



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LIGHT RAIL TRANSIT G.R. No. 211281
AUTHORITY (LRTA),
Petitioner,

-versus-

**JOY MART CONSOLIDATED
INC.,* AND ISETANN
DEPARTMENT STORE, INC.**
Respondents.

X-----X

**JOY MART CONSOLIDATED
INC., and ISETANN
DEPARTMENT STORE, INC.,**
Petitioners,

G.R. No. 212602

Present:

- versus -

GESMUNDO, C.J., *Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M., and
LOPEZ, J., *JJ.*

**LIGHT RAIL TRANSIT
AUTHORITY (LRTA) and
PHOENIX OMEGA
DEVELOPMENT AND
MANAGEMENT CORPORATION,**
Respondents.

Promulgated:

FEB 15 2022

X-----X

DECISION

CAGUIOA, J.:

The instant controversy traverses two cases involving two decisive points of query that converge on the interplay between the principle of party

* Also referred to as Joy Mart Consolidated Corp. in some parts of the record.

autonomy, on the one hand, and the provisions of laws that are imbued with public policy, particularly the requirement of public bidding in government contracts, on the other. Given the question of whether parties to a government contract may do away with the required public bidding, the Court reminds, even as it makes clear that the freedom of contract and the autonomy of the parties thereto are not boundless, they are circumscribed, as this case shows, by laws and public policy.

The Facts

G.R. No. 211281 involves the petition of the Light Rail Transit Authority (LRTA) which assails the Decision¹ dated February 6, 2014 of the Court of Appeals – First Division (CA) in CA-G.R. CV No. 100000. The CA therein upheld the first refusal option of Joy Mart Consolidated, Inc. (Joy Mart) and Isetann Department Store, Inc. (Isetann) to develop the LRT Carriedo Station consolidated block (consolidated block).

G.R. No. 212602 brings to the Court the petition of Joy Mart and Isetann which assails the same CA Decision, as well as the CA Resolution² dated May 19, 2014, with respect to the CA's dismissal of their claim for damages.

The factual backdrop of the instant case involves the government's acquisition of properties for its Light Rail Transit (LRT) system project, which included the property of Joy Mart located along Carriedo Street, Manila. The properties include that lot where Isetann Department Store is located, along with three other adjoining lots (with a total area of 1,611 sq. m.) under lease by Joy Mart. Joy Mart consented to sell its property and give up its leasehold rights over the adjacent properties provided it would be given the first option to redevelop the entire area of the consolidated block of a total of 2,014.9 sq. m., with the same provided for in the whereas clause of the contract.

In September, 1982, while negotiations were underway between Joy Mart and the LRTA, the latter entered into a contract with the Philippine General Hospital Foundation, Inc. (PGHFI), which granted PGHFI the right to develop areas adjacent to the LRT stations, and manage and operate concessions thereon. Later, under a Deed of Absolute Sale (DoAS) dated February 22, 1983, Joy Mart, in consideration of ₱44,000,000.00 and a supposed first refusal option to redevelop the consolidated block, sold its property and waived its leasehold rights on the adjacent lots in favor of the government through the LRTA.³ Pertinent portions of the said DoAS read:

WHEREAS, the VENDEE, upon recommendation of the Special Panel created by the LRT Committee on Land and Property Acquisition

¹ *Rollo* (G.R. No. 211281), pp. 33-52. Penned by Associate Justice Normandie B. Pizarro, with Associate Justice Andres B. Reyes (retired Member of the Court) and Associate Justice Manuel M. Barrios concurring.

² *Rollo* (G.R. No. 212602), pp. 45-48.

³ *Rollo* (G.R. No. 211281), p. 35.



agrees that "the owners of Isetann and as Lessee of the President Hotel x x x (Joy Mart Consolidated Corp.) **should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property.**"

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

1. The Sum of FORTY FOUR MILLION PESOS, Philippine Currency will be paid by the VENDEE to the VENDOR for the land consisting of four (4) lots, building, machineries and other improvement, as follows:

1.1. Twenty-Five Million Pesos
([P]25,000,000.00) as initial
payment.

1.2. Nineteen Million Pesos
([P]19,000,000.00) as soon as the
equity funds for the acquisition of
properties are made available to the
Vendee.

2. The VENDOR hereby sells, transfers and conveys absolutely and perpetually unto the VENDEE, its successor and assigns the following described parcels of land, building, machineries and improvements thereon free from liens and encumbrances, to wit:⁴

Pursuant to the supposed first refusal option granted to Joy Mart, PGHFI subleased to the former the consolidated block through a sublease agreement entered into on February 1, 1984, the relevant portions of which provide:

WHEREAS, the SUB-LESSOR is the true and registered lessee of a parcel of land, containing a total area of approximately One Thousand One Hundred Forty[-]One Square Meters and Twenty Square Decimeters (1,141.20) located at the former site of Isetann Building and the President Hotel Building in the District of Sta. Cruz, City of Manila, Metro Manila, which parcel of land and the lots comprising it, x x x.

x x x x

WHEREAS, **the SUB-LESSOR, as means of generating funds to undertake its worthy projects, has been granted by the Light Rail Transit Authority (LRTA) the right, authority, permit, and license to develop the areas adjacent to the Light Rail Transit System stations, and manage and operate the concessions in such adjacent areas, since the Light Rail Transit System (LRTS) will operate along Caloocan City, Manila, Pasay City and Baclaran, Parañaque.**

⁴ Id. at 79. Underscoring in the original. Emphasis supplied.

