

THIRD DIVISION

[G. R. No. 165548, June 13, 2011]

**PHILIPPINE REALTY AND HOLDINGS CORPORATION,
PETITIONER, VS. LEY CONSTRUCTION AND DEVELOPMENT
CORPORATION, RESPONDENT.**

[G. R. No. 167879]

**LEY CONSTRUCTION AND DEVELOPMENT CORPORATION,
PETITIONER, VS. PHILIPPINE REALTY AND HOLDINGS
CORPORATION, RESPONDENT.**

D E C I S I O N

SERENO, J.:

These are consolidated petitions for review under Rule 45 of the New Rules of Civil Procedure filed by both parties from a Court of Appeals (CA) Decision in CA-GR No. 71293 dated 30 September 2004. This Decision reversed a Decision of the Regional Trial Court (RTC), National Capital Judicial Region (NCJR), Branch 135 in Makati City dated 31 January 2001 in Civil Case No. 96-160.

The foregoing are the facts culled from the record, and from the findings of the CA and the RTC.

Ley Construction and Development Corporation (LCDC) was the project contractor for the construction of several buildings for Philippine Realty & Holdings Corporation (PRHC), the project owner. Engineer Dennis Abcede (Abcede) was the project construction manager of PRHC, while Joselito Santos (Santos) was its general manager and vice-president for operations.

Sometime between April 1988 and October 1989, the two corporations entered into four major construction projects, as evidenced by four duly notarized "construction agreements." LCDC committed itself to the construction of the buildings needed by PRHC, which in turn committed itself to pay the contract price agreed upon. These were the four construction projects the parties entered into involving a Project 1, Project 2, Project 3 (all of which involve the Alexandra buildings) and a Tektite Building:

1. Construction Agreement dated 25 April 1988 - Alexandra-Cluster C - involving the construction of two units of seven-storey buildings with basement at a contract price of P 68,000,000 (Project 1);
2. Construction Agreement dated 25 July 1988 - Alexandra-Cluster B - involving the construction of an eleven-storey twin-tower building with a common basement at a contract price of P 140,500,000

(Project 2);

3. Construction Agreement dated 23 November 1988 - Alexandra-Cluster E - involving the construction of an eleven-storey twin-tower building with common basement at a contract price of P 140,500,000 (Project 3); and
4. Construction Agreement dated 10 October 1989 - Tektite Towers Phase I - involving the construction of Tektite Tower Building I at Tektite Road at a contract price of P 729,138,964 (Tektite Building).

The agreement covering the construction of the Tektite Building was signed by a Mr. Campos under the words "Phil. Realty & Holdings Corp." and by Santos as a witness. Manuel Ley, the president of LCDC, signed under the words "Ley Const. & Dev. Corp."

The terms embodied in the afore-listed construction agreements were almost identical. Each agreement provided for a fixed price to be paid by PRHC for every project.

All the aforementioned agreements contain the following provisions:

ARTICLE IV - CONTRACT PRICE

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The Contract Price shall not be subject to escalation except due to work addition, (approved by the OWNER and the ARCHITECT) and to official increase in minimum wage as covered by the Labor Adjustment Clause below. All costs and expenses over and above the Contract Price except as provided in Article V hereof shall be for the account of the CONTRACTOR. It is understood that there shall be no escalation on the price of materials. However, should there be any increase in minimum daily wage level, the adjustment on labor cost only shall be considered based on conditions as stipulated below.

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ARTICLE VII - TIME OF COMPLETION

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Should the work be delayed by any act or omission of the OWNER or any other person employed by or contracted by the OWNER in the project, including days in the delivery or (sic) materials furnished by the OWNER or others, or by any appreciable additions or alterations in the work ordered by the OWNER or the ARCHITECT, under Article V or by force majeure, war, rebellion, strikes, epidemics, fires, riots, or acts of the civil or military authorities, the CONTRACTOR shall be granted time extension.

Sometime after the execution of these agreements, two more were entered into by the parties:

1. Letter-agreement dated 24 August 1989 - Project 3 - for the construction of the drivers' quarters in Project 3; and
2. Agreement dated 7 January 1993 - Tektite Towers - for the concreting works on "GL, 5, 9, & A" (ground floor to the 5th floor) of the Tektite Towers.

Santos signed the letter-agreement on the construction of the drivers' quarters in Project 3, [1] while both he and Abcede signed the letter-agreement on the concreting works on GL, 5, 9, and A, and also of Project 3. [2]

In order to jump-start the construction operations, LCDC was required to submit a performance bond as provided for in the construction agreements. As stated in these agreements, as soon as PRHC received the performance bond, it would deliver its initial payment to LCDC. The remaining balance was to be paid in monthly progress payments based on actual work completed. In practice, these monthly progress payments were used by LCDC to purchase the materials needed to continue the construction of the remaining parts of the building.

In the course of the construction of the Tektite Building, it became evident to both parties that LCDC would not be able to finish the project within the agreed period. Thus, through its president, LCDC met with Abcede to discuss the cause of the delay. LCDC explained that the unanticipated delay in construction was due mainly to the sudden, unexpected hike in the prices of cement and other construction materials. It claimed that, without a corresponding increase in the fixed prices found in the agreements, it would be impossible for it to finish the construction of the Tektite Building. In their analysis of the project plans for the building and of all the external factors affecting the completion of the project, the parties discovered that even if LCDC were able to collect the entire balance from the contract, the collected amount would still be insufficient to purchase all the materials needed to complete the construction of the building.

Both parties agreed that their foremost objective should be to ensure that the Tektite Building project would be completed. To achieve this goal, they entered into another agreement. Abcede asked LCDC to advance the amount necessary to complete construction. Its president acceded, on the absolute condition that it be allowed to escalate the contract price. It wanted PRHC to allow the escalation and to disregard the prohibition contained in Article VII of the agreements. Abcede replied that he would take this matter up with the board of directors of PRHC.

The board of directors turned down the request for an escalation agreement. [3] Neither PRHC nor Abcede gave notice to LCDC of the alleged denial of the proposal. However, on 9 August 1991 Abcede sent a formal letter to LCDC, asking for its conformity, to the effect that should it infuse P36 million into the project, a contract price escalation for the same amount would be granted in its favor by PRHC. [4]

This letter was signed by Abcede above the title "Construction Manager," as well as by LCDC. [5] A plain reading of the letter-agreement will reveal that the blank above the words "PHIL. REALTY & HOLDINGS CORP." was never signed, [6] viz:

Very truly yours,

(Signed)
DENNIS A. ABCEDE
Construction Manager

C O N F O R M E :

_____(Signed)_____
LEY CONST. & DEV. CORP.

APPROVED & ACCEPTED :

PHIL. REALTY & HOLDINGS CORP.

Notwithstanding the absence of a signature above PRHC's name, LCDC proceeded with the construction of the Tektite Building, expending the entire amount necessary to complete the project. From August to December 1991, it infused amounts totaling P 38,248,463.92. These amounts were not deposited into the joint account of LCDC and PRHC, but paid directly to the suppliers upon the instruction of Santos. [7]

LCDC religiously submitted to PRHC monthly reports [8] that contained the amounts of infusion it made from the period August 1991 to December 1991. These monthly reports all had the following heading:

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MR. JOSELITO L. SANTOS
VICE PRESIDENT OPERATION
PHIL. REALTY & HOLDINGS CORP.
4TH Floor Quad Alpha Centrum Bldg.
125 Pioneer St., Mandaluyong, M.M.

T H R U : D.A. ABCEDE & ASSOCIATES
Construction Managers

SUBJECT : P 36.0M INFUSION-TEKTITE

TOWERS PROJECT

From these monthly reports, it can be gleaned that the following were the cash infusions made by LCDC:

Month	Amount	Date of monthly report
August 1991	PhP 6,724,632.26	15 October 1991 ^[9]
September 1991	PhP 7,326,230.69	7 October 1991 ^[10]
October 1991	PhP 7,756,846.88	7 November 1991 ^[11]
November 1991	PhP 8,553,313.50	7 December 1991 ^[12]
December 1991	PhP 7,887,440.50	9 January 1992 ^[13]
	PhP 38,248,463.92	

PRHC never replied to any of these monthly reports.

On 20 January 1992, LCDC wrote a letter addressed to Santos stating that it had already complied with its commitment as of 31 December 1991 and was requesting the release of P 2,248,463.92. It attached a 16 January 1992 letter written by D.A. Abcede & Associates, informing PRHC of the total cash infusion made by LCDC to the project, to wit:

in compliance with the commitment of Ley Construction and Dev't Corp.
to infuse P36.00M for the above subject project x x x

x x x we would like to present the total cash infusion by LCDC for the
period covering the month of August, 1991 to December 1991 broken
down as follows:

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T O T A L: P 38,248,463.92

PRHC never replied to this letter.

In another letter dated 7 September 1992, there was a reconciliation of accounts between the two corporations with respect to the balances due for Projects 1, 2, and 3. The reconciliation of accounts resulted in PRHC owing LCDC the sum of P 20,862,546.41, broken down as follows:

Project 1	P 1,783,046.72
Project 2	P 13,550,003.93
Project 3	P 5,529,495.76
	P 20,862,546.41

In a letter dated 8 September 1992, ^[14] when 96.43% of Tektite Building had been completed, LCDC requested the release of the P 36 million escalation price. PRHC did not reply, but after the construction of the building was completed, it conveyed its decision in a letter on 7 December 1992. ^[15] That decision was to set off, in the form of liquidated damages, its claim to the supposed liability of LCDC, to wit: