Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GEORGE C. FONG, Petitioner,	**G.R. No. 185592**
	Present:
-versus-	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, LEONEN, and JARDELEZA,* *JJ.*
JOSE V. DUEÑAS, Respondent.	Promulgated: 15 JUN 2015

x----------x

DECISION

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the September 16, 2008 decision[2] and the December 8, 2008 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 88396.

These assailed CA rulings annulled the June 27, 2006 decision[4] and October 30, 2006 order[5] of the Regional Trial Court of Makati, Branch 64 (*trial court*), which directed respondent Jose V. Dueñas (*Dueñas*) to pay Five Million Pesos (*₱5 Million*) to petitioner George C. Fong (*Fong*), and imposed a six percent (6%) annual interest on this amount.

---

* Designated as Additional Member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated June 10, 2015.

1 *Rollo*, pp. 33-67.

2 Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Jose C. Mendoza (now a member of this Court) and Sesinando E. Villon; id. at 69-90.

3 Id. at 92.

4 Id. at 239-249.

5 Id. at 255-257.

Factual Antecedents

Dueñas is engaged in the bakery, food manufacturing, and retailing business, which are all operated under his two companies, D.C. DANTON, Inc. (*Danton*) and Bakcom Food Industries, Inc. (*Bakcom*). He was an old acquaintance of Fong as they were former schoolmates at the De La Salle University.[6]

Sometime in November 1996, Dueñas and Fong entered into a **verbal** joint venture contract where they agreed to engage in the food business and to incorporate a holding company under the name Alliance Holdings, Inc. (*Alliance* or *the proposed corporation*). Its capitalization would be Sixty Five Million Pesos (*₱65 Million*), to which they would contribute in equal parts.[7]

The parties agreed that Fong would contribute Thirty Two Million and Five Hundred Thousand Pesos (₱32.5 Million) in cash while Dueñas would contribute all his Danton and Bakcom shares which he valued at ₱32.5 Million.[8] Fong required Dueñas to submit the financial documents supporting the valuation of these shares.

On November 25, 1996, Fong started remitting in tranches his share in the proposed corporation's capital. He made the remittances under the impression that his contribution would be applied as his subscription to fifty percent (50%) of Alliance's total shareholdings. On the other hand, Dueñas started processing the Boboli[9] international license that they would use in their food business. Fong's cash contributions are summarized below.[10]

Date	Amount
November 25, 1996	₱1,980,475.20
January 14, 1997	₱1,000,000.00
February 8, 1997	₱500,000.00
March 7, 1997	₱100,000.00
April 28, 1997	₱500,000.00
June 13, 1997	₱919,524.80
Total	₱5,000,000.00

On June 13, 1997, Fong sent a letter to Dueñas informing him of his decision to limit his total contribution from ₱32.5 Million to ₱5 Million. This letter reads:

June 13, 1997

---

6 Id. at 37.
7 Id. at 214.
8 Id. at 71.
9 Boboli is an international food enterprise.
10 *Rollo*, pp. 445-446.

Mr. Jose Dueñas
c/o Camira Industries

Re: Proposed JV in Bakcom, D.C. Danton and Boboli

Dear Jojit,

Enclosed is our check for ₱919,534.80 representing our **additional advances to subject company in process of incorporation**. This will make our total advances to date amounting to ₱5 million.

Since we agreed in principal late last year to pursue subject matter, the delays in implementing the joint venture have caused us to rethink our position. First, we were faced with the 'personal' factor which was explained to you one time. This has caused us to turn down a number of business opportunities. Secondly, since last year, the operation of Century 21 has been taking more time from us than anticipated. That is why we decided to relinquish our original plan to manage and operate 'Boboli' knowing this limitation. For us, it does not make sense anymore to go for a significant shareholding when we cannot be hands on and participate actively as originally planned. For your information, we will probably be giving up our subway franchise too.

Together with our business advisers and legal counsel, **we came to a decision to hold our commitment (from advances to investment) at ₱5 million only for now from the original plan of ₱32.5 million, if this is acceptable to you.**

We know that our decision will somewhat upset the overall plans. But it will probably be more problematic for us in the long run if we continue full speed. **We have put our money down in trust and good faith despite the much delayed financials**. We continue to believe in your game plan and capabilities to achieve the desired goals for subject undertaking. Please permit us instead to be just a modest silent investor now with a take out plan when time and price is right.

Thank you for your kind understanding and consideration.

With best regards.

(Signed) George Fong[11]

Fong observed that despite his ₱5 Million contribution**, Dueñas still failed to give him the financial documents on the valuation of the Danton and Bakcom shares.** Thus, except for Dueñas' representations, Fong had nothing to rely on to ensure that these shares were really valued at ₱32.5 Million. **Moreover, Dueñas failed to incorporate and register Alliance with the Securities and Exchange Commission (*SEC*).**[12]

---

11 Id. at 81-82; emphasis supplied.
12 Id. at 215.

These circumstances convinced Fong that Dueñas would no longer honor his obligations in their joint venture agreement.[13] Thus, on October 30, 1997, Fong wrote Dueñas informing him of his decision to cancel the joint venture agreement. He also asked for the refund of the ₱5 Million that he advanced.[14] **In response, Dueñas admitted that he could not immediately return the money since he used it to defray the business expenses of Danton and Bakcom**.[15]

To meet Fong's demand, Dueñas proposed several schemes for payment of the ₱5 Million.[16] However, Fong did not accept any of these proposed schemes. On March 25, 1998, Fong wrote a final letter of demand[17] informing Dueñas that he would file a judicial action against him should he still fail to pay after receipt of this written demand.

Since Dueñas did not pay, Fong filed a complaint against him for collection of a sum of money and damages[18] on April 24, 1998.

The Trial Court's Ruling

In its June 27, 2006 decision, the trial court ruled in favor of Fong and held that a careful examination of the complaint shows that although it was labeled as an action for collection of a sum of money, it was actually an action for rescission.[19]

The trial court noted that Dueñas' failure to furnish Fong with the financial documents on the valuation of the Danton and Bakcom shares, as well as the almost one year delay in the incorporation of Alliance, caused Fong to rescind the joint venture agreement.[20] According to the trial court, these are adequate and acceptable reasons for rescission.

The trial court also held that Dueñas erroneously invested Fong's cash contributions in his two companies, Danton and Bakcom. The signed receipts,[21] presented as evidence, expressly provided that **each remittance should be applied as advance subscription to Fong's shareholding in Alliance.** Thus, Dueñas' investment of the money in Danton and Bakcom was clearly unauthorized and contrary to the parties' agreement.

Since Dueñas was unjustly enriched by Fong's advance capital contributions, the trial court ordered him to return the money amounting

---

13 Id. at 216.
14 Id. at 112-113.
15 Id.
16 Id. at 133-136.
17 Id. at 115-116.
18 Id. at 213-220.
19 Id. at 243.
20 Id. at 245.
21 Id.

to ₱5 Million and to pay ten percent (10%) of this amount in attorney's fees, as well as the cost of the suit.[22]

Fong filed a partial motion for reconsideration from the trial court's June 27, 2006 decision and asked for the imposition of a six percent (6%) annual interest, computed from the date of extrajudicial demand until full payment of the award. The trial court granted this prayer in its October 30, 2006 order.[23]

The CA's Ruling

Dueñas responded to the trial court's ruling through an appeal with the CA, which granted the appeal and annulled the trial court's ruling.

The CA ruled that Fong's June 13, 1997 letter evidenced his intention to convert his cash contributions from "advances" to the proposed corporation's shares, to mere "investments." Thus, contrary to the trial court's ruling, Dueñas correctly invested Fong's ₱5 Million contribution to Bakcom and Danton. This did not deviate from the parties' original agreement as eventually, the shares of these two companies would form part of Alliance's capital.[24]

Lastly, the CA held that the June 13, 1997 letter showed that Fong knew all along that he could not immediately ask for the return of his ₱5 Million investment. Thus, whether the action filed was a complaint for collection of a sum of money, or rescission, it must still fail.[25]

The Petition

Fong submits that the CA erred when it ruled that his June 13, 1997 letter showed his intent to convert his contributions from advance subscriptions to Alliance's shares, to investments in Dueñas' two companies. Contrary to the CA's findings, the receipts and the letter expressly mentioned that his contributions should all be treated as his share subscription to Alliance.[26]

Also, Fong argues that Dueñas' unjustified retention of the ₱5 Million and its appropriation to his (Dueñas') own business, amounted to unjust enrichment; and that he contributed to fund Alliance's capital and incorporation, not to pay for Danton and Bakcom's business expenses.[27]

---

22 Id. at 249.
23 Id. at 257.
24 Id. at 29.
25 Id. at 29-30.
26 Id. at 452-464.
27 Id. at 465.

The Case for Dueñas

Dueñas contends that he could no longer refund the ₱5 Million since he had already applied it to his two companies; that this is proper since Danton and Bakcom's shares would also form part of his capital contribution to Alliance.[28]

Moreover, the incorporation did not push through because Fong unilaterally rescinded the joint venture agreement by limiting his investment from ₱32.5 Million to ₱5 Million.[29] Thus, it was Fong who first breached the contract, not he. Consequently, Fong's failure to comply with his undertaking disqualified him from seeking the agreement's rescission.[30]

The Court's Ruling

We resolve to **GRANT** the petition.

At the outset, the Court notes that the parties' joint venture agreement to incorporate a company that would hold the shares of Danton and Bakcom and that would serve as the business vehicle for their food enterprise, is a valid agreement. The failure to reduce the agreement to writing does not affect its validity or enforceability as there is no law or regulation which provides that an agreement to incorporate must be in writing.

With this as premise, we now address the related issues raised by the parties.

The body rather than the title of the complaint determines the nature of the action.

A well-settled rule in procedural law is that the allegations in the body of the pleading or the complaint, and not its title, determine the nature of an action.[31]

An examination of Fong's complaint shows that **although it was labeled as an action for a sum of money and damages, it was actually a complaint for rescission.** The following allegations in the complaint support this finding:

> 9. **Notwithstanding the aforesaid remittances, defendant failed for an unreasonable length of time to submit a valuation of the equipment of D.C. Danton and Bakcom** x x x.

---

28 Id. at 477.
29 Id. at 489.
30 Id. at 490.
31 *Gochan v. Gochan*, 423 Phil. 491, 501 (2001).

> 10. Worse, despite repeated reminders from plaintiff, **defendant failed to accomplish the organization and incorporation of the proposed holding company**, contrary to his representation to promptly do so.
>
> x x x x
>
> 17. **Considering that the incorporation of the proposed holding company failed to materialize, despite the lapse of one year and four months from the time of subscription, plaintiff has the right to revoke his pre-incorporation subscription. Such revocation entitles plaintiff to a refund of the amount of P5,000,000.00 he remitted to defendant**, representing advances made in favor of defendant to be considered as payment on plaintiff's subscription to the proposed holding company upon its incorporation, plus interest from receipt by defendant of said amount until fully paid. [Emphasis supplied.]

Fong's allegations primarily pertained to his cancellation of their verbal agreement because Dueñas failed to perform his obligations to provide verifiable documents on the valuation of the Danton's and Bakcom's shares, and to incorporate the proposed corporation. These allegations clearly show that what Fong sought was the joint venture agreement's rescission.

As a contractual remedy, rescission is available when one of the parties substantially fails to do what he has obligated himself to perform.[32] It aims to address the breach of faith and the violation of reciprocity between two parties in a contract.[33] Under Article 1191 of the Civil Code, the right of rescission is inherent in reciprocal obligations, *viz*:

> The power to rescind obligations **is implied in reciprocal ones**, in case one of the obligors should not comply with what is incumbent upon him. [Emphasis supplied.]

Dueñas submits that Fong's prayer for the return of his cash contribution supports his claim that Fong's complaint is an action for collection of a sum of money. However, Dueñas failed to appreciate that **the ultimate effect of rescission is to restore the parties to their original status before they entered in a contract**. As the Court ruled in *Unlad Resources v. Dragon*:[34]

> Rescission has the effect of "unmaking a contract, or its *undoing from the beginning, and not merely its termination.*" **Hence, rescission creates the obligation to return the object of the contract**. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate

---

32 *Spouses Tumibay v. Spouses Lopez***,** G.R. No.171692, June 3, 2013, 697 SCRA 21.

33 Id.

34 582 Phil. 61 (2008).

> it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made.
>
> Accordingly, **when a decree for rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation**.[35] [Emphasis supplied.]

In this light, we rule that Fong's prayer for the return of his contribution did not automatically convert the action to a complaint for a sum of money. **The mutual restitution of the parties' original contributions is only a necessary consequence of their agreement's rescission**.

Rescission under Art. 1191 is applicable in the present case

Reciprocal obligations are those which arise from the same cause, in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent on the obligation of the other.[36]

Fong and Dueñas' execution of a joint venture agreement created between them reciprocal obligations that must be performed in order to fully consummate the contract and achieve the purpose for which it was entered into.

Both parties verbally agreed to incorporate a company that would hold the shares of Danton and Bakcom and which, in turn, would be the platform for their food business. Fong obligated himself to contribute half of the capital or ₱32.5 Million in cash. On the other hand, Dueñas bound himself to shoulder the other half by contributing his Danton and Bakcom shares, which were allegedly also valued at ₱32.5 Million. Aside from this, Dueñas undertook to process Alliance's incorporation and registration with the SEC.

When the proposed company remained unincorporated by October 30, 1997, Fong cancelled the joint venture agreement and demanded the return of his ₱5 Million contribution.

For his part, Dueñas explained that he could not immediately return the ₱5 Million since he had invested it in his two companies. He found nothing irregular in this as eventually, the Danton and Bakcom shares would form part of Alliance's capital.

Dueñas' assertion is erroneous.

---

35 Id. at 79-80.

36 *Cortes v. CA*, 527 Phil. 153, 160 (2006).

The parties never agreed that Fong would invest his money in Danton and Bakcom. Contrary to Dueñas' submission, Fong's understanding was that his money would be applied to his shareholdings in Alliance. As shown in Fong's June 13, 1997 letter, this fact remained to be true even after he limited his contribution to ₱5 Million, *viz*:

> Dear Jojit,
>
> Enclosed is our check for ₱919,534.80 representing our **additional advances to subject company in process of incorporation**. This will make our total advances to date amounting to ₱5 million.[37] [Emphasis supplied.]

Moreover, under the Corporation Code, before a stock corporation may be incorporated and registered, it is required that at least twenty five percent (25%) of its authorized capital stock as stated in the articles of incorporation, be first subscribed at the time of incorporation, and at least twenty five percent (25%) of the total subscription, be paid upon subscription.[38]

To prove compliance with this requirement, the SEC requires the incorporators to submit a treasurer's affidavit and a certificate of bank deposit, showing the existence of an amount compliant with the prescribed capital subscription.[39]

In this light, we conclude that **Fong's cash contributions play an indispensable part in Alliance's incorporation.** The process necessarily requires the money not only to fund Alliance's registration with the SEC but also its initial capital subscription. This is evident in the receipts which Dueñas himself executed, one of which provides:

> I, **JOSE V. DUEÑAS**, hereby acknowledge the receipt on January 14, 1997 of the amount of One Million Pesos (Php 1,000,000.00) Check No. 118 118 7014 Metro Bank, Pasong Tamo branch dated January 13, 1997 from Mr. George Fong, **which amount shall constitute an advance of the contribution or investment of Mr. Fong in the joint venture which he and I are in the process of organizing**. Specifically, this amount will be considered as part of Mr. Fong's subscription to the shares of stock of the joint venture company which we will incorporate to embody and carry out our joint venture.[40] [Emphasis supplied.]

Thus, Dueñas erred when he invested Fong's contributions in his two companies. This money should have been used in processing Alliance's registration. Its incorporation would not materialize if there would be no funds for its initial capital. Moreover, Dueñas represented that Danton and Bakcom's shares were valued at ₱32.5 Million. If this

---

37 *Rollo*, p. 81.

38 Section 13, Corporation Code of the Philippines.

39 Registration requirements accessed from: http://iregister.sec.gov.ph/PDFs/registration%20of%20corporations%20and%20partnerships.pdf

40 *Rollo*, p. 222.

was true, then there was no need for Fong's additional ₱5 Million investment, which may possibly increase the value of the Danton and Bakcom shares.

Under these circumstances, the Court agrees with the trial court that Dueñas violated his agreement with Fong. **Aside from unilaterally applying Fong's contributions to his two companies, Dueñas also failed to deliver the valuation documents of the Danton and Bakcom shares to prove that the combined values of their capital contributions actually amounted to ₱32.5 Million.**

These acts led to Dueñas' delay in incorporating the planned holding company, thus resulting in his breach of the contract.

On this basis, Dueñas' breach justified Fong's rescission of the joint venture agreement under Article 1191. As the Court ruled in *Velarde v. Court of Appeals*:[41]

> The **right of rescission** of a party to an obligation under Article 1191 of the Civil Code **is predicated on a breach of faith by the other party who violates the reciprocity between them**. The breach contemplated in the said provision is the obligor's failure to comply with an existing obligation. **When the obligor cannot comply with what is incumbent upon it, the obligee may seek rescission** and in the absence of any just cause for the court to determine the period of compliance, the court shall decree the rescission.
>
> In the present case, **private respondents validly exercised their right to rescind the contract, because of the failure of petitioners to comply with their obligation** to pay the balance of the purchase price. Indubitably, the latter violated the very essence of reciprocity in the contract of sale, a violation that consequently gave rise to private respondents' right to rescind the same in accordance with law.[42] [Emphasis supplied.]

However, the Court notes that Fong also breached his obligation in the joint venture agreement.

In his June 13, 1997 letter, Fong expressly informed Dueñas that he would be limiting his cash contribution from ₱32.5 Million to ₱5 Million because of the following reasons which we quote verbatim:

> 1. First, we were faced with the 'personal' factor which was explained to you one time. This has caused us to turn down a number of business opportunities;
>
> 2. Secondly, since last year, the operation of Century 21 has been taking more time from us than anticipated. That is why we decided to relinquish our original plan to manage and operate 'Boboli' knowing this limitation. For us, it does not make sense anymore to go for a

---

41 413 Phil. 360 (2001).

42 Id. at 373-374.

> significant shareholding when we cannot be hands on and participate actively as originally planned.[43] x x x.

Although these reasons appear to be valid, they do not erase the fact that Fong still reneged on his original promise to contribute ₱32.5 Million. The joint venture agreement was not reduced to writing and the evidence does not show if the parties agreed on valid causes that would justify the limitation of the parties' capital contributions. Their only admission was that they obligated themselves to contribute ₱32.5 Million each.

Hence, Fong's diminution of his capital share to ₱5 Million also amounted to a substantial breach of the joint venture agreement, which breach occurred before Fong decided to rescind his agreement with Dueñas. Thus, Fong also contributed to the non-incorporation of Alliance that needed ₱65 Million as capital to operate.

Fong cannot entirely blame Dueñas since the substantial reduction of his capital contribution also greatly impeded the implementation of their agreement to engage in the food business and to incorporate a holding company for it.

As both parties failed to comply with their respective reciprocal obligations, we apply Article 1192 of the Civil Code, which provides:

> Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. **If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages**. [Emphasis supplied.]

Notably, the Court is not aware of the schedule of performance of the parties' obligations since the joint venture agreement was never reduced to writing. The facts, however, show that both parties began performing their obligations after executing the joint venture agreement. Fong started remitting his share while Dueñas started processing the Boboli international license for the proposed corporation's food business.

The absence of a written contract renders the Court unsure as to whose obligation must be performed first. It is possible that the parties agreed that Fong would infuse capital first and Dueñas' submission of the documents on the Danton and Bakcom shares would just follow. It could also be the other way around. Further, the parties could have even agreed to simultaneously perform their respective obligations.

---

43 *Rollo*, p. 83.

Despite these gray areas, the fact that both Fong and Dueñas substantially contributed to the non-incorporation of Alliance and to the failure of their food business plans remains certain.

As the Court cannot precisely determine who between the parties first violated the agreement, we apply the second part of Article 1192 which states: *"if it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished,* ***and each shall bear his own damages.***"

In these lights, the Court holds that the joint venture agreement between Fong and Dueñas is **deemed extinguished through rescission under Article 1192 in relation with Article 1191 of the Civil Code.** Dueñas must therefore return the ₱5 Million that Fong initially contributed since rescission requires mutual restitution.[44] **After rescission, the parties must go back to their original status before they entered into the agreement.** Dueñas cannot keep Fong's contribution as this would constitute unjust enrichment.

No damages shall be awarded to any party in accordance with the rule under Article 1192 of the Civil Code that in case of mutual breach and the first infractor of the contract cannot exactly be determined, each party shall bear his own damages.

WHEREFORE, premises considered, we hereby **GRANT** the petition and reverse the September 16, 2008 decision and December 8, 2008 resolution of the Court of Appeals in CA-G.R. CV No. 88396. Respondent Jose V. Dueñas is ordered to **RETURN** Five Million Pesos to petitioner George C. Fong. This amount shall incur an interest of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.[45] The parties' respective claims for damages are deemed **EXTINGUISHED** and each of them shall bear his own damages.

SO ORDERED.

ARTURO D. BRION
Associate Justice

---

44 *Grace Park Engineering v. Dimaporo,* 194 Phil. 253 (1981).

45 Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, series of 2013, effective July 1, 2013; *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice