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FIRST DIVISION

[G.R. No. 147614. January 29, 2004]

H.L. CARLOS CONSTRUCTION, INC., *petitioner, vs.* **MARINA PROPERTIES CORPORATION, JESUS K. TYPOCO SR. and TAN YU,** *respondents.*

SYNOPSIS

Petitioner entered into a Construction Contract with the respondent corporation for the construction of 31 housing units. The original completion date of the project was May 16, 1989, but it was extended to October 31, 1989 with a grace period until November 30, 1989. On December 15, 1989, petitioner instituted a complaint for a sum of money against the respondent corporation and its officers. Respondents opposed the allegations of the complaint and alleged that the petitioner has no cause of action against them and that it was not entitled to its various claims. The trial court ruled in favor of the petitioner and found respondents jointly and severally liable for: (1) the escalations in the cost of labor and construction materials, (b) the cost of change orders and extra work, (c) the release of the 10% retention money, (d) the cost of illegally detained materials, and (e) attorney's fees. It also dismissed the counterclaim for liquidated damages for lack of evidence. On appeal, the Court of Appeals reversed and set aside the decision of the trial court and dismissed petitioner's complaint. It found the respondent officers of the corporation not solidarily liable to the petitioner. However, the appellate court held the petitioner liable to the respondents for actual and liquidated damages for breach of contract for abandoning the project prior to its completion.

Hence, the instant petition.

The Supreme Court affirmed the decision of the Court of Appeals with modification awarding the petitioner labor cost escalation and cost of extra work. According to the Court, the respondent was liable for the increase in labor cost because

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they allowed the petitioner to continue working on the project until April 20, 1990, even beyond the expiration of the extended period. To allow the respondent corporation to acquire the partially accomplished project without paying for labor cost escalation validly incurred would constitute unjust enrichment at the expense of petitioner. Since petitioner had rendered services that were accepted by the respondent corporation, then the former should be compensated for them. Labor cost escalation has already been earned by petitioner. Anent the award of cost of extra work and change orders, the Court held that under the principle of quantum meruit, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of written contract, in order to avoid unjust enrichment. Although the petitioner did not submit in evidence the alleged construction memoranda covering the claimed extra work and change orders, the respondent corporation, however, never denied having ordered additional work. Evidence on record reveals that the respondent corporation approved some change order jobs despite the absence of any supplementary agreement. Petitioner may have failed to show the construction memoranda covering its claim, but it inarguably performed extra work that was accepted by the respondent corporation. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEASE; WORK AND LABOR; CONTRACT FOR A PIECE OF WORK; PETITIONER IS ENTITLED TO LABOR COST ESCALATION.** — We agree with petitioner that it is entitled to price escalation, but only for the labor component of Progress Billing No. 24. MPC admits that the labor cost escalation clause was adopted by the parties to safeguard the contractor against losses in the event that, during the execution of the Contract, the government would order a minimum wage adjustment, which would then inflate the labor cost. Respondents deny liability for this added expense because, according to the Contract, the

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allowance for labor cost escalation is available only within the duration of the original construction period. We clarify. The claimed cost of labor escalation pertains to the period. September 1 to December 15, 1989, in the amount of ₱170,722.10; and December 16 to January 27, 1990, ₱45,983.91. During those periods, petitioner had not yet incurred any delay in the project, originally stipulated to be finished by May 16, 1989. But by mutual agreement, the period was extended up to October 31, 1989, with a grace period until November 30, 1989. Furthermore, a legislated wage increase became effective after the expiration of the original period.[17] Respondents are, therefore, liable for this increase in labor cost, because they allowed petitioner to continue working on the project until April 20, 1990 (even beyond November 30, 1989).

2. **ID.; ID.; ID.; ID.; ID.; ALLOWING THE OWNER TO ACQUIRE THE PARTIALLY ACCOMPLISHED PROJECT WITHOUT PAYING THE BUILDING CONTRACTOR FOR LABOR COST ESCALATION VALIDLY INCURRED CONSTITUTES UNJUST ENRICHMENT.**— To allow MPC to acquire the partially accomplished project without paying for labor cost escalation validly incurred would constitute unjust enrichment at the expense of petitioner. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. Since petitioner had rendered services that were accepted by MPC, then the former should be compensated for them. Labor cost escalation, in this case, has already been earned by petitioner.

3. **ID.; ID.; ID.; ID.; ID.; PRINCIPLE OF *QUANTUM MERUIT*; PETITIONER IS ENTITLED TO COMPENSATION FOR CHANGE ORDERS AND EXTRA WORK.**— The CA is correct in holding that there is no supplemental agreement covering the claimed extra work and change orders. Exhibits "C-1", "C-2", "C-2-A", "C-3" AND "C-4" show billings for extra work sent by petitioner to MPC. But the former did not submit in evidence the alleged construction memoranda covering them. Neither were they mentioned in the letter of Roilo Golez dated November 24, 1989. Progress Billing No. 24, which pertained to the project as covered by the Construction Contract, did not mention any claim for extra work or change orders. These

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additional jobs were covered by separate bills other than the twenty-four Progress Billings sent by petitioner. MPC, however, never denied having ordered additional work. x x x. Evidence on record further reveals that MPC approved some change order jobs despite the absence of any supplementary agreement. In its "Over-all Summary of Reconciled Quantities" as of September 6, 1989 (Annex "C"), it valued petitioner's valid claim therefor at ₱79,340.52. After noting that the claim had extremely been bloated, Atty. Laureta, in-house counsel for respondent corporation, affirmed as valid the amount stated in the summary. Petitioner may have failed to show the construction memoranda covering its claim, but it inarguably performed extra work that was accepted by MPC. Hence, we will consider Annex "C" as the proper valuation thereof. Under the principle of *quantum meruit*, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment. *Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor.

4. ID.; ID.; ID.; ID.; **FORFEITURE OF THE RETENTION MONEY WARRANTED IN CASE AT BAR.**— In the construction industry, the 10 percent retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work — if any — becomes necessary. This amount is to be released one year after the completion of the project, minus the cost of corrective work. x x x. None of the conditions in the Construction Contract were satisfied; hence, the CA was correct in forfeiting the retention fee. The completion of the work was stipulated in the Contract to be within 365 days from the issuance of a Notice to Proceed or until May 16, 1989. Then the period was extended up to November 30, 1989. Petitioner worked on the project till April 20, 1990. It was given by MPC ample time and two extensions to complete the project. The simple truth is that in failing to finish the project, the former failed to fulfill a prerequisite for the release of the retention money.

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5. ID.; DAMAGES; ATTORNEY'S FEES; NOT GRANTED EVERY TIME A PARTY PREVAILS IN A SUIT.— The grant of some of the claims of petitioner does not change the fact that it did not finish the project. Attorney's fees are not granted every time a party prevails in a suit, because no premium should be placed on the right to litigate. Petitioner is not, after all, blameless in the present controversy. Just because MPC withheld some payments from petitioner does not mean that the former was in gross or evident bad faith. MPC had claims that it wanted to offset with those of the latter.

6. ID.; ID.; ACTUAL OR COMPENSATORY DAMAGES; OBLIGOR IS LIABLE FOR DAMAGES THAT ARE THE NATURAL AND PROBABLE CONSEQUENCES OF ITS BREACH OF OBLIGATION; CASE AT BAR.— As of November 30, 1989, petitioner accomplished only approximately 80 percent of the project. In other words, it was already in delay at the time. In addition, Engineer Miranda testified that it would lose money even if it finished the project; thus, respondents already suspected that it had no intention of finishing the project at all. Petitioner was in delay and in breach of contract. Clearly, the obligor is liable for damages that are the natural and probable consequences of its breach of obligation. Petitioner was already paid by MPC in the amount of ₱31,435,187 out of the total contract price of ₱38,580,609; thus, only ₱7,145,422 remained outstanding. In order to finish the project, the latter had to contract the services of a second construction firm for ₱11,750,000. Hence, MPC suffered actual damages in the amount of ₱4,604,579 for the completion of the project.

7. ID.; ID.; LIQUIDATED DAMAGES; AMOUNT WHICH THE PARTIES AGREE TO BE PAID IN CASE OF BREACH; CASE AT BAR.— Petitioner is also liable for liquidated damages as provided in the Contract. x x x. Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, these damages take the nature of penalties. A penal clause is an accessory undertaking to assume greater liability in case of a breach. It is attached to an obligation in order to ensure performance. Thus, as held

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by the CA, petitioner is bound to pay liquidated damages for 92 days, or from the expiration of the grace period in the Amended Contract until February 1, 1990, when it effectively abandoned the project.

8. COMMERCIAL LAW; CORPORATION CODE; CORPORATIONS; PERSONAL LIABILITY OF CORPORATE OFFICERS; RESPONDENTS JESUS TYPOCO AND TAN YU ARE NOT SOLIDARILY LIABLE WITH MPC.— Petitioner claims that Respondents Jesus Typoco and Tan Yu are solidarily liable with MPC. We concur with the CA that these two respondents are not liable. The personal liability of corporate officers validly attaches only when (a) they assent to a patently unlawful act of the corporation; or (b) they are guilty of bad faith or gross negligence in directing its affairs; or (c) they incur conflict of interest, resulting in damages to the corporation, its stockholders or other persons. The records are bereft of any evidence that Typoco acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of his authority as company president. The unilateral termination of the Contract during the existence of the TRO was indeed contemptible — for which MPC should have merely been cited for contempt of court at the most — and a preliminary injunction would have then stopped work by the second contractor. Besides, there is no showing that the unilateral termination of the Contract was null and void. Respondent Tan is not an officer or a director of MPC. His participation is limited to an alleged conversation between him and Engineer Mario Cornista, petitioner's project manager. Supposedly, the former verbally agreed therein to guarantee the payment of the latter's progress billings. We find no satisfactory evidence to show respondent's alleged solidary liability to petitioner.

APPEARANCES OF COUNSEL

Manuel N. Camacho for petitioner.
Wilfredo M. Garrido, Jr. for private respondents.

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DECISION

PANGANIBAN, *J.*:

There is unjust enrichment when a building contractor is denied payment for increased labor cost validly incurred and additional work validly rendered with the owner's express or implied agreement.

The Case

The Petition for Review[1] before the Court, filed under Rule 45, seeks the reversal of the Decision[2] dated March 29, 2001, issued by the Court of Appeals[3] in CA-GR CV No. 60975. The assailed Decision disposed as follows:

"WHEREFORE, the judgment appealed from is hereby ***REVERSED*** and ***SET ASIDE***, and a new one entered ***DISMISSING*** the [petitioner's] Complaint, AND PARTIALLY GRANTING THE [RESPONDENT-CORPORATION'S] COUNTERCLAIM, IN THAT THE [PETITIONER] IS DIRECTED TO PAY UNTO THE [RESPONDENT-CORPORATION] THE SUM OF ₱4,604,579.00 in ACTUAL DAMAGES PLUS ₱3,549,416.00 AS AND FOR LIQUIDATED DAMAGES."[4]

The Facts

The facts of the case, summarized by the Court of Appeals (CA), are as follows:

"[Respondent] MARINA PROPERTIES CORPORATION (MPC for brevity) is engaged in the business of real estate development. On May 10, 1988, MPC entered into a contract[5] with [Petitioner] H.[L.]

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[1] *Rollo*, pp. 10-41.

[2] *Id.*, pp. 42-57.

[3] Tenth Division. Composed of *JJ* Delilah Vidallon-Magtolis (chairman and *ponente*), Teodoro P. Regino and Josefina Guevara-Salonga (members).

[4] *Rollo*, p. 57.

[5] Construction Contract; *rollo*, pp. 60-70.

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CARLOS CONSTRUCTION, INC. (HLC) to construct Phase III of a condominium complex called MARINA BAYHOMES CONDOMINIUM PROJECT, consisting of townhouses and villas, totaling 31 housing units, for a total consideration of ₱38,580,609.00, within a period of 365 days from receipt of 'Notice to Proceed.' The original completion date of the project was May 16, 1989, but it was extended to October 31, 1989 with a grace period until November 30, 1989.[6]

"The contract was signed by Jovencio F. Cinco, president of MPC, and Honorio L. Carlos, president of HLC.

"On December 15, 1989, HLC instituted this case for sum of money against not only MPC but also against the latter's alleged president, [Respondent] Jesus K. Typoco, Sr. (Typoco) and [Respondent] Tan Yu (Tan), seeking the payment of various sums with an aggregate amount of ₱14 million pesos, broken down as follows:

a) ₱7,065,885.03 for costs of labor escalation, change orders and material price escalation;

b) ₱2,000,000.00 as additional compensatory damages, exclusive of the cost of suit.

c) ₱3,147,992.00 representing retention money allegedly withheld by MPC on HLC's Progress Billings as of January, 1990, and

d) ₱2,000,000.00 representing the value of construction materials allegedly withheld/detained by MPC.

"Traversing the allegations of the complaint, [respondents] filed separate answers, whereby the two individual [respondents] alleged that they are not parties to the Construction Contract and Amendatory Contract and are therefore not liable to HLC. [Respondent] MPC on the other hand alleged that the [petitioner] has no cause of action against it and that it (HLC) is not entitled to its various claims. MPC interposed a counterclaim in the aggregate sum of ₱68,296,227.14 for actual and compensatory damages, liquidated damages, unliquidated advances, and attorney's fees."[7]

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[6] Amended Contract: *rollo*, pp. 71-74.

[7] CA Decision, pp. 2-3; *rollo*, pp. 43-44.

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On May 15, 1997, the trial court[8] ruled as follows:[9]

"WHEREFORE, premises above considered, judgment is hereby rendered for [Petitioner] H.L. CARLOS CONSTRUCTION, INC. and as against [Respondents] MARINA PROPERTIES CORPORATION, TAN YU, and JESUS K. TYPOCO, SR., who are hereby ordered to pay, jointly and severally, the [petitioner], as follows:

"1. the amount of ₱7,065,885.03, representing unpaid labor escalation costs, change orders and material price escalations, plus 12% interest per annum from date of filing of the complaint, until fully paid;

"2. the amount of ₱3,147,992.39 representing the 10% retention money withheld by the [respondents] [from] [petitioner's] progress billing as of January 1990, plus 12% interest per annum from the date of filing of the complaint, until fully paid;

"3. the amount of ₱2,000,000.00 representing the value of construction materials and the like detained by the [respondents], plus 12% legal interest from the date of filing of the complaint, until fully paid;

"4. the sum equivalent to 15% of the principal sum as and by way of attorney's fees; and to

"5. [p]ay the costs of this suit.

"The counterclaim for liquidated damages, are hereby DISMISSED for lack of evidence. Liquidated damages can only be awarded under paragraph 2 of the amended construction contract that extended the completion period and mainly on the finding of the 85% substantial completion of the project, and that the delay and stoppage of the project was caused by [respondents'] default in payment of [the] progress billings that would have allowed [petitioner] to have the capability to continue and complete the project."

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[8] RTC of Makati, Br. 61, presided by Judge Fernando V. Gorospe Jr. See *rollo*, pp. 84-88.

[9] *Rollo*, pp. 87-88.

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Ruling of the Court of Appeals

On appeal, the CA held that respondents were not liable for escalations in the cost of labor and construction materials, because of the following reasons: (1) the contract between the parties was for a lump sum consideration, which did not allow for cost escalation; and (2) petitioner failed to show any basis for the award sought.

Respondents were also absolved from paying for change orders and extra work, inasmuch as there was no supplemental agreement covering them as required in the main Construction Contract. Although Progress Billing No. 24 apparently indicates that extra work was rendered by petitioner, this claim is not supported by sufficient evidence.

The CA further failed to find any basis for the release of the 10 percent retention fee. The Construction Contract had provided that such release would be made only under certain conditions, none of which was complied with, as petitioner failed to complete the work required. Furthermore, MPC was not held liable for detained or withheld construction materials, since petitioner had eventually withdrawn them.

Nothing in the records indicated any personal liability on the part of Typoco and Tan. Moreover, they had nothing to assume, as MPC was not held liable to petitioner.

Furthermore, the CA ruled that petitioner was liable for actual and liquidated damages. The latter had abandoned the project prior to its completion; hence, MPC contracted out the work to another entity and incurred actual damages in excess of the remaining balance of the contract price. In addition, the Construction Contract had stipulated payment of liquidated damages in an amount equivalent to 1/1000 of the contract price for each calendar day of delay.

Hence, this Petition.[10]

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[10] This case was deemed submitted for decision on February 8, 2002, upon the Court's receipt of petitioner's Memorandum signed by Attys.

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Issues

In its Memorandum, petitioner raises the following issues:

"a. Whether or not the respondents are liable to pay the petitioner its claim for price escalation of construction materials and labor cost escalation.

"b. Whether or not the respondents are liable to the petitioner for cost of change orders and extra works.

"c. Whether or not the respondents are liable to the petitioner for the ten percent retention money.

"d. Whether or not the respondents are liable to pay the petitioner attorney's fees.

"e. Whether or not the respondents are liable to the petitioner for the cost of illegally detained materials.

"f. Whether or not the respondents Jesus Typoco Sr., and Tan Yu are jointly and solidarily liable to the petitioner for the latter's claims.

"g. Whether or not the petitioner is liable to the respondents for actual and liquidated damages."[11]

In simpler terms, the issues to be resolved are as follows:

(1) Whether petitioner is entitled to (a) a price escalation for labor and material cost, (b) the cost of change orders and extra work, (c) the release of the 10 percent retention money, (d) the cost of illegally detained materials, and (e) attorney's fees

(2) Whether Typoco and Tan are solidarily liable with MPC

(3) Whether petitioner is liable for actual and liquidated damages

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Manuel N. Camacho and Lourielee L. Garcia of Camacho and Associates. Respondents' Memorandum, signed by Atty. Wilfredo M. Garrido Jr. of Garrido & Associates, was received by this Court on February 5, 2002.

[11] Petitioner's Memorandum, pp. 8-9; *rollo*, pp. 257-258.

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The Court's Ruling

The Petition is partly meritorious.

First Issue:
Liability for Additional Costs

Petitioner argues that it is entitled to price escalation for both labor and materials, because MPC was delayed in paying for its obligations. The former admits that it is *normally* not entitled to any price increase for labor and materials, because a contractor is expected to build into its price a contingency factor to protect it from cost increases that may occur during the contract period.[12] It justifies its claim, however, on the ground that a contractor cannot be expected to anticipate price increases *beyond* the original contract period. Respondents, on the other hand, aver that it was delayed in finishing the project; hence, it is not entitled to any price increase.

It must be pointed out that the reason for the CA's denial of petitioner's claim was that the contract between the parties was for a lump sum consideration, and petitioner was guilty of delay in completing the project.

Labor and Material Cost Escalation

We agree with petitioner that it is entitled to price escalation, but only for the labor component of Progress Billing No. 24. The Construction Contract contains the following provision on the considerations therefor:

> "6.1 For and in consideration of the true and faithful performance of the work by the CONTRACTOR, the OWNER shall pay the Lump Sum Contract Price of PESOS: THIRTY EIGHT MILLION FIVE HUNDRED EIGHTY THOUSAND SIX HUNDRED NINE (₱38,580,609.00) broken down as shown in

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[12] Petitioner's Memorandum, p. 12; *id.*, p. 261.

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> the Bid Form. No cost escalation shall be allowed except on the labor component of the work x x x."[13]

Since the Contract allows escalation only of the "labor component," the implication is that material cost escalations are barred. There appears to be no provision, either in the original or in the amended contract, that would justify billing of increased cost of materials. Furthermore, no evidence — like official economic data showing an increase in the price index of construction materials — was even adduced by petitioner to prove that there had indeed been increases in material costs.[14]

Petitioner attempts to pass off these cost escalations as a form of damages suffered by it as a natural consequence of the delay in the payment of billings and claims for additional work. It argues that the baseless and malicious refusal to pay for those claims renders respondents liable for damages under Article 2201 of the Civil Code.

We disagree. Without tackling the issue of delay, we find that the contentious Progress Billing No. 24 contains no claim for material cost escalation. The other unsettled bills claimed by petitioner are those for change orders or extra work, which have not been shown to be related to the increase in cost of materials. Dealt with in separate contracts between the parties were such claims, the costs of which were to be determined and agreed upon only when required by MPC. Materials used for those additional jobs were to be purchased only when the work was contracted, not prior thereto. As admitted by petitioner, expenses for change orders/additional work were not included in the agreed contract price[15] and, hence, were not subject to increases.

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[13] Construction Contract, p. 6; *id.*, p. 65.

[14] *Rollo*, p. 229.

[15] *Id.*, p. 271.

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MPC admits that the labor cost escalation clause was adopted by the parties to safeguard the contractor against losses in the event that, during the execution of the Contract, the government would order a minimum wage adjustment, which would then inflate the labor cost.[16] Respondents deny liability for this added expense because, according to the Contract, the allowance for labor cost escalation is available only within the duration of the original construction period.

We clarify. The claimed cost of labor escalation pertains to the period September 1 to December 15, 1989, in the amount of ₱170,722.10; and December 16 to January 27, 1990, ₱45,983.91. During those periods, petitioner had not yet incurred any delay in the project, originally stipulated to be finished by May 16, 1989. But by mutual agreement, the period was extended up to October 31, 1989, with a grace period until November 30, 1989.

Furthermore, a legislated wage increase became effective after the expiration of the original period.[17] Respondents are, therefore, liable for this increase in labor cost, because they allowed petitioner to continue working on the project until April 20, 1990 (even beyond November 30, 1989).

MPC argues that to allow the claim for labor cost escalation would be to reward petitioner for incurring delay, thereby breaching a contractual obligation.

This contention is untenable. Before the expiration of the extended period, petitioner was not yet in delay. It was granted by MPC an extension to complete the project until November 30, 1989. Moreover, despite the expiration of the extended period, MPC allowed it to continue working on the project until the former took over and awarded that project to another contractor. Hence, labor costs were actually incurred by petitioner until April 20, 1990. It was thus entitled to reimbursement for labor cost escalation until that date. MPC cannot now be allowed to

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[16] Respondents' Memorandum, p. 14; *rollo*, p. 229.

[17] Affidavit of Atty. Laureta, Exh. "DET-1," p. 6; records, Vol. II, p. 641.

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question the true valuation of the additional labor because, instead of submitting to an independent evaluator, it violated the Temporary Restraining Order (TRO) issued by the trial court and hired another contractor to finish the project.

Noteworthy is the fact that MPC paid for the labor cost escalation during the period August 1-15, 1989,[18] which was past the expiration of the original period. Apparently, it thereafter stopped paying for labor cost escalation in response to the suit filed against it by petitioner.

The CA denied the labor cost escalation claim because, despite having billed MPC therefor, petitioner accepted payments that did not include such claim. The appellate court construed the acceptance by petitioner as a waiver of the latter's right to be reimbursed for the increased labor cost.

We believe that this position is untenable. The CA mistook Exhibits "C-7-B"[19] and "D-1"[20] as bills coming from petitioner, when in truth they were Accomplishment Evaluation Sheets issued by MPC. The notation "labor escalation not included" in the said Exhibits was an admission on the part of MPC that it had not paid such amount, upon the advice of Atty. Jose C. Laureta, its resident counsel. According to him, petitioner should be faulted for having incurred labor cost increases after the expiration of the original period (after May 16, 1989). Not having waived such increases, it should thus bear them.[21]

To allow MPC to acquire the partially accomplished project without paying for labor cost escalation validly incurred would constitute unjust enrichment at the expense of petitioner.[22] There

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[18] Progress Billing No. 16, Folder of Annex A-1, Affidavit of Celso O. Redondo, p. 1189; and Accomplishment Evaluation Sheet, p. 1188.

[19] Records, Vol. I, p. 485.

[20] *Id.*, p. 487.

[21] Records, Vol. II, pp. 639-640.

[22] Article 22, Civil Code; *Security Bank and Trust Company v. Court of Appeals*, 249 SCRA 206, 211, October 11, 1995.

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is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.[23] Since petitioner had rendered services that were accepted by MPC, then the former should be compensated for them. Labor cost escalation, in this case, has already been earned by petitioner.

Change Orders and Extra Work

Petitioner claims entitlement to compensation for change orders and extra work that were covered by construction memoranda. MPC counters, however, that the former never presented any cost estimate for additional work. The estimate would have formed the basis for a consensual agreement and a computation of actual accomplishment, for which MPC could have been unilaterally billed. Worse, the extra work was allegedly assessed by its engineer to be worth only ₱705.41.

We side with petitioner. The "General Conditions to the Construction Contract" provides:

"13. CLAIMS FOR EXTRA AND FORCE ACCOUNT WORK:

If the Contractor claims that any construction by drawings or otherwise involve extra cost under this Contract, he shall give the Owner and/or the Architect, written notice thereof within a reasonable time after receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property. No such claim shall be valid unless so made.

> Extra work for which no price is provided in the proposal shall be covered by a supplementary agreement to be signed by both parties before such work is commenced."[24]

The CA is correct in holding that there is no supplemental agreement covering the claimed extra work and change orders. Exhibits "C-1", "C-2", "C-2-A", "C-3" and "C-4" show billings for extra work sent by petitioner to MPC. But the former did

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[23] *MC Engineering, Inc. v. Court of Appeals*, 380 SCRA 116, 138, April 3, 2002.

[24] Annex "A", Affidavit of Atty. Laureta; records, Vol. II, p. 657.

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not submit in evidence the alleged construction memoranda covering them. Neither were they mentioned in the letter[25] of Roilo Golez dated November 24, 1989.

Progress Billing No. 24, which pertained to the project as covered by the Construction Contract, did not mention any claim for extra work or change orders. These additional jobs were covered by separate bills other than the twenty-four Progress Billings sent by petitioner.

MPC, however, never denied having ordered additional work. In Item No. 12 of its Amended Answer,[26] it averred that petitioner's claim for change orders and extra work were premature. Limneo P. Miranda, respondent's work engineer, manifested that additional work was indeed done, but that claims therefor were not settled for the following reasons: (1) reconciliation between the parties was never completed due to the absence of petitioner's representative in scheduled meetings; (2) difference in opinion on the proper valuation of the additional work, as MPC wanted to use the net quantity method, while petitioner preferred the gross method; and (3) some claims were rejected by MPC, because they had not been properly approved in accordance with the Contract.[27]

Evidence on record further reveals that MPC approved some change order jobs despite the absence of any supplementary agreement. In its "Over-all Summary of Reconciled Quantities" as of September 6, 1989 (Annex "C"),[28] it valued petitioner's valid claim therefor at ₱79,340.52. After noting that the claim had extremely been bloated, Atty. Laureta, in-house counsel for respondent corporation, affirmed as valid the amount stated in the summary.[29]

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[25] Annex "S", Petition; *rollo*, p. 118.

[26] *Rollo*, p. 264.

[27] Affidavit of Engineer Miranda (Exh. "DET-3"); records, Vol. II, p. 763.

[28] Annex "C", Affidavit of Atty. Laureta (Exh. "DET-1"); records, Vol. II, p. 676.

[29] Records, Vol. II, p. 645.

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Petitioner may have failed to show the construction memoranda covering its claim, but it inarguably performed extra work that was accepted by MPC. Hence, we will consider Annex "C" as the proper valuation thereof.

Under the principle of *quantum meruit*, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment.[30] *Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves.[31] To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor.[32]

The CA held that since Billing No. 24 did not include any claim for additional work, such work had presumably been previously paid for. This reasoning is not correct. It is beyond dispute that the change orders and extra work were billed separately from the usual progress billings petitioner sent to MPC.

Retention Money

The CA denied the claim for the 10 percent retention money, because petitioner had failed to comply with the conditions under paragraph 6.3 of the Construction Contract. On the other hand, the latter avers that these conditions were deemed fulfilled under Article 1186 of the Civil Code because, when its contract was terminated, MPC prevented the fulfillment of those conditions. It would allegedly be unfair and unreasonable for petitioner to guarantee a project finished by another contractor.

We disagree with petitioner. In the construction industry, the 10 percent retention money is a portion of the contract

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[30] *Melchor v. Commission on Audit*, 200 SCRA 704, 713, August 16, 1991.

[31] *Republic v. Court of Appeals*, 359 Phil. 530, 640, November 25, 1998.

[32] *Eslao v. Commission on Audit*, 195 SCRA 730, 738-739, April 8, 1991.

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price automatically deducted from the contractor's billings, as security for the execution of corrective work — if any — becomes necessary. This amount is to be released one year after the completion of the project, minus the cost of corrective work.[33] The conditions for its release are stated in the Construction Contract as follows:

> "6.3 In all cases, however, payment of the progress billings shall be subject to deduction of twenty percent (20%) recoupment of the downpayment, ten percent (10%) retention and expanded withholding tax on CONTRACTOR'S income. Upon issuance of the Certificate of Completion of the work by the OWNER and upon submission of Guaranty Bond, Ninety Percent (90%) of the retained amount shall be released to the CONTRACTOR and the balance thereof shall be released by the OWNER within thirty (30) days after the expiration of the guaranty period which is 365 days after issuance of the certificate of completion."[34]

None of the foregoing conditions were satisfied; hence, the CA was correct in forfeiting the retention fee. The completion of the work was stipulated in the Contract to be within 365 days from the issuance of a Notice to Proceed or until May 16, 1989. Then the period was extended up to November 30, 1989. Petitioner worked on the project till April 20, 1990. It was given by MPC ample time and two extensions to complete the project. The simple truth is that in failing to finish the project, the former failed to fulfill a prerequisite for the release of the retention money.

Detained Materials

Petitioner claims cost reimbursement of illegally detained materials, as it was allowed to withdraw them from the site only after two years from the unilateral termination of the Contract. By 1992, only 30 percent of the materials detained were salvageable, while the rest had depreciated.

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[33] Respondents Memorandum, p. 18; *rollo*, p. 233.

[34] *Rollo*, p. 66.

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This contention has no merit. According to the CA's ruling, the only proof that MPC detained materials belonging to petitioner was the denial of the request, contained in the latter's February 1990 letter,[35] for the release of used form lumber. Aside from that letter, however, no other attempt was shown to have been made by petitioner to obtain its request. It should have tried again to do so before claiming that respondents unreasonably prevented it from removing its construction materials from the premises. As to the other materials, there was absolutely no attempt to remove them from the construction site. Hence, we cannot say that these were ever withheld from petitioner.

Detention is not proved by Atty. Laureta's letter[36] dated July 4, 1992, allowing petitioner to remove its materials from the site. The letter was merely a directive for it to clear out its belongings therefrom, in view of the hiring of a second contractor to finish the project.

Moreover, in a specifically designated yard inside the construction site, petitioner maintained a warehouse that was guarded by its own security complement and completely inaccessible to MPC personnel.[37] It therefore had control over those materials and should have made provisions to keep them safe from the elements and from pilferage.

Attorney's Fees

Petitioner argues that it is entitled to attorney's fees based on Article 2208 of the Civil Code, because (1) respondents' act or omission has compelled it to litigate with third persons or to incur expenses to protect its interest; and (2) respondents acted in gross and evident bad faith in refusing to satisfy its plainly valid, just and demandable claim.

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[35] Exh. "F"; *rollo*, p. 130.

[36] Annex "Z"; *id.*, pp. 131-132.

[37] Affidavit of Atty. Laureta (Exh. "DET-1"); records, Vol. II, pp. 645-646.

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The grant of some of the claims of petitioner does not change the fact that it did not finish the project. Attorney's fees are not granted every time a party prevails in a suit, because no premium should be placed on the right to litigate.[38] Petitioner is not, after all, blameless in the present controversy. Just because MPC withheld some payments from petitioner does not mean that the former was in gross or evident bad faith. MPC had claims that it wanted to offset with those of the latter.

Second Issue:
Typoco and Tan's Liabilities

Petitioner claims that Respondents Jesus Typoco and Tan Yu are solidarily liable with MPC.

We concur with the CA that these two respondents are not liable. Section 31 of the Corporation Code (Batas Pambansa Blg. 68) provides:

"Section 31. *Liability of directors, trustees or officers.* Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith x x x shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders and other persons."

The personal liability of corporate officers validly attaches only when (a) they assent to a patently unlawful act of the corporation; or (b) they are guilty of bad faith or gross negligence in directing its affairs; or (c) they incur conflict of interest, resulting in damages to the corporation, its stockholders or other persons.[39]

The records are bereft of any evidence that Typoco acted in bad faith with gross or inexcusable negligence, or that he

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[38] *American Home Assurance Co. v. Chua*, 309 SCRA 250, 264, June 28, 1999; *Industrial Insurance Co., Inc. v. Bondad*, 330 SCRA 706, 717, April 12, 2000.

[39] *FCY Construction Group, Inc. v. Court of Appeals*, 381 Phil. 282, 290, February 1, 2000; *Atrium Management Corp. v. Court of Appeals*, 353 SCRA 23, 31, February 28, 2001.

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acted outside the scope of his authority as company president. The unilateral termination of the Contract during the existence of the TRO was indeed contemptible — for which MPC should have merely been cited for contempt of court at the most — and a preliminary injunction would have then stopped work by the second contractor. Besides, there is no showing that the unilateral termination of the Contract was null and void.

Respondent Tan is not an officer or a director of MPC. His participation is limited to an alleged conversation between him and Engineer Mario Cornista, petitioner's project manager. Supposedly, the former verbally agreed therein to guarantee the payment of the latter's progress billings. We find no satisfactory evidence to show respondent's alleged solidary liability to petitioner.

Third Issue:
Liability for Actual and Liquidated Damages

Petitioner avers that it should be exonerated from the counterclaims for actual and liquidated damages because its failure to complete the project was due to respondents' acts.

Central to the resolution of this issue is the question of which party was in delay. Aside from the contentious Progress Billing No. 24, there are no other unpaid claims. The bills for extra work and change orders, aside from those for the beams and columns, were premature and still subject to reconciliation and adjustment. Hence, we cannot hold MPC liable for them.

In comparison, petitioner did not fulfill its contractual obligations. It could not totally pass the blame to MPC for hiring a second contractor, because the latter was allowed to terminate the services of the contractor.

> "10.1 The OWNER shall have the right to terminate this Contract in the event that the CONTRACTOR incurs a fifteen percent (15%) or greater slippage in the prosecution of the overall work evaluated against the Project schedule as indicated by the critical path of the approved PERT/CPM network for the Project or as amended by Art. II herein.

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> Either party shall have the right to terminate this Contract for reason of violation or non-compliance by the other party of the terms and conditions herein agreed upon."[40]

As of November 30, 1989, petitioner accomplished only approximately 80 percent of the project. In other words, it was already in delay at the time. In addition, Engineer Miranda testified that it would lose money even if it finished the project;[41] thus, respondents already suspected that it had no intention of finishing the project at all.

Petitioner was in delay and in breach of contract. Clearly, the obligor is liable for damages that are the natural and probable consequences of its breach of obligation.[42] Petitioner was already paid by MPG in the amount of ₱31,435,187 out of the total contract price of ₱38,580,609; thus, only ₱7,145,422 remained outstanding. In order to finish the project, the latter had to contract the services of a second construction firm for ₱11,750,000. Hence, MPC suffered actual damages in the amount of ₱4,604,579 for the completion of the project.

Petitioner is also liable for liquidated damages as provided in the Contract,[43] the pertinent portion of which is quoted as follows:

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[40] *Rollo*, p. 68.

[41] Exh. "DET-3", Affidavit of Limneo P. Miranda:

"18. Q: What was the basis of your suspicion [that HLCCI was planning to abandon the construction of Phase III], if any?

A: x x x. However, as of November 30, 1989, HLCCI's work accomplishment on Phase III had only reached approximately 80%. In other words, HLCCI was at that time already 20% delayed. Because of this 20% slippage, HLCCI already became liable for liquidated damages of approximately ₱5,000,000. In addition to this, HLCCI still had to complete the project. Under the circumstances, it was certain that HLCCI stood to lose on the project an amount then estimated to be approximately ₱3,000,000, possibly more." (Records, Vol. II, p. 752)

[42] Art. 2201, Civil Code.

[43] *Rollo*, p. 64.

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> "4.1 Time is an essential feature of this Contract and in the event that the CONTRACTOR fails to complete the contracted work within the stipulated time inclusive of any granted extension of time, the CONTRACTOR shall pay the OWNER, as liquidated damages, the amount of one over one thousand (1/1000) of the value of the contract price for each and every calendar day of delay (Sundays and Holidays included), not to exceed 15% of [the] Contract amount, in the completion of the work as specified in Article II above. It is understood that the liquidated damages herein provided are fixed, agreed upon and not by way of penalty, and as such, the OWNER shall not be further required to prove that he has incurred actual damages to be entitled thereto. In the case of such delays, the OWNER is hereby authorized to deduct the amount of liquidated damages from any money due or which may become due the CONTRACTOR in this or any other contract or to collect such amount from the CONTRACTOR's performance bond whichever is convenient and expeditious to the OWNER."

Liquidated damages are those that the parties agree to be paid in case of a breach.[44] As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, these damages take the nature of penalties.[45] A penal clause is an accessory undertaking to assume greater liability in case of a breach. It is attached to an obligation in order to ensure performance.

Thus, as held by the CA, petitioner is bound to pay liquidated damages for 92 days, or from the expiration of the grace period in the Amended Contract until February 1, 1990, when it effectively abandoned the project.

WHEREFORE, the Petition is partly ***GRANTED*** and the assailed Decision ***MODIFIED***. Petitioner is ***AWARDED*** labor

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[44] Art. 2226, Civil Code.

[45] Arturo Tolentino, *Commentaries and Jurisprudence on the Civil Code*, 1992 ed., Vol. V, p. 662; Decano, *supra*; and *Lambert v. Fox*, *supra*.

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cost escalation in the sum of ₱1,196,202 and cost of extra work in the sum of ₱79,340.52. In all other respects, the appealed Decision is ***AFFIRMED***.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, and *Carpio, JJ.*, concur.

Azcuna, J., on official leave-official business.

SECOND DIVISION

[G.R. No. 147974. January 29, 2004]

ROBERTO GOROSPE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYNOPSIS

Petitioner questioned the decision of the Court of Appeals affirming *in toto* the decision of the Regional Trial Court of Tuguegarao, Cagayan convicting him of the crime of frustrated homicide committed against Miguel Beran. Petitioner alleged that both the trial court and the appellate court erred in rejecting his plea of self-defense. He further claimed that the prosecution failed to prove that he intended to kill the victim. Thus, he was guilty only of slight or less serious physical injuries.

In affirming *in toto* the decision of the Court of Appeals, the Supreme Court held that: First, the prosecution mustered the requisite quantum of proof, inclusive of the physical evidence and the collective testimony of the victim and witness Andres Soriano, who was with the victim on that fateful day, to prove that the petitioner shot the victim; Second, the credibility and probative weight of the testimony of witness Andres Soriano cannot be assailed simply because