

**PHILIPPINE REALTY AND HOLDINGS CORPORATION, PETITIONER,
VS. LEY CONSTRUCTION AND DEVELOPMENT CORPORATION,
RESPONDENT.**

G.R. No. 165548. June 13, 2011

Ponente: SERENO, J.

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SERENO, J.:

These are consolidated petitions for review under Rule 45 of the New Rules of Civil Procedure filed by both parties from a Court of Appeals (CA) Decision in CA-GR No. 71293 dated 30 September 2004. This Decision reversed a Decision of the Regional Trial Court (RTC), National Capital Judicial Region (NCJR), Branch 135 in Makati City dated 31 January 2001 in Civil Case No. 96-160.

The foregoing are the facts culled from the record, and from the findings of the CA and the RTC.

Ley Construction and Development Corporation (LCDC) was the project contractor for the construction of several buildings for Philippine Realty & Holdings Corporation (PRHC), the project owner. Engineer Dennis Abcede (Abcede) was the project construction manager of PRHC, while Joselito Santos (Santos) was its general manager and vice-president for operations.

Sometime between April 1988 and October 1989, the two corporations entered into four major construction projects, as evidenced by four duly notarized "construction agreements." LCDC committed itself to the construction of the buildings needed by PRHC, which in turn committed itself to pay the contract price agreed upon. These were the four construction projects the parties entered into involving a Project 1, Project 2, Project 3 (all of which involve the Alexandra buildings) and a Tektite Building:

- Construction Agreement dated 25 April 1988 - Alexandra-Cluster C - involving the construction of two units of seven-storey buildings with basement at a contract price of P 68,000,000 (Project 1);
- Construction Agreement dated 25 July 1988 - Alexandra-Cluster B - involving the construction of an eleven-storey twin-tower building with a common basement at a contract price of P 140,500,000 (Project 2);
- Construction Agreement dated 23 November 1988 - Alexandra-Cluster E - involving the construction of an eleven-storey twin-tower building with common basement at a contract price of P 140,500,000 (Project 3); and
- Construction Agreement dated 10 October 1989 - Tektite Towers Phase I - involving the construction of Tektite Tower Building I at Tektite Road at a contract price of P 729,138,964 (Tektite Building).

The agreement covering the construction of the Tektite Building was signed by a Mr. Campos under the words "Phil. Realty & Holdings Corp." and by Santos as a witness. Manuel Ley, the president of LCDC, signed under the words "Ley Const. & Dev. Corp."

The terms embodied in the afore-listed construction agreements were almost identical. Each agreement provided for a fixed price to be paid by PRHC for every project.

All the aforementioned agreements contain the following provisions:

ARTICLE IV - CONTRACT PRICE

.....

The Contract Price shall not be subject to escalation except due to work addition, (approved by the OWNER and the ARCHITECT) and to official increase in minimum wage as covered by the Labor Adjustment Clause below. All costs and expenses over and above the Contract Price except as provided in Article V hereof shall be for the account of the CONTRACTOR. It is understood that there shall be no escalation on the price of materials. However, should there be any increase in minimum daily wage level, the adjustment on labor cost only shall be considered based on conditions as stipulated below.

.....

ARTICLE VII - TIME OF COMPLETION

.....

Should the work be delayed by any act or omission of the OWNER or any other person employed by or contracted by the OWNER in the project, including days in the delivery or (sic) materials furnished by the OWNER or others, or by any appreciable additions or alterations in the work ordered by the OWNER or the ARCHITECT, under Article V or by force majeure, war, rebellion, strikes, epidemics, fires, riots, or acts of the civil or military authorities, the CONTRACTOR shall be granted time extension.

Sometime after the execution of these agreements, two more were entered into by the parties:

- Letter-agreement dated 24 August 1989 - Project 3 - for the construction of the drivers' quarters in Project 3; and
- Agreement dated 7 January 1993 - Tektite Towers - for the concreting works on "GL, 5, 9, & A" (ground floor to the 5[th] floor) of the Tektite Towers.

Santos signed the letter-agreement on the construction of the drivers' quarters in Project 3, [1] while both he and Abcede signed the letter-agreement on the concreting works on GL, 5, 9, and A, and also of Project 3. [2]

In order to jump-start the construction operations, LCDC was required to submit a performance bond as provided for in the construction agreements. As stated in these agreements, as soon as PRHC received the performance bond, it would deliver its initial payment to LCDC. The remaining balance was to be paid in monthly progress payments based on actual work completed. In practice, these monthly progress payments were used by LCDC to purchase the materials needed to continue the construction of the remaining parts of the building.

In the course of the construction of the Tektite Building, it became evident to both parties that LCDC would not be able to finish the project within the agreed period. Thus, through its president, LCDC met with Abcede to discuss the cause of the delay. LCDC explained that the unanticipated delay in construction was due mainly to the sudden, unexpected hike in the prices of cement and other construction materials. It claimed that, without a corresponding increase in the fixed prices found in the agreements, it would be impossible for it to finish the construction of the Tektite Building. In their analysis of the project plans for the building and of all the external factors affecting the completion of the project, the parties discovered that even if LCDC were able to collect the entire balance from the contract, the collected amount would still be insufficient to purchase all the materials needed to complete the construction of the building.

Both parties agreed that their foremost objective should be to ensure that the Tektite Building project would be completed. To achieve this goal, they entered into another agreement. Abcede asked LCDC to advance the

amount necessary to complete construction. Its president acceded, on the absolute condition that it be allowed to escalate the contract price. It wanted PRHC to allow the escalation and to disregard the prohibition contained in Article VII of the agreements. Abcede replied that he would take this matter up with the board of directors of PRHC.

The board of directors turned down the request for an escalation agreement. [3] Neither PRHC nor Abcede gave notice to LCDC of the alleged denial of the proposal. However, on 9 August 1991 Abcede sent a formal letter to LCDC, asking for its conformity, to the effect that should it infuse P36 million into the project, a contract price escalation for the same amount would be granted in its favor by PRHC. [4]

This letter was signed by Abcede above the title "Construction Manager," as well as by LCDC. [5] A plain reading of the letter-agreement will reveal that the blank above the words "PHIL. REALTY & HOLDINGS CORP." was never signed, [6] viz:

Very truly yours,

(Signed)

DENNIS A. ABCEDE
Construction Manager

C O N F O R M E :

(Signed)

LEY CONST. & DEV. CORP.

APPROVED & ACCEPTED :

PHIL. REALTY & HOLDINGS CORP.

Notwithstanding the absence of a signature above PRHC's name, LCDC proceeded with the construction of the Tektite Building, expending the entire amount necessary to complete the project. From August to December 1991, it infused amounts totaling P 38,248,463.92. These amounts were not deposited into the joint account of LCDC and PRHC, but paid directly to the suppliers upon the instruction of Santos. [7]

LCDC religiously submitted to PRHC monthly reports [8] that contained the amounts of infusion it made from the period August 1991 to December 1991. These monthly reports all had the following heading:

.....

MR. JOSELITO L. SANTOS
VICE PRESIDENT OPERATION
PHIL. REALTY & HOLDINGS CORP.
4[TH] Floor Quad Alpha Centrum Bldg.
125 Pioneer St., Mandaluyong, M.M.

T H R U : D.A. ABCEDE & ASSOCIATES
Construction Managers

SUBJECT : P 36.0M INFUSION-TEKTITE

TOWERS PROJECT

From these monthly reports, it can be gleaned that the following were the cash infusions made by LCDC:

Month	
Amount	
Date of monthly report	
August 1991	PhP 6,724,632.26
15 October 1991 [9]	
September 1991	PhP 7,326,230.69
7 October 1991 [10]	
October 1991	PhP 7,756,846.88
7 November 1991 [11]	
November 1991	PhP 8,553,313.50
7 December 1991 [12]	
December 1991	PhP 7,887,440.50
9 January 1992 [13]	
	PhP 38,248,463.92

PRHC never replied to any of these monthly reports.

On 20 January 1992, LCDC wrote a letter addressed to Santos stating that it had already complied with its commitment as of 31 December 1991 and was requesting the release of P 2,248,463.92. It attached a 16 January 1992 letter written by D.A. Abcede & Associates, informing PRHC of the total cash infusion made by LCDC to the project, to wit:

in compliance with the commitment of Ley Construction and Dev't Corp. to infuse P36.00M for the above subject project x x x

x x x we would like to present the total cash infusion by LCDC for the period covering the month of August, 1991 to December 1991 broken down as follows:

.....

T O T A L: P 38,248,463.92

PRHC never replied to this letter.

In another letter dated 7 September 1992, there was a reconciliation of accounts between the two corporations with respect to the balances due for Projects 1, 2, and 3. The reconciliation of accounts resulted in PRHC owing LCDC the sum of P 20,862,546.41, broken down as follows:

Project 1

P 1,783,046.72

Project 2

P 13,550,003.93

Project 3

P 5,529,495.76

P 20,862,546.41

In a letter dated 8 September 1992, [14] when 96.43% of Tektite Building had been completed, LCDC requested the release of the P 36 million escalation price. PRHC did not reply, but after the construction of the building was completed, it conveyed its decision in a letter on 7 December 1992. [15] That decision was to set off, in the form of liquidated damages, its claim to the supposed liability of LCDC, to wit:

.....

In this regard, please be advised that per owner's decision; your claim of P36,000,00.00 adjustment will be applied to the liquidated damages for concreting works computed in the amount of Thirty Nine Million Three Hundred Twenty Six Thousand Eight Hundred Seventeen & 15/100 (P39,326,817.15) as shown in the attached sheet.

Further, the net difference P 3,326,817.15 will also be considered waived as additional consideration.

.....

In a letter dated 18 January 1993, LCDC, through counsel, demanded payment of the agreed escalation price of P 36 million. In its reply on 16 February 1993, PRHC suddenly denied any liability for the escalation price. In the same letter, it claimed that LCDC had incurred 111 days of delay in the construction of the Tektite Building and demanded that the latter pay P 39,326,817.15 as liquidated damages. This claim was set forth in PRHC's earlier 7 December 1992 letter.

LCDC countered that there were many times when its requests for time extension - although due to reasonable causes sanctioned by the construction agreement such as power failures, water supply interruption, and scarcity of construction materials - were unreasonably reduced to shorter periods by PRHC. In its letter dated 9 December 1992, LCDC claimed that in a period of over two years, out of the 618 days of extension it requested, only 256 days - or not even half the number of days originally requested - were considered. It further claimed that its president inquired from Abcede and Santos why its requests for extension of time were not granted in full. The two, however, assured him that LCDC would not be penalized with damages for even a single day of delay, because the fact that it was working hard on the Tektite Building project was known to PRHC. [16]

Thereafter, in a letter dated 18 January 1993, LCDC demanded payment of the agreed total balance for Projects 1, 2, and 3. Through a reply letter dated 16 February 1993, PRHC denied any liability. During the course of the proceedings, both parties conducted another reconciliation of their respective records. The reconciliation showed the following balances in favor of LCDC:

Project 1

P 1,703,955.07

Project 2

P 13,251,152.61

Project 3

P 5,529,495.76

Total:

P 20,484,603.44

In addition to the agreed-upon outstanding balance in favor of LCDC, the latter claimed another outstanding balance of P 232,367.96 in its favor for the construction of the drivers' quarters in Project 3.

It also further claimed the amount of P 7,112,738.82, representing the balance for the concreting works from the ground floor to the fifth floor of the Tektite Building.

Seeking to recover all the above-mentioned amounts, LCDC filed a Complaint with Application for the Issuance of a Writ of Preliminary Attachment on 2 February 1996 before the RTC in Makati City docketed as Civil Case No. 96-160:

WHEREFORE, it is respectfully prayed that:

1.

Immediately upon the filing of this Complaint, an order of preliminary attachment be issued over defendant Philrealty's properties as security for any judgment which plaintiff may recover against said defendant; and

2.

After trial, judgment be rendered as follows:

2.1.

On the first, second and third alternative causes of action,

(a)

Ordering defendant Philrealty to pay plaintiff actual damages in the amount of P36,000,00.00 with legal interest thereon from the filing of this Complaint until fully paid;

(b)

In the alternative, ordering defendants Abcede and Santos to jointly and severally, in the event that they acted without necessary authority, to pay plaintiff actual damages in the amount of P36,000,00.00 with legal interest thereon from the filing of this Complaint until fully paid; and

(c)

Ordering defendant Philrealty or defendants Abcede and Santos to pay plaintiff exemplary damages in the amount to be determined by the Honorable Court but not less than P5,000,000.00

2.2.

On the fourth cause of action, ordering defendant Philrealty to pay plaintiff

(a)

Actual damages in the amount of P7,112,738.82 with legal interest thereon from the filing of this Complaint until fully paid; and

(b)

Exemplary damages in the amount to be determined by the Honorable Court but not less than P1,000,000.00

2.3.

On the fifth cause of action, ordering defendant Philrealty to pay plaintiff

(a)

Actual damages in the amount of P20,862,546.41 with legal interest thereon from the filing of this Complaint until fully paid; and

(b)

Exemplary damages in an amount to be determined by the Honorable Court but not less than P5,000,000.00.

2.4.

On the sixth cause of action, ordering defendant Philrealty to pay plaintiff

(a)

Actual damages in the amount of P232,367.96 with legal interest thereon from the filing of this Complaint until fully paid; and

(b)

Exemplary damages in the amount to be determined by the Honorable Court but not less than P100,000.00

2.5.

On the seventh cause of action, ordering defendant Philrealty and/or defendants Abcede and Santos to pay plaintiff attorney's fees in the amount of P750,000.00 and expenses of litigation in the amount of P50,000.00, plus costs.

Plaintiff prays for such other just and equitable reliefs as may be warranted by the circumstances.

On 23 July 1999, a joint Stipulation of Facts [17] was filed by the parties. In the said stipulation, they reconciled their respective claims on the payments made and the balances due for the construction of the Tektite Building project, Project 1, and Project 2. The reconciliation shows that the following amounts are due and/or overpaid:

Due to LCDC

Overpaid to LCDC

Tektite Building

P4,646,947.35

Project 1

P1,703,955.07

Project 2

P3,251,152.61

P14,955,107.68

P4,646,947.35

Both parties agreed that the only remaining issues to be resolved by the court, with respect to the Tektite Building project and Projects 1 to 3, were as follows:

a)

The validity of Ley Construction's claim that Philrealty had granted the former a contract price escalation for Tektite Tower I in the amount of P36,000,000.00

b)

The validity of the claim of Philrealty that the following amounts should be charged to Ley Construction:

Payments/Advances without LCDC's conformity and recommendation of the Construction Manager, D.A. Abcede & Associates that subject items are LCDC's account:

a. Esicor, Inc. - waterproofing works Cluster B

P1,121,000.00

b. Ideal Marketing, Inc. - waterproofing works at Cluster B, Quadrant 2

P885,000.00

P2,006,000.00

c)

The claim of Philrealty for liquidated damages for delay in completion of the construction as follows:

d)

Tektite Tower I

-

P39,326,817.15

Alexandra Cluster B

-

12,785,000.00

Alexandra Cluster C

-

1,100,000.00

and

e)

The claim of Ley Construction for additional sum of P2,248,463.92 which it allegedly infused for the Tektite Tower I project over and above the original P36,000,000.00 it had allegedly bound itself to infuse.[18]

On 31 January 2001, the RTC promulgated its Decision. LCDC filed a Motion for Partial Reconsideration, which was granted.

It must be noted that in the Stipulation of Facts, the parties had jointly agreed that the P7,112,738.82 unpaid account in the concreting of Tektite Building would no longer be included in the list of claims submitted to the RTC for decision. Nonetheless, this amount was still included as an award in the trial court's 7 May 2001 amended Decision, the dispositive portion of which provides:

WHEREFORE, premises considered, judgment is hereby rendered:

- Dismissing the counter-claim of defendant DENNIS ABCEDE and the cross-claim of defendant JOSELITO SANTOS; and
- Ordering defendant PHILIPPINE REALTY AND HOLDING CORPORATION to pay plaintiff LEY CONSTRUCTION AND DEVELOPMENT CORPORATION:
- P33,601,316.17, for the Tektite Tower I Project with legal interest thereon from date of the filing of the complaint until fully paid;
- P13,251,152.61 for Alexandra Cluster B with legal interest thereon from date of the filing of the complaint until fully paid;
- P1,703,955.07 for Alexandra Cluster C with legal interest thereon from date of the filing of the complaint until fully paid;
- P7,112,738.82 in actual damages for the concreting works of Tektite Tower I, with legal interest thereon from the date of the filing of the complaint until fully paid;
- P5,529,495.76 in actual damages for the construction of Alexandra Cluster E, with legal interest thereon from the date of the filing of the complaint until fully paid;
- P232,367.96 in actual damages for the construction of the driver's quarters of Alexandra Cluster E, with legal interest thereon from the date of the filing of the complaint until fully paid;
- P750,000.00 for attorney's fees and expenses of litigation; and
- Costs.

SO ORDERED. [19]

PRHC filed a Notice of Appeal on 14 June 2001. The Court of Appeals, in CA-G.R. CV No. 71293, [20] reversed the lower court's amended Decision on 30 September 2004 and ruled thus:

WHEREFORE, premises considered, the assailed January 31, 2001 decision and the May 7, 2001 amended decision are hereby REVERSED and SET ASIDE and a new one is entered:

I. FINDING plaintiff-appellee LCDC LIABLE to defendant-appellant PRHC in the amount of Sixty million Four Hundred Sixty Four (Thousand) Seven Hundred Sixty Four 90/100 (P60,464,764.90) PESOS detailed as follows:

[1] P39,326,817.15 liquidated damages pursuant to contract for delay incurred by plaintiff-appellee LCDC in the construction of Tektite Tower Phase I, the length of delay having been signed and confirmed by LCDC;

[2] P12,785,000.00 liquidated damages pursuant to contract for delay incurred by plaintiff-appellee LCDC in

the construction of Alexandra Cluster B, the length of delay having been signed and confirmed by LCDC;

[3] P1,700,000.00 liquidated damages pursuant to contract for delay incurred by plaintiff-appellee LCDC in the construction of Alexandra Cluster C, the length of delay having been confirmed by LCDC;

[4] P4,646,947.75 overpayment by defendant-appellant PRHC to plaintiff-appellee LCDC for the Tektite Tower Phase I Project;

[5] P1,121,000.00 expenses incurred by defendant-appellant PRHC for corrective works to redo/repair allegedly defective Waterproofing construction work of plaintiff-appellee LCDC in the Alexander Cluster B Project which was paid by defendant-appellant PRHC to contractor Escritor, Inc.;

[6] P885,000.00 expenses incurred by defendant-appellant PRHC for corrective works to redo/repair allegedly defective Waterproofing construction work of plaintiff-appellee LCDC at the Alexandra Cluster B Quadrant in the Alexander Cluster B Project which was paid by defendant-appellant PRHC to contractor Ideal Marketing Inc., and

II. FINDING defendant-appellant PRHC LIABLE to plaintiff-appellee LCDC in the amount of Fifty Six million Seven Hundred Sixteen Thousand Nine Hundred Seventy One 40/100 (P56,716,971.40) detailed as follows:

[1] P36,000,000.00 as acknowledged and agreed to by PHRC as a loan by LCDC, reimbursable when the Tektite Tower I project was 95% completed, but this was not classified by this Court as an escalation for increase in price of materials because an escalation for price increase of cost of materials is expressly prohibited by 10 October 1989 original contract;

[2] All expenditures for the projects are at the risk of the contractor LCDC who is to be paid, according to the contract, a fixed contract price so that there is no such thing as overinfusion of expenses by plaintiff-appellee LCDC guaranteed under the contract that it would pay all costs of materials irregardless (sic) of any increase in costs;

[3] P13,251,152.61 balance yet unpaid by defendant-appellant in the Alexandra Cluster B Project;

[4] P1,703,955.07 balance yet unpaid by defendant-appellant in the Alexander Cluster C Project;

[5] Defendant-appellant PRHC is hereby held not liable for P750,000.00 attorney's fees;

[6] Plaintiff-appellee LCDC is not entitled to claim P7,112,738.82 for concreting works for Tektite Towers Phase I which cause of action had already been dismissed by the parties in the 23 July 1999 Joint Stipulation of Facts that the contract price for the October 10, 1989 Construction Agreement had been fully paid;

[7] P5,529,495.76 balance yet unpaid in the Alexandra Cluster E Project;

[8] P232,367.96 balance yet unpaid for construction of the drivers' quarters at the Alexandra Cluster E.

The respective liabilities of the parties as set forth above are hereby SET OFF against each other and plaintiff-appellee LCDC is hereby DIRECTED to pay defendant-appellant PRHC the net amount due of Three million Seven Hundred Forty Seven Thousand Seven Hundred Ninety Three 50/100 (P3,747,793.50) PESOS with legal interest from date of filing of complaint.

SO ORDERED.

PRHC came directly to this Court and filed a petition for review on certiorari docketed as SC-G.R. No. 165548 to assail in part the appellate court's Decision. LCDC, on the other hand, filed on 25 October 2004 a Motion for Reconsideration with the Court of Appeals. In its Resolution dated 12 April 2005, the appellate court denied the motion. LCDC then filed its own Petition for Review on certiorari, which was docketed as SC-G.R. No. 167879.

In a Resolution dated 6 August 2008, this Court consolidated G.R. Nos. 165548 and 16789.

PRHC, in its Petition for Review [21] in G.R. No. 165548, submits the following issues for resolution:

- Whether the finding and ruling of the Court of Appeals that the letter dated 07 December 1992 was a counter-offer on the part of LCDC and a confirmation to treat the P36,000,000.00 as a loan deductible from liquidated damages is contrary to the allegations in the pleadings and the evidence on record.
- Whether the finding and ruling of the Court of Appeals that LCDC is liable to PRHC in the amount of P5,529,495.76 representing the balance of the contract price for the construction of Alexandra Cluster E Project is contrary to the Stipulation of Facts jointly submitted by the parties to the Trial Court.
- Whether the finding and ruling of the Court of Appeals that LCDC is liable to PRHC in the amount of P232,367.96 representing the cost of the construction of the driver's quarters at Alexandra Cluster E Project is contrary to the Stipulation of Facts jointly submitted by the parties to the trial court. [22]

For its part, LCDC submits the following grounds in support of its Petition for Review [23] docketed as G.R. No. 167879:

- The Court of Appeals seriously erred in ruling that there is no P36 million escalation agreement between LCDC and PRHC.

.....

- The Court of Appeals seriously erred in ruling that PHRC is not obliged to pay LCDC the sum of P2,248,463.92 representing the cash infused by LCDC over and above the P36 million escalation price.
- The Court of Appeals seriously erred in ruling that PRHC is not obliged to pay LCDC the P7,112,738.82 balance for the concreting works of the ground floor to the fifth floor of the PSE.
- The Court of Appeals seriously erred in awarding liquidated damages to PHRC under the TTI Project Agreement and the Alexandra-Clusters B and C agreements.
- The Court of Appeals seriously erred in ruling that LCDC is liable for the corrective works in Alexandra-Cluster B.
- The Court of Appeals seriously erred in deleting the lower court's award of P750,000.00 attorney's fees and expenses of litigation to LCDC and holding the latter liable to pay costs. [24]

At the outset, it must be noted that PRHC does not question the following amounts granted by the Court of Appeals:

(a)

P13,251,152.61 awarded to LCDC as balance yet unpaid by PRHC for Project 2;

(b)

P1,703,955.07 awarded to LCDC as balance yet unpaid by PRHC for Project 1; and

(c)

P4,646,947.75 awarded to PRHC for its overpayment to LCDC for the Tektite Building.

No appeal having been filed from the immediately preceding rulings, they attained finality.

We reduce the issues to the following:

I

Whether or not a valid escalation agreement was entered into by the parties and, if so, to what amount;

II

Whether or not LCDC was delayed in the performance of its obligation to construct the buildings for PRHC and, corollary thereto, whether or not the latter is entitled to liquidated damages for this supposed delay in the construction of the Tektite Building and Projects 1 and 2;

III

Whether or not the CA can make an award or should have made an award for the following causes of action not alleged in the pleadings or omitted in the stipulation of facts:

- The supposed remaining balance of P5,529,495.76 for Project 3, which was awarded by the appellate court;
- The supposed remaining balance of P232,367.96, which the appellate court also awarded, representing the cost of the construction of the drivers' quarters in Project 3; and
- The supposed remaining balance of P7,112,738.82, the cost of the concreting works from the ground floor to the fifth floor of the Tektite Building, which was not awarded by the CA but was awarded by the lower court;

IV

Whether or not LCDC should be held liable for the amount of P2,006,000 for the corrective works to redo or repair the defective waterproofing in Project 2; and

V

Whether or not LCDC is entitled to the appellate court's award of P750,000 for attorney's fees and expenses of litigation and costs.

We shall review the findings of fact of the Court of Appeals in view of some inconsistencies with those of the trial court and the evidence on record, and as a result of our analysis of the threshold legal issues.

A subsequent escalation agreement was validly entered into by the parties, but only to the extent of P 36 million.

The construction agreements, including the Tektite Building agreement, expressly prohibit any increase in the contracted price. It can be inferred from this prohibition that the parties agreed to place all expenses over and above the contracted price for the account of the contractor. [25] PRHC claims that since its board of directors never acceded to the proposed escalation agreement, the provision in the main agreement prohibiting any increase in the contract price stands.

LCDC, on the other hand, claims that the fact that any increase in the contract price is prohibited under the Tektite Building agreement does not invalidate the parties' subsequent decision to supersede or disregard this prohibition. It argues that all the documentary and testimonial evidence it presented clearly established the existence of a P 36 million escalation agreement. [26]

LCDC now comes to this Court, asking that the escalation agreement with PRHC, as represented by Abcede and Santos, be declared to have effectively novated the prohibition in the Tektite Building agreement.

After examining the extensive evidence presented by both parties, we resolve to rule in favor of LCDC.

LCDC relies in part on PRHC's 19 August 1991 letter-agreement, [27] which provides as follows:

August 09, 1991

LEY CONSTRUCTION DEV. CORP.
10th Flr., Pacific Star Bldg.
Makati Avenue, Makati
Metro Manila

Attention: Mr. Manuel Ley
Subject: TEKTITE TOWERS

Gentlemen:

Relative to your contract for subject project this will confirm agreement between your goodselves and Philippine Realty & Holdings Corporation as follows:

1.0 Ley Construction & Development Corporation shall put in funds for Tektite project with a total amount of THIRTY SIX MILLION PESOS (P36,000,000.00) ONLY in accordance with the following schedule:

.....

2.0 If Ley Construction & Dev. Corp. faithfully complies with above commitment then Philippine Realty & Holdings Corporation shall grant a contract price escalation to Ley Const. & Dev. Corp. in the amount of THIRTY SIX MILLION PESOS (P36,000,000.00) ONLY in view of the increase in cost of materials during the construction period which amount shall be payable to Ley Const. & Dev. Corp. when the LCDC contract work is at least 95% complete.

(over)

Very truly yours,

(Signed)
DENNIS A. ABCEDE
Construction Manager

C O N F O R M E :

(Signed)
LEY CONST. & DEV. CORP.

APPROVED & ACCEPTED :

PHIL. REALTY & HOLDINGS CORP.

It is apparent from its face that the letter was not signed by PRHC. This fact allegedly proves, according to PRHC, that it never expressed its consent to the letter and, hence, cannot and should not be bound by the contents thereof. It further claims that its internal rules require the signatures of at least two of its officers to bind the corporation.

LCDC, for its part, submits that the fact that the letter is unsigned by PRHC is insignificant, considering that other pieces of documentary and testimonial evidence were presented to prove the existence of the escalation agreement. [28]

The appellate court found for PRHC and ruled that an unsigned letter does not bind the party left out, [29] viz:

But it is patent on the face of that letter that PRHC did not sign the document. It is patent on its face that between the words: "APPROVED:" and the name "Philippine Realty & Holdings Corporation", there is no signature. Apparent therefore on its face, there was no meeting of the minds between the parties LCDC and PRHC in the P36,000,000.00 escalation for materials. [30]

The Court of Appeals further held that a simple letter cannot novate a notarized agreement. [31]

The appellate court is incorrect. The 9 August 1991 letter is not a simple letter, but rather a letter-agreement--a contract--which because of the existence of the consent of both parties become valid and binding. It is true that no representative of PRHC signed under its typewritten name, where a signature should traditionally appear, to show the company's acceptance and approval of the contents of the letter-agreement. This Court, however, finds that the signature of Abcede is sufficient to bind PRHC. As its construction manager, his very act of signing a letter embodying the P36 million escalation agreement produced legal effect, even if there was a blank space for a higher officer of PHRC to indicate approval thereof. At the very least, he indicated authority to make such representation on behalf of PRHC.

On direct examination, Abcede admitted that, as the construction manager, he represented PRHC in running its affairs with regard to the execution of the aforesaid projects. He testified as follows: [32]

Q.

What is your profession by the way?

A.

I'm a Civil Engineer by profession and presently, I am engaged in the construction management.

Q.

And what is your company engaged in the construction management?

A.

We actually, as construction managers, we represent the owners, of the construction.[33]

All throughout the existence and execution of the construction agreements, it was the established practice of LCDC, each time it had concerns about the projects or something to discuss with PRHC, to approach Abcede and Santos as representatives of the latter corporation. As far as LCDC was concerned, these two individuals were the fully authorized representatives of PRHC. Thus, when they entered into the P 36 million escalation agreement with LCDC, PRHC effectively agreed thereto.

In fact, correspondences to the construction manager that were addressed to or that had to be noted by PRHC were most of the time coursed through and noted by Santos. Likewise, its correspondences to LCDC were signed by him alone. [34]

Santos testified that, as the vice president and general manager of PRHC, he was responsible for the implementation of the policies of the board, [35] to wit:

Q:

Why do you know the defendant Philippine Realty and Holding Corporation?

A:

I used to serve that company as Vice President and Director, sir.

Q:

During what year did you serve as Vice President and Director of Philippine Realty.

A:

I started serving that company as General Manager in 1987 and I resigned in 1993, sir.

Q:

Will you state your duties and functions as General Manager and Director of the company?

A:

I was responsible for the implementation of the policies approved by the board and the day to day general management of the company from operation to administration to finance and marketing, sir. [36]

In addition, LCDC was able to establish that Abcede and Santos had signed, on behalf of PRHC, other documents that were almost identical to the questioned letter-agreement. [37] Santos was actually the one who signed for PRHC in the letter-agreement for the construction of the drivers' quarters in Project 3. [38] He signed under the words "Approved: Phil. Realty & Holdings Corp." [39] While both he and Abcede signed the letter-agreement for concreting works on "GL, 5, 9, and A," [40] Santos again signed under the word "Approved." [41] PRHC does not question the validity of these agreements; it thereby effectively admits that these two individuals had actual authority to sign on its behalf with respect to these construction projects.

We cannot fault LCDC for relying on the representation of PRHC that the authority to contract with the former, in matters relating to the construction agreements, resided in Abcede and Santos.

Furthermore, PRHC does not question the validity of its 7 December 1992 letter to LCDC wherein it seeks to apply LCDC's claim for the P 36 million escalation price to its counterclaim for liquidated damages, which was signed by Santos under the words "Approved: Phil. Realty & Holdings Corp.":

07 December 1992
LEY CONST. & DEV. CORP.
23rd Floor Pacific Star Bldg.
Sen. Gil Puyat Ave. corner
Makati Avenue, Makati,
Metro Manila.

Attention : MR. MANUEL T. LEY

Subject : TEKTITE TOWERS

Gentlemen :

This is in connection with your previous request for materials cost adjustment in the amount of Thirty Six Million & 0/100 (P36,000,000.00).

In this regard, please be advised that per owner's decision; your claim of P36,000,00.00 adjustment will be applied to the liquidated damages for concreting works computed in the amount of Thirty Nine Million Three Hundred Twenty Six Thousand Eight Hundred Seventeen & 15/100 (P39,326,817.15) as shown in the attached sheet.

Further, the net difference P3,326,817.15 will also be considered waived as additional consideration.

We trust you will find the above fair and equitable.

Very truly yours,

(Signed)
DENNIS A. ABCEDE
Construction Manager

Approved:

(Signed by Santos)
PHIL. REALTY & HOLDINGS CORP.

This letter was signed by Abcede, again as the construction manager, while Santos signed above "PHIL. REALTY & HOLDINGS CORP.," which was notably the unsigned part in the 9 August 1991 letter. PRHC claims that neither one of them had the authority to sign on behalf of the corporation; yet, it is not questioning the validity of the above-quoted letter.

We consider this letter as additional evidence that PRHC had given Abcede and Santos the authority to act on its behalf in making such a decision or entering into such agreements with LCDC.

LCDC additionally argues that a subsequent escalation agreement was validly entered into, even on the following assumptions: (a) that Abcede and Santos had no authority to agree to the escalation of the contract price without the approval of the board of directors; and (b) that the 7 December 1992 letter cannot be construed as an acknowledgment by PRHC that it owed LCDC P36 million. It posits that the actions of Abcede and Santos, assuming they were beyond the authority given to them by PRHC which they were representing, still bound PRHC under the doctrine of apparent authority. [42] Thus, the lack of authority on their part should not be used to prejudice it, considering that the two were clothed with apparent authority to execute such agreements. In addition, PRHC is allegedly barred by promissory estoppel from denying the claims of the other corporation.

We agree with LCDC.

In *Yao Ka Sin Trading v. Court of Appeals, et al.*, [43] this Court discussed the applicable rules on the doctrine of apparent authority, to wit:

The rule is of course settled that "[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time." Also, "if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents." [44]

In *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals, et al.*, [45] we held that apparent authority is derived not merely from practice:

Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.

We rule that Santos and Abcede held themselves out as possessing the authority to act, negotiate and sign documents on behalf of PRHC; and that PRHC sanctioned these acts. It would be the height of incongruity to now allow PRHC to deny the extent of the authority with which it had clothed both individuals. We find that Abcede's

role as construction manager, with regard to the construction projects, was akin to that of a general manager with regard to the general operations of the corporation he or she is representing.

Consequently, the escalation agreement entered into by LCDC and Abcede is a valid agreement that PRHC is obligated to comply with. This escalation agreement - whether written or verbal - has lifted, through novation, the prohibition contained in the Tektite Building Agreement.

In order for novation to take place, the concurrence of the following requisites is indispensable:

- There must be a previous valid obligation.
- The parties concerned must agree to a new contract.
- The old contract must be extinguished.
- There must be a valid new contract. [46]

All the aforementioned requisites are present in this case. The obligation of both parties not to increase the contract price in the Tektite Building Agreement was extinguished, and a new obligation increasing the old contract price by P 36 million was created by the parties to take its place.

What makes this Court believe that it is incorrect to allow PRHC to escape liability for the escalation price is the fact that LCDC was never informed of the board of directors' supposed non-approval of the escalation agreement until it was too late. Instead, PRHC, for its own benefit, waited for the former to finish infusing the entire amount into the construction of the building before informing it that the said agreement had never been approved by the board of directors. LCDC diligently informed PRHC each month of the partial amounts the former infused into the project. PRHC must be deemed estopped from denying the existence of the escalation agreement for having allowed LCDC to continue infusing additional money spending for its own project, when it could have promptly notified LCDC of the alleged disapproval of the proposed escalation price by its board of directors.

Estoppel is an equitable principle rooted in natural justice; it is meant to prevent persons from going back on their own acts and representations, to the prejudice of others who have relied on them. [47] Article 1431 of the Civil Code provides:

Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

Article 1431 is reflected in Rule 131, Section 2 (a) of the Rules of Court, viz.:

Sec. 2. Conclusive presumptions. -- The following are instances of conclusive presumptions:

(a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it.

This Court has identified the elements of estoppel as:

[F]irst, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action. [48]

This liability of PRHC, however, has a ceiling. The escalation agreement entered into was for P 36 million--the maximum amount that LCDC contracted itself to infuse and that PRHC agreed to reimburse. Thus, the Court of Appeals was correct in ruling that the P 2,248,463.92 infused by LCDC over and above the P 36 million should be for its account, since PRHC never agreed to pay anything beyond the latter amount. While PRHC benefited from this excess infusion, this did not result in its unjust enrichment, as defined by law.

Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." [49] Under Art. 22 of the Civil Code, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. [50] The term is further defined thus:

Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. [51]

In order for an unjust enrichment claim to prosper, one must not only prove that the other party benefited from one's efforts or the obligations of others; it must also be shown that the other party was unjustly enriched in the sense that the term "unjustly" could mean "illegally" or "unlawfully." [52] LCDC was aware that the escalation agreement was limited to P36 million. It is not entitled to remuneration of the excess, since it did not confer this benefit by mistake, fraud, coercion, or request. Rather, it voluntarily infused the excess amount with full knowledge that PRHC had no obligation to reimburse it.

Parenthetically, we note that the CA had ruled that the 7 December 1992 letter demonstrates that PRHC treated the P 36 million as a loan deductible from the liquidated damages for which LCDC is supposedly liable. [53] It ruled that when PRHC informed LCDC that it would apply the P36 million to the liquidated damages, PRHC, in effect, acknowledged that it was in debt to LCDC in the amount of P 36 million, and that forms the basis for PRHC's liability to LCDC for the said amount.

We disagree with this analysis.

In a contract of loan, ownership of the money is transferred from the lender to the borrower. [54] In this case, ownership of the P 36 million was never transferred to PRHC. As previously mentioned, such amount was paid directly to the suppliers. [55] We find that arrangement between PRHC and LCDC cannot be construed as a loan agreement but rather, it was an agreement to advance the costs of construction. In *Liwanag v. Court of Appeals et al.*, we state:

Neither can the transaction be considered a loan, since in a contract of loan once the money is received by the debtor, ownership over the same is transferred. Being the owner, the borrower can dispose of it for whatever purpose he may deem proper. In the instant petition, however, it is evident that *Liwanag* could not dispose of the money as she pleased because it was only delivered to her for a single purpose, namely, for the purchase of cigarettes, and if this was not possible then to return the money to *Rosales*.

LCDC is not liable for liquidated damages for delay in the construction of the buildings for PRHC.

There is no question that LCDC was not able to fully construct the Tektite Building and Projects 1, 2, and 3 on time. It reasons that it should not be made liable for liquidated damages, because its rightful and reasonable requests for time extension were denied by PRHC. [56]

It is important to note that PRHC does not question the veracity of the factual representations of LCDC to justify

the latter's requests for extension of time. It insists, however, that in any event LCDC agreed to the limits of the time extensions it granted. [57]

The practice of the parties is that each time LCDC requests for more time, an extension agreement is executed and signed by both parties to indicate their joint approval of the number of days of extension agreed upon.

The applicable provision in the parties' agreements is as follows:

ARTICLE VII - TIME OF COMPLETION

.....

Should the work be delayed by any act or omission of the OWNER or any other person employed by or contracted by the OWNER in the project, including days in the delivery or (sic) materials furnished by the OWNER or others, or by any appreciable additions or alterations in the work ordered by the OWNER or the ARCHITECT, under Article V or by force majeure, war, rebellion, strikes, epidemics, fires, riots, or acts of the civil or military authorities, the CONTRACTOR shall be granted time extension.

In case the CONTRACTOR encounters any justifiable cause or reason for delay, the CONTRACTOR shall within ten (10) days, after encountering such cause of delay submit to the OWNER in writing a written request for time extension indicating therein the requested contract time extension. Failure by the CONTRACTOR to comply with this requirements (sic) will be adequate reason for the OWNER not to grant the time extension.

The following table shows the dates of LCDC's letter-requests, the supposed causes justifying them, the number of days requested, and the number of days granted by PRHC and supposedly conformed to by LCDC:

Cause

of days requested

of days granted

1 Mar 1990

Due to additional works and shortage of supplies and cement

30

11

14 Apr 1990

Shortage of cement supply

18

6

10 May 1990

Frequent power failures

10

2

9 Jul 1990

Bad weather which endangered the lives of the construction workers ("heavy winds")

10

2

4 Sep 1990

Inclement weather that endangered the lives of the construction workers

10

3

28 Feb 1991

Architectural and structural revisions of R.C. beams at the 8[th] floor level

20

8

28 Aug 1991

For change order work and revisions in the plans initiated by the architect and Abcede's delay in giving the revised plans to contractor

271

136

2 Sep 1991

Inclement weather and scarcity of cement

25

17

13 Oct 1991

Water supply interruption and power failures preventing the mixing of cement

15

6

5 Dec 1991

Typhoon Uring and water supply interruption (typhoon Uring alone caused a delay for more than 10 days due to strong and continuous rains)

15

2

2 Apr 1992

Inadequate supply of Portland cement and frequent power failures

15

12

5 May 1992

Inadequate supply of cement and frequent power failures

17

12

456

217

additions and alterations in the work ordered by the owner and architect

108

20

564

237

As previously mentioned, LCDC sent a 9 December 1992 letter to PRHC claiming that, in a period of over two years, only 256 out of the 618 days of extension requested were considered. We disregard these numbers presented by LCDC because of its failure to present evidence to prove its allegation. The tally that we will accept--as reflected by the evidence submitted to the lower court--is as follows: out of the 564 days requested, only 237 were considered.

Essentially the same aforementioned reasons or causes are presented by LCDC as defense against liability for both Projects 1 and 2. [58] In this regard, the CA ruled:

Plaintiff-appellee's allegation that determination by PHRC of extensions of time were unreasonable or arbitrary is untenable in the light of express provisions of the Construction Agreements which prescribed precise procedures for extensions of time. In fact the procedure is fool-proof because both OWNER and CONTRACTOR sign to indicate approval of the number of days of extension. Computation of the penalty becomes mechanical after that. Each extension as signed by the parties is a contract by itself and has the force of law between them.

In fact, the parties followed that prescribed procedure strictly - the CONTRACTOR first requested the OWNER to approve the number of days applied for as extension of time to finish the particular project and the OWNER will counter-offer by approving only a lower number of days extension of time for CONTRACTOR to finish the contract as recommended by the CONSTRUCTION MANAGER ABCEDE, and in the end, both CONTRACTOR and OWNER sign jointly the approved number of days agreed upon. That signed extension of time is taken to be the contract between the parties. [59]

The appellate court further ruled that each signed extension is a separate contract that becomes the law between the parties: [60]

there is nothing arbitrary or unreasonable about the number of days extension of time because each extension is a meeting of the minds between the parties, each under joint signature OWNER and CONTRACTOR witnessed by the CONSTRUCTION MANAGER. [61]

Inasmuch as LCDC's claimed exemption from liability are beyond the approved time extensions, LCDC, according to the majority of the CA, is liable therefor.

Justice Juan Q. Enriquez, in his Dissenting Opinion, held that the reasons submitted by LCDC fell under the definition of force majeure. [62] This specific point was not refuted by the majority.

We agree with Justice Enriquez on this point and thereby disagree with the majority ruling of the CA.

Article 1174 of the Civil Code provides: "Except in cases expressly specified by the law, or when it is otherwise declared by stipulation or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable." A perusal of the construction agreements shows that the parties never agreed to make LCDC liable even in cases of force majeure. Neither was the assumption of risk required. Thus, in the occurrence of events that could not be foreseen, or though foreseen were inevitable, neither party should be held responsible.

Under Article 1174 of the Civil Code, to exempt the obligor from liability for a breach of an obligation due to an "act of God" or force majeure, the following must concur:

(a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.[63]

The shortage in supplies and cement may be characterized as force majeure. [64] In the present case, hardware stores did not have enough cement available in their supplies or stocks at the time of the construction in the 1990s. Likewise, typhoons, power failures and interruptions of water supply all clearly fall under force majeure. Since LCDC could not possibly continue constructing the building under the circumstances prevailing, it cannot be held liable for any delay that resulted from the causes aforementioned.

Further, PRHC is barred by the doctrine of promissory estoppel from denying that it agreed, and even promised, to hold LCDC free and clear of any liquidated damages. Abcede and Santos also promised that the latter corporation would not be held liable for liquidated damages even for a single day of delay despite the non-approval of the requests for extension. [65] Mr. Ley testified to this fact as follows:

Q: So, Mr. Witness in all those requests for extension and whenever the D.A. Abcede & Associates did not grant you the actual number of days stated in your requests for extension, what did Ley construction and Development do, if any?

A: We talked to Dennis Abcede and Mr. Santos, Ma'am.

Q: And what did you tell them?

A: I will tell them why did you not grant the extension for us, Ma'am.

Q: What was the response of Mr. Abcede and Mr. Santos?

A: Mr. Abcede and Mr. Santos told me, Mr. Ley don't worry, you will not be liquidated of any single day for this because we can see that you worked so hard for this project, Ma'am.

Q: And what did you do after you were given that response of Mr. Abcede and Mr. Santos?

A: They told me you just relax and finish the project, and we will pay you up to the last centavos, Ma'am.

Q: What did you do after taking that statement or assurance?

A: As gentleman's agreement I just continued working without complaining anymore, Ma'am. [66]

The above testimony is uncontradicted. Even assuming that all the reasons LCDC presented do not qualify as fortuitous events, as contemplated by law, this Court finds that PRHC is estopped from denying that it had granted a waiver of the liquidated damages the latter corporation may collect from the former due to a delay in the construction of any of the buildings.

Courts may rule on causes of action not included in the Complaint, as long as these have been proven during trial without the objection of the opposing party.

PRHC argues that since the parties had already limited the issues to those reflected in their joint stipulation of facts, neither the trial court nor the appellate court has the authority to rule upon issues not included therein. Thus it was wrong for the trial court and the CA to have awarded the amounts of P 5,529,495.76 representing the remaining balance for Project 3 as well as for the P 232,367.96 representing the balance for the construction of the drivers' quarters in Project 3. PRHC claims that in the Stipulation of Facts, all the issues regarding Project 3 were already made part of the computation of the balances for the other projects. It thus argues that the computation for the Tektite Building showed that the overpayment for Project 3 in the amount of P 9,531,181.80 was credited as payment for the Tektite Tower Project. [67] It reasons that, considering that it actually made an overpayment for Project 3, it should not be made liable for the remaining balances for Project 3 and the drivers' quarters in Project 3. [68] It is LCDC's position, however, that the Stipulation of Facts covers the balances due only for the Tektite Tower Project, Project 1, and Project 2. [69] Since Project 3 was not included in the reconciliation contained in the said stipulation, it maintains that the balance for Project 3 remains at P 5,529,495.76, [70] and that the balance for the construction of the drivers' quarters in Project 3 remains at P 232,367.96.

On its part, LCDC disputes the deletion by the CA of the lower court's grant of the alleged P 7,112,738.82 unpaid balance for the concreting works in the Tektite Building. The CA had ruled that this cause of action was withdrawn by the parties when they did not include it in their Joint Stipulation of Facts. LCDC argues that to the contrary, the silence of the Stipulation of Facts on this matter proves that the claim still stands. [71]

Considering that the unpaid balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building were not covered by the Stipulation of Facts entered into by the parties, we rule that no judicial admission could have been made by LCDC regarding any issue involving the unpaid balances for those pieces of work.

We affirm in this case the doctrine that courts may rule or decide on matters that, although not submitted as issues, were proven during trial. The admission of evidence, presented to support an allegation not submitted as an issue, should be objected to at the time of its presentation by the party to be affected thereby; otherwise, the court may admit the evidence, and the fact that such evidence seeks to prove a matter not included or presented as an issue in the pleadings submitted becomes irrelevant, because of the failure of the appropriate party to object to the presentation.

No objection was raised when LCDC presented evidence to prove the outstanding balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building.

In *Phil. Export and Foreign Loan Guarantee Corp. v. Phil. Infrastructures, et al.*, [72] this Court held:

It is settled that even if the complaint be defective, but the parties go to trial thereon, and the plaintiff, without

objection, introduces sufficient evidence to constitute the particular cause of action which it intended to allege in the original complaint, and the defendant voluntarily produces witnesses to meet the cause of action thus established, an issue is joined as fully and as effectively as if it had been previously joined by the most perfect pleadings. Likewise, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

Considering the absence of timely and appropriate objections, the trial court did not err in admitting evidence of the unpaid balances for Project 3, its driver's quarters, and the concreting works in the Tektite Building. Furthermore, both the lower and the appellate courts found that the supporting evidence presented by LCDC were sufficient to prove that the claimed amounts were due, but that they remained unpaid.

LCDC should be held liable for
the corrective works to redo or repair
the defective waterproofing in Project 2.

The waterproofing of Project 2 was not undertaken by LCDC. Instead, Vulchem Corporation (Vulchem), which was recommended by Santos and Abcede, was hired for that task. Vulchem's waterproofing turned out to be defective. In order to correct or repair the defective waterproofing, PRHC had to contract the services of another corporation, which charged it P2,006,000.

Denying liability by alleging that PRHC forced it into hiring Vulchem Corporation for the waterproofing works in Project 2, LCDC argues that under Article 1892, an agent is responsible for the acts of the substitute if he was given the power to appoint a substitute. Conversely, if it is the principal and not the agent who appointed the substitute, the agent bears no responsibility for the acts of the sub-agent. [73] The provision reads:

"Art. 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;

(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent."

LCDC argues that because PRHC, as the principal, had designated Vulchem as sub-agent, LCDC, as the agent, should not be made responsible for the acts of the substitute, even in the instance where the latter were notoriously incompetent. [74]

LCDC's reliance on Art. 1892 is misplaced. The principles of agency are not to be applied to this case, since the legal relationship between PRHC and LCDC was not one of agency, but was rather that between the owner of the project and an independent contractor under a contract of service. Thus, it is the agreement between the parties and not the Civil Code provisions on agency that should be applied to resolve this issue.

Art. XIV of the Project 2 Agreement clearly states that if the contractor sublets any part of the agreement to a third party, who in effect becomes a sub-contractor, the losses or expenses that result from the acts/inactions of the sub-contractor should be for the contractor's account, to wit:

ARTICLE XIV - ASSIGNMENT

This Agreement, and/or any of the payments to be due hereunder shall not be assigned in whole or in part by the CONTRACTOR nor shall any part of the works be sublet by CONTRACTOR without the prior written consent of OWNER, and such consent shall not relieve the CONTRACTOR from full responsibility and liability for the works hereunder shall not be granted in any event until CONTRACTOR has furnished OWNER with satisfactory evidence that the Sub-Contractor is carrying ample insurance to the same extent and

in the same manner as herein provided to be furnished by CONTRACTOR. If the agreement is assigned or any part thereof is sublet, CONTRACTOR shall exonerate, indemnify and save harmless the OWNER from and against any and all losses or expenses caused thereby. [75]

LCDC had every right to reject Vulchem as sub-contractor for the waterproofing work of Project 2 but it did not do so and proceeded to hire the latter. It is not unusual for project owners to recommend sub-contractors, and such recommendations do not diminish the liability of contractors in the presence of an Article XIV-type clause in the construction agreement. The failure of LCDC to ensure that the work of its sub-contractor is satisfactory makes it liable for the expenses PRHC incurred in order to correct the defective works of the sub-contractor. The CA did not err in ruling that the contract itself gave PRHC the authority to recover the expenses for the "re-do" works arising from the defective work of Vulchem. [76]

LCDC is entitled to attorney's fees
and the expenses of litigation and costs.

According to the CA, LCDC was not entitled to attorney's fees, because it was not the aggrieved party, but was the one that violated the terms of the construction agreements and should thus be made to pay costs. [77] LCDC claims, on the other hand, that the CA seriously erred in deleting the lower court's award of P750,000 attorney's fees and the expenses of litigation in its favor, since this award is justified under the law. [78] To support its claim, LCDC cites Article 2208(5), which provides:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

.....

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

.....

Attorney's fees may be awarded when the act or omission of the defendant compelled the plaintiff to incur expenses to protect the latter's interest. [79] In *ABS-CBN Broadcasting Corp. v. CA*, [80] we held thus:

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

LCDC has failed to establish bad faith on the part of PRHC so as to sustain its position that it is entitled to attorney's fees. Nevertheless, the CA erred in reversing the lower court's Decision granting LCDC's claim for attorney's fees considering that the construction agreements contain a penal clause that deals with the award of attorney's fees, as follows:

In the event the OWNER/CONTRACTOR institutes a judicial proceeding in order to enforce any terms or conditions of this Agreement, the CONTRACTOR/OWNER should it be adjudged liable in whole or in part, shall pay the OWNER/CONTRACTOR reasonable attorney's fees in the amount equivalent to Twenty Percent (20%) of the total amount claimed in addition to all expenses of litigation and costs of the suit.

Equivalent to at least Twenty Percent (20%) of the total amount claimed in addition to all expenses of litigation and costs of the suit.

As long as a stipulation does not contravene the law, morals, and public order, it is binding upon the obligor. [81] Thus, LCDC is entitled to recover attorney's fees. Nevertheless, this Court deems it proper to equitably reduce the stipulated amount. Courts have the power to reduce the amount of attorney's fees when found to be excessive, [82] viz:

We affirm the equitable reduction in attorney's fees. These are not an integral part of the cost of borrowing, but arise only when collecting upon the Notes becomes necessary. The purpose of these fees is not to give respondent a larger compensation for the loan than the law already allows, but to protect it against any future loss or damage by being compelled to retain counsel - in-house or not--to institute judicial proceedings for the collection of its credit. Courts have has the power to determine their reasonableness based on quantum meruit and to reduce the amount thereof if excessive. [83]

We reverse the appellate court's Decision and reinstate the lower court's award of attorney's fees, but reduce the amount from P750,000 to P200,000.

WHEREFORE, we SET ASIDE the Decision of the Court of Appeals and RULE as follows:

- We find Philippine Realty and Holdings Corporation (PRHC) LIABLE to Ley Construction Development Corporation (LCDC) in the amount of P 64,029,710.22, detailed as follows:
 - P 13,251,152.61 as balance yet unpaid by PRHC for Project 2;
 - P 1,703,955.07 as balance yet unpaid by PRHC for Project 1;
 - P 5,529,495.76 as balance yet unpaid by PRHC for Project 3;
 - P 232,367.96 as balance yet unpaid by PRHC for the drivers' quarters for Project 3;
 - P 36,000,000.00 as agreed upon in the escalation agreement entered into by PRHC's representatives and LCDC for the Tektite Building;
 - P 7,112,738.82 as balance yet unpaid by PRHC for the concreting works from the ground floor to the fifth floor of the Tektite Building;
 - P 200,000.00 as LCDC's reduced attorney's fees.
- Further, we find LCDC LIABLE to PRHC in the amount of P6,652,947.75 detailed as follows:
 - P 4,646,947.75 for the overpayment made by PRHC for the Tektite Building;
 - P 2,006,000.00 for the expenses incurred by PRHC for corrective works to redo/repair the allegedly defective waterproofing construction work done by LCDC in Project 2.

The respective liabilities of the parties as enumerated above are hereby SET OFF against each other, and PRHC is hereby DIRECTED to pay LCDC the net amount due, which is P 57,376,762.47, with legal interest from the date of the filing of Complaint.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Villarama, Jr., JJ., concur.

[1] Rollo (G.R. No. 167879) at 1090.

[2] Id at 1091.

- [3] Id at 1084.
- [4] Exhibit "A" of Annex "L" of LCDc's Petition for Review.
- [5] Rollo (G.R. No. 167879) at 390.
- [6] Id.
- [7] Id at 1076-1077.
- [8] Exhibits "I" to "M" of Annex "L" of LCDc's Petition for Review (G.R. No. 167879).
- [9] Exhibit "I," supra note 8; TSN 21 August 1998, at 16-17.
- [10] Exhibit "J," supra note 8; TSN 21 August 1998, at 17.
- [11] Exhibit "K," supra note 8; TSN 21 August 1998, at 18-19.
- [12] Exhibit "L," supra note 8; 21 August 1998, at 19.
- [13] Exhibit "M," supra note 8; 21 August 1998, at 20.
- [14] Exhibits "O," supra note 8.
- [15] Exhibit "B," supra note 8.
- [16] TSN, 14 March 2000, at 25-26.
- [17] Rollo (G.R. No. 167879) at 957.
- [18] Id at 961.
- [19] Id at 114-115.
- [20] Id at 113-177. Penned by Associate Justice Vicente Q. Roxas, concurred in by Associate Justice Salvador J. Valdez, Jr., with a Dissenting Opinion from Associate Justice Juan Q. Enriquez, Jr.
- [21] Rollo (G.R. No. 165548) at 64-95.
- [22] Id at 80.
- [23] Rollo (G.R. No. 167879) at 11-110.
- [24] Id at 42-44.
- [25] Rollo (G.R. No. 167879) at 850.
- [26] Id at 1074.
- [27] Id at 389-390.
- [28] Id at 1082.
- [29] Id at 148.
- [30] Id at 149.
- [31] Id.
- [32] Rollo (G.R. No. 167879) at 1086.

- [33] TSN, 23 March 1999, at 4.
- [34] Rollo (G.R. No. 167879) at 1091.
- [35] Id at 1087.
- [36] TSN, 27 July 1999, at 3- 4.
- [37] Rollo (G.R. No. 167879) at 1090.
- [38] Id at 1090-1091.
- [39] Id at 380.
- [40] Id at 1091.
- [41] Id at 391.
- [42] Rollo (G.R. No. 167879) at 63.
- [43] G.R. No. 53820, 15 June 1992, 209 SCRA 763.
- [44] Id. citing Fletcher, Cyclopedia of the Law of Private Corporations, Vol. 2 (Perm. Ed.), 1969 Revised Volume, 614; and 19 C.J.S. 458.
- [45] G.R. No. 1871447, 7 October 1998, 297 SCRA 170.
- [46] Civil Code, Art. 1292; Agro Conglomerates, Inc. v. Court of Appeals, G.R. No. 117660, 18 December 2000, 348 SCRA 450, 459; Security Bank and Trust Company, Inc. v. Cuenca, G.R. No. 138544, 3 October 2000, 341 SCRA 781, 796; Reyes v. Court of Appeals, G.R. No. 120817, 4 November 1996, 264 SCRA 35, 43.
- [47] Philippine National Bank v. Palma, G.R. No. 157279, 9 August 2005, 466 SCRA 307, 324.
- [48] Philippine Bank of Communications v. Court of Appeals and Fernandez-Puen, G.R. No. 109803, 20 April 1998, 289 SCRA 178 citing Dobbs, Law of Remedies, 2nd ed., (1983), at 65; British American Tobacco v. Camacho, G.R. No. 163583, 20 August 2008, ---562 SCRA 511.
- [49] LBP v. Alfredo Ong, G.R. No. 190755, 24 November 2010, citing Car Cool Philippines v. Ushio Realty and Development Corporation, 479 SCRA 404, 412 (2006).
- [50] H.L. Carlos Corporation, Inc. v. Marina Properties Corporation, G.R. No. 147614, 29 January 2004, 421 SCRA 428, 437, citing MC Engineering, Inc. v. Court of Appeals, 380 SCRA 116, 138 (2002).
- [51] University of the Philippines v. PHILAB Industries, Inc., G.R. No. 152411, 29 September 2004, citing Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc., 318 F.Supp.2d 216 (2004); Dinosaur Dev., Inc. v. White, 216 Cal.App.3d 1310, 265 Cal.Rptr. 525 (1989).
- [52] University of the Philippines v. PHILAB Industries, Inc., G.R. No. 152411, 29 September 2004, 439 SCRA 467, citing Mon-Ray, Inc. v. Granite Re, Inc., 677 N.W.2d 434 (2004) and First National Bank of St. Paul v. Ramier, 311 N.W. 2d 502, 504 (1981).
- [53] Rollo (G.R. No. 167879) at 150.
- [54] Reynaldo B. Aralar, Agency, Sales, Bailments, and/or Credit Transactions Law and Jurisprudence, 241 (2006).
- [55] Rollo (G.R. No. 167879) at 1076-1077.

[56] Rollo (G.R. No. 167879) at 859.

[57] Rollo (G.R. No. 167879) at 860.

[58] Rollo (G.R. No. 167879) at 97-99.

[59] Id at 156.

[60] Id.

[61] Id at 157.

[62] Id at 175.

[63] Juan F. Nakpil & Sons v. Court of Appeals, 144 SCRA 596 (1986) citing Vasquez v. Court of Appeals, 138 SCRA 553 (1985); Estrada v. Consolacion, 71 SCRA 423 (1976); Austria v. Court of Appeals, 39 SCRA 527 (1971); Republic of the Phil. v. Luzon Stevedoring Corp., 128 Phil. 313 (1967); Lasam v. Smith, 45 Phil. 657 (1924).

[64] Rollo (G.R. No. 167879) at 87.

[65] Id at 95.

[66] TSN, 14 March 2000, at 25-26.

[67] Rollo (G.R. No. 165548) at 90.

[68] Id at 91.

[69] Id at 1072.

[70] Id at 26

[71] Id at 77.

[72] G.R. No. 120384, 13 January 2004, 419 SCRA 55

[73] Rollo (G.R. No. 167879) at 102.

[74] Id at 100.

[75] Id at 441-442.

[76] Id at 164.

[77] Id at 866.

[78] Id at 102.

[79] Portes, Sr. v. Arcala, G.R. No. 145264, 30 August 2005, 468 SCRA 343.

[80] 361 Phil. 499 (1999).

[81] Bañas v. Asia Pacific Finance Corporation, G.R. No. 128703, 18 October 2000, 343 SCRA 527.

[82] Manila Trading & Supply Co. v. Tamaraw Plantation Co., 47 Phil. 513, 524, (1925).

[83] New Sampaguita Builders Construction. v. Philippine National Bank, G.R. No. 148753, 30 July 2004, 435 SCRA 565.

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