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*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division  
MAY 26 2016

Republic of the Philippines  
Supreme Court  
Baguio City

THIRD DIVISION

ACS DEVELOPMENT &  
PROPERTY MANAGERS, INC.,  
Petitioner,

G.R. No. 195552

Present:

VELASCO, JR., J,  
*Chairperson,*  
PERALTA,  
PERES,  
REYES, and  
JARDELEZA, JJ.

- versus -

MONTAIRE REALTY AND  
DEVELOPMENT CORPORATION,  
Respondent.

Promulgated:

April 18, 2016

*Wilfredo V. Lapitan*

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RESOLUTION

REYES, J.:

Before the Court is a Petition for *Certiorari*<sup>1</sup> filed by ACS Development & Property Managers, Inc. (ADPROM) against Mont-Aire<sup>2</sup> Realty and Development Corporation (MARDC) to assail the Decision<sup>3</sup> dated March 28, 2000 and Resolution<sup>4</sup> dated November 9, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 48805, which affirmed with modification the Decision<sup>5</sup> dated August 17, 1998 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 32-97.

<sup>1</sup> Rollo, pp. 2-72.

<sup>2</sup> Montaire in the Petition for *Certiorari*.

<sup>3</sup> Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Corona Ibay-Somera and Portia Aliño-Hormachuelos concurring; *rollo*, pp. 311-317.

<sup>4</sup> Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Josefina Guevara-Salonga and Japar B. Dimaampao concurring; *id.* at 319-320.

<sup>5</sup> *Id.* at 80-99.

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ADPROM and MARDC were parties to a Construction Agreement<sup>6</sup> executed on April 25, 1996, whereby ADPROM, as contractor, was to construct 17 units of MARDC's Villa Fresca Townhomes in Barangay Kaybagal, Tagaytay City. The total consideration for the contract was ₱39,500,000.00, inclusive of labor, materials, supervision and taxes. ADPROM was to be paid periodically based on monthly progress billings, less 10% retention.<sup>7</sup> Angel Lazaro & Associates (ALA) was hired by MARDC as the project's construction manager.<sup>8</sup>

The parties later amended their Construction Agreement, reducing the number of units to be erected to 11 and the total contract price to ₱25,500,000.00. On May 2, 1996, ADPROM commenced with the construction of the townhouses.<sup>9</sup>

MARDC fully satisfied ADPROM'S Progress Billing Nos. 1 to 8 for a total amount of ₱23,169,183.43. In Progress Billing No. 9 for work performed in February 1997, ADPROM demanded from MARDC the amount of ₱1,495,345.24.<sup>10</sup> ALA, however, approved the payment of only ₱94,460.28, as it disputed specific amounts in the billing, including cost additives.<sup>11</sup> ADPROM refused to allow a reduction in its demanded amount. In a letter<sup>12</sup> dated March 14, 1997, it even insisted on MARDC's acceptance of the accomplishments identified in Progress Billing No. 9 before it could proceed further with construction works. Beginning March 18, 1997, when Progress Billing No. 9 remained unpaid, ADPROM decided on a work stoppage.<sup>13</sup>

The stoppage prompted MARDC to serve upon ADPROM on March 20, 1997 a notice of default.<sup>14</sup> After several meetings among the parties and ADPROM's issuance of consolidated Progress Billing Nos. 9 and 10<sup>15</sup> intended to supersede the contested Progress Billing No. 9, ALA still advised MARDC to defer the payment of ADPROM's demand.<sup>16</sup> ADPROM's consolidated billing of ₱1,778,682.06 was still greater than ALA's approved amount of ₱1,468,348.60.<sup>17</sup>

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<sup>6</sup> Id. at 105-111.

<sup>7</sup> Id. at 107.

<sup>8</sup> Id. at 312.

<sup>9</sup> Id. at 81.

<sup>10</sup> Id. at 261.

<sup>11</sup> Id. at 268-269.

<sup>12</sup> Id. at 271-272.

<sup>13</sup> Id. at 271-275, 312.

<sup>14</sup> Id. at 273.

<sup>15</sup> Id. at 283.

<sup>16</sup> Id. at 284, 312.

<sup>17</sup> Id. at 283.

On June 5, 1997, MARDC decided to terminate the subject Construction Agreement.<sup>18</sup> It demanded from ADPROM the return of alleged overpayments amounting to ₱11,188,539.69, after it determined from ALA that ADPROM's accomplished work constituted only 54.67%. An evaluation by another firm hired by MARDC, TCGI Engineers, also provided that ADPROM'S work accomplishment was only at 46.98%.<sup>19</sup> Feeling aggrieved, ADPROM instituted with the CIAC a case for sum of money against MARDC, which in turn filed its own counterclaim against ADPROM.

On August 17, 1998, the CIAC rendered its Decision<sup>20</sup> that concluded with the following awards:

#### IX. SUMMARY OF AWARD

The Tribunal therefore makes the summary of award as follows:

##### A. FOR [ADPROM]

	<i>Claims</i>	<i>Award</i>
1. Unpaid Billings	₱1,468,348.60	₱1,468,348.60
2. Interest on Billings	19,755.23	109,824.43*
3. Refund of accumulated 10% retention	2,806,814.00	2,806,814.00
4. Interest on retention	202,396.71	0.00
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Total	₱4,497,314.54	₱4,384,987.03

[\* computed at 6% per annum from 19 May 1997 up to 17 August 1998, the date of the promulgation of this award]

##### B. FOR [MARDC]

1. Refund for overpayment	₱11,188,539.69	0.00
2. Interest on overpayment	167,828.10	0.00
3. Liquidated Damages	6,517,500.00	0.00
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Total	₱17,873,867.79	0.00

C. **NET AWARD for CLAIMANT** **₱4,384,987.03**

**NET AWARD** **₱4,384,987.03**

#### X. AWARD

[MARDC] therefore is ordered to pay [ADPROM] the amount of PESOS FOUR MILLION [THREE] HUNDRED [EIGHTY-FOUR] THOUSAND [NINE] HUNDRED [EIGHTY-SEVEN] AND [03]/100 (₱4,384,987.03) within fifteen (15) days from receipt of notice hereof. Interest of twelve percent (12%) per annum shall be

<sup>18</sup> Id. at 289.

<sup>19</sup> Id. at 312-313.

<sup>20</sup> Id. at 80-99.

charged on said amount or any balance thereof from the time due until fully paid.<sup>21</sup>

### **Ruling of the CA**

Dissatisfied, MARDC appealed the CIAC decision to the CA *via* a petition for review. On March 28, 2000, the CA rendered its Decision<sup>22</sup> deleting the award of interest on unpaid billings, and holding ADPROM liable to MARDC for liquidated damages at ₱39,500.00 per calendar day from March 20, 1997 until September 1, 1997. Thus, the dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the assailed Decision of [CIAC] is hereby MODIFIED. It is affirmed in part, insofar as it awards [ADPROM] its unpaid billings and the refund of its retention. The award of interest on the unpaid billings is set aside for lack of merit. Finally, [ADPROM] is hereby held liable to [MARDC] for liquidated damages in the amount of Thirty[-]Nine Thousand Five Hundred Pesos (Php 39,500.00) per calendar day, computed from March 20, 1997, the date ADPROM was served a notice of default for unjustified work stoppage, until September 1, 1997, when [MARDC] contracted another construction corporation, the Ulanday Contractors, Inc., to complete the project.

**SO ORDERED.**<sup>23</sup>

ADPROM filed a motion for reconsideration while MARDC filed a motion for partial reconsideration. Both motions were denied by the CA in its Resolution<sup>24</sup> dated November 9, 2010.

Unyielding, ADPROM filed the Petition for *Certiorari* before this Court arguing that the CA gravely abused its discretion in deleting the award of interest on unpaid billings and in ordering it to pay liquidated damages.

### **Ruling of the Court**

The Court dismisses the petition.

At the outset, the Court emphasizes that ADPROM availed of the wrong remedy when it filed with the Court a petition for *certiorari* to question the CA decision that reviewed the CIAC's rulings. Instead of

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<sup>21</sup> Id. at 98-99.

<sup>22</sup> Id. at 311-317.

<sup>23</sup> Id. at 317.

<sup>24</sup> Id. at 319-320.

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filing a petition for *certiorari* under Rule 65 of the Rules of Court, ADPROM should have filed a petition for review under Rule 45.<sup>25</sup> In *Spouses Leynes v. Former Tenth Division of the CA, et al.*,<sup>26</sup> the Court emphasized:

The proper remedy of a party aggrieved by a decision of the [CA] is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders, or resolutions of the [CA] in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.<sup>27</sup>

Even granting that the Court adopts a liberal application of the rules and treats the present petition as a petition for review, there still exists no cogent reason for a reversal of the rulings made by the CA.

The appellate court sufficiently explained its bases in modifying the CIAC's monetary awards. As regards the deletion of the interest on the unpaid billings, the CA explained that with the parties' agreement that ALA would have to first approve ADPROM's progress billings before MARDC would be obligated to pay, the latter did not incur any delay in the payment of ADPROM's demands. On the award of liquidated damages, the CA cited ADPROM's unjustified work stoppage that resulted in MARDC's clear disadvantage. Even the non-payment of its demands upon MARDC failed to justify ADPROM's decision, given its own refusal to adjust its billings in accordance with the findings of ALA. Moreover, the subject Construction Agreement provided that in case of disputes that would arise from the contract, the parties should strive to resolve them through an amicable settlement.<sup>28</sup>

The foregoing pronouncements of the CA were in accord with the pertinent provisions of the parties' Construction Agreement. First, ADPROM was not entitled to CIAC's awarded interest of ₱109,824.43, which was supposedly computed based on the unpaid billings at six percent (6%) *per annum* from May 19, 1997 up to the date of promulgation of the

<sup>25</sup> See *Phil. Commercial Int'l. Bank v. CA*, 452 Phil. 542, 551 (2003).

<sup>26</sup> 655 Phil. 25 (2011).

<sup>27</sup> *Id.* at 44-45.

<sup>28</sup> *Rollo*, pp. 315-316.

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CIAC decision.<sup>29</sup> Specifically on the accrual of MARDC’s obligation to pay for work performed by ADPROM, the parties deemed necessary the prior approval by ALA of the billings to be paid, as recognized in the following stipulations:

Article III  
SCOPE OF OWNER’S RESPONSIBILITY

3.1 [MARDC] shall make payments directly to [ADPROM] based on the latter’s progress billing **as approved by [ALA]**.

Article IV  
CONTRACT PRICE AND TERMS OF PAYMENT

x x x x

4.2 Terms of Payment

x x x x

4.2.3 [MARDC] shall pay [ADPROM] within seven (7) working days from receipt of the progress billing submitted by [ADPROM], **duly approved by [ALA]**.

x x x x

4.2.5 All payments/releases shall be effected strictly in accordance with the “Scope of Works, Cost Breakdown and Weight Percentage for Billing” attached as Annexes A and C and the stipulations herein provided and upon presentment by [ADPROM] of a written certification certifying as to the percentage of completion and accompanied by a certificate attesting to the said percentage of completion **and recommending approval by [ALA] for the appropriate payment thereof**, subject to the warranties and obligations of [ADPROM].<sup>30</sup> (Emphasis ours)

Clearly, given its consent to the foregoing conditions, ADPROM could not have compelled MARDC to satisfy the unpaid billings unless and until its progress billings had been approved by ALA. In the same vein, no default could be attributed to MARDC in the absence of such action from ALA. Records indicate that as of May 9, 1997, pending the settlement of the disputed matters between the parties, ALA only recommended payment by MARDC of the reduced amount of ₱1,468,348.60.<sup>31</sup> ADPROM then could neither fault nor penalize MARDC for its deferment of the demanded amounts. On the other hand, in

<sup>29</sup> Id. at 99.  
<sup>30</sup> Id. at 107.  
<sup>31</sup> Id. at 312.

withholding approval, ALA made clear its grounds for refusing to agree on the full amount of ADPROM's claim.

Contrary to the statement of ADPROM in its petition that ALA later approved on April 4, 1997 the payment of the consolidated Progress Billing Nos. 9 and 10, the minutes of the meeting among representatives of MARDC, ADPROM and ALA on even date indicated that the consolidated billings were then still subject to evaluation.<sup>32</sup> Records even show that as of May 9, 1997, there were still items in the billings that were being contested by ALA, already made known to ADPROM.<sup>33</sup>

The CA's award of liquidated damages upon MARDC was also supported by sufficient bases. In justifying the award, the appellate court correctly cited the unjustified decision of ADPROM to cease in its construction of MARDC's townhouse project. The pending conflict between the parties on the unpaid billings was not a sufficient ground for such recourse. Article XIII, Section 13.1 of the Construction Agreement even provided that "[t]he parties shall attempt to settle any dispute arising from the Agreement amicably."<sup>34</sup>

The Court reiterates that MARDC was allowed under the parties' contract to rely on the findings of ALA on the percentage of completion and the appropriate payment that should be given therefor, and to act in accordance with such findings. However, beginning March 18, 1997, at a time when no approval for full payment was as yet issued by ALA, ADPROM proceeded with its threat to cease working on the townhouse project already conveyed in its letter dated March 14, 1997. Such work stoppage by ADPROM was not based on justifiable grounds, and thus rendered applicable the following agreement of the parties on liability for liquidated damages:

Article IX  
LIQUIDATED DAMAGES

- 9.1. [ADPROM] acknowledges that time is of the essence of this Agreement and that any unexcused day of delay as determined in accordance with [S]ection 5.1 hereof as defined in the general conditions of this Agreement will result in injury or damages to [MARDC], in view of which, the parties have hereto agreed that for every calendar day of unexcused delay in the completion of its Work under this Agreement, [ADPROM] shall pay [MARDC] the sum of Thirty[-]Nine Thousand Five Hundred (P39,500.00) per calendar day as liquidated damages. Said amount is

<sup>32</sup> Id. at 279-280.

<sup>33</sup> Id. at 284-286.

<sup>34</sup> Id. at 109-A.

equivalent to 1/10 of 1% of the Total Contract Price. Liquidated damages under this provision may be deducted by [MARDC] from the stipulated Contract Price or any balance thereof, or to any progress billings due [ADPROM].<sup>35</sup>

Section 5.1 of Article V referred to in the aforequoted provision provides that the townhouse project shall be completed within 180 calendar days, to be effective from the date of the agreement's execution, MARDC's payment of the required down payment and the issuance of a Notice to Proceed.<sup>36</sup> Based on records, the parties agreed on an extension of the period to complete the project until April 30, 1997.<sup>37</sup>

There clearly was an unexcused delay in the completion of the project because of ADPROM's decision on a work stoppage. Given the terms of the Construction Agreement, ADPROM neither had the authority to terminate their contract, nor to unilaterally decide to discontinue a prompt performance of its duties under the agreement, especially after no default could as yet be attributed to MARDC. Records indicate that MARDC had been prompt in the payment of Progress Billing Nos. 1 to 8 for the period covering June 1996 to January 1997, having already paid a total amount of ₱23,169,183.43 for the construction of the townhouses. The dispute only arose from the February 1997 billing. ADPROM's unilateral and hasty decision to cease constructing, and the consequent delay in the project's completion, then made it liable for the stipulated liquidated damages. In *Philippine Charter Insurance Corporation v. Petroleum Distributors & Services Corporation*,<sup>38</sup> the Court reiterated:

Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.<sup>39</sup> (Citations omitted)

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<sup>35</sup> Id. at 109.

<sup>36</sup> Id. at 107.

<sup>37</sup> Id. at 97, 260.

<sup>38</sup> 686 Phil. 154 (2012).

<sup>39</sup> Id. at 164-165.

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Subsequent to the execution of the Construction Agreement, the parties decided to vary the terms of their contract by reducing the project's number of units and the corresponding contract price. There was nonetheless no indication that they resolved to reduce the amount of liquidated damages to be paid by ADPROM in the event of its unexcused delay. The foregoing circumstances also do not affect ADPROM's entitlement to the unpaid billings of ₱1,468,348.60, after it was established before the CIAC and by the CA that work for such value had been completed by the company.<sup>40</sup> MARDC then rightly had to compensate ADPROM for such amount, together with the 10% retention of ₱2,806,814.00.

The imposable interest on the monetary awards after their finality must however be clarified, as the CA made no pronouncement on the CIAC's award of interest on the total money judgment, pegged by the CIAC at the rate of 12% *per annum* from the time they become due until full payment. To be consistent with prevailing jurisprudence, this must be modified in that all monetary awards shall bear interest at the rate of only six percent (6%) *per annum*, and to be computed from the time the awards attain finality until full payment thereof.<sup>41</sup>

**WHEREFORE**, the petition is **DISMISSED**. The Decision dated March 28, 2000 and Resolution dated November 9, 2010 of the Court of Appeals in CA-G.R. SP No. 48805 are **AFFIRMED with MODIFICATION** in that the monetary awards to the parties shall bear interest at the rate of six percent (6%) *per annum* from the time the awards become final until full satisfaction thereof.

**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

<sup>40</sup> Rollo, p. 283.

<sup>41</sup> *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 609.

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

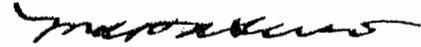
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

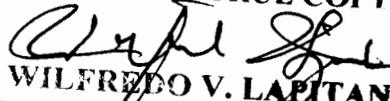


**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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

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