15] Rollo at 308.

[16] *Rillo vs. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461.

[17] BLACK'S LAW DICTIONARY (6[th] Ed. 1991) 1064.

[18] *California Bus Lines, Inc.*, G.R. No. 147950, December 11, 2003.

[19] Art. 1292, Civil Code; *Idolor vs. Court of Appeals*, G.R. No. 141853, February 7, 2001, 351 SCRA 399.

[20] *Izzo vs. Ludington*, 79 N.Y. Supp. 744.

[21] *Omandam vs. Court of Appeals*, G.R. No. 128750, January 18, 2001, 349 SCRA 483.

[22] *Pacmac, Inc. vs. Intermediate Appellate Court*, No. L-72405, May 29, 1987, 150 SCRA 555.

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