

SECOND DIVISION

[G.R. No. 228799, January 10, 2018]

**MACTAN ROCK INDUSTRIES, INC. AND ANTONIO TOMPAR,
PETITIONERS, VS. BENFREI S. GERMO, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated August 8, 2016 and the Resolution^[3] dated October 14, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 104431, which affirmed the Decision^[4] dated January 14, 2015 of the Regional Trial Court of Muntinlupa City, Branch 276 (RTC) in Civil Case No. 11-029, finding petitioners Mactan Rock Industries, Inc. (MRII) and Antonio Tompar (Tompar) solidarily liable to pay respondent Benfrei S. Germo (Germo) the amount of P4,499,412.84 plus interest, damages, and attorney's fees.

The Facts

This case stemmed from a Complaint^[5] for sum of money and damages filed by Germo against MRII – a domestic corporation engaged in supplying water, selling industrial maintenance chemicals, and water treatment and chemical cleaning services^[6] – and its President/Chief Executive Officer (CEO), Tompar. The complaint alleged that on September 21, 2004, MRII, through Tompar, entered into a Technical Consultancy Agreement (TCA)^[7] with Germo, whereby the parties agreed, *inter alia*, that: (a) Germo shall stand as MRII's marketing consultant who shall take charge of negotiating, perfecting sales, orders, contracts, or services of MRII, but there shall be no employer-employee relationship between them; and (b) Germo shall be paid on a purely commission basis, including a monthly allowance of P5,000.00.^[8]

On May 2, 2006 and during the effectivity of the TCA, Germo successfully negotiated and closed with International Container Terminal Services, Inc. (ICTSI) a supply contract of 700 cubic meters of purified water per day. Accordingly, MRII commenced supplying water to ICTSI on February 22, 2007, and in tum, the latter religiously paid MRII the corresponding monthly fees.^[9] Despite the foregoing, MRII allegedly never paid Germo his rightful commissions amounting to P2,225,969.56 as of December 2009, inclusive of interest.^[10] Initially, Germo filed a complaint before the National Labor Relations Commission (NLRC), but the same was dismissed for lack of jurisdiction due to the absence of employer-employee relationship between him and MRII. He then filed a civil case before the Regional Trial Court of Muntinlupa, Branch 256, but the same was dismissed without prejudice to its re-filing due to his counsel's failure to mark all his documentary evidence at the pre-trial conference.^[11] Hence, Germo filed the instant complaint praying that MRII and

Tompar be made to pay him the amounts of P2,225,969.56 as unpaid commissions with legal interest from the time they were due until fully paid, P1,000,000.00 as moral damages, P1,000,000.00 as exemplary damages, and the costs of suit.^[12]

In their Answer,^[13] MRII and Tompar averred, among others, that: (a) there was no employer-employee relationship between MRII and Germo as the latter was hired as a mere consultant; (b) Germo failed to prove that the ICTSI account materialized through his efforts as he did not submit the required periodic reports of his negotiations with prospective clients; and (c) ICTSI became MRII's client through the efforts of a certain Ed Fornes.^[14] Further, MRII and Tompar claimed that Germo should be made to pay them litigation expenses and attorney's fees as they were compelled to litigate and engage the services of counsel to protect their interest.^[15]

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

The RTC Ruling

In a Decision^[17] dated January 14, 2015, the RTC ruled in Germo's favor, and accordingly, ordered MRII and Tompar to solidarily pay him the amounts of: (a) P4,499,412.84 representing Germo's unpaid commissions from February 2007 until March 2012 with legal interest from judicial demand until fully satisfied; (b) P100,000.00 as moral damages; (c) P100,000.00 as exemplary damages; and (d) P50,000.00 as attorney's fees.^[18]

The RTC found that MRII and Germo validly entered into a TCA whereby the latter shall act as the former's marketing consultant, to be paid on a commission basis.^[19] It also found that MRII's contract with ICTSI was made possible through Germo's negotiation and marketing skills, and as such, the latter should be paid the commissions due to him. In this regard, Germo presented various sales invoices spanning the period of February 2007 to March 2012, wherein he should have been paid commissions in the amount of P4,499,412.84.^[20] Further, based on the evidence presented and in order to deter those who intend to negate the fulfillment of an obligation to the prejudice of another, the RTC found it appropriate to award Germo moral damages, exemplary damages, and attorney's fees in the foregoing amounts.^[21] Finally, the RTC imposed a lien equivalent to the appropriate legal fees on the monetary awards in Germo's favor, noting that the latter litigated the instant suit as an indigent.^[22]

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

The CA Ruling

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

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

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

The Issue Before the Court

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

The Court's Ruling

The petition is partly meritorious.

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

Such insistence is untenable.

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

[36] While this rule admits of an exception, [37] such is not applicable in this case.

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

As to the merits of the case, the courts *a quo* correctly found that: (a) Germo entered into a valid and binding TCA with MR II where he was engaged as a marketing consultant; (b) aside from the P5,000.00 monthly allowance, Germo was going to be paid on a purely commission basis; (c) during the effectivity of the TCA and in the performance of his duties as marketing consultant of MR II, Germo successfully brokered MR II's contract of services with ICTSI, obviously resulting in revenues in MR II's favor; (d) despite the foregoing and demands from Germo, MR II refused to pay Germo's rightful commission fees; and (e) MR II's refusal to pay Germo resulted – or at the very least, contributed to – Germo's financial hardships. In light of the foregoing, the courts *a quo* correctly found MR II liable to Germo for the various monetary obligations as stated in their respective rulings. Time and again, it has been consistently held that the factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect and will not be disturbed on appeal unless it appears that there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case; [41] none of which are present insofar as this matter is concerned.

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

Further, the Court deems it proper to adjust the interests imposed on the monetary awards in Germo's favor. To recapitulate, he was awarded the amounts of P4,499,412.84 representing his unpaid commissions from February 2007 to March 2012, P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 as attorney's fees. Pursuant to prevailing jurisprudence, his unpaid commissions shall earn legal interest at the rate of twelve percent (12%) per annum