DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. GLORIA C. BALLESTEROS, REPRESENTED BY HER ATTORNEY-IN-FACT, VALENTINO RIVERA, RESPONDENT.

G.R. NO. 168794. August 30, 2006

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CHICO-NAZARIO, J.:

Before Us is an amended petition for review on certiorari which seeks to set aside the decision[1] of the Court of Appeals in CA-G.R. CV No. 58925 dated 18 March 2003 which modified the decision of Branch 26 of the Regional Trial Court (RTC) of Cabanatuan City in Civil Case No. 486-AF dated 17 October 1997,[2] the decretal portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant Development Bank of the Philippines, ordering the same to pay the plaintiff the amount of P26,725.00, representing the total penalty charges/liquidated damages less overpayment of the contract price, plus legal interest at the rate of 6% per annum on the said amount from the time of filing of the complaint up to the time payment is made before finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time the judgment becomes final and executory until fully satisfied.[3]

and its Resolution[4] dated 28 June 2005 denying the motion for reconsideration of petitioner Development Bank of the Philippines (DBP).

The following are the antecedents as narrated by the Court of Appeals:

> The plaintiff-appellee contractor won the bidding for the refurbishing of the Development Bank of the Philippines, Cabanatuan Branch Building. Thus, pursuant thereto the defendant-appellant Development Bank of the Philippines (DBP for brevity), and the plaintiff-appellee (hereinafter referred to as contractor) entered into a contract of service for the refurbishing of the DBP Cabanatuan Branch building, on 04 April 1988.
>
> Under the said contract, the contractor, agreed to refurbish/renovate the DBP, Cabanatuan Branch building, within a period of thirty-five (35) days, commencing on 11 April 1988, for and in consideration of the contract price of P850,000.00. The parties further agreed that in case the contractor fails to complete the work within the stipulated period, a penalty of P2,000.00 per day of delay, inclusive of Sundays and holidays, shall be deducted from any amount/s due the said contractor.
>
> To supervise the refurbishing work, the DBP hired the services of project architect, Jose Vicente Salazar III. The project architect was named as representative of DBP and was expressly authorized by DBP, to condemn or reject defective works or poor workmanship of the contractor at anytime before the completion, approval and acceptance of such work.
>
> In accordance with the aforesaid contract of service, the contractor commenced the refurbishing work on 11 April 1988 following the specifications prepared by the project architect and approved by the DBP. However, in the course of the work, the contractor, at the behest of the project architect, performed additional works, not included in the said specifications. Among the additional works done by the contractor were the replacement of

ten (10) narra flush doors and the repainting of the canteen.

Foreseeing that the refurbishing work would not be completed on 15 May 1988, for the following reasons: (1) problems encountered in the freight delivery service of some materials purchased in Metro Manila due to the negligence of the supplier; (2) unavailability of materials due to the hoarding of the same by suppliers anticipating price increases; and (3) refusal of some laborers to work on Sundays to attend their religious and family obligations; the contractor requested, on 13 May 1988, for an extension of one (1) week, from May 16-22, 1988, without penalty, from DBP to finish the work.

In a radio message, dated 25 May 1988, the DBP approved the contractor's request for extension of one (1) week to finish the work. In the said radio message, the DBP expressly waived its right to receive the stipulated penalty of P2,000.00 per day of delay corresponding to the period of extension.

On 22 May 1988, the project architect accepted the turnover of the refurbishing work as 97.2% complete.

However, in a meeting of the Refurbishing Committee held on 25 May 1988, the acceptance made by the project architect was repudiated by the said committee on account of some defects in the refurbishing work noted by the Evaluation Committee and Engineer Bettina Mari, Technical Audit Specialist of the Commission on Audit. In the said meeting, DBP required the contractor to make a correction of the defects noted.

The request of the contractor that she be not charged with the stipulated penalty of P2,000.00 per day of delay corresponding to the period of May 16-22 1988, was also brought up in the said meeting. To settle this matter it was agreed that the contractor's request be elevated to the higher authorities of the Commission on Audit.

On 29 May 1988, the Branch Bidding Committee of DBP accepted the refurbishing project at 97.35% complete.

On 2 June 1988, DBP paid the contractor the amount of P215,475.00, representing the outstanding balance of the contract price based on 97.35% completion of the refurbishing work.

On 7 June 1988, Acting Chief Gregorio Yamzon, Regional Office No. III, Commission on Audit, in answer to the query posed by DBP, Branch Auditor Marcelita Sarmiento, as to whether the contractor should be charged with the stipulated penalty of P2,000.00 per day of delay from 16 May 1988 to the time of formal turnover of the refurbishing project, opined:

Due to the unexpected failure of the contractor to finish the work on schedule, they requested for an extension of contract time of seven (7) calendar days, the reasons are contained in their letter-request dated May 13, 1988. The reason of the contractor which includes the difficulty in securing the needed materials and the labor problem encountered do not constitute a ground (sic) for the granting of time extension, for it is clearly provided in P.D. 1594, as amended, that no extension of contract time shall be granted the contractor due to (1) non-availability of equipment, supplies and materials to be furnished him; and (2) other causes for which the government is not responsible.

In as much as there seems to be no legal basis to grant the extension of contract time and even after the expiry date of the requested extension, the work remained incomplete, the imposition of liquidated damages as provided in Article III, Paragraph 2 of the contract should be observed, until the final turnover of the completed project.

Pursuant to the letter, dated 7 June 1988, of the Acting Chief of the Regional Office No. III, Commission on Audit, the DBP, recommended for payment to the contractor the amount of P88,890.45, representing the 10% retention fee owing the contractor less liquidated damages/penalty in the total amount of P14,000.00 for the period corresponding to May 23 to 29, 1988. The DBP, Branch Auditor Marcelita Sarmiento, however, approved for release only the amount of P74,890.45, deducting from the P88,890.45 recommended by the DBP, liquidated damages/penalty in the additional amount of P14,000.00 corresponding to the period May 16

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> to 22, 1988.
>
> Alleging that the DBP's imposition of the stipulated penalty in the total amount of P14,000.00 for the period May 22 to 29, 1988, was unjustified inasmuch as the refurbishing project was turned over and accepted by its project architect on 22 May 1988; alleging further, that DBP's imposition of the additional penalty in the total amount of P14,000.00, for the period May 16 to 22, 1988, was likewise without basis since she was granted an extension of one (1) week from 15 May 1988 by the DBP to finish the refurbishing project; alleging that it was through the instigation and prodding of Marcelita Sarmiento that the penalties were imposed upon her; and finally, alleging that DBP failed to pay for the additional work performed by her in the amount of P28,000.00; plaintiff-appellee Gloria C. Ballesteros, through her attorney-in-fact, Valentino Rivera filed, on 17 August 1988, a complaint for Collection and Damages against defendants-appellants DBP and Marcelita Sarmiento. Said complaint was docketed as Civil Case No. 486-AF before the Regional Trial Court of Cabanatuan City, Branch 24.[5]

After the case was submitted for decision, the presiding judge of Branch 24 of the RTC, Cabanatuan City, inhibited[6] himself from deciding the case. Hence, the case was re-raffled to Branch 26 of the same court which rendered its decision on 17 October 1997, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:
>
> - Directing and ordering the defendant DBP to pay the plaintiff the amount of P28,000.00 with legal rate of interest of 12% from the date of filing of this case up to its payment for the imposed penalty;
>
> - Ordering and directing the defendant Marcelita Sarmiento in her personal capacity to pay the plaintiff the amount of P30,000.00 as incidental, moral and exemplary damages;
>
> - Directing and ordering the defendant DBP to pay plaintiff the sum of P28,000.00 for the additional work with legal rate of interest of 12% from date of filing of this case up to its payment;
>
> - Ordering and directing both defendants to pay jointly and severally the plaintiff the sum of P10,000.00 as attorney's fees; and
>
> - To pay the costs of suit.[7]

The trial court held inter alia that the imposition of a P2,000.00 penalty for every day of delay in the completion of the project has no leg to stand on, because prior to the lapse of the period stipulated in the Contract for Services, respondent filed on 13 May 1998 a letter-request for a one-week extension (16 May 1998 to 22 May 1998) to complete the project without the imposition of any penalty, and that the extension was approved by the DBP. It explained that since the refurbishing/renovation of the DBP building, Cabanatuan Branch, was completed, turned over and accepted by Architect Jose Vicente Salazar III, DBP Project Architect, on 22 May 1988, there was no delay to speak of.

In ruling the way it did, the trial court disregarded the argument of defendant Marcelita A. Sarmiento, Branch Auditor, DBP Cabanatuan City, that the extension granted by the DBP, Head Office, violated Presidential Decree No. 1594[8] because the grounds contained in the request for extension were not allowed under the Implementing Rules and Regulations of said law.

Aggrieved, petitioner and defendant Sarmiento appealed to the Court of Appeals via a Notice of Appeal.[9] On 18 March 2003, the Court of Appeals promulgated the assailed decision.

The Court of Appeals ruled that the extension of the contract time from 16 May to 22 May 1988, which was granted by the DBP to respondent, was valid and lawful. It explained that the Implementing Rules of Presidential

Decree No. 1594 disallowed the granting of time extension to the contractor only when the failure or neglect to provide the required equipment, supplies or materials is inexcusable. And since the reasons for the unavailability of the materials needed to finish the refurbishing work were satisfactorily explained by the respondent in this case, respondent cannot be held liable for the stipulated penalty during the period of extension.

Moreover, the Court of Appeals concluded that it is Architect Jose Vicente Salazar III, DBP Project Architect, who was clothed with the authority to approve and accept the refurbishing project, which he did on 22 May 1998. In arriving at said conclusion, it elucidated that under the "SPECIFICATIONS," petitioner expressly designated its project architect as its representative in the inspection and supervision of the refurbishing work and that the project architect was authorized to condemn or reject defective works and/or poor workmanship at anytime before the completion, approval and acceptance of such work. This, it said, was apart from the fact that petitioner did not authorize any other person from inspecting and supervising the contractor's work and/or to approve and accept said work. Corollarily, it ruled that there is no justification for the imposition of the penalty/liquidated damages against the contractor for the period 23 May to 29 May 1988 considering that the project has already been accepted on 22 May 1988.

The Court of Appeals, finding no basis to hold petitioner and defendant Sarmiento guilty of bad faith considering that they were merely implementing the opinion of the Acting Chief of the Regional Office No. III, Commission on Audit (COA), in the imposition of the stipulated penalty/liquidated damages upon respondent, deleted the award of incidental, moral and exemplary damages, and attorney's fees in favor of the latter.

Petitioner and respondent filed their respective motions for reconsideration, but same were denied by the Court of Appeals in its resolution dated 28 June 2005.[10]

Not satisfied, petitioner is now before this Court by way of a Petition[11] for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure.[12]

Petitioner assigns a solitary error:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT ORDERED THE PETITIONER DBP TO RETURN THE AMOUNT OF P26,725.00 REPRESENTING THE LIQUIDATED DAMAGES ASSESSED/DEDUCTED FROM THE RETENTION FEE PAID TO RESPONDENT '
>
> - THE ASSAILED DECISION AND RESOLUTION ISSUED BY THE COURT OF APPEALS FAILED TO CONSIDER THE CONSTITUTIONAL POWERS OF THE COMMISSION ON AUDIT (COA) TO REVIEW CONTRACTS INVOLVING THE DISBURSEMENT OF GOVERNMENT FUNDS.
>
> - RESPONDENT FAILED TO EXHAUST ADMINISTRATIVE REMEDIES AND ELEVATE THE ADVERSE DECISION OF COA ACTING CHIEF GREGORIO YAMZON, REGIONAL OFFICE NO. III AND COA AUDITOR MARCELITA SARMIENTO FOR REVIEW BY HIGHER COA AUTHORITIES AS MANDATED BY SECTION 48 OF PD 1594 (sic), OTHERWISE KNOWN AS THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES.[13]

For the proper resolution of the instant case, the following issues must be resolved: (1) whether or not the extension of contract time was in accordance with the implementing rules and regulations of Presidential Decree No. 1594; and (2) whether or not Architect Jose Vicente Salazar III, DBP Project Architect, was authorized to accept the refurbishing project.

Before we resolve these issues, we first rule on whether respondent failed to exhaust administrative remedies when she did not elevate the adverse decisions of COA Regional Office No. III Acting Chief Gregorio B. Yamzon and DBP Cabanatuan City Branch Auditor Marcelita Sarmiento to higher COA authorities in accordance with

Section 48 of Presidential Decree No. 1445.[14]

Respondent failed to exhaust administrative remedies when she did not appeal to higher COA authorities the imposition of the P2,000.00 a day penalty. This, notwithstanding, the trial court properly took cognizance of the case and proceeded in hearing the same there being no motion to dismiss filed by petitioner or by defendant Sarmiento on the ground of lack of cause of action. Having failed to invoke this ground at the proper time, that is, in a motion to dismiss, petitioner cannot raise it for the first time on appeal. In Sunville Timber Products, Inc. v. Abad,[15] this Court explained:

> The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. Non-observance of the doctrine results in lack of a cause of action which is one of the grounds allowed in the Rules of Court for the dismissal of the complaint. The deficiency is not jurisdictional. Failure to invoke it operates as a waiver of the objection as a ground for a motion to dismiss and the court may then proceed with the case as if the doctrine had been observed.

In the Contract for Services entered into by petitioner and respondent for the refurbishing/renovation of the building/furniture of DBP Cabanatuan Branch, the latter agreed to finish the project within a period of 35 calendar days commencing from 11 April 1988, or until 15 May 1988. In case respondent fails to complete the work within the period agreed upon, she shall pay a P2,000.00 penalty per day of delay which amount is to be deducted from any amount due her. The pertinent portion of the contract reads:

> III. Time of Completion
>
> The Project Contractor shall complete the works called for herein in accordance with the plans and specifications and related contract documents within a period of thirty-five calendar days, commencing on April 11, 1988.
>
> It is understood that time is of the essence of this Contract and that upon failure of the Project Contractor to complete the work within the period stated above, the Project Contractor shall pay the DBP the sum of TWO THOUSAND (P2,000.00) PESOS, per each day of delay (Sundays and Holidays included) in the completion of work, by way of penalty, which amounts shall be deducted from any amount/s due the Project Contractor.[16]

On 13 May 1988, respondent requested for an extension of one week from 16 May to 22 May 1988 without the imposition of penalty, due to the following reasons:

> - A problem was encountered by us in the freight delivery service of some materials purchased in Metro Manila due to the negligence of the supplier inspite of our repeated follow-ups;
>
> - Procurement of materials were hard as some were not readily available due to the hoarding of materials by the suppliers anticipating price increases;
>
> - The 35-working day period included Sundays. Hired laborers usually go on half-day on whole day leave to attend to their religious and family obligations.[17]

The request was approved by the DBP Head Office on 25 May 1988[18] However, by reason of the opinion dated 7 June 1998 rendered by Gregorio B. Yamzon, Acting Chief, Regional Office No. III, COA, that the extension of contract time had no legal basis and that the stipulated penalty should be imposed, the total amount of P28,000.00 for the fourteen-day delay was deducted from the 10% retention fee that was still due the petitioner.

Are the reasons mentioned by respondent allowed under Presidential Decree No. 1594? Reasons 1 and 2 involve problems regarding materials to be used in the project, while reason number 3 deals with labor or manpower

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problems.

After going over the implementing rules and regulations of Presidential Decree No. 1594 on the matter, we find that the extension should not have been granted because the reasons for its asking are not those allowed.

> CI 10 Extension of Contract Time
>
> x x x x
>
> No extension of contract time shall be granted the contractor due to (1) ordinary unfavorable weather conditions (2) non-availability of equipment, supplies or materials, to be furnished him or (3) other causes for which Government is not directly responsible. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering as agreed upon by the parties before contract perfection. Extension of contract time shall be granted only for the equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the Government, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralization of construction activities, and other meritorious causes as determined by the Government's authorized Engineer and approved by the Government, provided that the written consent of bondsmen must be attached to any request of the contractor for extension of contract time and submitted to the Government for consideration and that the validity of the Performance Bond shall be correspondingly extended. (Underscoring supplied.)

The first two reasons cited by respondent refer to non-availability of materials which is clearly a ground not allowed for the extension of the contract time. As regards the third reason – laborers not working on Sundays due to religious and family obligations – this is also not a valid reason to grant a contract time extension. The contract entered into by petitioner and respondent is clear that the project shall be completed within 35 calendar days from commencement, including Sundays. The penal clause of the contract provides for a P2,000.00 penalty for each day of delay in the completion of the work, Sundays and holidays included. The contract is explicit that Sunday is part of the contract time. Work during Sundays was already considered in the determination of the original contract time. The fact that respondent encountered problems because her employees were not willing to work on a Sunday is not an excuse for not complying with the contract she entered into. She could have refrained from accepting the project if her workers were not willing to work on a Sunday, or could have asked petitioner prior to the perfection of the contract that Sunday be not part of the contract time. These, she did not do. Having accepted the project, she has no choice but to comply with its terms and conditions; otherwise the sanctions agreed upon must be imposed.

This Court notes that the Court of Appeals in upholding the extension of the contract time said:

> x x x [T]he granting of extension of contract time to the contractor is disallowed only when the failure or neglect to provide the required equipment, supplies or materials is inexcusable; and, in the present case, the reason for the unavailability of the materials needed to finish the refurbishing work was satisfactorily explained by the contractor x x x.[19] (Underscoring supplied.)

Nowhere in the implementing rules and regulations of Presidential Decree No. 1594 does it say that if the failure or neglect to provide equipment, supplies or materials is excusable, then the extension of contract time shall be granted. As quoted above, the second reason for the non-extension of contract time is non-availability of equipment, supplies, or materials to be furnished him. As long as the materials are not available, regardless of whether it is through his failure or neglect, excusable or inexcusable, the non-availability thereof will not allow

the extension of the contract time.

This Court has the suspicion that the Court of Appeals used the Implementing Rules and Regulations of Presidential Decree No. 1594 that was amended in 13 April 1988.[20] The provision on extension of contract time as amended reads:

> CI 10 Extension of Contract Time
>
> x x x x
>
> No extension of contract time shall be granted the contractor due to (1) ordinary unfavorable weather conditions (2) inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials, or (3) other causes for which Government is not directly responsible.

Inasmuch as the contract was entered into in 4 April 1988, the implementing rules and regulations prevailing then should have been applied. The Court of Appeals erroneously applied the wrong implementing rules and regulations. What it applied was that which contained amendments after the contract was entered into. The Court of Appeals should be careful as to what law or rule should be applied in a certain case involving a specific period of time because any error may have dire consequences, as in the case before us.

It is the argument of respondent that since the DBP Head Office has approved the extension of the contract time for one week, no penalty of P2,000.00 per day should be imposed on her.

We do not agree. Petitioner is a government-owned financial institution created and operated in accordance with Executive Order No. 81.[21] As such, its receipt and disbursement of funds are subject to audit by the COA. The powers and duties of the COA are provided for in Article IX(D), Section 2, subsections 1 and 2, of the 1987 Constitution, as follows:

> SECTION 2(1). The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
>
> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

The determination of whether to allow the extension of the contract time, which necessarily includes the waiver of the penalty to be imposed, is within the scope of its authority considering that what is involved are the funds of petitioner. The initial granting of the extension of contract by the DBP Head Office cannot bind or preclude the COA to exercise its constitutionally mandated function in reviewing the same and to ensure its conformity with

the law. We thus find the imposition of the penalty to be in order inasmuch as the grounds in support of the extension are prohibited under the implementing rules and regulations of Presidential Decree No. 1594.

We now go to the issue of whether or not Arch. Jose Vicente Salazar III, DBP Project Architect, was authorized to accept the refurbishing project. Respondent's contention that Arch. Salazar has the authority to accept the project was sustained by the Court of Appeals.

We reverse. Arch. Salazar is not authorized to accept the project.

The General Conditions in the Specifications[22] read:

> All construction work hereinafter described and stipulated shall be done by contract and under the periodic inspection and supervision by the Project Architect as the Owner's representative, hence all materials, labor, plant and equipment necessary for the satisfactory completion of this project shall be furnished by the Contractor.
>
> x x x x
>
> Defective works and/or poor workmanship may be condemned or rejected by the Project Architect at anytime before the completion, approval, and acceptance of such work.

In the provision just quoted, it is stated that the Project Architect, as the owner's representative, has the authority to inspect and supervise the construction work, condemn or reject defective works and/or poor workmanship anytime before the completion, approval and acceptance of such work. The contract, however, did not authorize Arch. Salazar to accept the project. The fact that he has the authority to inspect and supervise, and to condemn or reject does not mean he already has the power to accept. His authority is limited to what is contained in the contract.

Respondent's contention that Arch. Salazar has the authority to accept the project is untenable. She failed to substantiate this claim with evidence. Her bare allegation will not suffice. The fundamental rule is that he who alleges must prove.[23] In the case at bar, respondent failed to prove her claim. In fact, when Arch. Salazar testified for her, the former failed to show proof of his alleged authority to accept. When asked if he saw in his contract with the petitioner any kind of authority giving him the power to accept the project, he merely answered that he does not remember. He testified:

> ATTY. VILLAR: I am asking the particular contract of the architect with the DBP?
>
> A- Yes sir.
>
> Q- Now in that contract of yours with the DBP did you see any kind of authority authorizing you to accept the project when it is completed?
>
> ATTY. VILLARIN: I think Exh. C is the best evidence your Honor. The specification is the best evidence your Honor.
>
> COURT: Objection overruled. Witness may answer.
>
> A- I just do not remember sir. [24]

The answer of Arch. Salazar that he does not remember is not the answer expected of someone who claims to possess the authority to accept a project. If, indeed, he were authorized to accept the project when completed, he could have easily and directly answered yes and immediately produced the document showing his authority. This, he failed to do. His continued reliance on his authority to supervise and to reject the work is not tantamount to an authority to accept the work.

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In the case at bar, the acceptance of the project was made by the Bidding Committee of the DBP, Cabanatuan City Branch, on 29 May 1988.[25] Inasmuch as there was no valid and legal ground raised by respondent for the extension of the contract time that lapsed on 15 May 1988, there is, therefore, a fourteen-day delay (16 May 1998 to 29 May 1988) in the completion of the project. As agreed upon in the Contract for Services, a P2,000.00 penalty per day of delay shall be paid by respondent to petitioner. The penalty for the fourteen days of delay amounts to P28,000.00 which is the amount that petitioner deducted from the ten (10%) percent retention fee that was returned to petitioner.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 58925 dated 18 March 2003 and its resolution dated 28 June 2005, as well as the decision of Branch 26 of the Regional Trial Court of Cabanatuan City in Civil Case No. 486-AF dated 17 October 1997 are REVERSED and SET ASIDE. The complaint in Civil Case No. 486-AF against petitioner is DISMISSED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

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[1] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam, concurring; rollo, pp. 9-21.

[2] Records, pp. 281-302.

[3] Rollo, pp. 20-21.

[4] Id. at 23-26.

[5] Id. at 10-13.

[6] Records, p. 280.

[7] Id. at 301-302.

[8] PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS effective 11 June 1978.

[9] Records, pp. 303-304, 308-309.

[10] Rollo, pp. 23-26

[11] Filed Amended Petition dated 21 September 2005.

[12] Rollo, pp. 29-46.

[13] Id. at 157.

[14] Government Auditing Code of the Philippines. Took effect three (3) months after its publication in the Official Gazette on 7 August 1978.

[15] G.R. No. 85502, 24 February 1992, 206 SCRA 482, 486.

[16] Exh. B; Records, p. 9.

[17] Exh. 3-Sarmiento; Id. at 66.

[18] Exh. A; Id. at 118.

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[19] Rollo, p. 17.

[20] O.G. Vol. 84, No. 23, p. 3360.

[21] 1986 Revised Charter of the Development Bank of the Philippines.

[22] Exhibit C; Records, p. 11.

[23] Bejoc v. Cabreros, G.R. No. 145849, 22 July 2005, 464 SCRA 78, 86-87.

[24] TSN, 24 May 1989, p. 18.

[25] Exh. 2-Sarmiento; Records, p. 170.

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