Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ANGEL V. TALAMPAS, JR.,
Petitioner,

- versus -

MOLDEX REALTY, INC.,
Respondent.

G.R. No. 170134

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, and
JARDELEZA,* *JJ.*

Promulgated:

17 JUN 2015

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the June 27, 2005 decision[2] and October 21, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 64715. The CA dismissed, for lack of cause of action, the complaint[4] for breach of contract and damages filed by Angel V. Talampas, Jr. (*petitioner*) against Moldex Realty, Inc. (*respondent*).

The Facts

The petitioner is the owner and general manager of Angel V. Talampas, Jr. Construction (*AVTJ Construction*), a business engaged in general engineering and building.[5]

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* Designated as Acting Member of the Second Division in lieu of Justice Marvic M.V.F. Leonen, per Special Order No. 2056 dated June 10, 2015.

1 Under Rule 45 of the Rules of Court.

2 *Rollo,* pp. 42-64; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr.

3 Id. at 66.

4 Docketed as Civil Case No. Q-93-18183 before the Regional Trial Court (*RTC*), Branch 96, Quezon City.

5 Id. at 68.

On December 16, 1992, the petitioner entered into a contract[6] with the respondent to develop a residential subdivision on a land owned by the latter, located at Km. 41, Aguinaldo Highway, Cavite, and known as the *Metrogate Silang Estates*.

The petitioner undertook to perform roadworks, earthworks and site-grading,[7] and to procure materials, labor, equipment, tools and facilities,[8] for the contract price of ₱10,500,000.00,[9] to be paid by the respondent through progress billings. The respondent made an initial down payment of ₱500,000.00 at the start of the contract.[10]

Construction works on the Metrogate project started on January 14, 1993[11] and was projected to be completed by the petitioner within three hundred (300) calendar days from this starting date.[12]

On May 14, 1993, Metrogate's Project Manager, Engr. Honorio 'Boidi' Almeida, asked the petitioner to suspend construction work on the site for one week due to a change in the project's subdivision plan.[13] The suspension lasted for more than one week, leaving the petitioner's personnel and equipment idle at the site for three weeks. In a letter[14] dated June 1, 1993, the petitioner inquired from Engr. Almeida whether the respondent would still push through with the project.

On June 16, 1993, the petitioner received from the respondent's Vice President, Engr. Jose Po, an antedated April 23, 1993 letter[15] that contained the respondent's decision to terminate the parties' contract. The April 23, 1993 letter stated:

> Gentlemen:
>
> This has reference to our site development contract for METROGATE SILANG ESTATES dated 16 December 1992.
>
> Please be informed that we have decided to suspend implementation of the site development works for the subject project. Consequently, **we are constrained to cause the termination of the abovecited contract effective immediately.**
>
> We wish to stress that this development is mainly due to a business decision. Please rest assured that you shall remain to be a partner in our endeavors and that once we finally decide to resume development works, you will be duly notified. (emphasis supplied)

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6 Denominated as "Contract for Site Development Works at Metrogate Silang Estates."
7 Paragraph 1, Contract.
8 Paragraph 2, Contract.
9 Paragraph 3, Contract.
10 Paragraph 4, Contract.
11 *Rollo,* p. 43.
12 Paragraph 6, Contract.
13 *Rollo,* p. 48.
14 Exhibit E for the Plaintiff, RTC records.
15 Exhibit G for the Plaintiff, RTC records.

The letter bore the signature of Engr. Almeida and gave the petitioner the 'go signal' to demobilize his equipment from the site.[16]

In a letter[17] dated August 18, 1993, the petitioner demanded from the respondent the payment of the following amounts: (a) **₱1,485,000.00** as equipment rentals incurred from May 14, 1993 to June 16, 1993 □ the period of suspension of construction works on the Metrogate project, and (b) **₱2,100,000.00** or twenty percent (20%) of the ₱10,500,000.00 contract price as cost of opportunity lost due to the respondent's early termination of their contract. The respondent received the letter on August 18, 1993,[18] but refused to heed the petitioner's demands.

On November 5, 1993, the petitioner filed a **complaint for breach of contract and damages** against the respondent before the RTC. He alleged that the respondent committed the following acts: (1) breach of contract for *unilaterally terminating* their agreement, and (2) *fraud* for failing to disclose the Metrogate project's lack of a conversion clearance certificate from the Department of Agrarian Reform (*DAR*), which he claimed to be the real reason why the respondent terminated their contract.

In a decision[19] dated September 9, 1999, the RTC found the respondent liable for *breach of contract* because the respondent's reason for termination, *i.e.*, "project redesign," was not a stipulated ground for the unilateral termination under the parties' contract.[20] The RTC further found the respondent liable for *fraud* for failing to disclose to the petitioner the lack of a conversion clearance certificate for the Metrogate subdivision. The RTC considered the conversion clearance to be a material consideration for the petitioner in entering the contract with the respondent.[21]

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16 Exhibits G-1 and G-2 for the Plaintiff, RTC records.

17 Exhibit I for the Plaintiff, RTC records.

18 Exhibit I-2 for the Plaintiff, RTC records.

19 Penned by Judge Lucas P. Bersamin (now Associate Justice of the Supreme Court); *rollo,* pp. 68-84.

20 Paragraph 8.1 of the subject contract provides:

> 8.1 The OWNER may terminate this CONTRACT upon ten (10) days written notice to the CONTRACTOR in the event of any default by the CONTRACTOR. It shall be considered a default by the CONTRACTOR whenever he shall:
> a) declare bankruptcy, become insolvent, dissolve the corporation, or assign its assets for the benefit of his creditors;
> b) disregard, violate or not comply with important provisions of the Plans and Specifications or the OWNER's instructions, or incur a delay of more than fifteen percent (15%) in the prosecution of the work as evaluated against the work schedule to be submitted by the CONTRACTOR; or
> c) fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Plans and Specifications.
>
> x x x x

21 In finding fraud, the RTC held:

> "As the owner/developer of the Silang project, the defendant (*referring to the respondent*) was fully aware of the requirement for a conversion clearance from the DAR on account of the land being tenanted and was obliged to satisfy the requirement prior to starting the works on the project, or, if the clearance was not yet obtained, to reveal its lack before contracting with the plaintiff (*referring to the petitioner*). It cannot be denied that the conversion clearance was a material consideration for the contractor in land development. Yet, the defendant did not disclose that lack to him *during* the negotiations

Consequently, the RTC ordered the respondent to pay: (a) ₱1,485,000.00 as unpaid construction equipment rentals from May 14, 1993 to June 16, 1993; (b) ₱2,100,000.00 as unrealized profits; (c) ₱300,000.00 as moral damages; (d) ₱150,000.00 as exemplary damages; (e) attorney's fees equivalent to ten percent (10%) of the sum total of items (*a*) and (*b*); and (f) double costs of suit.[22]

On appeal, the CA reversed and set aside the RTC's ruling and dismissed the petitioner's complaint for breach of contract for lack of cause of action.[23] The CA held:

> The pieces of evidence presented and offered by the plaintiff-appellee do not clearly prove that the subject contract was unilaterally terminated by the defendant-appellant. While the trial court cited the letter of defendant-appellant dated April 23, 1993 as an evidence of unilateral rescission, said court however, failed to consider the letter of the plaintiff-appellee dated June 15, 1993, showing that he agreed to terminate the contract. Thus:
>
> **June 15, 1993.**
>
> **ENGR. JOSE PO**
> **Vice-President**
> **Moldex Realty, Inc.**
> **West Avenue, Q.C.**
>
> **Subject: Earthwork and Preparation**
> **Moldex Silang Estates**
> **Silang, Cavite**
>
> **Sir:**
>
> **Please be informed that as of this writing, we have not received your official letter regarding the untimely termination of our contract with you, due to reason that stoppage of work is due to business decision.**
>
> **In order for us to demobilize our personnel, construction equipments (sic), we need your official letter of termination (sic) soonest possible time.**
>
> **Thank you.**
>
> **Very truly yours,**
>
> **ANGEL V. TALAMPAS, JR.**
> **General Manager**

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and *at the time of* the conclusion of the contract. More probably than not, this failure to reveal was deliberate, with the defendant hoping to resolve the deficit before the plaintiff's completion of his contract. The defendant's concealment unavoidably caused serious prejudice to the plaintiff, for, in the first place, he would not have entered into the contract had he known of the lack of clearance before. Thereby, the defendant was guilty of fraud, because its failure to disclose facts when there is a duty to reveal them constitute fraud."[21]

22 *Rollo,* p. 84.

23 *Supra* note 2; Decision dated June 27, 2005.

> This letter of June 15, 1993 of Angel Talampas, Jr. to Engr. Jose Po, Sr., Vice-President of Moldex Realty, Inc., confirms that previous to said date or specifically on May 21, 1993, Engr. Jose Po, Sr. met with Jose Angel Talampas, the Project Manager of the plaintiff-appellee, to discuss the possibility of either suspending or terminating the contract due to a redesign of the project necessitated by the acquisition of a larger tract of land adjacent to the original project. Engr. Talampas opted for the termination of the contract instead of its suspension.
>
> This letter was never considered by the *court a quo.*[24] (emphasis supplied)

The CA, likewise, dismissed the petitioner's allegation of fraud, under the following reasoning:

> The alleged lack of conversion clearance does not in itself amount to fraud. While the duty to seek conversion clearance from DAR is an obligation of the defendant-appellant, failure to obtain the same at the time of the execution of the contract would not convincingly show that the plaintiff-appellee was defrauded. The omission to obtain conversion clearance could be in good faith since the records show that it was eventually obtained. Fraud must be established by clear and convincing evidence. Mere preponderance of evidence is not enough. Besides, it cannot be said by the plaintiff-appellee that the alleged lack of conversion clearance was concealed by defendant-appellant from plaintiff-appellee. Plaintiff-appellee had every opportunity to verify this before submitting his bid. Plaintiff-appellee must sufficiently connect that such lack of conversion clearance was the real reason for the termination of the contract. Sadly, the records fail to show that he adequately established that the failure of the defendant-appellant to seek conversion clearance of the subject property was the real reason for the termination of the contract. On the contrary, the June 15, 1993 letter of Angel V. Talampas admits that the reason for the termination was "due to business decision."[25]

The petitioner moved to reconsider the CA's decision, but the CA denied his motion in a resolution[26] dated October 21, 2005. The denial opened the way for the filing of the present petition for review on *certiorari* with this Court.

The Petition

The petitioner raised the following issues:

> 1. Whether, *as found by the trial court*, the subject development contract was unilaterally abrogated by respondent without justifiable cause, or whether, *as opined by the Court of Appeals*, the contract termination was upon the mutual agreement of the parties.
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> 2. Whether, *as found by the trial court*, the lack of DAR conversion clearance which was not disclosed to the petitioner prior to the bidding and execution of the subject contract, was the true reason of the

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24 *Rollo,* pp. 53-55.
25 Id. at 56
26 *Supra* note 3.

respondent in ordering stoppage of work and in eventually terminating the subject contract, or whether, *as opined by the Court of Appeals*, the reason for the contract termination was "due to business decision" of the respondent.

3. Whether or not it was respondent's responsibility prior to the bidding or execution of the contract, to disclose to the petitioner, the lack of conversion clearance certificate from DAR and/or its agrarian problem; and if in the affirmative, whether such non-disclosure constitutes bad faith or fraud on the part of respondent.

4. Whether, *as concluded by the trial court*, the subject development contract was an integrated whole, not divisible contract, or whether, *as opined by the Court of Appeals*, subject contract is a divisible contract.

5. Whether or not petitioner is entitled to the damages awarded to him by the trial court for breach of contract by respondent.[27]

In a resolution[28] dated June 28, 2006, this Court gave due course to the petition and required the parties to submit their respective memoranda.

The Case for the Respondent

The respondent argues that the petitioner is no longer entitled to the payment of the amounts he demanded because he had already agreed/consented to terminate their contract;[29] that, in a meeting held on May 21, 1993, the petitioner's son, Engr. Jose Angel Talampas, the Project Manager and Vice-President of AVTJ Construction, agreed, even opted, to terminate their contract.[30] The respondent posits that the petitioner's consent is confirmed by his request for an official letter of termination from the respondent, as the petitioner would not have requested for such letter had he not earlier agreed/consented to the termination.[31]

Moreover, the respondent argues that the petitioner is estopped to claim further damages, as he had already been paid the amounts of: (a) **₱297,090.43** representing the contractor's unpaid actual work accomplishment at the time of termination (paid on August 13, 1993); (b) **₱109,551.00** representing unrecouped costs of equipment mobilization and demobilization, and unrecouped payment of insurance bond (paid on September 14, 1993); and (c) **₱209,606.56** representing the release of all retention fees.[32] The respondent contends that the petitioner, by accepting these payments, ratified, if not consented to, the termination of their contract.[33]

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27 *Rollo*, pp. 17-18.
28 Id. at 166-167.
29 Id. at 229-232.
30 Id. at 225-226.
31 Id. at 230-231.
32 Id. at 226-227.
33 Id. at 234.

The respondent strongly denies the petitioner's allegation of fraud and maintains that the real reason for the termination of their contract was the redesign of the *Metrogate Silang Estates* project, not the project's lack of conversion clearance from the DAR.[34]

The Court's Ruling

The petitioner's issues are largely factual in nature and are therefore not the proper subjects of a Rule 45 petition.[35] Specifically, the determination of the existence of a breach of contract is a factual matter that we do not review in a Rule 45 petition.[36] But due to the *conflicts in the factual findings* of the RTC and the CA, we see the need to re-examine the facts and the parties' evidence to fully resolve their present dispute.[37]

In an April 23, 1993 letter[38] addressed to the petitioner, the respondent declared that it was "constrained to cause the termination of the parties' contract effective immediately" due to a "business decision," but the termination was not immediately implemented.

On May 14, 1993, the respondent, through Engr. Almeida, ordered the suspension of construction work on the site, instead of terminating the project in accordance with the respondent's instructions in its (belatedly received) April 23, 1993 letter to the petitioner.

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34 *Rollo,* pp. 232-233.

35 Section 1, Rule 45 of the Rules of Court 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 xxx, 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.** (emphasis supplied)

36 *Omengan v. Philippine National Bank*, G.R. No. 161319, January 23, 2007, 512 SCRA 305, 309.

37 In *Development Bank of the Philippines v. Traders Royal Bank* (G.R. No. 171982, August 18, 2010, 628 SCRA 404), the Court held:

> "The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is 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 in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7**) when the findings are contrary to that of the trial court;** (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion." (emphasis supplied)

38 *Supra* note 15.

The respondent alleged that, on May 21, 1993, its Vice-President Engr. Po and Engr. Talampas of AVTJ Construction met to discuss the possible termination of their contract or the suspension of construction works on the Metrogate project. In this meeting, Engr. Talampas chose to terminate their contract.

On June 1, 1993, the petitioner wrote Engr. Almeida to ask for the confirmation of the Metrogate project's status.

On June 10, 1993, the petitioner received from the respondent the amount of ₱474,679.28 as payment for Progress Billing No. 3[39] (which billing the petitioner requested in a letter[40] to the respondent dated May 31, 1993).

On June 15, 1993, the petitioner wrote Engr. Po, informing the latter that he had not yet received from the respondent the letter officially terminating their contract.

On June 16, 1993, the petitioner received from the respondent a letter dated April 23, 1993, expressing the respondent's decision to terminate the parties' contract. The petitioner alleged that it was only then (June 16, 1993) that he was formally informed of the respondent's decision to terminate their contract.

On August 13, 1993, the petitioner received from the respondent the amount of ₱297,090.43 as payment for earthworks and road base preparations done on the Metrogate subdivision as of July 12, 1993 (Progress Billing No. 4).[41]

On August 18, 1993, the petitioner sent a demand letter to the respondent for the payment of ₱1,485,000.00 for unpaid construction equipment rentals from May 14, 1993 to June 16, 1993, and ₱2,100,000.00 as unrealized profits, among others.

Meanwhile, the petitioner received from the respondent the amount of ₱209,606.56 for the release of all "retention fees"[42] withheld by the respondent from the petitioner's billings.[43]

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39 Exhibit 9-b for the Defendant, RTC records.

40 Exhibit 7 for the Defendant, RTC records.

41 Exhibits 9-c and 14 for the Defendant, RTC records.

42 Retention fee is the amount retained by the owner "when[ever] the contractor bills for his accomplishment [and] xxx is a percentage of his accomplishment that the owner keeps so that the owner can be protected from whatever damages incurred during the prosecution of the contract. (TSN , July 17, 1997, pp. 22-32)"

43 Exhibit 9-e for the Defendant indicates that the release of all retention fees was paid to the petitioner on August 27, 1993. The respondent, in its memorandum to this Court, states that said amount was paid to the petitioner on September 26, 1993. In any case, the payment for the release of all retention fees was made to the petitioner between August 18, 1993, the date of the petitioner's formal demand, and November 5, 1993, the date the petitioner filed the complaint for breach of contract with the RTC.

On November 5, 1993, the petitioner filed a complaint for breach of contract against the respondent. This is the root-complaint of the present case.

The parties' contract is the law between them and must be complied with in good faith.

Contracts have the force of law between the parties and must be complied with in good faith.[44] A contracting party's failure, without legal reason, to comply with contract stipulations breaches their contract and can be the basis for the award of damages to the other contracting party.[45]

In the present case, **we find that the respondent failed to comply with its contractual stipulations on the unilateral termination when it terminated their contract due to the redesign of the *Metrogate Silang Estates'* subdivision plan**.

Paragraph 8 of the parties' contract limits the instances when the respondent (referred to as *owner* in the contract) or the petitioner (referred to as *contractor* in the contract) may unilaterally terminate their agreement. On the part of the owner, paragraph 8.1 of the contract specifically provides:

> 8.1. The OWNER may terminate this CONTRACT upon ten (10) days written notice to the CONTRACTOR in the event of any default by the CONTRACTOR. It shall be considered a default by the CONTRACTOR whenever he shall:
>
> a) declare bankruptcy, become insolvent, dissolve the corporation, or assign its assets for the benefit of his creditors;
>
> b) disregard, violate or not comply with important provisions of the Plans and Specifications or the OWNER's instructions, or incur a delay of more than fifteen percent (15%) in the prosecution of the work as evaluated against the work schedule to be submitted by the CONTRACTOR; or

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[44] *Panlilio v. Citibank, N.A.*, G.R. No. 156335, November 28, 2007, 539 SCRA 69, 82-83; citing CIVIL CODE, Art. 1159.

[45] In *RCPI v. Verchez, et al.,* G.R. No. 164349, January 31, 2006, (citing *FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation,* 435 Phil. 333, 341-342 (2002), the Court held:

> "In *culpa contractual* x x x the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. **A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered.** xxx" (emphasis supplied).

> c) fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Plans and Specifications.
>
> x x x x

The respondent could not have validly and unilaterally terminated its contract with the petitioner, as the latter has not committed any of the stipulated acts of default. In fact, the petitioner at that time was willing and able to perform his obligations under their contract; he expressed this in his June 1, 1993 letter to the respondent, which stated:

> Dear Sir:
>
> Please be advised that as per last meeting, you made mention that works at Silang Estates, Cavite will be temporarily stopped for reason/reasons of redesigning of the subdivision plan. Stoppage will only be for one week and that we will be informed in writing of your decision. It has been three weeks now, going a month that we have not received your decision on the matter. Meantime, our timetable for the completion of the work is hampered, considering also the good weather condition prevailing in the area which is also a big factor for our early completion of our contract with you.
>
> Kindly inform us in writing regarding this matter, so that we can act accordingly.[46]

Thus, the respondent's termination of the subject contract violated the parties' agreement as the reason for the termination, *i.e.*, the redesign of the project's subdivision plan, was not a stipulated cause for the unilateral termination under Paragraph 8.1 of their contract.

The respondent failed to prove the petitioner's consent, express or implied, to the termination of the subject contract.

The respondent alleged that there had been mutual termination of the parties' contract during a meeting held between Engr. Po of Moldex Realty Inc. and Engr. Talampas of AVTJ Construction on May 21, 1993. However, this claim is not supported by evidence.

In the first place, the respondent failed to fully establish that a meeting took place as alleged. Except for the self-serving testimony of Engr. Po that the May 21, 1993 meeting took place, the respondent presented no other evidence to prove that Engr. Po and Engr. Talampas met on that date to discuss the fate of their contract. No document or record the minutes of their May 21, 1993 meeting appeared to have been made despite the importance of their alleged discussion. The questions that this evidentiary gap raised cannot but be resolved against the respondent.

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46 *Supra* note 14.

Even assuming that the May 21, 1993 meeting between Engr. Po and Engr. Talampas did indeed take place, we cannot discern from the developments the petitioner's claimed agreement or consent to the termination of the construction contract.

The respondent contended that the petitioner's request for an official letter of termination was proof that the latter consented to the termination of their contract. We disagree with this view. The request for an official letter of termination does not necessarily mean consent to the termination; by itself, the request for an official letter of termination does not really signify an agreement; it was nothing more than a request for a final decision from the respondent.

A close reading of petitioner's June 15, 1993 letter shows that the petitioner's intent was solely to confirm whether the respondent would still push through with its decision to terminate the contract. The petitioner's June 15, 1993 letter to the respondent stated:

> Sir:
>
> Please be informed that as of this writing, we have not received your official letter regarding the untimely termination of our contract with you, due to reason that stoppage of work is due to business decision.
>
> In order for us to demobilize our personnel, construction equipments, we need your official letter of termination soonest possible time.
>
> Thank you.

To our mind, the petitioner fully disclosed the intent behind his letter and it was not consent. Thus, we find it erroneous to conclude, based on this letter, that the petitioner had consented to the termination of the construction contract.

The respondent also contended that the petitioner ratified the termination of their contract by accepting payments for progress billings, costs of equipment mobilization/demobilization, refund of insurance bond payments, and the release of retention fees. However, we do not see the petitioner's receipt of these payments to be acts of ratification or consent to the contract's termination.

Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[47] The offer must be certain, and the acceptance, whether express or implied, must be absolute.[48] An acceptance is considered absolute and unqualified when it is

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47 Article 1319, Civil Code.

48 Articles 1319 and 1320, Civil Code.

identical in all respects with that of the offer so as to produce consent or a meeting of the minds.[49]

W**e find no such meeting of the minds between the parties on the matter of termination because the petitioner's acceptance of the respondent's offer to terminate was not absolute.**

To terminate their contract, the respondent offered to pay the petitioner billings for accomplished works, unrecouped costs of equipment mobilization and demobilization, unrecouped payment of insurance bond, and the release of all retention fees — payments that the petitioner accepted or received.

But despite receipt of payments, no absolute acceptance of the respondent's offer took place because the petitioner still demanded the payment of equipment rentals, cost of opportunity lost, among others. In fact, the payments received were for finished or delivered works and for expenses incurred for the respondent's account. By making the additional demands, the petitioner effectively made a qualified acceptance or a counter-offer,[50] which the respondent did not accept. Under these circumstances, we see no full consent.

The petitioner is entitled to the payment of:
(a) equipment rentals during the period of work suspension, and
(b) cost of opportunity lost.

A. <u>On equipment rentals incurred during the suspension of construction works</u>

The respondent does not deny that the petitioner's equipment was idled from May 14, 1993 to June 16, 1993, but refused to pay the petitioner equipment rentals because the idling was allegedly due to the petitioner's fault; the respondent posits that the petitioner should have demobilized his equipment as soon as the latter gave his consent to terminate their contract. Also, it questioned the petitioner's use of ACEL[51] rates in the computation of the accrued rent.

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[49] *Traders Royal Bank v. Cuison Lumber Co., Inc.,* G.R. No. 174286, June 5, 2009, 588 SCRA 690, 701, 703.

[50] In *Manila Metal Container Corporation v. Philippine National Bank,* G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465-466, the Court ruled:

> A qualified acceptance or one that involves a new proposal constitutes a counter-offer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis. Consequently, **when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer.** The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds. (emphasis supplied).

[51] The Associated Construction Equipment Lessors, Inc. (ACEL) introduced the system of equipment leasing which is accepted as the best possible alternative to acquiring heavy equipment for immediate use, where outright purchase may not be possible because of the huge capital outlay involved.

The petitioner cannot be faulted for the idling of his equipment on the project site. First and foremost, the order to suspend the construction work on May 14, 1993 came from the respondent. Second, the suspension of construction works was supposedly temporary; thus, the petitioner's equipment were placed on standby at the site. Third, it was only on June 16, 1993, that the respondent gave the final word and formal authority for the demobilization of the petitioner's equipment.

Hence, even assuming that the petitioner had earlier given his consent, such consent was for the suspension of the contract, not for its termination. The petitioner could not have properly demobilized his equipment earlier than June 16, 1993 without an official and definite letter of termination from the respondent.

The petitioner undeniably lost expected profits when he placed the rented equipment on idle since progress billings under the contract were to be paid by the respondent based on the petitioner's actual work accomplished. Due to the uncertainty of the end date of the suspension (initially represented to be only for one week but which lasted for three weeks), the petitioner was compelled to keep his personnel and his rented equipment on standby at the site, and was prevented from renting out his own equipment to others.

Under these facts, the petitioner should be entitled to the payment of the rent for his equipment amounting to ₱1,485,000.00, incurred from May 14, 1993 to June 16, 1993.

We uphold the amount of rent arrived at by the petitioner as the use of prevailing ACEL rates in the computation of the rent was reasonable based on industry standards.

B. On cost of opportunity lost

Article 2200 of the Civil Code provides that indemnification for damages shall include, not only the value of the loss suffered, **but also the profits that the obligee failed to obtain.** On this basis, we find the petitioner entitled to the payment for the opportunity lost because of the respondent's unilateral termination of the parties' contract.

Significantly, the respondent itself impliedly accepted this legal consequence by contending that the cost of opportunity lost should not be based on the total contract price of ₱10,500,000.00 as the petitioner had already been compensated for a part of the construction work done.

We find merit in the respondent's contention that the basis of the cost of opportunity lost should not be the total contract price, as the 'cost of

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ACEL aimed for the standardization of rental rates covering all ACEL members who have the same equipment. See http://www.acel.com.ph/Page.aspx?id=71&pid=54, last accessed May 4, 2015.

opportunity lost' must represent only the profits that the petitioner failed to obtain due to the contract's early termination. Thus, from the total contract price, the amounts paid to the petitioner for work accomplished must be subtracted, including the ₱500,000.00 down payment that the respondent gave at the start of the contract; the difference would be the basis for determining the cost of opportunity lost.

On record, the petitioner received the following amounts for work accomplished: (a) ₱292,682.90, paid by the respondent on March 10, 1993; (b) ₱319,922.32, paid on May 14, 1993; (c) ₱474,679.28, paid on June 10, 1993; and (d) ₱297,090.43, paid on August 13, 1993. By subtracting these amounts and the ₱500,000.00 down payment from the total contract price of ₱10,500,000.00, we arrive at the amount of ₱8,615,625.07, which represents the petitioner's unrealized gross earnings from the contract.

The twenty percent (20%) rate of cost of opportunity lost is, to our mind, reasonable under the circumstances, considering that one hundred fifty (150) days had lapsed (out of the three hundred (300) days-completion period under the contract) at the time the petitioner received the respondent's letter confirming the termination of their contract on June 16, 1993.

In these lights, we award the petitioner the amount of ₱1,723,125.01 (equivalent of 20% of ₱8,615,625.07) **as cost of opportunity lost.**

Awards of moral and exemplary damages, and attorney's fees are unwarranted due to the absence of fraud and bad faith on the part of the respondent.

The petitioner alleges that the respondent deliberately failed to inform him of the Metrogate project's lack of a conversion clearance from the DAR, and that the non-disclosure of this fact amounted to fraud: he would not have contracted with the respondent had he known beforehand of the project's lack of a conversion clearance.

The petitioner presented evidence to confirm that the respondent actually failed to secure a conversion clearance before it entered into a contract with the petitioner for the development of the *Metrogate Silang Estates*. However, nothing in the evidence showed that the respondent was under any legal or contractual obligation to disclose the project's conversion clearance status to the petitioner, or that the presence of a conversion clearance was a consideration for the petitioner's entry into the contract with the respondent.

Article 1339 of the Civil Code provides that "failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud." Otherwise stated, the innocent

non-disclosure of facts, when no duty to reveal them exists, does not amount to fraud.

We cannot award moral and exemplary damages to the petitioner in the absence of fraud on the respondent's part. To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.[52] In the same manner, to warrant the award of exemplary damages, the wrongful act must be accompanied by bad faith, such as when the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[53]

We cannot also award attorney's fees to the petitioner. Attorney's fees are not awarded every time a party wins a suit.[54] Attorney's fees cannot be awarded even if a claimant is compelled to litigate or *to incur expenses to protect his rights* due to the defendant's act or omission,[55] where no sufficient showing of bad faith exists; a party's persistence based solely on its erroneous conviction of the righteousness of his cause, does not necessarily amount to bad faith.[56] In the present case, the respondent was not shown to have acted in bad faith in appealing and zealously pursuing its case. Under the circumstances, it was merely protecting its interests.

WHEREFORE, premises considered, we **GRANT** the appeal and **REVERSE** and **SET ASIDE** the decision dated June 27, 2005, and resolution dated October 21, 2005, of the Court of Appeals in CA-G.R. CV No. 64715.

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52 *Magat v. Court of Appeals*, G.R. No. 124221, August 4, 2000; *Far East Bank & Trust Company v. Court of Appeals*, 311 Phil. 783 (1995).

53 *Cervantes v. Court of Appeals*, 304 SCRA 25, 33 (1999).

54 *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 529 (1999).

55 Article 2208 of the Civil Code provides:

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

(1) When exemplary damages are awarded;
(2) **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;**
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, labourers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. (emphasis supplied)

56 See note 54, citing *Gonzales v. National Housing Corp.*, 92 SCRA 786, 792 (1979); *Servicewide Specialists, Inc. v. Court of Appeals*, 256 SCRA 649 (1996).

Accordingly, we **ORDER** the respondent to pay the petitioner the following amounts of: (a) **₱1,485,000.00,** for the rent of petitioner's equipment from May 14, 1993 to June 16, 1993, and (b) **₱1,723,125.01,** as cost of opportunity lost. The sum of these amounts shall earn legal interest of six percent (6%) per annum from the finality of this Decision until full payment.

No pronouncement as to costs.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice