

CONTINENTAL CEMENT CORP., PETITIONER, VS. FILIPINAS (PREFAB) SYSTEMS, INC., RESPONDENT.

G.R. No. 176917. August 04, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court are two Petitions for Review on Certiorari assailing the Court of Appeals' Decision[1] dated October 20, 2006 and Resolution[2] dated March 6, 2007 in CA G.R. CV No. 71593.

The antecedents, as summarized by the Court of Appeals, are as follows:

x x x [P]laintiff-appellee Continental Cement Corporation (CCC) entered into a construction agreement with defendant-appellant Filipinas Systems, Inc. (FILSYSTEMS) for the civil works construction for its Cement Plant Expansion Project at Bo. Bigte, Norzagaray, Bulacan for and in consideration of P82,300,00.00 (sic). Under the contract, the period for the project's completion should be 300 days from 22 February 1993 or up to 18 December 1993. However, on 3 September 1993, CCC filed an action for Specific Performance with TRO and/or Preliminary Mandatory Injunction against FILSYSTEMS to prevent the latter from pulling out its equipment from the site and stopping the construction of the project. While the suit was pending, the parties entered into a Compromise Agreement which was approved by the trial court on 14 October 1993. Among others, the said agreement provided for new terms and conditions of payment. Under Item No. 5 thereof, the civil works was to be paid in cash, cement, crushed aggregates (sic) as well as steel bars. The agreement, particularly Item No. 6, also admitted that FILSYSTEMS has 109 days [from 6 October 1993 or actual resumption of work, exclusive of contract time extensions for accomplished and future changes] to finish the project. And under item no. 7, the parties further agreed that all future change orders, additional works and construction bulletins shall be implemented by FILSYSTEMS only after CCC and its architect sign and the two agree on the price which will be billed separately. The change orders, additional works and construction bulletins already accomplished prior to the Compromise Agreement were supposed to be reconciled and paid immediately.

Thereafter, FILSYSTEMS and CCC filed their separate Motions for Execution based on the aforementioned Compromise Agreement on, (sic) 1 and 14 September 1994, respectively.

Banking on items no. 5 and 7 of the Compromise Agreement, FILSYSTEMS claimed that CCC failed to release the cement and crushed aggregates as per the agreed schedules annexed to the Compromise Agreement and to pay FILSYSTEMS' subsequent billings also in the form of cement. Aside from this claim, the latter also asked for the fifteen percent (15%) liquidated damages and five percent (5%) attorney's fees computed from the original price.

On the other hand, CCC advanced that FILSYSTEMS failed to finish the project after one hundred nine (109) days as provided in Item no. 6 of the same compromise agreement. As such, it similarly prays for the fifteen percent (15%) liquidated damages and five percent (5%) attorney's fees.[3]

After trial, the RTC issued a Decision,[4] the dispositive portion of which reads:

WHEREFORE, premises considered, finding that the defendant failed to perform its obligation under the Compromise Agreement dated October 4, 1993, without any justification, the plaintiff's expansion project on time or within the 109 calendar days, from October 6, 1993 to January 23, 1994, as agreed and without fault on plaintiff's part, this Court hereby orders said defendant to pay the plaintiff the following:

- The sum of Twelve Million Three Hundred Forty Five Thousand Pesos (Php 12,345,000.00) in liquidated damages pursuant to the Compromise Agreement;
- The sum of Fifty Million Three Hundred Thirty Eight Thousand Two Hundred Twenty One Pesos and Sixty One Centavos (Php 50,338,221.61) for the cost of finishing plaintiff's expansion cement plant, pursuant to Article 1167 of the Civil Code; and
- Four Million One Hundred Fifteen Thousand Pesos (Php 4,115,000.00) for attorney's fees, as provided for in the Compromise Agreement.
- Plus costs.

SO ORDERED.[5]

FILSYSTEMS appealed the Decision to the Court of Appeals. On October 20, 2006, the CA issued the assailed Decision,[6] the dispositive portion of which reads:

WHEREFORE, the instant appeal is AFFIRMED with these MODIFICATIONS:

(1) Appellant FILSYSTEMS is hereby ordered to pay appellee CCC the following:

- (a) The sum of Six Million One Hundred Seventy-Two Thousand Five Hundred Pesos (Php6,172,500.00) as liquidated damages; and
- (b) The sum of Six Million Six Hundred Thousand Seven Hundred Twenty-Three Pesos and Thirty-Six Centavos (Php6,600,723.36) as the cost of finishing CCC's expansion cement plant;

and

(2) Appellee CCC is hereby ordered to pay appellant FILSYSTEMS the following:

- (a) The sum of Ten Million Four Hundred Twenty Thousand One Hundred Sixty-One Pesos and Seventeen Centavos (Php10,420,161.17) as the amount still due the latter based on the parties (sic) reconciliatory talks;
- (b) The sum of Seven Hundred Seventy-Seven Thousand Seven Hundred Thirty-Five Pesos (Php777,735.00) as liquidated damages.

SO ORDERED.[7]

The CA found CCC to have defaulted in the payment of its obligations. On the other hand, FILSYSTEMS not only incurred in delay in performing its obligation but, in fact, failed to finish the project.

The CA held that, under the Compromise Agreement, CCC was to pay FILSYSTEMS P3.5 million in cement for change orders, additional works, and construction bulletins, even as the parties failed to reconcile their accounts.

The CA, likewise, held that, while FILSYSTEMS agreed that CCC would pay in kind, the payment was not to be made in advance. Under the Compromise Agreement, CCC was to deliver the delivery receipts only and not the cement. These delivery receipts were to be given in advance to allow FILSYSTEMS to withdraw cement from CCC's plants, but always against the value equivalent to the completed or accomplished work.

The CA also found that FILSYSTEMS was in fact lagging behind in its work schedule. It said that CCC's delay

was not a sufficient excuse for FILSYSTEMS to incur in delay and not finish the project. According to the CA, FILSYSTEMS failed to explain how the delay in CCC's payment contributed to its own delay.

On the other hand, the CA upheld FILSYSTEMS' claim that it was entitled to time extension. However, it said that FILSYSTEMS could not unilaterally claim the time extension in order to excuse itself or justify the delay in the project. As such, FILSYSTEMS is still liable for the delay. Hence, the CA made a tempered application of the penalty clause of the Construction Contract. It reduced the liquidated damages awarded by the trial court by half, bringing down FILSYSTEMS' liability to P6,172,500.00.

The CA also found that FILSYSTEMS had completed 92.839% of the project, based on the testimony of CCC's own accounting manager,[8] and is, therefore, entitled to P10,420,161.17. This also proves, the CA said, that payments by CCC to FILSYSTEMS were also delayed. Hence, the CA held that CCC is liable to pay FILSYSTEMS P777,735.00 as liquidated damages.

The CA also modified the trial court's award of P50,338,221.61 in favor of CCC, which was allegedly the cost incurred when CCC hired another contractor to finish the project. The CA said that the amount was glaringly disproportionate to the unfinished part of the project. Considering that the unfinished work is equivalent only to 7.161% of the project, the amount FILSYSTEMS should pay must be correspondingly reduced to P6,600,723.36.

CCC then filed the first of the two petitions at bar.[9] It assails the part of the CA's Decision holding that FILSYSTEMS is entitled to P3.5 million in cement. It claims that the payment of that amount is still subject to final reconciliation of accomplished change orders, additional works, and construction bulletins.[10]

It also argues that the CA erred in reducing the award of liquidated damages, stressing that time is of the essence in the Construction Contract, and that FILSYSTEMS' delay and total failure to complete the project is a clear breach of the Compromise Agreement and renders the essence of time under the Construction Contract moot.[11] Thus, CCC posits that it is entitled to the full amount of liquidated damages.[12]

CCC likewise disputes the finding that it incurred in delay in paying FILSYSTEMS. It avers that nowhere in the Compromise Agreement did it admit that it was in delay; that the Compromise Agreement stated, in fact, that the balance it is to pay FILSYSTEMS would be due only after the completion of the project, a condition never fulfilled because of the latter's breach.[13]

Then, CCC assails the CA's finding that FILSYSTEMS had finished 92.839% of the project, since no evidence was adduced to this effect before FILSYSTEMS was deemed in delay. Instead, CCC claims that it was able to show that, because FILSYSTEMS was unable to finish the project, the former was compelled to contract C.E. Construction to complete the same.[14]

Lastly, CCC questions the deletion of the award of attorney's fees. It argues that the Compromise Agreement provided that attorney's fees equivalent to five percent of the total original contract price, plus change orders/additional works/construction bulletins, must be paid by the aggrieved party to the guilty party. Because FILSYSTEMS breached its obligation under the Compromise Agreement, CCC submits that the trial court correctly awarded it P4,115,000.00 in attorney's fees.[15]

Hence, CCC prays that this Court partially reverse the CA Decision and affirm the trial court's Decision in toto.[16]

Meanwhile, FILSYSTEMS filed its own Petition for Review[17] of the CA Decision.

FILSYSTEMS claims that the CA erroneously considered all infractions committed by CCC prior to the signing of the Compromise Agreement to have been set aside by the said agreement. It points to the CA's failure to

appreciate that the former was authorized to suspend work in the event CCC defaulted in the payment of submitted progress billings;[18] thus, FILSYSTEMS was not in delay. On the contrary, it was CCC that was in delay in the payment of FILSYSTEMS' approved progress billings, prompting the latter to invoke its right to stop work in accordance with Article V of the Construction Agreement. According to FILSYSTEMS, CCC's delay totaled 77 days; but the CA refused to grant FILSYSTEMS the equivalent time extension, because the infraction occurred before the Compromise Agreement.[19]

Next, FILSYSTEMS posits that the CA misconstrued the Construction Agreement to be on a "turn key" basis, which means that the contractor would initially finance the completion of the project. FILSYSTEMS argues that the agreement was the regular type of construction agreement, where the owner was obligated to pay the contractor periodically based on the percentage of completion of work.[20] FILSYSTEMS emphasized that its refusal to continue working was due to CCC's failure to promptly pay the former's submitted/approved progress billings.[21]

Thus, FILSYSTEMS prays for modification of the CA Decision and the deletion of all monetary awards in favor of CCC.[22]

The resolution of these cases calls for a re-examination of facts. While generally, the Court is not a trier of facts, a recognized exception thereto is a situation where the findings of fact of the Court of Appeals and the trial court are conflicting.[23]

Indeed, the most fundamental rule in the interpretation of contracts is that, if the terms are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of the contract provisions shall control. However, where some ambiguity exists, in order to determine the intention of the parties, their contemporaneous and subsequent acts should be considered.[24]

Thus, to resolve the question of default by the parties, we must re-examine the terms of the Construction Contract and the Compromise Agreement.

We sustain the finding of the CA holding CCC to have incurred in default in its payments to FILSYSTEMS.

Records show that CCC admitted it was in default. FILSYSTEMS had already completed 44% of the work at the time the parties entered into a Compromise Agreement. This means that, by the terms of the Construction Contract, FILSYSTEMS should have been paid P36,212,000.00. However, CCC admitted having paid only P27,006,028.04. Hence, it still owed FILSYSTEMS P9,205,971.96. CCC also admitted that it owed FILSYSTEMS P3.5 million in cement for accomplished change orders/additional works/construction bulletins.

Conversely, CCC's contention that FILSYSTEMS was in default is bereft of merit.

The right of FILSYSTEMS to stop work is recognized by CCC, as the Construction Contract provides:

ARTICLE V
PAYMENTS

Upon signing of this Contract, the OWNER shall pay the CONTRACTOR a downpayment of twenty six and four over one hundred percent (26.4%) of the Contract Price. The downpayment shall be liquidated by the CONTRACTOR from his monthly progress billings.

Ten percent (10%) of each monthly progress payment shall be retained by the OWNER until fifty (50%) (sic) completion of the contract work. No additional retention shall be made.

The OWNER shall make payment to the CONTRACTOR on account of this Contract thirty (30) days after submission of each progress billing in consideration of the work accomplished by the CONTRACTOR less ten

percent (10%) retention and Expanded Withholding Tax (One percent of the gross amount of accomplishment).

As required by Philippine Law, the Contractor's Expanded Withholding Tax withheld from each payment to the CONTRACTOR shall be transmitted by the OWNER to the Bureau of Internal Revenue in favor of the CONTRACTOR'S TIN Account No. 391-412.

No payments shall be made unless payment requests are on the prescribed form and bear the approval of the Construction Manager of the OWNER and concurred in by the ARCHITECT.

