



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ASIAN CONSTRUCTION AND
DEVELOPMENT CORPORATION,
Petitioner,

G.R. No. 221147

- versus -

Present:

PERLAS-BERNABE, SAJ.,
Chairperson,
HERNANDO,
CARANDANG,*
INTING, and
DIMAAMPAO, JJ.

MERO STRUCTURES, INC.,
substituted by NOVUM
STRUCTURES LLC, INC., FIRST
CENTENNIAL CLARK CORP., and
NATIONAL DEVELOPMENT
COMPANY,

Promulgated:

Respondents.

SEP 29 2021

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ seeks to set aside the February 18, 2015 Decision² and October 21, 2015 Resolution³ of the Court of Appeals (CA/appellate court) in CA-G.R. CV No. 98844.

The facts of the case are as follows:

In line with the 100th anniversary celebration of the Philippine independence from Spanish colonial rule in 1998,⁴ First Centennial Clark

* Designated as additional Member per August 25, 2021 Raffle.

¹ *Rollo*, pp. 9-48.

² *Id.* at 49-65.

³ *Id.* at 66-69.

⁴ *Id.* at 51.

Corporation (FCCC) was created for the purpose of designing, constructing, operating, and managing the Philippines' National Centennial Exposition to be held in the Clark Special Economic Zone (CSEZ) located in Clark Field, Pampanga.⁵

On March 16, 1998, FCCC entered into a Construction Agreement⁶ with petitioner Asian Construction and Development Corporation (Asiakonstrukt) for the finalization of the architectural concept, design, and storyline approved by the National Centennial Commission and to undertake all the necessary construction works for the Exposition Theme Park.⁷ On even date, respondent MERO Structures, Inc. (MERO), an American corporation, submitted a Materials Only Proposal⁸ to Asiakonstrukt for the supply of materials in constructing a special Philippine flag structure in the Expo Filipino, the grand opening of which is on July 19, 1998. The proposal provides, among others, that: (a) MERO would manufacture and supply the MERO KK System Spaceframe (spaceframe) for the flag structure for US\$570,000.00; (b) 20% of the contract price would be paid upon award of the supply contract and the remainder payable *via* letter of credit; and (c) the materials would be shipped on April 4, 1998 if the transaction were confirmed by March 18, 1998.⁹ On March 17, 1998, Asiakonstrukt accepted the Materials Only Proposal.¹⁰

In a bill of lading dated April 5, 1998,¹¹ MERO shipped the spaceframe to "Philippine Centennial Exposition c/o Asiakonstrukt."¹²

On June 16, 1998, Asiakonstrukt submitted to FCCC a proposal¹³ for the design, supply, and installation of the flag structure using MERO's spaceframe subject to the following terms and conditions: (a) full payment of the imported MERO spaceframe structures upon its delivery on-site; (b) 50% payment of installation and lighting of spaceframe structures upon receipt of the notice to proceed while the remaining 50% shall be paid on progress billing; and (c) completion of the project on June 28, 1998.¹⁴ On the same day, the FCCC held a board meeting and approved Asiakonstrukt's proposal, subject to the applicable rules and regulations of the Commission on Audit, the reimbursement of the costs out of the sponsorships, and the submission of a certificate from MERO that Asiakonstrukt is the only certified installer of spaceframe structures in the Philippines.¹⁵ Also, in a Memorandum¹⁶ for the Board of Directors, the President of FCCC, Mr. Benjie L. Lopez, requested

⁵ Id.

⁶ Records, pp. 73-85.

⁷ Id.

⁸ Id. at 203-206.

⁹ Id.

¹⁰ Id. at 203.

¹¹ Id. at 219-220.

¹² Id. at 219-223.

¹³ *Rollo*, p. 52.

¹⁴ Records, pp. 227-228.

¹⁵ Id. at 230.

¹⁶ *CA rollo*, p. 62.

board approval to secure advances from respondent National Development Corporation (NDC) to finance the design, supply, and installation of the flag structure.¹⁷ NDC would in turn source the advances from a loan provided by certain government financial institutions to FCCC.¹⁸

In a letter¹⁹ dated June 17, 1998, FCCC approved Asiakonstrukt's proposal, subject to the pricing, terms, and conditions in the latter's proposal dated June 16, 1998, and in accordance with MERO's Materials Only Proposal dated March 16, 1998.²⁰

On June 18, 1998, Asiakonstrukt informed MERO that FCCC awarded to Asiakonstrukt the contract for the design supply, and installation of the flag structure and the latter would pay MERO after FCCC's payment of the materials not later than June 26, 1998.²¹

On August 10, 1998, Asiakonstrukt requested from FCCC the full payment for the spaceframe, which had been delivered to the intended site, and the 50% downpayment for its installation and lighting, both due since June 17, 1998.²²

In a series of letters dated as early as March 19, 1998, MERO sought payment of the spaceframe from Asiakonstrukt.²³

In a letter²⁴ to Asiakonstrukt dated October 13, 1999, MERO requested that it be paid directly by the FCCC and that Asiakonstrukt notify FCCC that the work is complete and satisfactory and that full payment should be made.²⁵ By way of a response, Asiakonstrukt, in a letter²⁶ dated November 8, 1999, stated that it interposed no objection to MERO's request to collect payment directly from the FCCC.

In another series of letters,²⁷ MERO attempted to seek assistance from the Department of Trade and Industry (DTI) and Department of Finance (DOF). However, these attempts proved futile.

In a letter²⁸ dated May 3, 2000, the newly appointed FCCC President at the time, Mr. Manuel R. Pamaran, wrote to MERO that he was not yet acquainted with the previous transactions of FCCC but noted that he had yet

¹⁷ Records, pp. 231-232.

¹⁸ Id.

¹⁹ Id. at 229.

²⁰ Id.

²¹ Id. at 225.

²² Id. at 233.

²³ Id. at 211-214 and 221.

²⁴ *Rollo*, pp. 20-21.

²⁵ Records, p. 24.

²⁶ Id. at 25 at 226.

²⁷ Id. at 26-28 and 234-237.

²⁸ Id. at 29.

to see a contract between FCCC and MERO.²⁹ In the same letter,³⁰ he also requested a conference with MERO's representative on May 12, 2000. The meeting eventually happened on May 22, 2000, but yielded nothing for MERO in terms of the payment demanded.³¹

In a letter³² dated September 21, 2000, MERO, through counsel, made a final demand on Asiakonstrukt for its US\$570,000.00 principal obligation plus 1.5% interest per month or 18% annually.

Despite this, Asiakonstrukt still failed to pay, prompting MERO to institute before the Regional Trial Court (RTC) a Complaint³³ for sum of money on February 21, 2002. MERO prayed that Asiakonstrukt or FCCC be ordered to pay US\$1,033,990.00 including interest, plus litigation expenses, and moral and exemplary damages, and NDC be directed to furnish FCCC with advances for this purpose.³⁴

In its Answer with Counterclaim,³⁵ NDC challenged MERO's personality to sue in the Philippines as well as the validity of the complaint's verification and certification against forum shopping.³⁶ It argued that MERO has no cause of action against NDC because it was only a member of the Oversight Committee tasked to oversee the release and utilization of the ₱1.4 billion budget for the Philippine Centennial Exposition Project, and FCCC failed to comply with the required terms for the approval of the loan drawdowns.³⁷ It interposed counterclaims for attorney's fees and exemplary damages.³⁸

FCCC filed an Answer with Counterclaim and Crossclaim,³⁹ arguing that no privity of contract exists between it and MERO because the transaction subject of the complaint involved only MERO and Asiakonstrukt, thus, MERO has no cause of action against FCCC.⁴⁰ It further averred that FCCC's approval of Asiakonstrukt's proposal for the design, supply, and installation of the flag structure was subject to certain conditions which were never met, hence the approval did not take effect; in fact, the MERO flag was not utilized.⁴¹ It interposed a cross-claim against Asiakonstrukt for reimbursement of any possible award made in favor of MERO, and prayed for attorney's fees and exemplary damages as compulsory counterclaims.⁴²

²⁹ Id.

³⁰ Id.

³¹ Id. at 238-240.

³² Id. at 30.

³³ Id. at 2-10.

³⁴ Id.

³⁵ Id. at 50-57.

³⁶ *Rollo*, p. 54.

³⁷ Id.

³⁸ Id.

³⁹ Records, pp. 60-66.

⁴⁰ *Rollo*, p. 54.

⁴¹ Id.

⁴² Id.

Asiakonstrukt likewise filed an Answer with Cross-claim,⁴³ wherein it admitted the validity of MERO's claim for the value of the spaceframe but objected on the imposition of 18% annual interest, which was allegedly not stipulated in writing.⁴⁴ It professed willingness to pay and explained that the delay was due to FCCC and NDC's refusal to pay their obligations to MERO.⁴⁵ It claimed that as a mere contractor of the project, it has no liability for the amount collected, instead, FCCC and NDC, the project owners, should be held accountable.⁴⁶ By way of cross-claim, it contended that FCCC and NDC should be jointly and severally liable to pay Asiakonstrukt ₱1,000,000.00 in attorney's fees.⁴⁷

During the RTC proceedings, MERO filed a Manifestation and Motion alleging that while MERO's composition remains the same, it was converted from a Delaware Corporation to a Delaware Limited Liability Company, and in the process, changed its name to from "MERO Structures, Inc." to "Novum Structures LLC" on March 31, 2006.⁴⁸

Accordingly, after due hearing, the RTC granted the said Manifestation and Motion in an Order⁴⁹ dated October 20, 2006.

Ruling of the Regional Trial Court:

On July 19, 2011, the trial court rendered a Decision⁵⁰ upholding MERO's right to collect from Asiakonstrukt and FCCC, the former by virtue of a contract and the latter for having benefited from MERO's fulfillment of its obligation to supply the spaceframe. However, the RTC dismissed the complaint against NDC for lack of evidence.⁵¹ The dispositive portion of the said Decision reads:⁵²

WHEREFORE, in view of the foregoing considerations, the Court hereby finds in favor of the plaintiff and against defendants Asiakonstrukt and FCCC. Thus, this court hereby orders Asiakonstrukt to pay plaintiff in the sum of Philippine Pesos: TWENTY-FIVE MILLION SIX HUNDRED FIFTY THOUSAND (P25,650,000.00) (\$570,000XP45.00) with interest at 6% per annum from date hereof and 12% per annum from date of finality of this decision until fully paid, with right to be reimbursed from FCCC without pronouncement as to cost.

⁴³ Records, pp. 69-72.

⁴⁴ *Rollo*, p. 54.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Records, pp. 427-437.

⁴⁹ *Id.* at 456.

⁵⁰ *Id.* at 715-721.

⁵¹ *Id.*

⁵² *Id.*

However, the complaint against NDC is hereby DISMISSED for insufficiency of evidence and the counterclaim of NDC is also DISMISSED [for] insufficiency of evidence.

SO ORDERED.⁵³

Both MERO and Asiakonstrukt sought reconsideration but the RTC denied the same through its Order⁵⁴ dated December 19, 2011. Pertinently, the RTC held that the documentary evidence presented by MERO, wherein a 1.5% monthly interest was stated, does not bear the signatures of any of the defendants; therefore, it is not the written agreement contemplated by law as a basis for the imposition of stipulated interest.⁵⁵ Accordingly, it stood firm with the imposition of the legal rate of interest.⁵⁶

Ruling of the Court of Appeals:

Dissatisfied, MERO and Asiakonstrukt filed separate appeals⁵⁷ with the CA. In a Decision⁵⁸ dated February 18, 2015, the CA denied both appeals and affirmed the RTC Decision with modification, to wit:

WHEREFORE, these separate appeals are hereby DENIED. The July 19, 2011 Decision and December 19, 2011 Order of the Regional Trial Court, Branch 145, Makati City in Civil Case No. 02-206 are AFFIRMED with MODIFICATION that the 12% interest per *annum* shall be applied from the date of default on March 31, 1998 until June 30, 2013 only, after which date and until fully paid, the outstanding obligation of Asian Construction and Development Corporation shall earn interest at 6% per *annum*.

SO ORDERED.⁵⁹

The appellate court ruled that while there was indeed a written stipulation between MERO and Asiakonstrukt as to the 18% interest, contrary to the RTC's findings, the said interest may nevertheless be tempered by the courts in the interest of justice and equity.⁶⁰ Thus, the CA still agreed with the RTC that legal interest shall apply subject to the modification of the interest rate in accordance with this Court's ruling in the *Nacar v. Gallery Frames*⁶¹ case.⁶²

⁵³ Id. at 721.

⁵⁴ Id. at 798-799.

⁵⁵ *Rollo*, p. 55.

⁵⁶ Id.

⁵⁷ Records, pp. 801-903 and 806-808.

⁵⁸ *Rollo*, pp. 49-65.

⁵⁹ Id. at 64-65.

⁶⁰ *Rollo*, pp. 59-61.

⁶¹ Id. at 60-61.

⁶² *Rollo*, pp. 59-61.

Aggrieved, Asiakonstrukt filed a Motion for Reconsideration⁶³ with the CA, but was denied in a Resolution⁶⁴ dated October 21, 2015.

Hence, the instant Petition for Review on *Certiorari*⁶⁵ filed by Asiakonstrukt, which essentially raises the following assignment of errors:

1. [Whether or not the CA] seriously erred when it failed and refused to consider the letter of MERO dated October 13, 1999 and the response letter of Asiakonstrukt dated November 8, 1999 as a new written contract, wherein both parties agreed that MERO collects directly the unpaid obligation of US\$570,000.00 or its equivalent against the FCCC; and
2. [Whether or not the CA] seriously erred when it affirmed with modification the RTC decision without excluding the newly included foreign respondent Novum from being a party to this case.⁶⁶

Our Ruling

We deny the Petition for Review on *Certiorari*.

No new contract was borne of the letters exchanged by MERO and Asiakonstrukt. At most, the said exchanges merely show Asiakonstrukt's approval of MERO's extraordinary efforts in helping the former fulfill its obligation to the latter. In any event, Asiakonstrukt's approval of MERO's request to collect directly from the FCCC did not extinguish Asiakonstrukt's obligation to pay MERO.

In its Petition for Review on *Certiorari*, which is merely a rehash of its arguments before the lower courts, Asiakonstrukt would want to impress upon this Court that a new contract was entered into by it and MERO, wherein MERO waives its rights to collect from Asiakonstrukt and is subrogated to Asiakonstrukt's place to collect directly from FCCC and NDC.

This argument has utterly no factual or legal basis.

⁶³ CA *rollo*, pp. 281-288.

⁶⁴ *Rollo*, at pp. 66-69.

⁶⁵ *Id.* at 9-48.

⁶⁶ *Id.* at 24-25.

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There are two (2) relevant contracts in this case, namely: 1) The Construction Agreement⁶⁷ between the FCCC and Asiakonstrukt dated March 16, 1998, and 2) MERO's Materials Only Proposal⁶⁸ dated March 16, 1998 that was accepted by Asiakonstrukt on March 17, 1998. While Asiakonstrukt is a common party in these contracts, MERO and FCCC have no contractual relationship with each other.

A cursory perusal of the instant petition would reveal that Asiakonstrukt's argument is essentially hinged on the theory that its obligation to pay MERO was extinguished by novation of either or both of the aforementioned contracts, as evidenced by the letters exchanged between it and MERO.

Article 1231 of the Civil Code provides for the different modes of extinguishing obligations, to wit:

Article 1231. Obligations are extinguished:

- (1) By payment or performance;
- (2) By the loss of the thing due;
- (3) By the condonation or remission of the debt;
- (4) By the confusion or merger of the rights of creditor and debtor;
- (5) By compensation;
- (6) By novation. (Underscoring supplied)

Other causes of extinguishment of obligations such as annulment, rescission, fulfillment of a resolatory condition, and prescription, are governed elsewhere in this Code.

The rules on novation are outlined in the Civil Code as follows:

Article 1291. Obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the rights of the creditor. (1203)

x x x x

Article 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms,

⁶⁷ Records, pp. 330-342.

⁶⁸ Id. at 203-205.

or that the old and the new obligations be on every point incompatible with each other.

x x x x

Article 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

Novation extinguishes an obligation between two parties when there is a substitution of objects or debtors or when there is subrogation of the creditor.⁶⁹ It occurs only when the new contract declares so “in unequivocal terms” or that “the old and the new obligations be on every point incompatible with each other.”⁷⁰

In *Garcia v. Llamas*,⁷¹ We discussed the concept of novation as follows:

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. Article 1293 of the Civil Code defines novation as follows:

Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in articles 1236 and 1237.

In general, there are two modes of substituting the person of the debtor: (1) *expromision* and (2) *delegacion*. In *expromision*, the initiative for the change does not come from — and may even be made without the knowledge of — the debtor, since it consists of a third person’s assumption of the obligation. As such, it logically requires the consent of the third person and the creditor. In *delegacion*, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation; thus, the consent of these three persons are necessary. Both modes of substitution by the debtor require the consent of the creditor.

Novation may also be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former. It is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement. Whether extinctive or modificatory, novation is made either by changing the object or the principal conditions, referred to as objective or real novation; or by substituting the person of the debtor or subrogating a third person to the rights of the creditor, an act known as subjective or personal novation. For novation to take place, the following requisites must concur:

⁶⁹ *Arco Pulp and Paper Co., Inc. and Candida A. Santos v. Dan T. Lim*, 737 Phil. 133, 144 (2014).

⁷⁰ *Id.*

⁷¹ 462 Phil. 779 (2003).

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- 1) There must be a previous valid obligation.
- 2) The parties concerned must agree to a new contract.
- 3) The old contract must be extinguished.
- 4) There must be a valid new contract.

Novation may also be express or implied. It is express when the new obligation declares in unequivocal terms that the old obligation is extinguished. It is implied when the new obligation is incompatible with the old one on every point. The test of incompatibility is whether the two obligations can stand together, each one with its own independent existence.⁷² (Underscoring supplied)

Applying the foregoing to the instant case, it is evident that there was neither an express nor implied novation through the letters exchanged between MERO and Asiakonstrukt.

First, there is nothing in the letters that unequivocally states that the obligation of Asiakonstrukt to pay MERO would be extinguished.

Second, there is also no mention that MERO would substitute or subrogate Asiakonstrukt as FCCC's payee/obligee as the letters merely show that MERO was allowed by Asiakonstrukt to try collecting from FCCC directly.

Lastly, using the test of incompatibility, Asiakonstrukt's non-objection to MERO's request to collect from FCCC directly is not incompatible with the obligation of Asiakonstrukt to pay MERO. It merely provided an alternative mode in collecting payment to MERO, which is not even valid as far as FCCC is concerned since the latter did not even consent to the same, not to mention there is no existing contractual relationship between MERO and FCCC.

With regard to the last point, it must be stressed that the consent of the third party, which is FCCC in this case, must also be secured for the novation to be valid. Again, FCCC was never a part of the letters exchanged between MERO and Asiakonstrukt. Thus, FCCC clearly could have not consented to any substitution or subrogation of the parties.

If the exchange of letters between MERO and Asiakonstrukt was intended to novate the original agreement between the parties, FCCC must have first agreed to the substitution of MERO as the new payee/creditor, at least to the extent of the US\$570,000.00 representing the payment for the flag. The exchange of letters must have also stated in clear and unequivocal terms that it has replaced the original obligation of Asiakonstrukt to MERO. Neither of these circumstances is present in this case.

⁷² Id. at 788-790.

Since there was clearly no novation, Asiakonstrukt's obligation to MERO remains valid and existing. Asiakonstrukt, therefore, must still pay respondent the full amount of US\$570,000.00 with the applicable interest.

Moreover, the records show that the fulfillment of FCCC's obligation to Asiakonstrukt was never a condition to the fulfillment of Asiakonstrukt's obligation to MERO. Absent this condition, Asiakonstrukt, as the primary contractor for the Philippine Centennial project, assumed the risk of FCCC's nonpayment when it essentially subcontracted a part of the said project to MERO. To emphasize, Asiakonstrukt is the only party obligated to pay MERO, not FCCC and definitely not NDC.

MERO, being the original party to the case, may indeed continue to litigate the present action despite any transfer of interest. In any event, it seems that there was no actual transfer of interest but a mere change of name by MERO to Novum Structures LLC.

The records would show that MERO filed a Manifestation and Motion, alleging that while MERO's composition remains the same, it was converted from a Delaware Corporation to a Delaware Limited Liability Company, and in the process, changed its name from "MERO Structures, Inc." to "Novum Structures LLC" on March 31, 2006.⁷³

Accordingly, after due hearing, the RTC granted the said Manifestation and Motion in an Order⁷⁴ dated October 20, 2006.

Given this, Asiakonstrukt's argument as to its second assignment of error patently holds no water as there was no transfer of interest that happened. MERO, the composition of which remained unchanged, merely changed its name to Novum Structures LLC to reflect its new status as a limited liability company. Thus, the appellate court did not commit any serious error when it affirmed the trial court's Decision in this regard, given that no new party was impleaded since MERO and Novum Structures LLC are essentially one and the same entity.

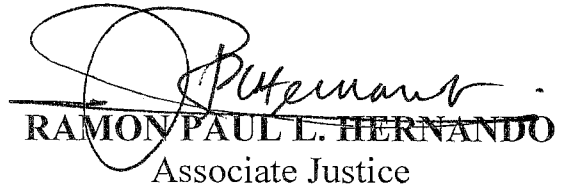
WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The February 18, 2015 Decision and October 21, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 98844 are hereby **AFFIRMED**.

⁷³ Records, at pp. 427-437.


⁷⁴ Id. at 456.

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SO ORDERED.

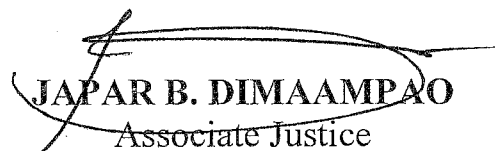

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

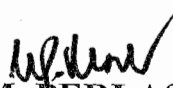

ROSKARI D. CARANDANG
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

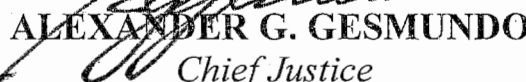
ATTESTATION

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.


ESTELA M. RERLAS-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 case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice