

FIRST DIVISION

[G.R. No. 158768, February 12, 2008]

**TITAN-IKEDA CONSTRUCTION & DEVELOPMENT CORPORATION,
Petitioner, vs. PRIMETOWN PROPERTY GROUP, INC.,
Respondent.**

D E C I S I O N

CORONA, J.:

This petition for review on certiorari^[1] seeks to set aside the decision of the Court of Appeals (CA) in CA-G.R. CV No. 61353^[2] and its resolution^[3] denying reconsideration.

In 1992, respondent Primetown Property Group, Inc. awarded the contract for the structural works^[4] of its 32-storey Makati Prime Tower (MPT) to petitioner Titan-Ikeda Construction and Development Corporation.^[5] The parties formalized their agreement in a construction contract^[6] dated February 4, 1993.^[7]

Upon the completion of MPT's structural works, respondent awarded the P130,000,000 contract for the tower's architectural works^[8] (project) to petitioner. Thus, on January 31, 1994, the parties executed a supplemental agreement.^[9] The salient portions thereof were:

1. the [project] shall cover the scope of work of the detailed construction bid plans and specifications and bid documents dated 28 September 1993, attached and forming an integral part hereof as Annex A.
2. the contract price for the said works shall be P130 million.
3. the payment terms shall be "full swapping" or full payment in condominium units. The condominium units earmarked for the [petitioner] are shown in the attached Annex B.
4. the [respondent] shall transfer and surrender to [petitioner] the condominium units abovestated in accordance with the following schedule:
 - (a) 80% of units — upon posting and acceptance by [respondent] of the performance bond [and]
 - (b) 20% or remaining balance — upon completion of the project as provided in

the construction contract and simultaneous with the posting by [petitioner] of the reglementary guarantee bond.

5. the contract period shall be fifteen (15) months reckoned from the release of the condominium certificates of title (CCTs) covering eighty percent (80%) of the units transferable to [petitioner] as aforesaid[.]

Significantly, the supplemental agreement adopted those provisions of the construction contract which it did not specifically discuss or provide for.^[10] Among those carried over was the designation of GEMM Construction Corporation (GEMM) as the project's construction manager.^[11]

Petitioner started working on the project in February 1994.

On June 30, 1994, respondent executed a deed of sale^[12] (covering 114 condominium units and 20 parking slots of the MPT collectively valued by the parties at P112,416,716.88)^[13] in favor of petitioner pursuant to the "full-swapping" payment provision of the supplemental agreement.

Shortly thereafter, petitioner sold some of its units to third persons.^[14]

In September 1995, respondent engaged the services of Integratech, Inc. (ITI), an engineering consultancy firm, to evaluate the progress of the project.^[15] In its September 7, 1995 report,^[16] ITI informed respondent that petitioner, at that point, had only accomplished 31.89% of the project (or was 11 months and six days behind schedule).^[17]

Meanwhile, petitioner and respondent were discussing the possibility of the latter's take over of the project's supervision. Despite ongoing negotiations, respondent did not obtain petitioner's consent in hiring ITI as the project's construction manager. Neither did it inform petitioner of ITI's September 7, 1995 report.

On October 12, 1995, petitioner sought to confirm respondent's plan to take over the project.^[18] Its letter stated:

The mutual agreement arrived at sometime in the last week of August 1995 for [respondent] to take over the construction supervision of the balance of the [project] from [petitioner's] [e]ngineering staff and complete [the] same by December 31, 1995 as promised by [petitioner's] engineer.

The [petitioner's] accomplished works as of this date of [t]ake over is of acceptable quality in materials and workmanship.

This mutual agreement on the take over should not be misconstrued in any other way except that the take over is part of the long range plan of [respondent] that [petitioner], in the spirit of

cooperation, agreed to hand over the construction supervision to [respondent] as requested. (emphasis supplied)^[19]

Engineers Antonio Co, general construction manager of respondent, and Luzon Y. Tablante, project manager of petitioner, signed the letter.

INTEGRATECH'S (ITI'S) REPORT

In its September 7, 1995 report, ITI estimated that petitioner should have accomplished 48.71% of the project as of the October 12, 1995 takeover date.^[20] Petitioner repudiated this figure^[21] but qualifiedly admitted that it did not finish the project.^[22] Records showed that respondent did not merely take over the supervision of the project but took full control thereof.^[23]

Petitioner consequently conducted an inventory.^[24] On the basis thereof, petitioner demanded from respondent the payment of its balance amounting to P1,779,744.85.^[25]

On February 19, 1996, petitioner sent a second letter to respondent demanding P2,023,876.25. This new figure included the cost of materials (P244,331.40) petitioner advanced from December 5, 1995 to January 26, 1996.^[26]

On November 22, 1996, petitioner demanded from respondent the delivery of MPT's management certificate^[27] and the keys to the condominium units and the payment of its (respondent's) balance.^[28]

Because respondent ignored petitioner's demand, petitioner, on December 9, 1996, filed a complaint for specific performance^[29] in the Housing and Land Use Regulatory Board (HLURB).

While the complaint for specific performance was pending in the HLURB, respondent sent a demand letter to petitioner asking it to reimburse the actual costs incurred in finishing the project (or P69,785,923.47).^[30] In view of the pendency of the HLURB case, petitioner did not heed respondent's demands.

On April 29, 1997, the HLURB rendered a decision in favor of petitioner.^[31] It ruled that the instrument executed on June 30, 1994 was a deed of absolute sale because the conveyance of the condominium units and parking slots was not subject to any condition.^[32] Thus, it ordered respondent to issue MPT's management certificate and to deliver the keys to the condominium units to petitioner.^[33] Respondent did not appeal this decision. Consequently, a writ of execution was issued upon its finality.^[34]

Undaunted by the finality of the HLURB decision, respondent filed a complaint for collection of sum of money^[35] against petitioner in the Regional Trial Court (RTC) of Makati City, Branch 58 on July 2, 1997. It prayed for the reimbursement of the value of the project's unfinished portion amounting to P66,677,000.^[36]

During trial, the RTC found that because respondent modified the MPT's architectural design, petitioner had to adjust the scope of work.^[37] Moreover, respondent belatedly informed petitioner of those modifications. It also failed to deliver the concrete mix and rebars according to schedule. For this reason, petitioner was not responsible for the project's delay.^[38] The trial court thus allowed petitioner to set-off respondent's other outstanding liabilities with respondent's excess payment in the project.^[39] It concluded that respondent owed petitioner P2,023,876.25.^[40] In addition, because respondent refused to deliver the keys to the condominium units and the management certificate to petitioner, the RTC found that petitioner lost rental income amounting to US\$1,665,260.^[41] The dispositive portion of the RTC decision stated:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered dismissing [respondent's] [c]omplaint for lack of merit. On the other hand, finding preponderance of evidence to sustain [petitioner's] counterclaim, judgment is hereby rendered in favor of [petitioner] ordering [respondent] to pay the former:

1. The unpaid balance of the consideration for [petitioner's] services in [the project] in the amount of P2,023,867.25 with legal interest from the date of demand until fully paid;
2. Compensatory damages in the amount of US\$1,665,260 or its peso equivalent at the current foreign exchange rate representing lost rental income due only as of July 1997 and the accrued lost earnings from then on until the date of actual payment, with legal interest from the date of demand until fully paid; and
3. Attorney's fees in the amount of P100,000 as acceptance fee, P1,000 appearance fee per hearing and 25% of the total amount awarded to [petitioner].

With costs against the [respondent].

SO ORDERED.^[42]

Respondent appealed the RTC decision to the CA.^[43] The appellate court found that respondent fully performed its obligation when it executed the June 30, 1994 deed of absolute sale in favor of petitioner.^[44] Moreover, ITI's report clearly established that petitioner had completed only 48.71% of the project as of October 12, 1995, the takeover date. Not only did it incur delay in the performance of its obligation but petitioner also failed to finish the project. The CA ruled that respondent was entitled to recover the value of the unfinished portion of the project under the principle of unjust enrichment.^[45] Thus:

WHEREFORE, the appealed decision is **REVERSED** and a new one entered dismissing [petitioner's] counterclaims of P2,023,867.25 representing unpaid balance for [its] services in [the project]; US\$1,665,260 as accrued lost earnings, and attorney's fees. [Petitioner] is hereby ordered to return to [respondent] the amount of P66,677,000 representing the value of unfinished [portion of the project], plus legal interest thereon until fully paid. Upon payment by [petitioner] of the

aforementioned amount, [respondent] is hereby ordered to deliver the keys and [m]anagement [c]ertificate of the [Makati Prime Tower] paid to [petitioner] as consideration for the [project].^[46]

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner contends that the CA erred in giving weight to ITI's report because the project evaluation was commissioned only by respondent,^[47] in disregard of industry practice. Project evaluations are agreed upon by the parties and conducted by a disinterested third party.^[48]

We grant the petition.

REVIEW OF CONFLICTING FACTUAL FINDINGS

As a general rule, only questions of law may be raised in a petition for review on certiorari. Factual issues are entertained only in exceptional cases such as where the findings of fact of the CA and the trial court are conflicting.^[49]

Here, a glaring contradiction exists between the factual findings of the RTC and the CA. The trial court found that respondent contributed to the project's delay because it belatedly communicated the modifications and failed to deliver the necessary materials on time. The CA, however, found that petitioner incurred delay in the performance of its obligation. It relied on ITI's report which stated that petitioner had accomplished only 48.71% of the project as of October 12, 1995.

JANUARY 31, 1994 SUPPLEMENTAL AGREEMENT WAS EXTINGUISHED

A contract is a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.^[50] This case involved two contracts entered into by the parties with regard to the project.

The parties first entered into a contract for a piece of work^[51] when they executed the supplemental agreement. Petitioner as contractor bound itself to execute the project for respondent, the owner/developer, in consideration of a price certain (P130,000,000). The supplemental agreement was reciprocal in nature because the obligation of respondent to pay the entire contract price depended on the obligation of petitioner to complete the project (and *vice versa*).

Thereafter, the parties entered into a second contract. They agreed to extinguish the supplemental agreement as evidenced by the October 12, 1995 letter-agreement which was duly acknowledged by their respective representatives.^[52]

While the October 12, 1995 letter-agreement stated that respondent was to take over merely the supervision of the project, it actually took over the whole project itself. In fact, respondent subsequently hired two contractors in petitioner's stead.