

SECOND DIVISION

[G.R. No. 170134, June 17, 2015]

ANGEL V. TALAMPAS, JR., PETITIONER, VS. MOLDEX REALTY, INC., RESPONDENT.

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]

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 P10,500,000.00,^[9] to be paid by the respondent through progress billings. The respondent made an initial down payment of P500,000.00 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 abovesited 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)

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) **P1,485,000.00** 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) **P2,100,000.00** or twenty percent (20%) of the P10,500,000.00 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]

Consequently, the RTC ordered the respondent to pay: (a) P1,485,000.00 as unpaid construction equipment rentals from May 14, 1993 to June 16, 1993; (b) P2,100,000.00 as unrealized profits; (c) P300,000.00 as moral damages; (d) P150,000.00 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**

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.
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 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) **P297,090.43** representing the contractor's unpaid actual work accomplishment at the time of termination (paid on August 13, 1993); (b) **P109,551.00** representing unrecouped costs of equipment mobilization and demobilization, and unrecouped payment of insurance bond (paid on September 14, 1993); and (c) **P209,606.56** 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]

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