Should the OWNER be delayed in the payment of the monthly billings beyond five (5) days after it is due, the work schedule or timetable shall be extended accordingly. If payment due is delayed for sixty (60) days, then the CONTRACTOR has the right to stop the work.[25]

In addition, in the Compromise Agreement, the parties recognized that the 109 days left in the original time frame was "exclusive of contract time extensions for accomplished and future change orders, additional works and construction bulletins and whatever additional contract time extensions provided in this Agreement and/or already earned or allowed under the original Construction Contract, dated January 23, 1993." [26]

Paragraph 6.b. of the Compromise Agreement is also instructive:

6.b. Defendant, on a best efforts basis and without prejudice to paragraph 6 above, shall finish the construction zones referred to in the Construction Contract dated January 23, 1993 which shall be identified by the plaintiff as priority construction zones, taking into consideration plaintiff's schedule of arrival of machineries and installation thereof on said zones.[27]

The Compromise Agreement must be interpreted as a whole. Its provisions must be construed collectively, and the meaning imputed to them must give effect to all. As this Court has previously pronounced:

The intention of the contracting parties should be ascertained by looking at the words used to project their intention, that is, all the words, not just a particular word or two or more words standing alone. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. The parts and clauses must be interpreted in relation to one another to give effect to the whole. The legal effect of a contract is to be determined from the whole read together.[28]

Thus, FILSYSTEMS must be accorded the time extensions it is entitled to under the Compromise Agreement. As the CA correctly held, it would go against the grain of equity and fair play to insist that FILSYSTEMS was limited to the non-extendible period of 109 days to complete the project, as erroneously found by the trial court.[29]

Further, since CCC is in default, FILSYSTEMS is entitled to liquidated damages, pursuant to Paragraph 9 of the Compromise Agreement, which states:

9. Should any party fail to comply with its obligation(s) as stipulated in this Compromise Agreement and/or violate any provisions of the Construction Contract not otherwise amended, repealed and/or modified as aforestated, the aggrieved party shall be entitled to move for the issuance by this Honorable Court of a writ of execution to enforce the provisions of this Compromise Agreement and/or the Compromise Judgment to be rendered by the court based on this Compromise Agreement. In this connection, the guilty party hereby undertakes to pay the aggrieved party additional liquidated damages in the amount equivalent to fifteen percent (15%) of the total original contract price of P82,300,000.00 and attorney's fees equivalent to five percent (5%) of the total original contract price plus change orders/additional works/construction bulletins.[30]

However, we find that the CA erred in its computation of the liquidated damages CCC should pay FILSYSTEMS.

In its Decision, the CA computed the liquidated damages as follows:

The original cost of the project is Php82,300,000.00 while the additional works, as conceded by CCC' (sic) 31 August 1994 letter, is approximately 12% of the original project cost. Thus, the total project cost is Php92,176,000.00. Considering that CCC was entitled to retain 10% of the first half of the construction cost, it was entitled to retain Php4,608,800.00. Against the Php10,420,161.17 CCC concededly owed FILSYSTEMS, the latter was underpaid by Php5,811,361.17 or by 6.3% of the total project cost. As such, CCC must be made to 6.3% of the full liquidated damages under the Compromise Agreement at Php12,345,000.00. Hence, CCC is liable to pay FILSYSTEMS liquidated damages in the amount of Php777,735.00.[31]

This computation has no basis. The Compromise Agreement clearly stated that any liquidated damages due will be "fifteen percent (15%) of the total original contract price of P82,300,000.00" regardless of any additional costs incurred by the parties. Thus, FILSYSTEMS is entitled to P12,345,000.00.

We likewise sustain the CA's decision holding CCC liable for P3.5 million in accomplished change orders and additional works.

Paragraph 7 of the Compromise Agreement reads in part:

x x x x It is understood that should the parties fail to reconcile the accomplished change orders, additional works and construction bulletins within the 15-day period, just the same, plaintiff (CCC) shall immediately pay defendant the approximate amount of P3.5 Million in cement, subject to final reconciliation not later than thirty (30) days from signing of this Agreement. x x x x

It is erroneous for CCC to claim that it is to pay the P3.5 million only after reconciliation. As the CA aptly held:

With this, CCC cannot simply dismiss the said P3.5 Million as being a mere "assigned value" for it is very clear that if the parties fail to reconcile the accomplished additional works within fifteen (15) days from the signing of the Compromise Agreement, CCC must still pay the said amount, which is the determined value of the change orders admitted in paragraphs 1 (a) and 7 of the Compromise Agreement. Thus, it is incorrect for CCC to expect that it must first be billed and approved by CCC and CC Castro International before it can be required to pay for this procedure applies to the subsequent additional works done after the signing of the Compromise Agreement.[32]

CCC itself recognized that it was liable to pay this amount to FILSYSTEMS in paragraph 1 (a) of the Compromise Agreement when it acknowledged the latter's accomplished change orders/additional works and construction bulletins in the approximate amount of P3.5 million.

Had it been the parties' intention to make the payment subject to reconciliation, it would have been unnecessary to put the above-quoted portion in paragraph 7 of the Compromise Agreement. The intent, to our mind, is simple, i.e., that even if there is no reconciliation within 15 days, CCC will still pay - "just the same" - FILSYSTEMS P3.5 million in cement "subject to final reconciliation". The reconciliation will come after the payment and not before.

FILSYSTEMS next argues that the CA erred in interpreting the Construction Contract as a "turn key" agreement[33] and not a regular type of construction agreement, where the owner is obligated to pay the contractor periodically based on percentage of completion, which, in this case, would be within 30 days from submission of each billing progress.[34]

The CA based its conclusion on Article 1 (Scope of Work) of the contract, which reads in part:

That the CONTRACTOR, for and in consideration of the payment to be made by the CONTRACTOR of the sum of money hereinafter stated, shall construct/perform and erect on a turnkey basis the following scope of

work: x x x x[35]

This denomination of the nature of the project notwithstanding, there is a specific provision in the agreement to the effect that the owner shall pay the contractor "on account of this contract thirty (30) days after submission of each progress billing in consideration of the work accomplished by the contractor less ten percent (10%) retention and Expanded Withholding Tax." [36] Further, that same article in the contract provides that delay by CCC in the payment of the monthly billings beyond five days after they are due entitles FILSYSTEMS to an extension of the work schedule. If the delay in payment extends to 60 days, FILSYSTEMS may then exercise the right to stop the work. [37] This was precisely what FILSYSTEMS did. Thus, it cannot be said to have violated the terms of the contract.

Still, FILSYSTEMS cannot fully escape liability. It is a fact - and FILSYSTEMS does not deny this - that it failed to finish the project, in contravention of its obligation under the Construction Contract and the Compromise Agreement.

The CA held that FILSYSTEMS failed to prove that the delay it incurred was attributable to CCC's failure to deliver the P3.5 million payment in cement. [38] It also held that FILSYSTEMS could not unilaterally declare or claim the time extensions in order to excuse itself or justify the delay in the project. [39]

We agree with the CA.

FILSYSTEMS has not shown that it was CCC's delay that caused the former to fail to complete the project. On the contrary, it appears that despite CCC's delays, FILSYSTEMS was able to accomplish 92.83% of the work. This proves that the completion of the project was not entirely dependent on CCC's payment - or prompt payment - of its obligation. FILSYSTEMS' failure to finish the project is, therefore, unjustified. Accordingly, it must be held liable for the cost of completing the project. Article 1167 of the Civil Code provides:

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

We do not believe, however, that FILSYSTEMS should be made to pay the entire cost CCC paid to CE Construction, which finished the project.

It has been shown that at the time FILSYSTEMS stopped work, the project was 92.83% finished, although such work was accomplished beyond the initial deadline of 23 January 1993. But, as already discussed above, FILSYSTEMS was entitled to time extensions equivalent to the delay in the payment of its progress billings. Hence, FILSYSTEMS must be held liable only for the remaining 7.17% of the project. To make it answer for more would unjustly enrich CCC, which has already benefited from the former's work.

Finally, the issue of attorney's fees. We sustain the CA's deletion of the trial court's award thereof, because both parties failed to comply with their obligations as stipulated in the Compromise Agreement. [40]

In sum, we hold that CCC defaulted in the payment of its obligation to FILSYSTEMS under the Compromise Agreement. On the other hand, FILSYSTEMS was not in default; however, considering that it failed to perform the obligation incumbent upon it under the Compromise Agreement, it must be held liable for the cost of completion of the unfinished portion of the project.

WHEREFORE, the foregoing premises considered, the Petition in G.R. No. 176917 is DENIED for lack of merit, while the Petition in G.R. No. 176919 is PARTIALLY GRANTED. Accordingly, the Court of Appeals' Decision dated October 20, 2006 in CA G.R. CV No. 71593 is hereby PARTIALLY MODIFIED to read:

WHEREFORE, the instant appeal is AFFIRMED with MODIFICATIONS:

(1) Appellant FILSYSTEMS is hereby ordered to pay appellee CCC the sum of six Million Six hundred Thousand Seven Hundred Twenty-Three Pesos and Thirty-Six Centavos (PhP6,600,723.36) as the cost of finishing CCC's expansion cement plant, plus legal interest at the rate of 6% per annum from the time of the filing of CCC's Motion for Execution of the Compromise Agreement before the trial court and, thereafter, at the rate of 12% from the finality of this Decision until the same is fully paid;

and

(2) Appellee CCC is hereby ordered to pay appellant FILSYSTEMS the following:

(a) The sum of Ten Million Four Hundred Twenty Thousand One Hundred Sixty-One Pesos and Seventeen Centavos (PhP10,420,161.17) as the amount still due the latter based on the parties' reconciliatory talks, plus legal interest at the rate of 6% per annum from the time of the filing of FILSYSTEMS' Motion for Execution of the Compromise Agreement before the trial court and, thereafter, at the rate of 12% from the finality of this Decision until the same is fully paid;

(b) The sum of Twelve Million Three Hundred Forty-Five Thousand Pesos (PhP12,345,000.00) as liquidated damages, plus legal interest at the rate of 6% per annum from the time of the filing of FILSYSTEMS' Motion for Execution of the Compromise Agreement, before the trial court and, thereafter, at the rate of 12% from the finality of this Decision until the same is fully paid.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, and Peralta, JJ., concur.

[1] Penned by Justice Rosmari D. Carandang, with Justices Renato C. Dacudao and Estela M. Perlas-Bernabe, concurring, Rollo (G.R. No. 176917), pp. 8-31.

[2] Penned by Justice Rosmari D. Carandang, with Justices Renato C. Dacudao and Estela M. Perlas-Bernabe, concurring, *id.* at 32-33.

[3] *Id.* at 58-60.

[4] Penned by Judge Fatima Gonzales-Asdala, rollo (G.R. No. 176919), pp. 129-142.

[5] *Id.* at 141-142.

[6] Rollo (G.R. No. 176917), pp. 57-80.

[7] *Id.* at 78-79.

[8] *Id.* at 25.

[9] G.R. No. 176917.

[10] Rollo (G.R. No. 176917), p. 45.

[11] *Id.* at 45.

[12] *Id.* at 48.

[13] *Id.*

[14] *Id.* at 49-51.

[15] Id. at 52.

[16] Id. at 53.

[17] G.R. No. 176919.

[18] Rollo (G.R. No. 176919), p. 25.

[19] Id. at 27.

[20] Id. at 30-31.

[21] Id. at 33.

[22] Id.

[23] Santos v. Lumbao, G.R. No. 169129, March 28, 2007, 519 SCRA 408.

[24] Agro Conglomerates, Inc. v. Court of Appeals, 401 Phil. 645, 656 (2000) citing Manila Surety & Fidelity Co., Inc. vs. Court of Appeals, G.R. No 55466, December 3, 1990, 191 SCRA 805, 812; citing Mercantile Ins. Co., Inc. vs. Felipe Ysmael, Jr. & Co. Inc., G.R. No. 43862, January 13, 1989, 169 SCRA 66, 74; GSIS vs. Court of Appeals, 229 Phil. 320 (1986); Sy vs. Court of Appeals, 216 Phil. 110 (1984).

[25] Rollo (G.R. No. 176917), p. 108. (emphasis supplied)

[26] Id. at 143.

[27] Id. at 143-144.

[28] Villamaria, Jr. v. Court of Appeals, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 593. (citations omitted)

[29] Rollo (G.R. No. 176917), p. 22.

[30] Id. at 145.

[31] Id. at 26.

[32] Id. at 14-15.

[33] A turnkey (or turn-key) is defined as pertaining to, or resulting from, an arrangement under which a private contractor designs and constructs a project, building, etc., for sale when completely ready for occupancy or operation. (visited July 24, 2009).

[34] Rollo (G.R. No. 176919), p. 31.

[35] Rollo (G.R. No. 176917), p. 105.

[36] Rollo (G.R. No. 176917), paragraph 3, Article V, Construction Contract, p. 108

[37] Id., paragraph 6, Article V, p. 108.

[38] Id. at 20.

[39] Id. at 24.

[40] Id., paragraph 9, Compromise Agreement, p. 145.

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