

MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), PETITIONER, VS. ALA INDUSTRIES CORPORATION, RESPONDENT.

G.R. No. 147349. February 13, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Foreseeable difficulties that occur during the Christmas season and cause a delay do not constitute a fortuitous event. The difficulties in processing claims during that period are not “acts of God” that would excuse noncompliance with judicially approved obligations.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the February 28, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 59518. The dispositive part of the Decision reads:

“WHEREFORE, the appealed final order is hereby REVERSED. The Court a quo is ordered to issue a Writ of Execution directing the branch sheriff to enforce [Respondent] ALA Industries’ unpaid claim against [Petitioner] Manila International Airport Authority (MIAA) in the total amount of P7,171,835.53.”[3]

The Facts

The facts of the case are narrated by the CA as follows:

“[Petitioner] MIAA conducted a public bidding for a contract involving the structural repair and waterproofing of the International Passenger Terminal (IPT) and International Container Terminal (ICT) buildings of the Ninoy Aquino International Airport (NAIA). Out of eleven bidders, [Respondent] ALA submitted the second lowest and most advantageous bid. The contract was awarded to [respondent] in the amount of P32,000,000.00 when it agreed to reduce the price from P36,000.00.[4] On June 28, 1993, the contract was executed providing, inter alia, the following terms:

‘ARTICLE I

‘SCOPE OF WORK

‘1.1 The CONTRACTOR shall furnish all materials, labor, tools, plans, equipment and other services and [perform] all operations necessary to complete the structural repair and waterproofing of IPT and ICT buildings, all in accordance with the plans and specifications and subject to the terms and conditions of the Bid Documents. The CONTRACTOR shall likewise be responsible for the removal, hauling, disposal of materials used in the work area including cleaning thereof during and after completion of the work.

‘1.2 The CONTRACTOR guarantees and warrants the availability, quality and genuineness of all the materials it will supply, deliver and use in the construction.

‘1.3 The CONTRACTOR warrants further that all works stipulated in the Contract shall be done in good and

acceptable condition and to make good at the CONTRACTOR's expense any imperfections or defects which the MIAA or its representative may discover during the progress of the work within one (1) year from and after acceptance in writing of the said work by the MIAA, as provided in the General Conditions and Specifications.

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'ARTICLE IV

'CONTRACT PRICE/MANNER OF PAYMENT

4.1 In consideration of the full, satisfactory and faithful performance by the CONTRACTOR of all its undertakings and obligations defined in and provided for under this agreement, the MIAA agrees to pay the CONTRACTOR the total amount of PESOS: THIRTY TWO MILLION [AND] 00/100 (P32,000,000.00) Philippine Currency, payable as follows:

4.1.1 Initial payment shall be made upon submission of work accomplishment of not less than 15%;

4.1.2 Subsequent payments shall be for work accomplished as measured, verified and approved by MIAA. Such progress billings shall indicate actual work accomplishments and shall be subject to the approval of MIAA, which approval shall not be unreasonably withheld.

4.1.3 Progress billings shall be paid by the MIAA periodically but not more than once a month within 30 calendar days from receipt hereof.

"The contract contains escalation clauses and price adjustments. [Respondent] made the necessary repairs and waterproofing. After submission of its progress billings to [petitioner], [respondent] received partial payments. Progress billing No. 6 remained unpaid despite repeated demands by [respondent].

"On June 30, 1994, [petitioner] unilaterally rescinded the contract on the ground that [respondent] failed to complete the project within the agreed completion date. On September 16, 1994, [petitioner] advised [respondent] of a committee formed to determine the extent of the work done which was given until September 30, 1994 to submit its findings. Just the same, [respondent] was not fully paid.

"On October 20, 1994, [respondent] objected to the rescission made by [petitioner] and reiterated its claims. As of the filing of the complaint for sum of money and damages on July 18, 1995, [respondent] was seeking to recover from [petitioner] P10,376,017.00 as the latter's outstanding obligation and P1,642,112.84 due from the first to [the] fifth progress billings.

"With the filing of [respondent's] sur-rejoinder to [petitioner's] rejoinder, the trial Court directed the parties to proceed to arbitration on July 16, 1996. The Court a quo's ruling is based on Article XXVII of the contract that provides for arbitration.

"Both parties executed a compromise agreement, assisted by their counsels, and jointly filed in court a motion for judgment based on compromise agreement.

RTC Disposition

"On November 4, 1997, the Court a quo rendered judgment approving the compromise agreement. The pertinent portions of the compromise read as follows:

'1. As full and complete payment of its claims against [petitioner] arising from their waterproofing contract subject of this case, [respondent] accepts [petitioner's] offer of payment in the amount of FIVE MILLION NINE HUNDRED FORTY SIX THOUSAND TWO HUNDRED NINETY FOUR AND 31/100 (P5,946,294.31).

'2. [Petitioner] shall pay [respondent] said amount of FIVE MILLION NINE HUNDRED FORTY SIX THOUSAND TWO HUNDRED NINETY FOUR AND 31/100 (P5,946,294.31) within a period of thirty (30) days from receipt of a copy of the Order of the Court approving this Compromise Agreement.

‘3. Failure of the [petitioner] to pay said amount to [respondent] within the period above stipulated shall entitle the [respondent] to a writ of execution from this Honorable Court to enforce all its claims[5] pleaded in the Complaint.

‘4. In consideration of the Implementation of this Compromise Agreement, [respondent] agrees to waive all its claims against the [petitioner] as pleaded in the Complaint, and [petitioner] also agrees to waive all its claims, rights and interests pleaded in the answer, and all such other claims that it has or may have in connection with, related to or arising from the Waterproofing Contract subject of this case with [respondent].

‘Finding the aforesaid COMPROMISE AGREEMENT not to be contrary to law, moral[s], good customs, public order, and public policy, the Court hereby approves the same and renders judgment in conformity with the terms and conditions of the said COMPROMISE AGREEMENT, enjoining the parties to comply with the provisions thereof strictly and in good faith without pronouncement as to costs.

‘SO ORDERED.’

“For [petitioner’s] failure to pay within the period above stipulated, [respondent] filed a motion for execution to enforce its claim in the total amount of P13,118,129.84. [Petitioner] filed a comment and attributed the delays to its being a government agency. In its effort to render [respondent’s] motion for execution moot and academic, [petitioner] paid [respondent] P5,946,294.31 on February 2, 1998.

“On February 16, 1998, the trial court denied [respondent’s] motion for execution. It also denied the motion for reconsideration, ruling as follows:

‘The delay in complying with the Compromise Agreement having been satisfactorily explained by the Office of the Government Counsel, the Motion for Reconsideration of the order denying [respondent’s] Motion for Execution is denied.’

“SO ORDERED.”[6]

Ruling of the Court of Appeals

Reversing the trial court, the CA ordered it to issue a writ of execution to enforce respondent’s claim to the extent of petitioner’s remaining balance. The appellate court ratiocinated that a judgment rendered in accordance with a compromise agreement was immediately executory, and that a delay of almost two months was not substantial compliance therewith.

Hence this Petition.[7]

Issues

Petitioner raises the following issues for our consideration:

“I.

Whether or not the slight delay of petitioner in complying with its obligation under the Compromise Agreement is a valid ground for the enforcement of private respondent’s claim under the Complaint.

“II.

Whether or not the delay of petitioner in complying with its obligation under the Compromise Agreement is justified under the principle that no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

“III.

Whether or not private respondent is estopped from enforcing its claim under the Complaint considering that it already enjoyed the benefits of the Compromise Agreement.”[8]

The foregoing may be summed up in one issue: Whether there was a fortuitous event that excused petitioner from complying with the terms and conditions of the judicially approved Compromise Agreement.

The Court’s Ruling

The Petition has no merit.

Sole Issue:

Delay in Payment by Reason
of a Fortuitous Event

A compromise agreement is a contract whereby the parties make reciprocal concessions to resolve their differences,[9] thus avoiding litigation[10] or putting an end to one that has already commenced.[11] Generally favored in law,[12] such agreement is a bilateral act or transaction that is binding on the contracting parties and is expressly acknowledged by the Civil Code as a juridical agreement between them.[13] Provided it is not contrary to law, morals, good customs, public order or public policy,[14] it is immediately executory.[15]

Judicial Compromise

Final and Executory

In a long line of cases, we have consistently held that “x x x ‘a compromise once approved by final orders of the court has the force of res judicata[16] between the parties and should not be disturbed except for vices of consent or forgery.’ Hence, ‘a decision on a compromise agreement is final and executory x x x.”[17] Such agreement has the force of law[18] and is conclusive between the parties.[19] It transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules.[20] Judges therefore have the ministerial and mandatory duty to implement and enforce it.[21]

To be valid, a compromise agreement is merely required by law, first, to be based on real claims; second, to be actually agreed upon in good faith.[22] Both conditions are present in this case. The claims of the parties are valid, and the agreement done without any fraud or vice of consent.

Without a doubt, each of the parties herein entered into Compromise Agreement freely and voluntarily. When they carefully negotiated the terms and provisions thereof, they were adequately assisted by their respective counsels — petitioner, no less than by the Office of the Government Corporate Counsel (OGCC).[23] Each party agreed to something that neither might have actually wanted, except for the peace that would be brought by the avoidance of a protracted litigation. Hence, the Agreement must govern their relations.

The Christmas Season

Not a Fortuitous Event

The failure to pay on the date stipulated was clearly a violation of the Agreement. Within thirty days from receipt of the judicial Order approving it — on December 20, 1997 — payment should have been made, but was not. Thus, nonfulfillment of the terms of the compromise justified execution.[24] It is the height of absurdity for petitioner to attribute to a fortuitous event its delayed payment. Petitioner’s explanation is clearly “a gratuitous assertion that borders on callousness.”[25] The Christmas season cannot be cited as an act of God that would excuse a delay in the processing of claims by a government entity that is subject to routine accounting and auditing rules.

A fortuitous event is one that cannot be foreseen or, though foreseen, is inevitable.[26] It has the following characteristics:

“x x x (a) [T]he cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligations, must be independent of human will; (b) it must be impossible to foresee the event which constitutes the caso fortuito, or if it can be foreseen, it must be impossible to avoid; (c) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.”[27]

None of these elements appears in this case.

First, processing claims against the government and subjecting these to the usual accounting and auditing procedures are certainly not only foreseeable and expectable, but also dependent upon the human will. Liquidation and payment resulting therefrom can be deliberately delayed or speeded up.

Second, the Christmas season is not a caso fortuito, but a regularly occurring event. It is in fact foreseeable, and its occurrence has absolutely nothing to do with the processing of claims.

Further, in order to claim exemption from liability by reason of a fortuitous event, such event should be the sole and proximate cause of the injury to or the loss or destruction of the object of the contract[28] or compromise, which was the payment to be made by petitioner. Certainly, this payment was not lost or destroyed, but merely delayed, thus causing injury to respondent. Granting arguendo such loss or destruction, the Christmas season could not have been the sole and proximate cause thereof.

Third, the occurrence of the Christmas season did not at all render impossible the normal fulfillment of the obligation of petitioner; otherwise, few claims would ever be paid during this period. It ought to have taken appropriate measures to ensure that a delay would be avoided. When it entered into the Agreement, it knew fully well that the 30-day period for it to pay its obligation would end during the Christmas season. Thus, it cannot now be allowed to renege on its commitment.

Fourth, petitioner cannot argue that it is free from any participation in the delay. It should have laid out on the compromise table the problems that would be caused by a deadline falling during the Christmas season. Furthermore, it should have explained to respondent that government accounts would be examined carefully and thoroughly to the last detail, in strict compliance[29] with accounting and auditing rules issued by and pursuant to the constitutional mandate of the Commission on Audit.[30]

Indeed, the liquidation of government obligations involves a long process beginning with the preparation of disbursement vouchers; followed by the processing of requests for allotment as supported by vouchers, job orders and requisitions; and ending with the issuance of the corresponding checks.[31] Without first securing the necessary certification as to the availability of funds and allotment against which expenditures may be properly charged,[32] no funds shall be disbursed; and no expenditures chargeable against any authorized allotments shall be incurred or authorized by agency heads.

Moreover, it is important to note that under government accounting principles, “no contract involving the expenditure of public funds shall be made until there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.”[33] In the present case, there was already an antecedent appropriation for the contract when petitioner entered into it. Obviously, prior planning had not taken into account the liquidation process in the conduct of the compromise.

The sheer neglect shown by petitioner in failing to consider these matters aggravated the resulting injury suffered by respondent. The former cannot be allowed to hide now behind its government cloak.

Fortuitous Event

Negated by Negligence

The act-of-God doctrine requires all human agencies to be excluded from creating the cause of the mischief.[34] Such doctrine cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of loss[35] or injury. Since the delay in payment in the present case was partly a result of human participation — whether from active intervention or neglect — the whole occurrence was humanized and was therefore outside the ambit of a caso fortuito.

Furthermore, none of the requisites we have earlier mentioned are present in this case, a fact that clearly prevents petitioner from being excused from liability.[36] Under the rules of evidence, the burden of proving that a loss is due to a caso fortuito rests upon the party invoking it.[37] This responsibility, it failed to discharge.

Verily, an assiduous scrutiny of the records convinces us that it was negligent,[38] and that it thereby incurred a delay in the performance of its contractual obligation under the judicial compromise. It thus created an undue risk or injury to respondent by failing to exercise that reasonable degree of care, precaution or vigilance that the circumstances justly demanded,[39] and that an ordinarily prudent person would have done.[40]

Court Without Power to Alter a Judicial Compromise

“The principle of autonomy of contracts must be respected.”[41] The Compromise Agreement was a contract perfected by mere consent;[42] hence, it should have been respected. Item 3 thereof provided that failure of petitioner to pay within the stipulated period would entitle respondent to a writ of execution to enforce all the claims that had been pleaded by the latter in the Complaint. This provision must be upheld, because the Agreement supplanted the Complaint itself. Although judicial approval was not required for the perfection of that Agreement once it was granted, it could not and must not be disturbed except for vices of consent or forgery.[43]

No such infirmity can be found in the subject Compromise Agreement. Its terms are clear and leave no doubt as to their intention. Thus, the literal meaning of its stipulations must control.[44] It “must be strictly interpreted and x x x understood as including only matters specifically determined therein or which, by necessary inference from its wording, must be deemed included.”[45]

The lower court was without power to relieve petitioner from an obligation it had voluntarily assumed, simply because the Agreement later turned out to be unwise, disastrous or foolish.[46] It had no authority to impose upon the parties a judgment different from or against the terms and conditions of their Compromise Agreement.[47] It could not alter a contract by construction or make a new one for the parties; “its duty is confined to the interpretation of the one which they have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain.”[48] It could not even set aside its judgment without declaring in an incidental hearing that the Agreement was vitiated by any of the grounds enumerated in Article 2038 of the Civil Code.[49] Above all, neither the Agreement nor the court’s approval of it was ever questioned or assailed by the parties.

Basic is the rule that if a party fails or refuses to abide by a compromise agreement, the other may either enforce it or regard it as rescinded and insist upon the original demand.[50] For failure of petitioner to abide by the judicial compromise, respondent chose to enforce it. The latter’s course of action was in accordance with the very stipulations in the Agreement that the lower court could not change.[51]

Respondent is thus entitled to a writ of execution for the total amount contained in the Compromise Agreement. The Court cannot reduce it. The partial payment made by petitioner does not at all contravene Article 1229 of the

Civil Code,[52] which is applicable only to contracts that are the subjects of litigation, not to final and executory judgments.[53]

Estoppel Inapplicable

Petitioner's attempt to put respondent in estoppel must be struck down. "In estoppel, a person, who by his act or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another." [54] No such inconsistency is present here. From the very start, respondent was already asking the courts to enforce all its claims, pursuant to the Agreement. It has not shown any act or conduct that would lead us to believe that by accepting petitioner's partial payment, it has dropped all claims to which it is entitled.

Certainly, an obligation may be extinguished by payment,[55] but this rule applies when the creditor "receives and acknowledges full payment"[56] from the debtor. Respondent has neither acknowledged full payment nor led petitioner to believe that it has. Lack of reservation or protest does not ipso facto constitute a waiver of claims. Because estoppel should be applied with caution, the action that gives rise to it must be deliberate and unequivocal.[57]

In the present case, respondent continued to pursue the execution of its total demand of P13,118,129.84, even after receiving P5,946,294.31 from petitioner. This continued pursuit signified the former's intent not to waive its total claim. Hence, it cannot be considered estopped from enforcing such claim.

The appellate court was correct in strictly following the Agreement by deducting the amount received by respondent from the latter's total claim. Besides, "questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal." [58] Any assertion of equity must finally be struck down "when dilatory schemes exist." [59]

WHEREFORE, the Petition is hereby DENIED, and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 8-25.

[2] Id., pp. 26-38. Penned by Justice Ruben T. Reyes (Thirteenth Division chairman), with the concurrence of Justices Presbitero J. Velasco Jr. and Juan Q. Enriquez Jr. (members).

[3] CA Decision, p. 12; rollo, p. 37.

[4] This should be P36,000,000.00.

[5] Actual damages of P12,018,129.84, moral damages of P500,000.00, exemplary damages of P500,000.00, and attorney's fees and costs of suit of P100,000.00, totaling P13,118,129.84. See Complaint, p. 10; records, p. 10.

[6] CA Decision, pp. 2-8; rollo, pp. 27-33.

[7] The case was deemed submitted for decision on April 3, 2002, upon receipt by this Court of respondent's Comment on Memorandum for Petitioner, signed by Attys. Perpetuo M. Lotilla Jr. and Rommel Napoleon M. Lumibao. Petitioner's Memorandum — signed by Government Corporate Counsel Amado D. Valdez, Assistant Government Corporate Counsels Efren B. Gonzales and Reynaldo F. Tansioco, and Government Corporate Attorney Mary Josephine B. Mendoza — was filed on February 20, 2002. Respondent's Memorandum, signed by

Attys. Barbara Anne C. Migallos and Rommel Napoleon M. Lumibao, was filed on February 28, 2002.

[8] Petitioner's Memorandum, p. 7; rollo, p. 113. Original in upper case.

[9] The parties to a compromise agreement adjust their respective positions by mutual consent in the way they feel they can live with. *Regal Films, Inc. v. Concepcion*, 414 Phil. 807, 812, August 9, 2001.

[10] *Mactan-Cebu International Airport Authority (MCIAA) v. CA*, 346 SCRA 126, 140, November 27, 2000; *Abarintos v. CA*, 374 Phil. 157, 168, September 30, 1999; *Galicía v. NLRC*, 342 Phil. 342, 348, July 28, 1997. See *Sanchez v. CA*, 345 Phil. 155, 182, September 29, 1997; and *Domingo v. CA*, 325 Phil. 469, 482, March 20, 1996.

[11] *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. CA*, 370 Phil. 150, 162, July 26, 1999, citing Article 2028 of the Civil Code; *Galay v. CA*, 321 Phil. 224, 231, December 4, 1995; *Del Rosario v. Hon. Madayag*, 317 Phil. 883, 887, August 28, 1995; and *David v. CA*, 214 SCRA 644, 650, October 16, 1992.

[12] *Amarante v. CA*, 232 SCRA 104, 108, May 3, 1994.

"The Civil Code not only defines and authorizes compromises, it in fact encourages them in civil actions." *Technogas Philippines Manufacturing Corp. v. CA*, 335 Phil. 471, 484, February 10, 1997; citing Article 2029 of the Civil Code, which was also cited in *Osmesa v. COA*, 238 SCRA 463, 471, November 29, 1994, per Narvasa, CJ.

"After all, reciprocal concessions are the very heart and life of every compromise agreement." *Abarintos v. CA*, supra, p. 169, per Buena, J.; citing the Report of the Code Commission, p. 154, which was also cited in *Litton v. CA*, 263 SCRA 40, 47, October 9, 1996.

[13] *Galay v. CA*, supra.

[14] Article 1306 of the Civil Code.

[15] *Rosauro v. Judge Villanueva Jr.*, 389 Phil. 699, 706, June 26, 2000. See *Regalado, Remedial Law Compendium*, Vol. I (7th rev. ed., 1988), pp. 366-367; citing *The Pasay City Government v. CFI of Manila*, Br. X, 217 Phil. 153, 163, September 28, 1984; and *Pamintuan v. Muñoz*, 131 Phil. 213, 216, March 15, 1968.

[16] "[R]es judicata x x x literally means 'a matter adjudged, a thing judicially acted upon or decided, a thing or matter settled by judgment' x x x." *Vda. de Salanga v. Alagar*, 335 SCRA 728, 740, July 14, 2000, per Ynares-Santiago, J.; citing *Mirpuri v. CA*, 376 Phil. 628, 649, November 19, 1999, per Puno, J.

[17] *Esguerra v. CA*, 335 Phil. 58, 68, February 3, 1997, per Panganiban, J.; citing *Casal v. Concepcion Jr.*, 313 Phil. 221, 225, April 6, 1995; *Republic v. Sandiganbayan*, 226 SCRA 314, 328, September 10, 1993; *Master Tours and Travel Corp. v. CA*, 219 SCRA 321, 325, Mar. 1, 1993; *Mobil Oil Phils., Inc. v. CFI of Rizal, Branch VI*, 208 SCRA 523, 529, May 8, 1992; and *Araneta v. Perez*, 117 Phil. 934, 935, April 30, 1963.

See also *Spouses San Antonio v. CA*, 371 SCRA 536, 543, December 7, 2001; *Thermphil, Inc. v. CA*, 369 SCRA 682, 688, November 20, 2001; *Spouses Magat v. Spouses Delizo*, 413 Phil. 24, 31-32, July 5, 2001; *Salvador v. Ortoll*, 343 SCRA 658, 668, October 18, 2000; *Republic v. CA*, 357 Phil. 174, 184, September 25, 1998; *National Electrification Administration v. CA*, 345 Phil. 420, 427, October 6, 1997; *Santos v. Judge Dames II*, 345 Phil. 242, 247, October 2, 1997; *Arkoncel Jr. v. Lagamon*, 204 SCRA 560, 567, December 4, 1991; *Hago-sojos v. CA*, 155 SCRA 175, 182, October 28, 1987; *Binamira v. Ogan-Occena*, 148 SCRA 677, 683, March 23, 1987; and *De Guzman v. CA*, 137 SCRA 730, 736, July 23, 1985.

[18] Once stamped with judicial approval, the compromise agreement becomes more than a mere contract binding

upon the parties. The court's sanction imbues it with the force and effect of any other judgment. *Abarintos v. CA*, supra. See *Golden Donuts, Inc. v. NLRC*, 379 Phil. 303, 314, January 19, 2000.

[19] *Ynson v. CA*, 327 Phil. 191, 205, June 17, 1996, citing *World Machine Enterprises v. IAC*, 192 SCRA 459, 465, December 20, 1990; and *United Housing Corp. v. Dayrit*, 181 SCRA 285, 293-294, January 22, 1990.

[20] *Abarintos v. CA*, supra, p. 170.

[21] *Dadap-Malinao v. Judge Mijares*, 372 SCRA 128, 134-135, December 12, 2001; citing *Rubio v. MTCC*, Br. 4, Cagayan de Oro City, 322 Phil. 179, 193-194, January 24, 1996.

[22] *Landoil Resources Corp. v. Tensuan*, 168 SCRA 569, 579, December 20, 1988.

[23] Respondent's Memorandum, p. 12; rollo, p. 129.

[24] *Flores v. CA*, 328 Phil. 992, 1012, July 29, 1996.

[25] *Barzaga v. CA*, 335 Phil. 568, 576, February 12, 1997, per Bellosillo, J.

[26] Article 1174 of the Civil Code, cited in *The Philippine American General Insurance Co., Inc. v. MGG Marine Services, Inc.*, 378 SCRA 650, 658, March 8, 2002. See *Diego v. Sandiganbayan*, 339 SCRA 592, 605, September 4, 2000; *Huibonhoa v. CA*, 378 Phil. 386, 409, December 14, 1999; and *Southeastern College, Inc. v. CA*, 354 Phil. 434, 441, July 10, 1998.

[27] *Yobido v. CA*, 346 Phil. 1, 10, October 17, 1997, per Romero, J. See *Juan F. Nakpil & Sons v. CA*, 228 Phil. 564, 578, October 3, 1986.

[28] *Tanguilig v. CA*, 334 Phil. 68, 75, January 2, 1997. See *National Power Corp. v. CA*, 222 SCRA 415, 426-427, May 21, 1993; and *National Power Corp. v. CA*, 161 SCRA 334, 340, May 16, 1988.

[29] *Enriquez v. People*, 387 Phil. 562, 581, May 9, 2000; citing *Tinga v. People*, 160 SCRA 483, 491, April 15, 1988. See *Diaz v. Sandiganbayan*, 361 Phil. 789, 808, January 26, 1999.

[30] §2(2) of Article IX-D of the 1987 Constitution; cited in *Polloso v. Gangan*, 335 SCRA 750, 758, July 14, 2000. See also *Development Bank of the Philippines v. COA*, 373 SCRA 356, 371, January 16, 2002; *Laysa v. COA*, 343 SCRA 520, 525, October 18, 2000; and *Osmexja v. COA*, 238 SCRA 463, 469, November 29, 1994.

[31] *Diaz v. Sandiganbayan*, supra, p. 805.

[32] §119(d), *The National Accounting and Auditing Manual*, Vol. II (1963 rev. ed.), pp. 202-203.

[33] §17(c)(7), id., p. 46.

[34] *Juan F. Nakpil & Sons v. CA*, supra, p. 579.

[35] *Mindex Resources Development v. Morillo*, 379 SCRA 144, 153, March 12, 2002. See *Southeastern College, Inc. v. CA*, supra, p. 442.

[36] *Fortune Express, Inc. v. CA*, 364 Phil. 480, 491, March 18, 1999.

[37] §1 of Rule 131 of the Rules of Court; cited in *Co v. CA*, 353 Phil. 305, 313, June 22, 1998.

[38] "x x x. [N]egligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do." *Jarco Marketing Corp. v. CA*, 378 Phil. 991, 1002, December 21, 1999, per Davide Jr., CJ.

[39] Mindex Resources Development v. Morillo, *supra*, pp. 155-156, per Panganiban, J. See Valenzuela v. Court of Appeals, 323 Phil. 374, 391, February 7, 1996; and US v. Barias, 23 Phil. 434, 437, November 12, 1912.

[40] Far Eastern Shipping Company v. CA, 357 Phil. 703, 731, October 1, 1998. See Philippine Bank of Commerce v. CA, 336 Phil. 667, 676, March 14, 1997; and Layugan v. IAC, 167 SCRA 363, 372-273, November 14, 1988.

[41] Barons Marketing Corp. v. CA, 349 Phil. 769, 779, February 9, 1998, per Kapunan, J.

[42] Sanchez v. CA, *supra*, pp. 182-183.

[43] Periquet Jr. v. IAC, 238 SCRA 697, 713, December 5, 1994.

[44] Inter-Asia Services Corp. (Int'l) v. CA Special Fifteenth Division, 331 Phil. 708, 718-719, October 21, 1996.

[45] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. V (1992), p. 491.

[46] Esguerra v. CA, 335 Phil. 58, 69, February 3, 1997.

[47] Flores v. CA, *supra*, pp. 1012-1013. See also Tolentino, *supra*, p. 485; Tac-an Dano v. CA, 137 SCRA 803, 813, July 29, 1985; and Municipal Board of Cabanatuan City v. Samahang Magsasaka, Inc., 62 SCRA 435, 438-439, February 25, 1975.

[48] Cuizon v. CA, 329 Phil. 456, 480-481, August 22, 1996, per Torres Jr., J.

[49] "Art. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of Article 1330 of this Code.

x x x x x x x x"

"Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable."

[50] Article 2041 of the Civil Code. See Ramnani v. CA, 413 Phil. 194, 209, July 10, 2001; and Canonizado v. Hon. Benitez, 212 Phil. 564, 570, February 20, 1984.

[51] Rollo, p. 223.

[52] "Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. x x x."

[53] Commercial Credit Corp. of Cagayan de Oro v. CA, 169 SCRA 1, 8, January 2, 1989.

[54] Padcom Condominium Corporation v. Ortigas Center Association, Inc., 382 SCRA 222, 230, May 9, 2002, per Davide Jr. CJ; citing Cruz v. CA, 354 Phil. 1036, July 27, 1998.

[55] Article 1231 of the Civil Code. See CKH Industrial and Development Corp. v. CA, 338 Phil. 837, 852, May 7, 1997.

There are two requisites for payment: (1) identity of the prestation and (2) its integrity. The first means that the very thing due must be delivered or released; and the second, that the prestation be fulfilled completely. (Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, 1991 p. 275).

[56] MC Engineering, Inc. v. CA, 380 SCRA 116, 128, April 3, 2002, per Carpio, J.

[57] Duero v. CA, 373 SCRA 11, 18, January 4, 2002; citing La Naval Drug Corp. v. CA, 236 SCRA 78, 87,

August 31, 1994.

[58] Keng Hua Paper Products Co., Inc. v. CA, 349 Phil. 925, 937, February 12, 1998, per Panganiban, J.; citing Sanchez v. CA, 345 Phil. 155, 186, September 29, 1997, per Panganiban, J., which had in turn cited Caltex (Phils.), Inc. v. CA, 212 SCRA 448, 461, August 10, 1992, per Regalado, J. See also Magellan Capital Management Corp. v. Zosa, 355 SCRA 157, 170, March 26, 2001; and Casolita Sr. v. CA, 341 Phil. 251, 261, July 8, 1997.

[59] Ramnani v. CA, supra, p. 208, per Sandoval-Gutierrez, J.

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