



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

LOCAL WATER UTILITIES  
ADMINISTRATION,

Petitioner,

G.R. No. 210970

Present:

- versus -

CAGUIOA, J., *Chairperson*,  
INTING, *Acting Chairperson*,  
GAERLAN,  
DIMAAMPAO, and  
SINGH, JJ.

R.D. POLICARPIO & CO.,  
INC.,

Respondent.

Promulgated:

July 22, 2024

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DECISION

SINGH, J.:

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, filed by the Local Water Utilities Administration (LWUA) of the Decision,<sup>2</sup> dated December 17, 2012, and the Resolution,<sup>3</sup> dated January 15, 2014, of the Court of Appeals (CA) in CA-G.R. SP No. 119019. The CA affirmed the Final Award,<sup>4</sup> dated April 1, 2011, of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 15-2010, which found the LWUA solidarily liable with the Butuan City Water District (BCWD) to pay respondent R.D. Policarpio & Co., Inc. (RDPCI) the latter's monetary

\* On official leave.

\*\* Per Special Order No. 3116 dated July 18, 2024.

<sup>1</sup> *Rollo*, pp. 9–28.

<sup>2</sup> *Id.* at 32–43. Penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion of the Twelfth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 45–46. Penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion of the Former Twelfth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 70–128. Approved by Chairman Alfredo F. Tadiar and Members Custodio O. Parlade and Armando N. Alli.

claims in the total amount of PHP 84,439,378.18 arising out of the construction contract with BCWD.

### *The Facts*

On July 26, 1996, the LWUA and the BCWD entered into a Financial Assistance Contract,<sup>5</sup> whereby the former granted the latter a loan in the total amount of PHP 550,915,000.00 for the purpose of implementing the Butuan City Water Supply System Comprehensive Improvement Program (**Project**).<sup>6</sup>

The Project was funded in the form of a re-loan obtained from the Japan Bank for International Cooperation (**JBIC**), of which the amount of PHP 413,186,000.00 was sourced from the Japan Overseas Economic Cooperation Fund.<sup>7</sup> Part of the loan package was the engagement by the LWUA of Yoshito Sato (**Sato**) of Nippon Jogesuido Sekkei Co. Ltd. as Acting Project Manager.<sup>8</sup>

Among the salient provisions of this Financial Assistance Contract is the appointment of the LWUA as an “agent” of the BCWD. Specifically, the LWUA was authorized by the BCWD to: (a) pre-qualify the engineering and civil works for the Project, process and evaluate the bids, negotiate with the winning bidder, award the contract, and release payments to the contractor; (b) green-light the commencement of the construction of the Project upon compliance with the terms of the Contract; (c) grant approval to the BCWD to pursue the Project; (d) inspect, examine, test, and accept (or reject) all work and materials pertaining to the Project; and (e) undertake the engineering work or engage a consultant to perform engineering services in the construction of the Project.<sup>9</sup>

In 1997, the LWUA opened the Project for potential bidders. After the conduct of competitive bidding, the construction project was awarded to RDPCI. Thus, the LWUA issued a Notice of Award on February 19, 1998.<sup>10</sup>

The Contract for the Construction of the Butuan City Water Supply System Comprehensive Improvement Program<sup>11</sup> (**Construction Contract**) was executed by the BCWD and RDPCI on April 18, 1998. The same agreement, which had a contract price of PHP 157,113,655.50 plus

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<sup>5</sup> *Id.* at 135–151.

<sup>6</sup> *Id.* at 33.

<sup>7</sup> *Id.* at 136.

<sup>8</sup> *Id.* at 33.

<sup>9</sup> *Id.* at 140.

<sup>10</sup> *Id.* at 33.

<sup>11</sup> *Id.* at 169–175.



USD 3,159,142.00 (or the peso equivalent of PHP 265,285,836.70), bore the approval of the LWUA.<sup>12</sup>

Before the commencement of the construction of the project, an Amendment to the Construction Contract<sup>13</sup> was made by the parties on July 21, 1998, with the approval of the LWUA. Thus, on the same date, the LWUA issued a Notice to Proceed<sup>14</sup> in favor of RDPCI.<sup>15</sup>

On February 26, 1999, the construction of the Project was halted by virtue of an Order for Temporary Suspension<sup>16</sup> due to some revisions on the design works, as confirmed by Acting Project Manager Sato.<sup>17</sup>

A Memorandum of Agreement (**MOA**)<sup>18</sup> was signed by the LWUA, the BCWD and RDPCI on July 24, 2001, which provided for the terms of the payments to be made to RDPCI.

Thereafter, the BCWD and RDPCI executed a Supplemental Agreement to the Contract for the Construction of Butuan City Water Supply System Phase III Improvement Project<sup>19</sup> (**Supplemental Agreement**), dated September 14, 2001, which, among others, gave RDPCI an additional 200 days to complete the project, and adjusted the contract price to PHP 140,435,052.72 plus USD 1,030,000.00, or a total peso equivalent of PHP 175,703,282.72. The Supplemental Agreement also had the approval of the LWUA.<sup>20</sup>

The LWUA issued a Notice to Proceed to RDPCI to commence the completion of the project within the additional 200 days.<sup>21</sup> RDPCI then resumed construction.<sup>22</sup>

Eventually, RDPCI claimed that it complied with the requirements of the Construction Contract and the Supplemental Agreement, and completed the construction of the Project. Despite demands for the payment for the final work accomplishment and price escalation and the release of retention money, the BCWD did not accede to such requests.<sup>23</sup>

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<sup>12</sup> *Id.* at 33.

<sup>13</sup> *Id.* at 176–179.

<sup>14</sup> *Id.* at 180.

<sup>15</sup> *Id.* at 33–34.

<sup>16</sup> *Id.* at 181.

<sup>17</sup> *Id.* at 34.

<sup>18</sup> *Id.* at 186–189.

<sup>19</sup> *Id.* at 190–193.

<sup>20</sup> *Id.* at 191.

<sup>21</sup> *Id.* at 194.

<sup>22</sup> *Id.* at 34.

<sup>23</sup> *Id.* at 34–35.



Thus, RDPCI filed a Complaint<sup>24</sup> with the CIAC, which primarily sought recovery of the following amounts from the LWUA and the BCWD: (a) PHP 15,731,605.60 plus USD 80,282.35, representing the value of the completed works; (b) PHP 14,498,022.06 plus USD 186,092.83 for the release of retention money; (c) PHP 37,756,140.41 plus USD 115,153.98 for the payment of price escalation; and (d) interest of 6% per annum for the amounts due RDPCI from receipt of the final demand letter, and interest of 12% per annum, from the date of finality of the award by CIAC until full payment.<sup>25</sup>

The BCWD filed a Motion to Dismiss based on lack of jurisdiction, which argued that the CIAC had no jurisdiction over RDPCI's Complaint since the parties have failed to exhaust administrative remedies, a condition precedent to trigger the application of the Construction Contract's arbitration clause. RDPCI filed an Opposition to such Motion.<sup>26</sup>

On July 8, 2010, the Arbitral Tribunal was constituted by the CIAC. During the Preliminary Case Management Conference on August 4, 2010, the counsel of the BCWD manifested the withdrawal of their Motion to Dismiss, which was granted by the CIAC.<sup>27</sup>

The BCWD submitted its Answer to the Complaint and filed a Cross-Claim against the LWUA on September 3, 2010. The LWUA, in turn, failed to file an Answer to RDPCI's Complaint, but filed an Answer to the BCWD's Cross-Claim.<sup>28</sup>

Earlier, however, the BCWD filed a Manifestation seeking to be dropped as a party to the case. RDPCI opposed the said Manifestation.<sup>29</sup> Thereafter, the arbitration proceedings ensued.

### ***The Ruling of the CIAC***

In the Final Award, dated April 1, 2011, the CIAC Arbitral Tribunal granted the monetary claims of RDPCI. The dispositive portion thereof reads as follows:

WHEREFORE, judgment is hereby rendered and **FINAL AWARD** is made on the monetary claims of the parties, as follows:

#### **FOR THE CLAIMANT:**

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<sup>24</sup> *Id.* at 201-239.

<sup>25</sup> *Id.* at 236.

<sup>26</sup> *Id.* at 71.

<sup>27</sup> *Id.* at 71-72.

<sup>28</sup> *Id.* at 72-73.

<sup>29</sup> *Id.* at 73.



1. For its **work accomplishment** on the final billable period under [Monthly Progress Payment Report] No. 50 – a) Peso portion: **[PHP] 15,731,605.60**; and b) Dollar portion: **USD 80,282.35 @ [USD] 1 to [PHP] 34 = [PHP] 2,729,599.90** or a total for the two portions = **[PHP] 18,461,205.50**;
2. For price escalation **[PHP] 37,756,140.41**; and (b) Dollar portion – **[USD] 115,153.98 @ [USD] 1 to [PHP] 34 = [PHP] 3,915,235.32** or a total for the two portions = **[PHP] 41,671,375.73**;
3. Retention money **[PHP] 14,498,022.06** and a dollar portion **[USD] 186,092.83 @ [USD] 1 to [PHP] 34 = [PHP] 6,327,156.22** or a total for the two portions = **[PHP] 20,735,178.28**;
4. [I]nterest amounting to **[PHP] 3,287,102.00**, subject to final adjustment as may be warranted by a computation made by the Secretariat;
5. [A]ttorney's fees in the amount of **[PHP] 750,000.00** that is deemed reasonable; and
6. [R]eimbursement of arbitration costs that Complainant had paid.

Out of the total amount [of] **[PHP] 84,904,861.51** held to be due and payable to the Claimant, the amount of **[PHP] 465,483.33** shall be deducted as its share in the liability for the damages caused to the Emenville [P]ump station. The net amount payable to Claimant is, therefore, **[PHP] 84,439,378.18**.

The parties are directed to each deposit the amount of **[PHP] 465,483.33** for which they have been respectively held liable, or a total amount of **[PHP] 1,396,450.00** into a TRUST ACCOUNT in the name of [the BCWD], being the intended beneficiary, who is directed to make the necessary repairs to the damaged facility[—]the Emenville [P]ump and Booster Station—within the reasonable time of [six] months from execution. Both [r]espondents are held responsible to see to it that said facility will be operational within the same period of time in order that the completed construction project will serve the purpose for which it was intended.

**SO ORDERED.**<sup>30</sup> (Emphasis in the original)

Particularly important in this case is the ruling of the CIAC that the LWUA is solidarily liable with the BCWD to pay the monetary claims of RDPCI. The CIAC cited Article 1207 of the Civil Code, which essentially provides that solidarity may be established in one of three ways, namely: (a) when the obligation expressly so states; (b) when the law requires solidarity; and (c) when the nature of the obligation requires it. It held that the first two modes are not present in this case since RDPCI failed to point out any contractual stipulation or statutory provision binding the parties solidarily liable for non-performance of the obligations under the Construction Contract.<sup>31</sup>

<sup>30</sup> *Id.* at 126–127.

<sup>31</sup> *Id.* at 114–115.

Nevertheless, the CIAC Arbitral Tribunal held that the nature of the obligation showed that the liability of the LWUA is solidary with the BCWD. It ruled that the LWUA, contrary to its contention that it was only an agent of the BCWD, acted more of a co-owner of the Project. The CIAC noted that the following acts, which are usually performed by the owner, were committed by the LWUA: (a) it amended the Construction Contract for the conversion of part of the PHP component into USD; (b) it deleted works from RDPCI; (c) it disbursed the payments made to RDPCI; and (d) it issued the Final Acceptance of the Project.<sup>32</sup>

The LWUA filed with the CA a Petition for Review<sup>33</sup> under Rule 43 of the Rules of Court to question the CIAC Arbitral Tribunal's Final Award. Particularly, it raised the following issues: (a) the CIAC erred in finding the LWUA solidarily liable with the BCWD despite a provision in the Financial Assistance Contract that the LWUA is merely the BCWD's agent in relation to the Construction Contract; and (b) the LWUA cannot be held liable because it is not a party to the Construction Contract.<sup>34</sup>

### *The Ruling of the CA*

In the Decision, dated December 17, 2012, the CA dismissed the Petition for Review filed by the LWUA, and affirmed the ruling of the CIAC Arbitral Tribunal that the LWUA is solidarily liable with the BCWD. The *fallo* of the assailed Decision reads as follows:

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit and the assailed **FINAL AWARD** rendered by the Construction Industry Arbitration Commission is hereby **AFFIRMED**.

**SO ORDERED.**<sup>35</sup> (Emphasis in the original)

In so ruling, the CA found that the LWUA, although designated as a mere agent of the BCWD, acted not as such, but more as an owner of the Project. It held that the LWUA not only approved the Construction Contract, but also extensively participated in every stage of the Project from the initial phase of the opening of the bids, up to the final acceptance of the Project.<sup>36</sup>

Moreover, the subsequent acts committed by the LWUA after the execution by the BCWD and RDPCI of the Construction Contract were appreciated by the CA to support the conclusion that the former was not just

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<sup>32</sup> *Id.* at 115–117.

<sup>33</sup> *Id.* at 47–69.

<sup>34</sup> *Id.* at 57–58.

<sup>35</sup> *Id.* at 42.

<sup>36</sup> *Id.* at 36.



an agent of the BCWD, but acted as a co-owner of the Project.<sup>37</sup> The CA was of the view that the LWUA can hardly be considered an agent of the BCWD when all the actions of the latter needed the approval of the LWUA. If there was an agency agreement, the usual arrangement should have been that the LWUA should be under the control of BCWD as the principal, but the reverse happened in this case. Although the LWUA was described as an agent of the BCWD, a reading of the Construction Contract, together with the conduct of the parties before, during and after, leads to the conclusion that the LWUA was not a mere agent of the BCWD.<sup>38</sup>

Ultimately, the CA held that the circumstances surrounding the Construction Contract show that the liability of the LWUA was solidary. The role and participation of the LWUA in the Project was inseparable that it would be difficult to determine the respective liabilities of the LWUA and the BCWD. The CA likewise ruled that the CIAC Arbitral Tribunal properly adjudged the LWUA liable for attorney's fees and litigation expenses.<sup>39</sup>

The LWUA filed a Motion for Reconsideration,<sup>40</sup> which was denied by the CA in the assailed Resolution. Thus, the LWUA filed the present Petition.

### *The Issues*

This Court resolves the following issues:

First, whether the LWUA is a party to the Construction Contract;

Second, if the LWUA is liable with the BCWD, whether such liability solidary; and

Finally, whether the LWUA is liable to pay attorney's fees and the cost of suit.

### *The Ruling of the Court*

After an assiduous review of the records and the applicable law, the Court finds the present Petition bereft of merit.

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<sup>37</sup> *Id.* at 36–37.

<sup>38</sup> *Id.* at 37–39.

<sup>39</sup> *Id.* at 40–42.

<sup>40</sup> *Id.* at 128–134.



*A Petition for Review under Rule 43 of the Rules of Court is the proper remedy at the time of filing of the Petition*

At the outset, the Court notes that there are currently two remedies to question the final awards of the CIAC, namely: (a) Petition for Review on *Certiorari* filed with the Court under Rule 45 of the Rules of Court; and (b) Petition for *Certiorari* with the CA under Rule 65. As discussed in *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*:<sup>41</sup>

For the avoidance of doubt, the Court now holds that the judicial review of CIAC arbitral awards takes either of two remedial routes, depending on the issue being raised. *First*, if the issue raised is a pure question of law, the petition should be filed directly and exclusively with the Court, notwithstanding Rule 43. *Second*, in cases where the petition takes issue on the integrity of the arbitral tribunal and its decision, ([i.e.], allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal), or the unconstitutionality or invalidity of its actions in the arbitral process then the parties can and should appeal the CIAC award before the CA under Rule 65, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction, where a factual review may then be had by the CA.<sup>42</sup> (Emphasis in the original; citation omitted)

Nevertheless, the ruling in *Global Medical Center* is prospective in application and does not apply to CIAC arbitral awards already pending in the CA before its promulgation. Thus said the Court:

Be that as it may, the Court nevertheless clarifies *that this instant carving out of the CIAC from the enumeration under Rule 43, along with the effective reversal of jurisprudence that provide otherwise, is prospective in application*, as judicial decisions applying or interpreting laws form part of the legal system of the Philippines until they are reversed, and remain good law until abandoned. The prospective application of the present ruling on the proper modes of appeal from a CIAC arbitral award applies in favor of parties who have relied on the old doctrine and have acted in good faith[.]

....

The Court hereby sets the following guidelines with respect to the application of the present ruling on modes of judicial review vis-à-vis CIAC arbitral awards:

1. *For appeals from CIAC arbitral awards that have already been filed and are currently pending before the CA under Rule 43, the prior availability of the appeal on matters of fact and law thereon applies. This is only proper since the parties resorted to this mode of review as it was the*

<sup>41</sup> G.R. No. 230112, May 11, 2021 [Per J. Caguioa, *En Banc*].

<sup>42</sup> *Id.*



*existing procedural rules at the time of filing, prior to the instant amendment.*<sup>43</sup> (Emphasis supplied; citations omitted)

In the present case, the prevailing rule at the time that the CIAC rendered the Final Award in 2011 is that the remedy is to file a Petition for Review under Rule 43 of the Rules of Court with the CA. This, together with the prospective application of *Global Medical Center*, leads to the conclusion that the LWUA availed of the proper remedy when it questioned the CIAC's Final Award.

Thus, the LWUA's filing of the Petition for Review under Rule 43 of the Rules of Court to question the Final Award of the CIAC is appropriate.

*The LWUA is a party to the Construction Contract, including the Supplemental Agreement, alongside the BCWD and RDPCI*

The LWUA argues that it cannot be held liable with the BCWD since it is not a party to the Construction Contract. It insists that since the Construction Contract only named two contracting parties, i.e., the BCWD and RDPCI, then the LWUA cannot be bound thereby. Its participation in the signing of the said Contract merely connoted its approval of the agreement in line with its financing and regulatory functions under Title III, Section 50 of Presidential Decree No. 198.<sup>44</sup> The LWUA thus concludes that it is a complete stranger as regards the Construction Contract, which was executed only between the BCWD and RDPCI.<sup>45</sup>

RDPCI forwards the view that Presidential Decree No. 198, the law which created the LWUA and authorized the creation of the BCWD, established the "intertwined relation and obligations"<sup>46</sup> of the LWUA to the BCWD. It cites Sections 59 to 66 of the said Decree to support its argument. RDPCI maintains that the LWUA's powers over, interest in, and participation with regard to the Project belie the latter's claims that it is not a party to the Construction Contract, and that it only acted as the BCWD's agent. RDPCI avers that there is nothing in Section 50 of Presidential Decree No. 198 that requires the LWUA to approve the Construction Contract, but that the latter did so voluntarily. Likewise, the various agreements entered into by the parties, as well as the acts done by them relative thereto, reveal that the LWUA was not a mere agent of BCWD, considering that the former had the power to approve or reject the Construction Contract altogether.<sup>47</sup>

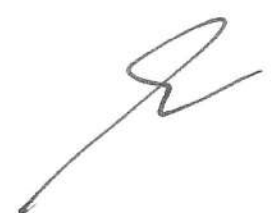
<sup>43</sup> *Id.*

<sup>44</sup> Presidential Decree No. 198 (1973), Provincial Water Utilities Act of 1973.

<sup>45</sup> *Rollo*, pp. 17-19.

<sup>46</sup> *Id.* at 303.

<sup>47</sup> *Id.* at 303-317.



The Court finds in favor of RDPCI.

Presidential Decree No. 198 authorized the creation of water districts throughout the country, by virtue of resolutions enacted by the different local legislative bodies. The primary function of water districts, just like the BCWD, is to sell water to residents within their territory, under such schedules of rates and charges as may be determined by the respective boards of directors of such districts.<sup>48</sup>

To support the economic and operational viability of these water districts, Presidential Decree No. 198 created the LWUA. Section 50 of Presidential Decree No. 198 listed its functions:

- (a) Prescribe minimum standards and regulations in order to assure acceptable standards of construction materials and supplies, maintenance, operation, personnel training, accounting and fiscal practices for local water utilities;
- (b) Furnish technical assistance and personnel training programs for local water utilities;
- (c) Monitor and evaluate local water standards; and
- (d) Effect system integration, joint investment and operation, district annexation and de-annexation whenever economically warranted.<sup>49</sup>

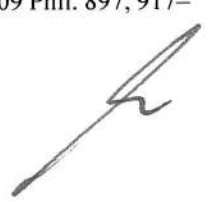
The LWUA argues that it only approved the Construction Contract, including the Supplemental Agreement, pursuant to its function as a regulator of water districts in accordance with the Section 50 of Presidential Decree No. 198. The Court finds, however, that there is nothing in the law that specifically required the LWUA to approve any and all construction contracts entered into by local water districts, as shown by the above-quoted provision.

What Section 50 of Presidential Decree No. 198 provides is that the LWUA, as the primary regulator of water districts, may prescribe minimum standards and regulations applicable to *all* water districts so that construction projects would be at par with prevailing standards. This is a form of quasi-legislative power delegated to the LWUA by the Legislature necessary to carry out the provisions of Presidential Decree No. 198 and implement the legislative policy behind it.<sup>50</sup>

<sup>48</sup> *Marilao Water Consumers Association, Inc. v. Intermediate Appellate Court*, 278 Phil. 444, 445 (1991) [Per J. Narvasa, First Division].

<sup>49</sup> Presidential Decree No. 198 (1973), sec. 50, as amended by Presidential Decree No. 768 (1975), sec. 22.

<sup>50</sup> *See Alliance for the Family Foundation of the Philippines, Inc., et al. v. Garin, et al.*, 809 Phil. 897, 917–918 (2017) [Per J. Mendoza, Special Second Division].



Likewise, there is nothing in the provisions of Presidential Decree No. 198 cited by RDPCI<sup>51</sup> which shows that the LWUA is automatically liable with the water districts it regulates. Notwithstanding the so-called “intertwined” relationship between the LWUA and the water districts, including the BCWD, the law did not intend the LWUA to be a guarantor of all liabilities entered into by water districts. Plainly, the LWUA was not mandated by law to assume all risks undertaken by the water districts.

The law created the LWUA to be both the regulator and lender of water districts. Presidential Decree No. 198 granted the LWUA regulatory powers necessary to optimize public service from water districts.<sup>52</sup> The said law gave the LWUA the power to establish standards and regulations for local water utilities, including minimum criteria for the design and construction of new or additional facilities for water supply, treatment, transmission and distribution, and for wastewater collection, treatment, and disposal.<sup>53</sup> As a financier, the LWUA is a “specialized lending institution for the promotion, development and financing of water utilities.”<sup>54</sup> The law permitted the LWUA to contract foreign loans and credits for re-loan to water districts for the latter to be able to finance their capital and operating expenditures.<sup>55</sup> The law did not contemplate that the LWUA, in performing these dual roles, would likewise assume the liabilities of water districts.

To the Court’s mind, the LWUA’s act of giving assent to the Construction Contract, including the Supplemental Agreement, was not done by directive of law, but by its *own volition* and *free will*.

It must be noted that the LWUA contracted a foreign loan with the JBIC, the proceeds of which were used to finance the Project. Thus, to formalize the LWUA’s financing of the Project, the LWUA and the BCWD entered into the Financial Assistance Contract. Article III, Sections 2 and 3 of the Financial Assistance Contract reads:

SEC. 2. The [P]roject shall be constructed in accordance with the approved plans and specifications made part of this Contract, including all other agreements, contracts and sub-contracts made or to be made pursuant thereto. *Construction shall not be commenced until the LENDER[, LWUA] shall have indicated that conditions precedent under this Contract have been met.*

SEC. 3. *Upon approval by the LENDER[, LWUA], the Borrower[, BCWD] may pursue the project by LENDER[, LWUA].* In such cases, the Borrower[, BCWD] shall be responsible for the smooth implementation of

<sup>51</sup> Presidential Decree No. 198 (1973), secs. 59–66.

<sup>52</sup> *De Jesus v. Commission on Audit*, 451 Phil. 812, 816 (2003) [Per J. Carpio, *En Banc*].

<sup>53</sup> Presidential Decree No. 198 (1973), sec. 62.

<sup>54</sup> J. Brion, Dissenting Opinion in *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 420 (2011) [Per J. Carpio, *En Banc*].

<sup>55</sup> Presidential Decree No. 198 (1973), sec. 73.



the work with the assistance of a resident engineer who shall be designated by the LENDER[, LWUA]. Further, the BORROWER[, BCWD] shall comply with any additional requirements set by the grant-Donor like progress reports, liquidation of cash advances, etc.<sup>56</sup> (Emphasis supplied)

Thus, as between the LWUA and the BCWD, both parties agreed that the Construction Contract should have the approval of the former before the latter may pursue the Project. Moreover, the parties stipulated that the construction of the Project needs the prior sign-off of the LWUA before the same may commence. These stipulations however, were not confined in the Financial Assistance Contract, but were translated to the Construction Contract. Item No. 13 of the latter Contract reads as follows:

13. *This Contract shall become effective and binding only upon approval by [the] Local Water Utilities Administration (LWUA) and such other competent government agencies whenever required, provided, that once approved, this Contract shall not be rescinded or substantially amended or modified, without the written approval of the LWUA first being obtained.*<sup>57</sup> (Emphasis supplied)

Item No. 8 of the Supplemental Agreement likewise provides as follows:

8. *This agreement shall become effective and binding only upon approval by the Local Water Utilities Administration (LWUA) as agent of the Butuan City Water District, provided, however, that once approved, this contract shall not be rescinded nor substantially amended or modified, without the written approval of LWUA and JBIC first being obtained.*<sup>58</sup> (Emphasis supplied)

To be clear, the LWUA's act of giving approval to the Construction Contract and the Supplemental Agreement is not mandated by any of the provisions of Presidential Decree No. 198, but was done to implement the provisions of the Financial Assistance Contract it entered into with the BCWD. By giving its approval to the Construction Contract, the latter wittingly became a party to the same in order to protect its interest as the BCWD's lender.

To an extent, the Court agrees with the LWUA that there are certain acts that made the LWUA an agent of the BCWD. In a contract of agency, "a person binds [themselves] to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."<sup>59</sup> The elements of agency are: (a) there is consent, express or implied

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<sup>56</sup> *Rollo*, p. 140.

<sup>57</sup> *Id.* at 173.

<sup>58</sup> *Id.* at 192.

<sup>59</sup> CIVIL CODE, art. 1868.



of the parties to establish the relationship; **(b)** the object is the execution of a juridical act in relation to a third person; **(c)** the agent acts as a representative and not for themselves; and **(d)** the agent acts within the scope of authority.<sup>60</sup>

In *Consortium of Hyundai Engineering Co., Ltd. v. National Grid Corporation of the Philippines*,<sup>61</sup> the Court held that a project or construction manager acts on behalf of the project owner, and performs such functions through the authority of and in representation of such project owner. These acts may include the selection of the contractor, the monitoring of the project, and the inspection and examination of the materials procured and works done by the contractor.

Indeed, certain acts were validly delegated by the BCWD to the LWUA in constituting the latter as project manager, such as: **(a)** the prequalification and processing of bids; **(b)** the award of contract to the winning contractor; **(c)** the inspection, examination, testing, and accepting all materials and works to the Project; and **(d)** the engagement of a consultant to perform engineering services. These acts, which pertain to the management or administration of the construction project, particularly the selection of the contractor and the supervision of its progress vis-à-vis the approved plans and programs of work, are generally reserved to the project owner, which in this case is the BCWD, but may be delegated to a project manager.

However, the act of securing the approval of the LWUA, without which the Construction Contract and the Supplemental Agreement would not be given effect, is not an act that is contemplated under the supposed agency established by the BCWD. Again, one of the elements of a contract of agency is that the agent acts as a representative of the principal and not for its own interest. This is so because the fiduciary relationship created by the agency creates a duty on the part of the agent to act in good faith to advance the interests of the principal, and not themselves.<sup>62</sup>

It would be incongruous for the BCWD, as the principal, to delegate to the LWUA, its mere agent, the power to approve the Construction Contract and the Supplemental Agreement when the BCWD had already signed the Contract and bound itself to the terms and conditions therein. To emphasize, the Construction Contract and the Supplemental Agreement both required the approval of the LWUA, a mere agent of the BCWD, before such contracts may be given force. To make the effectivity of the said contracts depend on the discretion of the agent, when the principal had already executed the same,

<sup>60</sup> *Spouses Vilorio v. Continental Airlines, Inc.*, 679 Phil. 61, 80 (2012) [Per J. Reyes, Second Division], citing *Rallos v. Felix Go Chan & Sons Realty Corporation*, 171 Phil. 222 (1978) [Per J. Muñoz Palma, First Division].

<sup>61</sup> G.R. Nos. 214743 & 248753, December 4, 2023 [Per J. Singh, Third Division], p. 24. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>62</sup> *International Exchange Bank v. Spouses Briones*, 808 Phil. 223, 235 (2017) [Per J. Leonen, Second Division].



is not indicative of the existence of a principal-agent relationship. The principle is that the agent's authority to act emanates from the powers granted by the principal.<sup>63</sup> Here, it is the other way around.

The LWUA's act of giving assent to the Construction Contract and the Supplemental Agreement was done not because the LWUA wanted to protect the interest of BCWD, but because it wanted to protect its own interest as a lender in accordance with the Financial Assistance Contract.

For a contract to be valid, it must have the following essential elements: (a) consent of the contracting parties; (b) object certain, which is the subject matter of the contract; and (c) cause of the obligation which is established.<sup>64</sup> The first element, consent, is manifested by the meeting of the offer and acceptance of the thing and the cause.<sup>65</sup> The basic principle of relativity of contracts is that contracts can only bind parties who entered into it.<sup>66</sup> By signing and approving the Construction Contract and the Supplemental Agreement, the LWUA essentially gave consent to the same, thereby giving it force and effect. Without the consent of the LWUA, such contracts would not become effective even as between the BCWD and RDPCI.

Moreover, Article 1371 of the Civil Code provides that the contemporaneous and subsequent acts of the parties may be considered to determine their true intention in executing the agreement.<sup>67</sup> As correctly posited by RDPCI, the subsequent actions of the LWUA show that it is a party to the Construction Contract. Of particular importance here is the MOA executed by the LWUA, the BCWD and RDPCI after the signing of the Construction Contract and the Supplemental Agreement. In the said MOA, the parties agreed to the terms and conditions on how RDPCI would be paid by the LWUA with respect to the works done for the Project.

Clearly, if the LWUA was not a party to the Construction Contract and the Supplemental Agreement, then there is no reason why it would enter into a contract with the parties therein binding itself to the terms and conditions concerning the construction of the Project. All these ultimately lead to the reasonable conclusion that the LWUA is a party to the Construction Contract, including the Supplemental Agreement, and its consent was required before the same may be given effect.

<sup>63</sup> *De Joya v. Madlangbayan*, G.R. No. 228999, April 28, 2021 [Per J. Gaerlan, First Division], p. 19. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>64</sup> *San Miguel Foods, Inc. v. Magtuto*, 857 Phil. 574, 584–585 (2019) [Per J. Carpio, Second Division].

<sup>65</sup> *Id.* at 585.

<sup>66</sup> *Philippine National Bank v. Dee*, 727 Phil. 473, 480 (2014) [Per J. Reyes, First Division].

<sup>67</sup> CIVIL CODE, art. 1371 states:

In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.



*Solidary liability may be established  
by the nature of the obligation*

The LWUA alleges that it is not solidarily liable with the BCWD. It maintains that it is a mere agent of the BCWD, as such it has nothing to do with the contractual obligations of the latter. It insists that no solidary obligation is present considering that, as the BCWD's agent, the LWUA only acted within the scope of its authority under the Financial Assistance Contract

On the other hand, RDPCI echoes the disquisitions made by the CIAC and the CA.<sup>68</sup> Both tribunals uniformly found that the LWUA is solidarily liable with BCWD to RDPCI considering that the nature of the obligation requires such liability. Both tribunals took into consideration not just the terms of the Financial Assistance Contract and the Construction Contract, but also the actions performed by the parties that led to the finding that the LWUA is not merely an agent of the BCWD, but an owner of the Project as well.

Pertinent to this case is the application of Article 1207 of the Civil Code, which reads:

Article 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. *There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.* (Emphasis supplied)

The general rule is that when there are two or more creditors, or two more debtors, the liabilities of each is treated, by law, as *joint*, as compared to *solidary*. Essentially, there is joint liability when the debtor is liable only for the payment of only a proportionate part of the debt, while there is solidary liability when the debtor is liable for the payment of the entire debt.<sup>69</sup>

In the 1918 case of *Jaucian v. Querol*,<sup>70</sup> the Court traced the origins of the "joint" liability as understood under the common law, while applying the then prevailing provisions of the Spanish Civil Code. There, the Court held that the term "joint" as contemplated under the common law, actually refers to the Spanish concept of solidary obligation, thus:

In the common law system every debtor in a joint obligation is liable *in solidum* for the whole; and the only legal peculiarity worthy of remark concerning the "joint" contract at common law is that the creditor is required to sue all the debtors at once. To avoid the inconvenience of this

<sup>68</sup> *Rollo*, pp. 317–329.

<sup>69</sup> *Guy v. Gacott*, 778 Phil. 308, 323 (2016) [Per J. Mendoza, Second Division].

<sup>70</sup> 38 Phil. 707 (1918) [Per J. Street].



procedural requirement and to permit the creditor in a joint contract to do what the creditor in a solidary obligation can do under article 1144 of the Civil Code, it is not unusual for the parties to a common law contract to stipulate that the debtors shall be “jointly and severally” liable. The force of this expression is to enable the creditor to sue any one of the debtors or all together at pleasure.

It will thus be seen that the purpose of section 698 of the Code of Civil Procedure, considered as a product of common law ideas, is not to convert an apportionable joint obligation into a solidary joint obligation—for the idea of the benefit of division is totally foreign to the common law system—but to permit the creditor to proceed at once separately against the estate of the deceased debtor, without attempting to draw the other debtors into intestate or testamentary proceedings. The joint contract of the common law is and always has been a solidary obligation so far as the extent of the debtor's liability is concerned.<sup>71</sup>

Under the Spanish Civil Code, the idea of multiplicity of obligation comes in two forms: (a) *mancomunidad simple*, which is the apportionable type of obligation, or the joint obligation under the present Civil Code; and (b) *mancomunidad solidaria*, or the solidary obligation.<sup>72</sup> *Jaucian* then discussed that the first form is a specific creation of Spanish law, having been incorporated in the *Novisima Recopilacion*, a compilation of Spanish laws that were in effect prior to the enactment of the Spanish Civil Code.<sup>73</sup>

In *Sharruf v. The Tayabas Land Co.*,<sup>74</sup> the Court clarified that when the parties use the word “joint” with respect to a liability, this is equivalent to *mancomunidad simple* or *mancomudamente*. Conversely, when the words “joint and several” are used, much like the distinction made in the laws of the State of Louisiana, where the civil law also mixes with the common law, the obligation pertains to *solidariamente*.

This distinction, which has been recognized by the Court in *Sharruf* and subsequent cases,<sup>75</sup> between a “joint” and a “joint and several” or “solidary” obligation, has been adopted with the enactment of the Civil Code in 1950, thereby instituting the present concepts of joint and solidary obligations.

Under the current Civil Code, it is provided that the liability of the parties, consisting of multiple creditors or multiple debtors, is joint. Essentially, the joint obligation is the default form. It has been held that there is a presumption that, if there is concurrence of two or more creditors or

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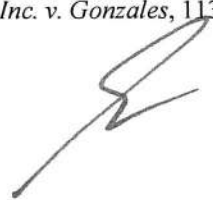
<sup>71</sup> *Id.* at 718–719.

<sup>72</sup> *Id.* at 719.

<sup>73</sup> See Melquiades J. Gamboa, *The Meeting of the Roman Law and the Common Law in the Philippines*, 49 PHIL. L.J. 304 (1974).

<sup>74</sup> 37 Phil. 655 (1917) [Per J. Carson].

<sup>75</sup> See, e.g., *De Leon v. Nepomuceno*, 37 Phil. 180 (1917) [Per J. Carson]; *Oriental Commercial Co., Inc. v. Abeto*, 60 Phil. 723 (1934) [Per J. Imperial]; *Philippine International Surety Co., Inc. v. Gonzales*, 113 Phil. 373 (1961) [Per J. Concepcion, *En Banc*].



debtors, the obligation is considered joint, and it is incumbent upon the party alleging the existence of solidarity to prove the same.<sup>76</sup>

Article 1207 of the Civil Code recognizes, however, three exceptions to the general rule. In these three instances, the obligation is considered solidary: (a) when the obligation expressly so states; (b) when the law so provides; or (c) when the nature of the obligation so requires.<sup>77</sup>

As to the first exception, it has been held that the existence of a solidary obligation cannot lightly be inferred. The law requires that such must be positively and expressly stipulated by the parties.<sup>78</sup> When there is absence of any express and indubitable term or stipulation in the contract as to the establishment of solidarity in the obligation, then what applies is the presumption that a joint obligation exists.<sup>79</sup>

Relative to the second exception, the Civil Code is replete with provisions that impose solidarity, thus:

- (a) When two or more heirs take possession of the estate, they are solidarily liable for the loss or destruction of a thing devised or bequeathed, even though only one of them is negligent;<sup>80</sup>
- (b) All partners are solidarily liable with the partnership for everything chargeable to the partnership under Articles 1822 and 1823 of the Civil Code;<sup>81</sup>
- (c) The principal is solidarily liable with the agent, even if the latter exceeded their authority, if the former allowed the latter to act as though they had full powers;<sup>82</sup>
- (d) If two or more persons have appointed an agent for a common transaction or undertaking, they are solidarily liable to the agent for all the consequences of the agency;<sup>83</sup>
- (e) When there are two or more bailees to whom a thing is loaned in the same contract, they are liable solidarily;<sup>84</sup>

<sup>76</sup> *Escaño v. Ortigas, Jr.*, 553 Phil. 24, 39 (2007) [Per J. Tinga, Second Division].

<sup>77</sup> *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 832 (2001) [Per J. Panganiban, Third Division].

<sup>78</sup> *Smith, Bell & Co., Inc. v. Court of Appeals*, 335 Phil. 194, 203 (1997) [Per J. Panganiban, Third Division].

<sup>79</sup> *See Spouses Berot v. Siapno*, 738 Phil. 673, 690 (2014) [Per C.J. Sereno, First Division].

<sup>80</sup> CIVIL CODE, art. 927.

<sup>81</sup> CIVIL CODE, art. 1824.

<sup>82</sup> CIVIL CODE, art. 1911.

<sup>83</sup> CIVIL CODE, art. 1915.

<sup>84</sup> CIVIL CODE, art. 1945.



- (f) In the quasi-contract of *negotiorum gestio*, the responsibility of two or more officious managers is solidary, unless the management was assumed to save the thing or business from imminent danger;<sup>85</sup>
- (g) In the quasi-contract of *solutio indebiti*, the responsibility of two or more payees, when there has been payment of what is not due, is solidary;<sup>86</sup>
- (h) The owner is solidarily liable with the driver in case of motor vehicle mishap, if the former, who was in the vehicle, could have, by the use of due diligence, prevented the misfortune;<sup>87</sup> and
- (i) The responsibility of joint tortfeasors in a quasi-delict is solidary.<sup>88</sup>

Another instance where solidarity is established by law pertains to the liability of the co-participants in a crime. As provided for under Article 110 of the Revised Penal Code,<sup>89</sup> the principals, accomplices and accessories are liable solidarily with each other with regard to the civil aspect.

Solidary liability may likewise be imposed by law on the corporate officers for certain acts they committed, and only in exceptional circumstances.<sup>90</sup> The Revised Corporation Code<sup>91</sup> lists down these instances where the corporate officers are jointly and severally liable together with the corporation itself.

There are also certain provisions in the country's labor laws that impose solidary obligation in line with the State policy of protecting and promoting the rights of workers. For example, Section 9-B of Republic Act No. 11199,<sup>92</sup> provides that recruitment agencies are solidarily liable with their principals with respect to the civil liabilities incurred for any violation of the said law.<sup>93</sup> Likewise, Section 10 of Republic Act No. 8042,<sup>94</sup> as amended by Republic

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<sup>85</sup> CIVIL CODE, art. 2146.

<sup>86</sup> CIVIL CODE, art. 2157.

<sup>87</sup> CIVIL CODE, art. 2184.

<sup>88</sup> CIVIL CODE, art. 2194. *See also Worcester v. Ocampo*, 22 Phil. 42 (1912) [Per J. Johnson].

<sup>89</sup> REV. PEN. CODE, art. 110 states:

Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in *solidum*) among themselves for their quotas, and subsidiaries for those of other persons liable.

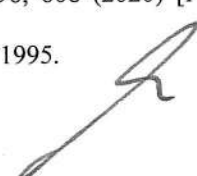
<sup>90</sup> *See MAM Realty Development Corporation v. National Labor Relations Commission*, 314 Phil. 838, 844–845 (1995) [Per J. Vitug, Third Division].

<sup>91</sup> Republic Act No. 11232 (2019), Revised Corporation Code of the Philippines.

<sup>92</sup> Republic Act No. 11199 (2019), Social Security Act of 2018.

<sup>93</sup> *See Joint Ship Manning Group, Inc. v. Social Security System*, 876 Phil. 596, 608 (2020) [Per J. Gesmundo, *En Banc*].

<sup>94</sup> Republic Act No. 8042 (1995), Migrant Workers and Overseas Filipinos Act of 1995.



Act No. 10022,<sup>95</sup> provides that the liability of the principal or employer and the recruitment agency for any and all money claims under Section 10 of the said law is joint and several or solidary.

The word “law,” with regard to the second exception, does not only contemplate statutes, but also covers executive or administrative issuances, which have the force and effect of law. Thus, in *Far Eastern Shipping Company v. Court of Appeals*,<sup>96</sup> the Court held that Customs Administrative Order No. 15-65, an implementing rule which has the force and effect of law, can validly provide for solidary liability.

With respect to the third exception, the law allows the imposition of solidary liability when the *nature* of the obligation requires it. For the Court to properly interpret this provision and how it should be applied, it is necessary to determine the intent of the legislators, and to trace the history that led to its enactment.

Article 1207 of the present Civil Code has its roots in Article 1137 of the Spanish Civil Code. Article 1137 reads:

1137. The concurrence of two or more creditors or of two or more debtors, in a single obligation, does not imply that each one of the former has a right to ask, nor each one of the latter is bound to comply in full with the things which are the objects of such obligation. *This shall only take place when the obligation determines it expressly, and is constituted as a joint and several obligation.*<sup>97</sup> (Emphasis supplied)

As may be gleaned from the above-quoted provision, there is only one instance where solidary liability is imposed—that is, when the “obligation determines it expressly.” In other words, this specific provision of the Spanish Civil Code provides for only one instance as to when solidarity exists, which is when solidarity is expressly provided for by the parties.

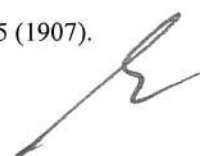
Notwithstanding this sole exception under the Spanish Civil Code, Jose Maria Manresa, a renowned commentator whose work had been cited by the Court in past decisions, is of the view that another exception exists. Manresa recognizes that, although Article 1137 of the Spanish Civil Code only speaks of the existence of solidarity when such is expressly provided for in the obligation, another obvious foundation of solidarity is when the law itself declares certain obligations to be joint and several.<sup>98</sup>

<sup>95</sup> Republic Act No. 10022 (2010), An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes.

<sup>96</sup> 357 Phil. 703, 760 (1998) [Per J. Regalado, *En Banc*].

<sup>97</sup> See *Luna v. Arcenas*, 34 Phil. 80, 88 (1916) [Per J. Carson].

<sup>98</sup> VIII JOSE MARIA MANRESA, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 184–185 (1907).



For Manresa, these are the only two sources of solidarity: the express stipulation of the parties, and the dictates of the law. He recognized that prior to the promulgation of the Spanish Civil Code, there was jurisprudence that established solidarity sourced from presumptions based on the acts of the obligors. This is a result of the implementation of the *Novísima Recopilación*, or the precursor of the Spanish Civil Code, which gave preference to solidarity of obligations. However, with the enactment of the Spanish Civil Code, the provision is, in Manresa's words, "*es en su expresión más restrictivo*,"<sup>99</sup> or at its most restrictive, that the law only acknowledged solidarity under the mentioned exceptions.<sup>100</sup>

Another renowned jurist of Spanish civil law, Felipe Sanchez Roman, has previously opined, similar to Manresa, that there are only two sources of solidarity of obligations: first, "*el contrato que contiene estipulación expresa estableciendo la solidaridad*"<sup>101</sup> or the express stipulation of the parties; and second, "*la disposición de la ley*"<sup>102</sup> or the provision of law. Sanchez Roman further enumerates other instances of solidarity, such as a will or final judgment, but he recognized that these instances only provide solidarity by virtue or ministry of law.<sup>103</sup>

It can thus be said that the Spanish Civil Code only provided for the first two exceptions that are now found in the present Civil Code. Solidarity, under the old Code, is established only upon the express stipulation of the parties, or by provision of law.

The authors of the present Civil Code evidently added a third source of solidarity: when such is required by the *nature* of the obligation. Justice Eduardo P. Caguioa of the then Intermediate Appellate Court (now the CA), an eminent civil law jurist, recognized this fact:

[Joint and solidary obligations]; when derived from the nature of the obligation. *This is a new source of solidarity created by the new Civil Code and not found in the old Civil Code.* As a matter of fact, its existence as a source of solidarity is disputed by some Spanish commentators. Examples of this kind of solidarity are in the mortgage of one object by one of its co-owners or the return of what is unduly paid to several payees in one single payment.<sup>104</sup> (Emphasis supplied)

Senator Arturo Tolentino, a renowned commentator on the present Civil Code, also acknowledged that the *nature* of the obligation is another source of solidarity under the present Code. For him, there is solidarity when

<sup>99</sup> *Id.* at 186.

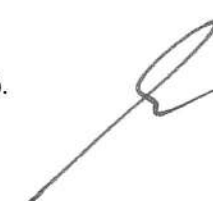
<sup>100</sup> *Id.*

<sup>101</sup> III FELIPE SANCHEZ ROMAN, ESTUDIOS DE DERECHO CIVIL 55 (1888–89).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> IV EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW: 248 (1983).



the liability emanated from wrongful acts. He gave the following examples of such acts: the commission of crimes or quasi-delicts, and payment by mistake. For him, the very nature of these acts, which he considered as morally wrong, "cannot be divided into parts; hence, the liability for it must be solidary."<sup>105</sup>

In determining whether solidarity exists, the Court has looked into certain factors that indicate whether the nature of the obligation requires such. The first factor is the *intent* or *purpose* of the parties or the authority which imposed the obligation.

In *Liwanag v. Workmen's Compensation Commission*,<sup>106</sup> a security guard, who was working for Liwanag Auto Supply co-owned by Benito Liwanag and Maria Liwanag Reyes, was killed while in the line of duty. The widow of the security guard filed a claim with the Workmen's Compensation Commission, which ordered the co-owners to solidarily pay compensation to the widow. The co-owners appealed the ruling, arguing that the liability of partners is not solidary under the Civil Code. The Court held, however, that what applies is the Workmen's Compensation Act,<sup>107</sup> and not the Civil Code.

The Court was cognizant of the fact that the Workmen's Compensation Act did not have a specific provision which imposed solidary liability as between the co-owners of an enterprise. The Court then looked into the *intent* or *purpose* behind the said law to support the conclusion that the nature of the obligation of the co-owners of the business, as the employer of the deceased security guard, required solidarity. Thus said the Court:

The provisions of the new Civil Code above quoted taken together with those of Section 2 of the Workmen's Compensation Act, reasonably indicate that in compensation cases, the liability of business partners, like appellants, should be solidary; otherwise, the right of the employee may be defeated, or at least crippled. *If the responsibility of appellants were to be merely joint and not solidary, and one of them happens to be insolvent, the amount awarded to the appellees would only be partially satisfied, which is evidently contrary to the intent and purposes of the Act.* In previous case we have already held that the Workmen's Compensation Act should be construed fairly, reasonably and liberally in favor of and for the benefit of the employee and his dependents; that all doubts as to right of compensation resolved in his favor; and that it should be interpreted to promote its purpose. Accordingly, the present controversy should be decided in favor of the appellees.

Moreover, Art. 1207 of the new Civil Code provides:

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<sup>105</sup> IV ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 222 (1991).

<sup>106</sup> See 105 Phil. 741 (1959) [Per J. Endencia, *En Banc*].

<sup>107</sup> Act No. 3428 (1927), as amended by Republic Act No. 772 (1952).



[There] is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

*Since the Workmen's Compensation Act was enacted to give full protection to the employee, reason demands that the nature of the obligation of the employers to pay compensation to the heirs of their employee who died in line of duty, should be solidary; otherwise, the purpose of the law could not be attained.*<sup>108</sup> (Emphasis supplied)

The second factor which the Court may look into in determining the nature of the obligation pertains to the *terms* of the contract itself. Even if the stipulations of the agreement do not contain words which expressly show solidarity, such as the indicative terms like “solidary,” “solidarily,” “in *solidum*,” “joint and several,” or “individually and jointly,”<sup>109</sup> there may exist other provisions which reveal the true nature of the obligation. It is a cardinal rule that the literal meaning of the words used in the contract are controlling if they are clear and leave no doubt as to the intention of the parties.<sup>110</sup> This is so because “the intent of the parties to an instrument is embodied in the writing itself, and when the words are clear and unambiguous[,] the intent is to be discovered only from the express language of the agreement.”<sup>111</sup>

The Court applied the said principle in the case of *AFP Retirement and Separation Benefits System v. Sanvictores*.<sup>112</sup> There, a buyer of a parcel of land sued for rescission of the contract after having fully paid the purchase price by installment, for failure of Prime East Properties, Inc. (**PEPI**) and the AFP Retirement and Separation Benefits System (**AFPRSBS**) to execute the corresponding deed of absolute sale of the property. The Arbiter of the Housing and Land Use Regulatory Board (**HLURB**) ruled in favor of the buyer, and found both PEPI and AFPRSBS solidarily liable to return the purchase price, and to pay damages. This ruling was affirmed by the HLURB Board of Commissioners, the Office of the President, and the CA.

In affirming that the nature of the obligation required solidarity, the Court held that it was the intention of PEPI and AFPRSBS to be bound as one party because they referred to themselves in the singular “seller” and not “sellers.” The Court stated:

Here, there is no doubt that the nature of the obligation of PEPI and AFPRSBS under the subject contract to sell was solidary. In the said contract, PEPI and AFPRSBS were expressly referred to as the “SELLER” while Sanvictores was referred to as the “BUYER.” Indeed, the contract to sell did not state “SELLERS” but “SELLER.” This could only mean that

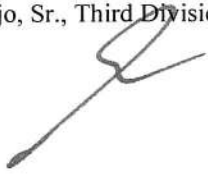
<sup>108</sup> *Id.* at 744.

<sup>109</sup> See *Ronquillo v. Court of Appeals*, 217 Phil. 269, 279 (1984) [Per J. Cuevas, Second Division].

<sup>110</sup> CIVIL CODE, art. 1370.

<sup>111</sup> *Abad, et al. v. Goldloop Properties, Inc.*, 549 Phil. 641, 654 (2007) [Per J. Callejo, Sr., Third Division].

<sup>112</sup> See 793 Phil. 442 (2016) [Per J. Mendoza, Second Division].



PEPI and AFPRSBS were considered as one seller in the contract. As correctly pointed out by the administrative tribunals below and the CA, there was no delineation as to their rights and obligations.<sup>113</sup>

Thus, solidarity may be established not only by the presence of indicative terms in the contract, but also by other stipulations found therein which may disclose the real nature of the obligation.

The last factor which may be considered in determining the nature of the obligation is its *divisibility*. When the nature of the obligation does not permit it to be severable, and where it is impossible to delineate the respective shares of the debtors, then solidarity is applicable.

In *Sunga-Chan v. Court of Appeals*,<sup>114</sup> the Court held that an obligation consisting of the continuance and management of the business of a partnership without the consent of one of the partners, which gave rise to an action for the winding up of partnership affairs, accounting, appraisal, and recovery of shares and damages, is, by its nature, a solidary obligation because such is not severable and may be enforced upon such individuals who continued the business. The Court ruled that:

For one, the complaint of Chua for winding up of partnership affairs, accounting, appraisal, and recovery of shares and damages is clearly a suit to enforce a solidary or joint and several obligation on the part of petitioners. As it were, *the continuance of the business and management of Shellite by petitioners against the will of Chua gave rise to a solidary obligation, the acts complained of not being severable in nature. Indeed, it is well-nigh impossible to draw the line between when the liability of one petitioner ends and the liability of the other starts.* In this kind of situation, the law itself imposes solidary obligation. Art. 1207 of the Civil Code thus provides:

[...]

Any suggestion that the obligation to undertake an inventory, render an accounting of partnership assets, and to wind up the partnership affairs is divisible ought to be dismissed.

For the other, the duty of petitioners to remit to Chua his half interest and share of the total partnership assets proceeds from petitioners' indivisible obligation to render an accounting and inventory of such assets. *The need for the imposition of a solidary liability becomes all the more pronounced considering the impossibility of quantifying how much of the partnership assets or profits was misappropriated by each petitioner.*<sup>115</sup> (Emphasis supplied)

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<sup>113</sup> *Id.* at 452.

<sup>114</sup> *See* 578 Phil. 262 (2008) [Per J. Velasco, Jr., Second Division].

<sup>115</sup> *Id.* at 280–281.



In sum, the Civil Code now provides for a modicum of liberality in determining whether solidarity exists. As compared to the Spanish Civil Code, which only recognized two exceptions to the general rule that joint obligations are presumed, the present Civil Code provides for a third exception: the *nature* of the obligation. To ascertain the true nature of the obligation, the Court may look into different factors: (a) the *intent* or *purpose* of the parties or the authority which imposed the obligation; (b) the *terms* of the contract, notwithstanding the absence of indicative words of solidarity; and (c) the *divisibility* of the obligation. These factors would aid the Court in determining whether solidarity is required by the nature of the obligation as provided for under Article 1207 of the Civil Code.

*All the factors in this case establish the nature of the obligation as requiring solidarity*

After a thorough evaluation of the evidence on record, the Court finds that the factors, as discussed above, all establish that the nature of the LWUA's obligation, together with the contemporaneous and subsequent acts of the parties, indicate solidarity.

*First*, it has been established that the LWUA and the BCWD entered into the Financial Assistance Contract for the former to be able to finance the Project. Indeed, one of the purposes of extending the loan to the BCWD is for the construction of the Project, without which the Project may not proceed. The "whereas" clauses in a contract are important signifiers which show the intent or purpose of the parties in executing the same.<sup>116</sup> Here, the pertinent "whereas" clause of the Financial Assistance Contract shows:

WHEREAS, it is intended that the LENDER will extend a financial assistance out of its Revolving Fund, subject to the approval of its Board of Trustees, and the BORROWER shall borrow the loan amount indicated above (in Philippine Currency) to finance the Program of Work as described hereunder (for Level III)[.]<sup>117</sup> (Emphasis in the original)

The preambular clauses of the MOA executed by the LWUA, the BCWD and RDPCI after the execution of the Construction Contract and the Supplemental Agreement also show that the loan granted by the LWUA to the BCWD was for the purpose of funding the construction of the Project, thus:

WHEREAS, the OWNER is a recipient of a loan package obtained from the Overseas Economic Cooperation Fund (OECF), Government of

<sup>116</sup> J. Leonen, Dissenting Opinion in *Risos-Vidal v. Commission on Elections*, 751 Phil. 479, 719 (2015) [Per J. Leonardo-De Castro, *En Banc*].

<sup>117</sup> *Rollo*, p. 135.

Japan, through the AGENT[, LWUA] to finance the construction of its Phase II Comprehensive Water Supply System Project;

WHEREAS, the construction of the Project was awarded to the CONTRACTOR in a bidding conducted on November 25, 1997, at an original Contract Cost of [PHP] 265,285,836.72 and the Contract Time of 540 calendar days[.]<sup>118</sup> (Emphasis in the original)

Evidently, without the loan from the LWUA, the BCWD cannot pursue the project considering the capital requirements to commence its construction. The relationship between these two entities should be viewed, however, not solely within the lens of the supposed loan agreement, but within the larger context of the LWUA's active participation from the beginning until the end of the construction of the Project.

Both the LWUA and the BCWD agreed that what they entered into under the Financial Assistance Contract is a loan for the construction of the Project. Indeed, the relationship between the three parties here are interwoven in such a way that the Project could not have been undertaken by the BCWD without the loan granted by the LWUA. Article I, Section 1 of the Financial Assistance Contract states:

SEC. 1. For the purpose of providing a safe, reliable, sound[,] and economically viable water supply and wastewater disposal system for the BUTUAN CITY WATER DISTRICT, the LENDER agrees to lend and [the] BORROWER agrees to borrow an amount not exceeding [PHP] 550,915,000.00] pursuant to the provisions of [ ] Presidential Decree No. 198, as amended, to finance the aforementioned Project[.]<sup>119</sup> (Emphasis in the original)

The peculiar circumstance in this case, however, militates against the finding that because there is a separate loan contract between the LWUA and the BCWD, such should shield the LWUA from liability under the Construction Contract and the Supplemental Agreement. In reality, the LWUA is very much a party to the Construction Contract, and its participation cannot be divorced therefrom just because it was the supposed lender of the BCWD, or as its agent, as claimed by the LWUA.

Under Article 1953 of the Civil Code,<sup>120</sup> a person who received a loan of money is bound to pay the creditor in equal amount, unless there is a stipulation to pay interest. In *Spouses Sy v. Westmont Bank*,<sup>121</sup> the Court held

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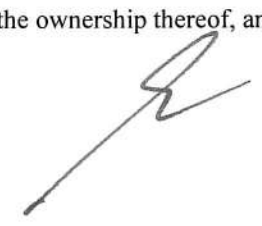
<sup>118</sup> *Id.* at 186.

<sup>119</sup> *Id.* at 136.

<sup>120</sup> CIVIL CODE, art. 1953 states:

A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

<sup>121</sup> 797 Phil. 694 (2016) [Per J. Mendoza, Second Division].



that in a contract of loan, it is essential that the amount so loaned should be delivered to the debtor, otherwise the contract is not perfected:

A simple loan or mutuum is a contract where one of the parties delivers to another, either money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. *A simple loan is a real contract and it shall not be perfected until the delivery of the object of the contract. Necessarily, the delivery of the proceeds of the loan by the lender to the borrower is indispensable to perfect the contract of loan.* Once the proceeds have been delivered, the unilateral characteristic of the contract arises and the borrower is bound to pay the lender an amount equal to that received.<sup>122</sup> (Emphasis supplied)

Here, even though the LWUA and the BCWD agreed that the nature of their agreement under the Financial Assistance Contract partook of a loan, the stipulations therein show that no money was actually delivered or transferred to the BCWD from the LWUA's account. The "loan" that BCWD took would only consist of the LWUA's actual payments to the contractor who would construct the Project. Article I, Section 2 of the Financial Assistance Contract is revealing:

*SEC. 2. Availments of the loan under this agreement shall consist in the LENDER paying the contractor, consulting firms, suppliers[,] or other persons or organizations engaged by the BORROWER[,] as approved by the LENDER in behalf of the BORROWER[,] for services rendered and/or for the supply of equipment, materials, supplies of other commodities to the Project including the cost of acquisition of sites, right-of-way[,] and easements. In the case of engineering studies, the BORROWER shall be billed on a standard basis based on the approved loan program, with interest to accrue from project implementation.*

*All payments or portions of payments made by the LENDER to the above-mentioned persons or organizations which are treated as loan availments of the BORROWER under this Agreement shall be covered by a Debit Memorandum, to be sent by the LENDER to the BORROWER. Failure of the latter to contest or object to such Debit Memorandum or any item therein within [10] days from receipt of the same shall constitute an acceptance of the loan availments covered by the BORROWER's liability for the amount charged to its account. All such loan availments shall constitute a first lien on all the properties of the BORROWER including those constructed or procured through the loan availments. (Emphasis supplied)*

The grant of any portion[,] if any, shall be utilized first if already in [the] LENDER's possession. Once the grant portion is fully utilized, subsequent project disbursements should be drawn from the loan. For bookkeeping purposes, all grant availments shall be recorded by the [water district] in their books as "Paid-in Capital[.]"<sup>123</sup> (Emphasis supplied)

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<sup>122</sup> *Id.* at 708–709.

<sup>123</sup> *Rollo*, pp. 136–137.

To reiterate, the proceeds that were used to finance the construction of the Project were sourced by the LWUA from a loan from the Overseas Economic Cooperation Fund of the Government of Japan, through the JBIC. In view of this arrangement, Item No. 15 of the Construction Contract provides:

15. All payments to the Contractor that will qualify for funding under the Overseas Economic Cooperation Fund (OECF) shall be paid through the Transfer Procedure or Commitment Procedure of the OECF. *All payments that will qualify under the said funding shall be paid directly to the Contractor by the LWUA.* Delivery of materials shall be made well in advance of the loan closing date to allow ample time for processing of the final payments.<sup>124</sup> (Emphasis supplied)

The Amendment to the Construction Contract likewise reads:

2. That as a measure of protection and to ensure the timely completion of the project, the contractor shall open a joint account with [the] LWUA for work items which have no bid prices, the equivalent amount of which shall be based on the Approved Agency Estimates (AAE);<sup>125</sup>

Finally, the MOA executed by the LWUA, the BCWD, and RDPCI provides that it is the LWUA which shall pay RDPCI through the joint bank account set up in accordance with the Amendment to the Construction Contract:

5. *The Agent[, LWUA,] shall release payments to the aforementioned joint savings account* not later than [45] working days from receipt by the Resident Engineer of the complete requirements for payment based on the routing slip.<sup>126</sup> (Emphasis supplied)

Construing the terms of these agreements, it is the LWUA who is obligated to pay the contractor for the works completed under the Project. It is explicit that the LWUA would act as the disbursing entity, as no funds were actually transferred or delivered to the BCWD. Even the BCWD forwarded the argument that the total amount of the loan remained in the possession of LWUA.<sup>127</sup> Thus, the nature of the LWUA's obligation is solidary, for it is incumbent upon it to pay RDPCI upon completion of the Project. It would be unreasonable for the BCWD to be held solely liable to pay RDPCI, when no money was ever delivered by the LWUA, who maintained full control over the funds supposedly loaned by the BCWD.

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<sup>124</sup> *Id.* at 173.

<sup>125</sup> *Id.* at 177.

<sup>126</sup> *Id.* at 187.

<sup>127</sup> *Id.* at 319.



*Second*, notwithstanding the absence of any indicative words of solidarity in the Financial Assistance Contract and the Construction Contract, including the Supplemental Agreement, it is evident that the stipulations found in the said contracts show the solidary liability of the LWUA.

As correctly found by the CA, the LWUA was constituted as the disbursing office of the BCWD with respect to the Construction Contract. The Financial Assistance Contract states that the LWUA is authorized to “release payments ... chargeable to the proceeds of this loan contract[.]”<sup>128</sup> As discussed above, it is incumbent upon the LWUA to pay the contractor. Thus, under the terms of the Financial Assistance Contract, the Construction Contract, the Supplemental Agreement, the MOA, and such other agreements entered into by the parties, RDPCI may validly claim the *whole amount* due it under the Construction Contract and the Supplemental Agreement for the portion of the work that continues to be unpaid against the LWUA, as the party who is obligated to pay the contractor.

*Third*, the nature of the LWUA’s obligation is such that it is impossible to quantify how much should be shouldered by the LWUA or the BCWD considering that both parties were, as found by the CIAC, negligent in not paying RDPCI for the works done under the Project. As correctly posited by RDPCI, the delineation of the ultimate obligations and liabilities relative to the Project is so muddled that both the LWUA and the BCWD were able to hide behind the various contracts executed by them with RDPCI.<sup>129</sup>

It is apparent to the Court, however, that ultimately, even though the BCWD is the owner of the Project, the active participation of the LWUA in the Construction Contract and the Supplemental Agreement cannot be gainsaid. The LWUA has retained authority as to when payment shall be made to the contractor, and has maintained control over the funds to be used for such payment. Such obligation, alongside the BCWD’s ownership of the Project, cannot be divorced from the overall scheme over which whole Project was implemented.

As aptly found by the CA, the ingrained involvement of the LWUA in the Project, together with the BCWD’s role as owner thereof, was inseparable that it would be difficult to determine their respective liability. Thus, the nature of this indivisible obligation required solidarity as between the LWUA and the BCWD.

*Finally*, subsequent actions of the parties show their true intention that the LWUA should likewise be held liable solidarily with BCWD.

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<sup>128</sup> *Id.* at 140.

<sup>129</sup> *Id.* at 326.



Contemporaneous and subsequent acts of the parties are considered indicators of the parties' true intent. As held in *Javier v. Court of Appeals*:<sup>130</sup>

It is settled that the previous and simultaneous and subsequent acts of the parties are properly cognizable indicia of their true intention. Where the parties to a contract have given it a practical construction by their conduct as by acts in partial performance, such construction may be considered by the court in construing the contract, determining its meaning and ascertaining the mutual intention of the parties at the time of contracting. The parties' practical construction of their contract has been characterized as a clue or index to, or as evidence of, their intention or meaning and as an important, significant, convincing, persuasive, or influential factor in determining the proper construction of the agreement.<sup>131</sup> (Citations omitted)

As correctly ruled by both the CIAC Arbitral Tribunal and the CA, the subsequent acts of the LWUA, after the execution of the Construction Contract, including the Supplemental Agreement, such as: (a) sending the Notice of Award and the Notice to Proceed to RDPCI; (b) issuing a series of Board Resolutions regarding the Construction Contract; (c) entering into a Memorandum of Agreement with the BCWD and RDPCI; (d) amending the Construction Contract for the conversion of the part of the PHP component into USD; (e) acting as disbursing office for the payments made to RDPCI; and (f) requiring its approval for final acceptance of the Project,<sup>132</sup> show that the LWUA did not merely act as an agent of the BCWD. In reality, these acts created the impression that it was the LWUA who had control over the Project, particularly over how payments to the contractor were made.

During the pendency of this case, RDPCI filed a Petition for Money Claim<sup>133</sup> before the Commission on Audit (COA) against the LWUA and the BCWD. This money claim is based on the Final Award of the CIAC Arbitral Tribunal, which had become final and executory with respect to the BCWD in view of the dismissal by the CA of the BCWD's appeal.<sup>134</sup>

In the Decision No. 2017-072,<sup>135</sup> dated March 21, 2017, the COA granted the money claim filed by RDPCI against the BCWD, but dismissed the same against the LWUA for lack of jurisdiction. The COA recognized that the LWUA had a pending Petition before the Court, which is this case, thereby precluding the COA from acting on the money claim. The COA Decision became final and executory on February 27, 2018.<sup>136</sup>

<sup>130</sup> 262 Phil. 188 (1990) [Per J. Regalado, Second Division].

<sup>131</sup> *Id.* at 198.

<sup>132</sup> *Rollo*, pp. 36–37.

<sup>133</sup> *Id.* at 656–690.

<sup>134</sup> *Id.* at 557.

<sup>135</sup> *Id.* at 691–704.

<sup>136</sup> *Id.* at 705–706.



In view of the final and executory Decision of the COA, RDPCI moved for execution thereof with the CIAC. However, after several attempts to enforce the Decision, only one bank was able to remit the amount of PHP 390,307.37 to RDPCI, out of the total judgment award of PHP 80,957,759.51.<sup>137</sup>

Moreover, the BCWD had engaged in the act of withdrawing all its deposits, using the proceeds thereof to buy manager's checks, and encashing them prior to becoming stale. The COA noted that this practice was resorted to by the BCWD to avoid the garnishment of its bank accounts pursuant to the writs of execution issued by the CIAC.<sup>138</sup>

With all these in mind, the Court cannot ignore the fact that this case stemmed from a Construction Contract executed way back in 1998. RDPCI has long completed the construction of the Project, and the BCWD has made use of the Project in its operations. For this case to continue to drag on without end is anathema to the basic tenets of justice and fair play, especially against the principles that underlie unjust enrichment.

In cases where unjust enrichment is present, the Court may exercise its equity jurisdiction to allow for the proper restitution to the aggrieved party. As explained in *Reyes v. Lim*:<sup>139</sup>

The purpose of the exercise of equity jurisdiction in this case is to prevent unjust enrichment and to ensure restitution. Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.<sup>140</sup> (Citations omitted)

Under these circumstances, it is thus proper to hold the LWUA solidarily liable with the BCWD to pay the monetary claims adjudged in favor of RDPCI.

*The LWUA is solidarily liable with the BCWD to pay attorney's fees and the cost of arbitration*

In the Final Award, the CIAC Arbitral Tribunal awarded attorney's fees to RDPCI on the basis of Article 2208, Paragraph 11 of the Civil Code, i.e.,

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<sup>137</sup> *Id.* at 513–514.

<sup>138</sup> *Id.* at 514–515.

<sup>139</sup> 456 Phil. 1 (2003) [Per J. Carpio, First Division].

<sup>140</sup> *Id.* at 10.



that the award is just and equitable under the circumstances. The said body reasoned that if RDPCI had not brought its claim before arbitration, the payment for its work would have been in a state of indefinite limbo, thus compelling RDPCI to file suit. In addition, since RDPCI is the prevailing party in the CIAC, the Arbitral Tribunal likewise awarded the cost of arbitration as a matter of course.<sup>141</sup> The CA affirmed the award of attorney's fees and cost of arbitration.<sup>142</sup>

It is a rule that the parties may stipulate in their agreement the recovery of attorney's fees. Without such stipulation, Article 2208 of the Civil Code enumerates the instances when these fees may be awarded:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

It is a settled rule, however, that the award of attorney's fees is not automatic to a winning party. Such award requires factual, legal and equitable

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<sup>141</sup> *Rollo*, pp. 107-109.

<sup>142</sup> *Id.* at 42.



considerations, which must be embodied in the tribunal's judgment. As held in *Spouses Timado v. Rural Bank of San Jose, Inc.*:<sup>143</sup>

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. **The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.** Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

The award of attorney's fees to the winning party lies *within the discretion of the court*, taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. In addition, the court should *state the reason for the award of attorney's fees in the body of the decision*. Its unheralded appearance in the dispositive portion, as a rule, is not allowed.<sup>144</sup> (Emphasis in the original)

As correctly found by the CIAC Arbitral Tribunal, and affirmed by the CA, RDPCI had no choice but to file the arbitration case to compel the parties to heed its numerous demands for payment of the works already done under the Project. In the Letter, dated October 26, 2009, RDPCI had already submitted to both the LWUA and the BCWD the final Monthly Progress Payment Report covering the finalization of the Project, thus billing the latter entities the collectible amount of PHP 15,731,605.60 plus USD 80,282.35.<sup>145</sup> Then, in the Letter, dated March 25, 2010, RDPCI reiterated its claim for payment and informed the LWUA and the BCWD that it is constrained to avail of legal remedies considering the inaction on the part of the LWUA, and the unreasonable delay of the BCWD in processing the claim even if it had been using the Project for more than four years already.<sup>146</sup>

If not for the cavalier attitude of the LWUA in not communicating with RDPCI considering that it had been appointed as manager of the Project, and for the unreasonable delay of the BCWD in settling the issues with regard to the variations thereof, RDPCI would not have invoked the arbitration clause under the Construction Contract. Equally telling is that the BCWD had used the Project in its operations for years, and the LWUA allowed this arrangement to continue, without paying the final claims made by RDPCI. It is thus reasonable for the Court to sustain the award of attorney's fees in the amount of PHP 750,000.00.

<sup>143</sup> 789 Phil. 453 (2016) [Per J. Brion, Second Division].

<sup>144</sup> *Id.* at 460.

<sup>145</sup> *Rollo*, p. 224.

<sup>146</sup> *Id.* at 226-227.



Moreover, the award for the cost of arbitration in favor of RDPCI is proper. Rule 16, Section 16.5 of CIAC Rules of Procedure Governing Construction Arbitration<sup>147</sup> provides that where the parties agreed that the sharing of fees shall be determined by the CIAC Arbitral Tribunal, the Final Award shall fix the costs of the arbitration, and decide which of the parties shall bear the cost.

In relation thereto, Rule 142, Section 1 of the Rules of Court provides as follows:

SEC. 1. *Cost ordinarily follow results of suit.—Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law. (Emphasis supplied)*

Here, the issue of the award for the cost of arbitration is one that is included in the Terms of Reference of arbitration agreed upon by the parties, the final disposition of which rested in the CIAC Arbitral Tribunal.<sup>148</sup>

Considering that RDPCI is the prevailing party, the cost of arbitration should be awarded in its favor as a matter of course. Importantly, the circumstances of this case, which show that RDPCI was forced to file the arbitration suit before the CIAC to enforce its claim, justify the said award.<sup>149</sup>

**ACCORDINGLY**, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The Decision, dated December 17, 2012, and the Resolution, dated January 15, 2014, of the Court of Appeals in CA-G.R. SP No. 119019, are **AFFIRMED**.

**SO ORDERED.**

  
**MARIA FILOMENA D. SINGH**  
Associate Justice

<sup>147</sup> CIAC RULES OF PROCEDURE, rule 16, sec. 16.5 states:

In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them.

<sup>148</sup> *Rollo*, p. 109.

<sup>149</sup> See *Philippine National Construction Corporation v. Court of Appeals*, 543 Phil. 530 (2007) [Per J. Chico-Nazario, Third Division].

**WE CONCUR:**

On official leave  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

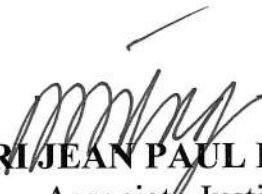
  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

**ATTESTATION**

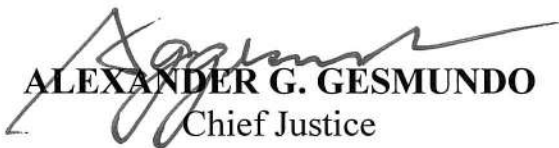
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice  
Acting Chairperson, Third Division  
Per S.O. No. 3116 dated July 18, 2024



**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Acting Chairperson’s Attestation, 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

