

## **NOELL WHESSOE, INC., PETITIONER, V. INDEPENDENT TESTING CONSULTANTS, INC., PETROTECH SYSTEMS, INC., AND LIQUIGAZ PHILIPPINES CORP., RESPONDENTS.**

*G.R. No. 199851. November 07, 2018*

Ponente: LEONEN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-199851/>

---

### **LEONEN, J.:**

The contractor may be solidarily liable with the owner and the subcontractor for any unpaid obligations to the subcontractor's supplier despite the absence of a contract between the contractor and supplier. Full payment to the subcontractor, however, serves as a valid defense against this liability.

This resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals April 28, 2011 Decision[3] and December 7, 2011 Resolution[4] in CA-G.R. CV No. 89300, which affirmed the Regional Trial Court's finding that Noell Whessoe, Inc. (Noell Whessoe) was solidarily liable with Liquigaz Philippines Corporation (Liquigaz) and Petrotech Systems, Inc. (Petrotech) to Independent Testing Consultants, Inc. (Independent Testing Consultants) for unpaid fees of P1,063,465.70.

Independent Testing Consultants is engaged in the business of conducting non-destructive testing on the gas pipes and vessels of its industrial customers.[5]

Sometime in June 1998, Petrotech, a subcontractor of Liquigaz, engaged the services of Independent Testing Consultants to conduct non-destructive testing on Liquigaz's piping systems and liquefied petroleum gas storage tanks located in Barangay Alas-Asin, Mariveles, Bataan.[6]

Independent Testing Consultants conducted the agreed tests. It later billed Petrotech, on separate invoices, the amounts of P474,617.22 and P588,848.48 for its services. However, despite demand, Petrotech refused to pay.[7]

Independent Testing Consultants filed a Complaint[8] for collection of sum of money with damages against Petrotech, Liquigaz, and Noell Whessoe for P1,063,465.70 plus legal interest. It joined Noell Whessoe as a defendant, alleging that it was Liquigaz's contractor that subcontracted Petrotech.[9]

In its Answer,[10] Liquigaz argued that Independent Testing Consultants had no cause of action against it since there were no contractual relations between them and that any contract that Independent Testing Consultants had was with its subcontractors.[11]

Noell Whessoe, on the other hand, denied that it was Liquigaz's contractor and that its basic role was merely to supervise the construction of its gas plants.[12] It argued that any privity of contract was only with Petrotech. Thus, it asserted that Petrotech alone should be liable to Independent Testing Consultants.[13] Noell Whessoe later submitted a Formal Offer of Documentary Exhibits[14] showing that Liquigaz engaged Whessoe Projects Limited (Whessoe UK), a limited company organized under the laws of the United Kingdom, for the construction of its storage facilities.[15] Whessoe UK, in turn, engaged Noell Whessoe, a separate and distinct entity, to be the construction manager for the Mariveles Terminal Expansion Project.[16] The documents further stated that

Whessoe UK had already paid in full its contractual obligations to Petrotech.[17]

For its part, Petrotech alleged that upon Noell Whessoe's approval, Independent Testing Consultants was chosen to conduct the non-destructive testing on Liquigaz's liquefied petroleum gas storage vessel under the supervision of OIS, an inspection firm from the United Kingdom, and of Nick Stephenson (Stephenson).[18] However, it averred that it later received a letter from Noell Whessoe withdrawing its approval for Independent Testing Consultants' continued services. Independent Testing Consultants' services allegedly failed to satisfy the standards set by the OIS and Stephenson.[19] Petrotech further claimed that due to Independent Testing Consultants' poor performance, it incurred additional costs. Thus, it prayed that Independent Testing Consultants be ordered to pay the additional costs as actual damages.[20]

The Regional Trial Court later declared Petrotech in default for failure to appear during the pre-trial conference.[21]

In its March 7, 2005 Decision,[22] the Regional Trial Court found Liquigaz, Noell Whessoe, and Petrotech solidarity liable to Independent Testing Consultants. It ruled that Liquigaz was liable considering that it was the entity which directly benefited from Independent Testing Consultants' services. It likewise held that Noell Whessoe, as the main contractor of the project, could not escape liability. Petrotech, as the subcontractor of the project, was also held liable.[23] The dispositive portion of the Regional Trial Court March 7, 2005 Decision read:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Liquigaz Philippine Corp., Noell Whessoe, Inc. and Petrotech Systems, Inc.

- 1) Ordering all defendants to pay plaintiff jointly and severally the amount of Php 1,063,465.70 plus legal rate of interest from December 1, 1998 until it is fully paid;
- 2) Ordering the defendants to pay attorney's fees equivalent to 25% of the principal amount of claim; and, the costs of suit.

SO ORDERED.[24]

Only Noell Whessoe and Liquigaz appealed to the Court of Appeals.[25] Thus, the Regional Trial Court March 7, 2005 Decision became final as to Petrotech.[26]

In its April 28, 2011 Decision,[27] the Court of Appeals affirmed the Regional Trial Court March 7, 2005 Decision and found that Noell Whessoe, Petrotech, and Liquigaz were liable to Independent Testing Consultants. It found that Whessoe UK, as contractor, assigned construction management to Noell Whessoe, effectively stepping into the shoes of Whessoe UK. Hence, Noell Whessoe could not disclaim knowledge that Petrotech engaged the services of Independent Testing Consultants, considering its admission that it later sent a letter to Petrotech withdrawing its approval of the engagement.[28] The Court of Appeals, however, held that Noell Whessoe's liability did not preclude it from demanding reimbursement from Petrotech for any amount paid.[29]

The Court of Appeals likewise found that Liquigaz had knowledge, as early as January 1999, that one of its subcontractors, Petrotech, failed to fulfill its contractual obligations in the amount of P1,063,465.70 to another subcontractor, Independent Testing Consultants.[30] It likewise found that Liquigaz still owed Noell Whessoe the amount of US\$9,000.00, which it could have withheld subject to Petrotech's fulfillment of its contractual obligations. Thus, Liquigaz was liable to Independent Testing Consultants, but only up to the amount of US\$9,000.00, which it could also demand from Petrotech.[31] The dispositive portion of the Court of Appeals April 28, 2011 Decision read:

WHEREFORE, the instant appeals are PARTLY GRANTED. The Decision of the RTC, Branch 161, Pasig City, dated March 7, 2005, is hereby AFFIRMED with MODIFICATIONS.

1. Defendants WHESSOE and PETROTECH are ordered to pay plaintiff-appellee jointly and severally the total claim of P1,063,465.70 plus legal rate of interest from December 1, 1998 until it is fully paid. On the other hand, the liability of defendant-appellant LIQUIGAZ, in case it is required to satisfy the judgment herein, is limited only to the amount of US\$9,000.00, or its peso equivalent at the time of payment, with right of reimbursement from PETROTECH.
2. The cross-claim of defendant-appellant WHESSOE against PETROTECH is GRANTED. The latter is ordered to reimburse WHESSOE in the event that it will be made to satisfy the judgment herein.
3. Defendants are ordered to pay the costs of suit. However, the award of attorney's fees in favor of plaintiff-appellee is DELETED.

### **SO ORDERED.[32]**

Noell Whessoe filed a Motion for Reconsideration, which was denied by the Court of Appeals in its December 7, 2011 Resolution.[33] Hence, it filed this Petition[34] before this Court.

Petitioner asserts that it should not have been made solidarity liable to respondent Independent Testing Consultants since it had no privity of contract with the latter. It maintains that the Contract Agreement for the Mariveles Terminal Expansion Project[35] was between Liquigaz and Whessoe UK, an entity separate and distinct from petitioner. It likewise asserts that the Pipework and Mechanical Equipment Installation Subcontract[36] for the testing and delivery of subcontracting works was between Whessoe UK and Petrotech. It explained that the Conditions of Contract for Supply of Professional, Technical and Management Services[37] between Whessoe UK and petitioner was not intended to be a deed of assignment where petitioner would step into Whessoe UK's shoes as contractor but was rather merely an undertaking to supply professional, technical, and management services.[38]

Petitioner maintains that it cannot be bound by the contract between Whessoe UK and Petrotech simply because it sent a letter to Petrotech expressing dissatisfaction or disapproval of respondent Independent Testing Consultants' services.[39] It likewise points out that even assuming that there was privity of contract, Whessoe UK had already paid in full its contractual obligations to Petrotech.[40] Thus, it asserts that it was entitled to moral damages of P1,000,000.00 since "the filing of this baseless and unfounded case . . . has tarnished its good business name and standing by giving the erroneous and false impression to the public that it is a company that reneges on its obligations." [41]

Respondent Independent Testing Consultants, on the other hand, counters that petitioner directly approved and commissioned its services, as admitted by Petrotech in its Answer before the Regional Trial Court.[42] It claims that petitioner never introduced evidence that it had already paid Petrotech, and that its allegation that it was not the same entity being sued was negated by its Answer before the Regional Trial Court.[43] Thus, respondent argues that petitioner was not entitled to any of its counterclaims.[44]

From the arguments of the parties, this Court is asked to resolve the issue of whether or not petitioner Noell Whessoe, Inc. can be held solidarily liable with respondents Liquigaz Philippines Corporation and Petrotech Systems, Inc. for unpaid fees to respondent Independent Testing Consultants, Inc. Assuming that petitioner Noell Whessoe, Inc. was not liable, this Court is further asked to resolve the issue of whether or not it was entitled to moral damages.

## I

To resolve the issue of whether petitioner is solidarily liable with Liquigaz and Petrotech, this Court must first pass upon petitioner's argument that it is a separate and distinct entity from Whessoe UK, the signatory of the contracts with them. This, however, is a question of fact.

As a general rule, only questions of law can be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.[45] The distinction between a question of fact and a question of law is settled. There is a question of law if the issue can be determined without reviewing or evaluating the evidence on record. Otherwise, the issue raised is a question of fact.[46]

Petitioner raises an issue that has already been factually determined by both the Regional Trial Court and the Court of Appeals. For this Court to pass upon the same issue, it would have to review and evaluate the evidence presented before the lower courts. Clearly then, petitioner raises a question of fact.

Appeal is not a matter of right but of sound judicial discretion.[47] This Court may, in its discretion, entertain questions of fact if they fall under certain exceptions, summarized in *Medina v. Mayor Asistio, Jr.* :[48]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[49] (Citations omitted)

Petitioner's assignment of the Court of Appeals' alleged errors centers on the Court of Appeals' interpretation of the provisions of the Conditions of Contract for Supply of Professional, Technical and Management Services,[50] and the Letter[51] dated June 29, 1998. Therefore, it alleges that the Court of Appeals' judgment was based on a misapprehension of facts. Any review requires a reevaluation of these two (2) documents mentioned.

The presence of any of the exceptions to the general rule, however, does not automatically place the case under this Court's review. This Court explained in *Pascual v. Burgos*[52] that the party claiming an exception "must demonstrate and prove"[53] that a review of the factual findings is necessary.

Petitioner has not alleged that it raised a question of fact, much less allege that this case falls under any of the exceptions. This would have merited the denial of the Petition since this Court is not a trier of facts. Petitioner, however, argues that this case falls under the considerations stated in Rule 45, Section 6 of the Rules of Court:

Section 6. Review discretionary. — A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

(a) When the court a quo has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or

(b) When the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

In particular, petitioner alleges that:

- The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and/or has decided a question of substance in a way not in accord with law or with the applicable decisions of the Honorable Court when it held that petitioner Noell Whessoe is solidarity liable with respondent Petrotech for the claims for respondent ITCI.

- The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and/or has decided a question of substance in a way not in accord with law or with the applicable decisions of the Honorable Court when it denied petitioner Noell Whessoe's counterclaims.[54]

A quick perusal of the parties' evidence reveals that the Regional Trial Court and the Court of Appeals may have erred in finding that petitioner was still liable to respondent Independent Testing Consultants for its unpaid fees. If not corrected, the assailed judgments may result in grave injustice to petitioner.

## II

"[A] contract is law between the parties[.]"[55] Generally, contracts only take effect between the parties, and their assigns and heirs.[56] Thus, subject to certain exceptions,[57] those not privy to the contract would not be bound by any of its provisions.

Petitioner contends that all contracts between the parties were undertaken by Whessoe UK, an entity that it alleges is separate and distinct from itself.

Both the Regional Trial Court and the Court of Appeals rejected this argument on the ground that petitioner's co-defendants, Liquigaz and Petrotech, alleged that petitioner was the contracting party. Liquigaz's Answer read, in part:

5. On November 7, 1996, defendant Liquigaz and defendant Whessoe entered into a Design and Construction Contract ("contract") for the construction of a storage facility for liqu[e]fied petroleum gas located in Mariveles, Bataan. Under the contract, defendant Whessoe undertook to complete the design and execute and complete the construction of the storage facility.

6. Under the contract, defendant Whessoe could subcontract the performance of any of its obligation as it deemed expedient. Thus, it subcontracted majority of the project work to several local subcontractors. One such subcontractor was defendant Petrotech. Defendant Petrotech was responsible for the fabrication of vessels and piping. Its work included conducting various non-destructive testing ("NDT"), which in turn defendant Petrotech subcontracted to several NDT firms. Apparently, plaintiff was one such NDT firm.[58]

Petrotech, on the other hand, alleged:

4. From December 5, 1997 to February 24, 1999, herein defendant Petrotech Systems Corporation (hereinafter Petrotech) became a sub-contractor of defendant Noell Whessoe (hereinafter Whessoe) in the latter's project for defendant Liquigaz Philippines Corporation (hereinafter Liquigaz); part of the conditions of the contract that Petrotech has is that all works must pass Non-destructive Testing (hereinafter NDT) by an independent third party before said works can be accepted by Whessoe[.][59]

To determine whether the Regional Trial Court and the Court of Appeals correctly held that petitioner is the same entity as Whessoe UK, further examination of the evidence is necessary.

The Contract Agreement for the Mariveles Terminal Expansion Project[60] dated November 7, 1996 was between Liquigaz and Whessoe UK, thus:

THIS AGREEMENT is made [on] the 7[th] day of November, 1996

Between LIQUIGAZ PHILIPPINES CORPORATION

of SUITE 2311 CITYLAND 10 TOWER 1  
DELA COSTA STREET, SALCEDO VILLAGE  
MAKATI CITY, MANILA, PHILIPPINES

(hereinafter called 'the Purchaser') of the one part

And WHESSOE PROJECTS LIMITED

of BRINKBURN ROAD, DARLINGTON  
CO DURHAM DL3 6DS  
UNITED KINGDOM[61]

On May 12, 1997, Whessoe UK executed the Pipework and Mechanical Equipment Installation Subcontract[62] with Petrotech, thus:

#### FORM OF SUBCONTRACT AGREEMENT

This Agreement made [on] the Twelfth day of May 1997

BETWEEN

(1) WHESSOE PROJECTS LIMITED

of BRINKBURN ROAD, DARLINGTON, ENGLAND  
(hereinafter called "the CONTRACTOR" of the one part; and

(2) PETROTECH SYSTEMS INC.

of 2[ND] FLOOR, AYALA LIFE ASSURANCE BUILDING  
NATIONAL HIGHWAY, ALANGITAN, BATANGAS CITY,  
PHILIPPINES  
(hereinafter called "the SUBCONTRACTOR") of the other part.[63]

One of the attached documents to the Pipework and Mechanical Equipment Installation Subcontract was a Confidentiality Agreement dated April 12, 1997 between Petrotech and petitioner Noell Whessoe, thus:

#### CONFIDENTIALITY AGREEMENT

The AGREEMENT entered into and effective this 12[th] day of April [1997] between NOELL WHESSOE Philippines Construction, Inc. whose registered office is situated at Unit 2409 Herrera Towers, 98 Herrera corner Valero Sts., Salcedo Village, Makati (hereinafter called "CONTRACTOR") of the one part and PETROTECH SYSTEMS, INC., whose registered office is situated at 2nd Floor Ayala Life Assurance Building, Kumintang Ilaya, Alangilan, Batangas (hereinafter called "SUBCONTRACTOR").

Witnesseth:

Whereas CONTRACTOR, as a wholly owned subsidiary of Noell desires SUBCONTRACTOR to undertake the performance of a SUBCONTRACT for the provision of Pipework Mechanical Equipment Installation, and it is necessary for each party to pass to the other certain confidential information whereby the SUBCONTRACTOR may examine CONTRACTOR'S SUBCONTRACT documentation and the CONTRACTOR (and its advisors) may assess SUBCONTRACTOR'S Work, then

It is hereby agreed that neither party shall:

a)

Divulge to any other party any matter or thing arising from the performance of the SUBCONTRACT at any time except as may be necessary to assist either CONTRACTOR or SUBCONTRACTOR in their assessment, and then only in the event that the third party enters into a similar Confidentiality Agreement or

....

In witness hereof the parties have caused this Confidentiality Agreement to be signed by the parties['] behalf.[64]

As of April 12, 1997, petitioner referred to itself as a "wholly owned subsidiary" of Whessoe UK. It alleged, however, that on June 5, 1997, it was registered with the Securities and Exchange Commission as a domestic corporation engaged in general construction and other allied businesses.[65] Unfortunately, no evidence was presented to prove that it was incorporated as a separate corporation by June 5, 1997. It instead filed on August 24, 1998 its Amendment of Articles of Incorporation.[66]

Petitioner contends that it was already a separate and distinct entity since it had to execute a Conditions of Contract for Supply of Professional, Technical and Management Services[67] on November 29, 1997 with Whessoe UK for the Mariveles Terminal Expansion Project. Pertinent portions of this contract provided:

THIS AGREEMENT is made on the 29 day of November 1997 between WHESSOE PROJECTS LIMITED whose registered office is at Brinkburn Road, Darlington, Durham, England, hereinafter called the "Employer" of the one part and Noell Whessoe Philippines Construction Incorporated whose registered office is at Unit 2409, Herrera Tower, 98 Herrera corner Valero St., North Salcedo Village[,] Makati City, Philippines, hereinafter called the "Contractor" of the other part.

WHEREAS, the Employer assign to the Contractor the construction management of the Mariveles Terminal Expansion Project located at Barangay Alas-asin, Mariveles, Bataan.

NOW IT IS HEREBY AGREED AS FOLLOWS:

Article 1

The Contractor will, subject to the conditions of the Contract, perform and complete the Works.

Article 2

The Employer will pay the Contractor such cost or costs expended in relation to the Works on a cost reimbursable basis plus a ten (10) percent mark-up.

....

1.2

The "Work" means any and all services rendered by the Contractor in relation to the construction and

successful completion of the Mariveles Terminal Expansion Project. Such services shall include but not be limited to the:

a)

Management of all site and Subcontractors' activities;

b)

Procurement of all local free issue materials and consumables;

c)

Provision of all equipment and tools not included in any Subcontractor's scope;

d)

Subcontract Administration;

e)

Preparation of all necessary periodic reports and compilation of all required documentation.

....

## 2.3

The Contractor shall be responsible for the timely and successful completion of the Project.[68]

Petitioner argues that the execution of this contract did not make it the contractor for the Mariveles Terminal Expansion Project. It asserts that it was merely a subcontractor hired by Whessoe UK to oversee the management of the site and the other subcontractors' activities.

Records, however, show that during the negotiations for the Pipework and Mechanical Equipment Installation Subcontract with Petrotech, Petrotech made no distinction between petitioner and Whessoe UK.

On April 24, 1997, Whessoe UK sent a Facsimile Message[69] to Petrotech on its Tender. Petrotech replied on April 28, 1997 to petitioner with its comments.[70] On April 30, 1997, Whessoe UK sent another message discussing the terms of the Quotation.[71] Petrotech replied on May 13, 1997 to petitioner, negotiating the subcontract price.[72] Whessoe UK replied on July 1, 1997 with a counter-offer.[73] Petrotech again addressed its reply to petitioner on July 2, 1997, submitting its Tender Form.[74]

In the letter[75] dated June 27, 1998, petitioner informed Petrotech that it was withdrawing its approval of the subcontract. This letter stated, in part:

We confirm our withdrawal of approval to your employment of Intec as your MPI-NDT Sub-contractor with effect from today, 27th June, 1998, for which we served warnings to Mr. McGrane over seven (7) days ago.

We additionally confirm having received Mr. McGrane's concurrence with this measure, and your undertaking to employ a new service subcontractor for the remaining work still to be performed, with effect from Monday, 29th June, 1998.

We also wish to confirm to you that since our engagement of the U.K. inspection firm, O.I.S., to supervise and manage your NDT obligations, such of Mr. Mick Stephenson's time has been rendered abortive by Intec's

ap[p]arent inability to react qualifiedly to his instructions, which have not in any manner been onerous, resulting in an unacceptably high level of reboots and poor quality Radiographs that have been impossible to interpret and rejected because of density, limits, film marks, debris etc.

Whilst it was at our own cost, and of necessity to the project that we arranged for O.I.S.'s services, these costs have escalated unreasonably due to Intec's intransigence.

We therefore feel compelled to onpass (sic) to your account our assessment of the abortive costs based upon a Re-shoot factor of 32.6% of the total of 414 radiographs inspected.

To date this amounts to 52.6% of 720 hours @ \$ 72.50/Hours = \$17,017.20 and continuing, dependent upon the degree of improvement that you are able to motivate from Intec's replacement. Otherwise, it is indicated that your responsibility] for continuing extra costs will increase by a further \$ 8,200.00 for O.I.S. charges to us.[76]

This letter did not state that Whessoe UK, through petitioner, was withdrawing approval. It states that petitioner was withdrawing approval. Petrotech was not privy to the Contract for Supply of Professional, Technical and Management Services between Whessoe UK and petitioner. It was only bound by its contract with Whessoe UK. Petitioner's withdrawal of approval would not have bound Petrotech.

Considering that Petrotech abided by petitioner's instructions, it did not consider petitioner and Whessoe UK as two (2) separate and distinct entities.

This Court made the same conclusion in *Pioneer International v. Hon. Guadiz*.<sup>[77]</sup> Although the issue in that case was on jurisdiction, this Court made a similar examination of the communications between the parties to determine whether several corporations were separate and distinct entities:

PIL's alleged acts in actively negotiating to employ Todaro to run its pre-mixed concrete operations in the Philippines, which acts are hypothetically admitted in PIL's motion to dismiss, are not mere acts of a passive investor in a domestic corporation. Such are managerial and operational acts in directing and establishing commercial operations in the Philippines. The annexes that Todaro attached to his complaint give us an idea on the extent of PIL's involvement in the negotiations regarding Todaro's employment. In Annex "E," McDonald of Pioneer Concrete Group HK confirmed his offer to engage Todaro as a consultant of PIL. In Annex "F," Todaro accepted the consultancy. In Annex "H," Klepzig of PPHI stated that PIL authorized him to tell Todaro about the cessation of his consultancy. Finally, in Annex "I," Folwell of PIL wrote to Todaro to confirm that "Pioneer" no longer wishes to be associated with Todaro and that Klepzig is authorized to terminate this association. Folwell further referred to a Dr. Schubert and to Pioneer Hong Kong. These confirmations and references tell us that, in this instance, the various officers and companies under the Pioneer brand name do not work independently of each other. It cannot be denied that PIL had knowledge of and even authorized the non-implementation of Todaro's alleged permanent employment. In fact, in the letters to Todaro, the word "Pioneer" was used to refer not just to PIL alone but also to all corporations negotiating with Todaro under the Pioneer name.

As further proof of the interconnection of the various Pioneer corporations with regard to their negotiations with Todaro, McDonald of Pioneer Concrete Group HK confirmed Todaro's engagement as consultant of PIL (Annex "E") while Folwell of PIL stated that Todaro rendered consultancy services to Pioneer HK (Annex "I"). In this sense, the various Pioneer corporations were not acting as separate corporations. The behavior of the various Pioneer corporations shoots down their defense that the corporations have separate and distinct personalities, managements, and operations. The various Pioneer corporations were all working in concert to negotiate an employment contract between Todaro and PPHI, a domestic corporation.<sup>[78]</sup> (Emphasis supplied)

In their respective Answers, Liquigaz and Petrotech referred to both Whessoe UK and petitioner when they used

"Whessoe." Neither party was aware that Whessoe UK and petitioner held themselves as separate and distinct entities.

Petitioner cannot also be considered as a mere subcontractor of Whessoe UK. The Contract Agreement for the Mariveles Terminal Expansion Project between Liquigaz and Whessoe UK provided:

10.1

Neither the Purchaser nor the Contractor shall without the previous consent of the other transfer any benefit or obligation under the Contract to any other person in whole or in part, save that the Contractor may without such consent assign absolutely or by way of charge any money which is or may become due to him under the Contract.

10.2

Subject to the provisions of Clause 11 (Nominated Subcontractors) the Contractor may subcontract the performance of any of his obligations under the Contract as the Contractor considers expedient with the exception of any limitations on subcontracting as defined in Schedule 12 (Limitations on Subcontracting).

10.3

Subject to the provisions of Clause 11 (Nominated Subcontractors), the subcontracting by the Contractor of any of his benefits or obligations under the Contract in whole or in part shall not relieve the Contractor in any way whatsoever from his responsibility for due performance of the Contract in accordance with its terms.

10.4

The Contractor shall not subcontract the whole of the Works.[79] (Emphasis supplied)

Under this Contract, Whessoe UK may subcontract the performance of some obligations but was prohibited from subcontracting "the whole of the Works." On the other hand, the Contract for Supply of Professional, Technical and Management Services between petitioner and Whessoe UK stated that petitioner would provide the following services:

1.2

The "Work" means any and all services rendered by the Contractor in relation to the construction and successful completion of the Mariveles Terminal Expansion Project. Such services shall include but not be limited to the:

a)

Management of all site and Subcontractors' activities;

b)

Procurement of all local free issue materials and consumables;

c)

Provision of all equipment and tools not included in any Subcontractor's scope;

d)

Subcontract Administration;

e)

Preparation of all necessary periodic reports and compilation of all required documentation.

....

2.3

The Contractor shall be responsible for the timely and successful completion of the Project.[80]

All of Whessoe UK's responsibilities as contractor for Liquigaz were passed on to petitioner, despite Liquigaz's stipulation that Whessoe UK could not subcontract all of its work to a subcontractor. Considering this stipulation, petitioner cannot be considered as a mere subcontractor of Whessoe UK. Otherwise, Whessoe UK would be in breach of its Contract with Liquigaz.

There was insufficient evidence proving that Whessoe UK and petitioner were two (2) separate and distinct entities. As with Pioneer International, prior acts by Liquigaz and Petrotech indicate that they were contracting with the same entity, albeit with different names. Thus, petitioner failed to prove that for the Mariveles Terminal Expansion Project, it was a separate and distinct entity from Whessoe UK. Therefore, it cannot set up the defense of privity of contract to escape liability.

Article 1729 of the Civil Code provides:

Article 1729. Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:

1. Payments made by the owner to the contractor before they are due;
2. Renunciation by the contractor of any amount due him from the owner.

This article is subject to the provisions of special laws.

In *JL Investment and Development, Inc. v. Tendon Philippines, Inc.*,<sup>[81]</sup> this Court explained that Article 1729 of the Civil Code is an exception to the general rule on the privity of contracts:<sup>[82]</sup>

This provision imposes a direct liability on an owner of a piece of work in favor of suppliers of materials (and laborers) hired by the contractor "up to the amount owing from the [owner] to the contractor at the time the claim is made." Thus, to this extent, the owner's liability is solidary with the contractor, if both are sued together. By creating a constructive vinculum between suppliers of materials (and laborers), on the one hand, and the owner of a piece of work, on the other hand, as an exception to the rule on privity of contracts, Article 1729 protects suppliers of materials (and laborers) from unscrupulous contractors and possible connivance between owners and contractors. As the Court of Appeals correctly ruled, the supplier's cause of action under this provision, reckoned from the time of judicial or extra-judicial demand, subsists so long as any amount remains owing from the owner to the contractor. Only full payment of the agreed contract price serves as a defense against the supplier's claim.<sup>[83]</sup> (Emphasis supplied)

Article 1729 talks of three (3) different parties: the owner, the contractor, and the supplier. In certain situations, the supplier may also be referred to as a subcontractor to provide materials or services. There are also situations where, as in this case, the subcontractor further subcontracts some materials and services to another subcontractor.

This sub-subcontractor would be considered the supplier of materials and services. In this case, the owner is Liquigaz, the contractor is petitioner, the subcontractor is Petrotech, and the supplier/sub-subcontractor is respondent Independent Testing Consultants.

Considering that the rationale behind the provision is to protect suppliers from possible connivance between the owners and the contractors, there would be no reason to apply the same rationale when it was the subcontractor that hired the supplier. The liability will extend from the owner to the contractor to the subcontractor.

Under Article 1729, respondent Independent Testing Consultants had a cause of action against Liquigaz and petitioner, even if its contract was only with Petrotech. The Regional Trial Court and the Court of Appeals, therefore, did not err in concluding that petitioner was solidarily liable with Liquigaz and Petrotech for unpaid fees to respondent Independent Testing Consultants.

Article 1729 creates a solidary liability between the owner, the contractor, and the subcontractor. A solidary obligation is "one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation." [84] Respondent Independent Testing Consultants may demand payment for all of its unpaid fees from Liquigaz, petitioner, or Petrotech, even if its contract was only with the latter.

However, Article 1729, while serving as an exception to the general rule on the privity of contracts, likewise provides for an exception to this exception. The contractor is solidarily liable with the owner and subcontractor for any liabilities against a supplier despite the absence of contract between the contractor and the supplier, except when the subcontractor has already been fully paid for its services.

Here, the Court of Appeals found that there was "uncontroverted evidence that PETROTECH had already been paid for its services:" [85]

MR. JOHN TATE, President of [petitioner] and former Managing Director of WHESSOE-UK, testified in open court affirming the existence of the Agreement (Exhibit "7" - Whessoe) between PETROTECH and WHESSOE-UK indicating the schedule of payment of the remaining balance in the amount of US\$283,436.42, as well as two (2) Barclays International Payments Service Customer Order Forms (Exhibits "8" and "9" - Whessoe) evidencing payment in the amounts of US\$125,000.00 and US\$158,436.42, respectively, that was coursed through the account of PETROTECH with China Banking Corporation in the Philippines. [86]

Since Whessoe UK and petitioner should be considered the same entity for the purposes of the Mariveles Terminal Expansion Project, Whessoe UK's full payment to Petrotech would serve as a valid defense against petitioner's solidary liability. Thus, petitioner still cannot be held solidarily liable with Liquigaz and Petrotech for any remaining receivables from respondent Independent Testing Consultants. Any remaining obligations to it should be solidarily borne by the owner, Liquigaz, and the subcontractor, Petrotech.

### III

While petitioner is absolved from its solidary liability, it is not, however, entitled to any moral damages.

Petitioner asserts that it was entitled to moral damages of P1,000,000.00 on the basis that respondent Independent Testing Consultants' collection suit "has tarnished its good business name and standing[.]" [87]

Moral damages are awarded when the claimant suffers "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury." [88] "These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered." [89] Its award is "aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted." [90]

A corporation is not a natural person. It is a creation of legal fiction and "has no feelings[,] no emotions, no senses[.]"[91] A corporation is incapable of fright, anxiety, shock, humiliation, and physical or mental suffering. "Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life[.]"[92] A corporation, not having a nervous system or a human body, does not experience physical suffering, mental anguish, embarrassment, or wounded feelings. Thus, a corporation cannot be awarded moral damages.

In the 1968 case of *Mambulao Lumber v. Philippine National Bank*,[93] this Court stated, in passing, "[a] corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages."[94]

This same statement has appeared in *People v. Manero*.<sup>[95]</sup> *Mambulao Lumber* and *Manero*, however, were not meant to be used as basis to carve an exception to the rule. There is still no definitive pronouncement by this Court of any existing exceptions to the rule. In *ABS-CBN Broadcasting Corporation v. Court of Appeals*,<sup>[96]</sup> this Court even clarified that the statement in *Mambulao Lumber* and *Manero* was mere obiter dictum.

There is no standing doctrine that corporations are, as a matter of right, entitled to moral damages. The existing rule is that moral damages are not awarded to a corporation since it is incapable of feelings or mental anguish. Exceptions, if any, only apply *pro hac vice*.

Even assuming that moral damages may be granted, no moral damages can be awarded in this case. Claims for moral damages must have sufficient factual basis, either in the evidence presented or in the factual findings of the lower courts.<sup>[97]</sup> Petitioner has not presented any evidence, other than its bare allegations, that it was entitled to its award.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The Court of Appeals April 28, 2011 Decision and December 7, 2011 Resolution in CA-G.R. CV No. 89300 are **AFFIRMED WITH MODIFICATION**.

Petitioner Noell Whessoe, Inc. is **ABSOLVED** from solidary liability with respondents Petrotech Systems, Inc. and Liquigaz Philippines Corporation to respondent Independent Testing Consultants, Inc. in view of its full payment to Petrotech Systems, Inc. Petitioner Noell Whessoe, Inc.'s claim for moral damages is **DENIED** for lack of factual basis.

All other previous dispositions by the Court of Appeals **STAND**.

### **SO ORDERED.**

Peralta (Chairperson) and Hernando, JJ., concur.  
Gesmundo and J. Reyes, Jr., JJ., on wellness leave.

---

[1] Noell Whessoe Philippines Construction, Inc. has changed its name to "Whessoe Philippines Construction, Inc." (See rollo, p. 541). However, this Decision will use "Noell Whessoe, Inc." to be consistent with how petitioner identifies itself in its Petition (see rollo, p. 12).

[2] Rollo, pp. 12-59.

[3] *Id.* at 60-73. The Decision was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Sixth Division, Court of Appeals, Manila.

[4] *Id.* at 74-75. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Former Sixth Division, Court of Appeals,

Manila.

[5] Id. at 61.

[6] Id.

[7] Id.

[8] Id. at 236-245.

[9] Id. at 238.

[10] Id. at 318-324.

[11] Id. at 321.

[12] Id. at 339.

[13] Id. at 340-342.

[14] Id. at 451-456.

[15] Id. at 452.

[16] Id. at 451.

[17] Id. at 453.

[18] Noell Whessoe's letter to Petrotech dated June 9, 1998 erroneously referred to Nick Stephenson as Mick Stephenson. See rollo, p. 331.

[19] Rollo, p. 326.

[20] Id. at 327.

[21] Id. at 808.

[22] Id. at 798-810. The Decision, docketed as Civil Case No. 67895, was penned by Pairing Judge Amelia A. Fabros of Branch 161, Regional Trial Court, City of Pasig.

[23] Id. at 809.

[24] Id. at 810.

[25] Id. at 811-814.

[26] Id. at 822-823.

[27] Id. at 60-73.

[28] Id. at 66-67.

[29] Id. at 67.

[30] Id. at 70.

[31] Id. at 71.

[32] Id. at 72.

[33] Id. at 74-75.

[34] Id. at 12-59. Respondent Liquigaz filed a Manifestation stating that since the Petition did not assert any claims against it, it would no longer be filing a comment. Respondent Petrotech's comment was dispensed with due to its failure to comply within the required period (rollo, p. 1031). Respondent Independent Testing Consultants filed its Comment (rollo, pp. 1015-1024) on March 29, 2012. Reply (rollo, pp. 1037-1045) was filed on November 19, 2013.

[35] Id. at 84-165.

[36] Id. at 166-170.

[37] Id. at 228-233.

[38] Id. at 33-38.

[39] Id. at 43-44.

[40] Id. at 46-47.

[41] Id. at 50.

[42] Id. at 1021.

[43] Id. at 1022.

[44] Id.

[45] RULES OF COURT, Rule 45, sec. 1 provides:

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[46] *Century Iron Works v. Bañas*, 511 Phil. 576, 584-585 (2013) [Per J. Brion, Second Division].

[47] RULES OF COURT, Rule 45, sec. 6.

[48] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[49] Id. at 232.

[50] Rollo, pp. 228-233.

[51] Id. at 331-332.

[52] 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[53] Id. at 184.

[54] Rollo, p. 32.

[55] *Alcantara v. Alinea*, 8 Phil. 111, 114 (1907) [Per J. Torres, En Banc].

[56] CIVIL CODE, art. 1311.

[57] CIVIL CODE, art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by

stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[58] Rollo, p. 321.

[59] Id. at 326.

[60] Id. at 84-165.

[61] Id. at 85.

[62] Id. at 166-170.

[63] Id. at 167.

[64] Id. at 223.

[65] Id. at 33.

[66] Id. at 541-551.

[67] Id. at 228-233.

[68] Id. at 229-230.

[69] Id. at 181-184.

[70] Id. at 185-193.

[71] Id. at 204-206.

[72] Id. at 210-211.

[73] Id. at 212.

[74] Id. at 213-219.

[75] Id. at 331-332.

[76] Id at 331-332.

[77] 561 Phil. 688 (2007) [Per J. Carpio, Second Division].

[78] Id. at 706-707.

[79] Id. at 109.

[80] Id. at 230.

[81] 541 Phil. 82 (2007) [Per J. Carpio, Second Division].

[82] CIVIL CODE, art. 1311 provides:

Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[83] *JL Investment and Development, Inc. v. Tendon Philippines, Inc.*, 541 Phil. 82, 91 (2007) [Per J. Carpio, Second Division], citing *Flores v. Ruelo*, No. 13905-R, September 29, 1955, 52 O.G. No. 2, 850; *Velasco v. Court of Appeals*, 184 Phil. 335 (1980) [Per J. Barredo, Second Division]; and *V. A. Tolentino*, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 295 (1992 ed.).

[84] *Inciong v. Court of Appeals*, 327 Phil. 364, 372 (1996) [Per J. Romero, Second Division], citing 4 *TOLENTINO, CIVIL CODE OF THE PHILIPPINES* 217 (1991 ed.)

[85] *Rollo*, p. 61.

[86] *Id.*

[87] *Id.* at 50.

[88] *CIVIL CODE*, art. 2217.

[89] *Del Mundo v. Court of Appeals*, 310 Phil. 367, 376 (1995) [Per J. Vitug, Third Division], citing *San Miguel Brewery, Inc. v. Magno*, 128 Phil. 328 (1967) [Per J. Angeles, En Banc]; *Agustin v. Court of Appeals*, 264 Phil. 744 (1990) [Per J. Regalado, Second Division]; *Abrogar v. Intermediate Appellate Court*, 241 Phil. 69 (1988) [Per J. Sarmiento, Second Division]; *Buan v. Camaganacan*, 123 Phil. 131 (1966) [Per J. J.B.L. Reyes, En Banc]; *Guita v. Court of Appeals*, 224 Phil. 123 (1985) [Per J. Plana, First Division]; and *Guilatco v. City of Dagupan*, 253 Phil. 377 (1989) [Per J. Sarmiento, Second Division].

[90] *Lambert v. Heirs of Castillon*, 492 Phil. 384, 395 (2005) [Per J. Ynares-Santiago, First Division], citing *CESAR SANGCO, TORTS AND DAMAGES* 986 (1994 ed.).

[91] *LBC Express v. Court of Appeals*, 306 Phil. 624, 628 (1994) [Per J. Puno, Second Division].

[92] *Id.* at 628, citing *Tamayo v. University of Negros Occidental*, 58 OG No. 37, p. 6032, September 10, 1962.

[93] 130 Phil. 366 (1968) [Per J. Angeles, En Banc].

[94] *Id.* at 391.

[95] 291-A Phil. 93 (1993) [Per J. Bellosillo, First Division].

[96] 361 Phil. 499 (1999) [Per J. Davide, Jr., First Division].

[97] *Kierulf v. Court of Appeals*, 336 Phil. 414, 426 (1997) [Per J. Panganiban, Third Division].

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.