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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MACTAN ROCK INDUSTRIES, INC. and ANTONIO TOMPAR, Petitioners,	**G.R. No. 228799**
	Present:
- versus -	CARPIO, *J.*, Chairperson, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR.,* *JJ.*
BENFREI S. GERMO, Respondent.	
	Promulgated: 10 JAN 2018

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 8, 2016 and the Resolution[3] dated October 14, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 104431, which affirmed the Decision[4] dated January 14, 2015 of the Regional Trial Court of Muntinlupa City, Branch 276 (RTC) in Civil Case No. 11-029, finding petitioners Mactan Rock Industries, Inc. (MRII) and Antonio Tompar (Tompar) solidarily liable to pay respondent Benfrei S. Germo (Germo) the amount of ₱4,499,412.84 plus interest, damages, and attorney's fees.

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* On leave.

1 *Rollo*, pp. 11-47.

2 Id. at 51-73. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Quirino C. Sadang concurring.

3 Id. at 74.

4 Id. at 117-124. Penned by Presiding Judge Antonietta Pablo-Medina.

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The Facts

This case stemmed from a Complaint[5] for sum of money and damages filed by Germo against MRII – a domestic corporation engaged in supplying water, selling industrial maintenance chemicals, and water treatment and chemical cleaning services[6] – and its President/Chief Executive Officer (CEO), Tompar. The complaint alleged that on September 21, 2004, MRII, through Tompar, entered into a Technical Consultancy Agreement (TCA)[7] with Germo, whereby the parties agreed, *inter alia*, that: (*a*) Germo shall stand as MRII's marketing consultant who shall take charge of negotiating, perfecting sales, orders, contracts, or services of MRII, but there shall be no employer-employee relationship between them; and (*b*) Germo shall be paid on a purely commission basis, including a monthly allowance of ₱5,000.00.[8] On May 2, 2006 and during the effectivity of the TCA, Germo successfully negotiated and closed with International Container Terminal Services, Inc. (ICTSI) a supply contract of 700 cubic meters of purified water per day. Accordingly, MRII commenced supplying water to ICTSI on February 22, 2007, and in turn, the latter religiously paid MRII the corresponding monthly fees.[9] Despite the foregoing, MRII allegedly never paid Germo his rightful commissions amounting to ₱2,225,969.56 as of December 2009, inclusive of interest.[10] Initially, Germo filed a complaint before the National Labor Relations Commission (NLRC), but the same was dismissed for lack of jurisdiction due to the absence of employer-employee relationship between him and MRII. He then filed a civil case before the Regional Trial Court of Muntinlupa, Branch 256, but the same was dismissed without prejudice to its re-filing due to his counsel's failure to mark all his documentary evidence at the pre-trial conference.[11] Hence, Germo filed the instant complaint praying that MRII and Tompar be made to pay him the amounts of ₱2,225,969.56 as unpaid commissions with legal interest from the time they were due until fully paid, ₱1,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages, and the costs of suit.[12]

In their Answer,[13] MRII and Tompar averred, among others, that: (*a*) there was no employer-employee relationship between MRII and Germo as the latter was hired as a mere consultant; (*b*) Germo failed to prove that the ICTSI account materialized through his efforts as he did not submit the required periodic reports of his negotiations with prospective clients; and (*c*) ICTSI became MRII's client through the efforts of a certain Ed Fornes.[14] Further, MRII and Tompar claimed that Germo should be made to pay them

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5 Dated February 28, 2011. Id. at 199-203.
6 Id. at 199-200.
7 Id. at 132-134.
8 See id. at 200.
9 Id. at 201.
10 Id.
11 Id. at 202.
12 Id. at 202-203.
13 Id. at 204-207.
14 See id. at 204-207.

litigation expenses and attorney's fees as they were compelled to litigate and engage the services of counsel to protect their interest.[15]

Due to MRII, Tompar, and their counsel's multiple absences at the various schedules for pre-trial conference, the RTC considered them as "in default," thereby allowing Germo to present his evidence *ex-parte*.[16]

The RTC Ruling

In a Decision[17] dated January 14, 2015, the RTC ruled in Germo's favor, and accordingly, ordered MRII and Tompar to solidarily pay him the amounts of: (*a*) ₱4,499,412.84 representing Germo's unpaid commissions from February 2007 until March 2012 with legal interest from judicial demand until fully satisfied; (*b*) ₱100,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; and (*d*) ₱50,000.00 as attorney's fees.[18]

The RTC found that MRII and Germo validly entered into a TCA whereby the latter shall act as the former's marketing consultant, to be paid on a commission basis.[19] It also found that MRII's contract with ICTSI was made possible through Germo's negotiation and marketing skills, and as such, the latter should be paid the commissions due to him. In this regard, Germo presented various sales invoices spanning the period of February 2007 to March 2012, wherein he should have been paid commissions in the amount of ₱4,499,412.84.[20] Further, based on the evidence presented and in order to deter those who intend to negate the fulfillment of an obligation to the prejudice of another, the RTC found it appropriate to award Germo moral damages, exemplary damages, and attorney's fees in the foregoing amounts.[21] Finally, the RTC imposed a lien equivalent to the appropriate legal fees on the monetary awards in Germo's favor, noting that the latter litigated the instant suit as an indigent.[22]

Aggrieved, MRII and Tompar appealed[23] to the CA, this time claiming, among others, that: (*a*) the jurisdiction over the case lies before the NLRC as the same is a monetary dispute arising from an employer-employee relationship; and (*b*) Germo had no legal personality to pursue the instant case since he only signed the TCA as a representative of another entity.[24]

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15 Id. at 207. See also id. at 57.
16 Id. at 58.
17 Id. at 117-124.
18 Id. at 124.
19 Id. at 121-122.
20 Id. at 123.
21 Id. at 123-124.
22 Id. at 124.
23 See Appellants' Brief dated September 4, 2015; id. at 88-114.
24 See id. at 70.

The CA Ruling

In a Decision[25] dated August 8, 2016, the CA affirmed the RTC ruling.[26] It held that Germo had sufficiently proven through the required quantum of evidence that: (*a*) he and MRII, through Tompar, entered into a TCA and thus, the provisions thereof are binding between them; (*b*) MRII's contract with ICTSI was realized through Germo's efforts; and (*c*) MRII failed to pay Germo the commissions due to him pursuant to the TCA and the ICTSI contract.[27]

Anent MRII and Tompar's additional arguments, the CA held that the same constitutes a new case theory, which cannot be introduced for the first time on appeal. The CA further pointed out that such new theory is directly contradictory to the judicial admissions they made in their Answer,[28] which are already binding on them.[29]

Undaunted, MRII and Tompar moved for reconsideration,[30] but the same was denied in a Resolution[31] dated October 14, 2016; hence, this petition.[32]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld MRII and Tompar's solidary liability to Germo.

The Court's Ruling

The petition is partly meritorious.

In the instant petition, MRII and Tompar insist, among others that: (*a*) the regular courts have no jurisdiction over the case as the present dispute involves an employment dispute cognizable by the NLRC; and (*b*) Germo had no legal personality to pursue the case as he signed the TCA not in his personal capacity, but as a representative of another entity.[33]

Such insistence is untenable.

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25 Id. at 51-73.
26 Id. at 72.
27 Id. at 65-69.
28 Id. at 204-207.
29 Id. at 70-72.
30 See Motion for Reconsideration dated September 8, 2016; id. at 75-87.
31 Id. at 74.
32 Id. at 11-47.
33 See id. at 28-37 and 39-42.

As aptly pointed out by the CA, the foregoing constitutes a new theory raised for the first time on appeal, considering that in their Answer[34] before the RTC, MRII and Tompar admitted, *inter alia*, the: (*a*) lack of employer-employee relationship between MRII and Germo as the latter was hired as a mere consultant; and (*b*) genuineness, authenticity, and due execution of the TCA, among other documents proving Germo's claims.[35] "As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court."[36] While this rule admits of an exception,[37] such is not applicable in this case.

More importantly, MRII and Tompar's statements in their Answer constitute judicial admissions,[38] which are legally binding on them.[39] Case law instructs that even if such judicial admissions place a party at a disadvantageous position, he may not be allowed to rescind them unilaterally and that he must assume the consequences of such disadvantage,[40] as in this case.

As to the merits of the case, the courts *a quo* correctly found that: (*a*) Germo entered into a valid and binding TCA with MRII where he was engaged as a marketing consultant; (*b*) aside from the ₱5,000.00 monthly allowance, Germo was going to be paid on a purely commission basis; (*c*) during the effectivity of the TCA and in the performance of his duties as marketing consultant of MRII, Germo successfully brokered MRII's contract of services with ICTSI, obviously resulting in revenues in MRII's favor; (*d*) despite the foregoing and demands from Germo, MRII refused to pay Germo's rightful commission fees; and (*e*) MRII's refusal to pay Germo resulted – or at the very least, contributed to – Germo's financial hardships. In light of the foregoing, the courts *a quo* correctly found MRII liable to

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34 Id. at 204-207.

35 See id. at 71.

36 *Maxicare PCIB CIGNA Healthcare (now Maxicare Healthcare Corporation) v. Contreras*, 702 Phil. 688, 696 (2013).

37 "As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein." (*Bote v. Spouses Veloso*, 700 Phil. 78, 88 [2012], citing *Canlas v. Tubil*, 616 Phil. 915, 923-924 [2009].)

38 Section 4, Rule 129 of the Rules of Court states:

> Section 4. *Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

39 See *Constantino v. Heirs of Constantino, Jr.*, 718 Phil. 575, 591 (2013).

40 See id., citing *Bayas v. Sandiganbayan*, 440 Phil. 54, 69 (2002).

Germo for the various monetary obligations as stated in their respective rulings. Time and again, it has been consistently held that the factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect and will not be disturbed on appeal unless it appears that there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case;[41] none of which are present insofar as this matter is concerned.

Be that as it may, the Court finds that the courts *a quo* erred in concluding that Tompar, in his capacity as then-President/CEO of MRII, should be held solidarily liable with MRII for the latter's obligations to Germo. It is a basic rule that a corporation is a juridical entity which is vested with legal and personality separate and distinct from those acting for and in behalf of, and from the people comprising it. As a general rule, directors, officers, or employees of a corporation cannot be held personally liable for the obligations incurred by the corporation, unless it can be shown that such director/officer/employee is guilty of negligence or bad faith, and that the same was clearly and convincingly proven. Thus, before a director or officer of a corporation can be held personally liable for corporate obligations, the following requisites must concur: (*1*) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (*2*) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[42] In this case, Tompar's assent to patently unlawful acts of the MRII or that his acts were tainted by gross negligence or bad faith was not alleged in Germo's complaint, much less proven in the course of trial. Therefore, the deletion of Tompar's solidary liability with MRII is in order.

Further, the Court deems it proper to adjust the interests imposed on the monetary awards in Germo's favor. To recapitulate, he was awarded the amounts of ₱4,499,412.84 representing his unpaid commissions from February 2007 to March 2012, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees. Pursuant to prevailing jurisprudence, his unpaid commissions shall earn legal interest at the rate of twelve percent (12%) per annum from judicial demand, *i.e.*, the filing of the complaint on February 28, 2011 until June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until the finality of this Decision. Thereafter, all monetary awards due to him shall then earn legal interest at the rate of six percent (6%) per annum from the finality of this ruling until fully paid.[43]

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41 See *Almojuela v. People*, 734 Phil. 636, 651 (2014); citations omitted.
42 See *Arco Pulp and Paper Co., Inc. v. Lim*, 737 Phil. 137, 154 (2014).
43 See *Nacar v. Gallery Frames*, 716 Phil. 267, 278-283 (2013).

Finally, since Germo litigated the instant suit as an indigent party as defined in Section 21, Rule 3[44] of the Rules of Court, it is only proper that the appropriate filing fees be considered as a lien on the monetary awards due to him, pursuant to the second paragraph of Section 19, Rule 141[45] of the same Rules.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated August 8, 2016 and the Resolution dated October 14, 2016 of the Court of Appeals in CA-G.R. CV No. 104431 are hereby **AFFIRMED** with **MODIFICATION, DELETING** petitioner Antonio Tompar's solidary liability with petitioner Mactan Rock Industries, Inc. (MRII). Accordingly, MRII is solely liable to respondent Benfrei S. Germo (Germo) for the following amounts: (*a*) ₱4,499,412.84 representing his unpaid commissions from February 2007 to March 2012 with legal interest at the rate of twelve percent (12%) per annum from judicial demand, *i.e.*, the filing of the complaint on February 28, 2011 until June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until the finality of this Decision; (*b*) ₱100,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; and (*d*) ₱50,000.00 as attorney's fees. The total monetary awards shall then earn legal interest at the rate of six percent (6%) per annum from the finality of this ruling until fully paid.

Finally, let the appropriate filing fees be considered as a lien on the monetary awards due to Germo, who litigated the instant case as an indigent party, in accordance with Section 19, Rule 141 of the Rules of Court.

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[44] Section 21, Rule 3 of the Rules of Court reads:

> Section 21. *Indigent party.* – A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.
>
> Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.
>
> Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue or the payment thereof, without prejudice to such other sanctions as the court may impose.

[45] Pertinent portions of Section 19, Rule 141 reads:

> Section 19. *Indigent litigants exempt from payment of legal fees.* – x x x x
>
> The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent litigant unless the court otherwise provides. x x x x

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On Leave
ANDRES B. REYES, JR.
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

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