

SECOND DIVISION

[G.R. No. 127367, May 03, 1999]

**GOLD LOOP PROPERTIES, INC., EMMANUEL ZAPANTA AND
FLORA ESTRELLA, PETITIONERS, VS. HON. COURT OF APPEALS
AND PHILIPPINE INTERNATIONAL TRADING CORPORATION,
RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review, under Rule 45 of the Rules of Court, assails the decision^[1] of the Court of Appeals which affirmed *in toto* the judgment^[2] of the Regional Trial Court, Branch CX, Pasay City, and ruled in favor of private respondents, Philippine International Trading Corporation.

The facts as found by the trial court, which the appellate court adopted and to which we give credence, reveal that on February 5, 1991, petitioner Gold Loop Properties (GLP), represented by its Executive Vice-President Estrella together with Fe Zapanta, entered into a Deed of Exchange with Philippine International Trading Corporation (PITC), a government controlled corporation. In that Deed, GLP, owner of a 16-storey residential condominium called Gold Loop Towers, located at Ortigas Commercial Complex, Pasig City, exchanged ten (10) condominium units with a total value of P25,846,067.00 for 304,071.38 bags of cement belonging to PITC, each bag containing 50 kilos. Subsequently, GLP offered an additional condominium unit in exchange for what is referred to as "bad stock" cement, or cement that was beginning to harden. In a letter dated March 25, 1991, PITC indicated it was amenable to the offer and suggested that lawyers prepare the necessary contract documents. On April 11, 1991, a Memorandum of Agreement (MOA) was executed between GLP and PITC.^[3] Pertinent portions of the MOA read as follows:

"WHEREAS, GLP has offered to buy aforesaid unbagged or loose imported cement at PITC-leased warehouses in Taguig, Pandacan and Paco, Metro Manila, on credit at the price set by PITC;

WHEREAS, PITC has accepted GLP's offer under terms and conditions hereinafter specified;

NOW, THEREFORE, for and in consideration of the foregoing premises and the covenants hereinafter stipulated, the parties hereby agree as follows:

1. SUBJECT MATTER, DELIVERY AND PRICE

1.1 GLP shall purchase on credit all PITC stock of loose or unbagged cement located at PITC-leased warehouses in Taguig, Pandacan and Paco, Metro Manila, which per inventory records as of 02 April 1991 amounts to

approximately 1,500 MT. Actual quantity shall be subject to final reconciliation after all cement shall have been withdrawn by GLP.

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1.3 Price for unbagged/loose cement is hereby set at P1.50 per kilo. The total value of the 1,500 MT unbagged/loose cement, subject of this Agreement is P2,250,000.00.

2. TERMS OF PAYMENT

2.1 Payment shall be made on or before the end of six (6) months from date of execution of this Agreement.

2.2 GLP shall issue a postdated check (PDC) in favor of PITC dated not later than 11 October 1991 in the amount of PESOS: TWO MILLION FIVE HUNDRED TWENTY THOUSAND PESOS (P2,520,00.00)^[4] hereof, secured by (i) a Promissory Note (PN) with at least two Joint and Solitary Signatories (JSS) and (ii) a Real Estate Mortgage. The post-dated check shall be submitted by GLP to PITC upon signing hereof. Nothing herein shall be construed as preventing GLP from paying PITC in cash for the actual quantities of cement purchased even before the end of the six-month period.

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2.5 GLP may, in lieu of cash, offer as payment a condominium unit acceptable to PITC whose value equals the value of cement purchased by GLP plus other (sic) all other charges as specified in Section 3.3 provided that such offer is expressly made to PITC before the end of the third month from the date of this contract. Upon acceptance by PITC of aforesaid condominium unit offered by GLP, PITC shall return to GLP the post dated check mentioned in Section 2.2 hereof and cancel the Real Estate Mortgage executed by GLP in favor of PITC pursuant to Section 2.2. If, however PITC refuses the condominium unit offered by GLP for any justifiable reason, GLP shall remit payment for cement and all other charges in cash in the manner provided in Pars. 2.1 and 2.2 hereof inclusive of interests. In the event that PITC accepts GLP's condominium unit in payment for the cement purchased no interest charges shall be imputed on the purchase price.^[5]

2.6 Payment shall be payable to: PHILIPPINE INTERNATIONAL TRADING CORPORATION.

2.7 Payment shall be made on or before the due date without need of demand and failure to make such payment on time shall entitle PITC to charge additional penalty, interest on late payments at the PITC Financial Assistance Rate (FAR) plus two percent (2%) per month of delinquency plus other charges as may reasonably be imposed, without prejudice to PITC's availing of other remedies as hereinafter outlined and those provided under existing laws.

8. OTHER TERMS AND CONDITIONS

8.1 No modification, alteration or waiver of any provisions herein contained, shall be binding on the parties hereto unless evidenced by a written agreement duly signed by both parties. Any written amendment to this AGREEMENT duly approved and signed by authorized officers or representatives of both parties shall be considered part of this contract and shall remain valid and binding until properly rescinded by either or both parties thereto."^[6]

Pursuant to the MOA, GLP issued a check^[7] in the amount of two million five hundred twenty thousand pesos (P2,520,000.00) bearing the signature of its president Emmanuel Zapanta. A promissory note^[8] dated April 11, 1991 for the amount of P2,250,000.00, to mature on October 11, 1991 was executed by Estrella as GLP's Executive Vice-President and in her personal capacity, and by the spouses Emmanuel and Fe Zapanta who undertook to bind themselves liable jointly and severally with GLP. A real estate mortgage was likewise executed on said date encumbering UNIT NE R-51 in the Gold Loop Towers, with the certificate of title delivered to PITC. A third transaction was later entered into by both parties wherein GLP sought to buy additional cement from PITC worth P350,000.00.^[9]

On October, 18, 1991, with the issued check having reached maturity, PITC deposited the check for encashment but it was returned for having been drawn against insufficient funds. In a demand letter sent to GLP, dated November 5, 1991, PITC stated that since the former was not able to give a condominium unit acceptable to the latter within three (3) months as stated in the MOA, and with the six (6) month-period within which it was to pay for the value of the cement having lapsed, PITC took the check given by GLP for value stated on its face and deposited it in their account. In the said letter, PITC also attached a final statement concerning the value of the cement GLP purchased and the pertinent charges in accordance with the MOA. The outstanding obligation including charges totalled P2,328,824.46 as of November 4, 1991. PITC further stated that although the total value of obligation (P2,328,824.46) is less than the value of the check issued, (P2,520,000.00) the issued check is still deemed as payment of the obligation, pursuant to clause 2.3 of the MOA. PITC indicated, however, that it would refund to GLP any excess in said payment.

When GLP failed to meet the demand in terms of either making arrangements for the payment by the drawee bank of the check or praying its obligation in cash to PITC, the latter filed charges against Estrella and Emmanuel Zapanta for estafa and violation of Batas Pambansa Bilang 22 (Bouncing Checks Law).^[10]

Pending preliminary investigation of the charges, a civil complaint was filed this time by GLP against PITC with the prayer that PITC be ordered to comply with the agreement for the swapping of cement in exchange for the condominium unit, and that the check issued to PITC be declared null and void for want of consideration. It also prayed that PITC pay GLP costs and damages. Concurrently, GLP filed a Motion for Suspension of the Preliminary Investigation of the criminal case initiated by

PITC, on the ground that the civil complaint filed by GLP constitutes a prejudicial question.^[11]

Private respondent PITC answered the complaint with permissive and compulsory counterclaims, alleging that the MOA was the latter contract which superseded the barter agreement. PITC also averred that as of April 30, 1992, the amount owed to it by GLP already totalled P3,197,660.11, inclusive of interest and penalties.^[12]

The issues as formulated in the pre-trial order and adopted by the trial court were as follows:

- "1. Whether or not the real agreement of the parties was one of 'swapping';
2. If in the affirmative, whether or not the check issued by plaintiffs was intended as a form of payment;
3. If the answer to issue No. 1 is in the negative, whether or not the transaction between the parties is covered by the Memorandum of Agreement of April 11, 1991;
4. Whether or not either the plaintiffs of (sic) the defendant is/are entitled to damages;
5. Whether or not the plaintiffs are liable under defendant's permissive and compulsory counterclaim."^[13]

The trial court found that the MOA dated April 11, 1991 was the contract between the parties and that its provisions were clear. The exchange of the condominium unit for the bad stock of cement was incorporated in the agreement but such was presented as an alternative. The trial court likewise pointed out that the MOA provided that "swapping" might only be done in lieu of cash payment and if GLP expressly made the offer before the end of the third month from the date of the contract. Such offer by GLP was also dependent upon PITC's acceptance of the condominium unit being offered. The trial court further characterized the agreement as a sale on credit with the purchase price to be paid in six (6) months, and GLP was given the option to pay in kind as long as such option was exercised within three (3) months from the date of the execution of the agreement. Petitioners' contention -- that the issuance of the check, the real estate mortgage and the promissory note were only in compliance with the regulation of the Commission on Audit -- was negated by trial court. The dispositive portion of the trial court's decision reads:

"WHEREFORE, judgment is hereby rendered DISMISSING the Complaint. On the Permissive Counterclaim, judgment is rendered in favor of the defendant and against the plaintiffs, ordering them to pay defendant jointly and severally P3,197,660.11 representing the value of 1,333,925 Metric Tons of cement at P1.50 [per] kilo inclusive of interest and penalties of April 30, 1992, plus all accrued interests and penalties from May 1, 1992 until the amount is fully paid. The [Compulsory] Counterclaim is hereby DISMISSED."^[14]