WHEREAS, the SUB-LESSEE is interest[ed] in sub-leasing the property specified in the first whereas clause hereof (as described in Annexes "A" & "B") under terms and conditions herein below stipulated;

x x x x

In conformity with these aims and to assure that the improvements to be introduced shall [meet the] special needs and requirements of the SUB-LESSEE, the SUB-LESSOR hereby engages the said SUB-LESSEE to design, and, upon previous written approval of the SUB-LESSOR, construct a multi-storey building of first-class materials and suitably air-conditioned, pursuant to plans and specifications mutually agreed upon by the parties. The funds or capital required for the construction and completion of the building to be constructed and improvements to be introduced shall be for the account of the SUB-LESSEE.⁵

On August 30, 1984, an addendum to the sublease was executed between Joy Mart and PGHFI, which amended the sublease to increase the land area referred to therein and the rental fee, and added an escalation clause thereto. Joy Mart was further required to pay a "goodwill" amount of ₱3,000,000.00.

A little less than two years later, the 1986 EDSA Revolution happened in February 1986.

Nearly three years from the execution of the DoAS⁶ in question, or on April 8, 1986, the LRTA, through its then Chairman Hernando B. Perez, wrote⁷ Joy Mart to inform the latter that the sublease was rescinded and that it was to pay the rental proceeds not to PGHFI but directly to the LRTA.

Then, on July 21, 1986, over three years from the execution of the DoAS and over two years since Joy Mart and Isetann entered into the cancelled sublease agreement with PGHFI, the LRTA, already under the new administration of President Corazon Aquino, caused the publication of the Notice for Pre-Qualification Bidding for the development of the LRT commercial stalls. During the public bidding that followed, Phoenix Omega Development and Management (Phoenix) made a bid and won.⁸

In November, 1986, proceeding from Phoenix's successful bid, the LRTA entered into a Commercial Stalls Concession Contract⁹ with Phoenix, which awarded to the latter all the areas and commercial spaces within three LRT terminals and fifteen LRT stations, including Carriedo Station.

Pursuant to said Commercial Stalls Concession Contract with the LRTA, Phoenix began the construction of the commercial stalls.

⁵ Id. at 105-110.

⁶ Id. at 78-83.

⁷ Id. at 125.

⁸ Id. at 11, 186-187.

⁹ Id. at 126-139.



Then, on August 20, 1987, or nine months after Phoenix had begun its construction, Joy Mart and Isetann sued the LRTA and Phoenix before Branch 32, Regional Trial Court of Manila (RTC) in a complaint for specific performance, injunction and damages,¹⁰ docketed as Civil Case No. 87-41731. In their complaint, Joy Mart and Isetann claimed that the LRTA violated its first refusal option, and demanded that the LRTA be directed to award to them the redevelopment of the block as well as pay them for damages.¹¹

The LRTA, in its answer,¹² countered that the provision in the DoAS mentioning the first refusal option was not a categorical commitment on its part, since it was only contained in the whereas clause thereof. It also averred that, in any case, Joy Mart is considered to have already waived the same when it entered into a sublease with PGHFI. Phoenix, for its part,¹³ anchors its defenses on the same arguments submitted by the LRTA, and avers that the first refusal option contained in the whereas clause did not add to the terms, conditions and nature of the contract.

RTC Ruling

In its Decision¹⁴ dated July 16, 2012, the RTC dismissed the complaint of Joy Mart and Isetann, to wit:

WHEREFORE, judgment is hereby rendered dismissing the instant complaint for Specific Performance, Injunction and Damages filed by the plaintiffs against the defendants. The preliminary injunction issued by the court is permanently dissolved.

Further, the counter-claims interposed by the defendants are likewise **dismissed**[.]

SO ORDERED.¹⁵

The RTC held that while the first refusal option was part and parcel of the DoAS,¹⁶ the same first refusal option pertains to a public contract undertaken by the LRTA as a government entity, which meant that the right to develop or redevelop any property pursuant to such a public contract required public bidding.¹⁷ For having been granted outside of any public bidding, the RTC ruled that the said first refusal option may not give rise to any preferential right in favor of Joy Mart and Isetann. The RTC reasoned thus:

Plaintiff Joy Mart, being fully cognizant of the fact that LRTA is a government entity, whose power to enter into contract is defined by and subject to the limitations provided by law, should have known and/or is

¹⁰ *Rollo* (G.R. No. 211281), pp. 57-69.

¹¹ *Id.* at 68-69.

¹² *Id.* at 140-150. Answer with Counterclaim and Opposition to the Petition for Preliminary Injunction.

¹³ *Id.* at 151-156. Answer with Compulsory Counterclaim.

¹⁴ *Id.* at 224-249. Penned by Presiding Judge Thelma Bunyi-Medina.

¹⁵ *Id.* at 249.

¹⁶ *See id.* at 241-242.

¹⁷ *Id.* at 242.

chargeable with the knowledge of these laws and jurisprudence regarding competitive public bidding.

