

TITAN-IKEDA CONSTRUCTION & DEVELOPMENT CORPORATION, Petitioner, vs. PRIMETOWN PROPERTY GROUP, INC., Respondent.

G.R. No. 158768. February 12, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the decision of the Court of Appeals (CA) in CA-G.R. CV No. 61353[2] and its resolution[3] denying reconsideration.

In 1992, respondent Primetown Property Group, Inc. awarded the contract for the structural works[4] of its 32-storey Makati Prime Tower (MPT) to petitioner Titan-Ikeda Construction and Development Corporation.[5] The parties formalized their agreement in a construction contract[6] dated February 4, 1993.[7]

Upon the completion of MPT's structural works, respondent awarded the P130,000,000 contract for the tower's architectural works[8] (project) to petitioner. Thus, on January 31, 1994, the parties executed a supplemental agreement.[9] The salient portions thereof were:

- the [project] shall cover the scope of work of the detailed construction bid plans and specifications and bid documents dated 28 September 1993, attached and forming an integral part hereof as Annex A.
- the contract price for the said works shall be P130 million.
- the payment terms shall be “full swapping” or full payment in condominium units. The condominium units earmarked for the [petitioner] are shown in the attached Annex B.
- the [respondent] shall transfer and surrender to [petitioner] the condominium units abovestated in accordance with the following schedule:
 - (a)
80% of units — upon posting and acceptance by [respondent] of the performance bond [and]
 - (b)
20% or remaining balance — upon completion of the project as provided in the construction contract and simultaneous with the posting by [petitioner] of the reglementary guarantee bond.
- the contract period shall be fifteen (15) months reckoned from the release of the condominium certificates of title (CCTs) covering eighty percent (80%) of the units transferable to [petitioner] as aforesaid[.]

Significantly, the supplemental agreement adopted those provisions of the construction contract which it did not specifically discuss or provide for.[10] Among those carried over was the designation of GEMM Construction Corporation (GEMM) as the project's construction manager.[11]

Petitioner started working on the project in February 1994.

On June 30, 1994, respondent executed a deed of sale^[12] (covering 114 condominium units and 20 parking slots of the MPT collectively valued by the parties at P112,416,716.88)^[13] in favor of petitioner pursuant to the “full-swapping” payment provision of the supplemental agreement.

Shortly thereafter, petitioner sold some of its units to third persons.^[14]

In September 1995, respondent engaged the services of Integratech, Inc. (ITI), an engineering consultancy firm, to evaluate the progress of the project.^[15] In its September 7, 1995 report,^[16] ITI informed respondent that petitioner, at that point, had only accomplished 31.89% of the project (or was 11 months and six days behind schedule).^[17]

Meanwhile, petitioner and respondent were discussing the possibility of the latter’s take over of the project’s supervision. Despite ongoing negotiations, respondent did not obtain petitioner’s consent in hiring ITI as the project’s construction manager. Neither did it inform petitioner of ITI’s September 7, 1995 report.

On October 12, 1995, petitioner sought to confirm respondent's plan to take over the project.^[18] Its letter stated:

The mutual agreement arrived at sometime in the last week of August 1995 for [respondent] to take over the construction supervision of the balance of the [project] from [petitioner's] [e]ngineering staff and complete [the] same by December 31, 1995 as promised by [petitioner's] engineer.

The [petitioner's] accomplished works as of this date of [t]ake over is of acceptable quality in materials and workmanship.

This mutual agreement on the take over should not be misconstrued in any other way except that the take over is part of the long range plan of [respondent] that [petitioner], in the spirit of cooperation, agreed to hand over the construction supervision to [respondent] as requested. (emphasis supplied)^[19]

Engineers Antonio Co, general construction manager of respondent, and Luzon Y. Tablante, project manager of petitioner, signed the letter.

INTEGRATECH’S (ITI’S) REPORT

In its September 7, 1995 report, ITI estimated that petitioner should have accomplished 48.71% of the project as of the October 12, 1995 takeover date.^[20] Petitioner repudiated this figure^[21] but qualifiedly admitted that it did not finish the project.^[22] Records showed that respondent did not merely take over the supervision of the project but took full control thereof.^[23]

Petitioner consequently conducted an inventory.^[24] On the basis thereof, petitioner demanded from respondent the payment of its balance amounting to P1,779,744.85.^[25]

On February 19, 1996, petitioner sent a second letter to respondent demanding P2,023,876.25. This new figure included the cost of materials (P244,331.40) petitioner advanced from December 5, 1995 to January 26, 1996.^[26]

On November 22, 1996, petitioner demanded from respondent the delivery of MPT's management certificate^[27] and the keys to the condominium units and the payment of its (respondent's) balance.^[28]

Because respondent ignored petitioner's demand, petitioner, on December 9, 1996, filed a complaint for specific performance^[29] in the Housing and Land Use Regulatory Board (HLURB).

While the complaint for specific performance was pending in the HLURB, respondent sent a demand letter to petitioner asking it to reimburse the actual costs incurred in finishing the project (or P69,785,923.47).^[30] In view

of the pendency of the HLURB case, petitioner did not heed respondent's demands.

On April 29, 1997, the HLURB rendered a decision in favor of petitioner.[31] It ruled that the instrument executed on June 30, 1994 was a deed of absolute sale because the conveyance of the condominium units and parking slots was not subject to any condition.[32] Thus, it ordered respondent to issue MPT's management certificate and to deliver the keys to the condominium units to petitioner.[33] Respondent did not appeal this decision. Consequently, a writ of execution was issued upon its finality.[34]

Undaunted by the finality of the HLURB decision, respondent filed a complaint for collection of sum of money[35] against petitioner in the Regional Trial Court (RTC) of Makati City, Branch 58 on July 2, 1997. It prayed for the reimbursement of the value of the project's unfinished portion amounting to P66,677,000.[36]

During trial, the RTC found that because respondent modified the MPT's architectural design, petitioner had to adjust the scope of work.[37] Moreover, respondent belatedly informed petitioner of those modifications. It also failed to deliver the concrete mix and rebars according to schedule. For this reason, petitioner was not responsible for the project's delay.[38] The trial court thus allowed petitioner to set-off respondent's other outstanding liabilities with respondent's excess payment in the project.[39] It concluded that respondent owed petitioner P2,023,876.25.[40] In addition, because respondent refused to deliver the keys to the condominium units and the management certificate to petitioner, the RTC found that petitioner lost rental income amounting to US\$1,665,260.[41] The dispositive portion of the RTC decision stated:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered dismissing [respondent's] [c]omplaint for lack of merit. On the other hand, finding preponderance of evidence to sustain [petitioner's] counterclaim, judgment is hereby rendered in favor of [petitioner] ordering [respondent] to pay the former:

- The unpaid balance of the consideration for [petitioner's] services in [the project] in the amount of P2,023,867.25 with legal interest from the date of demand until fully paid;
- Compensatory damages in the amount of US\$1,665,260 or its peso equivalent at the current foreign exchange rate representing lost rental income due only as of July 1997 and the accrued lost earnings from then on until the date of actual payment, with legal interest from the date of demand until fully paid; and
- Attorney's fees in the amount of P100,000 as acceptance fee, P1,000 appearance fee per hearing and 25% of the total amount awarded to [petitioner].

With costs against the [respondent].

SO ORDERED.[42]

Respondent appealed the RTC decision to the CA.[43] The appellate court found that respondent fully performed its obligation when it executed the June 30, 1994 deed of absolute sale in favor of petitioner.[44] Moreover, ITI's report clearly established that petitioner had completed only 48.71% of the project as of October 12, 1995, the takeover date. Not only did it incur delay in the performance of its obligation but petitioner also failed to finish the project. The CA ruled that respondent was entitled to recover the value of the unfinished portion of the project under the principle of unjust enrichment.[45] Thus:

WHEREFORE, the appealed decision is REVERSED and a new one entered dismissing [petitioner's] counterclaims of P2,023,867.25 representing unpaid balance for [its] services in [the project]; US\$1,665,260 as accrued lost earnings, and attorney's fees. [Petitioner] is hereby ordered to return to [respondent] the amount of P66,677,000 representing the value of unfinished [portion of the project], plus legal interest thereon until fully paid. Upon payment by [petitioner] of the aforementioned amount, [respondent] is hereby ordered to deliver the keys and [m]anagement [c]ertificate of the [Makati Prime Tower] paid to [petitioner] as consideration for

the [project].[46]

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner contends that the CA erred in giving weight to ITI's report because the project evaluation was commissioned only by respondent,[47] in disregard of industry practice. Project evaluations are agreed upon by the parties and conducted by a disinterested third party.[48]

We grant the petition.

REVIEW OF CONFLICTING FACTUAL FINDINGS

As a general rule, only questions of law may be raised in a petition for review on certiorari. Factual issues are entertained only in exceptional cases such as where the findings of fact of the CA and the trial court are conflicting.[49]

Here, a glaring contradiction exists between the factual findings of the RTC and the CA. The trial court found that respondent contributed to the project's delay because it belatedly communicated the modifications and failed to deliver the necessary materials on time. The CA, however, found that petitioner incurred delay in the performance of its obligation. It relied on ITI's report which stated that petitioner had accomplished only 48.71% of the project as of October 12, 1995.

JANUARY 31, 1994 SUPPLEMENTAL AGREEMENT WAS EXTINGUISHED

A contract is a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[50] This case involved two contracts entered into by the parties with regard to the project.

The parties first entered into a contract for a piece of work[51] when they executed the supplemental agreement. Petitioner as contractor bound itself to execute the project for respondent, the owner/developer, in consideration of a price certain (P130,000,000). The supplemental agreement was reciprocal in nature because the obligation of respondent to pay the entire contract price depended on the obligation of petitioner to complete the project (and vice versa).

Thereafter, the parties entered into a second contract. They agreed to extinguish the supplemental agreement as evidenced by the October 12, 1995 letter-agreement which was duly acknowledged by their respective representatives.[52]

While the October 12, 1995 letter-agreement stated that respondent was to take over merely the supervision of the project, it actually took over the whole project itself. In fact, respondent subsequently hired two contractors in petitioner's stead.[53] Moreover, petitioner's project engineer at site only monitored the progress of architectural works undertaken in its condominium units.[54] Petitioner never objected to this arrangement; hence, it voluntarily surrendered its participation in the project. Moreover, it judicially admitted in its answer that respondent took over the entire project, not merely its supervision, pursuant to its (respondent's) long-range plans.[55]

Because the parties agreed to extinguish the supplemental agreement, they were no longer required to fully perform their respective obligations. Petitioner was relieved of its obligation to complete the project while respondent was freed of its obligation to pay the entire contract price. However, respondent, by executing the June 30, 1994 deed of absolute sale, was deemed to have paid P112,416,716.88. Nevertheless, because petitioner

applied part of what it received to respondent's outstanding liabilities,[56] it admitted overpayment.

Because petitioner acknowledged that it had been overpaid, it was obliged to return the excess to respondent. Embodying the principle of *solutio indebiti*, Article 2154 of the Civil Code provides:

Article 2154. If something is received when there is no right to demand it and it was unduly delivered through mistake, the obligation to return it arises.

For the extra-contractual obligation of *solutio indebiti* to arise, the following requisites must be proven:

- the absence of a right to collect the excess sums and
- the payment was made by mistake.[57]

With regard to the first requisite, because the supplemental agreement had been extinguished by the mutual agreement of the parties, petitioner became entitled only to the cost of services it actually rendered (i.e., that fraction of the project cost in proportion to the percentage of its actual accomplishment in the project). It was not entitled to the excess (or extent of overpayment).

On the second requisite, Article 2163 of the Civil Code provides:

Article 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but, he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause. (emphasis supplied)

In this instance, respondent paid part of the contract price under the assumption that petitioner would complete the project within the stipulated period. However, after the supplemental agreement was extinguished, petitioner ceased working on the project. Therefore, the compensation petitioner received in excess of the cost of its actual accomplishment as of October 12, 1995 was never due. The condominium units and parking slots corresponding to the said excess were mistakenly delivered by respondent and were therefore not due to petitioner.

Stated simply, respondent erroneously delivered excess units to petitioner and the latter, pursuant to Article 2154, was obliged to return them to respondent.[58] Article 2160 of the Civil Code provides:

Article 2160. He who in good faith accepts an undue payment of a thing certain and determinate shall only be responsible for the impairment or loss of the same or its accessories and accessions insofar as he has thereby been benefited. If he has alienated it, he shall return the price or assign the action to collect the sum.

One who receives payment by mistake in good faith is, as a general rule, only liable to return the thing delivered.[59] If he benefited therefrom, he is also liable for the impairment or loss of the thing delivered and its accessories and accessions.[60] If he sold the thing delivered, he should either deliver the proceeds of the sale or assign the action to collect to the other party.[61]

The situation is, however, complicated by the following facts:

- a) the basis of the valuation (P112,416,716.99) of the condominium units and parking slots covered by the June 30, 1994 deed of sale is unknown;
- b) the percentage of petitioner's actual accomplishment in the project has not been determined and
- c) the records of this case do not show the actual number of condominium units and parking slots sold by petitioners.

Because this Court is not a trier of facts, the determination of these matters should be remanded to the RTC for reception of further evidence.

The RTC must first determine the percentage of the project petitioner actually completed and its proportionate cost.[62] This will be the amount due to petitioner. Thereafter, based on the stipulated valuation in the June 30, 1994 deed of sale, the RTC shall determine how many condominium units and parking slots correspond to the amount due to petitioner. It will only be the management certificate and the keys to these units that petitioner will be entitled to. The remaining units, having been mistakenly delivered by respondent, will therefore be the subject of solutio indebiti.

What exactly must petitioner give back to respondent? Under Article 2160 in relation to Article 2154, it should return to respondent the condominium units and parking slots in excess of the value of its actual accomplishment (i.e., the amount due to it) as of October 12, 1995. If these properties include units and/or slots already sold to third persons, petitioner shall deliver the proceeds of the sale thereof or assign the actions for collection to respondent as required by Article 2160.

DELAY IN THE COMPLETION OF THE PROJECT

Mora or delay is the failure to perform the obligation in due time because of dolo (malice) or culpa (negligence).[63] A debtor is deemed to have violated his obligation to the creditor from the time the latter makes a demand. Once the creditor makes a demand, the debtor incurs mora or delay.[64]

The construction contract[65] provided a procedure for protesting delay:

Article XIV

DELAYS AND ABANDONMENT

15.1. If at any time during the effectivity of this contract, [PETITIONER] shall incur unreasonable delay or slippages of more than fifteen percent (15%) of the scheduled work program, [RESPONDENT] should notify [PETITIONER] in writing to accelerate the work and reduce, if not erase, slippage. If after the lapse of sixty (60) days from receipt of such notice, [PETITIONER] fails to rectify the delay or slippage, [RESPONDENT] shall have the right to terminate this contract except in cases where the same was caused by force majeure. "FORCE MAJEURE" as contemplated herein, and in determination of delay includes, but is not limited to, typhoon, flood, earthquake, coup d'etat, rebellion, sedition, transport strike, stoppage of work, mass public action that prevents workers from reporting for work, and such other causes beyond [PETITIONER'S] control.[66] (emphasis supplied)

xxx xxx xxx

Respondent never sent petitioner a written demand asking it to accelerate work on the project and reduce, if not eliminate, slippage. If delay had truly been the reason why respondent took over the project, it would have sent a written demand as required by the construction contract. Moreover, according to the October 12, 1995 letter-agreement, respondent took over the project for the sole reason that such move was part of its (respondent's) long-term plan.

Respondent, on the other hand, relied on ITI's September 7, 1995 report. The construction contract named GEMM, not ITI, as construction manager.[67] Because petitioner did not consent to the change of the designated construction manager, ITI's September 7, 1995 report could not bind it.

In view of the foregoing, we hold that petitioner did not incur delay in the performance of its obligation.

RECOVERY OF ADDITIONAL COSTS RESULTING FROM CHANGES

The supplemental agreement was a contract for a stipulated price.[68] In such contracts, the recovery of additional costs (incurred due to changes in plans or specifications) is governed by Article 1724 of the Civil Code.

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in

conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of higher cost of labor or materials, save when there has been a change in plans and specifications, provided:

- such change has been authorized by the proprietor in writing; and
- the additional price to be paid to the contractor has been determined in writing by both parties.

In *Powton Conglomerate, Inc. v. Agcolicol*,^[69] we reiterated that a claim for the cost of additional work arising from changes in the scope of work can only be allowed upon the:

- written authority from the developer/owner ordering/allowing the changes in work; and
- written agreement of parties with regard to the increase in cost (or price) due to the change in work or design modification. ^[70]

Furthermore:

Compliance with the two requisites of Article 1724, a specific provision governing additional works, is a condition precedent of the recovery. The absence of one or the other bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence for purposes of recovery.^[71] (emphasis supplied)

Petitioner submitted neither one. In addition, petitioner's project coordinator Estellita Garcia testified that respondent never approved any change order.^[72] Thus, under Article 1724 and pursuant to our ruling in *Powton Conglomerate, Inc.*, petitioner cannot recover the cost it incurred in effecting the design modifications. A contractor who fails to secure the owner or developer's written authority to changes in the work or written assent to the additional cost to be incurred cannot invoke the principle of unjust enrichment.^[73]

RECOVERY OF COMPENSATORY DAMAGES

Indemnification for damages comprehends not only the loss suffered (actual damages or *damnum emergens*) but also the claimant's lost profits (compensatory damages or *lucrum cessans*). For compensatory damages to be awarded, it is necessary to prove the actual amount of the alleged loss by preponderance of evidence.^[74]

The RTC awarded compensatory damages based on the rental pool rates submitted by petitioner^[75] and on the premise that all those units would have been leased had respondent only finished the project by December 31, 1995.^[76] However, other than bare assertions, petitioner submitted no proof that the rental pool was in fact able to lease out the units. We thus hold that the "losses" sustained by petitioner were merely speculative and there was no basis for the award.

REMAND OF OTHER CLAIMS

Since respondent did not repudiate petitioner's other claims stated in the inventory^[77] in the RTC and CA, it is estopped from questioning the validity thereof.^[78] However, because some of petitioner's claims have been disallowed, we remand the records of this case to the RTC for the computation of respondent's liability.^[79]

WHEREFORE, the petition is hereby GRANTED.

The March 15, 2002 decision and May 29, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 61353 and the August 5, 1998 decision of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 97-1501 are hereby SET ASIDE. New judgment is entered:

- ordering petitioner Titan-Ikeda Construction and Development Corporation to return to respondent Primetown Property Group, Inc. the condominium units and parking slots corresponding to the payment made in excess of the proportionate (project) cost of its actual accomplishment as of October 12, 1995, subject to its (petitioner's) allowable claims as stated in the inventory and

- dismissing petitioner Titan-Ikeda Construction and Development Corporation's claims for the cost of additional work (or change order) and damages.

The records of this case are remanded to the Regional Trial Court of Makati City, Branch 58 for:

- the reception of additional evidence to determine

a)

the percentage of the architectural work actually completed by petitioner Titan-Ikeda Construction and Development Corporation as of October 12, 1995 on the Makati Prime Tower and

(b)

the number of condominium units and parking slots sold by petitioner Titan-Ikeda Construction and Development Corporation to third persons;

- the computation of petitioner Titan-Ikeda Construction and Development Corporation's actual liability to respondent Primetown Property Group, Inc. or vice-versa, and the determination of imposable interests and/or penalties, if any.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Godardo A. Jacinto (retired) and concurred in by Associate Justices Eloy R. Bello, Jr. (retired) and Josefina Guevara-Salonga of the Fifth Division of the Court of Appeals. Dated March 15, 2002. Rollo, pp. 10-18, 34-42, 81-89.

[3] Dated May 29, 2003. Id., pp. 20-23, 91-94.

[4] Refers to the foundation of the building, particularly the concrete and steel works up to the topping of the last floor without any finishing.

[5] Rollo, pp. 55, 200, 255.

[6] Exhibit "A," records, pp. 474-488.

[7] Id., p. 1.

[8] Refers to all the finishing works including putting up partitions, doors, windows and interior and exterior finishes.

[9] Exhibit "B," records, pp. 490-492.

[10] Exhibit "B-2," id., p. 492. Paragraph 10 of the supplemental agreement provided:

- All other terms and conditions appearing in the construction contract, not otherwise in conflict with the above

terms, shall remain in full force and binding upon the Parties insofar as they may be applicable with the [project] contemplated therein.

[11] Exhibit “A-1,” id., p. 234. Art. I, par. 1.4. (Definition of Terms) of the construction contract provided:

1.4. CONSTRUCTION MANAGER GEMM Construction and Management
and its duly authorized representatives

See Exhibit “A-10,” id., p. 484. Art. XIX of the construction contract provided:

ARTICLE XIX

CONSTRUCTION MANAGER'S STATUS

19.1. The construction managers shall have general management, inspection, monitoring and administration of the [project]. They shall have the authority to stop the [project] whenever such stoppage may be necessary to ensure the proper execution of this contract. The construction managers, in consultation with [respondent] and ARCHITECT, shall decide on matters pertaining to architectural and engineering designs, workmanship, materials and construction.

19.2. The construction managers shall interpret the terms and conditions of this contract and shall mediate between and recommend decide on all claims of [respondent] or [petitioner] and shall resolve such other matters relating to the execution and progress of the works.

[12] Exhibit “8,” id., pp. 506-509 and rollo, p. 23.

[13] See Deed of Absolute Sale. Exhibit “E,” records, pp. 380-383. This value exceeded 80% of the contract price. (The amount paid was equivalent to 86% of the contract price.)

[14] Exhibits “13-P,” “13-Q,” “13-R,” “13-S,” and “13-T,” records, pp. 537-541.

[15] Rollo, p. 201.

[16] Exhibit “F,” records, pp. 383-409.

[17] Id., p. 384.

[18] Id.

[19] Exhibit “C,” id., p. 499.

Contra, Exhibit “A-9,” id., pp. 483-484. The construction contract provided:

ARTICLE XVII

RESCISSION OF CONTRACT

- It is understood that in case of failure on the part of [petitioner] to complete the [project] herein stipulated and agreed on, or if the [project] to be done under this contract is abandoned by [petitioner] or the latter fails to insure its completion within the required time, including any extension thereof, and in any of these cases, [RESPONDENT] shall have the right to rescind this contract by giving notice in writing to that effect to [PETITIONER] and its bondsmen. [Respondent] shall then take over the [project] and proceed to complete the same on its own account.

17.1. It is further agreed and understood that in case of rescission, [respondent] shall ascertain and fix the value of the [project] completed by [petitioner] such usable materials on the [project] taken.

17.2. In the event that the total expenditures of [respondent] supplying the scope of [petitioner's] work to complete the project, including all charges against the project prior to rescission of the contract, and not in excess of the contract price, then the difference between the said total expenditures of [respondent] and the contract price may be applied to settle claims, if any, with the conformity of [petitioner] filed by workmen employed on the project and by suppliers furnishing materials therefor. The balance, if any should be paid, to the [petitioner] but no amount in excess of the combined value of the unpaid completed work and retained percentage at the time of the rescission of this contract shall be paid. No claim for prospective profits on the work done after rescission of this contract shall be considered or allowed.

17.3. [Petitioner] and its sureties shall likewise be liable to [respondent] for any loss caused to [respondent] in excess of the contract price. (emphasis supplied)

“Rescission” under article XVII of the construction contract never took place. Respondent notified neither petitioner nor its bondsmen that it was invoking its right to rescind under the contract. On the contrary, it was petitioner who drafted the October 12, 1995 letter-agreement. (The said letter was printed on petitioner’s letterhead.) Thus, the succeeding paragraphs quoted above are inapplicable in this case.

[20] Exhibit “F-1,” id., p. 386.

[21] TSN, December 19, 1997, pp. 67-68.

[22] Id., pp. 94-95 and records, pp. 95-96.

[23] Id. Petitioner did not protest the new arrangement. In fact, it detailed a project engineer at site who monitored only the progress of works in its condominium units.

[24] Exhibits “5-E” and “5-F,” id., pp. 502-503.

Petitioner's letter dated October 17, 1995 provided a detailed account of the respondent's liabilities. That letter was duly acknowledged by respondent.

Change Orders

a) CO #1

P 7,496,125.80

b) CO #2

160,975.87

c) CO #3

167,191.15

d) CO #4

311,799.71

e) Penthouse rework (structural)

1,228,781.08

f) Equipment support for MOS precast items

605,788.38

Architectural Works

g) Structural additive CO #1

41,400.00

h) Structural additive CO #2

276,177.00

i) VAT for structural $(42,077,577 \times 0.07)$

2,945,430.39

j) VAT for architectural (May 31)

1,849,640.00

k) [Respondent's] share in modular cabinets

2,694,400.00

l) Letter dated October 2, 1995 under "A" Nos. 1, 8, 12, 16

37,688.00

m)

Letter dated October 2, 1995 under "B" Nos. 4, 11, 12, 17, 18, 19, 22 & 23 and VAT for modular cabinets

726,878.05

n) Letter dated September 28, 1995 under "B" - #28

10,349.78

o) Letter dated October 12, 1995-- A, B, C, D

7,668,131.76

SUB-TOTAL**P26,220,756.97**

Others

a) Labor adjustment for architectural $290,000 \times 27$

7,830,000.00

VATa) VAT for e and f (above) - $1,834,569.46 \times 0.07$

128,419.86

b) VAT for o (above) - $7,668,131.75 \times 0.07$

536,769.22

c)

VAT for nos. 4, 11, 22 & 23 (under "B" letter Oct. 2, 1995) - $145,223.52 \times 0.04$

5,808.94

d)

VAT for architectural as of June to December 31, 1995

Accomplished as of Dec. 31, 1995

100.00%

Less: accomplishment as of May 1, 1995

35.57

Accomplishment as of June to Dec. 1995

64.43%

VAT = $130,000,000 \times 0.6643 \times 0.04$

3,350,360.00

e) VAT for 1 above I

1,507.52

f) VAT for A above: labor adjustment for architectural

313,200.00

g)

Misc. additive (refer to attached) A. 2, 5, 7, 9, 10, 11, 13, 14, 16, 17, & B-25

648,211.78

SUB-TOTAL

P12,814,277.32

Total change orders and other claims

P39,035,033.29

ADD: Balances from other projects:

Balance from Citadel project

P 196,379.44

Sunnette Tower expenses advanced by [petitioner]

418,413.61

Balance due to [petitioner] from Citadel units sold by [respondent]

240,785.82

CWT and document stamp [taxes] advanced by [petitioner]

680,850.17

Balance due from 100% swapping MPT architectural contract

894,902.15

Balance from [petitioner] supplied concrete mix for [MPT] project

20,164.50

Balances from other projects

2,451,495.69

LESS: Advances and payable to petitioner

18,065,212.90

AMOUNT DUE FROM RESPONDENT

P23,421,316.08

[25] Demand letter dated October 26, 1997. Exhibits “6” and “7,” records, pp. 500-504. The breakdown of the accounts is as follows:

The remaining balance as of October 12, 1995 (refer to the attached) is P 5,499,233.82

Plus: Amount still payable to [petitioner] to SUBCONS (labor and materials) 16,244,635.38

Amount still needed as of October 20, 1995 P21,743,869.20

Less: Letter [dated] October 17, 1995 [amount due to petitioner] (supra note 24) 23,422,316.08

AMOUNT PAYABLE TO [PETITIONER] BY [RESPONDENT] P 1,677,446.85

Plus: Material deliveries from October 20 to 25, 1995 102,298.00

REVISED AMOUNT

P 1,779,744.85

[26] Exhibit “7,” id., p. 505.

Balance as of October 26, 1995

P1,779,744.85

Add: Cost of materials delivered from December 6, 1995 to January 25, 1996

244,131.40

AMOUNT PAYABLE TO [PETITIONER] BY [RESPONDENT]**P2,023,867.25**

Records show that at the time petitioner was working on the (MPT) project, it was also working on respondent's Sunnette Tower and Citadel projects. It is unclear in relation to which project this cost was incurred.

[27] A management certificate attests to the fact that the condominium corporation is at least 60% Filipino (or that foreigners own not more than 40% of that corporation). It is a condition precedent to the issuance of condominium certificates of title.

[28] Rollo, pp. 62-63.

[29] Docketed as HLRB Case No. 9657. Petitioner prayed for the issuance of the management certificate and condominium certificates of title and the delivery of keys to its respective buyers. Records, pp. 48-53.

[30] Exhibit "G," id., pp. 410-412.

[31] Penned by housing and land use arbiter Emmanuel T. Pontejos. Rollo, pp. 113-119.

[32] Id., pp. 116-117.

[33] Id.

[34] Records, pp. 518-519. It is not clear whether the said writ was implemented.

[35] Docketed as Civil Case No. 97-1501. Id., pp. 1-6 and rollo, p. 12.

[36] ITI assessed the unfinished portion of the project at using the formula:

Contract price x (100% - projected % of work to be accomplished in MPT project)

P130,000,000 x (100% - 48.71%)

[37] Refer to paragraph 1 of the supplemental agreement.

[38] Rollo, p. 97.

[39] See notes 24, 25 and 26. Respondent's liabilities did not only pertain to the MPT project (both structural and architectural works) but included those incurred in the Sunnette Tower and Citadel projects.

[40] Rollo, p. 98.

[41] Id., pp. 109-110. In a rental pool agreement, the owners of several condominium units agree to lease their respective units at stipulated rates and divide the rent (or their earnings) proportionately according to the area of their respective units.

MPT rental pool's daily rates

Rate

No. of Units

Studio type

US\$

75

1-bedroom unit

115

2-bedroom unit

135

3-bedroom unit

180

Total Number of units

114 units

Lost rental income as of July 1997

US\$1,665,260

[42] Penned by Judge Escolatico U. Cruz, Jr. of RTC Branch 58, Makati City. Dated August 5, 1998. Id., pp. 95-112.

[43] CA rollo, pp. 50-87. Under Rule 41 of the Rules of Court.

[44] Rollo, p. 15.

[45] Id.

See CIVIL CODE, Art. 22. The article provides:

Article 22. Every person who through an act or performance by another, or by any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

See also 1 Jose B.L. Reyes and Ricardo C. Puno, AN OUTLINE OF PHILIPPINE CIVIL LAW, 1957 ed., 42-43. The following are the essential requisites of the action (action in rem verso):

- enrichment by direct acquisition of “plus value”;
- impoverishment of another;
- correlation between enrichment and impoverishment (i.e., a relation of cause and effect);
- absence of justifiable cause for either enrichment or impoverishment; and
- lack of other remedy.

The principle of unjust enrichment is inapplicable in this instance since petitioner received the condominium units and parking slots as advance payment for services it should have rendered pursuant to the supplemental agreement. There was therefore a justifiable cause for the delivery of excess properties.

[46] Id., p. 17.

[47] Id., pp. 67-70.

[48] Id.

[49] *Austria v. Gonzales, Jr.*, 465 Phil. 355, 364 (2004).

[50] CIVIL CODE, Art. 1305.

[51] See CIVIL CODE, Art. 1713. The article provides:

Art. 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill or also furnish the material.

[52] Evidence “G,” records, p. 499.

[53] TSN, December 19, 1997, pp. 94-97.

[54] Id.

[55] Records, pp. 95-96.

[56] See notes 24, 25 and 26.

[57] *Velez v. Balzarza*, 73 Phil. 630 (1942). See also *City of Cebu v. Judge Piccio*, 110 Phil. 558 (1960). See also *Andres v. Manufacturer's Hanover Trust*, G.R. No. 82670, 15 September 1989, 177 SCRA 618.

[58] To compute the value of the unfinished portion of the project, the formula below should be used:

Total project cost x (100% - % of project actually accomplished)

[59] Refer to Article 2154.

[60] Refer to Article 2160.

[61] Id. See also Melencio S. Sta. Maria, Jr., *OBLIGATIONS AND CONTRACTS: TEXT AND CASES*, 1st ed., p. 509.

[62] In order to determine the proportionate cost of the petitioner's actual accomplishment in the project, the formula below must be used:

Total project cost P130,000,000 (refer to paragraph 2 of the construction contract)

x

% of the project petitioner actually accomplished (to be determined by the RTC)

[63] 4 Jose B.L. Reyes and Ricardo C. Puno, *AN OUTLINE OF PHILIPPINE CIVIL LAW*, 1957 ed., 28. See *Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc.*, 478 Phil. 269, 290 (2004).

See CIVIL CODE, Art. 1169. The article provides:

Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, demand by the creditor shall not be necessary in order that delay may exist:

- 1) When the obligation or the law expressly declares; or
- 2) When from the nature and the circumstances of the obligation it appears that the designation of the time when

the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the obligation; or

3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[64] *Solid Homes v. Tan*, G.R. Nos. 145156-57, 29 July 2005, 465 SCRA 137, 147-148.

[65] *Supra* note 10. The supplementary agreement clearly stated the construction contract, save those matters explicitly discussed in the former, governed the project.

[66] Exhibit "A-7," records, p. 481.

[67] *Supra* note 11.

[68] Refer to paragraph 2 of the January 31, 1994 supplemental agreement.

[69] 448 Phil. 643 (2003).

[70] *Id.*, pp. 652-653 citing *Weldon Construction Corporation v. Court of Appeals*, G.R. No. L-35721, 12 October 1987, 154 SCRA 618, 632-634.

[71] *Id.*, p. 633.

See also *San Diego v. Sayson*, 112 Phil. 1073 (1961). We explained the rationale of Article 1724.

"That the requirement for a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article 1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery."

[72] TSN, December 18, 1997, pp. 127-128. The records contain neither a document allowing a change order or an agreement as to increase in cost.

[73] *Powton Conglomerate, Inc. v. Agcolicol*, *supra* note 69 at 655-656.

[74] *Integrated Packing Corporation v. Court of Appeals*, 388 Phil. 835, 846 (2000). See also *Smith Kline Beckman Corporation v. Court of Appeals*, 456 Phil. 213, 225-226 (2003).

[75] *Supra* note 41.

[76] Rollo, p. 111.

[77] *Supra* note 24.

[78] *Reyes and Puno*, *supra* note 63 at 274. This case involves estoppel by judgment. Estoppel by judgment bars the parties from raising any question that should have been put in issue and decided in previous proceedings.

[79] See *Metro Manila Transit Corporation v. D.M. Consortium, Inc.*, G.R. No. 147594, 7 March 2007, 517 SCRA 632, 642.

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