

THIRD DIVISION

[G.R. No. 183374, June 29, 2010]

**MARSMAN DRYSDALE LAND, INC., PETITIONER, VS. PHILIPPINE
GEOANALYTICS, INC. AND GOTESCO PROPERTIES, INC.,
RESPONDENTS.**

[G.R. NO. 183376]

**GOTESCO PROPERTIES, INC., PETITIONER, VS. MARSMAN
DRYSDALE LAND, INC. AND PHILIPPINE GEOANALYTICS, INC.,
RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

On February 12, 1997, Marsman Drysdale Land, Inc. (Marsman Drysdale) and Gotesco Properties, Inc. (Gotesco) entered into a Joint Venture Agreement (JVA) for the construction and development of an office building on a land owned by Marsman Drysdale in Makati City.^[1]

The JVA contained the following pertinent provisions:

SECTION 4. CAPITAL OF THE JV

It is the desire of the Parties herein to implement this Agreement by **investing in the PROJECT on a FIFTY (50%) PERCENT- FIFTY (50%) PERCENT basis.**

4.1. Contribution of [Marsman Drysdale]-**[Marsman Drysdale] shall contribute the Property.**

The total appraised value of the Property is PESOS: FOUR HUNDRED TWENTY MILLION (P420,000,000.00).

For this purpose, [Marsman Drysdale] shall deliver the Property in a buildable condition within ninety (90) days from signing of this Agreement barring any unforeseen circumstances over which [Marsman Drysdale] has no control. Buildable condition shall mean that the old building/structure which stands on the Property is demolished and taken to ground level.

4.2. Contribution of [Gotesco]- **[Gotesco] shall contribute the amount of PESOS: FOUR HUNDRED TWENTY MILLION**

(P420,000,000.00) in cash which shall be payable as follows:

- 4.2.1. The amount of PESOS: FIFTY MILLION (P50,000,000.00) upon signing of this Agreement.
- 4.2.2. The balance of PESOS: THREE HUNDRED SEVENTY MILLION (P370,000,000.00) shall be paid based on progress billings, relative to the development and construction of the Building, but shall in no case exceed ten (10) months from delivery of the Property in a Buildable condition as defined in section 4.1.

A joint account shall be opened and maintained by both Parties for handling of said balance, among other Project concerns.

4.3. Funding and Financing

4.3.1 Construction funding for the Project shall be obtained from the cash contribution of [Gotesco].

4.3.2 Subsequent funding shall be obtained from the pre-selling of units in the Building or, when necessary, from loans from various banks or financial institutions. [Gotesco] shall arrange the required funding from such banks or financial institutions, under such terms and conditions which will provide financing rates favorable to the Parties.

4.3.3 [Marsman Drysdale] shall not be obligated to fund the Project as its contribution is limited to the Property.

4.3.4 If the cost of the Project exceeds the cash contribution of [Gotesco], the proceeds obtained from the pre-selling of units and proceeds from loans, the Parties shall agree on other sources and terms of funding such excess as soon as practicable.

4.3.5 x x x x.

4.3.6 x x x x.

4.3.7 x x x x.

4.3.8 **All funds advanced by a Party** (or by third parties in substitution for advances from a Party) **shall be repaid by the JV.**

4.3.9 **If any Party agrees to make an advance to the Project but fails to do so (in whole or in part) the other party may advance the shortfall and the Party in default shall indemnify the Party making the substitute advance on demand for all of its losses, costs and expenses incurred in so doing.** (emphasis supplied; underscoring in the original)

Via Technical Services Contract (TSC) dated July 14, 1997,^[2] the joint venture engaged the services of Philippine Geoanalytics, Inc. (PGI) to provide subsurface soil exploration, laboratory testing, seismic study and geotechnical engineering for the project. PGI, was, however, able to drill only four of five boreholes needed to conduct its subsurface soil exploration and laboratory testing, justifying its failure to drill the remaining borehole to the failure on the part of the joint venture partners to clear the area where the drilling was to be made.^[3] PGI was able to complete its

seismic study though.

PGI then billed the joint venture on November 24, 1997 for P284,553.50 representing the cost of partial subsurface soil exploration; and on January 15, 1998 for P250,800 representing the cost of the completed seismic study.^[4]

Despite repeated demands from PGI,^[5] the joint venture failed to pay its obligations.

Meanwhile, due to unfavorable economic conditions at the time, the joint venture was cut short and the planned building project was eventually shelved.^[6]

PGI subsequently filed on November 11, 1999 a complaint for collection of sum of money and damages at the Regional Trial Court (RTC) of Quezon City against Marsman Drysdale and Gotesco.

In its Answer with Counterclaim and Cross-claim, Marsman Drysdale passed the responsibility of paying PGI to Gotesco which, under the JVA, was solely liable for the monetary expenses of the project.^[7]

Gotesco, on the other hand, countered that PGI has no cause of action against it as PGI had yet to complete the services enumerated in the contract; and that Marsman Drysdale failed to clear the property of debris which prevented PGI from completing its work.^[8]

By Decision of June 2, 2004,^[9] Branch 226 of the Quezon City RTC rendered judgment in favor of PGI, disposing as follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of plaintiff [PGI].

The defendants [Gotesco] and [Marsman Drysdale] are ordered to pay plaintiff, **jointly**:

- (1) the sum of P535,353.50 with legal interest from the date of this decision until fully paid;
- (2) the sum of P200,000.00 as exemplary damages;
- (3) the sum of P200,000.00 as and for attorney's fees; and
- (4) costs of suit.

The cross-claim of defendant [Marsman Drysdale] against defendant [Gotesco] is hereby GRANTED as follows:

- a) Defendant [Gotesco] is ordered to reimburse co-defendant [Marsman Drysdale] in the amount of P535,353.^[50] in accordance with the [JVA].

b) Defendant [Gotesco] is further ordered to pay co-defendant [Marsman Drysdale] the sum of P100,000.00 as and for attorney's fees.

SO ORDERED. (underscoring in the original; emphasis supplied)

Marsman Drysdale moved for partial reconsideration, contending that it should not have been held jointly liable with Gotesco on PGI's claim as well as on the awards of exemplary damages and attorney's fees. The motion was, by Resolution of October 28, 2005, denied.

Both Marsman Drysdale and Gotesco appealed to the Court of Appeals which, by Decision of January 28, 2008,^[10] **affirmed with modification** the decision of the trial court. Thus the appellate court disposed:

WHEREFORE, premises considered, the instant appeal is **PARTLY GRANTED**. The assailed Decision dated June 2, 2004 and the Resolution dated October 28, 2005 of the RTC of Quezon City, Branch 226, in Civil Case No. Q99-39248 are hereby **AFFIRMED with MODIFICATION** deleting the award of exemplary damages in favor of [PGI] and the P100,000.00 attorney's fees in favor of [Marsman Drysdale] and ordering defendant-appellant [Gotesco] to REIMBURSE [Marsman Drysdale] 50% of the aggregate sum due [PGI], instead of the lump sum P535,353.00 awarded by the RTC. The rest of the Decision stands.

SO ORDERED. (capitalization and emphasis in the original; underscoring supplied)

In partly affirming the trial court's decision, the appellate court ratiocinated that notwithstanding the terms of the JVA, the joint venture cannot avoid payment of PGI's claim since "[the JVA] could not affect third persons like [PGI] because of the basic civil law principle of relativity of contracts which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof."^[11]

Their motions for partial reconsideration having been denied,^[12] Marsman Drysdale and Gotesco filed separate petitions for review with the Court which were docketed as G.R. Nos. 183374 and 183376, respectively. By Resolution of September 8, 2008, the Court consolidated the petitions.

In G.R. No. 183374, Marsman Drysdale imputes error on the appellate court in

A. ...ADJUDGING [MARSMAN DRYSDALE] WITH JOINT LIABILITY AFTER CONCEDING THAT [GOTESCO] SHOULD ULTIMATELY BE SOLELY LIABLE TO [PGI].

B. ...AWARDING ATTORNEY'S FEES IN FAVOR OF [PGI]...