Supreme Court E-Library

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated July 14, 2009 is **REVERSED** and **SET ASIDE**. Petitioner's application of the mark LOLANE for goods classified under Class 3 of the International Classification of Goods is **GRANTED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 193068. February 1, 2017]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **STA. INES MELALE FOREST PRODUCTS CORPORATION, RODOLFO CUENCA, MANUEL TINIO, CUENCA INVESTMENT CORPORATION and UNIVERSAL HOLDINGS CORPORATION,** *respondents.*

[G.R. No. 193099. February 1, 2017]

NATIONAL DEVELOPMENT CORPORATION, *petitioner, vs.* **STA. INES MELALE FOREST PRODUCTS CORPORATION, RODOLFO M. CUENCA, MANUEL I. TINIO, CUENCA INVESTMENT CORPORATION and UNIVERSAL HOLDINGS CORPORATION,** *respondents.*

---

[*] Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

Supreme Court E-Library

SYLLABUS

1. CIVIL LAW; CONTRACTS; WHEN 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.— When 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." *Bautista v. Court of Appeals* instructs that where the language of a contract is plain and unambiguous, the contract must be taken at its face value, x x x The law is categorical that "various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." *Fernandez v. Court of Appeals* further emphasizes that "[t]he important task in contract interpretation is always the ascertainment of the intention of the contracting parties and that task is of course to be discharged by looking to the words they used to project that intention in their contract, *all* the words not just a particular word or two, and words *in context* not words standing alone."

2. ID.; OBLIGATIONS AND CONTRACTS; KINDS OF OBLIGATIONS; OBLIGATIONS WITH A PERIOD; WHEN THE DEBTOR LOSES THE RIGHT TO MAKE USE OF THE PERIOD.— The due execution of the share purchase agreement is further bolstered by Article 1198(4) of the Civil Code, which states that the debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable: Article 1198. The debtor shall lose every right to make use of the period: (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt; (2) When he does not furnish to the creditor the guaranties or securities which he has promised; (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory; *(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;* (5) When the debtor attempts to abscond.

3. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; REQUIRES EXPRESS CONSENT OF THE

Supreme Court E-Library

CREDITOR TO THE SUBSTITUTION OF THE DEBTOR.— Novation is a mode of extinguishing an obligation by "[c]hanging [its] object or principal conditions[,] [substituting the person of the debtor [or] [s]ubrogating a third person in the rights of the creditor." While novation, "which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter, [it must be with] the consent of the creditor." *Testate Estate of Mota v. Serra* instructs that for novation to have legal effect, the creditor must expressly consent to the substitution of the new debtor: x x x Novation is never presumed. The *animus novandi*, whether partial or total, "must appear by express agreement of the parties, or by their acts which are too clear and unequivocal to be mistaken."

4. COMMERCIAL LAW; CORPORATION CODE; CORPORATION; CORPORATE POWERS; DELEGATED POWER TO BIND A CORPORATION MUST BE AUTHORIZED.— The general rule is that, "[i]n the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation." A corporation is a juridical person, separate and distinct from its stockholders and members, having "powers, attributes and properties expressly authorized by law or incident to its existence." Section 23 of the Corporation Code provides that "the corporate powers of all corporations . . . shall be exercised, all business conducted and all property of such corporations [shall] be controlled and held by the board of directors[.]" *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals* explains that under Section 23 of the Corporation Code, the power and responsibility to bind a corporation can be delegated to its officers, committees, or agents. Such delegated authority is derived from law, corporate bylaws, or authorization from the board.

5. CIVIL LAW; DAMAGES; FORBEARANCE OF MONEY, DEFINED; SIX PERCENT (6 %) AND TWELVE PERCENT (12 %) INTEREST RATES, IMPOSED; CASE AT BAR.— *Estores v. Spouses Supangan* defined forbearance as an arrangement other than a loan where a person agrees to the temporary use of his money, goods, or credits subject to the fulfillment of certain conditions. x x x On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas issued

Supreme Court E-Library

> Resolution No. 796, which revised the interest rate to be imposed for the loan or forbearance of any money, goods, or credits. This was implemented by Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, x x x [Thus,] *Nacar v. Gallery Frames, et al.* then modified the guidelines laid down in *Eastern Shipping Lines* to embody Bangko Sentral ng Pilipinas Circular No. 799, x x x Applying these guidelines, the Court of Appeals' ruling must be modified to reflect the ruling in *Nacar*. The award of the advances made by Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings in Galleon's favor and payment for their shares of stocks in Galleon shall earn an interest rate of 12% per annum from the date of filing of this case on April 22, 1985 until June 30, 2013. After June 30, 2013, these amounts shall earn interest at six percent (6%) per annum until the Decision becomes final and executory. An interest of six percent (6%) per annum shall be imposed on such amounts from the finality of the Decision until its satisfaction.

APPEARANCES OF COUNSEL

Office of the Legal Counsel, DBP for petitioner Development Bank of the Philippines.

Cruz Marcelo And Tenefrancia for respondent Cuenca *et al.*

Jose M. Jose for Sta. Ines Melale Forest Products Corp.

Apolonio S. Mayuga for Sta. Ines Melale Forest Products Corp.

Office of the Government Corporate Counsel for petitioner National Development Corporation.

D E C I S I O N

LEONEN, *J.*:

A condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment and a debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable.[1]

---

[1] CIVIL CODE, Arts. 1186 and 1198(4).

Supreme Court E-Library

This resolves the consolidated Petitions for Review filed by the Development Bank of the Philippines (DBP)[2] and the National Development Corporation (NDC)[3] assailing the Court of Appeals Decision[4] dated March 24, 2010 and Court of Appeals Resolution[5] dated July 21, 2010, which affirmed with modifications the Decision[6] dated September 16, 2003 of Branch 137, Regional Trial Court of Makati City.[7]

Sometime in 1977, National Galleon Shipping Corporation (Galleon), "formerly known as Galleon Shipping Corporation, was organized to operate a liner service between the Philippines and its . . . trading partners."[8] Galleon's major stockholders were respondents Sta. Ines Melale Forest Products Corporation (Sta. Ines), Cuenca Investment Corporation (Cuenca Investment), Universal Holdings Corporation (Universal Holdings), Galleon's President Rodolfo M. Cuenca (Cuenca), Manuel I. Tinio (Tinio), and the Philippine National Construction Corporation (PNCC).[9]

Galleon experienced financial difficulties and had to take out several loans from different sources such as foreign financial

---

[2] *Rollo* (G.R. No. 193068), pp. 56-113.

[3] *Rollo* (G.R. No. 193099), pp. 52-82.

[4] *Rollo* (G.R. No. 193068), pp. 9-39, and *rollo* (G.R. No. 193099), pp. 7-45. The Decision, docketed as CA-G.R. CV No. 85385, was penned by Associate Justice Isaias Dicdican and concurred in by Presiding Justice Andres B. Reyes, Jr. (Chair) and Associate Justice Priscilla J. Baltazar-Padilla, of the First Division.

[5] *Rollo* (G.R. No. 193068), pp. 49-50, and *rollo* (G.R. No. 193099), pp. 47-48. The Resolution was penned by Associate Justice Isaias Dicdican and concurred in by Presiding Justice Andres B. Reyes, Jr. (Chair) and Associate Justice Priscilla J. Baltazar-Padilla, of the Former First Division.

[6] *Rollo* (G.R. No. 193068), pp. 157-169. The Decision, docketed as Civil Case No. 10387, was penned by Judge Santiago Javier Ranada.

[7] *Rollo* (G.R. No. 193068), pp. 9-10 and 45-46, Court of Appeals Decision, and *rollo* (G.R. No. 193099), pp. 7-8 and 43-44, Court of Appeals Decision.

[8] *Rollo* (G.R. No. 193068), p. 158, Regional Trial Court Decision.

[9] *Id.*

institutions, its shareholders (Sta. Ines, Cuenca Investment, Universal Holdings, Cuenca, and Tinio), and other entities "with whom it had ongoing commercial relationships."[10]

DBP guaranteed Galleon's foreign loans.[11] In return, Galleon and its stockholders Sta. Ines, Cuenca Investment, Universal Holdings, Cuenca, and Tinio, executed a Deed of Undertaking[12] on October 10, 1979 and obligated themselves to guarantee DBP's potential liabilities.[13]

To secure DBP's guarantee, Galleon undertook to secure a first mortgage on its five new vessels and two second-hand vessels.[14] However, despite the loans extended to it, "[Galleon's] financial condition did not improve."[15]

Cuenca, as Galleon's president, wrote to the members of the Cabinet Standing Committee "for the consideration of a policy decision to support a liner service."[16] Cuenca also wrote then President Ferdinand Marcos and asked for assistance.[17]

On July 21, 1981, President Marcos issued Letter of Instructions No. 1155[18] addressed to the NDC, DBP, and the Maritime Industry Authority. Letter of Instructions No. 1155 reads:

---

[10] *Id*. at 159.

[11] *Id*.

[12] *Rollo* (G.R. No. 193099), pp. 204-209.

[13] *Id*. at 205-206.

[14] *Id*. at 205.

[15] *Rollo* (G.R. No. 193068), p. 159, Regional Trial Court Decision.

[16] *Id*.

[17] *Id*.

[18] *Rollo* (G.R. No. 193099), pp. 430-431.

Supreme Court E-Library

TO : Development Bank of the Philippines
National Development Company
Maritime Industry Authority

DIRECTING A REHABILITATION PLAN FOR GALLEON SHIPPING CORPORATION

WHEREAS, Galleon Shipping Corporation is presently in a distressed state in view of the unfavorable developments in the liner shipping business;

WHEREAS, the exposure of the Philippine government financial institutions is substantial;

WHEREAS, it is a policy of government to provide a reliable liner service between the Philippines and its major trading partners;

WHEREAS, it is a policy to have a Philippine national flag liner service to compete with other heavily subsidized national shipping companies of other countries;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby direct the following:

1. NDC shall acquire 100% of the shareholdings of Galleon Shipping Corporation from its present owners for the amount of ₱46.7 million which is the amount originally contributed by the present shareholders, payable after five years with no interest cost.
2. NDC to immediately infuse ₱30 million into Galleon Shipping Corporation in lieu of its previously approved subscription to Philippine National Lines. In addition, NDC is to provide additional equity to Galleon as may be required.
3. DBP to advance for a period of three years from date hereof both the principal and the interest on Galleon's obligations falling due and to convert such advances into 12% preferred shares in Galleon Shipping Corporation.
4. DBP and NDC to negotiate a restructuring of loans extended by foreign creditors of Galleon.
5. MARINA to provide assistance to Galleon by mandating a rational liner shipping schedule considering existing freight volume and to immediately negotiate a bilateral agreement with the United States in accordance with UNCTAD resolutions.

Supreme Court E-Library

These instructions are to take effect immediately.[19]

On August 10, 1981,[20] pursuant to Letter of Instructions No. 1155, Galleon's stockholders, represented by Cuenca, and NDC, through its then Chairman of the Board of Directors, Roberto V. Ongpin (Ongpin) entered into a Memorandum of Agreement,[21] where NDC and Galleon undertook to prepare and sign a share purchase agreement covering 100% of Galleon's equity for ₱46,740,755.00.[22] The purchase price was to be paid after five years from the execution of the share purchase agreement.[23] The share purchase agreement also provided for the release of Sta. Ines, Cuenca, Tinio and Construction Development Corporation of the Philippines from the personal counter-guarantees they issued in DBP's favor under the Deed of Undertaking.[24]

The Memorandum of Agreement reads:

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement made and entered into this ____ day of August, 1981, at Makati, Metro Manila, Philippines, by and between the stockholders of Galleon Shipping Corporation listed in Annex A hereof, represented herein by their duly authorized attorney-in-fact, Mr. Rodolfo M. Cuenca (hereinafter called "Sellers") and National Development Company, represented herein by its Chairman of the Board, Hon. Minister Roberto V. Ongpin (hereinafter called "Buyer").

W I T N E S S E T H : That –

WHEREAS, Sellers and Buyer desire to implement immediately Letter of Instructions No. 1155, dated July 21, 1981, which directs

---

[19] *Id*.

[20] *Rollo* (G.R. No. 193068), p. 160, Regional Trial Court Decision.

[21] *Rollo* (G.R. No. 193099), pp. 187-190.

[22] *Id*. at 187-188.

[23] *Id*. at 188.

[24] *Id*. at 189.

Supreme Court E-Library

that Buyer acquire 100% of the shareholdings of Galleon Shipping Corporation ("GSC") from Sellers who are the present owners.

WHEREAS, Sellers have consented to allow Buyer to assume actual control over the management and operations of GSC prior to the execution of a formal share purchase agreement and the transfer of all the shareholdings of Sellers to Buyer.

NOW, THEREFORE, the parties agree as follows:

1. Within seven (7) days after the signing hereof, Sellers shall take all steps necessary to cause five (5) persons designated by Buyer to be elected directors of GSC, it being understood that Sellers shall retain the remaining two (2) seats in the GSC board subject to the condition hereafter stated in clause 7(b).

2. The new board to be created pursuant to clause 1 above shall elect Antonio L. Carpio as Chairman and Chief Executive Officer and Rodolfo M. Cuenca as President. All other officers will be nominated and appointed by Buyer.

3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, i.e. 10,000,000 fully paid common shares of the par value of ₱1.00 per share and subscription of an additional 100,000,000 common shares of the par value of ₱1.00 per share of which ₱36,740,755.00 has been paid, but not yet issued.

4. Sellers hereby warrant that ₱46,740,755[.00] had been actually paid to Galleon Shipping Corporation, which amount represents payment of Sellers for 46,740,755 common shares of said Corporation. This warranty shall be verified by Buyer, the results of which will determine the final purchase price to be paid to Sellers.

The purchase price directed by LOI 1155 to be paid to Sellers shall be paid after five (5) years from date of the share purchase agreement with no interest cost to buyer.

5. As security for the payment of the aforementioned purchase price, Buyer shall issue to each of the GSC stockholders listed in Annex A a negotiable promissory note in the amount corresponding to the respective paid-up capital in GSC of each of such stockholders and with maturity on the date of the fifth annual anniversary of the share purchase agreement.

Supreme Court E-Library

6. Notwithstanding the provisions of clauses 4 and 5 above, upon the signing of the share purchase agreement, it is understood that Sellers shall deliver to Buyer all the stock certificates covering 10,000,000 common shares of GSC, and duly and validly endorsed for transfer, free from any and all liens and encumbrances whatsoever. It is likewise understood that Buyer shall at that time acquire all the subscription rights to 100,000,000 common shares of which ₱36,740,755.00 has been paid by Sellers, and shall assume the obligation to pay the unpaid portion of such subscription.

7. The stock purchase agreement to be prepared and signed by the parties within sixty (60) days from date hereof shall contain, among other things:

(a) standard warranties of seller including, but not limited to, warranties pertaining to the accuracy of financial and other statements of GSC; disclosure of liabilities; payment of all taxes, duties, licenses and fees; non-encumbrance of corporate assets; valid contracts with third parties, etc. including an indemnity clause covering any breach thereof.

(b) provisions that Buyer shall retain 2 representatives of Sellers in the board of GSC only for as long as Sellers have not been paid, or have not negotiated or discounted any of the promissory notes referred to in clause 5 above.

(c) provisions whereby Construction Development Corporation of the Philippines, Sta. Ines Melale Forest Products Corporation, Mr. Rodolfo M. Cuenca and Mr. Manuel I. Tinio shall be released from counter-guarantees they have issued in favor of DBP and other financial institutions in connection with GSC's various credit accommodations.

(d) provisions for arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

8. Sellers hereby make a special warranty that:

(a) any and all liabilities and obligations as disclosed in the financial statements of Galleon Shipping Corporation are valid, regular, normal and incurred in the ordinary course of business of Galleon Shipping Corporation, and Buyer will verify this warranty and conduct an audit of Galleon Shipping Corporation as of March 31 and July 31, 1981; liabilities that do not fall under the above definition are to be for the account of the Seller; and

Supreme Court E-Library

(b) from July 31, 1981 to the date of the election of Buyers' representatives to the Board of GSC, GSC has not and shall not enter into any contract and has not and shall not incur any liability except what is normal and usual in the ordinary course of shipping business.

9. Valid and duly authorized liabilities of GSC which are the subject of a meritorious lawsuit, or which have been arranged and guaranteed by Mr. Rodolfo M. Cuenca, may be considered by Buyer for priority in the repayment of accounts, provided that, upon review, the Buyer shall determine these to be legitimate and were validly incurred in the ordinary course of GSC's principal business.

IN WITNESS HEREOF, the parties have signed this Memorandum of Agreement this ___ day of August 1981, in Makati, Metro Manila.

STOCKHOLDERS OF
GALLEON SHIPPING CORPORATION

By:

(signed)
RODOLFO M. CUENCA

NATIONAL DEVELOPMENT COMPANY

By:

(signed)
ROBERTO V. ONGPIN[25]

Acting as Galleon's guarantor, DBP paid off Galleon's debts to its foreign bank creditor and, on January 25, 1982, pursuant to the Deed of Undertaking, Galleon executed a mortgage contract[26] over seven of its vessels in favor of DBP.

---

[25] *Id*. at 187-190, Memorandum of Agreement.

[26] *Id*. at 432.

Supreme Court E-Library

NDC took over Galleon's operations "even prior to the signing of a share purchase agreement."[27] However, despite NDC's takeover, the share purchase agreement was never formally executed.[28]

On February 10, 1982, or barely seven months from the issuance of Letter of Instructions No. 1155, President Marcos issued Letter of Instructions No. 1195,[29] which reads:

TO : Development Bank of the Philippines
National Development Company

RE : Galleon Shipping Corporation

WHEREAS, NDC has assumed management of Galleon's operations pursuant to LOI No. 1155;

WHEREAS, the original terms under which Galleon acquired or leased the vessels were such that Galleon would be unable to pay from its cash flows the resulting debt service burden;

WHEREAS, in such a situation the financial exposure of the Government will continue to increase and therefore the appropriate steps must be taken to limit and protect the Government's exposure;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby direct the following:

1) The DBP and the NDC shall take immediate steps, including foreclosure of Galleon vessels and other assets, as may be deemed necessary to limit and protect the Government's exposure;

2) NDC shall discharge such maritime liens as it may deem necessary to allow the foreclosed vessels to engage in the international shipping business;

3) Any provision of LOI No. 1155 inconsistent with this Letter of Instructions is hereby rescinded.

---

[27] *Rollo* (G.R. No. 193068), p. 161, Regional Trial Court Decision.

[28] *Id*.

[29] *Rollo* (G.R. No. 193099), p. 537.

Supreme Court E-Library

These instructions are to take effect immediately.[30]

On April 22, 1985, respondents Sta. Ines, Cuenca, Tinio, Cuenca Investment and Universal Holdings filed a Complaint with Application for the Issuance of a Temporary Restraining Order or Writ of Preliminary Injunction.[31] The Complaint was amended several times to implead new parties and to include new claims/counterclaims.[32]

In their Complaint, Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings alleged that NDC, "without paying a single centavo, took over the complete, total, and absolute ownership, management, control, and operation of defendant [Galleon] and all its assets, even prior to the formality of signing a share purchase agreement, which was held in abeyance because the defendant NDC was verifying and confirming the amounts paid by plaintiffs to Galleon, and certain liabilities of Galleon to plaintiffs[.]"[33]

Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings also alleged that NDC tried to delay "the formal signing of the share purchase agreement in order to interrupt the running of the 5-year period to pay . . . the purchase of the shares in the amount of ₱46,740,755[.00] and the execution of the negotiable promissory notes to secure payment[.]"[34]

As for DBP, Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings claimed that "DBP can no longer go after [them] for any deficiency judgment [since] NDC had been subrogated [in their place] as borrower[s], hence the Deed of Undertaking between [Sta. Ines, Cuenca Investment, Universal

---

[30] *Id*.

[31] *Id*. at 89, Court of Appeals Decision.

[32] *Id*. at 126-143, Fourth Amended Complaint with Application for Temporary Restraining Order and/or Preliminary Injunction.

[33] *Id*. at 131, Fourth Amended Complaint with Application for Temporary Restraining Order and/or Preliminary Injunction.

[34] *Id*. at 132.

Supreme Court E-Library

Holdings, Cuenca, and Tinio and DBP] had been extinguished and novated[.]"[35]

Meanwhile, on December 8, 1986, Proclamation No. 50 created the Asset Privatization Trust.[36] The Asset Privatization Trust was tasked to "take title to and possession of, conserve, provisionally manage and dispose of, assets which have been identified for privatization or disposition and transferred to the TI-List for [that] purpose."[37]

Under Administrative Order No. 14 issued by then President Corazon C. Aquino, certain assets of DBP, which included Galleon's loan accounts, "were identified for transfer to the National Government."[38]

On February 27, 1987, a Deed of Transfer was executed providing for the transfer of the Galleon loan account from DBP to the National Government.[39] The Asset Privatization Trust was "constituted as [the National Government's] trustee over the transferred accounts and assets[.]"[40]

On September 16, 2003, the Regional Trial Court upheld the validity of Letter of Instructions No. 1155 and the Memorandum of Agreement executed by NDC and Galleon's stockholders, pursuant to Letter of Instructions No. 1155.[41]

The Regional Trial Court also held that Letter of Instructions No. 1195 did not supersede or impliedly repeal Letter of Instructions No. 1155, and assuming that it did impliedly repeal Letter of Instructions No. 1155, it would be void and unconstitutional for violating the non-impairment clause.[42]

---

[35] *Id*. at 133.

[36] *Id*. at 90, Court of Appeals Decision.

[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Rollo* (G.R. No. 193068), pp. 163-164, Regional Trial Court Decision.

[42] *Id*.

Supreme Court E-Library

As regards NDC's argument that Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings had no basis to compel it to pay Galleon's shares of stocks because no share purchase agreement was executed, the Regional Trial Court held that the NDC was in estoppel since it prevented the execution of the share purchase agreement and had admitted to being Galleon's owner.[43]

The Regional Trial Court also ruled that Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings' liability to DBP under the Deed of Undertaking had been extinguished due to novation, with NDC replacing them and PNCC as debtors.[44] The dispositive of the Regional Trial Court's Decision reads:

> WHEREFORE, judgment is hereby rendered (1) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amounts of ₱15,150,000.00 and US$2.3 million, representing the amount of advances made by plaintiffs in behalf of defendant Galleon, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;
>
> (2) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱46,740,755.00, representing the price of the shares of stock of plaintiffs and defendant PNCC in defendant Galleon, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;
>
> (3) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal

---

[43] *Id*. at 164.

[44] *Id*. at 166-167.

Supreme Court E-Library

Holdings Corporation, attorney's fees equivalent to 10% of the amount due; and costs of suit; and

(4) ordering defendants National Development Corporation, Development Bank of the Philippines and National Galleon Shipping Corporation, jointly and severally, to pay each plaintiff and defendant Philippine National Construction Corporation, ₱10,000.00 as moral damages; and ₱10,000.00 as exemplary damages.

SO ORDERED.[45]

On February 23, 2003, the Regional Trial Court issued an Order[46] partially reconsidering and modifying the September 16, 2003 Decision by categorically declaring Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings free from liability under the mortgage contract with DBP and the deficiency claim of DBP.[47] The Regional Trial Court also deleted the award of US$2.3 million to Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings since they failed to include the same in their fourth amended complaint.[48] The dispositive portion of the Regional Trial Court Order, as amended, reads:

WHEREFORE, judgment is hereby rendered (1) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱15,150,000.00 representing the amount of advances made by plaintiffs in behalf of defendant NGSC, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;

(2) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal

---

[45] *Id*. at 168-169.

[46] *Id*. at 170-174. The Order was penned by Judge Santiago Javier Ranada of Branch 137, Regional Trial Court of Makati City.

[47] *Id*. at 174.

[48] *Id*. at 173.

Supreme Court E-Library

Holdings Corporation, the amount of ₱46,740,755.00, representing the price of the shares of stock of plaintiffs and defendant PNCC in defendant NGSC, plus legal interest at the rate of 6% per annum from the date of filing of this case on 22 April 1985 up to full payment;

(3) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, attorney's fees equivalent to 10% of the amount due; and costs of suit;

(4) ordering defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay to each plaintiff and defendant Philippine National Construction Corporation, ₱10,000.00 as moral damages; and ₱10,000.00 as exemplary damages; and

(5) declaring plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation and defendant Philippine National Construction Corporation to be no longer liable to defendants National Development Corporation, Development Bank of the Philippines and Asset Privatization Trust under the deed of undertaking, pledge, mortgages, and other accessory contracts between the parties; and consequently, permanently enjoining defendant DBP or APT from filing a deficiency claim against plaintiffs and defendant PNCC.

SO ORDERED.[49]

On March 9, 2004 and March 16, 2004, DBP and NDC filed their respective notices of appeal to the Court of Appeals.[50]

In its assailed Decision dated March 24, 2010, the Court of Appeals upheld the Regional Trial Court's findings that the Memorandum of Agreement between NDC and Cuenca (representing Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings) was a perfected contract, which bound the parties,[51] thus:

---

[49] *Id*. at 173-174.

[50] *Rollo* (G.R. No. 193099), p. 90.

[51] *Id*. at 24-27.

Supreme Court E-Library

Although the Supreme Court ruled in the Poliand case that LOI No. 1155 is a mere administrative issuance and, as such, cannot be a valid source of obligation, the defendant-appellant NDC cannot escape its liabilities to the plaintiffs-appellees considering that the Memorandum of Agreement that it executed with the plaintiffs-appellees created certain rights and obligations between the parties which may be enforced by the parties against each other. The situation in the Poliand case is different because Poliand was not a party to the Memorandum of Agreement.[52]

The Court of Appeals ruled that NDC is estopped from claiming that there was no agreement between it and Cuenca since the agreement had already been partially executed after NDC took over the control and management of Galleon.[53]

The Court of Appeals also rejected NDC's argument that it should not be held liable for the payment of Galleon's shares.[54] The Court of Appeals held that NDC "voluntarily prevented the execution of a share purchase agreement when it reneged on its various obligations under the Memorandum of Agreement."[55]

The Court of Appeals likewise affirmed the Regional Trial Court's ruling that novation took place when NDC agreed to be substituted in place of Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings in the counter-guarantees they issued in favor of DBP.[56]

The Court of Appeals ruled that DBP was privy to the Memorandum of Agreement between NDC and Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings, since Ongpin was concurrently Governor of DBP and chairman of the NDC Board at the time the Memorandum of Agreement was signed.[57]

---

[52] *Id*. at 24.

[53] *Id*. at 27.

[54] *Id*. at 28.

[55] *Id*.

[56] *Id*. at 38-39.

[57] *Rollo* (G.R. No. 193099), p. 39, Court of Appeals Decision.

Supreme Court E-Library

The Court of Appeals further held that DBP was no longer the real party-in-interest as the loan accounts of Galleon were transferred to the Asset Privatization Trust.[58]

The *fallo* of the Court of Appeals Decision reads:

WHEREFORE, in view of the foregoing premises, the assailed *D*ecision, as well as, assailed *Order,* appealed from is hereby **AFFIRMED** with **MODIFICATIONS** such that, as modified, the dispositive portion thereof shall now read as follows:

"**WHEREFORE,** judgment is hereby rendered (1) ordering defendants National Development Corporation and National Galleon Shipping Corporation jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱15,150,000.00 representing the amount of advances made by plaintiffs in behalf of defendant NGSC, plus interest at the rate of twelve percent (12%) per annum from the date of filing of this case on 22 April 1985 until instant Decision becomes final and executory, thereafter the said amount shall earn an interest at the rate of twelve (12%) percent per annum from such finality until its satisfaction;

(2) ordering the defendants National Development Corporation and National Galleon Shipping [C]orporation, jointly and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, the amount of ₱46,740,755.00, representing the price of the shares of stock of plaintiffs and defendant PNCC in defendant NGSC, plus interest at the rate of twelve percent (12%) per annum from the date of filing of this case on 22 April 1985 until instant *Decision* becomes final and executory, thereafter the said amount shall earn an interest at the rate of twelve percent (12%) per annum from such finality until its satisfaction;

(3) ordering the defendants National Development Corporation and National Galleon Shipping Corporation, jointly

---

[58] *Id*. at 40.

and severally, to pay plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation, attorney's fees equivalent to 10% of the amount due; and costs of suit;

(4) ordering the defendants National Development Corporation and National Galleon Shipping Corporation, jointly and severally, to pay to each plaintiffs and defendant Philippine National Construction Corporation, ₱10,000.00 as moral damages; and ₱10,000.00 as exemplary damages; and

(5) declaring plaintiffs Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation and Universal Holdings Corporation and defendant Philippine National Construction Corporation to be no longer liable to defendants National Development Corporation, Development Bank of the Philippines and Asset Privatization Trust under the deed of undertaking, pledge, mortgages, and other accessory contracts between the parties; and consequently, permanently enjoining defendant DBP or APT from filing a deficiency claim against plaintiffs and defendant PNCC.

SO ORDERED.[59] (Emphasis and underscoring in the original)

On September 16, 2010, NDC appealed the Court of Appeals Decision to this Court. In its Petition for Review,[60] NDC maintains that the Memorandum of Agreement does not bind it, since Ongpin was not equipped with authority from the NDC Board to sign the Memorandum of Agreement on NDC's behalf.[61] NDC also denies that it took over the control and management of Galleon or that it "prevented the execution of the [s]hare [p]urchase [a]greement[.]"[62]

---

[59] *Id*. at 43-44.

[60] *Rollo* (G.R. No. 193099), pp. 52-82.

[61] *Id*. at 71-72, Petition for Review.

[62] *Id*. at 72.

Supreme Court E-Library

NDC asserts that even assuming that the Memorandum of Agreement was binding, what was agreed upon was that the parties shall execute a share purchase agreement within a certain period of time.[63] The Memorandum of Agreement was only a preliminary agreement between Cuenca and Ongpin for NDC's "intended purchase of Galleon's equity[,] pursuant to [Letter of Instructions No.] 1155."[64] The Memorandum of Agreement cannot "be considered as the executing agreement or document for the purchase of the shares."[65]

On September 13, 2010, DBP filed its Petition for Review[66] before this Court. DBP insisted that novation did not take place because: (a) there was no second binding contract designed to replace the Deed of Undertaking; (b) it did not give its consent to the substitution of debtors under the Memorandum of Agreement; and (c) there was no agreement that unequivocally declared novation by substitution of debtors.[67]

The issues raised for the resolution of this Court are as follows:

a) Whether the Memorandum of Agreement obligates NDC to purchase Galleon's shares of stocks and pay the advances made by respondents in Galleon's favor;[68]

b) Whether the Memorandum of Agreement novated the Deed of Undertaking executed between DBP and respondents;[69] and

c) Whether the computation of legal interest should be at the rate of 6% per annum, instead of the 12% per annum pegged by the Court of Appeals.[70]

---

[63] *Id*. at 74-75.

[64] *Id*. at 74.

[65] *Id*.

[66] *Rollo* (G.R. No. 193068), pp. 56-113.

[67] *Id*. at 82-87.

[68] *Rollo* (G.R. No. 193099), p. 73.

[69] *Rollo* (G.R. No. 193068), pp. 80-81.

[70] *Rollo* (G.R. No. 193099), p. 75.

Supreme Court E-Library

I

When 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."[71]

Bautista v. Court of Appeals[72] instructs that where the language of a contract is plain and unambiguous, the contract must be taken at its face value, thus:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.[73]

It is not disputed that NDC and respondents Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings executed a Memorandum of Agreement pursuant to the directives of Letter of Instructions No. 1155.

Under the Memorandum of Agreement, NDC, as the Buyer, undertook to:

a) implement Letter of Instructions No. 1155 and acquire 100% of Galleon's shareholdings;

b) assume actual control over Galleon's management and operations prior to the execution of a formal share

---

[71] CIVIL CODE, Art. 1370.

[72] 379 Phil. 386 (2000) [Per *J*. Puno, First Division].

[73] *Id*. at 399, *citing* 17 A Am. Jur. 2d 348-349.

Supreme Court E-Library

purchase agreement and prior to the transfer to NDC of Galleon's shareholdings;

c) designate five persons to sit in Galleon's Board of Directors;

d) pay Galleon's stockholders the share purchase price after five years from the date of the share purchase agreement;

e) issue each Galleon stockholder a negotiable promissory note with maturity on the date of the fifth annual anniversary of the share purchase agreement;

f) verify Galleon's special warranty on its liabilities and obligations by conducting an audit; and

g) consider for priority in the repayment of accounts, Galleon's valid and duly authorized liabilities which are the subject of meritorious lawsuit or which have been arranged and guaranteed by Cuenca.

While respondents, Galleon's stockholders, as the Sellers, undertook to:

a) implement Letter of Instructions No. 1155 by allowing NDC to purchase 100% of their shareholdings;

b) consent for NDC to assume actual control over Galleon's management and operations prior to the execution of a formal share purchase agreement and prior to the transfer to NDC of Galleon's shareholdings;

c) elect NDC's designated five persons to Galleon's Board of Directors;

d) warrant that ₱46,740,755.00 had been actually paid to Galleon, representing payment of 46,740,755 common shares to Galleon;

e) deliver to NDC, upon signing of the share purchase agreement, 10,000,000 common shares of Galleon, duly and validly endorsed for transfer, free from any and all liens and encumbrances whatsoever; and

f) make special warranties under clause 8.

Supreme Court E-Library

As parties to the Memorandum of Agreement, NDC and respondents jointly undertook to:

a) immediately implement Letter of Instructions No. 1155;

b) endeavor to prepare and sign a share purchase agreement covering 100% of Galleon's shareholdings not more than 60 days after the signing of the Memorandum of Agreement; and

c) incorporate the conditions listed down in clause 7 in the share purchase agreement.

The law is categorical that "various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly."[74] *Fernandez v. Court of Appeals*[75] further emphasizes that "[t]he important task in contract interpretation is always the ascertainment of the intention of the contracting parties and that task is of course to be discharged by looking to the words they used to project that intention in their contract, *all* the words not just a particular word or two, and words *in context* not words standing alone."[76]

The Court of Appeals found that the Memorandum of Agreement between NDC and Galleon was a perfected contract for NDC to purchase 100% of Galleon's shareholdings. However, a careful reading of the Memorandum of Agreement shows that what the parties agreed to was the execution of a share purchase agreement to effect the transfer of 100% of Galleon's shareholdings to NDC, as seen in clause 3:

3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, *i.e.* 10,000,000 fully paid common shares

---

[74] CIVIL CODE, Art. 1374.

[75] 248 Phil. 805 (1988) [Per *J.* Feliciano, *En Banc*].

[76] *Id.* at 817.

Supreme Court E-Library

of the par value of ₱1.00 per share and subscription of an additional 100,000,000 common shares of the par value of ₱1.00 per share of which ₱36,740,755.00 has been paid, but not yet issued.

The second paragraph of clause 4 likewise makes the execution of a share purchase agreement a condition before the purchase price can be paid to respondents, since the payment of the purchase price becomes due only after five years from the date of execution of the share purchase agreement:

> 4. Sellers hereby warrant that ₱46,740,755[.00] had been actually paid to Galleon Shipping Corporation, which amount represents payment of Sellers for 46,740,755 common shares of said Corporation. This warranty shall be verified by Buyer, the results of which will determine the final purchase price to be paid to Sellers.
>
> *The purchase price directed by LOI 1155 to be paid to Sellers shall be paid after five (5) years from date of the share purchase agreement with no interest cost to buyer.* (Emphasis supplied)

NDC asserts that the Memorandum of Agreement was only a preliminary agreement between Galleon, represented by Cuenca, and NDC, represented by Ongpin, for the intended purchase of Galleon's equity pursuant to Letter of Instructions No. 1155,[77] thus:

> It merely prescribed the manner, terms and conditions of said purchase. In fact, the [Memorandum of Agreement] provided for a time frame for the execution of the share purchase agreement which is within sixty (60) days from the signing thereof. By no means can it be considered as the executing agreement or document for the purchase of the shares.[78]

NDC's assertion that the Memorandum of Agreement was merely a preliminary agreement that was separate and distinct from the share purchase agreement, finds support in clause 7 of the Memorandum of Agreement, which lists down the terms and conditions to be included in the share purchase agreement as follows:

---

[77] *Rollo* (G.R. No. 193099), pp. 73-74, Petition for Review.

[78] *Id*. at 74.

Supreme Court E-Library

7. The stock purchase agreement to be prepared and signed by the parties within sixty (60) days from date hereof shall contain, among other things:

(a) standard warranties of seller including, but not limited to, warranties pertaining to the accuracy of financial and other statements of GSC; disclosure of liabilities; payment of all taxes, duties, licenses and fees; non-encumbrance of corporate assets; valid contracts with third parties, etc. including an indemnity clause covering any breach thereof.

(b) provisions that Buyer shall retain 2 representatives of Sellers in the board of GSC only for as long as Sellers have not been paid, or have not negotiated or discounted any of the promissory notes referred to in clause 5 above.

(c) provisions whereby Construction Development Corporation of the Philippines, Sta. Ines Melale Forest Products Corporation, Mr. Rodolfo M. Cuenca and Mr. Manuel I. Tinio shall be released from counter-guarantees they have issued in favor of DBP and other financial institutions in connection with GSC's various credit accommodations.

(d) provisions for arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

Under clause 7 of the Memorandum of Agreement, NDC and respondents agreed to include in the still-to-be-executed share purchase agreement, provisions on: (a) standard warranties, including warranties on the accuracy of Galleon's financials, disclosure of liabilities, etc; (b) the retention of Galleon's representatives in Galleon's board of directors prior to the payment of the share purchase price; (c) the release of respondents from the counter-guarantees they made in favor of DBP and other financial institutions in connection with Galleon's various credit accommodations; and (d) arbitration as a means of settling disputes and differences of opinion regarding the stock purchase agreement.

Taking the provisions of the Memorandum of Agreement as a whole, it is clear that while there was an intention to follow the directives of Letter of Instructions No. 1155, the transfer of shares from respondents to NDC was to be effected only

Supreme Court E-Library

with the execution of the share purchase agreement, the terms and conditions of which were laid out in the Memorandum of Agreement.

NDC and the respondents undertook to prepare and sign a share purchase agreement over 100% of respondents' shares in Galleon not more than sixty days after the signing of the Memorandum of Agreement:

> 3. As soon as possible, but not more than 60 days after the signing hereof, the parties shall endeavor to prepare and sign a share purchase agreement covering 100% of the shareholdings of Sellers in GSC to be transferred to Buyer, *i.e.* 10,000,000 fully paid common shares of the par value of ₱1.00 per share and subscription of an additional 100,000,000 common shares of the par value of ₱1.00 per share of which ₱36,740,755.00 has been paid, but not yet issued.

The execution of a share purchase agreement was a condition precedent to the transfer of Galleon's shares to NDC. However, the Court of Appeals found that the NDC prevented its execution by deliberately delaying its review of Galleon's financial accounts:

> From the foregoing, it is evident that the period for the payment of the purchase price is entirely dependent on the execution of a share purchase agreement by the parties. The evidence on record, however, show that the *defendant-appellant NDC itself voluntarily prevented the execution of a share purchase agreement when it reneged on its various obligations under the Memorandum of Agreement*. The evidence on record show that the share purchase agreement was not formally executed because then Minister Roberto Ongpin claimed that the accounts of defendant Galleon had to be reviewed and cleared up before the share purchase agreement is signed. While defendant Galleon made its financial records available to defendant-appellant NDC for their review, the latter never made any serious effort to review the financial accounts of the defendant Galleon, hence, effectively preventing the execution of the share purchase agreement. Consequently, the condition for the running of the period for the payment of the purchase price of the shares of stocks in defendant Galleon by the defendant-appellant NDC, *i.e.*, the execution of the Share Purchase Agreement, was deemed fulfilled as it was the defendant-appellant NDC itself which prevented it from happening.

Supreme Court E-Library

Under Article 1186 of the Civil Code, a "condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment." This applies in the instant case.[79] (Emphasis supplied)

The Regional Trial Court likewise found that respondent Cuenca, as Galleon's representative, initiated moves for the preparation and execution of the share purchase agreement and NDC's takeover of Galleon.[80] Nonetheless, despite Cuenca's efforts, the share purchase agreement was never formally executed:

> Assuming that the share purchase agreement was a condition for the effectivity of the Memorandum of Agreement (dated 10 August 1981), said condition is deemed fulfilled by virtue of Art. 1186 of the Civil Code, which provides that "*the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment*." Plaintiff Cuenca, as representative of the former shareholders of defendant Galleon, in order to clear up the accounts preparatory to the execution of the share purchase agreement, created a team to prepare a statement of defendant Galleon's outstanding accounts which statement of account was intended to be included as part of the annexes of the said share purchase agreement. Another team with representatives from both parties, that is, the former stockholders of defendant Galleon and defendant NDC, had to be created for a smoother turnover. However, despite said efforts done by plaintiff Cuenca the share purchase agreement was not formally executed.[81] (Emphasis in the original)

NDC denies that it caused the delay in the execution of the share purchase agreement and argues that it was Cuenca who caused the delay for insisting on the payment first of the advances made in Galleon's favor before executing the share purchase agreement and relinquishing control over Galleon.[82]

NDC's bare denials cannot succeed in light of the preponderance of evidence submitted by respondents.

---

[79] *Id*. at 28-29, Court of Appeals Decision.

[80] *Rollo* (G.R. No. 193068), p. 164, Regional Trial Court Decision.

[81] *Id*.

[82] *Rollo* (G.R. No. 193099), pp. 72-73, Petition for Review.

Supreme Court E-Library

In his Affidavit[83] dated June 17, 1999, Cuenca narrated the preparations the Galleon stockholders undertook for the execution of the share purchase agreement with NDC:

168. Q : What happened to the share purchase agreement referred to in the Memorandum of Agreement dated August 1981 (Exhibit "J")?

A : The share purchase agreement was never drawn up despite persistent attempts by myself to see it prepared and executed. In fact, we continually negotiated with NDC and DBP throughout 1982 and 1983 on the matter.

169. Q : Why was it never executed?

A : Minister Ongpin kept claiming that the accounts had to be cleared up before any formal agreement could be signed.

170. Q : What steps, if any, did the parties take to clear up the accounts preparatory to the signing of the share purchase agreement?

A : During the transition period, prior to the signing of the share purchase agreement, I created a team to prepare a statement of Galleon's outstanding accounts which we intended to include as part of the annexes of the share purchase agreement. Another team with representatives from both parties, i.e., the former stockholders of Galleon and NDC, had to be created for a smoother turn-over. In short, we did all that was possible and required of us under the Memorandum of Agreement. *We negotiated with NDC in good faith for years but NDC kept stonewalling the execution of the share purchase agreement*.[84] (Emphasis supplied)

---

[83] *Id*. at 355-401.

[84] *Id*. at 383-384.

Supreme Court E-Library

On April 26, 1982, Antonio L. Carpio, NDC's General Manager,[85] sent Ongpin a Memorandum,[86] where Carpio acknowledged reviewing Galleon's outstanding accounts submitted by Cuenca.[87] This supports Cuenca's statement that they submitted a statement of Galleon's outstanding accounts for NDC's review, as per Ongpin's request, a fact not denied by NDC.

Upon receiving Galleon's outstanding accounts, NDC and Sta. Ines, Cuenca, Tinio, Cuenca Investment and Universal Holdings should have initiated the execution of the share purchase agreement. However, the share purchase agreement was never executed, through no fault of Galleon's stockholders.

In clause 4 of the Memorandum of Agreement, NDC as the buyer was to verify the warranty of the Galleon shareholders that ₱46,740,755.00 was paid for Galleon's 46,740,755 common shares with par value of ₱1.00 per share. The results of the verification would have determined the final purchase price to be paid to the Galleon shareholders. Nonetheless, despite the verification still to be done, both parties agreed to execute the share purchase agreement as soon as possible but not more than sixty days from the signing of the Memorandum of Agreement.

We uphold the Court of Appeals' finding that the failure to execute the share purchase agreement was brought about by NDC's delay in reviewing the financial accounts submitted by Galleon's stockholders. The Memorandum of Agreement was executed on August 10, 1981, giving the parties no more than sixty days or up to October 9, 1981, to prepare and sign the share purchase agreement. However, it was only on April 26, 1982, or more than eight months after the Memorandum of Agreement was signed, did NDC's General Director submit his recommendation on Galleon's outstanding account. Even then, there was no clear intention to execute a share purchase

---

[85] *Id*. at 509.

[86] *Id*. at 881-881-A.

[87] *Id*. at 881.

Supreme Court E-Library

agreement as compliance with the Memorandum of Agreement. Article 1186 of the Civil Code is categorical that a "condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfilment." Considering NDC's delay, the execution of the share purchase agreement should be considered fulfilled with NDC as the new owner of 100% of Galleon's shares of stocks.

The due execution of the share purchase agreement is further bolstered by Article 1198(4) of the Civil Code, which states that the debtor loses the right to make use of the period when a condition is violated, making the obligation immediately demandable:

Article 1198. The debtor shall lose every right to make use of the period:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the debtor attempts to abscond. (Emphasis supplied)

Well-settled is the rule that findings of fact made by a trial court and the Court of Appeals are accorded the highest degree of respect by this Court, and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored.[88]

---

[88] *See Verdejo v. Court of Appeals*, G.R. No. 106018, December 5, 1994, 238 SCRA 781, 784 [Per *J.* Quiason, First Division].

Supreme Court E-Library

II

The Regional Trial Court found that the advances made by respondents in Galleon's behalf covered legitimate expenses in the ordinary course of business,[89] making NDC liable under clause 9 of the Memorandum of Agreement, which states:

> 9. Valid and duly authorized liabilities of GSC which are the subject of a meritorious lawsuit, or which have been arranged and guaranteed by Mr. Rodolfo M. Cuenca, may be considered by Buyer for priority in the repayment of accounts, provided that, upon review, the Buyer shall determine these to be legitimate and were validly incurred in the ordinary course of GSC's principal business.

NDC's liability for the advances made in Galleon's behalf was upheld by the Court of Appeals, which held that the advances made were valid and authorized liabilities incurred by Galleon in the course of its business, thus:

> In the instant case, the advances being claimed by [respondents] are in the nature of guarantee fees in consideration for the personal undertakings of the [respondents] to secure the potential liabilities of defendant-appellant DBP in favor of defendant Galleon's foreign creditors, advances to cover payments of interest, security and management fees arising out of a mortgage contract, charter line payments, bare boat hire payments, fuel and ship franchise payments, salaries and wages and advertising expenses[.][90]

Ordinary and necessary business expenses are those that are "directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession[.]"[91]

In Carpio's Memorandum to Ongpin dated April 26, 1982, he recommended that the guarantee fees being claimed by Galleon's stockholders should not be paid. Carpio also

---

[89] *Rollo* (G.R. No. 193068), p. 163, Regional Trial Court Decision.

[90] *Rollo* (G.R. No. 193099), p. 32, Court of Appeals Decision.

[91] TAX CODE, Sec. 34.

Supreme Court E-Library

questioned the ₱1,400,000.00 interest being charged by Sta. Ines from the ₱6,650,000.00 cash advances it made in Galleon's behalf. Carpio likewise questioned the charge of ₱600,000.00 being claimed as Galleon's share for the Construction Development Corporation of the Philippine's basketball team with the Philippine Basketball Association.[92]

We see no reason to disturb the findings of fact made by the trial court and the Court of Appeals considering that the same are duly supported by substantial evidence.

III

Novation is a mode of extinguishing an obligation by "[c]hanging [its] object or principal conditions[,] [s]ubstituting the person of the debtor [or] [s]ubrogating a third person in the rights of the creditor."[93] While novation, "which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter, [it must be with] the consent of the creditor."[94]

Testate Estate of Mota v. Serra[95] instructs that for novation to have legal effect, the creditor must expressly consent to the substitution of the new debtor:

> It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of a new debtor. This *consent must be given expressly* for the reason that, since novation extinguishes the personality of the first debtor who is to be substituted by new one, it implies on the part of the creditor a waiver of the right that he had before the novation, which waiver must be express under the principle that *renuntiatio non præsumitur*, recognized by the law in declaring that a waiver of right

---

[92] *Rollo* (G.R. No. 193099), pp. 881-881-A, National Development Company's Memorandum.

[93] CIVIL CODE, Art. 1291.

[94] CIVIL CODE, Art. 1293.

[95] 47 Phil. 464 (1925) [Per *J.* Villamor, *En Banc*].

Supreme Court E-Library

may not be performed unless the will to waive is indisputably shown by him who holds the right.[96] (Emphasis supplied)

The Court of Appeals erred when it ruled that DBP was privy to the Memorandum of Agreement since Ongpin was concurrently Governor of DBP and chairman of NDC Board of Directors at the time the Memorandum of Agreement was signed.[97]

The general rule is that, "[i]n the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation."[98] A corporation is a juridical person, separate and distinct from its stockholders and members, having "powers, attributes and properties expressly authorized by law or incident to its existence."[99]

Section 23[100] of the Corporation Code provides that "the corporate powers of all corporations . . . shall be exercised, all business conducted and all property of such corporations [shall] be controlled and held by the board of directors[.]"

---

[96] *Id*. at 469-470.

[97] *Rollo* (G.R. No. 193099), p. 39, Court of Appeals Decision.

[98] *Premium Marble Resources, Inc v. Court of Appeals*, 332 Phil. 10, 20 (1996) [Per *J*. Torres, Jr., Second Division].

[99] CORP. CODE, Sec. 2.

[100] CORP. CODE, Sec. 23 provides:

Sec. 23 The board of directors or trustees.– Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director.

Supreme Court E-Library

People's Aircargo and Warehousing Co. Inc. v. Court of Appeals[101] explains that under Section 23 of the Corporation Code, the power and responsibility to bind a corporation can be delegated to its officers, committees, or agents. Such delegated authority is derived from law, corporate bylaws, or authorization from the board:

> Under this provision, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. *The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board,* either expressly or impliedly by habit, custom or acquiescence in the general course of business, *viz*.:
>
> > "A corporate officer or agent may represent and bind the corporation in transactions with third persons *to the extent that [the] authority to do so has been conferred upon him*, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred."[102] (Emphasis supplied)

Aside from Ongpin being the concurrent head of DBP and NDC at the time the Memorandum of Agreement was executed, there was no proof presented that Ongpin was duly authorized

---

> Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

[101] 357 Phil. 850 (1998) [Per *J*. Panganiban, First Division].

[102] *Id*. at 863, *citing Yao Ka Sin Trading v. Court of Appeals*, 285 Phil. 345, 365 (1992) [Per *J*. Davide, Jr., Third Division].

Supreme Court E-Library

by the DBP to give consent to the substitution by NDC as a co-guarantor of Galleon's debts. Ongpin is not DBP, therefore, it is wrong to assume that DBP impliedly gave its consent to the substitution simply by virtue of the personality of its Governor.

Novation is never presumed. The *animus novandi*, whether partial or total, "must appear by express agreement of the parties, or by their acts which are too clear and unequivocal to be mistaken."[103]

There was no such *animus novandi* in the case at bar between DBP and respondents, thus, respondents have not been discharged as Galleon's co-guarantors under the Deed of Undertaking and they remain liable to DBP.

IV

On the issue of attorney's fees and moral and exemplary damages awarded to Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings, the Court of Appeals upheld the findings of the Regional Trial Court for being just, reasonable, and supported by the evidence on record.[104]

We see no reason to disturb the findings of the lower courts.

However, on the issue of compensatory interest as damages, where the Regional Trial Court imposed an interest rate of six percent (6%) per annum on the advances made and the payment due for the shares of stock,[105] the Court of Appeals modified the Regional Trial Court's ruling insofar as the interest rate to be imposed was concerned.[106] The Court of Appeals ruled that the advances made by Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings and the payment due them

---

[103] *Fortune Motors (Phils.) Corporation v. Court of Appeals*, 335 Phil. 315, 329 (1997) [Per *J.* Panganiban, Third Division].

[104] *Rollo* (G.R. No. 193099), p. 41, Court of Appeals Decision.

[105] *Rollo* (G.R. No. 193068), p. 167, Regional Trial Court Decision.

[106] *Rollo* (G.R. No. 193099), pp. 41-43.

Supreme Court E-Library

for the Galleon shares of stocks were loans or forbearances of money that should earn interest of 12% from the date the case was filed.[107] Furthermore, the Court of Appeals held that these amounts should likewise earn an additional 12% interest per annum from finality until its satisfaction.[108]

Estores v. Spouses Supangan[109] defined forbearance as an arrangement other than a loan where a person agrees to the temporary use of his money, goods, or credits subject to the fulfillment of certain conditions.[110]

In this case, Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings advanced money in Galleon's favor and agreed to turn over management and control of Galleon to NDC even before receiving payment for their shares of stocks. They were deprived of the use of their money in both cases for the periods pending fulfillment of the agreed conditions. When those conditions were not met, they became entitled not only to the return of their advances and payment of their shares of stocks, but also to the compensation for the use of their money and property. The unwarranted withholding of the money, which rightfully pertains to Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings, amounts to forbearance of money.

Sunga-Chan v. Court of Appeals,[111] citing *Eastern Shipping Lines, Inc. v. Court of Appeals,*[112] reiterated the rule on application of interest:

> *Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% per annum rate under CB Circular No. 416 shall apply only to loans

---

[107] *Id*. at 43.

[108] *Id*.

[109] 686 Phil. 86 (2012) [Per *J*. Del Castillo, First Division].

[110] *Id*. at 97.

[111] 578 Phil. 262 (2008) [Per *J*. Velasco, Jr., Second Division].

[112] 304 Phil. 236 (1994) [Per *J*. Vitug, *En Banc*].

Supreme Court E-Library

or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."

Otherwise formulated, the norm to be followed in the future on the rates and application thereof is:

I. When an obligation, regardless of its source, is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

    1. When the obligation breached 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 12% 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.

. . . . . .

    3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being

Supreme Court E-Library

> deemed to be by then an equivalent to a forbearance of credit.[113] (Emphasis supplied, citations omitted)

On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas issued Resolution No. 796, which revised the interest rate to be imposed for the loan or forbearance of any money, goods, or credits. This was implemented by Bangko Sentral ng Pilipinas Circular No. 799,[114] Series of 2013, which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
>
> Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
>
> This Circular shall take effect on 1 July 2013.

Nacar v. Gallery Frames, et al.[115] then modified the guidelines laid down in *Eastern Shipping Lines* to embody Bangko Sentral ng Pilipinas Circular No. 799, thus:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

---

[113] *Sunga-Chan v. Court of Appeals,* 578 Phil. 262, 276-278 (2008) [Per *J.* Velasco, Jr., Second Division].

[114] The subject of Bangko Sentral ng Pilipinas Circular No. 799 dated June 21, 2013 is the "[r]ate of interest in the absence of stipulation."

[115] 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

Supreme Court E-Library

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. 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.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[116]

---

[116] *Id*. at 282-283.

Supreme Court E-Library

Applying these guidelines, the Court of Appeals' ruling must be modified to reflect the ruling in *Nacar*. The award of the advances made by Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings in Galleon's favor and payment for their shares of stocks in Galleon shall earn an interest rate of 12% per annum from the date of filing of this case on April 22, 1985[117] until June 30, 2013. After June 30, 2013, these amounts shall earn interest at six percent (6%) per annum until the Decision becomes final and executory. An interest of six percent (6%) per annum shall be imposed on such amounts from the finality of the Decision until its satisfaction.

Finally, DBP's claims for damages are denied since it failed to support its claims of malicious prosecution and a deliberate act of Sta. Ines, Cuenca, Tinio, Cuenca Investment, and Universal Holdings to cause loss or injury to DBP.

WHEREFORE, the March 24, 2010 Decision and July 21, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 85385 are **AFFIRMED** with the following **MODIFICATIONS**:

(1) Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel I. Tinio, Cuenca Investment Corporation, Universal Holdings Corporation, and the Philippine National Construction Corporation are declared **LIABLE** to the National Development Corporation, the Development Bank of the Philippines, and the Asset Privatization Trust under the deed of undertaking, pledge, mortgages, and other accessory contracts among the parties; and

(2) The award of the advances made by Sta. Ines Melale Forest Products Corporation, Rodolfo M. Cuenca, Manuel L. Tinio, Cuenca Investment Corporation, and Universal Holdings Corporation in Galleon's favour, as well as the award of the payment for their shares of stocks in Galleon, shall earn an interest rate of 12% per annum from the date of the filing of this case on April 22, 1985 until June 30, 2013, after which,

---

[117] *Rollo* (G.R. No. 193068), p. 167.

Supreme Court E-Library

they shall earn interest at the rate of 6% per annum until the Decision becomes final and executory.

These amounts shall earn interest at the rate of 6% per annum from the finality of this Decision until its satisfaction.

SO ORDERED.

Peralta (*Acting Chairperson*), *Bersamin,*[*] *Mendoza,* and *Jardeleza,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 195450. February 1, 2017]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner*, *vs*. **HON. EMMANUEL C. CARPIO, in his capacity as Presiding Judge, Regional Trial Court, Branch 16, Davao City, COUNTRY BANKERS INSURANCE CORPORATION, DABAY ABAD, HATAB ABAD, OMAR ABAS, HANAPI ABDULLAH, ROJEA AB ABDULLAH, ABDULLAH ABEDIN, ALEX ABEDIN, *et al*., represented by their Attorney-in-Fact, MR. MANUEL L. TE,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; TRIAL COURTS; RESIDUAL JURISDICTION; ELUCIDATED.— Residual jurisdiction

---

[*] Designated as Fifth Member of the Second Division per Special Order No. 2416-B (REVISED) dated January 4, 2017.

[**] Designated Additional Member in lieu of Associate Justice Antonio T. Carpio per Raffle dated April 20, 2015.