Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CAMP JOHN HAY DEVELOPMENT CORPORATION, Petitioner,	**G.R. No. 198849**
	Present:
	LEONEN, *Acting Chairperson,*
	CAGUIOA,*
	REYES, A., JR.,
-versus-	HERNANDO, and
	INTING, *JJ.*
CHARTER CHEMICAL AND COATING CORPORATION, Respondent.	**Promulgated:** August 7, 2019 MisRDCBatt

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DECISION

LEONEN, *J.*:

Rescission under Article 1191 of the Civil Code is the proper remedy when a party breaches a reciprocal obligation. Because each case has its own distinct circumstances, this Court's power to fix a period of an obligation under Article 1197 is discretionary and should be exercised only if there is just cause.

This resolves a Petition for Review on Certiorari[1] assailing the May 13, 2011 Decision[2] and September 30, 2011 Resolution[3] of the Court of

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* Designated additional Member per Raffle dated July 31, 2019.

1 *Rollo,* pp. 8–38. Filed under Rule 45 of the Rules of Court.

Appeals in CA-G.R. SP No. 108335. The Court of Appeals affirmed the March 30, 2009 Final Award[4] in CIAC Case No. 19-2008 issued by the Construction Industry Arbitration Commission, which found that Charter Chemical and Coating Corporation (Charter Chemical) is entitled to the payment of the monetary equivalent of two (2) units in Camp John Hay Suites in the total amount of ₱5,900,000.00 and attorney's fees in the amount of ₱590,000.00.[5]

Camp John Hay Development Corporation (Camp John Hay Development) is the investment arm of a consortium engaged in the construction of the Camp John Hay Manor in Baguio City.[6]

In January 2001, Camp John Hay Development entered into a Contractor's Agreement[7] with Charter Chemical, the company awarded to complete the interior and exterior painting works of unit 2E of the Camp John Hay Manor for the contract price of ₱15,500,000.00. This was inclusive of the price of two (2)-studio type units at Camp John Hay Suites, the total amount of which would be based on the units chosen by Charter Chemical.[8]

Although the Contractor's Agreement contained no date of the units' turnover, it allowed Charter Chemical to choose the units for offsetting under an offsetting scheme:

> 1. Compensation:
>
> . . . .
>
> b. Off-setting against Two (2) Units – Studio Type at Suite 2A. Total amount shall be based on the final unit[s] chosen by the Contractor.[9]

Charter Chemical chose Units 102 and 104 studio type in the second phase of Camp John Hay Suites.[10]

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2 Id. at 40–48. The Decision was penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios of the Eighth Division, Court of Appeals, Manila.

3 Id. at 50. The Resolution was penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios of the Former Eighth Division, Court of Appeals, Manila.

4 Id. at 236–249. The arbitral tribunal was composed of Chairman Beda G. Fajardo and Members Ernesto S. De Castro and Wilfredo H. Guerzon, Jr.

5 Id. at 17.

6 Id. at 40.

7 Id. at 64–71.

8 Id. at 40–41.

9 Id. at 67.

10 Id. at 41 and 238.

At the time the Contractor's Agreement was signed in 2001, the actual construction of the Camp John Hay Suites had not yet commenced.[11]

Later on, the contract price was reduced to ₱13,239,734.16, for which Camp John Hay Development paid ₱7,339,734.16. The balance of ₱5,900,000.00 was ought to be settled by offsetting the price of the two (2) studio units.[12]

In 2003, Charter Chemical completed the painting works, after which Camp John Hay Development issued a Final Inspection and Acceptance Certificate belatedly on May 30, 2005. Charter Chemical demanded the execution of the deed of sale and delivery of the titles of the two (2) units in September 2004, with a follow-up in April 2005.[13] In June 2005, Camp John Hay Development and Charter Chemical executed contracts to sell. The uniform contracts state in part:

> [P]ossession of the Unit shall be delivered by Seller to Buyer within a reasonable period of time from the date of completion of the Unit either by (a) serving written Notice of Completion to the Buyer or (b) by delivering to the Buyer the Limited Warranty Deed covering the Unit. The delivery of the Notice of Completion or the Limited Warranty Deed shall constitute constructive delivery of the Unit and immediately thereafter the risk of loss to the Unit and all obligations and assessments provided in this Contract, the Project Plan and Declaration of Restrictions, the Articles of Incorporation and By-Laws of the Association, and the House Rules, shall pertain to Buyer.[14]

In August 2005, Camp John Hay Development issued certifications to Charter Chemical that the two (2) units were fully paid under their offsetting scheme. However, the units were not delivered because the construction of Camp John Hay Suites was not yet complete.[15]

Camp John Hay Development had initially estimated that the construction would be completed by 2006. In a Lease Agreement[16] executed on October 19, 1996, Camp John Hay Development and Bases Conversion and Development Authority provided for a period of three and a half (3.5) years from the execution of the Lease Agreement to complete the various physical components in Camp John Hay. When this timetable was not followed due to alleged mutual delays and *force majeure*, they entered into at least four (4) more amendments to the Lease Agreement. Two (2) of

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11 Id. at 41.
12 Id. at 12 and 237. The CA Decision erroneously indicated ₱5,906,000.00 as the balance.
13 Id. at 41.
14 Id. at 81.
15 Id. at 42.
16 Id. at 98–122.

these, the July 18, 2003 and July 1, 2008 Memoranda of Agreement, covered the revision of the Project Implementation Plan providing the targeted completion dates of the various facilities in Camp John Hay.[17]

Under the July 18, 2003 revision, Camp John Hay Development and Bases Conversion and Development Authority estimated that the second phase of the Camp John Hay Suites would be completed by the end of the second quarter of 2006.[18] Admitting various unforeseen events, Camp John Hay Development again failed to complete its construction. Under the July 1, 2008 revision, the Camp John Hay Suites was estimated to be completed by 2012.[19]

Due to the subsisting construction delay, Charter Chemical, through counsel, wrote Camp John Hay Development, demanding that it transfer the units or pay the value of these units in the sum of ₱6,996,517.48.[20]

When it felt that further demands would be futile, Charter Chemical, on June 12, 2008, filed before the Construction Industry Arbitration Commission a Request for Arbitration[21] under the arbitration clause in the Contractor's Agreement.

In its March 30, 2009 Final Award,[22] the Construction Industry Arbitration Commission ordered Camp John Hay Development to pay the amounts of ₱5,900,000.00, the monetary value of the two (2) units in Camp John Hay Suites, and ₱590,000.00 as attorney's fees.[23]

The arbitral tribunal ruled that Charter Chemical was entitled to its claim for the value of the two (2) units because Camp John Hay Development failed to deliver the units within the targeted completion date.[24]

The Final Award read:

> On the basis of the evidence the Arbitration Tribunal finds and so holds that:
>
> 1. Claimant is entitled to its claim for the monetary equivalent of the two (2) units CJH Suites in the total sum of Php5,900,000.00.
>
> 2. Claimant is not entitled to its claim for exemplary damages.

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17 Id. at 368.
18 Id. at 369.
19 Id. at 16.
20 Id. at 43 and 96–97.
21 Id. at 156–164.
22 Id. at 236–249.
23 Id. at 247.
24 Id. at 245.

> 3. Claimant is entitled to its claim for attorney's fees for the sum of Php590,000.00 which is 10% of the total monetary value for the two (2) units CJH Suites of Php5,900,000.00 which had not been delivered by respondent.
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> 4. The Court should not fix the period for the delivery of the subject units as provided for in Article 1197 of the Civil Code because the reciprocal nature of the contract itself provides for the period of their delivery. Moreover, CIAC can fix the period if necessary.[25]

Camp John Hay Development filed before the Court of Appeals a Petition for Review[26] under Rule 43 of the Rules of Court. It argued that the arbitral tribunal did not have jurisdiction over the dispute because the arbitration clause had been superseded by a subsequent dispute resolution clause contained in the contracts to sell.[27] It further asserted that it had neither agreed on the completion date of the two (2) units nor admitted that the units were to be completed within three (3) years from 2003 or 2005.[28] Instead, it asked for a fixing of the term or period when the units would be completed.[29]

In its May 13, 2011 Decision,[30] the Court of Appeals affirmed the arbitral tribunal's award. It held that the arbitration clause in the Contractor's Agreement was neither modified nor superseded by the contracts to sell, which were merely devices by which to transfer possession and title over the units to Charter Chemical. The Contractor's Agreement, it noted, remained the principal covenant.[31]

The Court of Appeals also ruled that Camp John Hay Development was already in delay when Charter Chemical demanded the transfer of units on August 3, 2007. When Charter Chemical finished the work in 2003, a timetable based on the 2003 Memorandum of Agreement between Camp John Hay Development and Bases Conversion and Development Authority stated that the units would be completed by 2006. This showed that there was a definite time for the completion of the units. Although Charter Chemical was an outsider to this agreement, it was "equivalent to an announcement to all concerned that the units would be completed at such and such a date."[32]

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25 Id. at 247.
26 Id. at 250–292, Amended Petition for Review under Rule 43 of the Rules of Court.
27 Id. at 44–45.
28 Id.
29 Id.
30 Id. at 40–48.
31 Id. at 44–45.
32 Id. at 47.

On June 3, 2011, Camp John Hay Development filed a Motion for Reconsideration, but it was denied by the Court of Appeals in its September 30, 2011 Resolution.[33]

Camp John Hay Development received the September 30, 2011 Resolution on October 7, 2011.[34] Before the lapse of the original 15-day period, it filed on October 21, 2011 a Motion for Extension of Time to File Petition for Review under Rule 45, asking for a period of 30 days from October 22, 2011, or until November 21, 2011, within which to file the Petition.[35] This Motion for Extension was granted by this Court.[36]

On November 23, 2011, Camp John Hay Development filed a Petition for Review on Certiorari.[37] Charter Chemical filed its Comment[38] on February 6, 2012 and, in turn, Camp John Hay Development filed its Reply[39] on May 16, 2012.

Petitioner contends that there is no specific date determined for the completion or delivery of the two (2) units in any of its contracts with respondent. It argues that the action filed should have been for the fixing of a period under Articles 1191[40] and 1197[41] of the Civil Code, and not an action for the rescission of the contract.[42]

According to petitioner, both the arbitral tribunal and the Court of Appeals erred in ruling that the Contractor's Agreement between petitioner and respondent had a definite timetable based on the Memorandum of Agreement between petitioner and the Bases Conversion and Development Authority. Moreover, petitioner argues that the determination of whether there is an agreed completion date must be based on the agreement between

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33 Id. at 50.
34 Id. at 9.
35 Id. at 9–10.
36 Id. at 363–364.
37 Id. at 8–38.
38 Id. at 365–379.
39 Id. at 413–419.
40 CIVIL CODE, art. 1191 provides:

ARTICLE 1191. 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.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

41 CIVIL CODE, art. 1197 provides:

ARTICLE 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

42 *Rollo*, p. 8.

petitioner and respondent in their contract. Thus, when the Court of Appeals resorted to a separate agreement different from the Contractor's Agreement, it recognized that the parties had never actually agreed on a specific completion date.[43]

Petitioner relies on Article 1311[44] of the Civil Code, which states that "contracts take effect only between the parties who execute them."[45] It also points out that respondent did not rely on the Master Development Plan in the Memorandum of Agreement, maintaining that its representative admitted having never seen the Master Development Plan when he signed the agreement.[46] Petitioner also notes that at the time of the execution of the Contractor's Agreement, respondent had not yet selected the two (2) units as part of its compensation for its painting works. Petitioner argues that the date of delivery was not specified in the contracts to sell, which merely indicated that the delivery would be "within a reasonable time from the date of completion of the subject units."[47]

Additionally, petitioner claims that the arbitral tribunal had no jurisdiction over the Complaint. It asserts that the contracts to sell executed following the Contractor's Agreement contain a different mode of dispute resolution.[48] The contracts to sell provide the following clause:

> ARTICLE XIV
> MISCELLANEOUS PROVISION
>
> . . . .
>
> 4. Venue – All actions involving this Contract shall be instituted only in the proper courts of Pasig City, Metro Manila to the exclusion of all other courts.[49]

From the dispute resolution clause, petitioner points out that disputes must be adjudicated by the proper courts of Pasig City, to the exclusion of all other courts. The contracts to sell also effectively removed the parties' dispute outside the ambit of a construction dispute since they are not the

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43 Id. at 21.

44 CIVIL CODE, art. 1311 provides:

> ARTICLE 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

45 *Rollo*, p. 22.

46 Id. at 22–23.

47 Id. at 24.

48 Id. at 28.

49 Id.

construction contracts contemplated by Executive Order No. 1008, or the Construction Industry Arbitration Law.[50]

Petitioner further contests the award of attorney's fees to respondent, maintaining that neither the Court of Appeals nor the arbitral tribunal has specified the factual basis for it. It argues that the award of attorney's fees is not justified when both tribunals denied respondent's claim for exemplary damages and when petitioner has not been found to have acted in bad faith. Respondent, it points out, also failed to present any official receipt to support its claim for attorney's fees.[51]

On the other hand, respondent argues that the Court of Appeals' and the arbitral tribunal's decisions, entitling respondent to the monetary equivalent of the units for offsetting, should be respected and accorded great weight and finality. Respondent points out that it only agreed to bid for the painting works because Interpro, Inc., petitioner's project manager, assured that under the Master Development Plan, the units would be available for occupancy two (2) to three (3) years from negotiations, or sometime in 2003.[52]

Respondent further argues that since petitioner was already delayed in delivering the units in 2007, the arbitral tribunal and the Court of Appeals correctly applied Article 1191 of the Civil Code, awarding indemnity for damages to respondent.[53]

Moreover, respondent claims that the arbitral tribunal correctly acquired jurisdiction over the dispute because the relationship of the parties was born out of the Contractor's Agreement.[54] The Contractor's Agreement provided the arbitration clause in case of any dispute. The contracts to sell "cannot be considered to have superseded the Contractor's Agreement"[55] because they are merely preparatory contracts required for the processing of the titles of the units.[56]

Lastly, respondent claims that the award of attorney's fees was justified, as petitioner's unwarranted delay and unjustified refusal to settle the matter brought about its filing of the Complaint before the arbitral tribunal.[57]

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50 Id. at 28–29.
51 Id. at 30–31.
52 Id. at 365–366.
53 Id. at 377.
54 Id. at 367.
55 Id.
56 Id.
57 Id. at 377.

For this Court's resolution are the following issues:

First, whether or not the Court of Appeals erred in ruling that the Construction Industry Arbitration Commission has jurisdiction over the dispute despite the existence of a dispute resolution clause;

Second, whether or not the Court of Appeals correctly rescinded the obligation under Article 1191 of the Civil Code and whether or not a period should be fixed under Article 1197 of the Civil Code; and

Finally, whether or not the Court of Appeals erred in affirming the award of attorney's fees to respondent Charter Chemical and Coating Corporation.

The Petition is denied.

I

The Construction Industry Arbitration Commission was created under Executive Order No. 1008 to establish an arbitral machinery that will "settle expeditiously problems arising from, or connected with, contracts in the construction industry."[58] It has jurisdiction over "construction disputes between or among parties to an arbitration agreement, or those who are otherwise bound by the latter, directly or by reference."[59] Its purpose is to encourage the early and expeditious settlement of disputes in the construction industry, recognizing that it is necessary to avert delays in the resolution of construction industry disputes, which is important to attain the national development goals.[60]

Section 4 of the Construction Industry Arbitration Law lays down the jurisdiction of the Construction Industry Arbitration Commission:

> SECTION 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire

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58 *Metro Rail Transit Development Corporation v. Gammon Philippines, Inc.*, G.R. No. 200401, January 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/200401.pdf> 13 [Per J. Leonen, Third Division].

59 Id.

60 *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361 (1993) [Per J. Feliciano, Third Division].

> jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

For the Construction Industry Arbitration Commission to acquire jurisdiction, the law merely requires that the parties agree to submit to voluntary arbitration any dispute arising from construction contracts.

In *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*:[61]

> Under Section 1, Article III of the CIAC Rules, an arbitration clause in a construction contract shall be deemed as an agreement to submit an existing or future controversy to CIAC jurisdiction, "notwithstanding the reference to a different arbitration institution or arbitral body in such contract. . . ." . . .
>
> . . . The arbitration clause in the construction contract ipso facto vested the CIAC with jurisdiction. This rule applies, regardless of whether the parties specifically choose another forum or make reference to another arbitral body. Since the jurisdiction of CIAC is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract. The parties will not be precluded from electing to submit their dispute to CIAC, because this right has been vested in each party by law.
>
> . . . .
>
> It bears to emphasize that the mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, without any qualification or condition precedent. To affirm a condition precedent in the construction contract, which would effectively suspend the jurisdiction of the CIAC until compliance therewith, would be in conflict with the recognized intention of the law and rules to automatically vest CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.[62] (Citations omitted)

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61 604 Phil. 631 (2009) [Per J. Chico-Nazario, Third Division].

62 Id. at 644–646.

Arbitration of construction disputes through the Construction Industry Arbitration Commission was incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004.[63] Chapter 6, Section 34 of this law explicitly referenced the Construction Industry Arbitration Law, while Section 35 affirmed the Construction Industry Arbitration Commission's jurisdiction:

> CHAPTER 6
> Arbitration of Construction Disputes
>
> SECTION 34. Arbitration of Construction Disputes: Governing Law. — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.
>
> SECTION 35. Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.
>
> The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

Arbitration, "[b]eing an inexpensive, speedy[,] and amicable method of settling disputes . . . is encouraged by the Supreme Court."[64] If any doubt will arise, it "should be resolved in favor of arbitration."[65]

In *LM Power Engineering Corp. v. Capitol Industrial Construction Groups, Inc.*,[66] this Court explained the rationale behind this policy:

> Aside from unclogging judicial dockets, arbitration also hastens the resolution of disputes, especially of the commercial kind. It is thus regarded as the "wave of the future" in international civil and commercial disputes. Brushing aside a contractual agreement calling for arbitration between the parties would be a step backward.
>
> Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts

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63 *CE Construction Corporation v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/192725.pdf> 19 [Per J. Leonen, Second Division].

64 Id.

65 Id.

66 447 Phil. 705 (2003) [Per J. Panganiban, Third Division].

> should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration.[67] (Citations omitted)

Here, petitioner and respondent agreed to submit to arbitration any dispute arising from the construction contract, as clearly stipulated in their Contractor's Agreement. The arbitration clause should, thus, be given primacy in accordance with the State's policy to favor arbitration. It follows that if there is any doubt as to what provision should be given effect, this Court will rule in favor of the arbitration clause.

Moreover, the contracts to sell, containing a contrary dispute resolution clause, did not supersede the arbitration clause. The case records show that the contracts to sell are not inconsistent with the Contractor's Agreement. They are merely devices to facilitate the transfer of ownership of the two (2) units to respondent—an offshoot of the offsetting scheme provision in the Contractor's Agreement.

While the contracts to sell and the Contractor's Agreement both refer to the transfer of the two (2) units to respondent, the contracts to sell are *pro-forma* contracts provided by petitioner in selling the Camp John Hay Suites units. There is no intent to supersede the Contractor's Agreement, which remains the principal contract between petitioner and respondent.

Petitioner erred in claiming that because the contracts to sell are not construction contracts, they effectively removed the parties' dispute outside the ambit of a construction dispute. On the contrary, the subject of the contracts to sell still falls within the jurisdiction of the Construction Industry Arbitration Commission. Section 4 of the Construction Industry Arbitration Law states that its jurisdiction includes "payment [and] default of employer or contractor[.]" Here, the main dispute concerning the contracts to sell all boils down to the issue of payment of the two (2) units for the services rendered by respondent. Hence, the units' transfer as payment to respondent still falls under the jurisdiction of the arbitral tribunal.

This dispute is better left to the expertise of the Construction Industry Arbitration Commission, a quasi-judicial body with the technical expertise to resolve disputes outside the expertise of regular courts.[68] Aptly, it should adjudicate and determine the claims and rights of petitioner and respondent with respect to the construction contract and all its incidents.

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[67] Id. at 714.

[68] *See Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176 (2001) [Per C.J. Davide, Jr., First Division].

It is worth noting that this dispute has been ongoing for over a decade now. Despite numerous meetings and negotiations prior to respondent's filing of a Complaint before the arbitral tribunal, no amicable settlement had been reached. Disregarding the proceedings that took place before the lower tribunals and requiring the parties to submit the dispute before the trial court would be merely dilatory at this point. It would only entail additional expenses and unnecessary delays for both parties.

II

Rescission on account of breach of reciprocal obligations is provided under Article 1191 of the Civil Code:

> ARTICLE 1191. 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.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

This provision refers to rescission applicable to reciprocal obligations. It is invoked when there is noncompliance by one (1) of the contracting parties in case of reciprocal obligations. "Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other."[69]

Rescission under Article 1191 will be ordered when a party to a contract fails to comply with his or her obligation. Rescission "is a principal action that is immediately available to the party at the time that the reciprocal [obligation] was breached."[70] In *Spouses Velarde v. Court of Appeals*:[71]

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[69] *The Wellex Group, Inc. v. U-Land Airlines, Co., Ltd.*, 750 Phil. 530, 585 (2015) [Per J. Leonen, Second Division] *citing Ong v. Court of Appeals*, 369 Phil. 243–257 (1999) [Per J. Ynares-Santiago, First Division].

[70] Id. at 587.

[71] 413 Phil. 360 (2001) [Per J. Panganiban, Third Division].

> 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 [him or her], 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.[72] (Citations omitted)

"Resolution grants the injured party the option to pursue, as principal actions, either a rescission or specific performance of the obligation, with payment of damages in either case."[73]

Rescission of the contract is sanctioned here. Under the contract, petitioner and respondent have reciprocal obligations. Respondent, for its part, was bound to render painting services for petitioner's property. This was completed by respondent in 2003, after which it was belatedly issued a clearance in 2005. Meanwhile, in accordance with the Contractor's Agreement, petitioner paid part of the contract price with the remaining balance to be paid through offsetting of two (2) Camp John Hay Suites units. However, despite incessant demands from respondent, petitioner failed to deliver these units because their construction had yet to be completed. The law, then, gives respondent the right to seek rescission because petitioner could not comply with what is incumbent upon it. Petitioner, however, claims that the fixing of the period under Article 1197 is the proper remedy, not rescission under Article 1191.

This Court disagrees. We cannot cure the deficiency here by fixing the period of the obligation. There is no just cause for this Court to fix the period for the benefit of petitioner.

Article 1197 applies "when the obligation does not fix a period but from its nature and circumstances it can be inferred that a period was intended[.]"[74] This provision allows the courts to fix the duration "because the fulfillment of the obligation itself cannot be demanded until after the court has fixed the period for compliance therewith and such period has arrived."[75]

In *Deudor v. J.M. Tuason & Company, Inc.*:[76]

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72 Id. at 373.

73 *Lalicon v. National Housing Authority*, 669 Phil. 231, 237 (2011) [Per J. Abad, Third Division].

74 *Central Philippine University v. Court of Appeals*, 316 Phil. 616, 627 (1995) [Per J. Bellosillo, First Division].

75 Id.

76 G.R. No. L-13768, May 30, 1961, 2 SCRA 129 [Per J. Concepcion, En Banc].

> Article 1197 is part and parcel of all obligations contemplated therein. Hence, whenever a period is fixed pursuant to said Article, the court merely enforces or carries out an implied stipulation in the contract in question. In fact, insofar as contracts not fixing a period are concerned, said legal provision applies only if, from the nature and circumstances surrounding the contract involved, "it can be inferred that a period was intended" by the parties thereto. For this reason, the last paragraph of Article 1197, ordains that "in every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties." In other words, in fixing said period, the Court merely ascertains the will of the parties and gives effect thereto.[77]

As stipulated in Article 1197, this Court must determine that the obligation does not fix a period or that the period is made to depend upon the will of the debtor, but it can be inferred from its nature and the circumstances that a period was intended. Then, it must be determined what period was probably contemplated by the parties.[78]

The power of this Court to fix a period is discretionary. The surrounding facts of each case must be taken into consideration in deciding whether the fixing of a period is sanctioned. The discretion to fix an obligation's period is addressed to this Court's judgment and is tempered by equitable considerations.

In *Central Philippine University v. Court of Appeals*,[79] this Court refused to fix a period because of the years that had already been allowed for the party to comply with the condition of the obligation. Doing so, it held, would be a mere technicality and formality, and would only cause further delay. This Court ruled:

> This general rule however cannot be applied considering the different set of circumstances existing in the instant case. More than a reasonable period of fifty (50) years has already been allowed petitioner to avail of the opportunity to comply with the condition even if it be burdensome, to make the donation in its favor forever valid. But, unfortunately, it failed to do so. Hence, there is no more need to fix the duration of a term of the obligation when such procedure would be a mere technicality and formality and would serve no purpose that to delay or lead to an unnecessary and expensive multiplication of suits. Moreover, under Art. 1191 of the Civil Code, when one of the obligors cannot comply with what is incumbent upon him, the obligee may seek rescission and the court shall decree the same unless there is just cause authorizing the fixing of a period. In the absence of any just cause for the court to determine the period of the compliance, there is no more obstacle for the court to decree the rescission claimed.[80] (Citation omitted)

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77 Id. at 140.

78 *Gregorio Araneta, Inc. v. Philippine Sugar Estates Development Co., Ltd.*, 126 Phil. 678, 684 (1967) [Per J. J.B.L. Reyes, En Banc].

79 316 Phil. 616 (1995) [Per J. Bellosillo, First Division].

80 Id. at 627.

In *Gregorio Araneta, Inc. v. Philippine Sugar Estates Development Company, Ltd.*,[81] this Court held that if a reasonable period was agreed upon in a contract, all that the court should have done was determine if that reasonable time had already elapsed:

> If the contract so provided, then there was a period fixed, a "reasonable time"; and all that the court should have done was to determine if that reasonable time had already elapsed when suit was filed. If it had passed, then the court should declare that petitioner had breached the contract, as averred in the complaint, and fix the resulting damages. On the other hand, if the reasonable time had not yet elapsed, the court perforce was bound to dismiss the action for being premature. But in no case can it be logically held that under the plea above quoted, the intervention of the court to fix the period for performance was warranted, for Article 1197 is precisely predicated on the absence of any period fixed by the parties.[82]

There is no just cause for this Court to determine the period of compliance. As can be gleaned from the records of this case, the obligation of petitioner to build the Camp John Hay Suites had been dragging for years even before it entered into the Contractor's Agreement with respondent.

The Memorandum of Agreement that petitioner executed with the Bases Conversion and Development Authority shows that the construction of the Camp John Hay Suites began in 1996. When respondent demanded the units' transfer in 2007, more than 10 years had lapsed; yet, within those years, petitioner was still not able to complete the construction of the Camp John Hay Suites.

To tolerate petitioner's excuses would only cause more delay and burden to respondent. Petitioner failed to forward any just cause to convince this Court to set a period. It merely reasoned *force majeure* and mutual delays with Bases Conversion and Development Authority without offering any explanation for its alleged difficulty in building the units.

To belatedly fix the period for petitioner's compliance would mean refusing immediate payment to respondent. Petitioner's noncompliance with its obligation to deliver the two (2) units as payment to respondent can no longer be excused.

The law and jurisprudence are clear. When the obligor cannot comply with its obligation, the obligee may exercise its right to rescind the obligation, and this Court will order the rescission in the absence of any just

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81 126 Phil. 678 (1967) [Per J. J.B.L. Reyes, En Banc].
82 Id. at 683.

cause to fix the period.[83] Here, lacking any reasonable explanation and just cause for the fixing of the period for petitioner's noncompliance, the rescission of the obligation is justified.

III

Rescission of the obligation under Article 1191 is a declaration that a contract is void at its inception. Its effect is to restore the parties to their original position, insofar as practicable. *Fong v. Dueñas*[84] is illustrative:

> 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 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.[85]

Mutual restitution is required in cases involving rescission under Article 1191. "Where a contract is rescinded, 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[;] the rescission has the effect of abrogating the contract in all parts."[86]

In *Spouses Serrano v. Court of Appeals*:[87]

> Generally, the rule is that to rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligations to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever been made. Rescission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it.[88] (Citation omitted)

This Court has explained that restitution under Article 1385 of the Civil Code equally applies for rescission under Article 1191. In *Laperal v. Solid Homes, Inc*:[89]

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83 *Spouses Velarde v. Court of Appeals*, 413 Phil. 360, 373 (2001) [Per J. Panganiban, Third Division].
84 759 Phil. 373 (2015) [Per J. Brion, Second Division].
85 Id. at 384–385 *citing Unlad Resources Development Corporation v. Dragon,* 582 Phil. 61, 79–80 (2008) [Per J. Nachura, Third Division].
86 *Carrascos, Jr. v. Court of Appeals*, 514 Phil. 48, 89 (2005) [Per J. Carpio Morales, Third Division].
87 463 Phil. 77 (2003) [Per J. Callejo, Sr., Second Division].
88 Id. at 89.
89 499 Phil. 367 (2005) [Per J. Garcia, Third Division].

> Despite the fact that Article 1124 of the old Civil Code from whence Article 1191 was taken, used the term "resolution", the amendment thereto (presently, Article 1191) explicitly and clearly used the term "rescission". Unless Article 1191 is subsequently amended to revert back to the term "resolution", this Court has no alternative but to apply the law, as it is written.
>
> Again, since Article 1385 of the Civil Code expressly and clearly states that "rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest," the Court finds no justification to sustain petitioners' position that said Article 1385 does not apply to rescission under Article 1191.[90]

Article 1385 of the Civil Code provides:

> ARTICLE 1385. Rescission creates the obligation *to return the things* which were the object of the contract, together with their fruits, and the *price with its interest*; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.
>
> Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.
>
> In this case, indemnity for damages may be demanded from the person causing the loss. (Emphasis supplied)

Although rescission repeals the contract from its inception, it does not disregard all the consequences that the contract has created. What mutual rescission entails is "the return of the benefits that each party may have received as a result of the contract."[91]

Here, it is clear that only petitioner benefited from the contract. Respondent has already performed the painting works in 2003, and it was accepted by petitioner as satisfactory. Since this service cannot be undone and petitioner has already enjoyed the value of the painting services over the years, respondent is entitled to the payment of the painting services with interest in accordance with Articles 1191 and 2210 of the Civil Code.[92] The interest shall be computed from the date of extrajudicial demand by respondent on August 3, 2007 in accordance with Article 1169[93] of the Civil Code and this Court's ruling in *Nacar v. Gallery Frames*.[94]

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90 Id. at 379.

91 *Raquel-Santos v. Court of Appeals*, 609 Phil. 630, 659 (2009) [Per J. Nachura, Third Division].

92 CIVIL CODE, art. 2210 provides:

ARTICLE 2210. Interest may, in the discretion of the court, be allowed upon damages awarded for breach of contract.

93 CIVIL CODE, art. 1169 provides:

IV

Generally, the parties may stipulate the recovery of attorney's fees, but in the absence of such, Article 2208 of the Civil Code enumerates instances when these fees may still be recovered:[95]

> ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
> (2) *When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest*;
> (3) In criminal cases of malicious prosecution against the plaintiff;
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
> (6) In actions for legal support;
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
> (9) In a separate civil action to recover civil liability arising from a crime;
> (10) When at least double judicial costs are awarded;
> (11) *In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.*
>
> In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied)

ARTICLE 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[94] 716 Phil. 267, 278–279 (2013) [Per J. Peralta, En Banc]. *Nacar* provides:

When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

[95] *See Philippine National Construction Corporation v. Apac Marketing Corporation*, 710 Phil. 389 (2013) [Per C.J. Sereno, First Division].

Generally, attorney's fees cannot be recovered as part of damages, as no premium should be placed on the right to litigate. In *ABS-CBN Broadcasting Corporation v. Court of Appeals*:[96]

> [Attorney's fees] are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[97] (Citations omitted)

The grant of attorney's fees depends on the evaluation of each case and is within this Court's discretion. Attorney's fees may be awarded if a party was forced to litigate and incur expenses to protect its right and interest due to another party's unjustified act or omission.[98]

Here, we agree with the findings of the Construction Industry Arbitration Commission and the Court of Appeals. Respondent is entitled to the award of attorney's fees.

In awarding attorney's fees, the arbitral tribunal explained that respondent was compelled to engage the services of a lawyer to recover the two (2) Camp John Hay Suites units or their monetary value; thus, it incurred expenses to protect its interest after petitioner had breached their contract.[99] In affirming this Final Award, the Court of Appeals found that respondent undeniably needed adequate legal representation to recover on a clearly demandable claim, making the additional expense inevitable.[100]

Unmistakably, there was breach of faith. Petitioner violated the reciprocity of its contract with respondent. This case dragged on for years because petitioner unjustifiably refused to pay respondent's valid claim. In the proceedings before the arbitral tribunal, petitioner even rejected respondent's offer to settle the dispute by paying the balance of the contract price. While petitioner enjoyed the benefit of the painting services, respondent is forced to await payment, foregoing the use and value of money that have compounded over the years.

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96 361 Phil. 499 (1999) [Per C.J. Davide, Jr., First Division].

97 Id. at 529.

98 *Sime Darby Pilipinas, Inc. v. Goodyear Phils., Inc.*, 666 Phil. 546, 564 (2011) [Per J. Mendoza, Second Division].

99 *Rollo*, p. 246.

100 Id. at 47.

Clearly, petitioner's refusal to pay compelled respondent to file the Complaint and incur expenses in the process. Considering the years that had lapsed, during which respondent incessantly demanded payment, it is only equitable to award attorney's fees.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals May 13, 2011 Decision and September 30, 2011 Resolution in CA-G.R. SP No. 108335 are **AFFIRMED WITH MODIFICATION**.

Petitioner Camp John Hay Development Corporation is ordered to pay respondent Charter Chemical and Coating Corporation: (1) the balance of the contract price in the amount of Five Million Nine Hundred Thousand Pesos (₱5,900,000.00) with interest at the rate of twelve percent (12%) per annum from August 3, 2007 until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until its full satisfaction; and (2) attorney's fees in the amount of Five Hundred Ninety Thousand Pesos (₱590,000.00).

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
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.

MARVIC M.V.F. LEONEN
Associate Justice
Acting 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.

LUCAS P. BERSAMIN
Chief Justice