Thus, any right which plaintiff Joy Mart may have derived from the “first option” provision of the Deed of Absolute Sale should be delimited and compliant with the rules concerning competitive public bidding. And it (plaintiff Joy Mart) cannot come to the court with clean hands to assert that having this right of “first option” pursuant to the Deed of Absolute Sale, any contract for the redevelopment of the areas covered within the consolidated block should automatically be awarded to it without having to undergo the procedures of public bidding provided under the existing rules and jurisprudence.¹⁸

The RTC further posited that owing to equitable grounds, the first refusal option could have still been complied with had Joy Mart and Isetann simply participated in the bidding process. It reasoned that should Joy Mart’s bid equaled that of Phoenix, then it could have been awarded the contract pursuant to its first refusal option.¹⁹

Joy Mart and Isetann sought a reconsideration²⁰ of the RTC Decision, which was similarly denied through the Order dated November 20, 2012.²¹

CA Ruling

Ruling on Joy Mart and Isetann’s appeal, the CA, in its Decision²² dated February 6, 2014, reversed the RTC and resolved the appeal in their favor, *viz.*:

WHEREFORE, the appeal is **GRANTED**. The assailed Decision is **REVERSED** and **SET ASIDE**. The complaint in Civil Case No. 87-41731 is **GRANTED**. Accordingly the Light Rail Transit Authority is ordered to comply with the parties’ 1983 Deed of Sale by granting Joy Mart Consolidated Corporation and/or Isetann Department Store, Inc. the right to redevelop the entire area denominated as the consolidated block of the LRT Carriedo Station and to pay to the latter, by way of compensatory damages, the rentals thereon which are deposited, by way of consignment, with the Regional Trial Court, National Capital Judicial Region, Br. 32, Manila, in Civil Case No. 87-41731. With costs.

SO ORDERED.²³

The CA found central to the resolution of the appeal the fact that the first refusal option was “the ultimate basis for [Joy Mart and Isetann’s] surrender of their properties”²⁴ and its provision in the whereas clause of the DoAS was effectively “the government’s show of gratitude for the former’s act of voluntarily cooperating with the government in its pursuit to establish

¹⁸ Id. at 246.

¹⁹ Id.

²⁰ Id. at 250-254.

²¹ Id. at 257-D-E.

²² Supra note 1.

²³ *Rollo* (G.R. No. 211281), p. 50.

²⁴ Id. at 44.



an LRT system.”²⁵ The CA held that due to Joy Mart and Isetann’s interest in the consolidated block on which the first refusal option was to be exercised, the preferential right was justified by the pertinent whereas clause in the DoAS, as well as by the vested right that they had thereon.²⁶

The CA also ruled that the first refusal option of Joy Mart and Isetann did not violate the requirement of competitive public bidding, since public bidding did not apply in this case due to Joy Mart and Isetann’s vested contractual right. Instead, it held that the first refusal option in the redevelopment of the consolidated block was a condition for Joy Mart and Isetann’s relinquishment of their property, so that the right they had thereto was a vested one that should have been respected by the LRTA.²⁷

It further reasoned that the rationale for the requirement of public bidding was to prevent undue favors towards one party or another. It explained that there was no such danger in the case of Joy Mart and Isetann since the grant of the first refusal option was in furtherance of the interest of the government. It held that the LRTA should have first offered the redevelopment of the consolidated block to Joy Mart and Isetann, and only upon the latter’s failure to exercise the right to redevelop should it have put up the same for public bidding.²⁸ It noted that to hold otherwise would allow the government to “deal dishonorably or capriciously with its citizens.”²⁹

The CA also found both Phoenix and the LRTA in bad faith. It noted that Phoenix continued the construction of stalls despite the Temporary Restraining Order (TRO) that was issued by the CA-Ninth Division in the related case of CA-G.R. SP No. 15618. For its part, the bad faith of the LRTA was attributable to the fact that it allowed Phoenix to continue its construction of commercial stalls in the consolidated block despite the fact that the rights to redevelop the same belonged to Joy Mart and Isetann.³⁰ It held that the LRTA and Phoenix’s failure to recognize Joy Mart and Isetann’s first refusal option violated the principle of party autonomy in contracts.³¹

The LRTA and Phoenix, on the one hand, and Joy Mart and Isetann, on the other, come before the Court with their petitions, which assail the CA Decision in varying respects.

In G.R. No. 211281, the LRTA appeals the CA Decision on the sole issue that the CA erred in upholding the first refusal option of Joy Mart and Isetann. It avers first that the grant of the first refusal option was invalid since the conditions of the same were not clearly expressed or stated in the body of the contract so that, at best, it was a non-committal statement on the part of

²⁵ Id.

²⁶ Id.

²⁷ Id. at 47-48.

²⁸ Id.

²⁹ Id. at 48.

³⁰ Id.

³¹ Id. at 50.

the LRTA.³² It then adds that, in any case, the grant of the first refusal option was invalid since it violated the requirement of public bidding,³³ and should not be given effect.³⁴ It challenges the CA's pronouncement that the principle of party autonomy prevailed over the public bidding requirement for government contracts, and submits that said principle is not absolute, but is instead circumscribed by provisions of applicable laws, especially those which affect public policy.³⁵

The LRTA also argues that even if the first refusal option was validly granted, Joy Mart and Isetann are guilty of estoppel by laches as shown by the following instances: (i) when it entered into a sublease agreement with PGHFI, which effectively recognized PGHFI's prior right to develop the consolidated block; (ii) when it executed an addendum to the sublease contract; (iii) when it failed to exercise its first refusal option after it had notice of the LRTA's cancellation of the sublease agreement with PGHFI; (iv) when it failed to object to the public bidding which Phoenix later won; (v) when it later negotiated with Phoenix for the lease of one of the buildings with commercial stalls; and (vi) when it took over nine months after it found out about the construction, which Phoenix was undertaking, for it to file its complaint against the LRTA and Phoenix.³⁶

Finally, it contends that Joy Mart and Isetann are not entitled to the damages for the breach of one of the conditions in the sublease agreement it entered into with PGHFI. The LRTA counters that, as Joy Mart and Isetann so admitted, the lease agreement between the LRTA and PGHFI was rescinded, and therefore the sublease agreement between PGHFI and Joy Mart and Isetann was also terminated.³⁷ It adds that the claim of financial losses is false since it continues to rent the consolidated block despite the fact that it has the option to surrender it to the LRTA to cut its losses. It notes that if Joy Mart and Isetann were suffering heavy losses, it would not be attributable to the stalls constructed, but to the fact that there is stiff competition in the area where Shoe Mart/SM, Fairmart, Robinsons Supermarket and other commercial establishments are also located.³⁸

Joy Mart and Isetann, in their Comment,³⁹ counter that their first refusal option is valid and remains so despite the general requirement of public bidding in government contracts, and that they are not guilty of estoppel by laches in the protection of said right.⁴⁰

³² *Rollo* (G.R. No. 211281), p. 19.

³³ *Id.* at 17.

³⁴ *Id.* at 18.

³⁵ *Id.*

³⁶ *Id.* at 19-20.

³⁷ *Id.* at 22-23.

³⁸ *Id.* at 23.

³⁹ *Id.* at 330-338.

⁴⁰ *Id.*



Phoenix, for its part,⁴¹ echoes the arguments of the LRTA, and additionally submits that the claim for damages by Joy Mart and Isetann are unsubstantiated and therefore should not have been awarded.⁴²

For their part, in G.R. No. 212602, Joy Mart and Isetann appeal the CA Decision only with respect to its award of damages. They aver that apart from the damages awarded by the CA, they additionally suffered damages in the amount of ₱489,559,288.80 corresponding to the opportunity loss over the redevelopment of the consolidated block.

Issues

The two threshold points of query for the resolution of the present petitions are as follows:

- (i) Is the first refusal option of Joy Mart and Isetann valid?
- (ii) Are Joy Mart and Isetann guilty of estoppel by laches?

The Ruling of the Court

On the above central issues, the Court finds for the LRTA and Phoenix.

Preliminarily, the Court notes that the timeline of the facts which gave rise to the instant controversy is crucial in unpacking the dimensions that remain disputed or unproven, which would otherwise bear upon the fair and equitable resolution of this case. To shed further on the Court's ratiocination herein, it finds the following factual observations merited for clarity as well as context.

First, on the cornerstone submission that the first refusal option formed part of the consideration in the DoAS between Joy Mart and the LRTA, the records of the case fail to reflect how Joy Mart and Isetann substantiated in proof that the purchase price of ₱44,000,000.00 could have been much higher in the absence of the first refusal option (*e.g.*, it was not shown that the ₱44,000,000.00-price was based on the fair market value or assessed value of the subject property.) Stated differently, there is no showing that *sans* the first refusal option, the subject property would have fetched a significantly higher purchase price than the one which Joy Mart and Isetann agreed to.

Second, the records of the case are silent on the matter of the significance of PGHFI's involvement, *i.e.*, if the first refusal option was indeed a full commitment on the part of the LRTA, the facts do not show how the LRTA found the need to enter into a lease contract with PGHFI despite its supposed prior commitment to Joy Mart and Isetann. It appears to stand to reason, therefore, that PGHFI's participation was discernibly because both the LRTA and Joy Mart were well-aware of the fact that the first refusal option

⁴¹ Id. at 339-345.

⁴² Id.



was a clear circumvention of the requirement of public bidding for government contracts, and hence both had to devise a way through which the development of the consolidated block could still be undertaken by them, *i.e.*, *via* PGHFI through a sublease.

Third, it is also noted that since the first refusal option was not reiterated anywhere else in the body of the contract, and did not have a stipulated period for the same, it brings to the fore the crucial question of whether the first refusal option, without a period fixed, could have ripened into an enforceable right. In this regard, while the *whereas* clause mentioned the right of first refusal, and which may reasonably be construed as part and parcel of the consideration, the Court is unable to agree with the CA's ruling that despite the public bidding requirement, said clause was validly granted on the basis of the freedom to contract. Contrary to the submission of Joy Mart and Isetann, the Court finds that, at best, the *whereas* clause is **merely a directive** that Joy Mart and Isetann, as the language of the clause spells out, "should be given the first option in the redevelopment of the consolidated block." It is not, in itself, a conferment of a first refusal option. Even the phrase "notwithstanding the compensation for their property" may not be given any other meaning than the directive to give the first refusal option is, as it says plainly, not intended to be part of the consideration.

Fourth and finally, even granting in *arguendo* that the first refusal option was validly constituted, the Court cannot concede that the same privilege was not already deemed waived when Joy Mart and Isetann, aware as they were that the redevelopment was for public bidding, did not object to the same.

The first refusal option was invalid

As settled in jurisprudence, the LRTA is correct in its submission that although the DoAS, in its *whereas* clause, did say that the first refusal option was granted as a privilege to Joy Mart and Isetann, that same privilege was invalid from the moment of its grant, and may not be saved by the application of freedom to contract. The reason for this is no other than the rule that such freedom to contract cannot be extended as to permit a contracting away of provisions of law, *i.e.*, the need for public bidding in government contracts, as in this case.

On this score, the RTC correctly found⁴³ that since the LRTA is a government entity and the subject matter, *i.e.*, the grant of the first refusal option, involves a public contract which required public bidding, such requirement may not be validly contracted away.

To be sure, the compelling import of public biddings cannot be gainsaid. The Court, in *Manila International Airport Authority v. Mabunay*⁴⁴

⁴³ *Rollo* (G.R. No. 211281), p. 242.

⁴⁴ G.R. No. 126151, January 20, 2000, 322 SCRA 760.



(*Mabunay*), recalled how the longstanding observation of requiring public bidding for government contracts is as purposeful as it is a matter of public policy, to wit:

Indeed, public bidding in government contracts has been observed in this jurisdiction since the time of the Philippine Commission:

Bidding was introduced in the Philippines by the American Laws on Public Bidding until finally Act No. 22 (1900) of the Philippine Commission was enacted which became the first law on public bidding in this jurisdiction. This was followed by several related Acts such as Act Nos. 74 (1901), 82 (1901) and 83 (1901) culminating in the promulgation by President Quezon on February 3, 1936, of Executive Order No. 16 declaring as a general policy that public bidding must be the means adopted in the purchase of supplies, materials and equipment except on very extraordinary cases and with his prior approval. These Acts and Executive Order as well as the rules and regulations promulgated pertinent thereto were later incorporated in the Administrative Code and in subsequent Public Works Acts, although with slight modifications. Up to the present, this policy and medium still hold both in procurement and construction contracts of the government, and the latest enactment relative thereto is Presidential Decree No. 1594 (1978) and its Implementing Rules and Regulations.

As early as 1936, then President Quezon declared as a matter of general policy that Government contracts for public service or for furnishing supplies, materials and equipment to the Government should be subjected to public bidding. There were a number of amendments, the latest of which, Executive Order No. 40 dated June 1, 1963 of President Diosdado Macapagal, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipments to the government or any of its branches, agencies or instrumentalities, shall be entered into without public bidding except for very extraordinary reasons to be determined by a Committee constituted thereunder. Of more recent date is Executive Order No. 301, S. 1987, issued by President Corazon Aquino, which prescribed the guidelines for decentralization of negotiated contracts. Section 1 of this issuance reiterated the legal requirement of public bidding for the award of contracts for public services and for furnishing supplies, materials and equipment to the government, and expressly specified the exceptions thereto.⁴⁵

Further, the paramount objective and protective necessity of the public requirement of public bidding are not difficult to discern, and literature surmises that across governments, its foremost goals are to ensure economic efficiency, prevent corruption involving taxpayers' money and, ultimately, preserve the people's faith in their government, *viz.*:

Whenever a government officer is called upon to make decisions of significant economic import, [he/]she may find [him/]herself facing a

⁴⁵ Id. at 766-767.



conflict between the interest of the organization [he/]she represents and [his/]her own personal interest. One of the objectives of the public tender mechanism is to reduce the possibility of favoritism and corruption playing a part in this decision-making process and to maintain integrity in the Government's transactions with private players. This objective also may be defined as the minimization of the "principal agent problem," which arises when an official is given authority to contract on behalf of the Government. Contracting that is tainted by favoritism raises difficulties on a number of levels. First, it poses a moral problem, as a violation of the public's faith in the Government and in its representatives. It also creates a social problem because a society in which economic survival depends on acquaintance with or the bribery of decision makers is, by definition, a "corrupt" one and is therefore incapable of instilling values of fairness, honesty, volunteerism, and the need to contribute to the community. Worse still, corruption is economically inefficient since favoritism in contracting usually leads to economically suboptimal decisions and adverse economic effects on the economy and the public. Although these inefficiency effects are generally disclosed almost immediately, the more severe consequences — *i.e.*, the negative effects on the Government's credibility and on the public's faith in appointed government officials — will manifest themselves only in the long term.⁴⁶

Jurisprudentially, the Court echoes this when it reminded in *Mabunay* that even the General Appropriations Act, a product of the legislature, may not be construed as to have done away with the public bidding requirement, thus:

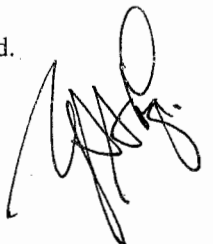
By positive provision of the annual General Appropriations Acts government offices and agencies are authorized to enter into contracts for services related or incidental to their respective functions and operations, either through public bidding or negotiated contract, whenever it is impractical or more expensive for the government to directly undertake such functions and operation, subject to accounting or auditing rules and regulations. As earlier stated, these provisions are not to be construed as doing away with the general requirement of public bidding. **Indeed, public bidding is the accepted method for arriving at a fair and reasonable price and it ensures that overpricing and favoritism, and other anomalous practices are eliminated or minimized and we reiterate that Section 68 of the General Appropriations Act has not dispensed with such requirement for contracts for services awarded thereunder.** Although the legislature in making appropriations under its exclusive jurisdiction leaves largely to administrative discretion the choice of ways and means to accomplish the object of appropriation, that administrative discretion may not transcend the statutes.⁴⁷

As keenly observed by Chief Justice Alexander Gesmundo (Chief Justice Gesmundo), the requirement of public bidding in government contracts is "not an idle ceremony," but is instead a requirement designed to protect the public interest by ensuring a method that arrives at the most fair and reasonable price for the government.⁴⁸ As well, as Chief Justice Gesmundo cautions, the public policy requirement of competitive bidding is

⁴⁶ Dekel, Omer, *The Legal Theory of Competitive Bidding for Government Contracts*, Public Contract Law Journal, Vol. 37, No. 2, p. 241.

⁴⁷ *Manila International Airport Authority v. Mabunay*, supra note 44, at 767-768. Emphasis supplied.

⁴⁸ Concurring Opinion of Chief Justice Alexander G. Gesmundo, p. 7.



a clear obstacle that stands in the way towards the vestedness of the first refusal option as Joy Mart and Isetann would have the Court believe.⁴⁹

The Court is, therefore, not prepared to quietly excuse the circumvention of the public bidding requirement in this case and anchor the same on an equivocal provision, the validity of which is sharply in question, and the waiver of the same, if it was valid at all to begin with, can already be reasonably deduced.

Further case in point is the early case of *Philippine American Life Insurance Co. v. Auditor General*,⁵⁰ where the Court expounded on the appreciation of the freedom of contract *vis-à-vis* state regulations in the exercise of the state's police power and pursuant to public welfare. Involving a reinsurance treaty which was held to be subject to regulation despite the principle of the freedom of contract, the Court elucidated thus:

Viewed from this focal point, there cannot be an impairment of the obligation of contracts. For, the State may, through its police power, adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. We have, in *Abe vs. Foster Wheeler Corporation*, declared that: **“The freedom of contract, under our system of government, is not meant to be absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, morals, safety and welfare. In other words, the constitutional guaranty of non-impairment of obligations of contract is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare.”** It has been said, and we believe correctly, that “the economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts.” It bears repetition to state at this point that the Margin Law is part of the economic “Stabilization Program” of the country.

Tersely put then, “the [constitutional] obligation of contracts provision does not bar a proper exercise of the state's police power.” *Nebia vs. New York* reasons out that: “Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest.” As emphatic, if not more, is the following from *Norman vs. Baltimore & Ohio Railroad Company*, thus: “Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.” More. In another case, pronouncement was made that: **“Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of**

⁴⁹ Id. at 18.

⁵⁰ G.R. No. L-19255, January 18, 1968, 22 SCRA 135.

sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile [—] a government which retains adequate authority to secure the peace and good order of society.”⁵¹

Along the same ratiocination, in the later case of *Goldenway Merchandising Corp. v. Equitable PCI Bank*,⁵² the Court once more recalled the metes and bounds of the freedom to contract, viz.:

The freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity. Settled is the rule that the non-impairment clause of the Constitution must yield to the loftier purposes targeted by the Government. The right granted by this provision must submit to the demands and necessities of the State’s power of regulation. Such authority to regulate businesses extends to the banking industry which, as this Court has time and again emphasized, is undeniably imbued with public interest.⁵³

Simply put, certain limitations attend the autonomy of the will of the parties in contracts. It is not a blanket license for the parties to stipulate anything that they desire into the contract at the expense of limiting positive laws.

In this case, the requirement of public biddings for government contracts — which, it should be added, is considered as having been written into the contracts themselves — is such a limitation. As succinctly provided in Article 1306 of the Civil Code:

The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, **provided they are not contrary to law, morals, good customs, public order, or public policy.**⁵⁴

Still, although the LRTA may have waived its immunity from suit when it entered into a contract with Joy Mart, and may therefore be sued for allegations of bad faith, the Court cannot leap to a further conclusion that the LRTA has similarly waived the requirement for public bidding of its transactions, since public bidding has been jurisprudentially demonstrated to be steeped in overarching policy considerations that are not susceptible to waivers.

To be certain, the Court cannot give its *imprimatur* to said circumvention, as to do so would send the wrong message of encouraging government entities and private parties to enter into contracts with deliberate

⁵¹ Id. at 145-147. Citations omitted and emphasis supplied.

⁵² 706 Phil. 427 (2013).

⁵³ Id. at 440-441. Emphasis supplied.

⁵⁴ Emphasis supplied.



disregard of the limitations and governmental procedures that are put in place as safeguards. This is so especially when, as the facts of the instant case show, Joy Mart and Isetann appear to have been very much aware that said grant was invalid or otherwise insufficient to give them a better right over the redevelopment of the consolidated block in question, for otherwise, they would not have found it necessary to sublease it from PGHFI.

The right of first option, assuming it was enforceable, was effectively waived

Moreover, even if the first refusal option did survive to be enforceable, it was nonetheless **waived by Joy Mart and Isetann through a series of clear but foregone opportunities to assert their claim to the right of first option**, the earliest of which was when it entered into a sublease with PGHFI, followed by their failure to object to the public bidding that they knew was being conducted for the redevelopment.

It bears repeating that Joy Mart and Isetann's act of entering into a sublease agreement with PGHFI on February 22, 1983 was a positive and express admission and acknowledgment on their part that they did not have a valid or legally enforceable right of first option. If they had such a right, Joy Mart would not have agreed to enter into the sublease and instead would have asserted its claim. The Court finds that the LRTA is correct in arguing that this point in the factual history of the controversy is the earliest known time when, regardless of whether the first refusal option in the DoAS was valid, Joy Mart and Isetann effectively acknowledged that their first refusal option was either insufficient or non-committal,⁵⁵ at best, since they found the need to sublease from PGHFI the property they sought to develop.

As early as this point, Joy Mart should have already asserted its claim and should it have met a refusal from LRTA, it should have gone to court. And yet, as shown by the facts and its own admission, Joy Mart did not.

What is more, even if it were argued that Joy Mart's act of entering into the sublease with PGHFI cannot rise to the level of an express admission and acknowledgment of the lack of a right of first option, and assuming there was such a right, such act of sublease is nevertheless tantamount to an express renunciation or waiver thereof. It should be emphasized here that Joy Mart made no qualifications or reservations when it entered into the sublease, *i.e.*, that despite its agreeing to the sublease, it was not renouncing or waiving its supposed right of first option, or abandoning the same. Yet, once more, the records of the case show that Joy Mart said and did nothing.

Then, when Joy Mart and Isetann executed on August 30, 1984 an addendum to the sublease with PGHFI, and even paid a "goodwill" amount at ₱3,000,000.00, they did so without again making any qualifications or reservations. The records of the case do not show that either Joy Mart or

⁵⁵ See *rollo* (G.R. No. 211281), p. 19.

Isetann raised the matter of their first refusal option on the redevelopment when they executed said addendum. Surely, if Joy Mart and Isetann were as persistent on their first refusal option as they aver, they could have easily signified their reservation to reflect the same, *i.e.*, despite their agreeing to the addendum and paying any additional goodwill amount, they were not renouncing or waiving their first refusal option or abandoning the same. This, evidently, they failed to do.

Worse for the case of Joy Mart and Isetann, when they were informed that the grant to PGHFI to redevelop had been rescinded on April 8, 1986, Joy Mart and Isetann had another golden opportunity to insist on their claim of a first refusal option. However, the records similarly do not show that Joy Mart or Isetann raised the matter of their first refusal option at this instance. On the contrary, Joy Mart and Isetann acquiesced to LRTA's demand, and agreed to pay the rental proceeds of the sublease directly to the LRTA without any significant reservations as far as the records will show.⁵⁶

Also at odds with Joy Mart and Isetann's claim is the fact that when the Carriedo Station development was being bidden out on July 21, 1986, or more than three years from the execution of the DoAS, Joy Mart and Isetann continued to sleep on their supposed right. Significantly, even with the knowledge of this bidding call, Joy Mart and Isetann failed to participate or otherwise object to the same on the ground that they had a first refusal option.⁵⁷ Since what was being bidden out was the subject of the very right that they were claiming, their failure to object can only be deemed a waiver of that right, or otherwise a foreclosure of the opportunity to assert such right under the equitable principle of laches.

Having repeatedly failed to raise their purported right of first refusal, Joy Mart and Isetann must be considered estopped by laches, and may no longer claim on their purported right. Indubitably, it was only when Phoenix was on its ninth month of development when Joy Mart and Isetann cried foul and filed a case before the RTC. By then, their successive inactions had already demonstrated either admission and acknowledgment of the lack of a first refusal option, a renunciation, waiver or abandonment thereof or, at the very least, estoppel *in pais*. Their inactions have unquestionably ripened into estoppel, both by laches and *in pais*.

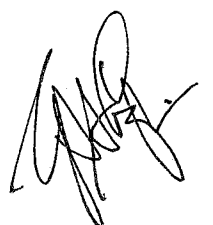
Tracing its origins in the principle of equity, estoppel by laches prevents a party from presenting his or her claim "when, by reason of abandonment and negligence, he [or she] allowed a long time to elapse without presenting [it]."⁵⁸ In the case of *Regalado v. Go*,⁵⁹ the Court explained that estoppel by laches is attended by a negligence or omission that effectively amounts to abandonment of said claim, *viz.*:

⁵⁶ Id. at 11.

⁵⁷ See id. at 19.

⁵⁸ *International Banking Corp. v. Yared*, 59 Phil. 72, 92 (1933).

⁵⁹ G.R. No. 167988, February 6, 2007, 514 SCRA 616.



Laches is defined as the “failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.”⁶⁰

Still, in *Figueroa v. People*,⁶¹ the Court recalled that estoppel by laches is one of the ways by which a party may be barred from raising a claim, to wit:

A party may be estopped or barred from raising a question in different ways and for different reasons. Thus, we speak of estoppel *in pais*, of estoppel by deed or by record, and of estoppel by *laches*.

Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

The doctrine of laches or of “stale demands” is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.⁶²

As applied to this case, the estoppel by laches is appreciated against Joy Mart and Isetann’s claim of the first refusal option, given their repeated failure to raise the same even up to the time of the public bidding, which directly affected such option.

To recall the timeline as shown above, some important actions or inactions belie Joy Mart and Isetann’s main claim, specifically: (i) despite the first refusal option, they recognized and acceded to the prior right of PGHFI over the subject property, from whom Joy Mart and Isetann subleased the same for purposes of redevelopment; (ii) Joy Mart and Isetann did not participate or otherwise object to the bidding off of the project of redeveloping the subject property even though an award of the redevelopment to another would militate against their first refusal option; and (iii) it took Joy Mart and Isetann nine months from the start of Phoenix’s redevelopment construction before they finally brought their cause before the RTC.

The Court likewise finds telling that when Joy Mart and Isetann entered into a sublease agreement with PGHFI, they already recognized the latter’s prior right over the subject redevelopment. In other words, entering into the sublease agreement constituted, in and of itself, a belief or an admission on the part of Joy Mart and Isetann that is wholly inconsistent with their position that they are entitled to a first refusal option. This suggests that Joy Mart and

⁶⁰ Id. at 635.

⁶¹ G.R. No. 147406, July 14, 2008, 558 SCRA 63.

⁶² Id. at 73.



Isetann effectively recognized that the first refusal option was not enforceable *per se*, or else they would not have found the sublease necessary.

In the meantime, during Joy Mart and Isetann's inaction, the LRTA and Phoenix undertook construction of commercial stalls on the consolidated block.⁶³

Given the foregoing tracing of the timeline, the Court also discerns that apart from the mere lapse of time and inaction on the part of Joy Mart and Isetann, the failure of their claim also, and perhaps with more weight, lies in the fact that they also overtly transacted in a way that was diametrically opposed to their claim. These inactions and accessions confirm to the Court either that the first refusal option was non-committal from its inception, or it was otherwise abandoned through Joy Mart and Isetann's own doing or non-doing.

In the final analysis, therefore, pursuant to Article 1433 in relation to Article 1431 of the Civil Code, the act of Joy Mart and Isetann in entering into a sublease with PGHFI to redevelop the consolidated block which at the outset they claim to have a first right over, also works as an estoppel *in pais* against their claim. The case of *Roblett Industrial Construction Corp. v. Court of Appeals*⁶⁴ and *Spouses Chung v. Ulanday Construction, Inc.*,⁶⁵ define estoppel *in pais*, thus:

[E]stoppel *in pais* arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.⁶⁶

Applying the principle of estoppel *in pais* to the instant case, Joy Mart and Isetann either impliedly consented to the negation of their first refusal option or otherwise tacitly abandoned the same when they agreed to enter into a sublease with PGHFI. Even when said sublease was amended on August 30, 1984,⁶⁷ it is not shown that either Joy Mart or Isetann raised the matter of their first refusal option as a claim that should have taken precedence over the contract that the LRTA entered into with PGHFI, which granted the latter the right to redevelop.

Phoenix and the LRTA are not in bad faith

As regards the bad faith imputed to Phoenix and the LRTA, apart from the fact that Phoenix continued its construction of commercial stalls within the consolidated block and allowed tenants to occupy them in seeming

⁶³ *Rollo* (G.R. No. 211281), p. 13.

⁶⁴ G.R. No. 116682, January 2, 1997, 266 SCRA 71.

⁶⁵ 647 Phil. 1 (2010).

⁶⁶ *Roblett Industrial Construction Corp. v. Court of Appeals*, supra note 64, at 76; See also *Spouses Chung v. Ulanday Construction, Inc.*, id. at 15. Italics supplied.

⁶⁷ *Rollo* (G.R. No. 211281), p. 11.

violation of the injunctive order from the CA, there was no mention of any other basis to find Phoenix and the LRTA in bad faith.

In this regard, the Court reminds that since the redevelopment awarded to Phoenix was in the nature of a government infrastructure project, no court apart from the Supreme Court had the power, authority or jurisdiction to issue an injunctive writ against it, pursuant to Section 1 of Presidential Decree (P.D.) No. 1818,⁶⁸ which prohibits issuances of restraining orders on infrastructure projects. In which case, despite the injunctive writ from the CA, Phoenix was well within its rights to continue its construction, and the LRTA well within its own rights to allow the same, since the injunctive writ that the CA issued against it was a clear contravention of the prohibition under P.D. No. 1818.

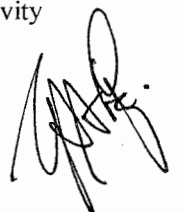
Award of damages improper

On the matter of the award of damages, the Court similarly reverses the CA's award for utter lack of legal basis. There is no ground on which to anchor an award for damages, given that the right on which Joy Mart and Isetann stake their claim is undoubtedly inexistent, or granting that it did exist, is invalid for being an admitted circumvention of an important legal requirement that is imbued with public policy and attends all government public transactions.

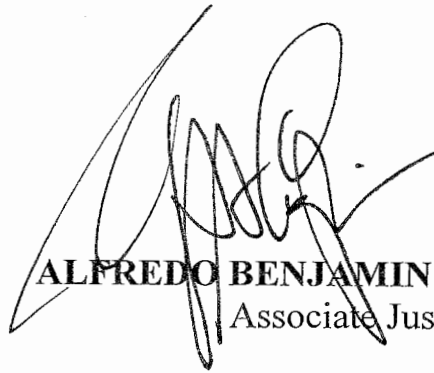
All these foregoing facts taken together reasonably support a finding that the LRTA well and truly relied upon what appeared to be an implied abandonment of the first refusal option, if any, since the actions and concessions made by Joy Mart and Isetann subsequently negate that claim. Consequently, Joy Mart and Isetann are estopped by laches as well as *in pais* and barred from raising and recovering upon a claim that they demonstrated against in several important instances throughout their dealings with the LRTA.

Based on the foregoing premises, the petition in G.R. 212602 is **DENIED** and the petition in G.R. No. 211281 is **GRANTED**. The Decision dated February 6, 2014 of the Court of Appeals – First Division in CA-G.R. CV No. 100000 and its Resolution dated May 19, 2014 are **REVERSED** and **SET ASIDE**. The Decision dated July 16, 2012 of Branch 32, Regional Trial Court of Manila in Civil Case No. 87-41731 is hereby **REINSTATED**.

⁶⁸ Section 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.



SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

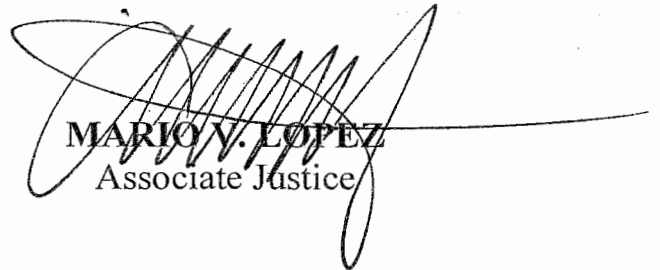
WE CONCUR:

*See separate
opinion*

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

Pls. see Dissenting Opinion


AMY C. LAZARO-JAVIER
Associate Justice



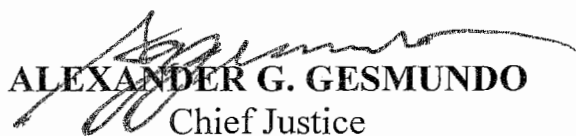
MARIO V. LOPEZ
Associate Justice



JHOSEP V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice