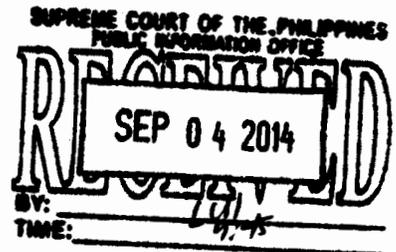




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **August 11, 2014**, which reads as follows:

“G.R. No. 197996 (*St. Francis Square Realty Corporation [formerly ASB Realty Corporation] v. William Golanco Construction Corporation.*); and G.R. No. 198001 (*William Golanco Construction Corporation v. Securities and Exchange Commission, ASB Realty Corporation and Atty. Julio Elamparo, in his capacity as Rehabilitation Receiver of the ASB Group of Companies.*) – Before the Court are two petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the November 30, 2010 Decision<sup>1</sup> and the August 2, 2011 Resolution<sup>2</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 111119, a case for damages arising from a construction agreement.

On May 7, 1997, William Golanco Construction Corporation (WGCC), a contractor, entered into a construction agreement with ASB Realty Corporation (ASBRC), now St. Francis Square Realty Corporation (SFSRC), a real estate developer, for the construction of the 50-storey ASB-Malayan Tower (*the project*) in Pasig City. The construction agreement covered the civil, structural and architectural package portions of the project. The original contract price was ₱316,468,226.00. Due to the reduction of floor levels of the project and value engineering revisions, the parties executed an amendment to the construction agreement, dated August 2, 1999. Accordingly, the contract price, after the amendment, was reduced to ₱261,000,000.00. Due to ASBRC’s delay in the payment of its obligation, WGCC was constrained to suspend the project sometime in the second quarter of 2000.

<sup>1</sup> *Rollo* (G.R. No. 197996), pp. 55-67 and *rollo*, (G.R. No. 198001), pp. 56-67. Penned by Associate Justice Bienvenido L. Reyes (now a member of the Supreme Court) with Associate Justices Priscilla Baltazar-Padilla and Elihu A. Ybañez concurring.

<sup>2</sup> *Rollo* (G.R. No. 197996), pp. 68-69 and *rollo* (G.R. No. 198001), pp. 69-70.

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On May 2, 2000, ASB Holding, Inc. (*ASB Holdings*), together with ASBRC, among others, filed with the Securities and Exchange Commission (*SEC*) a petition for rehabilitation with prayer for suspension of actions and proceedings. Subsequently, Atty. Julio C. Elamparo (*Atty. Elamparo*) was appointed Rehabilitation Receiver for the ASB Group of Companies, which included ASBRC.

On April 30, 2002, SFSRC (formerly ASBRC) and Malayan Insurance Co. (*MIC*), entered into a memorandum of agreement (*MOA*), whereby *MIC* took over the project and assumed all debts and liabilities of SFSRC related to the project. The *MOA* was submitted to the SEC hearing panel for approval. *WGCC*, however, opposed the approval of the *MOA* on the ground that it incorrectly reduced the amount payable to *WGCC*. Eventually, the SEC hearing panel resolved to approve the *MOA*, but subject to further amendments if, among others, the claims of *WGCC* would be found meritorious. Thus, the SEC hearing panel referred the unsettled claims of *WGCC* to the Board of Arbitrators (*BOA*).

On December 28, 2004, the *BOA* rendered the award on some of the technical claims. It ruled that *WGCC* was entitled to labor cost adjustments of ₱386,424.21 and Change Order in the amount of ₱1,954,522.24. On the other hand, it held that SFSRC (formerly ASBRC) was entitled to Overrun/Underrun owner-finished materials in the amount of ₱1,147,709.57. Thus, the *BOA* held that SFSRC (formerly ASBRC) was entitled to the net amount of ₱4,806,763.12. The non-technical issues (progress billing, extended overhead expenses, reimbursement of trade contractor's utilities expenses, main office overhead share, and interest charges) were directed to the SEC for resolution.

In its Order,<sup>3</sup> dated July 31, 2009, the SEC ruled as follows:

**WHEREFORE**, foregoing premises considered, the Hearing Panel rule as follows:

1. William Golangeo Construction Corporation is entitled to the payment of the following in accordance with the provision on payments to suppliers and contractors under the Rehabilitation Plan of the ASB Group of Companies:

a. Four Hundred Twenty Eight Thousand Six Hundred Eighty Two Pesos and 40/100 (Php428,682.40) for Unpaid Progress Billings; and

<sup>3</sup> *Rollo*. (G.R. No. 198001), pp. 247-253.

