Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CHANELAY DEVELOPMENT CORPORATION, *Petitioner,*	**G.R. No. 210423**
-versus-	
GOVERNMENT SERVICE INSURANCE SYSTEM, *Respondent.*	
x----------x	**G.R. No. 210539**
GOVERNMENT SERVICE INSURANCE SYSTEM, *Petitioner,*	Members:
-versus-	PERLAS-BERNABE, *S.A.J.*, *Chairperson,* LAZARO-JAVIER, LOPEZ, M., ROSARIO, and LOPEZ, J.,* *JJ.*
CHANELAY DEVELOPMENT CORPORATION, *Respondent.*	Promulgated: JUL 05 2021

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D E C I S I O N

LAZARO-JAVIER, *J.*:

The Cases

In **G.R. No. 210423**, Chanelay Development Corporation (CDC) assails the following dispositions of the Court of Appeals in CA-G.R. CV No. 92142 entitled "*Chanelay Development Corporation v. Government Service*

* Designated additional member per Special Order No. 2822 dated 7 April 2021.

Insurance System, Goldesc (Property &) Development Corporation & Equipment Technical Services:"

1. **Decision**[1] **dated October 23, 2012** affirming with modification the ruling of the trial court which, *inter alia*, upheld the termination of the Joint Venture Agreement (JVA) between CDC and the Government Service Insurance System (GSIS); and

2. **Resolution**[2] **dated December 2, 2013**, denying both parties' motions for partial reconsideration.

In **G.R. No. 210539**, GSIS assails the same dispositions insofar as the Court of Appeals deleted the award of ₱180,300,000.00 in its favor.[3]

Antecedents

GSIS was the owner of Kanlaon Tower II (now Chanelay Towers) situated at Roxas Blvd., Pasay City. It invited interested parties to submit proposals for the property's renovation, improvement and eventual sale of its 108 unsold units. After public bidding and evaluation of proposals, GSIS awarded the contract to CDC. Thus, on June 16, 1995, GSIS entered into a JVA with CDC. Under the JVA, CDC shall renovate the building and sell the unsold units at its own expense. Under paragraph 4.02 of the JVA, CDC would pay ₱180,300,000.00 to GSIS regardless of actual sales receipt, plus 71% of the proceeds in the sale of units in the building.

Renovations began in late 1995. Though not covered by the JVA, CDC caused the construction of 21 additional units on the ground, 10th and 11th floors, and reapportioned 50 parking slots at the basement parking. These additional improvements were titled in CDC's name. CDC completed its renovation and started marketing the condominium units in early 1997.

Meanwhile, CDC requested extension on its payment of ₱180,300,000.00 under paragraph 4.02 of the JVA[4] due to the ongoing renovations of Chanelay Towers. GSIS granted several extensions but CDC nevertheless failed to remit any payment. Thus, GSIS sent two demand letters reminding CDC of its obligation. Thereafter, through letter dated November 9, 1998, GSIS terminated the JVA in accordance with paragraph 7.01 thereof.

The termination of the JVA prompted CDC to file a complaint before the Regional Trial Court-Branch 231, Pasay City against GSIS for reformation of contract, injunction, and damages. It claimed that the parties' intention was to pursue a regular business in the form of a partnership. It sought to delete the guaranteed payment clause under Article 4.02 of the JVA, and compel

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez, concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz; G.R. No. 210423, *rollo*, pp. 73-104.
[2] *Id.* at 112-115.
[3] G.R. No. 210539, *rollo*, pp. 19-26.
[4] G.R. No. 210423, *rollo*, p. 120.

GSIS to accept units in Chanelay Towers as full satisfaction of its 71% share in profits.

In its answer, GSIS countered that the terms of the JVA were clear and unequivocal. Despite their agreement, however, CDC did not report any sale nor remit its share in the profits. More, CDC unlawfully constructed additional units, reapportioned parking lots in its name, and rented out several units, all without its prior consent.

By way of counterclaim, it prayed that the trial court nullify CDC's certificates of titles over the building's units and parking spaces, as well as the contracts to sell or memorandum of agreements and lease contracts which CDC entered into with third parties. It also sought payment of actual and exemplary damages and attorney's fees.

During the proceedings, the trial court allowed the intervention of Goldesc Property & Development Corporation (Goldesc) and Equipment Technical Services (ETS), both unit holders in Chanelay Towers.

Decision of the Regional Trial Court

By Decision[5] dated June 24, 2008, trial court dismissed the complaint, *viz.*:

> WHEREFORE, all the foregoing considered, judgment is hereby rendered as follows:
>
> 1. Dismissing the instant complaint for reformation of contract and damages filed by Chanelay Development Corporation against Government Service Insurance System for lack of cause of action;
>
> 2. Declaring the cancellation of the Joint Venture Agreement by Government Service Insurance System valid.
>
> 3. Ordering Chanelay Development Corporation to pay Government Service Insurance System the guaranteed payment of One Hundred Eighty Million Three Hundred Thousand Pesos (P180,300,000.00) stipulated in clause 4.02 of the JVA, with legal interest from 9 November 1998 until fully paid;
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> 4. Declaring all improvements on the building introduced by Chanelay Development Corporation and existing at the time of the cancellation of the JVA, including those unlawfully constructed, forfeited in favor of Government Service Insurance System;
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> 5. Declaring the Transfer/Condominium Certificates of Titles listed under Annex "7" of the Second Amended Answer and registered in the name of Chanelay Development Corporation or its successor/s-in-interest null and void;

[5] Penned by Judge Pedro B. Corales; *id.* at 126-149.

6. Declaring the contracts to sell entered into by Chanelay Development Corporation with third parties over several units of Chanelay Tower, including the parking slots, null and void;

7. Denying Government Service Insurance System's prayer for actual damages in the amount of Ten Million Pesos (P10,000,000.00) for the alleged adverse effect of the unlawful construction of two additional floors on the building as well as opportunity cost, the amount of Five Million Pesos (P5,000,000.00) as exemplary damages and One Hundred Thousand Pesos (P100,000.00) as litigation expenses and attorney's fees for lack of factual basis;

8. Dismissing the complaints-in-interventions filed by Goldesc and ETS for lack of cause of action; and

9. Dismissing the counterclaims of Government Service Insurance System against the intervenors.

Cost against the plaintiff.

SO ORDERED.

The trial court ruled that there was no valid reason to reform the JVA. The requisites under Article 1359[6] of the Civil Code on reformation of contracts were simply not present. The JVA clearly stipulated that CDC shall renovate the building and sell the units at its own expense. Regardless of actual sales receipt, CDC also agreed to pay ₱180,300,000.00, plus 71% in the proceeds of sale.

Further, CDC violated the terms and conditions of the JVA resulting in the cancellation thereof: CDC did not remit any proceeds, unlawfully constructed additional floors, subdivided parking lots and appropriated them in its name, and rented units to third parties. GSIS was therefore justified in terminating the JVA.

The trial court likewise ruled that GSIS was not legally bound to answer the claims of Goldesc and ETS as CDC was not GSIS' agent, contrary to CDC's representations to third parties. Besides, the supposed agency is inconsistent with CDC's theory of partnership. Too, GSIS never ratified CDC's acts nor became privy to the latter's contracts with third parties.

The trial court, nevertheless, denied GSIS' claims for damages, 71% share in the proceeds, attorney's fees and litigation expenses for lack of factual or legal basis.

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[6] Article 1359, Civil Code. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

The trial court denied the motion for reconsideration of CDC, Goldsec and ETS on September 8, 2008.[7]

The Proceedings before the Court of Appeals

On appeal, the Court of Appeals summarized the issues raised by appellants, thus: (a) whether reformation of the JVA is warranted; (b) whether the termination of the JVA and the nullification of the certificates of titles in CDC's name were valid; and (c) whether GSIS was bound by the agreements which CDC entered into with Goldesc and ETS.

Decision of the Court of Appeals

By Decision[8] dated October 23, 2012 in CA-G.R. CV No. 92142, the Court of Appeals affirmed with modification, *viz.*:

> **WHEREFORE**, the Decision dated June 24, 2008 issued by the Regional Trial Court of Pasay City, Branch 231 is **AFFIRMED WITH MODIFICATION** to the effect that: 1) The portion in the decision ordering Chanelay Development Corporation to pay Government Service Insurance System the guaranteed payment of One Hundred Eighty Million Three Hundred Thousand Pesos (P180,300,000.00) stipulated in clause 4.02 of the JVA, with legal interest from 9 November 1998 and until fully paid is **DELETED**; 2) Chanelay Development Corporation is **ORDERED** to return to GOLDESC Development Corporation the amount paid by the latter pursuant to the Contract to Sell dated December 1996 amounting to TWO MILLION THREE HUNDRED FIFTY-FIVE THOUSAND SEVEN HUNDRED FORTY FIVE PESOS AND 42/100 (Php2,355,745.42); and 3) Chanelay Development Corporation is **ORDERED** to pay Equipment Technical Services Ten Million Seven Hundred Thousand Pesos (Php10,700,000.00) as compensation for the installation of the automatic fire sprinkler system and over-all sanitary and plumbing system pursuant to the agreements dated October 11, 1996 and May 13, 1997.
>
> **SO ORDERED.**[9]

First. An action for reformation of instrument may prosper only upon the concurrence of the following: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties to the contract; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.[10] Here, CDC failed to establish that GSIS acted fraudulently or in an inequitable manner, leading to the JVA's failure to reflect the true intentions of the parties. On the contrary, the complaint simply stemmed from CDC's desire to avoid its obligations under the JVA.

Second. GSIS validly terminated the JVA in view of CDC's violation of its terms and conditions. The trial court erred, however, in ordering CDC

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[7] G.R. No. 210539, *rollo*, pp. 81-83.
[8] G.R. No. 210423, *rollo*, pp. 73-104.
[9] *Id.* at 103-104.
[10] *Huibonhoa v. Court of Appeals*, 378 Phil. 386, 405 (1999).

to pay ₱180,300,000.00 to GSIS under paragraph 4.02 of the JVA. For basic is the rule in obligations and contracts that a party may only choose either specific performance or rescission, not both.[11] To order payment would be tantamount to specific performance, an option which GSIS did not pursue. At any rate, GSIS did not ask for this amount in its counterclaim.

In another vein, the Court of Appeals cannot grant liquidated damages in favor of GSIS as it was not included in its counterclaim. Neither did GSIS appeal the trial court's failure to award liquidated damages.

On the other hand, the trial court correctly ruled that all improvements introduced by CDC are forfeited in favor of GSIS pursuant to paragraph 7.01 of the JVA.[12] The trial court, too, rightfully nullified CDC's certificates of title over Chanelay Towers' unsold units and reapportioned parking spaces.

Finally. GSIS is not bound to comply with the contracts to sell which CDC entered into with Goldesc and ETS without authority. Thus, CDC alone should return the advances which Goldesc and ETS had already paid.

All parties filed their respective motions for reconsideration but the Court of Appeals denied said motions by Resolution[13] dated December 2, 2013.

Only CDC and GSIS appealed the dispositions of the Court of Appeals.

The Present Petitions

In **G.R. No. 210423**, CDC discusses two issues: (a) whether it is entitled to reimbursement for the renovation and rehabilitation of Chanelay Towers; and (b) whether GSIS may be compelled to honor its contracts to sell with third parties, including Goldesc and ETS.

It invokes Article 1385[14] of the Civil Code which provides that rescission creates the obligation to return the objects of the contract. Thus, the JVA provision should not be enforced. Otherwise, GSIS would be unjustly enriched. In the same vein, a contractor must be paid after building a house for a landowner.

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[11] See *Laperal v. Solid Homes, Inc.*, 499 Phil. 367, 380 (2005).

[12] "All constructions or improvements existing at the time of said cancellation shall automatically become the property of GSIS without any right on the part of CDC for reimbursement for the value thereof, but GSIS may opt to require CDC to remove the same at its expense." (Par. 2, Clause 7.01, JVA)

[13] G.R. No. 210423, *rollo*, pp. 112-115.

[14] Article 1385, Civil Code. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss. (1295)

As for its contracts with Goldesc and ETS, GSIS should honor the same considering that they were entered into within the scope of its (CDC's) authority under 3.01 of the JVA, thus:

> ARTICLE III – MARKETING OF THE UNIT
>
> 3.01. The CDC is hereby appointed and designated by the GSIS as the sole and exclusive marketing agent to sell (at no less than the average price of P35,000.00 per sq.m.) and to prospective buyers all the units of the Condominium building with full power and authority to hire the services of sales agents, representatives and marketing firms to be able to achieve the projected marketing time table.
>
> CDC and GSIS agree that the success of the project depends largely on the marketing, promotions, campaigns, strategies and efforts of the sales agents, representatives and marketing firms thus hired by CDC. Toward this end, CDC and GSIS shall conduct a periodic review of their performances and activities and GSIS shall have the right to make such recommendation\suggestions it may deem appropriate and necessary for the change or the hiring of other sales agents, representatives and marketing firms.

In its Comment,[15] GSIS ripostes that CDC's reliance on Article 1385 is misplaced. The provision refers to rescission and not cancellation or termination of contract. Here, the contract was not merely rescinded; it was terminated pursuant to clause 7.01 of the JVA due to CDC's countless violations thereof.[16]

Too, GSIS did not give CDC blanket authority to enter into contracts with third parties under the JVA. As a mere marketing agent, it was not empowered to transfer ownership of any condominium unit in Chanelay Towers. The JVA even expressly stipulates that only GSIS has authority to execute the final Deed of Conveyance/Absolute Sale, thus:

> 3.04. The Condominium Certificate of Title of the unit sold shall likewise be delivered to the buyer only upon full payment of the total purchase price of the unit, and execution of the final Deed of Conveyance/Absolute Sale by the GSIS.

In **G.R. No. 210539**, GSIS maintains that it is entitled to the award of ₱180,300,000.00 as guaranteed under paragraph 4.02 of the JVA, as well as liquidated damages. GSIS alleges that the amount is compensation for surrendering possession of the property to CDC. In ***Pryce Corp. v.***

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[15] G.R. No. 210423, *rollo*, pp. 162-187.

[16] *Id.* at 121-122. Article VII – Cancellation and Penalty, JVA, 7.01. Should CDC fail to start the construction works or at any time abandon the same or otherwise commit any breach of its obligations and commitments under this Agreement, this Joint Venture arrangement shall be deemed terminated and cancelled without need of judicial action by giving thirty (30) days written notice to that effect to the CDC who hereby agrees to abide by the decision of the GSIS.

All constructions or improvements existing at the time of said cancellation shall automatically become the property of GSIS without any right on the part of CDC for reimbursement for the value thereof, but GSIS may opt to require CDC to remove the same at its expense.

PAGCOR,[17] the Court held that the termination or cancellation of a contract would necessarily entail the enforcement of its terms prior to such termination or cancellation.[18] With regard to liquidated damages, GSIS pleads for equity.[19]

In its Comment,[20] CDC resurrects its allegation that the JVA is subject to reformation as the true intention of the parties was to enter into a partnership agreement. It never really agreed to the guaranteed payment under paragraph 4.02 of the JVA. As for GSIS' plea for liquidated damages, CDC echoed the reasoning of the Court of Appeals.

The consolidated replies of CDC[21] and GSIS[22] merely rehash their arguments in their respective petitions.

Issues

In **G.R. No. 210423**:

1) Is GSIS required to reimburse CDC for the latter's expenses in the renovation and rehabilitation of the tower?

2) Is GSIS bound to honor CDC's contracts with third parties?

In **G.R. No. 210539**:

1) Is GSIS entitled to receive payment from CDC in the amount of ₱180,300,000.00 pursuant to paragraph 4.02 of the JVA?

2) Is GSIS entitled to liquidated damages?

Our Ruling

We deny the petitions.

G.R. No. 210423:

a. The forfeiture of the improvements without reimbursement was the necessary consequence of the valid termination of the Joint Venture Agreement

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[17] 497 Phil. 490, 560 (2005).
[18] *Id.*, citing *Sps. Mercader, v. DBP*, 387 Phil. 828 (2000).
[19] G.R. No. 210539, *rollo*, p. 23
[20] *Id.* at 167-187.
[21] G.R. No. 210423, *rollo*, pp. 250-257.
[22] G.R. No. 210539, *rollo*, pp. 213-228.

It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[23]

Here, CDC and GSIS entered into a JVA wherein CDC assumed the obligation to renovate Chanelay Towers and sell the unsold units at its own expense. Under paragraph 4.02 of the JVA, CDC further undertook to pay ₱180,300,000.00 to GSIS regardless of actual sales receipt, plus 71% of the proceeds in the sale of units in the building. As it was, however, CDC, in utter bad faith, did not report any sale nor remit its share in the profits to GSIS. Worse, CDC unlawfully constructed additional units, reapportioned parking lots in its name, and rented out several units, all without the prior consent of GSIS.

For these reasons, GSIS was compelled to exercise its right under paragraph 7.01 of the JVA and terminate said agreement, thus:

> Article VII – Cancellation and Penalty
>
> 7.01. **Should CDC** fail to start the construction works or at any time abandon the same or otherwise **commit any breach of its obligations and commitments under this Agreement, this Joint Venture arrangement shall be deemed terminated** and cancelled without need of judicial action by giving thirty (30) days written notice to that effect to the CDC who hereby agrees to abide by the decision of the GSIS.
>
> **All constructions or improvements existing at the time of said cancellation shall automatically become the property of GSIS without any right on the part of CDC for reimbursement for the value thereof, but GSIS may opt to require CDC to remove the same at its expense.** (emphasis added)

Verily, the effect of termination was specifically stated in the JVA – forfeiture of property rights sans reimbursement. CDC agreed to this term without reservation. It must therefore abide by its bond.

CDC nevertheless argues anew that its supposed infractions were no infractions at all as they were authorized under the "partnership agreement" it had with GSIS.

Preliminarily, the Court notes that the posturing of CDC changes depending on the arguments it is confronted with.

In G.R. No. 210423, it impliedly admits that reformation of instrument is indeed inapplicable as it merely questioned the forfeiture of the improvements it introduced to the building, as well as the nullity of its contracts with third parties. **CDC no longer questioned the validity of the**

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[23] *Morla v. Belmonte*, 678 Phil. 102, 117 (2011) (citations omitted).

termination of the JVA with the GSIS.[24] But in complete turnabout, **in G.R. No. 210539, it resurrects its original claim for reformation of instrument.**[25] In ***Rivera v. Court of Appeals***,[26] the Court stated that fair-play or due process bars flip-flopping. The prohibition guarantees fairness in the proceedings.

In any event, the Court agrees with the courts below that CDC filed the complaint for reformation as a ruse to evade its obligations under the JVA. As it was, CDC failed to adduce evidence to corroborate its claim that the agreement with GSIS was simply to form a partnership. On the other hand, the terms and conditions under the JVA were clear and unequivocal. There is therefore no reason to modify the same just to suit the whims and caprices of CDC. As the Court of Appeals aptly held, one cannot simply ask for reformation if it finds itself at the shorter end of an unwise bargain.

b. GSIS is not bound to honor CDC's unauthorized contracts

As keenly observed by the Court of Appeals, there is no special authority given to CDC to enter into any contract relating to the sale of units in Chanelay Towers. Article III of the JVA ordains:

> ARTICLE III – MARKETING OF THE UNIT
>
> 3.01. The CDC is hereby appointed and designated by the GSIS as the sole and exclusive marketing agent to sell (at no less than the average price of P35,000.00 per sq.m.) and to prospective buyers all the units of the Condominium building with full power and authority to hire the services of sales agents, representatives and marketing firms to be able to achieve the projected marketing time table.
>
> CDC and GSIS agree that the success of the project depends largely on the marketing, promotion, campaigns, strategies and efforts of the sales agents, representatives and marketing firms thus hired by CDC. Toward this end, CDC and GSIS shall conduct a periodic review of their performances and activities and GSIS shall have the right to make such recommendation\suggestions it may deem appropriate and necessary for the change or the hiring of other sales agents, representatives and marketing firms.

Verily, CDC was merely appointed and designated by the GSIS as the sole and exclusive marketing agent in selling the tower's unsold units. The above-cited provision is not a blanket authority to transact on the property,

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[24] G.R. No. 210423, *rollo*, p. 63 (Petition for Review), CDC states under Par. 29 that the issues to be resolved by the Honorable Supreme Court relate to the right of the petitioner to be reimbursed for the costs and value of the improvements, renovation and rehabilitation of respondent's building in view of the rescission of the JVA and the obligation of respondent GSIS to honor the sales contracts entered into by petitioner as the sole sales and marketing agent of respondent GSIS.

[25] G.R. No. 210539, *rollo*, pp. 167-187. In Page 185 of the *rollo* (Comment of CDC), CDC respectfully prayed for the reformation of the JVA. See also *rollo*, pp. 176-184 where CDC alleges that reformation of instrument of the JVA again.

[26] 257 Phil. 174, 178 (1989).

contrary to CDC's claim. Rather, it is specifically limited to marketing activities. Otherwise stated, CDC did not have authority to enter into contracts to sell or lease contracts with third parties, including Goldesc and ETS. Consequently, GSIS is not bound by CDC's contracts with them.

Indeed, parties who dealt with CDC should have checked the scope of its authority. For it is settled that persons dealing with an agent must ascertain not only the fact of agency but also the nature and extent of authority if they were to hold the principal liable for the actions of the agent. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such an inquiry, he is chargeable with knowledge of the agent's authority and his ignorance of that authority will not be any excuse.[27]

G.R. No. 210539:

For its part, GSIS asserts that it automatically became entitled to ₱180,300,000.00 under paragraph 4.02 of the JVA the moment it transferred possession of Chanelay Towers to CDC. With respect to liquidated damages, it appeals to equity considerations.

We are not convinced.

a. Rescission and Specific Performance are alternative remedies

Jurisprudence teaches that breach of contract may give rise to an action for either specific performance or rescission of contract.[28] ***Sps. Pajares v. Remarkable Laundry and Dry Cleaning***[29] distinguished these two remedies, thus:

> **Specific performance is "[t]he remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon**. [It is t]he actual accomplishment of a contract by a party bound to fulfill it." **Rescission of contract under Article 1191 of the Civil Code, on the other hand, is a remedy available to the obligee when the obligor cannot comply with what is incumbent upon him.** It is predicated on a breach of faith by the other party who violates the reciprocity between them. Rescission may also refer to a remedy granted by law to the contracting parties and sometimes even to third persons in order to secure reparation of damages caused them by a valid contract; by means of restoration of things to their condition in which they were prior to the celebration of the contract.

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[27] See *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard*, 688 Phil. 78, 102-103 (2012) (citations omitted).
[28] See *Sps. Pajares v. Remarkable Laundry and Dry Cleaning*, 806 Phil. 39, 47 (2017).
[29] *Id.* at 48.

Here, paragraph 4.02 of the JVA required CDC to pay GSIS ₱180,300,000.00. For GSIS to insist payment of this amount would be tantamount to requiring specific performance. If the JVA is to be pursued to its conclusion, this amount should be complied with as part of exacting performance under the JVA. On the other hand, if rescission is chosen, GSIS may no longer claim this amount. It could not have its cake and eat it, too.

Indubitably, GSIS chose rescission rather than specific performance. It opted to invoke 7.01 of the JVA and terminated the agreement due to CDC's countless violations thereof rather than collect payment. Consequently, the ₱180,300,000.00 monetary award is no longer available to GSIS. As correctly ruled by the Court of Appeals, such award could have only been given to GSIS had it chosen to continue with the JVA.

In ***Asuncion v. Evangelista***,[30] the Court reiterated the rule that persons prejudiced may elect between exacting fulfillment of the obligation (specific performance) and its resolution, but they are not entitled to pursue both of these mutually exclusive, nay inconsistent remedies.

Let us be clear, however, that GSIS resorted to rescission under Article 1191 of the Civil Code, not under Article 1381 as the CDC would have us believe. ***Congregation of the Religious of the Virgin Mary v. Orola***,[31] is *apropos*:

> At the outset, we must distinguish between an action for rescission as mapped out in Article 1191 of the Civil Code and that provided by Article 1381 of the same Code. The articles read:
>
> > Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
> >
> > The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
> >
> > The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
> >
> > This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.
> >
> > Art. 1381. The following contracts are rescissible:

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[30] 375 Phil. 328, 362 (1999), citing *Rios and Reyes v. Jacinto*, 49 Phil. 7, 12-13 (1926).
[31] 576 Phil. 538, 543-544 (2008).

> (1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one fourth of the value of the things which are the object thereof;
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> (2) Those agreed upon in representation of absentees, if the latter suffer the lesion state in the preceding number;
>
> (3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;
>
> (4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
>
> (5) All other contracts specially declared by law to be subject to rescission.
>
> Article 1191, as presently worded, speaks of the remedy of rescission in reciprocal obligations within the context of Article 1124 of the Old Civil Code which uses the term "resolution". **The remedy of resolution applies only to reciprocal obligations such that a party's breach thereof partakes of a tacit resolutory condition which entitles the injured party to rescission. The present article, as in the Old Civil Code, contemplates alternative remedies for the injured party who is granted the option to pursue, as principal actions, either a rescission or specific performance of the obligation, with payment of damages in each case.** On the other hand, rescission under Article 1381 of the Civil Code, taken from Article 1291 of the Old Civil Code, is a subsidiary action, and is not based on a party's breach of obligation.

Here, the JVA involved reciprocal obligations wherein CDC was obligated, inter alia, to renovate the Chanelay Towers, market its unsold units, and remit payment to GSIS. In exchange, GSIS was to transfer possession of the property to CDC. GSIS complied with its obligation; CDC did not. Thus, GSIS invoked its right to rescission under Article 1191 of the Civil Code as embodied in paragraph 7.01 of the JVA.

In ***Laperal v. Solid Homes, Inc.***[32] the Court recognized the right of parties to stipulate on extrajudicial rescission under Article 1191, allowing parties to freely determine and stipulate under what terms and conditions the rescission may be invoked and its effect. In this case, such terms and conditions are embodied in paragraph 7.01 of the JVA. The provision clearly did not provide for the application of Article 1385 of the Civil Code on the mutual restitution of things received by the parties.

b. GSIS is not entitled to liquidated damages

As for GSIS' claim for liquidated damages, the same is also denied. For as the Court of Appeals duly noted, GSIS' counterclaim did not include a

[32] 499 Phil. 367, 381-382 (2005).

prayer for liquidated damages; GSIS only sought payment for liquidated damages for the first time before the Court of Appeals. Unfortunately, a counterclaim not presented in the lower court cannot be entertained for the first time on appeal.[33]

GSIS nonetheless appeals to equity considerations. But we are not persuaded.

Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate. In relation to the concept of equity, equity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation.[34]

Here, suffice it to state that GSIS had not established any special circumstance which would compel the Court to suspend the usual application of procedural rules for its benefit.

In any case, the trial court found that despite the protracted trial, GSIS never presented evidence to establish its counterclaim for damages, 71% share in the proceeds of CDC's sales, litigation expenses, and attorney's fees. In other words, GSIS' monetary claims were bereft of factual bases. Factual findings of the trial court such as this are accorded great respect, if not finality, when affirmed by the Court of Appeals, as here.

ACCORDINGLY, the twin petitions are **DENIED**. The Decision dated October 23, 2012 and Resolution dated December 2, 2013 of the Eleventh Division of the Court of Appeals in CA-G.R. CV No. 92142, are **AFFIRMED**.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[33] *Agustin v. Bacalan*, 220 Phil. 28, 36 (1985).
[34] See *Denila v. Republic*, G.R. No. 206077, July 15, 2020.

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

MARIA V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

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 cases were assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice