



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

H. S. POW CONSTRUCTION AND
 DEVELOPMENT CORP.,

Petitioner,

G.R. No. 229262

Present:

- versus -

LEONEN, J., Chairperson,
 HERNANDO,
 INTING,
 ROSAFIO, and
 LOPEZ, J., JJ.

SHAUGHNESSY DEVELOPMENT
 CORPORATION,

Respondent.

Promulgated:

July 7, 2021

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DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court seeking the modification of the Decision² dated August 16, 2016 and the Resolution³ dated January 11, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 98277. The CA reversed and set aside the Decision⁴ dated October 29, 2010 and the Order⁵ dated November 18, 2011 of Branch 223, Regional Trial Court (RTC), Quezon City in Civil Case No. Q-05-55081.

The Antecedents

H.S. Pow Construction and Development Corporation (HSPCDC) is a corporation engaged in the business of constructing buildings and

¹ *Rollo*, pp. 33-60.

² *Id.* at 9-27; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Magdangal M. De Leon and Elihu A. Ybañez, concurring.

³ *Id.* at 28-30.

⁴ *Id.* at 142-159; penned by Pairing Judge Tita Marilyn Payoyo-Villordon.

⁵ *Id.* at 160-162.

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houses and supplying labor and materials for construction.⁶

On April 4, 2005, HSPCDC filed a Complaint⁷ for Sum of Money alleging that in September 2001, Shaughnessy Development Corporation (SDC) engaged its services for the construction of subdivision concrete roads, underground drainage system, water distribution, and elevated water reservoir for SDC's Summerfield Subdivision in Taytay, Rizal.⁸

Based on the Construction Contract⁹ (Contract), HSPCDC shall undertake the project for ₱10,500,000.00 with no escalation clause, inclusive of all materials, labor, shop facilities, overhead, supervision, profit, workers insurance coverage, performance and warrant bonds, and value added tax. The Contract further provided that work should commence not later than 10 calendar days from receipt of the notice to proceed and upon actual release of the building permit and should be completed within 180 days therefrom.¹⁰

Construction started on May 21, 2002.¹¹

According to HSPCDC, changes or variation orders¹² costing ₱552,829.75¹³ were undertaken in the course of the project which was approved by SDC President, Timothy Ang (Ang). SDC also instructed HSPCDC to construct three duplex units in the subdivision site which was not part of the scope of its work under the Contract.

On January 17, 2003, HSPCDC completed the main entrance roadway and the main subdivision road (Roads 1 and 2, and a significant portion of Road 4). However, SDC requested HSPCDC to proceed with the completion of work on Road 3 and to defer the submission of

⁶ *Id.* at 10.

⁷ *Id.* at 62-70.

⁸ *Id.* at 63.

Id. at 71-77.

Id. at 72-73.

⁹ *Id.* at 10.

¹⁰ Reworks were done on Roads 1 and 3 due to flash floods; concrete embankment on both edges of the roadway; laying of rock boulders on selected areas along Road 3 whose sub grade was discovered to be soft clay; owner's instruction to raise road elevation at Roads 3,4,5,6 and 7 by an average of 250mm height, and raising of draining catch basin along Road 3,4,5,6 and 7; *id.* at 143.

¹¹ There is a discrepancy in the amount of variation orders as it appeared to be in the amount of ₱522,829.75 in some parts of the *rollo*; however, as reflected in the Letter with a Summary of Accounts dated November 11, 2003, the variation order costing amounts to ₱552,829.75. *id.* at 83.

progress billing until the entire portion of Road 3 is concreted. On March 3, 2003, the entire road network of the project was completed.¹⁴

On March 5, 2003,¹⁵ HSPCDC submitted its Progress Billing to SDC requesting for the release of ₱766,556.46, representing the value of work accomplishment covering the period of January 10 to March 3, 2003.¹⁶

Seeing that no payment was forthcoming, HSPCDC wrote another Letter dated March 26, 2003 seeking to clarify matters relative to the project and stating that due to SDC's non-payment of the progress billing, it incurred negative cash position and the remaining works had to be deferred.¹⁷

Still, SDC gave no response. Thus, on November 11, 2003, HSPCDC sent another Letter with a Summary of Account¹⁸ and listing the principal balance due on the Contract in the amount of ₱2,122,704.55 itemized as follows:

SUMMARY ACCOUNT

<i>Main Contract</i>	₱	1,081,584.80
<i>3-Duplex Residential Houses</i>		488,290.00
<i>Variation Order:</i>		<u>552,829.75</u>
Total Due	₱	2,122,704.55 ¹⁹

As SDC refused to pay HSPCDC the stated amount, HSPCDC filed an action before the trial court to collect the total amount of ₱2,122,704.55, including interest at the rate of 12% *per annum* from February 20, 2004, the date of extrajudicial demand, as well as attorney's fees, litigation expenses, and exemplary damages.²⁰

¹⁴ *Id.* at 10-11.

¹⁵ *Id.* at 11. In the Decision dated October 29, 2010 of Branch 221, Regional Trial Court (RTC), Quezon City, the date of submission of H.S. Pow Construction and Development Corp. is March 4, 2003, *id.* at 144.

¹⁶ HSPCDC reported the following accomplishment: complete Road Concreting of Roads 3,4,5,6 and 7; complete embankment formation and base coarse and completion road 3,4,5,6 and 7; and work progress on drainage and waterlines; *id.*

¹⁷ *Id.*

¹⁸ *Id.* at 82-83.

¹⁹ *Id.* at 83.

²⁰ See Complaint for Sum of Money filed on April 4, 2005, *id.* at 62-70.

In its Answer,²¹ SDC denied liability and asserted that: (1) it was HSPCDC which incurred delay in the performance of its obligation;²² (2) HSPCDC abandoned its work when it did not finish the construction of the water tank and the water tank foundation;²³ (3) HSPCDC also refused to comply with its undertaking to build a basketball court and sidewalk when these had appeared in the plans and drawing of the contractor, signed by the parties, and were therefore made an integral part of the contract;²⁴ and (4) HSPCDC similarly did not comply with its undertaking under the Contract to issue a performance bond.²⁵ Further, SDC denied liability for the variation works for the sum of ₱552,829.75, alleging that they were unauthorized and/or already formed part of the original contract and inherently included therein.²⁶ As counterclaim, SDC prayed that HSPCDC be ordered to pay SDC: (1) ₱50,000.00 for expenses incurred for the completion of the work left unfinished by HSPCDC and in having defective work redone by another; (2) ₱728,067.80 as actual damages and penalties; (3) ₱200,000.00 as exemplary damages; and (4) ₱100,000.00 for the cost of litigation.²⁷

Trial proceeded.

The RTC Decision

On October 29, 2010, the RTC rendered its Decision,²⁸ viz.:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the [HSPCDC]. Accordingly, the [SDC] is ordered to pay the plaintiff the following:

(1) The sum of Forty-four Thousand Two Hundred Seventy and Ninety-Four [c]cents (Php 44,270.94) as the amount due on the main contract:

(2) The sum of Five Hundred Fifty-Two Thousand Eight Hundred Twenty-Nine and Seventy-Five cents (Php 552,829.75) as the balance due on the variation works:

²¹ *Id.* at 93-102.

²² *Id.* at 98-99.

²³ *Id.* at 97.

²⁴ *Id.* at 97-98.

²⁵ *Id.* at 95-96.

²⁶ *Id.* at 99.

²⁷ *Id.* at 101-102.

²⁸ *Id.* at 142-159.

(3) The sum of Four Hundred Eighty-Eight Thousand Two Hundred Ninety Pesos (Php 488,290.00) as the amount due on the duplex building;

(4) Ten per cent (10%) of the total amount as attorney's fees and cost of suit.

Furthermore, the total amount adjudged against the defendant shall earn interest at the rate of 12% per annum computed from the finality of this decision until fully paid.

SO ORDERED.²⁹

SDC filed a notice of appeal, while HSPCDC moved for partial reconsideration which the RTC denied in its Order³⁰ dated November 18, 2011.

Both parties filed their respective appeals with the CA.

For HSPCDC, it claimed that the RTC erred in holding SDC liable only for ₱44,270.94 as the amount due on the main contract.³¹

SDC, on the other hand, averred that the RTC erred: (1) in finding it liable for variation orders;³² (2) in not finding that HSPCDC delayed in its performance of the contractual obligations;³³ (3) in not considering the expenses made by SDC for the basketball court and sidewalk which were included in the drawings and plans signed by both parties;³⁴ and (4) in awarding attorney's fees, the amount of which was not pleaded; and that it was HSPCDC that was in bad faith in not performing its obligation under the contract.³⁵

The CA Decision

On August 16, 2016, the CA rendered its Decision³⁶ as follows:

²⁹ *Id.* at 158-159.

³⁰ *Id.* at 160-161.

³¹ See Appellant's Brief dated October 16, 2012, *id.* at 193.

³² See Defendant-Appellee's Brief dated December 3, 2012, *id.* at 216.

³³ *Id.* at 219-220.

³⁴ *Id.* at 223-224.

³⁵ *Id.* at 224-225.

³⁶ *Id.* at 9-27.

WHEREFORE, premises considered, the appeal is GRANTED. The Decision dated October 29, 2010 and the Resolution dated November 18, 2011 of the Regional Trial Court (RTC), Branch 223, Quezon City, in Civil Case No. Q-05-55081, are REVERSED and SET ASIDE and a new one is hereby rendered ORDERING:

1. Shaughnessy Development Corp. TO PAY H.S. Pow Construction and Development Corp.

a) Balance under the contract	-	₱1,581,584.80
b) Balance for the duplex houses	-	₱ 488,290.00

2. H.S. Pow Construction and Development Corp. TO PAY Shaughnessy Development Corp.

a) Well drilling	-	₱ 362,781.72
b) Elevated water steel tank	-	₱ 359,503.80
c) Delay	-	₱1,050,000.00

The amounts due from both parties shall be subject to offsetting pursuant to Art. 1278 of the Civil Code; provided further that amounts due shall earn interest of six percent (6%) per annum from finality of this Decision until fully paid.

SO ORDERED.³⁷

The CA ratiocinated that only four of HSPCDC's evidence were admitted by the RTC. The RTC issued an Order denying admission of the rest of the exhibits, being mere photocopies; thus it was erroneous on its part to appreciate excluded evidence in resolving the case.³⁸

The CA also noted that SDC admitted that it was liable to HSPCDC in the amount of ₱2,069,874.80 consisting of the remaining balance in the main contract for the amount of ₱1,581,584.80 and ₱488,290.00³⁹ for the three duplex houses. As for the additional expenses incurred by SDC as a result of HSPCDC's abandonment of the well-drilling and elevated water tank works, the RTC found HSPCDC liable to SDC in the amount of ₱722,285.52.⁴⁰

The CA also found that SDC was not liable to HSPCDC for the

³⁷ *Id.* at 26.

³⁸ *Id.* at 17-19.

³⁹ The balance for the three duplex houses varied in some parts of the *rollo* in the amount of ₱488,390.00.

⁴⁰ *Rollo*, pp. 19-20.

variation orders, or that increase in price for any additional work due to a subsequent change in the original plans and specifications for the reason that there was neither a written authority from SDC ordering or allowing the written change in work nor a written agreement of the parties that there would be an additional cost due to the variations made. There was no addition, alteration, or omission on the roadworks but only repair or rework due to the damage suffered by the roads.⁴¹

As for the basketball court and sidewalks, the CA held that in the absence of any agreement, the RTC did not err in finding HSPCDC not liable.⁴²

With regard to the delay, the CA found no compelling reason to reduce the damages imposed under the Contract, more so, when the Contract itself already set a ceiling on the penalty in case of delay. The CA also deleted the award of attorney's fees as there was no showing of bad faith on the part of SDC.⁴³

Both parties filed their respective motions of reconsideration which the CA denied on January 11, 2017.⁴⁴

Hence, the present petition.