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b. Two Million Twenty Six Thousand Eight Hundred Twenty Six and 18/100 (Php2,026,826.18) for Extended Overhead Expenses.

2. The claim of William Golanco Construction Corporation for main office overhead share and trade contractors' utilities are hereby **DENIED** for lack of merit.

3. The principal obligations stated in Item No. 1 shall earn interest at the rate of six percent (6%) per annum, subject to the pertinent provisions of the Rehabilitation Plan.

**SO ORDERED.**

Aggrieved, WGCC filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

In its Decision, dated November 30, 2010, the CA affirmed with modification the assailed SEC ruling. As to WGCC's extended overhead cost claims, the CA observed that WGCC merely presented its own Summary of Extended Overhead Claims without any supporting document. Since claims for extended overhead costs partake the nature of actual damages, they must be proven with a reasonable degree of certainty.

As to WGCC's claim for rental expenses, the CA held that WGCC did not substantiate its claim and that it failed to adduce evidence that the claimed rented equipment were at the construction site during the period when such rental expenses were incurred. The CA, however, awarded temperate damages in the amount of ₱1,000,000.00 in favor of WGCC because it suffered some pecuniary loss although not duly proved pursuant to Article 2224 of the Civil Code.<sup>4</sup>

As to its claim for trade contractors' utilities expenses, the CA noted that WGCC could not impose any obligation or liability to SFSRC, as it was not a party to the agreement between WGCC and the specialty contractors.

As to the issue of interest charges, the CA agreed with the SEC that interest payments may be made only after the principal obligations of SFSRC have been paid based on the interest rate of 6% per annum as stated in the rehabilitation plan.

WGCC moved for reconsideration, while SFSRC moved for partial reconsideration. Both motions were, however, denied by the CA in its Resolution, dated August 2, 2011.

<sup>4</sup> Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

Hence, SFSRC filed a petition for review on *certiorari*, docketed as G.R. No. 197996. WGCC, likewise, filed its own petition for review on *certiorari*, docketed as G.R. No. 198001.

In the October 17, 2011 Resolution,<sup>5</sup> the Court resolved to consolidate G.R. No. 197996 and G.R. No. 198001, as both cases assail the same CA decision.

In its petition, SFSRC argues that the CA erred in awarding temperate damages in favor of WGCC because it lacked legal basis.

On the other hand, WGCC argues that the CA erred in ruling that it was not entitled to the full amount of its claim for extended overhead expenses and reimbursement of trade contractors' utilities expenses. WGCC also claims that the CA erred in failing to award interest charges on account payable in its favor.

The Court, however, finds no reversible error warranting the exercise of its appellate jurisdiction.

Evidently, the issues being raised by both petitioners in the case at bench pertain to factual matters. In *Queensland-Tokyo Commodities, Inc. v. George*,<sup>6</sup> the Court stated that the findings of facts and conclusions of law of the SEC are controlling on the reviewing authority. Indeed, the rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It has been held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. The Hearing Officer had the optimum opportunity to review the pieces of evidence presented before him and to observe the demeanor of the witnesses. Administrative decisions on matters within its jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud, or error of law, which has not been shown by petitioners in this case.

Anent the issue of the award of temperate damages, the Court agrees with the CA. Article 2224 of the Civil Code provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proven with certainty. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.<sup>7</sup> While WGCC failed

<sup>5</sup> Id. at 101-102 and id. at 479-480.

<sup>6</sup> G.R. No. 172727, September 8, 2010, 630 SCRA 304.

<sup>7</sup> *Adriano v. La Sala*, G.R. No. 197842, October 9, 2013.

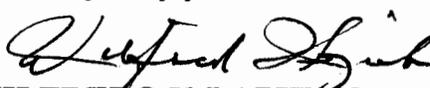
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to properly substantiate its various claims in the nature of actual damages with documentary evidence, it is undisputable that it complied with its obligation to maintain adequate and sufficient supply of tool, materials, equipment, and manpower at the project site for the construction of a 50-storey concrete building. As aptly observed by the CA, with the reduction in the scope of work from 50 storeys to 36 storeys, the equipment furnished and maintained by WGCC at the project site was in excess of that necessary to construct a 36-floor building. Thus, the excess equipment could have been detailed to other projects or leased out for a fee by WGCC. Doubtless, WGCC suffered some pecuniary loss. In the absence, however, of competent evidence on the exact amount of loss that WGCC had suffered, the Court finds the award of temperate damages granted by the CA to be fair and reasonable under the circumstances.

**WHEREFORE**, the petitions are **DENIED**. (*Villarama, Jr., J., designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691, dated May 22, 2014*)

**SO ORDERED.”**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court *3/27/14*

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