

## **PHILIPPINE REALTY HOLDINGS CORPORATION, PETITIONER, VS. FIREMATIC PHILIPPINES, INC., RESPONDENT.**

*G.R. NO. 156251. April 02, 2007*

Ponente: CALLEJO, SR., J.

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### **CALLEJO, SR., J.:**

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63791 and its Resolution[2] dated November 19, 2002.

#### **The Antecedents**

On December 12, 1989, Philippine Realty and Holdings Corporation (PRHC), entered into a Construction Agreement[3] with Firematic Philippines, Inc. (Firematic) for the installation of a sprinkler system in the proposed Tektite Towers, located at Tektite Road corner Pearl Avenue, Mandaluyong, Metro Manila. The project had two phases - Phase I (Tower I) and Phase II (Tower II)

The scope of the work to be done by Firematic is provided in Article II of the Contract, thus:

1.0 The CONTRACTOR, in consideration of the payments to be made by OWNER, of certain sums of money in the manner hereinafter specified, shall fully and faithfully deliver, perform and undertake to finish and supply all the materials, tools, equipment, supervision and to do all the skills and labor necessary or proper for the due completion of the Sprinkler System for the above-mentioned project, and does hereby warrant and guarantee that the said work and labor shall be performed in the most proper and workmanlike manner and in full conformity with the corresponding plans and specifications duly prepared therefor and/or the pertinent contract documents.

2.0 The work of the CONTRACTOR shall include, but shall not be limited to ordering materials, following-up of orders, checking the quantity and quality of materials within the premises of the construction site, and rejecting or returning defective materials.

3.0 The CONTRACTOR is hereby expressly required to refer to all Mechanical, Plumbing, Electrical, Structural and Architectural plans and specifications and shall investigate any possible interference and conditions affecting its contract work.

4.0 All materials supplied by the CONTRACTOR shall be in conformity with the Sprinkler System specifications prepared by R. Villarosa — Architects.

5.0 It is not intended that the drawings shall show every pipe, fittings, and valve. All such items, whether or not those parts have been specifically mentioned or indicated on the drawings, shall be furnished and installed by CONTRACTOR, if necessary to complete the system in accordance with the best practice of Sprinkler System and to the satisfaction of the OWNER.[4]

Under Article I of the Contract, the following documents were incorporated into the agreement:

1.0 Sprinkler System Plans: FP-1 to FP-18, all consisting of eighteen (18) sheets as prepared by R. Villarosa —

Architects.

2.0 Fire Protection Specification consisting of Forty-nine (49) pages.

3.0 Bid Documents consisting of the following:

- a) Invitation to Bid — One (1) sheet;
- b) Instruction to Bidders — Three (3) sheets;
- c) Bid Proposals of Firematic Phils., Inc. consisting of Three (3) pages dated Oct. 31, 1989;
- d) Bid Bulletin No. 1 — Fourteen (14) sheets;
- e) Letter of Intent dated November 21, 1989 duly signed by the Owner and the Contractor consisting of Two (2) sheets.[5]

Article IX of the Contract enumerates the responsibilities of Firematic relative to the supply and installation of the sprinkler supplies:

1.0. The CONTRACTOR shall remove all portions of work which the OWNER or its representative may condemn as in any way having failed to conform with the corresponding Sprinkler Systems plans and specifications, and the CONTRACTOR shall properly make good all such work so condemned by the OWNER. The cost of making good any/all work shall be solely borne by the CONTRACTOR.

x x x x

7.0. The CONTRACTOR warrants the Sprinkler System installations under this contract to be free from faults or defects in materials and workmanship for a period of One (1) year from the date of initial operations. Faults caused by or due to ordinary wear and tear or those caused by the OWNER or its employees are excluded from this guarantee.

The CONTRACTOR further warrants all equipment and accessories thereto to be free from defects in materials and faulty workmanship for a period of One (1) year from the date of initial operation.

The equipment or parts thereof which are found defective within the said period of guarantee shall be replaced by the CONTRACTOR at no cost to the OWNER.

On December 11, 1990, PRHC informed[6] Firematic that it had decided to delete Phase II (Tower II) from the original contract, and consequently, the contract price for Phase I was reduced to P22,153,424.52.[7] However, by reason of the change orders approved by PRHC, the contract price was increased to P24,773,376.48.[8]

On December 13, 1990, PRHC and Firematic entered into another Construction Agreement[9] under which the latter undertook to supply, deliver and install the fire alarm system for Phase I of the Tektite Project for a total contract price of P3,780,000.00. This agreement contains substantially the same terms and conditions as the earlier contract for fire sprinklers.

The Technical Specification for Fire Protection[10] (which is an integral part of the contract) provides, among others:

## 1.02. QUALIFICATIONS

x x x x

D. LISTED AND APPROVED:

When the words "listed" and "approved" appear in the Contract Documents, or the Standard Specifications and Codes, they shall be interpreted to require products to bear labels indicating the listing, or approval of items of equipment, components, devices, assemblies and apparatus; by an internationally recognized testing laboratory for the specific service intended.

#### 1.03. STANDARD SPECIFICATIONS AND CODES:

x x x x

##### 1. NFPA-20; Centrifugal Fire Pumps[11]

The contract price and terms of payment for the project are as follows:

The OWNER shall pay the CONTRACTOR for the full, faithful and complete performance of the works called for under this agreement, a fixed amount of PESOS: THIRTY THREE MILLION NINE HUNDRED NINETY FIVE THOUSAND FORTY ONE & 24/100 (P33,995,041.24) ONLY, the manner of payment of which shall be in accordance with Article V hereof. The contract price shall not be subject to escalation, except due to work addition approved by the Owner and the Architect and due to official increase in minimum wage as covered by the Labor Cost Adjustment Clause below. x x x It is understood that there shall be no escalation in the price of materials. x x x.

#### ARTICLE IV — ADJUSTMENT OF CONTRACT PRICE

The OWNER or ARCHITECT may, without invalidating this Agreement or the Contract Documents, order at anytime in writing additional work or alterations by correcting, altering or deducting from the work to be undertaken or being undertaken by the CONTRACTOR. All such work shall be evidenced by Change Orders signed by the OWNER and shall be executed under the conditions hereof and of the Contract Documents.

No claims for additions or deductions to the Contract Price herein stipulated by reason of extra or alteration shall be valid unless ordered in writing by the Owner. The value of any extra work or alterations shall be separately agreed upon by the parties in writing.

Any value of Change Orders approved shall be considered as part of the Contract and to be included in progress billing.

#### ARTICLE V — TERMS OF PAYMENT

3.0. No payment made hereunder shall be construed as a waiver of any claim against the CONTRACTOR by the OWNER for any faulty workmanship, materials used or defect in work completed.

On March 30, 1992, Firematic requested[12] PRHC for financial assistance due to its tight business credit and rising costs. Consequently, the purchases of materials for the project were directly paid by PRHC.

Firematic submitted to PRHC the Catalogue of Peerless Fire Pumps,[13] and PRHC approved the use of 500 GPM (12 LB-F model) Peerless Vertical Turbine Fire Pumps.[14] To facilitate the purchase of the approved model and specifications of the fire pumps from Technotrade Industrial Sales, Inc., and pursuant to the financial assistance earlier requested by Firematic, the latter presented to PRHC for approval Purchase Order No. 108[15] dated August 6, 1992. PRHC approved the purchase order. The subject materials were delivered and eventually installed by Firematic.

On the other hand, the Technical Specifications for Fire Alarm and Detection System[16] provides:

#### 2.01. FIRE ALARM CONTROL PANEL (FACP):

x x x x

B. The FACP shall be solid state design with full capability for sensing automatic detectors, and manual stations and have the provision for integrating with security system.[17]

Paragraph 9 of Bid Bulletin No. 1[18] dated September 10, 1990 provides that the requirement for interfacing with Security System Section under Section 2.01(B) is actually for interfacing with the Building Management System (BMS).[19]

The materials were installed by Firematic. The project became operational and was turned over to PRHC, which then issued the Certificate of Completion.[20] The Municipal Mayor issued a Certificate of Occupancy in favor of PRHC on January 12, 1993.[21]

In the meantime, PRHC requested the Connel Bros. Co., Philippines for a quotation of the Peerless UL/FU Fire pump similar to those installed by Firematic in Tektite Tower I.[22] However, Connel Bros. Philippines, Inc. replied by letter dated September 2, 1993 that it would be difficult for them to trace whether they had records of transactions with Technotrade-USA, because the pump model and serial number that PRHC furnished were not of Peerless origin."[23]

Meanwhile, on October 14, 1993, Firematic billed PRHC P1,402,559.93 for the balance of the amount of the automatic sprinkler supplies installed.[24] However, PRHC rejected the claim. On October 20, 1993, PRHC, through counsel, sent a letter[25] to Firematic claiming that, based on its Purchase Order, the brand "Peerless" should have been used; however, the manufacturer of the brand (Peerless Pump Co., USA), did not have any record of having manufactured the pumps that Firematic delivered and installed on the Tektite Towers project.

Firematic did not respond to the letter. Instead, its managing director, Ms. Jojie Gador, went to the Fire Department of the City of Pasig and inquired about the fire incident that occurred at Tower II while construction was ongoing.[26] In response to the inquiry, the City Fire Marshall issued a report[27] dated June 10, 1994 stating that "said fire could have turned into a conflagration size without the swift response of the company guards on duty plus the existing firefighting equipment installed thereat."

In a letter[28] dated March 2, 1994, Connel Bros. stated that Peerless Pump Co. never had direct negotiation with Technotrade, and as such, the latter is not a dealer of "Peerless" pump.

On January 12, 1995, Firematic sent its final billing[29] and a demand letter[30] prepared by its counsel to PRHC for the payment of the latter's balance of the contract price amounting to P3,919,283.13, including the unacted charge order attached thereto.

In answer to the final billing of Firematic, PRHC denied[31] liability for the following reasons:

- [The] installation is incomplete and has not been fully commissioned.
- [The] Fire Alarm Panels could not be interfaced with Building Management System as required in [the] contract x x x.
- [The] Fire Alarm Panels do not follow the specifications required in the contract.

In a letter[32] dated March 6, 1995, PRHC informed Firematic that all the fire pumps and accessories supplied by it shall be removed, and the cost of replacement, including the labor cost of the installation, would be chargeable to its account. Again, Firematic failed to respond.[33]

In the meantime, PRHC purchased the replacement for the "defective" materials installed by Firematic, as evidenced by the following Purchase Orders: (1) P.O. dated November 15, 1993 for pumps obtained from Connel Bros. Company Pilipinas, Inc. amounting to US\$ 61,925.00;[34] (2) P.O. dated October 25, 1994 for fire and

jockey pumps installation amounting to P318,750.00;[35] and (3) P.O. dated October 4, 1995 for materials purchased from Electro Systems, for a total amount of P450,000.00.[36] The Peerless pumps bought by PRHC to replace the pumps Firematic had installed were higher in terms of capacity.[37]

As a result of the continued refusal of PRHC to pay its unpaid obligation, Firematic filed a Complaint for Collection for Sum of Money plus Damages[38] against PRHC. The case was raffled to Branch 66 of the Regional Trial Court of Makati, and was docketed as Civil Case No. 95-394.

Firematic alleged in its complaint that when it followed up its final billings and retention money, the PRHC, under new management, refused to pay its obligation. It further claimed that the PRHC's reason, that the sprinkler system and fire alarm system were defective was so flimsy because the sprinkler and fire alarm systems were certified to be in good condition. Firematic also asserted that because of PRHC's continued refusal to settle its valid and outstanding obligations, it suffered actual damages in the amount of P5,897,736.44; temperate or moderate damages in a reasonable amount of P500,000.00; and attorney's fees equivalent to 25% of the amount recoverable. The complaint contained the following prayer:

WHEREFORE, Premises Considered, it is respectfully pray (sic) of the Honorable Court that after trial a judgment be rendered ordering the defendant —

- To pay the amount of P5,897,736.44 plus legal interest of 1% per month until fully paid from the filing of this complaint;
- To pay temperate or moderate damages of P500,000.00;
- To pay attorney's fees in the amount equivalent to 25% of the amount recovered;
- To pay the cost of suit.

Further prays for such other reliefs and damages under the premises.[39]

In its Answer,[40] PRHC countered that plaintiff had no cause of action, and that the complaint is premature because the case should have been submitted first to arbitration. It also alleged that out of the total amount of P23,400,869.41 billed by Firematic, it already paid the total sum of P22,098,302.45. However, after such payment, it discovered that Firematic had violated the terms and conditions of the contract, and that the actual works completed in accordance with the technical specifications amounted only to P21,915,869.41. It likewise claimed that there was in fact an overpayment of P182,433.04 insofar as the fire sprinkler contract was concerned. As to the fire alarm contract, PRHC alleged that it paid a total sum of P3,247,966.49, but it turned out that the works actually completed in accordance with the specifications of the contract amounted only to P2,857,655.10. PRHC insisted that Firematic committed fraud in the performance of its obligations under the two contracts in (1) actually delivering and installing pumps that were not genuine "Peerless" products, non-UL listed and non-FM approved; (2) supplying and installing "Mitech" brand instead of "Firescan 5027" as approved during the bidding; (3) installing fire alarm control and data gathering panels that were not compatible with each other; and (4) installing a fire alarm system that could not be connected or interfaced with the Building Management System.

In its Reply,[41] Firematic alleged that the provision on arbitration had force and effect only during the execution and performance of the agreement or contract and not after its termination. It further asserted that the total contract price, including the change orders, increased to P25,277,559.75 but PRHC only paid P21,087,191.89; thus, there was a balance of P4,190,367.86. It likewise contended that though there was an approved specification, revisions were made due to unavailability of materials. Consequently, with the conformity and approval of PRHC of the description specified under P.O. 108, the latter made direct orders from Technotrade; PRHC also made direct payments to it. Firematic pointed out that the materials delivered were under warranty for one (1) year, and

since PRHC had no complaints after the lapse of the warranty, it was under the impression that the materials had met the specifications. It insisted that PRHC could not complain that the fire alarm system could not be interfaced with its system because it was the latter's responsibility to provide for an interface device.

On September 1, 1998, PRHC filed a Motion for Leave to Amend Answer to Conform to Evidence[42] which Firematic opposed. On October 26, 1998, the trial court granted the motion and thereby admitted the Amended Answer.[43] In its Amended Answer, PRHC claimed that, with respect to the fire sprinkler system, the actual works completed by Firematic amounted to only P20,613,302.45. Thus, it (PRHC) made an overpayment of P1,485,000.00. As to the fire alarm system, the works actually completed in accordance with the technical specifications amounted to only P2,597,966.49. Again, there was an overpayment of P650,000.00.

By way of counterclaim, PRHC averred that Firematic's violation of the contract and its misrepresentation caused the former to suffer actual damages in the amount of P2,135,000.00, \$61,925.00 and P450,000.00; the baseless and unfounded suit caused it to suffer besmirched reputation, for which Firematic should be ordered to pay moral damages in the amount of P20,000.00; for the public good and to deter others similarly minded from committing fraud in the performance of the contract, Firematic should be ordered to pay exemplary damages in the amount of P10,000.00; and since the unfounded suit compelled PRHC to obtain the services of counsel, Firematic should be made to pay 25% of the amount recovered as attorney's fees.[44]

After trial on the merits, the RTC ruled in favor of PRHC. The fallo of the decision[45] reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered dismissing the above complaint and ordering the plaintiff to pay the defendant the amount of \$61,925.00 or P1,610,050.00 (at P26.00 per dollar exchange rate when the Peerless pump were bought) representing the purchase price of the genuine Peerless fire pumps, P318,750.00 representing the amount to install the replacement fire pumps, P450,000.00 representing the amount of supply and installation of replacement fire alarm panels plus P25,000.00 as attorney's fees.

SO ORDERED.[46]

The RTC concluded that in failing to deliver genuine Peerless Pumps as agreed upon, and to install fire alarm system that could be interfaced with the system, Firematic failed to comply with the technical specifications of the contracts.[47]

Aggrieved, Firematic appealed to the CA, raising the following errors:

I.

THE HONORABLE COURT ERRED IN FINDING PLAINTIFF-APPELLANT OF HAVING FAILED TO DELIVER AND TRANSFER TO DEFENDANT-APPELLEE SPRINKLER SYSTEM AND FIRE ALARM SYSTEMS IN ACCORDANCE WITH THE CONTRACTS.

II.

THE HONORABLE COURT ERRED IN FINDING THE PEERLESS FIRE PUMPS AS FAKE.

III.

THE HONORABLE COURT ERRED IN FINDING PLAINTIFF-APPELLANT OF HAVING FAILED TO COMPLY WITH THE TECHNICAL SPECIFICATIONS OF THE FIRE ALARM SYSTEM CONTRACT.

IV.

DEFENDANT IS LIABLE TO PLAINTIFF-APPELLANT FOR THE DAMAGES PRAYED FOR.[48]

On July 10, 2002, the CA rendered judgment reversing the decision of the RTC. The fallo reads:

WHEREFORE, the foregoing considered, the Decision appealed from is hereby ANNULLED. The appellee is hereby ORDERED to pay, in view of the above premises and computations, the sum of P852,566.96, with legal interest from 7 March 1995, the date the complaint was filed.[49]

The CA declared that PRHC's belated claim was highly doubtful since PRHC had ordered the pumps from Technotrade, albeit through the Firematic, and were inspected and scrutinized by its consultants who are experts in their fields.[50] The appellate court likewise agreed with Firematic that the documents presented in evidence by PRHC to prove that the pumps supplied by Technotrade were not genuine "Peerless" pumps are inadmissible for being hearsay.[51] According to the CA, it is possible that it was not the appellant but Technotrade that was guilty of fraud in supplying dubious pumps to PRHC.[52]

However, the CA affirmed the findings of the RTC that appellant committed a breach of contract in installing the fire control panels because of its failure to comply with the requirement of interfacing with its system. Since PRHC was constrained to incur P450,000.00 to undo the work of Firematic, it was convinced that the unfinished work amounted to P1,372,507.07.

Thus, the appellate court held that Firematic was liable to PRHC for a total amount of P1,822,507.07, while PRHC had an unpaid obligation to Firematic amounting to P2,675,074.03 representing the balance of the contract price. The appellate court concluded that PRHC owed Firematic P852,566.96.[53]

On August 2, 2002, Firematic and PRHC filed their Motion for Reconsideration and Clarification[54] and Motion for Partial Reconsideration,[55] respectively.

On November 19, 2002, the CA issued the following Resolution:[56]

WHEREFORE, premises considered, the Decision of 10 July 2002 is hereby MODIFIED, and instead of P852,566.96, the appellee is hereby ORDERED to pay appellant P762,658.71 with legal interest from 07 March 1995.

The main Decision STANDS in all other respects.

No costs.

SO ORDERED.[57]

PRHC, now petitioner, seeks to have the appellate court's ruling reversed on the following grounds:

- The Court of Appeals committed reversible error when it came out with a conclusion based on a manifestly mistaken inference or based on misapprehension of facts, inasmuch as its findings are contradictory to the evidence on record. Specifically, the Court of Appeals committed reversible error when it ruled that the fire pumps supplied and delivered by FIREMATIC to PHILREALTY conformed to the technical specifications of the sprinkler system contract despite evidence to the contrary.
- The Court of Appeals committed reversible error when it again came out with a conclusion based on a manifestly mistaken inference. Specifically, the Court of Appeals committed reversible error when it unjustifiably disregarded petitioner's evidence showing the supplied pumps as fakes and not of "Peerless" origin, on the ground that said evidence is hearsay.
- The Court of Appeals committed reversible error when it came out with a conclusion based on a manifestly mistaken inference and based on misapprehension of facts. Specifically, the Court of Appeals erred that the issuance of a Certificate of Completion proved the genuineness of fire pumps and the compliance with the technical specifications of the contract.[58]

The threshold issue raised is whether or not the fire pumps supplied and delivered by respondent to petitioner conformed to the technical specifications of the contract.

Petitioner argues that while it is true that the particular model of the pumps for the fire control system was not specified in the technical specifications for fire protection, the qualifications of the pumps were nevertheless provided — that the pumps should be "listed" and "approved" by an internationally recognized testing laboratory for the specific service intended.[59] Pursuant to such specification, respondent in fact submitted for approval the brochure of Peerless Pumps. Petitioner further insists that it was respondent who brought the source of the fake peerless pumps into the picture, and as such, it should be the one to return the defective materials. It insists that the direct payment made by petitioner did not relieve respondent from its responsibility under the contract. Moreover, petitioner asserts, because respondent failed to dispute its claim and present proof that the fire pumps delivered were genuine, it had impliedly admitted that the fire pumps were not original Peerless pumps. Petitioner further contends that the issuance of the certificate of completion and the fact that the fire pumps were used did not cure their defects.

For its part, respondent contends that the fire pumps were inspected, examined and tested by petitioner's technical staff, and that the latter found them to be operational. Thus, it cannot now be permitted to belatedly complain. According to respondent, petitioner admitted that when the fire pumps were changed, the replacement pumps installed by the latter were higher in terms of capacity. Respondent likewise reiterates that the evidence presented by petitioner to prove that the fire pumps were not genuine is inadmissible in evidence for being hearsay. It claimed that the CA erred in ordering petitioner to pay to it the principal amount of only P852,566.96. Respondent maintains that, as shown by the evidence on record, petitioner owed it P10,399,418.89 for the fire sprinkler supplies and fire alarm system. It further contends that the decision of the CA should be modified, and prays for the following relief:

- 1.) The herein Petition for Review on Certiorari filed by Petitioner Philippine Realty & Holdings Corporation be dismissed for lack of merit;
- 2.) Petitioner be ordered to pay Respondent the following to wit:
  - a.) Ten Million Three Hundred Ninety Nine Thousand Four Hundred Eighteen & 87/100 (P10,399,418.89) Pesos, for the fully completed installation of the Fire Sprinkler System and Fire Alarm System, ten (10%) percent retention and (sic) plus legal interest of twelve (12%) percent per annum from July 10, 2002 as and by way of actual damages;
  - b.) Five Hundred Thousand (P500,000.00) Pesos as and by way of exemplary, nominal or moderate damages;
  - c.) Attorney's fees at the rate of Twenty (sic) (25%) percent of the award of actual damages above-mentioned;
  - d.) Such other reliefs and remedies as may be just and equitable under the premises.[60]

However, it is an established rule that an appellee (respondent) who is not also an appellant (petitioner) may assign error where the purpose is to maintain the judgment on other grounds, but he cannot seek modification or reversal of the judgment or affirmative relief unless he has also appealed (or filed a separate petition).[61] Thus, due to respondent's failure to institute a separate petition before this Court, the CA decision must perforce be considered final and binding as to it.

Petitioner insists that the fire pumps supplied and installed by respondent are "not of Peerless origin" because of the following: (1) respondent failed to present proofs of the genuineness of the pumps; (2) respondent failed to answer petitioner's letters requiring it to present the aforesaid proofs, thus, estoppel by silence applies; and (3) the manufacturer of the Peerless pumps verbally informed Connel Bros. that the subject fire pumps "are not of

Peerless origin."

We do not agree.

Well-settled is the rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that fraud be established, not just by preponderance of evidence, but by clear and convincing evidence.[62]

In this case, petitioner relied on the principle of estoppel by silence, as well as on Letter No. L/93-272[63] and Letter No. L/94-043[64] of Connel Bros. to prove that the fire pumps, which respondent supplied and installed, were not genuine. The aforesaid letters are quoted hereunder:

Letter No. L/93-272

December 15, 1993

PRHC PROPERTY MANAGERS, INC.

5th Floor, Tektite Towers,  
Tektite Road, Ortigas Center,  
Pasig, Metro Manila

Attention: Mr. Ed B. Banaag, Vice President

Subject: EXISTING FIRE PUMPS AT TEKTITE TOWER I

Gentlemen:

With reference to your letter dated November 15, 1993, please find attached a (sic) copy of facsimile message dated December 15, 1993 from our principal, Peerless Pump, USA.

Please take note that they normally trace the authenticity of the pump through the pump model and pump serial number. It would be then difficult for the factory to trace whether they have indeed records of transactions with Technotrade-USA because the pump model and serial number that you furnished us are not of Peerless origin.

We also enclosed a copy of our Letter No. L/93-063 dated November 16, 1993 for your reference.

We hope the above explanation will enlighten your clarification.

Very truly yours,

E.L. STA. MARIA, JR.

Asst. Vice President

Machineries Department

ELS:LTV

Att.: a/s

Letter No. L/94-043

March 2, 1994

PRHC PROPERTY MANAGERS, INC.

5/F Tektite Towers, Tektite Road  
Ortigas Center, Pasig, M.M.

Attention: MR. EDUARDO B. BANAAG

Vice President

Subject: EXISTING FIRE PUMPS AT TEKTITE TOWER I

Gentlemen:

We apologize for the delay in our reply to your letter of December 16, 1994 regarding your clarification on the above subject.

Please find attached a (sic) copy of our Letter No. F/93-071 dated December 20, 1993 addressed to our principal wherein we enclosed your above stated letter .

However, inspite of constant follow-ups and reminder, we could not have a confirmation from our principal on your requested information.

Mr. John Kahren, Peerless Pump's Director for International Sales, verbally advised that they have no access or capability to verify whether there is such an organization named Technotrade operating in the U.S.A. They can only confirm that they never had direct negotiation with Technotrade in record and as such, Technotrade is not a dealer of Peerless pump.

We hope the above statement will in any way answer your requested clarification.

Very truly yours,

E.L. STA. MARIA, JR.

Asst. Vice President

Machineries Department

ELS: LTV

Att.: a/s

However, petitioner failed to present the signatory of the letters (E.L. Sta. Maria, Jr.) to testify on the veracity of the contents of the letters; thus, respondent was not given the opportunity to cross-examine him. It also appears that the person who signed the letters had no personal knowledge of the facts stated therein, as he claimed that he had been "verbally advised" that the manufacturer of Peerless pumps never had direct negotiation with Technotrade, and as such, the latter is not a dealer of the pumps.

Well-entrenched is the rule that a private certification is hearsay where the person who issued the same was never presented as a witness. The same is true of letters. While hearsay evidence may be admitted because of lack of objection by the adverse party's counsel, it is nonetheless without probative value.[65] Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination.[66] The lack of objection may make an incompetent evidence admissible, but admissibility of evidence should not be equated with weight of evidence. Indeed, hearsay evidence whether objected to or not has no probative value.[67]

Petitioner asserts that respondent impliedly admitted that the fire pumps it installed were "not of Peerless origin" because of its failure to dispute petitioner's accusation and to present proofs that the fire pumps delivered were genuine. Thus, petitioner contends that estoppel by silence applies to respondent.

The principle of estoppel in pais applies wherein one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[68]

We find the principle inapplicable in the present case. According to respondent's Managing Director Jodie S. Gador, she did not completely keep silent on petitioner's accusation. She testified that when petitioner refused to pay respondent, she went to the Fire Department of the City of Pasig and made an inquiry regarding the fire incident that took place at the Tektite project.[69] In answer to this inquiry, the Fire Department issued a Certification[70] stating, inter alia, that the office[71] was very much delighted because the management of Tektite Tower had substantially complied with the safety requirements of Presidential Decree No. 1185.[72] In making such inquiry, respondent in effect denied petitioner's accusation that the fire pumps it had installed were defective; as such, the principle of estoppel by silence does not apply.

Because good faith is presumed, respondent was not obliged to present proofs of the genuineness of the fire pumps it supplied and installed. The burden of proof to show that the pumps were not genuine fell upon petitioner. However, the records show that petitioner failed to discharge this burden. Clearly, the evidence relied upon is not sufficient to overturn (1) the presumption of good faith; (2) that private transactions have been fair and regular;[73] and (3) that the ordinary course of business had been followed.[74]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The Decision of the RTC dated July 10, 2002, in CA-G.R. CV No. 63791, and its Resolution dated November 19, 2002, are AFFIRMED.

**SO ORDERED.**

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Romeo Brawner, with Associate Justices Jose L. Sabio, Jr. and Mario Guariña III, concurring; rollo, pp. 36-48.

[2] Rollo, pp. 50-56.

[3] Exhibit "B"; folder of exhibits (vol. II) pp. 8-17.

[4] Exhibit "B-1," folder of exhibits, p. 9.

[5] Folder of exhibits, pp. 8-9.

[6] Embodied in a letter dated December 11, 1990 by Dennis A. Abcede, the construction manager of the project, and approved by PRHC, addressed to Firematic Phils. (folder of exhibits, vol. II, p. 19).

[7] Exhibit "D."

[8] Exhibit "14"; folder of exhibits, vol. III, p. 109.

[9] Exhibit "L"; folder of exhibits, vol. II, pp. 33-38.

[10] Exhibit "2"; folder of exhibits, vol. III, pp. 1-49.

[11] Exhibit "2"; folder of exhibits, vol. III, pp. 40-41.

[12] Exhibit "8"; folder of exhibits, vol. III, p. 103.

[13] Exhibit "4"; folder of exhibits, vol. III, pp. 50-98.

[14] Exhibit "4-G"; folder of exhibits, vol. III, p. 57.

[15] Exhibit "E"; folder of exhibits, vol. II, pp. 20-22.

- [16] Exhibit "18"; folder of exhibits, vol. III, pp. 114-140.
- [17] Exhibit "14-M"; folder of exhibits, vol. III, p. 127.
- [18] Exhibit "EE", folder of exhibits, vol. IV, pp. 40-42.
- [19] Folder of exhibits, vol. IV, p. 41.
- [20] Exhibit "G"; folder of exhibits, vol. II, p. 25.
- [21] Exhibit "W"; folder of exhibits, vol. II, p. 55.
- [22] Exhibit "35."
- [23] Exhibit "37"; folder of exhibits, vol. III, p. 161.
- [24] Exhibit "I."
- [25] Exhibit "7"; folder of exhibits, vol. III, pp. 101-102.
- [26] TSN, September 9, 1995, p. 55.
- [27] Folder of exhibits, vol. II, p. 45.
- [28] Exhibit "39"; folder of exhibits, vol. III, p. 165.
- [29] Exhibit "I"; folder of exhibits, vol. II, p. 27.
- [30] Exhibit "J"; folder of exhibits, vol. II, pp. 28-31.
- [31] Embodied in a letter dated January 25, 1995; Exhibit "22"; folder of exhibits, vol. III, p. 143.
- [32] Exhibit "13"; folder of exhibits, vol. III, p. 108.
- [33] TSN, March 4, 1996, p. 35.
- [34] Exhibit "10"; folder of exhibits, vol. III, pp. 104-105.
- [35] Exhibit "12"; folder of exhibits, vol. III, p. 107.
- [36] Exhibit "23"; folder of exhibits, vol. III, p. 144.
- [37] TSN, April 17, 1996, p. 54.
- [38] Records, pp. 1-6.
- [39] Records, p. 5.
- [40] Id. at 46-55.
- [41] Id. at 85-90.
- [42] Id. at 313-316.
- [43] Id. at 331-339.
- [44] The Amended Answer contained the following prayer:

WHEREFORE, defendant prays that after trial, the Honorable Court renders a Decision:

- Ordering the dismissal of the complaint as against the defendant;

- Ordering plaintiff to pay defendant:

2.1. Actual damages as follows:

- P1,485,000.00 representing the amount of overpayment under the Sprinkler System Contract;
- \$61,925.00 representing the purchase price of the genuine PEERLESS fire pumps;
- P318,750.00 representing the amount to install the replacement fire pumps;
- P650,000.00 representing the amount of overpayment under the Fire Alarm System Contract;
- P450,000.00 representing the amount of supply and installation of replacement data gathering panels.

2.2. Moral damages in the amount of P20,000,000;

2.3. Exemplary damages in the amount of P10,000,000;

2.4. Attorney's fees and expenses of litigation equivalent to 25% of the amount recovered and such amounts as may be proved in the trial.

Other reliefs just and equitable in the premises are also prayed for.

[45] Penned by Judge Eribero U. Rosario, Jr., rollo, pp. 56-60.

[46] Rollo, p. 60.

[47] CA rollo, p. 52.

[48] Id. at 22.

[49] Id. at 118.

[50] Id. at 113.

[51] Id. at 114.

[52] Id.

[53] Id. at 117-118.

[54] Id. at 122-136.

[55] Id. at 221-233.

[56] Id. at 367-372.

[57] Id. at 372.

[58] Id. at 19-20.

[59] Id. at 22.

[60] Id. at 160-161.

[61] *Union of Filipino Employees v. Vivar, Jr.*, G.R. No. 79255, January 20, 1992, 205 SCRA 200, 210; *Franco v. Intermediate Appellate Court*, G.R. No. 71137, October 5, 1989, 178 SCRA 331, 340.

[62] *Republic v. Guerero*, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 438; *Morandarte v. Court of Appeals*, G.R. No. 123586, August 12, 2004, 436 SCRA 213, 223.

[63] Exh. "37"

[64] Exh. "39"

[65] Tin v. People, G.R. No. 126480, August 10, 2001, 362 SCRA 594, 602; De la Torre v. Court of Appeals, 381 Phil. 819, 829 (2000).

[66] Alba v. Court of Appeals, G.R. No. 164041, July 29, 2005, 465 SCRA 495, 510; De la Torre v. Court of Appeals, *supra*.

[67] People v. Valero, 112 SCRA 661, 675; cited in De la Torre v. Court of Appeals, *supra*.

[68] Hanopol v. Shoemart, Incorporated, G.R. No. 137774, October 4, 2002, 390 SCRA 439, 454.

[69] TSN, October 9, 1995, pp. 55-63.

[70] Exh. "R"; folder of exhibits, vol. II, p. 45.

[71] Department of Interior and Local Government, Bureau of Fire Protection, Pasig Fire Station II.

[72] Otherwise known as the FIRE CODE OF THE PHILIPPINES.

[73] REVISED RULES OF COURT, Rule 131, Section 3 (p).

[74] REVISED RULES OF COURT, Rule 131, Section 3 (q).

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