The Issues

Whether the CA erred in directing petitioner to pay respondent the amount of ₱362,781.72 for well-drilling and ₱359,500.80 for the elevated water steel tank.

Whether the CA erred in holding petitioner liable to pay respondent ₱1,050,000.00 for delay.

HSPCDC argues that the lower court erred in holding it liable for ₱362,781.72, representing the amount allegedly spent by SDC for engaging another subcontractor to finish the well-drilling because it was SDC that was at fault for failing to secure the necessary permit from the

⁴¹ *Id.* at 20-21.

⁴² *Id.* at 23.

⁴³ *Id.* at 25-26.

⁴⁴ See Resolution dated January 11, 2017 of the Court of Appeals. *Id.* at 28-30.

National Water Resources Board (NWRB) and for refusing to sign the agreement drafted by HSPCDC on the matter.

As for the water tank, HSPCDC alleges that because the check payments reflected in the disbursement vouchers of Rariza Steel Works were not presented as proof of payment, the alleged payment of ₱1,163,674.00 is questionable.⁴⁵

Finally, HSPCDC claims that there was no delay on its part. SDC's continuous change of plans greatly contributed to the delay in the commencement of the construction work which started on May 21, 2002. On January 17, 2003, HSPCDC completed the main entrance roadway, main subdivision road (Road 1, Road 2, and a significant portion of Road 4). However, Ang requested HSPCDC to proceed with the completion of Road 3 and to defer the submission of the progress billing until the entire portion of Road 3 has been concreted. HSPCDC completed the road work on March 3, 2003 and maintains that the alleged delay of 106 days should not be imputed to it, and thus, the ₱1,050,000.00 penalty lacked factual basis.⁴⁶

HSPCDC prays for the CA Decision to be modified by deleting the portion directing it to pay SDC ₱362,781.73 for the well-drilling, ₱359,503.80 for the elevated water steel tank, and ₱1,050,000.00 for the delay.⁴⁷

Meanwhile, SDC in its Compliance and Comment⁴⁸ avers that the issues raised in the present petition are factual and not legal; hence, not cognizable by the Court. Also, the CA granted ₱500,000.00 more than what was prayed for by HSPCDC, and thus, the same should be deleted.

HSPCDC filed a Reply reiterating its arguments.⁴⁹

The Court's Ruling

The Court finds partial merit in the petition.

⁴⁵ *Id.*

⁴⁶ *Id.* at 55.

⁴⁷ *Id.* at 57.

⁴⁸ *Id.* at 315-317.

⁴⁹ *Id.* at 321-324.

As a rule, the Court, in the exercise of its power of review under Rule 45, resolves only questions of law. There are, however, recognized exceptions: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when the judgment is based on a misapprehension of facts; (4) when the findings of facts are conflicting; (5) when in making its findings the CA went beyond the issues, or its findings are contrary to the admissions of the parties; (6) when the findings are contrary to the trial court; (7) 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; (8) when the findings of fact are premised on the purported lack of evidence and contradicted by the evidence on record; or (9) when the CA manifestly overlooked relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.⁵⁰

There is a question of law “when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same should not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rely solely on what the law provides on the given set of circumstances. If the issue invites a review of the evidence presented, the [question] posed is one of fact.”⁵¹

Here, HSPCDC assails the CA Decision ordering it to pay SDC ₱362,781.72 for well-drilling, ₱359,503.80 for the elevated water steel tank, and ₱1,050,000.00 for delay.⁵² As the matters raise doubts as to the truth or falsity of the alleged facts and necessitate a review of the evidence presented, the issues raised by HSPCDC are clearly factual.

HSPCDC is liable for the well-drilling and elevated water steel tank.

⁵⁰ *Star Electric Corp. v. R & G Construction Dev't. and Trading, Inc.*, 774 Phil. 410, 419-420 (2015), citing *Sps. Almendrala v. Sps. Ngo*, 508 Phil. 305, 315-316 (2005).

⁵¹ *FAJ Construction & Development Corp. v. Saulog*, 757 Phil. 191, 209-210 (2015).

⁵² *Rollo*, p. 56.

In the case, both the CA and the RTC found HSPCDC liable to SDC for the well-drilling and elevated water steel tank.

Harrison Pow of HSPCDC admitted that his company did not finish the work on the well-drilling because the project owner did not secure the necessary permit from the NWRB. The steel water tank was also not completed because the power available at the site was insufficient. Such claims were disputed by SDC which pointed out, through its President, that consistent with the stipulation in the Contract, it is HSPCDC's responsibility to secure the permit for the well-drilling. The fact that partial work had already been done by HSPCDC with the steel water tank proves that power was already in place.⁵³

The RTC found SDC's allegation to be well taken and held that it was part of the scope of HSPCDC's work under the contract and is included in the cost estimate.

The RTC then pronounced:

Deducting the cost estimate for the well-drilling in the sum of Php500,000.00 from the amount of Php 862,781.72, actually spent by [SDC] when it contracted the work to another, there is a difference of Php 362,781.72.

As for the elevated water tank, the cost estimate in the amount of Php 804,170.00 is deducted from the sum of Php 1,163,674.00 actually spent by the defendant when it contracted the work to another, thus yielding a difference of Php 359,503.80.

The plaintiff is therefore liable to the defendant in the sum of Seven Hundred Twenty Two Thousand Two Hundred Eighty Five and Fifty Two Centavos (Php 722,285.52) representing the cost it incurred in having the work performed by another.⁵⁴

This was affirmed by the CA which "found no reason to depart from the above findings as these have been sufficiently proven by the evidence."⁵⁵

As both the RTC and CA found sufficient evidence to support

⁵³ *Id.* at 151-152.

⁵⁴ *Id.* at 153.

⁵⁵ *Id.* at 20.

SDC's claim, the Court finds no reason to reverse their uniform factual findings. It is a rule generally applied that the Court will not review much less reverse factual findings of the CA, especially where, as in this case, such findings coincide with those of the trial court.⁵⁶ Factual findings of appellate courts are considered final, binding, and conclusive on the parties and upon this Court when supported by substantial evidence.⁵⁷

A review of the Contract would also show HSPCDC's liability for the well-drilling and elevated water steel tank. It states:

ARTICLE II. SCOPE OF WORK

That the CONTRACTOR [HSPCDC], for and consideration of the payment to be made by the OWNER [SDC] to the CONTRACTOR of the sum of money hereinafter stated, shall contract/perform and erect

PROPOSED CONSTRUCTION OF SUBDIVISION CONCRETE
ROADS. UNDERGROUND RCP DRAINAGE SYSTEM. **WATER
DISTRIBUTION AND ELEVATED STEEL WATER
RESERVOIR**

For

SHAUGHNESSY DEVELOPMENT CORPORATION
At # 176 Marlo Drive, Montevista Park, Cainta, Rizal

Upon presentation of the CONTRACTOR that he has the knowledge of the project, in the manner and form shown on the plans thereof and described in the Specifications prepared by SHUAUGHNESSY DEVELOPMENT CORPORATION, hereinafter referred to as the OWNER, and to the satisfaction of the said plans and specification of which are hereto attached and made a part thereof.

In the said construction, the CONTRACTOR, shall fully and faithfully perform all labor, furnish all tools, plants, equipment, all materials supervision and all incidental related to the work package being contracted and will do all things necessary for the proper construction and completion of all work shown and described in the Contract Document.⁵⁸ (Emphasis supplied).

As HSPCDC bound itself under the contract "to fully and faithfully perform all labor, furnish all tools x x x material x x x and will do all

⁵⁶ *FAI Construction & Development Corp. v. Sandog*, *supra* note 51

⁵⁷ *Magalang v. Spouses Heretape*, G.R. No. 199558, August 14, 2019.

⁵⁸ *Rollo*, pp. 71-72.

things necessary for the proper construction and completion of all work shown and described in the Contract Document,”⁵⁴ in this case, a “water distribution and elevated steel water reservoir,”⁶⁰ the reasons given by HSPCDC in not finishing the well-drilling and elevated water steel tank cannot excuse it for non-delivery.

As correctly ruled by the RTC, HSPCDC’s failure to comply with its obligation to undertake the well-drilling and to put up the steel water tank renders it liable under Article 1167 of the Civil Code which provides:

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

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

Under this provision, a contractor shall be liable for the costs incurred by the developer in hiring the services of other subcontractors to complete the unfinished work left by the original contractor.⁶¹ Here, there is no question that HSPCDC failed to finish the well-drilling and elevated steel water tank and SDC had to engage the services of other subcontractors to finish these projects, the costs of which were duly supported by receipts admitted and given weight by the courts *a quo*.

HSPCDC is not liable for delay.

On the question of whether HSPCDC is liable for delay, the RTC and the CA had divergent rulings.

For the RTC, petitioner is not liable for delay, because:

The evidence adduced by [HSPCDC] show that the delay may be reasonably attributed to the corrective measures that had to be undertaken in the form of variation measures that had to be undertaken in the form of variation orders as well as the construction

⁵⁴ *Id.* at 72.

⁵⁵ *Id.* at 71.

⁶¹ See *Swire Realty Dev't. Corp. v. Specialty Contracts General and Construction Services, Inc., et al.*, 816 Phil. 58 (2017).

of the duplex building upon the instruction of the project owner. In contrast, no clear evidence was adduced by the defendant to prove that the delay was caused by the plaintiff other than its bare assertions. The allegation of delay therefore lacks merit.⁶²

The RTC gave weight to HSPCDC's assertion that SDC's continued change of plans and the onset of the rainy season jeopardized the works already done. It cited the testimony of Engr. Noel Bernal (Engr. Bernal), an employee of HSPCDC who testified that the reason HSPCDC was not able to comply with the completion date specified in the Contract was because of the several changes made during the construction upon SDC's instructions, thus requiring a change in the project's plan. They had to come up with different sets of working drawings to adapt to the variation orders introduced by way of verbal and written instructions. One of these was the issuance of the July 2002 plan, three months after the issuance of the permit. It was at this time that major changes were introduced which affected the engineering design of the project. Other changes included the construction of the duplex houses upon instruction of the SDC.⁶³

For the CA, it noted that only four of HSPCDC's evidence were admitted by the RTC. These are: (1) Construction Contract (Exhibit "A"); (2) Taytay's Housing and Land Use Regulatory Preliminary Approval and Location Clearance dated April 5, 2002 (Exhibit "B"); (3) Taytay's Housing and Land Use Regulatory Development Permit Clearance dated April 5, 2002 (Exhibit "C"); and (4) Demand Letter dated February 18, 2004 (Exhibit "S"). The other exhibits, consisting of six sets of construction plans by Architect Huberto Agcamaran, variation order, and several letters, were denied admission, upon motion of SDC, for being mere photocopies and for the absence of testimony of the engineer who drafted the plan.⁶⁴

According to the CA, the RTC erred in appreciating excluded evidence. It then based its finding of delay on the terms stipulated in the Contract, thus:

The construction began on May 21, 2002, thus [HSPCDC] should have finished the same after 180 days as stipulated in the

⁶² *Rollo*, p. 89.

⁶³ *Id.* at 147-148.

⁶⁴ *Id.* at 14.

Contract, or on November 17, 2002. However, it was only on March 3, 2003 or 106 days after the date agreed upon, that the work was completed. Worse, [HSPCDC] failed to complete the agreed scope of work. Pursuant to Article III of the Contract, [HSPCDC] should be liable in the amount of ₱1,113,000.00 (106 days x ₱10,500.00) but since the penalty provided under the Contract should not exceed 10% of the contract price of ₱10,500,000.00, the liability of [HSPCDC] should only be ₱1,050,000.00.

x x x We are aware of jurisprudence whereby the liquidated damages stipulated under the contract was reduced by the Supreme Court x x x

x x x x

However, in the instant case, We find no compelling reason to reduce the damages imposed under the Contract; *moreso*, when the Contract itself already set a ceiling on the penalty in case of delay.⁶⁵

As the findings of the CA are contrary to those of the RTC on this point, a review of the facts on this matter is called for.⁶⁶

The Court affirms the RTC findings that HSPCDC is not guilty of delay.

While the bulk of HSPCDC's documentary evidence may have been declared inadmissible by the RTC, it is incorrect to infer that the RTC's ruling was without basis.

A cursory reading of the RTC Decision would show that it gave weight to the testimonial evidence presented by HSPCDC. The portion of the Decision pertaining to the issue of delay would also show that the RTC based its ruling on the transcript of stenographic notes of Engr. Bernal and not on the exhibits it previously held inadmissible.⁶⁷

The Court gives the highest respect to the RTC's evaluation of the testimony of witnesses, considering its unique position in directly observing the demeanor of the witnesses on the stand. The evaluation of the credibility of witnesses and their testimonies is a matter best

⁶⁵ *Id.* at 24-25.

⁶⁶ See *Swire Realty Dev't. Corp. v. Specialty Contracts General and Construction Services, Inc.*, *et al.*, *supra* note 61.

⁶⁷ *Rollo*, pp. 147-148.

undertaken by the trial court having had the unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination.⁶⁸

Here, the RTC cannot be faulted for giving weight to the testimony of HSPCDC's witness who averred in open court that the reason they were not able to comply with the completion date specified in the Contract was because of the several changes made during the construction upon the owner's instruction. Even if the RTC did not consider the exhibits pertaining to the multiple designs made by HSPCDC's architect or the letters sent in the course of the project, it was admitted by SDC and HSPCDC alike that HSPCDC constructed three duplex houses upon instruction of the project owner.⁶⁹ Ang of SDC admitted that the duplex units were not part of the scope of works in the Contract.⁷⁰

Based on the testimony of HSPCDC's witness and the admission of Ang, it is clear that the project went through modifications even while the project was already ongoing. In cases where the respondent-developer contributed to petitioner-contractor's delay, the CA's award of liquidated damage for delay in favor of respondent-developer would have no basis.⁷¹

Finding the conclusion of the RTC to be supported by evidence on record, the Court affirms its finding that HSPCDC did not incur delay and is therefore not liable to pay SDC liquidated damages in the amount of ₱1,050,000.00.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated August 16, 2016 and the Resolution dated January 11, 2017 of the Court of Appeals in CA-G.R. CV No. 98277 are hereby **MODIFIED** in that the portion directing petitioner H.S. Pow Construction and Development Corporation to pay respondent Shaughnessy Development Corporation the amount of ₱1,050,000.00 is hereby **DELETED**. The other portions of the Decision are **AFFIRMED**.

⁶⁸ *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, et al.*, 810 Phil. 172, 184 (2017).

⁶⁹ *Rollo*, p. 148.

⁷⁰ *Id.* at 155.

⁷¹ See *Star Electric Corp. v. R & G Construction Dev't. and Trading, Inc.*, *supra* note 50.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP LOPEZ
Associate Justice

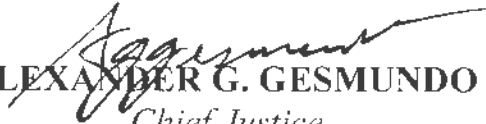
ATTESTATION

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.


MARVIC M.V.F. LEONEN
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 case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice