Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SYSTEMS ENERGIZER CORPORATION (SECOR), Petitioner,	**G.R. No. 205737**
	Present:
	CAGUIOA, *J.*, *Chairperson*,
- versus -	INTING,
	GAERLAN,
	DIMAAMPAO, *and*
	SINGH, *JJ.*
BELLVILLE DEVELOPMENT INCORPORATED (BDI), Respondent.	Promulgated: September 21, 2022

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D E C I S I O N

GAERLAN, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks to set aside the Decision[2] dated January 31, 2013 of the Court of Appeals (CA) 10th Division in CA-G.R. SP No. 125889, and to reinstate the Final Award[3] dated July 16, 2012 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 25-2011.

The Factual Antecedents

Systems Energizer Corporation (petitioner) and Bellville Development, Incorporated (respondent) entered into an Owner-Contractor Agreement[4] (First Agreement) on May 21, 2009 whereby the former was to undertake the

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1 *Rollo*, pp. 20-59.
2 Id. at 61-72; penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda C. Lampas-Peralta and Angelita A. Gacutan, concurring.
3 Id. at 74-110.
4 Id. at 111-120.

construction of the electrical works for the latter's proposed Molito 3—Puregold Building located inside the El Molito Commercial Complex located on the corner of Madrigal Avenue and the Alabang-Zapote Road in Barangay Alabang, Muntinlupa City.[5] The contract price agreed upon was a fixed lump sum of ₱15,250,000.00,[6] and the First Agreement had two crucial stipulations: the first being Article 2.02 which states the following:

> 2.02. The other documents, which hereafter may be mutually agreed upon between the OWNER and CONTRACTOR and duly signed by both of them, whether prepared before or after signing of the Contract Documents, shall likewise form part of the Contract Documents.[7]

The second crucial stipulation is Article 5.05, which states the following:

> 5.05. Should the OWNER require the CONTRACTOR to perform additional work or extra work or to reduce any work, the costs of such additional and/or reduced work shall be added to or deducted from, as the case may be, to [sic] the Contract Price stated in Article 5.01.[8]

Petitioner began work on the project but the same was suspended after only a few months, allegedly due to some issues with respondent's original contractor for the structural works, and the untimely demise of respondent's two vice presidents, who were signatories to the First Agreement.[9] However, respondent issued a new Notice of Award/Notice to Proceed[10] dated March 25, 2010 to petitioner with the following particulars:

> Gentlemen:
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> This is to confirmed [sic] that your proposal for the supply of materials, manpower, tools, equipment and supervision for the construction works of the Architectural & Structural Vault Sub-station, Vault Sub-station System, CCTV System and **Changes/Revisions of Electrical Building Plans** dated 17 October 2009 of the project; Molito–3/Puregold Commercial Building located along Alabang-Zapote Road corner Madrigal Avenue, Alabang, Muntinlupa City in accordance with your offer and further negotiated by Bellville Development, Inc. stipulated as follows:

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5 Id. at 111.
6 Id. at 114.
7 Id. at 112.
8 Id. at 114.
9 Id. at 268.
10 Id. at 139.

Variations/Change Orders	Amount	Downpayment
1. Architectural & Structural Vault Sub-station	Php. 2,000,000.00	Php. 400,000.00 (20%)
2. Vault Sub-station System	19,800,000.00	5,940,000.00 (30%)
3. CCTV System	1,500,000.00	450,000.00 (30%)
4. **Changes/Revisions of Electrical Building Plans dated 17 October, 2009**	28,250,000.00	8,475,000.00 (30%)

and to the following terms and conditions:

1. That the total contract amount shall be PESOS: Fifty One Million Five Hundred Fifty Thousand (Php. 51,550,000.00) Pesos inclusive of VAT and other applicable government taxes.

2. That the down payment equivalent to PESOS: Fifteen Million Two Hundred Sixty Five Thousand (Php. 15,265,000.00) Pesos shall be paid upon your submission of the corresponding Surety Bond acceptable to the owner and signing of the Construction Agreement.

3. That the construction period will commence, 90 calendar days from March 15, 2010.

Should you agree with the above terms and conditions and that your scope of work will be completed on June 14, 2010[, p]lease submit your construction schedule as well [as] the **revised** cost breakdown totaling to your contract amount.[11] (Emphases and underscoring supplied)

Eventually, the Parties entered into a Second Agreement[12] dated April 5, 2010, in order to reflect the new specifications indicated in the Notice of Award/Notice to Proceed dated March 25, 2010. The Second Agreement provided that petitioner was to undertake the construction and completion of electrical works at the same location/project, *i.e.*, the Molito 3—Puregold Commercial Building. The scope of work covered the entirety of petitioner's undertaking in much more detail and additional major structures (*i.e.*, the vault substation and the closed circuit television system [CCTV] for the project), and crucially, Article 2.4 called for an abandonment of the previous First Agreement, *viz.*:

2.4. The Contract Documents contain the entire agreement and understanding between the OWNER and CONTRACTOR as to the subject matter hereof, **and the same supersedes all prior agreements, commitments, representations, writing, and discussions between them. All other documents relating to the subject matter executed by the parties prior to this Construction Contract but not forming part of the**

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11 Id.

12 Id. at 121-138.

> **Contract Documents above enumerated are deemed waived an/or abandoned**.[13] (Emphasis and underscoring supplied)

Said Second Agreement had a contract price of ₱51,550,000.00, with payment to be made on monthly billings based on percentage of actual accomplishment, the evidence of which would be summaries of accomplishment prepared by the construction manager and accepted by respondent.[14]

Over the course of the project's completion, additional Work Authorization Orders[15] (WAOs) were entered into between the Parties for further electrical installations. The actual final cost of respondent for petitioner's services *vis-à-vis* the construction of electrical works for the building amounted to ₱80,711,308.05, as stated in the Statement of Actual Cost Accounting & Summary of Expenses[16] prepared by respondent's accountant/finance manager. There are, however, no attached summaries of accomplishment that form petitioner's basis for its progress billings. Instead, attached to the record are two Certificates of Final Inspection and Acceptance: 1) the first is dated September 1, 2010 and covers petitioner's completion of the installation of the project's CCTV system;[17] and the second is dated September 7, 2010 and covers petitioner's completion of electrical works, fire protection/fire detection and suppression (FDAS) system, and the project's power substation vault.[18]

It appears from the records that respondent did pay petitioner for the full contract price of the First and Second Agreements, minus however the retention fees of 10% under both contracts. But no relevant receipts or billings are present in the record. These retention fees (*i.e.*, ₱1,525,000.00 for the First Agreement and ₱5,155,000.00 for the Second Agreement), plus the unpaid balance of WAO No. 20[19] (₱1,350,000.00), amounted to a total of ₱8,030,000.00, and were the subject of a demand letter addressed to respondent from petitioner's counsel and dated July 12, 2011.[20] Respondent's reply dated July 15, 2011,[21] however, simply requested that petitioner provide

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13 Id. at 126.
14 Id.
15 Id. at 376-393.
16 Id. at 394.
17 Id. at 395.
18 Id. at 396.
19 Id. at 393. This is dated August 24, 2010 and are for the following additional installations: "1) [p]urchasing of [e]mergency and directional exit sig[ns]; 2) [a]dditional lightings @ car entrance of Molito 3 Zapote Rd. (Pendant type) (for approval); 3) [a]dditional Power and telephone outlet provision for ATM Machine [*sic*]; 4) [a]dditional power supply for architectural lightings @ walkalator area; 5) [a]dditional UPS for CCTV system; 6) [a]dditional Telephone line provision for elevator; 7) [s]upervisory panel for FDAS @ monitoring room; 8) [p]ower supply for Molito 3 Logo; and 9) [a]dditional power supply @ walkal[a]tor area for architectural lightings."
20 Id. at 406.
21 Id. at 407.

all necessary documentation to support the allegedly "tremendous increase of the project cost from the original contract price of [₱]15,250,000.00 to a total price of [₱]80,711.308.00."[22]

With no settlement as to their issues, and with no action on the part of respondent to pay the total remaining balance, petitioner filed its Complaint before the CIAC on September 13, 2011,[23] which started arbitration proceedings under both the First and Second Agreements. Respondent filed its Answer with Counterclaim to recover the alleged excess of what it paid to petitioner under the terms of the First Agreement (alleging novation by the Second Agreement),[24] and petitioner duly filed its Reply with Answer to Counterclaim.[25] After conducting the preliminary conference and a series of evidentiary hearings, and after receiving the Parties' memoranda, the CIAC promulgated its Final Award[26] on July 16, 2012 with the following dispositive portion:

> IX. Final Award (Dispositive Part)
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> 25.0. WHEREFORE, we, Atty. Eduardo R. Ceniza, Engr. Salvador P. Castro, Jr., and Arch. Armando N. Alli, hereby decide and award in full and final disposition of this arbitration, as follows:
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> (1) Respondent is ordered to pay Claimant the sums of (i) Php1,525,000.00, representing the 10% retention fee under the first contract, (ii) Php5,155,000.00, representing the 10% retention fee under the second contract, and (iii) Php1,350,000.00, representing the value of WAO No. 20 – or a total of Php8,030,000.00, with legal interest thereon at the rate of 12% per annum computed from date of finality of this Final Award until the principal amount is fully paid;
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> (2) Claimant's claim for exemplary damages and attorney's fee[s] are hereby denied;
>
> (3) Respondent's claim for reimbursement of various items in the total amount of Php32,044,090.32 are hereby denied;
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> (4) Respondent's claim for exemplary damages, [and] attorney['s] fees are hereby denied;
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> (5) Each party shall bear its own attorney's fees;
>
> (6) The arbitration cost which includes the filing fee, administrative fee, arbitrator['s] fee, and Arbitration

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22 Id.
23 Id. at 76.
24 Id.
25 Id.
26 Id. at 74-110.

Development Fund charges, including all incidental expenses, shall be borne by both parties on a *pro rata* basis;

(7) All other requests for relief not granted or disposed of here are hereby denied.[27]

The CIAC made the following findings *vis-à-vis* petitioner's claim and respondent's counter-claim for a refund of its inadvertent payment for the full price under the First Contract:

1) The additional cost for the changes of the revised plan on the original plan amounting to ₱28,250,000.00 (reduced from ₱34,254,288.32 as initially stated in the Bill of Quantities[28]) partly covered the scope of work of the First Agreement, and the Second Agreement did not contain any provision that specifically stipulates the abandonment of the First Agreement.

2) The issue of whether or not the Second Agreement superseded the First Agreement was not the real issue, since the case all boiled down to petitioner's proper compensation for actual services rendered and as billed to respondent.

3) There was no justification present for CIAC to undo the contractual terms entered into and agreed upon by the Parties, much less concerning their performance, since there was no showing of any fraud or vitiation of consent on the part of either petitioner or respondent. Moreover, the evaluation of the professionals hired by respondent to oversee the implementation of the Agreements (*i.e.*, the project manager, the quantity surveyor, and its own accountant) do not show any irregularities in petitioner's accomplished works, and respondent was bound by their actions and evaluation.

4) Petitioner was entitled to the release of the retention fees under both contracts, since respondent did not raise any of its objections to the same in its reply to petitioner's demand letter, and only belatedly raised them before the CIAC.

Aggrieved, respondent filed a Petition for Review under Rule 43 of the Rules of Court (in relation to Section 18.2 of the CIAC's Revised Rules of Procedure Governing Construction Arbitration), and sought the CA's reversal

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27 Id. at 109.

28 Id. at 142-147.

and setting aside of CIAC's Final Award. On January 31, 2013, the CA 10th Division promulgated its Decision[29] with the following dispositive portion:

> **WHEREFORE**, premises considered, the questioned Final Award dated 9 July 2012 is hereby **MODIFIED** as follows:
>
> "(1) **Respondent Systems Energizer Corporation (SECOR) is hereby ORDERED to reimburse petitioner BELLVILLE DEVELOPMENT INCORPORATED (BDI) the amount of Thirteen Million Five Hundred Ninety[-]Three Thousand Two Hundred Seventy[-]Three [Pesos] (P13,593,273.00), representing the excess amount paid by the petitioner to the respondent;**
>
> (2) Respondent's claim for exemplary damages and attorney's fees are hereby denied;
>
> (3) Petitioner's claim for exemplary damages and attorney's fees are hereby denied;
>
> (4) The arbitration cost[,] which includes the filing fee, administrative fee, arbitrator's fee, and Arbitration Development Fund charges, including all incidental expenses, shall be borne by both parties on a *pro rata* basis;
>
> (5) All other requests for relief not granted or disposed of here are hereby denied."
>
> **SO ORDERED**.[30] (Emphases in the original)

The CA reasoned that the monetary awards stated in the CIAC's Final Award lacked evidentiary basis, since there was no proof attached at all of petitioner's completion of work under the First Agreement. The CIAC's ruling was merely based on presumptions, surmises, and conjectures not based on factual details of the controversy that the CIAC failed to seriously look into.

Moreover, the CA found that petitioner failed to discharge the burden of proving that the First Agreement was not superseded. This is because the "as-built" plan of the final completed project reflects the implementation of the revised plan under the Second Agreement, meaning the original and revised plans could never have been executed simultaneously. This is bolstered by the unsigned report[31] dated November 21, 2009 of Jarhaus Options & Trends (respondent's quality surveyor), which states that the

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29 Id. at 61-72.
30 Id. at 17 and 71.
31 Id. at 161-165.

electrical works completed under the First Agreement (but before resumption of work) only amounted to 6.774% of the original plan.

With the First Agreement found to have been superseded, the CA ruled that petitioner was only entitled to one retention fee: that of the Second Agreement in the amount of ₱5,155,000.00. Petitioner, however, was still also entitled to 6.774% of the contract price under the First Agreement (*i.e.*, ₱1,033,035.00) and payment for WAO No. 20 (*i.e.*, ₱1,350,000.00). Off-setting these obligations with the amount due respondent (*i.e.*, the full price it paid under the terms of the First Agreement amounting to ₱15,250,000.00), the CA determined that petitioner owes respondent ₱13,593,273.00, computed as follows:

Total Amount Paid to Petitioner: ₱72,681,308.00[32]
[minus the following:]
Contract Price (Second Agreement): ₱51,550,000.00
Accomplished Works (6.744% of First Agreement): ₱1,033,035.00
Retention Fee (Second Agreement): ₱5,155,000.00
Accomplished Works (WAO No. 20): ₱1,350,000.00
[Subtotal of Minuend: ₱59,088,035.00]

Excess Paid to Petitioner: ₱13,593,273.00[33]

Without filing a motion for reconsideration, Petitioner instituted the present action for the Court's review of both the CIAC's and CA's rulings.

The Parties' Arguments

Petitioner posits the following errors on the part of the CA:

1. The CA erred in not finding respondent in delay when it purposely did not pay its outstanding balance on time;

2. The CA erred in relying on the unsigned report of Jarhouse Options and Trends (respondent's quality surveyor) for the determination of its accomplished works under the terms of the First Agreement;

3. The CA erred in not finding that petitioner fully accomplished the works under the terms of both the First and Second Agreements, and in ordering the refund of the excess paid by respondent;

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32 Id. at 69.
33 Id.

4. The CA erred in its determination that the First Agreement had been superseded, despite petitioner's position that the Second Agreement was merely constitutive of additional costs for revision/changes to the original plan for the project's electrical works; and

5. The CA erred in its determination that only one "as-built" plan submitted by petitioner means that there was only one contract implemented, *i.e.*, in accordance with the revised plans for electrical works under the Second Agreement.

In its Opposition,[34] respondent reiterates its position that the Second Agreement had specifically superseded all prior agreements between the Parties, and that the incompatibility between the original and revised plan for the project's electrical works were proof enough of the incompatibility of implementing both First and Second Agreements. Respondent asserts that the only "as-built" plan (prepared by petitioner itself) indisputably proved that only the revised plan under the Second Agreement was implemented, and that the Certificates of Final Inspection only referred to the revised (not the original) plan. Finally, respondent avers that it was justified in delaying payment of the retention fees and remaining balance to petitioner due to the need to investigate the escalated cost of the entire project—specifically the electrical works.

The Issues

For the Court's consideration are the following matters:

1. Whether or not there is doubt in the interpretation of the terms of the Second Agreement in the context of the effectivity of the previous First Agreement.

2. Whether or not there is enough evidence to conclude that the First Agreement between the Parties was novated by the Second Agreement; and

3. Whether or not there is enough evidence to show the actual percentage of accomplished work done by respondent *vis-à-vis* the First Agreement.

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34 Id. at 265-309.

The Court's Ruling

The Petition is lacking merit, and must be denied.

At this stage, the Court notes that petitioner did indeed fail to file a motion for reconsideration *vis-à-vis* the CA 10th Division's Decision dated January 31, 2013. While it is true that Rule 45, Section 1[35] of the 1997 Rules of Court (since the present Petition was filed prior to the 2019 Amendments under A.M. No. 19-10-20-SC) does not strictly require the filing of such motion before instituting a petition for review on *certiorari* with the Court, petitioner nonetheless should have given the CA an opportunity to review its own ruling. But despite petitioner's procedural misstep, the Court finds special and important reasons to take cognizance of the present case: the first being the opportunity to clarify standing jurisprudence on the civil law concepts of novation of obligations, the judicial interpretation of contracts between private parties, *solutio indebitii*, unjust enrichment, and even compensation between debtors and creditors. The second is to finally settle the present controversy, which has been unresolved for nearly 11 years since the Complaint was filed before the CIAC.

Proceeding now to the substantive issues, the Court first tackles the alleged doubt in the interpretation of the terms of Article 2.4 of the Second Agreement—the crux of the present controversy. To accurately paraphrase the same, it states that the contract documents (*i.e.*, the Second Agreement itself, its general conditions, the engineering design, plans, drawings and specifications, respondent's Notice to Proceed, the master construction schedule, petitioner's revised proposal and bill of quantities, the performance bond, the surety bond, the guaranty bond, the project organizational chart, the manpower and equipment utilization schedule, the site layout of temporary facilities, and the standard United Architects of the Philippines 301 general conditions) contain the entire agreement between the Parties, that all prior agreements are **superseded**, and that all documents executed before the Second Agreement that are not forming part of the contract documents are deemed waived/abandoned. Had this provision not been put in issue, the first paragraph of Article 1370 of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, would have applied: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

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[35] Sec. 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

However, petitioner has exactly put Article 2.4 of the Second Agreement in issue before the CIAC, the CA, and the Court. The second paragraph of Article 1370 of the Civil Code thus applies: "[i]f the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former." In order for the Court to determine the true intent of the present Parties, Article 1371 of the Civil Code provides a judicial guide: "[i]n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."

Civil law commentators in this jurisdiction have much to say about the great care needed in straying away from the text of a contract in order to adhere to the actual intent of the parties. Arturo M. Tolentino opined that—

> In order that the intention of the contracting parties may prevail against the terms of the contract, such intention must be clear or, in other words, besides the fact that such intention should be proved by competent evidence, the latter must be of such character as to carry in the mind of the judge an inequivocal [sic] conviction. The evident intention which prevails against the defective wording of the contract, is not that of one of the parties, but the general intent, which, being so, is to a certain extent equivalent to mutual consent, inasmuch as it was the result desired and intended by the contracting parties.[36]

Ruben F. Balane, in his more recent treatise, noted the significance of "[c]ontemporaneous and subsequent acts as guides to interpretation"[37] of the true intent of the parties. Thus, the Court is obliged to pore over the evidence on record for any and all indications as to the intent of the Parties to either sustain and keep alive the First Agreement along with the Second, or to do away with the First altogether. This is despite the straightforward language of Article 2.4 of the First Agreement, since again, the said provision was put in issue by petitioner.

Before examining parts of the record in detail, a discussion on the basics of novation in civil law is in order. The legal basis for the concept can be found in Article 1291 of the Civil Code, which states that obligations can be modified by: "(1) [c]hanging their object or principal obligations; (2) [s]ubstituting the person of the debtor; (3) [s]ubrogating a third person in the rights of the creditor." Obviously, what is purportedly involved in the present

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36 Arturo Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Volume 4 (1987 ed.), pp. 560-561, citing 8 Manresa 726-727 and *Philippine National Bank v. Agudelo* (58 Phil. 655, 662-663).

37 Ruben F. Balane, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (OBLIGATIONS AND CONTRACTS) (2018 ed.), p. 679, citing *Lim Yhi Luya v. Court of Appeals*, 99 SCRA 668 (1980), and *Republic v. Castellvi*, 68 SCRA 336 (1974).

controversy is an objective novation, *i.e.*, "the change of the obligation by substituting the object with another or changing the principal conditions."[38]

According to Balane, the determination of whether or not a contract was subjected to objective novation would necessitate a determination of "whether the conditions to be changed are principal (in which case there would be a novation) or incidental (in which case there would be no novation)."[39] For the general requisites of novation, Tolentino identifies four: "first, a previous valid obligation; second, the agreement of all the parties to the new contract; third, the extinguishment of the old contract; and fourth, the validity of the new one."[40]

Article 1292 of the Civil Code further provides that "[i]n order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other." This is the basis for the important concept that novation is never presumed. Tolentino elucidates *vis-à-vis* the concept of express novation thus:

> Novation takes place only when the contracting parties expressly disclose that their object in making the new contract is to extinguish the old contract, otherwise the old contract remains in force and the new contract is added to it, and each gives rise to an obligation still in force. Thus, where it appears that there was no clear agreement of the parties to the creation of a new contract in substitution of the existing one, no novation can be held to have been made.[41]

To be clear, what is involved in the present controversy is an allegedly express novation, *i.e.*, Article 2.4 of the Second Agreement. While the Court recognizes that the Parties have indeed made arguments and presented evidence below to show how the First and Second Agreements are incompatible with each other, the main issue of the present controversy relates only to the Parties' intention *vis-à-vis* an express and objective novation, and not in relation to an implied novation of the contract. Thus, the Court will only check the record for the Parties' actions and admissions relating to circumstances immediately before and right after the execution of the Second Agreement to see whether they expressly agreed to either an ***essential*** or ***accidental*** change to the principal conditions and obligations of their mutual understanding. If the Court determines that the change to the terms of the First

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38 Tolentino, supra note 36, at 381-382.

39 Balane, supra note 37, at 464.

40 Tolentino, supra note 36, at 382.

41 Id. at 384, citing *Hard v. Burton*, 62 Vt. 314, 20 Ath. 269; *Philippine National Bank v. Granada, (C.A.)* G.R. No. 13919-R, 20 July1955; *National Exchange Co. v. Ramos*, 51 Phil. 310 (1927); *Hawaiian Philippine Co. v. Hernaez*, 45 Phil. 746 (1924); *Tiu Siuco v. Habana*, 45 Phil. 707 (1924); and *Santos v. Reyes*, 10 Phil. 123 (1908).

Agreement was essential, then there was a novation. If the change was merely accidental, then there is no novation to speak of despite the express terms of Article 2.4 of the Second Agreement.

Incidentally, Tolentino cites the case of *Tiu Siuco v. Habana*[42] as a helpful and apt illustration to guide the Court's determination of the question:

> In a building contract, although numerous and expensive changes and alterations were made, where it appears that the original plans were followed in the construction of the main body of the building, the contractor, without the consent of the owner, cannot treat the original contract as abandoned and recover upon a *quantum meruit* for the cost of the entire building.[43]

Said in another way, if the final result of a construction work were to be materially different from what was intended in the original plan—which is the basis for the previous contract—then there would be a totally new agreement that had effectively been implemented. This would either be an express and subsequent contract embodying the new or revised designs/plans, or an implied contract that can be the subject of the contractor's compensation on a *quantum meruit* basis (which is not the case at present).

True enough, the fact that the Parties entered into the Second Agreement that points to a new or revised plan for the necessary electrical works for the Molito 3—Puregold Building is already telling. The contract price is significantly greater, and this alone should be sufficient to declare a new object of the contract. But the fact that the new Notice of Award/Notice to Proceed specified "Changes/Revisions of Building Plans dated 17 October 2009"[44] means that there was indeed a new plan for the project's electrical works altogether. The adjustments of the variance between the costing of the original and revised plans were thus not mere "additional" or "additive" costs upon the First Agreement. Since there was a new and revised plan based on new needs of the planned structure, and for works not found in the specifications under the First Agreement, such as the CCTV and FDAS systems and the power substation vault, the revised plan indeed constituted a new subject matter of the mutual understanding between the Parties. This is not merely an *accidental* change in the object of petitioner's obligations to respondent, but an *essential* one.

Even if the Court considers the affidavits of the numerous experts fielded by the Parties before the CIAC, the conclusion that the revised plan

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42 See supra note 41.
43 Id. at 387.
44 *Rollo*, p. 139.

constituted an essential change in the principal object of the contract between the Parties cannot be avoided. The main Affidavit[45] of Petitioner's president in the CIAC proceedings belies the substantial change in the contractual terms despite his insistence that the First Agreement still subsisted:

> Q42: As you mentioned above, this Revised Plan modifies the First Agreement. In the First Agreement the contract amount is ₱15,250,000.00 and in the Revised Plan Amount[,] it is ₱28,250,000.00. Did this Revised Plan supersede the first agreement?
>
> A: No sir. The First Agreement remained and the Revised Plan co-exist [sic] with the First Agreement.
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> Q43: Can you show us why you said the First Agreement was not superseded?
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> A: Sir, kindly refer to Exhibit "C-15" to "C-20" – Bill of Quantities (Original and Revised Plan). There you will see the columns for [the] Original Plan amount, Revised Plan amount, Variance amount and remarks. The amount for the original in the total amount of [₱]15,250,000.00 was deducted to the Revised Plan total [a]mount of ₱49,504,288.32 to come up with the Variance Amount of ₱34,254,288.32 (reduced to the final contract amount of ₱28,250,000.00) which is the contract amount for this Revised Plan and remarked as additive. This shows that the Original was retained and the contract amount for the revised plan was also treated separately.
>
> Q44: Can you enumerate some of the differences in the Revised Plan compared to the First Agreement (Original)?
>
> A: In the revised plan, there was increase in electrical requirements and demands (electrical power) as there was increase in the number of tenants and varying demand of tenants depending on the kind of business; the further subdivision of the existing subdivisions of the spaces for rent. The increase in electrical power demand was also caused by the Introduction of Air-conditioning system, Parking exhaust and Ventilating System requiring higher Power Supply, especially their tenant puregold [sic]. Thus almost all the [n]umber of [u]nits/pcs [sic], length or sets for materials needed in the Original Contract was greatly increased in the Revised Plan. To meet this demand for larger electrical power supply, the other Additions, namely: Construction of Vault Sub-Station System and the electrical works relative to this Vault Sub-station System, CCTV system (electrical works) needed to be implemented. These among other revisions, enlarged the original work and requirements in the Original Contract.[46]

The comparison between the original and revised designs—and the confirmation that the as-built plan conforms to the latter—is evident in the

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45 Id. at 168-186.

46 Id. at 173.

first Affidavit[47] of respondent's project engineer, shows no doubt that there was indeed a substantial difference:

	Design 1	Design 2	As-Built Plan
Service Entrance Conductor	Concrete pedestal	First Private Pole + concrete pedestal	First Private Pole + concrete pedestal
Transformer	1 unit 700KVA	2 units 2000KVA	2 units 2000KVA
		DRYTYPE 34.5KV/230V	DRYTYPE 34.5KV/230V
	MERALCO-supplied	Owner-supplied	Owner-supplied
Meter Center	1 Center	4 Centers	4 Centers
	126,000VA Total Rated Capacity	2,986,376VA Total Rated Capacity	2,986,376VA Total Rated Capacity
	18 meters	56 meters	56 meters[48]

The second Affidavit[49] of respondent's project engineer further noted that his comparison and analysis between the two designs "showed that they could not have been implemented simultaneously. That is to say, either of them could have been implemented, but not both."[50] He further stated that "almost all items indicated in the 1st Contract Agreement or the Original Design have not been installed except those items that are already existing and the owner[-]supplied materials such as the generator and manual transfer switch."[51]

From the records, the CIAC seems to not have made an express ruling on either the admissibility or weight of these affidavits of respondent's project engineer. In actuality, it merely brushed aside the issue of the alleged novation of the First Agreement by the Second, and merely concluded that "the second contract does not contain any provision that specifically stipulates that the first contract is deemed superseded and set aside by the second contract."[52] The CIAC even doubted the matter as being the central issue of the present controversy, since in its view, "[t]he real issue as to liability is whether Claimant has actually performed the works it claims it has performed and for which it has billed the Respondent."[53] Overall, the CIAC found that since the Parties entered into their mutual understanding/s freely and voluntarily, and since the implementation of the contracts were observed and certified by

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47 Id. at 427-434.
48 Id. at 430.
49 Id. at. 435-436.
50 Id. at 435.
51 Id. at 436.
52 Id. at 100.
53 Id.

competent professionals, respondent has no choice but to simply pay up for all services rendered by petitioner—under both contracts.

To the Court's mind, the CIAC gravely erred in its disposition of the case when it abandoned its duty to make the necessary evidentiary rulings that would have settled the issues between the Parties. Had the CIAC made a categorical ruling on the issue of whether or not the revised plan was substantially different from the original plan for the project's electrical works, the issue of novation would have been put to rest. Instead, the present controversy has dragged on for years simply because an administrative agency with presumed competence and technical expertise over the subject matter of the case did not properly appreciate the facts and apply the law accordingly.

Further, the Court finds no substantial objection on the part of petitioner as to the Affidavits of respondent's project engineer, other than simply asserting that said witness was unfamiliar with the project, and was not involved in its implementation.[54] While it is true that the said witness may not have been intimately familiar with the actual implementation of the project, his sworn statements (*i.e.*, his First and Second Affidavits) still have weight as an expert witness. Petitioner forgets that Section 13.5, Rule 13 of the CIAC's Revised Rules of Procedure Governing Construction Arbitration states that the CIAC is mandated to perform its functions "without regard to technicalities or legal forms and need not be bound by any technical rule on evidence." This is in keeping with the oft-repeated rule of thumb in administrative proceedings that the "strict enforcement of the rules on evidence x x x does not hold true for administrative bodies."[55] So long as the ruling of an administrative body is supported by substantial evidence, *i.e.*, "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,"[56] the courts shall not disturb the same.

But in the present controversy, the CIAC, as mentioned, failed to make such a ruling *vis-à-vis* the First and Second Affidavits of respondent's project engineer. The Court finds that the CIAC's Final Award lacks the mention of any substantial evidence to support its findings in favor of petitioner, despite the presence of enough evidence to make the conclusion that there was a substantial difference between the original and revised plans for the project's electrical works. The statements of respondent's project engineer are still competent in terms of his professional opinion as a licensed electrical engineer, and his points are not directly addressed or refuted by any expert witness presented by petitioner. In fact, petitioner's president (who is also a licensed electrical engineer) was its sole witness[57] during the CIAC

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54 Id. at 49.
55 *Sibayan v. Alda*, 823 Phil. 1229, 1239 (2018).
56 RULES OF COURT, Rule 133, Section 6 (as amended by A.M. No. 19-08-15-SC).
57 *Rollo*, p. 77.

proceedings; and as discussed above, his admission as to the substantial difference between the original and revised plans also constitute substantial evidence that the CIAC failed to consider.

In short, with enough evidence to conclude that the revised plan differed substantially from the original plan for the project's electrical works, the Court also concludes in turn that the revised plans constituted a different subject matter for the Second Agreement between the Parties. Put simply, there was an express novation in the terms of the Second Agreement concerning an *essential* change in the subject matter of the First Agreement.

Thus, there was no doubt at all to be found in the interpretation of Article 2.4 of the Second Agreement, since the actions and admissions of the Parties conformed to their intentions at the time. Petitioner only has a different interpretation as to the nature of the change to the contract's subject matter, *i.e.*, that the same was merely accidental because it characterized the same as just additional or additive work within the contemplation of Article 5.05[58] of the Second Agreement. The Court, as explained, however, sees otherwise.

Common sense would also dictate that it was indeed impossible for petitioner to perform and collect on both contracts, since there was only one resulting output of finished electrical works for the project that conformed to the specifications of the revised plan under the Second Agreement. For petitioner to collect the full amount for work that was never finished would go against any notion of justice and equity as embodied in either the Civil Code or in the law between the Parties, *i.e.*, their contractual stipulations. This is something the Court will never allow.

Overall, the CA was thus correct in finding that petitioner had unjustly enriched itself at respondent's expense; and in ordering that the Final Award be modified to allow respondent to recover its wrong payment under the full terms of the First Agreement. *Solutio indebiti* was correctly applied to the case, as was the compensation between the Parties as mutual creditors and debtors.

A final word on the actual percentage of petitioner's accomplished work *vis-à-vis* the First Agreement is in order. It is undisputed that petitioner's president admitted to work stoppage some time in November 2009 due to notice relayed by respondent's construction manager that there was "an internal problem that they need[ed] to fix before work can continue."[59] The run date of the unsigned report of Jarhaus Options and Trends is November

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58 Id. at 114.
59 Id. at 171.

21, 2009, which roughly corresponds to the work stoppage. Petitioner asserts its objections to the admissibility of the said report, pointing out that it was not authenticated, that the author of the report was never cross-examined, and that the contents were mere hearsay prepared by an accountant with no personal knowledge of the relevant events and facts. Notably, the CIAC also failed to make a categorical ruling on this evidentiary matter.

The Court, however, is inclined to sustain the CA's utilization of the contents of the said report in determining (on a *quantum meruit* basis) petitioner's work accomplishment and billing under the superseded First Agreement. The CA correctly noted that the CIAC did not dispute the competence and professionalism of Jarhaus Options and Trends as respondent's quality surveyor, and that the CIAC found no fraud to justify going into a deeper investigation and examination of all of petitioner's billings under both contracts. The Court similarly finds no such fraud to sanction a re-litigation of petitioner's compensation under the First Agreement. To sustain the CA's ruling that petitioner was entitled to compensation under the 6.774% as determined by Jarhaus Options and Trends would be better than remanding the entire case back to the CIAC for the reception of evidence to prove something that would be nearly impossible: the completion of preparatory works for an original design that was abandoned in favor of the revised plan under the Second Agreement. Such would also likely be a relatively small amount. For reasons of equity similar to the ruling of the Court in *Naga Development Corp. v. Court of Appeals*,[60] should there be any inaccuracy in the Court's presumption that the electrical works undertaken by petitioner for the First Agreement was only 6.774%, "the difference involves a trifling amount which, in law, may be overlooked. *De minimis non curat lex.*"[61]

WHEREFORE, the present Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit, and the Decision dated January 31, 2013 of the Court of Appeals (10th Division) in CA-G.R. SP No. 125889 is hereby **AFFIRMED**.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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60 148-B Phil. 591 (1971).
61 Id. at 602.

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
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.

ALFREDO BENJAMIN S. CAGUIOA
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.

MARVIC M.V.F. LEONEN
Acting Chief Justice