



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

**SOUTHSTAR CONSTRUCTION
 AND DEVELOPMENT
 CORPORATION,**

Petitioner,

- versus -

**PHILIPPINE
 CORPORATION,**

ESTATES

Respondent.

G.R. No. 218966

Present:

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

Promulgated:

August 1, 2022

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DECISION

GAERLAN, J.:

Before the Court is a Petition for Review on *Certiorari*¹ dated August 24, 2015 filed by petitioner Southstar Construction and Development Corporation (Southstar), praying for the reversal of the Decision² dated January 22, 2015 and the Resolution³ dated June 16, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 101973.

The Factual Antecedents

Sometime in 2005, Southstar and Philippine Estates Corporation (PHES) entered into three different Construction Agreements, wherein

¹ Rollo, pp. 8-31.

² Id. at 33-49. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Elihu A. Ybañez and Carmelita Salandanan-Manahan, concurring.

³ Id. at 51-52.

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Southstar was engaged to undertake various construction projects in Jaro Estates, Iloilo City.⁴

Under the First Construction Agreement⁵ dated March 31, 2005, Southstar was tasked to construct three Model Houses located at Coastal Villas, Jaro Estates, Iloilo City, for a total amount of ₱3,358,000.00.⁶ As outlined in the First Construction Agreement, the terms of payment were as follows:

ARTICLE IV – TERMS OF PAYMENT

- 4.1 Upon submission by the CONTRACTOR [Southstar] to the OWNER [PHES] of the Performance Bond, and Surety Bond required under Article VIII of this Agreement, the OWNER shall release to the CONTRACTOR the down payment for the batch of houses to be constructed representing **Thirty Percent (30%)** of the total cost of the model houses or **ONE MILLION SEVEN THOUSAND FOUR HUNDRED PESOS ONLY (P1,007,400.00)**. The balance of the contract shall be paid through progress billings.

Payment shall be made by the OWNER to the CONTRACTOR within thirty (30) working days after receipt of the approved Construction Manager's certificate of payment. Furthermore, the progress payments shall be reduced by a portion of the down payment made by the OWNER corresponding to the value of work completed.

- 4.2 Ten Percent (10%) of each progress payment shall be retained by the OWNER until the full completion of the contract.
- 4.3 The full amount of retention shall be released by the OWNER to the CONTRACTOR, Thirty (30) days after the completion and acceptance of the works by the OWNER and submission by the contractor of the following:
- a) Contractor's Sworn Statement showing that all taxes due from the CONTRACTOR, and all obligations on materials used and labor employed in connection with this contract have been duly paid.
 - b) Guarantee Bond equivalent to Ten Percent (10%) of the Contract Price covering a period of one year after final completion and acceptance to answer for faulty and/or defective materials or workmanship as stated in Article IX.

⁴ Id. at 9.

⁵ Id. at 211-219.

⁶ Id. at 212.

- c) Three (3) Original, signed and sealed sets of prints of “As-Built” drawings.⁷

Furthermore, the First Construction Agreement provided that the three Model Houses must be completed within 120 calendar days beginning on March 7, 2005.⁸ Failure to complete the work entitled PHES to liquidated damages, in accordance with Article VII of the First Construction Agreement:

ARTICLE VII – FAILURE TO COMPLETE WORK

For failure to complete work, on completion dates, plus extension granted if any, the CONTRACTOR shall pay the OWNER liquidated damages equivalent to One Tenth of One Percent (0.1%) of the Total Contract Amount per calendar day of delay (including Sundays and Holidays) until the work is completed by the CONTRACTOR or a third party. Any sum which may be payable to the OWNER for such loss may be deducted from the amounts retained under Article VI.⁹

Notably, under Article VIII of the First Construction Agreement, Southstar was likewise required to post several bonds to ensure performance of its obligations under the First Construction Agreement, to wit:

ARTICLE VIII – BONDS AND INSURANCES

PERFORMANCE BOND:

Upon signing of this Contract, the CONTRACTOR shall secure at its own expense and deliver to the OWNER a Performance and Liability Bond in the form of a Surety Bond posted by a licensed domestic bonding company, acceptable to the OWNER, equivalent to Fifteen Percent (15%) of the total contract price or **FIVE HUNDRED THREE THOUSAND SEVEN HUNDRED PESOS ONLY (P503,700.00)**. Such Bond shall answer for the liability of the CONTRACTOR for delays and shall extend its guarantee to include contract changes that may be made during the progress of the construction. Such bond shall further guarantee payment of both labor and materials under this Contract.

The Coverage of Performance Bond shall be for the total construction period including extensions that may be made.

ADVANCE PAYMENT BOND:

Prior to receipt of the down payment and prior to the performance of the CONTRACTOR of his work under this Contract, the CONTRACTOR shall deliver to the OWNER an advance payment bond equivalent to Thirty

⁷ Id. at 213.

⁸ Id.

⁹ Id. at 214.

Percent (30%) of the Contract Amount or equivalent to **ONE MILLION SEVEN THOUSAND FOUR HUNDRED PESOS ONLY (P1,007,400.00)** posted by a licensed bonding company acceptable to the OWNER.

ALL-RISK INSURANCE:

The Contractor shall secure at its own expense within thirty (30) calendar days after the signing of the Contract, a Contractor's All Risk Insurance to be issued by a licensed bonding company acceptable to the OWNER in the amount equivalent to its total contract price. The Contractor's All-risk Insurance shall cover the total construction period and the specified beneficiaries shall be the OWNER and the CONTRACTOR according to their interests.

GUARANTEE BOND:

The CONTRACTOR shall, upon [the] OWNER's final acceptance of the works and prior to issuance of final payment, obtain at its own expense a Guarantee Bond equivalent to Ten Percent (10%) of the total Contract Price including all awarded additional amount to answer for faulty and/or defective materials or workmanship for a period of one (1) year starting from the date of final acceptance of the work.

The OWNER shall release the Performance Bond upon the submission of the CONTRACTOR of the Guarantee Bond.¹⁰

The First Construction Agreement also detailed the requirements for the completion and final acceptance of the three Model Houses:

ARTICLE XI – COMPLETION & FINAL ACCEPTANCE

- 11.1 If the work done by the CONTRACTOR is fully completed and in accordance with this Agreement, the OWNER shall within thirty (30) days issue a written certificate of acceptance thereof and the balance found to be due the CONTRACTOR shall become payable, subject only to the retention provided for under Article IV and to claims under Article VII, XII, and IX.
- 11.2 After completion of works, clean-up and demobilization of the CONTRACTOR, a working crew consisting of at least a Project Engineer or Supervisor, a Finishing Carpenter, Finishing Mason and other trades as may be necessary with an adequate stock of materials, tools and equipment shall be available at the project site until the final acceptance of the OWNER.
- 11.3 Before issuance of the certificate of acceptance, the CONTRACTOR shall submit evidence satisfactory to the OWNER that all payrolls, materials, bills and other indebtedness relating to the work have been paid. Any claim by any party arising from this

¹⁰ Id.



agreement will be sufficient reason for the OWNER to withhold any payment due the CONTRACTOR for such amount of the claim.¹¹

Moreover, the First Construction Agreement specified each party's obligations in case of insolvency or default:

ARTICLE XII – INSOLVENCY AND EVENTS OF DEFAULT

This Agreement shall be deemed automatically terminated and cancelled and the OWNER may, after giving written notice of at least seven (7) days to the CONTRACTOR and without the necessity of court action, enter upon the site and take over the works, and the CONTRACTOR shall voluntarily and unconditionally surrender and turnover the works if:

The CONTRACTOR shall become bankrupt or insolvent, or proceedings in relation thereto is instituted by or against it, or if it commits acts indicating bankruptcy or insolvency, or levy on execution is instituted against it, if it shall assign or sublet this contract without prior written consent of the OWNER;

The CONTRACTOR has abandoned the work or has failed to commence such work without a good, valid and reasonable ground;

The CONTRACTOR has suspended the progress of the works for seven (7) consecutive days;

In case there are materials or workmanship rejected by the OWNER and the CONTRACTOR fails to undertake the corresponding corrective measures within fifteen (15) days from receipt of the OWNER's written request for correction;

Despite previous warning by the OWNER in writing, the CONTRACTOR is not executing the works in accordance with this contract or is persistently or flagrantly neglecting to carry out his obligations herein stipulated;

Without reasonable and acceptable ground has caused delay of the work by more than ten percent (10%) of the contract time;

Has, sublet any part of this contract.

In any of the above instances, all essential equipment belonging to the CONTRACTOR as may be needed for the completion of the works by the OWNER itself or other contractors shall at the option of the OWNER,

¹¹ Id. at 216.

remain in the site until the works are completed and shall be rented at such price reasonable under the circumstances. The OWNER shall, likewise, be entitled to confiscate the herein Performance Bond as compensation for all damages and expenses that it may suffer without prejudice to other remedies that it may have under this contract and under the law. All expenses incurred to finish the works shall be charged to the CONTRACTOR and/or its bond and the OWNER is hereby authorized to deduct such expenses from any money due the CONTRACTOR.

The CONTRACTOR hereby appoints the OWNER as its attorney-in-fact for purposes of implementing the provisions of this Article and the CONTRACTOR hereby absolutely and unconditionally waives any and all claims and actions against the OWNER as a result of the execution of the provisions of this Article.¹²

Finally, it is stipulated under Article XVI of the First Construction Agreement that in cases where judicial proceedings are instituted, attorney's fees shall be paid to the winning litigant:

ARTICLE XVI – GENERAL PROVISIONS

x x x x

16.2 In the event, the OWNER/CONTRACTOR institutes judicial proceedings in order to enforce any terms or conditions of this Agreement, the CONTRACTOR/OWNER should it be adjudged liable in whole or in part, shall pay the OWNER/CONTRACTOR reasonable attorney's fees in the amount equivalent to at least ten percent (10%) of the total amount claimed in addition to all expenses of litigation and costs of the suit.

x x x x¹³

Meanwhile, under the Second Construction Agreement¹⁴ dated March 31, 2005, Southstar was tasked to undertake the Development of the Phase Entry for Coastal Villas at Jaro Estates, Iloilo City, for the amount of ₱900,000.00,¹⁵ to be completed within 45 calendar days beginning from March 4, 2005, or upon receipt of the down payment.¹⁶

Notably, the Second Construction Agreement contained similar provisions as regards terms of payment, failure to complete work, bonds and insurances, completion and final acceptance, insolvency and events of default, and the payment of attorney's fees, found in the First Construction Agreement.

¹² Id. at 217.

¹³ Id. at 218.

¹⁴ Id. at 220-228.

¹⁵ Id. at 221.

¹⁶ Id. at 222.

Finally, under the Third Construction Agreement¹⁷ dated June 29, 2005, Southstar was engaged to undertake the completion/take-over of the four Eunice Units at the Chateaux Geneva, Jaro Estates, Iloilo City, for the total amount of ₱3,470,931.84.¹⁸ The Third Construction Agreement also provided the expected date of completion of the four Eunice Units, as follows:

ARTICLE VI – TIME OF COMPLETION

The CONTRACTOR shall complete the four Eunice units as follows:

<i>Blk. No.</i>	<i>Lot No.</i>	<i>Construction Duration</i>	<i>Expected Completion</i>
3	8	75 cds.	June 15, 2005
10	1	45 cds.	May 31, 2005
11	16/18	45 cds.	May 31, 2005
11	24	75 cds.	June 15, 2005 ¹⁹

The Third Construction Agreement likewise contained the same provisions found in the First and Second Construction Agreements as regards terms of payment, failure to complete work, bonds and insurances, completion and final acceptance, insolvency and events of default, and the payment of attorney's fees.

After the execution of the three Construction Agreements, Southstar fulfilled its obligations and turned over the construction projects to PHES sometime in October 2005. Pertinently, on January 13, 2006, PHES issued Certificate of Payment No. 4²⁰ (certificate of completion), signed by Kenneth T. Gatchalian (Gatchalian) and Elvira Ting (Ting), PHES' Chief Operating Officer and President, respectively, certifying that the four Eunice Units at Chateaux Geneva have been 100% completed.

Partial payments were made, but PHES refused to pay the balance of the contract price as specified in the Construction Agreements, as shown below:

PROJECT	CONTRACT PRICE	AMOUNT PAID	BALANCE
Three Model Houses at Coastal Villas, Jaro Estates	₱3,358,000.00	₱1,664,577.00	₱1,693,423.00

¹⁷ Id. at 229-237.

¹⁸ Id. at 230.

¹⁹ Id. at 231.

²⁰ Id. at 96-97.

Development of the Phase Entry at Coastal Villas, Jaro Estates	₱900,000.00	₱764,483.78	₱135,516.22
Take-over and completion of the four Eunice Units at Chateaux Geneva, Jaro Estates	₱3,470,931.84	₱2,847,198.89	₱623,732.95
TOTAL BALANCE:			₱2,452,672.17²¹

Because of PHES' refusal to pay, Southstar engaged the services of counsel, who sent several demand letters to PHES.

On May 19, 2006, Southstar's counsel sent a Demand Letter,²² addressed to Gatchalian, demanding payment of the amount of ₱623,732.95 in connection with the take-over and completion of the four Eunice Units at Chateaux Geneva. Thereafter, Southstar sent another Demand Letter²³ dated June 2, 2006, addressed to Ting, reiterating its demand for the payment of ₱623,732.95 in connection with the take-over and completion of the four Eunice Units at Chateaux Geneva. However, instead of making payment, Gatchalian wrote a Letter²⁴ dated June 28, 2006, where he alleged substandard work in the construction project.²⁵ Thus, Southstar was constrained to send a Final Demand Letter²⁶ dated November 9, 2006, to which PHES never responded.

Meanwhile, as regards the completion of the three Model Houses at Coastal Villas, Southstar sent a Demand Letter²⁷ dated April 13, 2007, demanding payment of the amount of ₱1,693,423.00. On the same date, Southstar, likewise, sent another Demand Letter,²⁸ demanding payment of the amount of ₱135,516.22, in connection with the completion of the Development of the Phase Entry at Coastal Villas. Notably, Southstar sent several follow-up demand letters, but PHES did not reply.²⁹

Proceedings Before the Regional Trial Court

Considering PHES' refusal to heed Southstar's demands for

²¹ Id. at 10.

²² Id. at 239.

²³ Id. at 240.

²⁴ Id. at 95.

²⁵ Id. at 10.

²⁶ Id. at 245-246.

²⁷ Id. at 250.

²⁸ Id. at 252.

²⁹ Id. at 11.

payment, Southstar was constrained to file a Complaint³⁰ on October 2, 2007 before the Regional Trial Court (RTC) of Imus, Cavite.³¹

On October 17, 2008, PHES filed its Answer (With Counterclaims),³² where PHES alleged, among others, that: (1) Southstar failed to complete the construction projects; (2) Southstar rendered substandard work; (3) Southstar incurred delay; and (4) no turn-over and final acceptance were ever made by the parties.³³

As regards to PHES' counterclaims, PHES argued that it is entitled to liquidated damages in the total amount of ₱11,188,668.20, in view of Southstar's delay, not only in the construction projects situated in Iloilo City and covered by the Construction Agreements, but also for Southstar's delay in another construction project – the Mercedes Unit at Pacific Grand Villas – located in Lapu-Lapu City, Cebu. Moreover, PHES prayed for: (1) the payment of the cost of expenses to rectify Southstar's substandard work in the amount of ₱476,007.90; (2) moral damages in the amount of ₱1,000,000.00; (3) exemplary damages in the amount of ₱1,000,000.00; and (4) attorney's fees in the amount of ₱500,000.00.³⁴

After trial, the RTC rendered its Decision³⁵ dated May 2, 2013, the dispositive portion of which, reads:

WHEREFORE, premises considered judgment is hereby rendered as follows:

1. ORDERING defendant Philippine Estates Corporation to pay plaintiff South Star Construction and Development Corp. the total amount of One Million Nine Hundred Seventy Five [Thousand] Eight Hundred Thirty Six Pesos and Seventeen Centavos (Php 1,975,836.17) with interest at six percent (6%) from the filing of the instant petition and at the legal rate of twelve percent (12%) per annum from the attainment of finality of this decision; and
2. No pronouncement as to attorney's fees and costs of suit.

SO ORDERED.³⁶ (Emphases in the original)

³⁰ Id. at 53-60.

³¹ Id. at 11.

³² Id. at 118-137.

³³ Id. at 122-132.

³⁴ Id. at 132-133.

³⁵ Id. at 375-380.

³⁶ Id. at 380.

In ruling in favor of Southstar, the RTC first discussed that Southstar's claims were based on three separate Construction Agreements. With regard to the construction of the four Eunice Units in Chateaux Geneva, the RTC ruled that PHES' certificate of completion, stating that the construction project is 100% completed is sufficient evidence to warrant the payment of the balance in the amount of ₱623,732.95. According to the RTC, such certificate of completion constitutes as a waiver for any protest or objection PHES may have with respect to the construction project.³⁷

Meanwhile, as regards the Development of Phase Entry at Coastal Villas, the RTC found that Southstar was able to complete the same. The RTC opined that PHES' contention that Southstar rendered substandard work and incurred delay is belied by the fact that PHES failed to provide field memos, and failed to reply to Southstar's demands for payment. The RTC likewise observed that PHES failed to adduce any documentary evidence to support its claim that it incurred expenses for rectification works. Thus, the RTC ruled that Southstar is entitled to the relief sought in the amount of ₱135,516.22.³⁸

Finally, as regards the construction of the three Model Houses at Coastal Villas, the RTC found that Southstar completed the same and thus, Southstar is entitled to the payment of the balance in the amount of ₱1,693,423.00.³⁹ However, the RTC also awarded liquidated damages in favor of PHES because of Southstar's delay. The RTC noted that the first demand letter relating to the payment of the balance of the contract price for the three Model Houses at Coastal Villas was only sent by Southstar on April 13, 2007, despite Southstar's contention that it had already turned over the same in 2005. As such, the RTC ruled that such delay of almost 450 days entitled PHES to liquidated damages in the amount of ₱980,536.00 based on the rate of 0.1% of the total contract price pursuant to Article VII of the Construction Agreement.⁴⁰

Notably, with regard to PHES' other counterclaim relating to the Mercedes Unit at Pacific Grand Villas situated in Lapu-Lapu City, Cebu, the RTC found that the same is a permissive counterclaim which should not be given due course considering that the proper docket fees were not duly paid.⁴¹

³⁷ Id. at 378.

³⁸ Id. at 378-379.

³⁹ Id. at 379.

⁴⁰ Id.

⁴¹ Id. at 380.

Proceedings Before the Court of Appeals

Both Southstar and PHES appealed before the CA. On June 18, 2014, PHES filed its Appellant's Brief,⁴² where it raised the following assignments of error:

I

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING DEFENDANT-APPELLANT LIABLE TO PLAINTIFF-APPELLEE FOR THE ALLEGED COMPLETION OF THE CONSTRUCTION OF THE FOUR (4) EUNICE UNITS IN CHATEAUX GENEVA ON THE BASIS OF CERTIFICATE OF PAYMENT NO. 4.

II

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING DEFENDANT-APPELLANT LIABLE TO PLAINTIFF-APPELLEE FOR THE ALLEGED COMPLETION OF THE DEVELOPMENT OF THE PHASE ENTRY AT COASTAL VILLAS.

III

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING DEFENDANT-APPELLANT LIABLE TO PLAINTIFF-APPELLEE FOR THE ALLEGED COMPLETION OF THE CONSTRUCTION OF THREE (3) MODEL HOUSES AT COASTAL VILLAS.

IV

THE HONORABLE REGIONAL TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT'S CLAIM, RELATING TO THE PROJECT FOR THE CONSTRUCTION OF THE MERCEDES UNIT AT PACIFIC GRAND VILLAS, IS A PERMISSIVE COUNTERCLAIM DESPITE ITS ORDER DATED 05 MARCH 2009 WHICH HELD THAT THE CLAIM IS COMPULSORY IN NATURE.⁴³

Meanwhile, on August 19, 2014, Southstar filed its Appellant's Brief,⁴⁴ where it raised the following assignments of error:

I

THE TRIAL COURT ERRED IN FINDING THE PLAINTIFF-APPELLANT GUILTY OF DELAY IN PERFORMANCE AND LIABLE FOR PENALTIES IN RESPECT OF THE THREE MODEL HOUSES AT THE COASTAL VILLAS PROJECT.⁴⁵

⁴² Id. at 380-420.

⁴³ Id. at 384-385.

⁴⁴ Id. at 421-440.

⁴⁵ Id. at 424.

II
THE TRIAL COURT ERRED IN FAILING TO AWARD ATTORNEY'S FEES AND COSTS TO THE PLAINTIFF-APPELLANT.⁴⁶

On January 22, 2015, the CA rendered its Decision,⁴⁷ which ruled in favor of PHES, to wit:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the appeal that was filed by plaintiff-appellant Southstar Construction & Development Corporation for lack of merit. On the other hand, the appeal that was filed by defendant-appellant Philippine Estates Corporation is **GRANTED**. The Decision that was rendered by Judge Fernando L. Felicen of Branch 20 of the Regional Trial Court of the Fourth (4th) Judicial Region in Imus, Cavite on May 2, 2013 and its subsequent Order dated September 19, 2013 in Civil Case No. 1671-07 are **REVERSED** and **SET ASIDE**. The complaint for collection of sum of money that was filed by the plaintiff-appellant is hereby **DISMISSED** for lack of merit.

Further, anent the counterclaim that was filed by the defendant-appellant, the same is hereby **GRANTED**. The plaintiff-appellant is thus **ORDERED** to pay the defendant-appellant the total amount of Eleven Million One Hundred Eighty Eight Thousand Six Hundred Sixty Eight Pesos and Twenty Centavos (Php11,188,668.20) corresponding to liquidated damages by reason of the delay and non-completion of the construction projects, plus legal interest thereon at the rate of twelve percent (12%) per annum. Other claims for damages by the defendant-appellant are dismissed for lack of merit.

SO ORDERED.⁴⁸ (Emphases in the original)

In reversing the RTC's decision, the CA stated that Southstar's evidence failed to establish that it was entitled to the payment of the balance. Citing Article 4.3 of the Construction Agreements, which provides that certain requirements must first be complied with before Southstar shall be entitled to full payment, the CA ruled that Southstar failed to present any evidence to show that such requirements were complied with so as to entitle it to the payment of the balance of the contract price.⁴⁹

Moreover, the CA found that certain conditions must, likewise, be complied with in accordance with Articles 11.1 and 11.3 of the Construction Agreements, before it can be said that the construction projects have been completed and accepted. Considering that there was no showing that

⁴⁶ Id.

⁴⁷ Id. at 33-49.

⁴⁸ Id. at 47-48.

⁴⁹ Id. at 43-44.

Southstar complied with the said conditions, the CA ruled that Southstar could not rightfully demand that PHES pay the balance of the contract price.⁵⁰

The CA, likewise, agreed with the contention of PHES that Southstar incurred delay. Accordingly, the CA held that PHES is entitled to liquidated damages in the amount of ₱11,188,668.20.⁵¹

Finally, with respect to the allegation that PHES' counterclaim relating to the construction of the Mercedes Unit at Pacific Grand Villas, located in Lapu-Lapu City, Cebu, the CA emphasized that the RTC already ruled that such claim is compulsory in nature, and thus, PHES could not have been expected to pay the docket fees thereon. In any case, the CA stated that even assuming such claim is permissive in nature, the dismissal of such claim is not warranted because the filing fees therefor shall constitute a lien on the judgment.⁵²

Aggrieved by the CA's reversal of the RTC's Decision, Southstar filed its Motion for Reconsideration⁵³ dated February 24, 2015, but the same was denied in the CA's Resolution⁵⁴ dated June 16, 2015.

The Instant Petition

On August 24, 2015, Southstar timely filed the instant petition where it raised the following issues:

I

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RELIED UPON ARTICLE 4.3 OF THE CONSTRUCTION AGREEMENTS.

II

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RELIED UPON ARTICLE 11.1 AND ARTICLE 11.3 OF THE CONSTRUCTION AGREEMENTS.

III

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT IGNORED THE PREPONDERANT EVIDENCE OF PROJECT COMPLETION ADDUCED BY THE PETITIONER.

⁵⁰ Id. at 44-45.

⁵¹ Id. at 45.

⁵² Id. at 46-47.

⁵³ Id. at 495-507.

⁵⁴ Id. at 51-52.

IV

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT FOUND THAT THERE WAS DELAY ON THE PART OF THE PETITIONER.

V

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AWARDED THE PERMISSIVE COUNTERCLAIM OF RESPONDENT.

VI

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT FAILED TO AWARD ATTORNEY'S FEES AND COSTS TO THE PETITIONER.

VII

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AWARDED LEGAL INTEREST AT THE RATE OF 12% PER ANNUM.⁵⁵

Thus, in the instant petition, Southstar made the following key arguments:

First, with respect to the four Eunice Units at Chateaux Geneva, Southstar argued that the certificate of completion stating that the same was 100% complete indicates PHES' acceptance, and nothing in the certificate of completion regarding any protest or objection to the non-submission of requirements under Article 4.3 of the contract agreements was ever mentioned by PHES. Thus, applying Article 1235⁵⁶ of the Civil Code, PHES could not validly argue that Southstar is not entitled to the balance of the contract price.⁵⁷

Meanwhile, as regards the three Model Houses and the Development of the Phase Entry at Coastal Villas, Southstar alleged that, even assuming it failed to submit the requirements under Article 4.3, such failure does not negate the fact that the construction projects have been completed, and that PHES had benefitted therefrom. Southstar had still substantially complied with its obligations in good faith, and under Article 1234⁵⁸ of the Civil Code,

⁵⁵ Id. at 13.

⁵⁶ Article 1235 of the Civil Code provides:

Article 1235. When the obligee accepts the performance, **knowing its incompleteness or irregularity**, and without expressing any protest or objection, the obligation is **deemed fully complied with**. (Emphasis supplied).

⁵⁷ *Rollo*, p. 14.

⁵⁸ Article 1234 of the Civil Code provides:

Article 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

it is still entitled to recover the balance as though there had been strict and complete fulfillment of its obligations.

Second, as regards the CA's reliance on Article 11.1 of the Construction Agreements, Southstar contended that the non-issuance of the certificate of acceptance was not a valid ground to withhold payment, since PHES refused to issue the same despite the fact that Southstar had already completed the construction projects. Thus, Article 1186⁵⁹ of the Civil Code must be applied. On the other hand, Southstar argued that Article 11.3 of the Construction Agreements is also inapplicable to supposedly justify PHES' non-payment because Article 11.3 only refers to the payment by the contractor of pay-rolls, materials, bills, and other work-related debt to third parties.⁶⁰

Third, with respect to the issue of delay, Southstar argued that the mere fact that the construction projects had not been completed on the stipulated dates under the Construction Agreements did not automatically mean that Southstar incurred delay. Citing Article 1169⁶¹ of the Civil Code, Southstar explained that it did not incur delay considering that PHES never made a judicial or extra-judicial demand.⁶²

Fourth, Southstar stressed that the CA erred when it awarded PHES' counterclaim relating to the Mercedes Unit at Pacific Grand Villas at Lapu-Lapu City, Cebu. Being a permissive counterclaim, since the construction project in Cebu did not arise out of nor was connected with the construction projects in Iloilo City, PHES should have paid the docket fees thereon.⁶³

On February 15, 2016, PHES filed its Comment⁶⁴ to Southstar's petition and argued that the CA did not commit any error when it reversed

⁵⁹ Article 1186 of the Civil Code provides:

Article 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.

⁶⁰ *Rollo*, pp. 16-17.

⁶¹ Article 1169 of the Civil Code provides:

Article 1169. Those obliged to deliver or to do something **incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.**

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis supplied).

⁶² *Rollo*, pp. 18-20.

⁶³ *Id.* at 20-21.

⁶⁴ *Id.* at 509-541.

the RTC's Decision. PHES emphasized, among others, that Southstar is not entitled to recover the full amount of the contract price, since it failed to submit the requirements needed under Article 4.3 of the Construction Agreements, the submission of which is a condition *sine qua non* for Southstar to be entitled to the full payment of the contract price.⁶⁵ PHES, likewise, argued that Southstar failed to complete the construction projects, and intentionally abandoned the same, as evidenced by the absence of any certificate of acceptance issued by PHES.⁶⁶

Thereafter, Southstar filed its Reply⁶⁷ dated June 30, 2016.

The Court's Ruling

The petition is partly meritorious.

Prefatorily, it must be noted that there are three separate construction projects under the three Construction Agreements involved in this case, namely: (1) the four Eunice Units at Chateaux Geneva; (2) the three Model Houses at Coastal Villas; and (3) the Development of the Phase Entry at Coastal Villas. Thus, the Court finds it essential to discuss these three separate construction projects *vis-à-vis* the issues raised by the parties.

Completion of the four units at Chateaux Geneva

For the four Eunice Units at Chateaux Geneva, it must be recalled that Southstar presented a certificate of completion issued by PHES expressly stating that the same had been 100% completed. Such acknowledgement on the part of PHES clearly entitles Southstar to the payment of the balance in the amount of ₱623,732.95, considering that, as pointed out by the RTC, the certificate of completion constitutes as a waiver for any protest or objection on the part of PHES regarding the construction project. That such certificate of completion is not denominated as a "certificate of acceptance" could not negate the fact that PHES acknowledged the completion of the construction project and accepted the same.

Invariably, by virtue of such acceptance through the certificate of completion issued by PHES, any supposed irregularity was deemed to have been waived in accordance with Article 1235 of the Civil Code. Thus, PHES

⁶⁵ Id. at 517-519.

⁶⁶ Id. at 523-526.

⁶⁷ Id. at 603-616.



is liable to pay Southstar the balance of the contract price for the four Eunice Units at Chateaux Geneva in the amount of ₱623,732.95.

Completion of the three Model Houses at Coastal Villas

For the three Model Houses at Coastal Villas, it bears emphasis that PHES never issued any certification that indicates that the same were 100% completed. Nevertheless, Southstar argued that it had completed the same. The CA, however, sided with PHES and ruled that Southstar is not entitled to recover the balance of the contract price because of Southstar's supposed failure to comply with the requirements under Articles 4.3, 11.1, and 11.3 of the Construction Agreements. The Court is not convinced.

To recall, Article VI of the Construction Agreement provides:

ARTICLE IV – TERMS OF PAYMENT

x x x x

- 4.2 **Ten Percent (10%)** of each progress payment shall be retained by the OWNER until the full completion of the contract.
- 4.3 **The full amount of retention shall be released by the OWNER to the CONTRACTOR, Thirty (30) days after the completion and acceptance of the works by the OWNER and submission by the contractor of the following:**
- a) Contractor's Sworn Statement showing that all taxes due from the CONTRACTOR, and all obligations on materials used and labor employed in connection with this contract have been duly paid.
 - b) Guarantee Bond equivalent to Ten Percent (10%) of the Contract Price covering the period of one year after final completion and acceptance to answer for faulty and/or defective materials or workmanship as stated in Article IX.
 - c) Three (3) Original, signed and sealed sets of prints of "As-Built" drawings.⁶⁸ (Emphasis and underscoring supplied)

A plain reading of the above-cited provision clearly indicates that the non-submission of the Contractor's Sworn Statement, Guarantee Bond, and "As-Built" Drawings only entitles PHES to retain the 10% retention money. Nowhere in the provision does it state that PHES is entitled to not pay the balance of the contract price if Southstar fails to submit the said documents.

⁶⁸ Id. at 213.

Undoubtedly, the CA's reliance on Article 4.3 of the Construction Agreements to justify PHES' non-payment of the balance of the contract price is misplaced.

Therefore, applying the above-cited provision, and considering that Southstar failed to adduce any evidence to show that it had submitted the Contractor's Sworn Statement, Guarantee Bond, and "As-Built" Drawings, PHES is only entitled, at most, to retain the 10% retention money.

Similarly, Articles 11.1 and 11.3 find no application in the case at bar. Article XI of the Construction Agreements provides:

ARTICLE XI – COMPLETION & FINAL ACCEPTANCE

11.1 If the work done by the CONTRACTOR is fully completed and in accordance with this Agreement, the OWNER shall within thirty (30) days issue a written certificate of acceptance thereof and the balance found to be due the CONTRACTOR shall become payable, **subject only to the retention provided for under Article IV and to claims under Article VII, XII, and IX.**

x x x x

11.3 Before issuance of the certificate of acceptance, the CONTRACTOR shall submit evidence satisfactory to the OWNER that all payrolls, materials, bills and other indebtedness relating to the work have been paid. **Any claim by any party arising from this agreement will be sufficient reason for the OWNER to withhold any payment due the CONTRACTOR for such amount of the claim.**⁶⁹ (Emphasis and underscoring supplied)

From the foregoing, and contrary to the interpretation of the CA, it is clear that Article 11.1 only refers to the withholding of the retention money. In other words, upon the completion of the construction project, PHES was duty bound to issue a certificate of acceptance and pay the balance of the contract price, and only the 10% retention money may be withheld.

Furthermore, the non-payment of the balance of the contract price cannot likewise find support under Article 11.3 of the Construction Agreements. As seen in the above-cited provision, the claims being referred to under Article 11.3 only pertain to claims relating to payrolls, materials, bills, and other indebtedness. Pertinently, nowhere in the records of this case does it show that any person had made claims against Southstar relating to payrolls, materials, bills, and other indebtedness. Thus, Article 11.3 of the Construction Agreements does not support PHES' stand that it has no

⁶⁹ Id. at 216.

obligation to pay Southstar the balance of the contract price for the construction of the three Model Houses at Coastal Villas.

Completion of the Development of the Phase Entry at Coastal Villas

Similar to the three Model Houses at Coastal Villas, Southstar also failed to show any certification issued by PHES that the same was 100% completed. Neither was there any evidence presented to demonstrate that Southstar complied with Article 4.3 of the Construction Agreements and submitted the Contractor's Sworn Statement, Guarantee Bond, and "As-Built" Drawings.

Nevertheless, and applying the Court's reasoning above, the Court finds that Articles 4.3, 11.1 and 11.3 of the Construction Agreements do not justify PHES' refusal to pay the balance of the contract price for the Development of the Phase Entry Way at Coastal Villas. At most, PHES is only entitled to retain the 10% retention money in accordance with Article 4.3 of the Construction Agreements.

Delay in the completion of the construction projects

At this juncture, it bears emphasis that both the RTC and the CA made similar factual determinations that Southstar incurred delay in the performance of its obligations under the Construction Agreements. According to the RTC, Southstar incurred delay considering that it only sent its first demand letter regarding the three Model Houses at Coastal Villas to PHES in April 2007 despite Southstar's claims that it already completed the same in 2005. Meanwhile, the CA found that Southstar failed to complete the construction projects on schedule and awarded PHES liquidated damages in the amount of ₱11,188,668.20, in accordance with Article VII of the Construction Agreements.

Taking into account these similar factual determinations, the Court finds no reason to disturb the same, considering that the factual findings of the RTC, especially when affirmed by the CA, are conclusive and binding upon the Court. As held in *Torres v. Court of Appeals*:⁷⁰

It is noteworthy to add that the foregoing findings of fact, as sustained by the CA, binds this Court. Barring the application of

⁷⁰ G.R. No. 241164, August 14, 2019.

recognized exceptions, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not subject to review by the Supreme Court.⁷¹

In any event, the Court finds that a review of the records reveals that the RTC and the CA correctly concluded that Southstar indeed incurred delay in the performance of its obligations under the Construction Agreements.

During the proceedings before the RTC, Southstar's witness expressly admitted that Southstar failed to finish the construction projects at the scheduled dates of completion. Particularly, Southstar's witness stated that the construction projects were only turned over in October 2005, which is way beyond the scheduled turn over dates, to wit:

Q: You also mentioned in your Judicial Affidavit that you completed and turned over the construction projects in 2005, is that correct?

x x x x

A: *Yes, Ma'am.*

Q: I am showing you a construction agreement for the three Model Houses of Coastal Villas at Jaro Estates. In Article VI of the contract, page 3, it states that, "The Contractor shall complete the three Model houses within one hundred twenty (120) calendar days. Day one shall be on March 7, 2005." Do you agree Mr. Witness that October 2005 is way beyond the one hundred twenty (120) calendar days from March 7, 2005.

A: *If we count the calendar day[s] it is beyond.*

Q: On the next contract, the second contract for Phase Entry at Coastal Villas at Jaro Estates, Article VI states: "The Contractor shall complete the development of Phase Entry at Coastal Villas at Jaro Estates, within forty five (45) calendar days. Day one shall be on March 4, 2005 or upon receipt of the downpayment." Do you agree with me that October 2005 is way beyond the 45 calendar days from March 4, 2005.

A: *For the number of days, it is beyond.*⁷²

Q: On the next contract, the third contract, for the Completion/Take Over of Four (4) Eunice Units of Chateaux Geneva at Jaro Estates, Article VI states that: "The Contractor shall complete the four Eunice units as follows: Blk. 3, Lot 8, expected completion is June 15, 2005; Blk. 10, lot 1, expected completion is May 31, 2005, Blk. 11[,] Lot 16/18, expected completion is May 31, 2005 and Blk 11[,] lot 24, expected completion is [J]une 15, 2005. Do you agree

⁷¹ Id.

⁷² Id. at 410-411.

with me Mr. Witness that October 2005 exceeded the expected completion date of these projects.

A: *For calendar days, yes, ma'am.*⁷³

These express admissions on the part of Southstar's witness lead to the inescapable conclusion that indeed, Southstar incurred delay in the performance of its obligations under the Construction Agreements. Accordingly, Southstar is liable for the payment of liquidated damages in accordance with Article VII of the Construction Agreements, which provides:

ARTICLE VII – FAILURE TO COMPLETE WORK

For failure to complete work, on completion dates, plus extension granted if any, the CONTRACTOR shall pay the OWNER liquidated damages equivalent to One Tenth of One Percent (0.1%) of the Total Contract Amount per calendar day of delay (including Sundays and Holidays) until the work is completed by the CONTRACTOR or a third party. Any sum which may be payable to the OWNER for such loss may be deducted from the amounts retained under Article VI.⁷⁴

While it is true that, as pointed out by Southstar, the simple lapse of time does not automatically constitute delay as demand is necessary,⁷⁵ and in this case, no demand was made, it bears emphasis that there are instances when demand is not necessary to render the obligor in delay. In *Rivera v. Sps. Chua*,⁷⁶ the Court succinctly summarized the instances when demand is no longer necessary, to wit:

There are four instances when demand is not necessary to constitute the debtor in default: (1) when there is an express stipulation to that effect; (2) where the law so provides; (3) when the period is the controlling motive or the principal inducement for the creation of the obligation; and (4) where demand would be useless. In the first two paragraphs, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence.⁷⁷

Similarly, in *Maybank Philippines, Inc. v. Sps. Tarrosa*,⁷⁸ the Court held:

⁷³ *Rollo*, pp. 404-405.

⁷⁴ *Id.* at 214.

⁷⁵ CIVIL CODE OF THE PHILIPPINES, Article 1169.

⁷⁶ 750 Phil. 663 (2015).

⁷⁷ *Id.* at 680-681.

⁷⁸ 771 Phil. 423 (2015).

In order that the debtor may be in default, it is necessary that: (a) the obligation be demandable and already liquidated; (b) the debtor delays performance; and (c) the creditor requires the performance judicially or extrajudicially, unless demand is not necessary — *i.e.*, when there is an express stipulation to that effect; where the law so provides; when the period is the controlling motive or the principal inducement for the creation of the obligation; and where demand would be useless. Moreover, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence. x x x⁷⁹ (Underscoring in the original; citations omitted)

Applying the foregoing in the instant case, the Court finds that Southstar incurred delay, notwithstanding the absence of any demand made by PHES. As seen above, Article VII of the Construction Agreements states that Southstar's failure to complete the construction projects at the scheduled completion dates shall render Southstar to be in delay and liable for the payment of liquidated damages. Verily, there is no need for any demand, judicial or extra-judicial, because the obligation itself fixes a date for performance, and provides that after such period lapses, the obligor shall be in delay.

Anent the amount of liquidated damages that Southstar must pay, the Court finds that such liquidated damages should run from the designated completion dates of the construction projects as stated in the Construction Agreements, until the actual completion and turn-over of the same.

For the three Model Houses at Coastal Villas, Jaro Estates, the scheduled completion date is 120 calendar days from March 7, 2005, or July 5, 2005. Considering that the construction project was only turned over in October 2005, Southstar incurred delay of around 88 calendar days (pegged at October 1, 2005), and is thus liable to pay liquidated damages in the amount of 0.1% of the total contract price (₱3,358,000.00) multiplied by 88 calendar days, or a total amount of **₱295,504.00**.

For the Development of Phase Entry at Coastal Villas, Jaro Estates, the scheduled completed date is 45 calendar days from March 4, 2005, or April 18, 2005. Considering that the construction project was only turned over in October 2005, Southstar incurred delay of around 166 calendar days (pegged at October 1, 2005), and is thus liable to pay liquidated damages in the amount of 0.1% of the total contract price (₱900,000.00) multiplied by 166 calendar days, or a total amount of **₱149,400.00**.

⁷⁹ Id. at 429.

However, for the four Eunice Units at Chateaux Geneva, Southstar is not liable to pay any liquidated damages despite delay, because, as explained above, the certificate of completion issued by PHES constitutes as a waiver of all the claims of PHES against Southstar in relation to the said project.

Accordingly, Southstar is liable to pay PHES the total amount of **₱444,904.00** as liquidated damages for its delay in the competition of the three Model Houses and the development of Phase Entry at Coastal Villas, Jaro Estates.

PHES' counterclaims

Apart from liquidated damages arising from Southstar's delay under the three Construction Agreements, PHES raised other counterclaims in its answer.

Particularly, PHES claimed the amount of ₱1,921,920.00 as liquidated damages for a construction project between PHES and Southstar located in Lapu-Lapu City, Cebu. The RTC dismissed such counterclaim because the same is permissive in nature, and the proper docket fees were not paid. On the other hand, the CA did not categorically rule whether such counterclaim is permissive or compulsory, but nevertheless awarded it to PHES, and merely stated that the docket fees therefor shall constitute a lien over the judgment.

The difference between permissive and compulsory counterclaims has been exhaustively discussed by the Court in *Villanueva-Ong v. Enrile*,⁸⁰ to wit:

The nature and kinds of counterclaims are well-explained in jurisprudence. In *Alba, Jr. v. Malapajo*, the Court explained:

[C]ounterclaim is any claim which a defending party may have against an opposing party. A **compulsory counterclaim** is one which, being cognizable by the regular courts of justice, **arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.** Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, necessarily connected with the subject matter of the

⁸⁰ 821 Phil. 538 (2017).

opposing party's claim or even where there is such a connection, the Court has no jurisdiction to entertain the claim or it requires for adjudication the presence of third persons over whom the court acquire jurisdiction. A compulsory counterclaim is barred if not set up in the same action.

“A counterclaim is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim. It is essentially an independent claim that may be filed separately in another case.”

Determination of the nature of counterclaim is relevant for purposes of compliance to the requirements of initiatory pleadings. **In order for the court to acquire jurisdiction, permissive counterclaims require payment of docket fees, while compulsory counterclaims do not.**

Jurisprudence has laid down tests in order to determine the nature of a counterclaim, to wit:

(a) **Are the issues of fact and law raised by the claim and the counterclaim largely the same?** (b) **Would *res judicata* bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule?** (c) **Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim?** and (d) **Is there any logical relation between the claim and the counterclaim[?]** x x x **[A positive answer to all four questions would indicate that the counterclaim is compulsory].**⁸¹ (Emphasis supplied; citations omitted)

Guided by these jurisprudential tests, it is manifestly clear that PHES' counterclaim with respect to the construction project located in Lapu-Lapu City, Cebu, is permissive in nature. Such claim does not arise out of nor is connected with the construction projects in Iloilo. The evidence to support PHES' claim for the construction project located in Lapu-Lapu City, Cebu is not the same as the evidence presented for PHES' claim for the construction projects in Iloilo. More compellingly, *res judicata* will not bar PHES from instituting an independent and separate complaint for its claims under the construction project in Lapu-Lapu City, Cebu.

In view of the foregoing, the Court agrees with the ruling of the RTC when it dismissed such counterclaim, considering that the proper docket fees were not filed therefor. In any case, it bears emphasis that PHES failed to adduce any evidence to support its claim that it is entitled to liquidated damages for its contract with Southstar relating to the construction project

⁸¹ Id. 546-547.

located in Lapu-Lapu City, Cebu. At most, PHES presented a Letter⁸² dated November 28, 2006, written by Ms. Geraldine Fujiwara, one of PHES' buyers for the Pacific Grand Villas construction project in Lapu-Lapu City, Cebu, claiming for a refund of expenses she incurred. However, such letter is irrelevant with respect to PHES' claim for liquidated damages. In fact, such letter even negates PHES' claim that it is entitled to liquidated damages considering that the letter proves that the construction project has been delivered to PHES' buyers, which necessarily means that Southstar was able to complete and turn over the same, and that PHES accepted it.

Additionally, in its answer, PHES, likewise, claimed for reimbursement in the amount of ₱476,007.90, which was the amount of expenses PHES was constrained to pay supposedly because of Southstar's delay, substandard work, and subsequent abandonment of the construction projects.

Such claim deserves scant consideration for lack of basis. No evidence was presented to establish that Southstar abandoned its works, or that it produced substandard work. Worse, as pointed out by the RTC, PHES did not present any documentary proof to substantiate its claim that it spent ₱476,007.90 because of rectification works made on the construction projects.

All things considered, it is undeniable that PHES is not entitled to any of its counterclaims.

Claim for attorney's fees

To recall, the RTC, while ruling in favor of Southstar, did not award attorney's fees, since it found that both PHES and Southstar were at fault.

The Court agrees.

As extensively explained above, both Southstar and PHES failed to comply with all of their respective obligations under the Construction Agreements, *i.e.*, PHES' failure to pay the balance of the contract price after completion and turn-over, and Southstar's delay in the performance of its obligations. Being both at fault, neither Southstar nor PHES may invoke the stipulation for the payment of attorney's fees under the Construction Agreements.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* dated August 24, 2015 filed by petitioner Southstar Construction


⁸² *Rollo*, pp. 184-185.

and Development Corporation is **PARTIALLY GRANTED**. The Decision dated January 22, 2015 and the Resolution dated June 16, 2015 of the Court of Appeals in CA-G.R. CV No. 101973 are **REVERSED** and **SET ASIDE**. The Decision dated May 2, 2013 of the Regional Trial Court of Imus, Cavite, Branch 20 is **REINSTATED** with the following **MODIFICATIONS**:

1. Respondent Philippine Estates Corporation is **ORDERED** to pay the following:
 - (a) For the four Eunice Units at Chateaux Geneva, Jaro Estates, Iloilo City, the amount of ₱623,732.95;
 - (b) For the three Model Houses at Coastal Villas, Jaro Estates, Iloilo City, the amount of ₱1,693,423.00, less the designated ten percent (10%) retention money;
 - (c) For the Development of the Phase Entry at Coastal Villas, Jaro Estates, Iloilo City, the amount of ₱135,516.22, less the designated ten percent (10%) retention money; and
 - (d) Legal interest at the rate of six percent (6%) *per annum* imposed on the sums due in letters (a), (b), (c), and (d) from finality of this Decision until full payment.

2. Petitioner Southstar Construction and Development Corporation is **ORDERED** to pay the following:
 - (a) For the three Model Houses at Coastal Villas, Jaro Estates, Iloilo City, the amount ₱295,504.00 as liquidated damages;
 - (b) For the Development of the Phase Entry at Coastal Villas, Jaro Estates, Iloilo City, the amount of ₱149,400.00, as liquidated damages; and
 - (c) Legal interest at the rate of six percent (6%) *per annum* imposed on the sums due in letters (a) and (b), from finality of this Decision until full payment.

SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

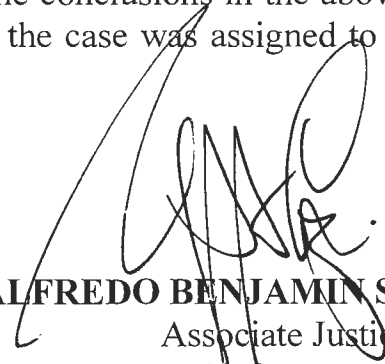


MARIA FILOMENA D. SINGH
Associate Justice

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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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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