



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

GOLDLOOP PROPERTIES INC.,  
*Petitioner,*

G.R. No. 171076

Present:

- versus -

LEONARDO-DE CASTRO,\*  
*Acting Chairperson,*  
DEL CASTILLO,  
VILLARAMA, JR.,  
REYES,\*\* *and*  
PERLAS-BERNABE,\*\*\* JJ.

GOVERNMENT SERVICE  
INSURANCE SYSTEM,  
*Respondent.*

Promulgated:

**01 AUG 2012**

DECISION

DEL CASTILLO, J.:

This protracted legal battle revolves around the unilateral rescission of the parties' contracts.

In this Petition for Review on *Certiorari*, petitioner Goldloop Properties Inc. (Goldloop) assails the September 26, 2005 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 80135 which reversed and set aside the June 23, 2003 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Pasay City, Branch 111 in Civil Case No. 00-0149 for Specific Performance and Damages. Likewise assailed is

\* Per Special Order No. 1226 dated May 30, 2012.

\*\* Per raffle dated June 25, 2012.

\*\*\* Per Special Order No. 1227 dated May 30, 2012.

<sup>1</sup> CA *rollo*, pp. 196-207; penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Jose C. Reyes, Jr.

<sup>2</sup> Records, Vol. III, pp. 1333-1351; penned by Judge Ernesto A. Reyes.

the January 11, 2006 Resolution<sup>3</sup> of the CA which denied Goldloop's Motion for Reconsideration thereto.

***Factual Antecedents***

The Government Service Insurance System (GSIS) owns a 2,411-square meter (sq. m.) parcel of land located in ADB Avenue cor. Sapphire St., Ortigas Center, Pasig City as well as the Philcomcen Building standing on a portion thereof. On June 16, 1995, GSIS and Goldloop executed a Memorandum of Agreement (MOA)<sup>4</sup> whereby Goldloop, at its own expense and account, would renovate the façade of the Philcomcen Building as well as construct a condominium building on the 1,195 sq. m. portion of said land. Goldloop also undertook to pay GSIS the amount of ₱140,890,000.00 for the portion of the land on which the condominium building shall stand to be remitted in eight installments within the four-year period following the execution of the MOA. Said amount is apart from the guaranteed revenue of ₱1,428.28 million<sup>5</sup> that the parties would share when the project is already completed and the condominium units sold. It was further agreed that should the gross sales of the condominium project exceed the said guaranteed revenue, GSIS would be entitled to 9.86% of the amount in excess of ₱1,428.28 million and Goldloop, to the balance of 90.14%.<sup>6</sup>

On June 18, 1996, the parties executed an Addendum to the Memorandum of Agreement<sup>7</sup> (Addendum) to include in the project the relocation of an existing powerhouse and cistern tank within the site of the proposed condominium building. And since by then Goldloop had yet to remit to GSIS the first and

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<sup>3</sup> CA *rollo*, p. 242; penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Renato C. Dacudao and Jose C. Reyes, Jr.

<sup>4</sup> Records, Vol. I, pp. 12-21.

<sup>5</sup> Id. at 14.

<sup>6</sup> Id.

<sup>7</sup> Id. at 22-25.

second installment payments of the guaranteed amount, the Addendum also contained stipulations relative thereto, to wit:

- 2. The parties agree that the expense items identified in Annex “C”<sup>8</sup> as A.1, A.2.1, A.2.2., A.2.3., A.3.1., B.1 and B.2 are for the account of GSIS; while expense items A.3.2. and B.3 are for the account of GOLDLOOP.
- 3. As a gesture of goodwill and in consideration for the waiver by GSIS of the interest due from GOLDLOOP by reason of late payment of the first guaranteed amount under Section 1.1. of the MOA, GOLDLOOP hereby agrees to absorb expense Item C of Annex “C” hereof;
- 4. GOLDLOOP shall advance the payments of all the expense items due from GSIS which shall, however be credited as full payment of its first guaranteed installment and partial payment of the second guaranteed installment under Section 1.1. of the MOA;
- 5. As further gesture of goodwill and as additional consideration for the waiver by GSIS of the interest due from GOLDLOOP by reason of late payment of the first guaranteed amount under Section 1.1 of the MOA, GOLDLOOP hereby agrees not to charge the GSIS any interest for the amounts to be advanced by GOLDLOOP in excess of the amount due as its first guaranteed installment;
- 6. In consideration of the undertakings of GOLDLOOP under Sections 3 and 5 hereof, the GSIS hereby waives in favor of GOLDLOOP the interest due from the latter by reason of its late payment of the first guaranteed amount under Section 1.1 of the MOA[.]<sup>9</sup>

<sup>8</sup> Unfortunately, Annex “C” of the Addendum to the Memorandum of Agreement is not part of the records of this case. However, GSIS quoted in its Answer (Records, Vol. II, pp. 413-423) the relevant portion thereof showing the alleged expense items for its account as follows:

ITEM	DESCRIPTION	AMOUNT
	CHANGE ORDER NO. 1-POWER HOUSE	
	A.1 Construction of 3-storey structure	₱ 5,601,820.22
	A.2 Mechanical Works	
	A.2.1 Purchase of New pumps for chiller	492,735.00
	A.2.2 Purchase of Air-cooled chillers	6,783,131.25
	A.2.3 Installation of New Air-cooled chillers	1,789,879.29
	A.3 Electrical Work	
	A.3.1 Relocation of transformers from existing basement to new 3-storey structure	2,435,812.13
	CHANGE ORDER No. 2-CISTERN TANK	
	B.1 Construction of reinforced concrete underground water tank	3,129,655.78
	B.2 Relocation/Installation of Booster Pumps and piping installation of new piping layout	992,477.41
	TOTAL	₱ 21,225,521.08 (Id. at 414)

<sup>9</sup> Records, Vol. I, pp. 23-24.

Goldloop then performed the necessary preparatory works.<sup>10</sup> It also formally launched the project<sup>11</sup> and conducted the pre-selling of the condominium units.<sup>12</sup>

Unfortunately, construction could not proceed because Mayor Vicente P. Eusebio (Mayor Eusebio) of Pasig City refused to act on the applications for building permits filed in November 1996<sup>13</sup> and July 1997,<sup>14</sup> claiming that GSIS owed Pasig City ₱54 million in unpaid real estate taxes. The GSIS, for its part, through its then President and General Manager, Mr. Cesar Sarino (Sarino), claimed that GSIS is exempt from payment thereof by virtue of Republic Act (R.A.) No. 8291.<sup>15</sup> Because of this impasse, Mayor Eusebio opted to hold in abeyance any action on the applications for building permit until the issue on the tax exemption provisions of R.A. No. 8291 shall have been settled by the court through a petition for declaratory relief that Pasig City intended to file.<sup>16</sup>

When Mr. Federico C. Pascual (Pascual) was subsequently appointed as the new President and General Manager of GSIS, Goldloop's President, Mr. Emmanuel R. Zapanta (Zapanta), apprised him of the situation. Later, however, Goldloop received from GSIS a letter dated November 23, 1998 informing it of a recommendation<sup>17</sup> to rescind the MOA.<sup>18</sup> Zapanta thus wrote GSIS on December 2, 1998 and reiterated that the work stoppage due to non-issuance of permit was not Goldloop's fault. Assuring GSIS that it would commence the project as soon as the issue on building permits is resolved, Zapanta urged GSIS to reconsider its position.<sup>19</sup> Despite this, GSIS still sent Goldloop a notice of rescission<sup>20</sup> dated

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<sup>10</sup> TSN dated July 6, 2000, pp. 12-15.

<sup>11</sup> Id. at 15; See also Exhibits "S" to "S-2," Records, Vol. I, pp. 135-136.

<sup>12</sup> Id. at 18.

<sup>13</sup> See GSIS's letter dated April 28, 1997 to Mayor Eusebio, id. at 26.

<sup>14</sup> See GSIS's letter dated September 30, 1997 to Mayor Eusebio, id. at 27.

<sup>15</sup> See Mayor Eusebio's letter dated October 8, 1997, id. at 28-29; R.A. No. 8291 is otherwise known as "The Government Service Insurance Act of 1997."

<sup>16</sup> Id.

<sup>17</sup> This recommendation was made by GSIS's Senior Vice President of the Housing and Real Property Development Group, Senior Vice President of the Legal Services Group and the General Counsel; see GSIS's Board Resolution No. 79, id. at 33.

<sup>18</sup> As mentioned in Goldloop's letter dated December 2, 1998 to GSIS, id. at 37-38.

<sup>19</sup> Id.

<sup>20</sup> Id. at 31-33; served upon Goldloop on March 22, 2000 as mentioned in GSIS's letter of April 27, 2000, id. at 39.

February 23, 2000 stating that 30 days from the latter’s receipt thereof, the MOA shall be deemed rescinded for Goldloop’s breach of its obligations and commitments thereunder, specifically for failure to pay the guaranteed amount of ₱140,890,000.00 under Section 1.1 and pursuant to Sections 1.3 and 2.4 of the MOA, viz:

In view of your failure to abide by the provisions of the Memorandum of Agreement, please be informed that effective upon the expiration of thirty (30) days from receipt of this notice, the aforesaid Agreement is deemed rescinded and terminated for breach of obligations and commitments pursuant to the following provisions of the Contract:

Section 1.1 That GOLDLOOP PROPERTIES, INC. will pay the GSIS a guaranteed amount of ONE HUNDRED FORTY MILLION EIGHT HUNDRED NINETY THOUSAND PESOS (₱140,890,000.00) as payment for the 1,195 sq. m. portion of the lot on which the second tower will stand in accordance with the following schedule:

<u>Period from signing of the Agreement</u>	<u>Percentage of Total Amount</u>	<u>Amount to be Remitted</u>
Six Months	10%	₱ 14,089,000.00
Twelve Months	15%	21,133,500.00
Eighteen Months	15%	21,133,500.00
Twenty-four Months	15%	21,133,500.00
Thirty Months	15%	21,133,500.00
Thirty-Six Months	10%	14,089,000.00
Forty-Two Months	10%	14,089,000.00
Forty-Eight Months	<u>10%</u>	<u>14,089,000.00</u>
	100%	₱ 140,890,000.00

Section 1.3 Payment to GSIS of the amounts provided for in the preceding paragraphs shall be remitted by GOLDLOOP within the periods stated therein without need of prior demand; and failure to so pay within said periods shall entitle the GSIS to an interest of 18% per annum, compounded monthly, without prejudice to the other rights and remedies of the GSIS under this Agreement and under applicable laws.

x x x x

Section 2.4. Should GOLDLOOP fail to start the construction works within thirty (30) working days from the date all the relevant permits and licenses from the concerned agencies are obtained, or within six (6) months from the date of the execution of this Agreement, whichever is earlier, or at any given time abandon the same or otherwise commit any breach of their obligations and commitments under this

Agreement, this agreement shall be deemed terminated and cancelled without need of judicial action by giving thirty (30) days written notice to that effect to GOLDLOOP [which] hereby agrees to abide by the decision of the GSIS.<sup>21</sup> (Underscoring and Emphasis in the original.)

Subsequently, GSIS sent Goldloop a letter<sup>22</sup> dated April 27, 2000 informing it that the MOA was already officially rescinded. It thus ordered Goldloop to vacate the premises and clear the same of all debris, machineries and equipment within five days from receipt thereof. Failing which, GSIS warned that it would undertake the same on Goldloop's account without responsibility on its part for any resulting loss or damage. Because of this, Goldloop filed on May 17, 2000 a Complaint<sup>23</sup> for Specific Performance with Damages before the RTC of Pasay City against GSIS. The case was docketed as Civil Case No. 00-0149 and raffled to Branch 111 of said court.

### ***Proceedings in the Regional Trial Court***

In its complaint, Goldloop belied GSIS's claim that it has not paid the guaranteed amount. It asserted that aside from the amount it expended for the preparatory works undertaken, it already paid GSIS the sum of ₱24,824,683.00 in terms of charges on change order items. This amount was advanced by Goldloop in favor of GSIS, with the understanding, per the Addendum, that the same shall be credited as full payment of the first installment and as partial payment of the second installment of the guaranteed amount. Goldloop also claimed to have spent a total of ₱44,075,910.70 for design, marketing fees, project launching, title annotation, waiver, advances of contractors and other expenses. All in all, Goldloop already shelled out the amount of ₱68,890,593.70.<sup>24</sup>

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<sup>21</sup> Id. at 31-32.

<sup>22</sup> Id. at 39.

<sup>23</sup> Id. at 2-11.

<sup>24</sup> During trial, Goldloop submitted in evidence its Consolidated Financial Statements for the Years Ended December 31, 1995, 1996, 1997, 1998, 1999 and 2000 and Auditor's Report (Records, Vol. II, pp. 731-740) which reflected its investments or exposure for the project as ₱83,082.749.

Goldloop also averred that it was ready, willing and able to perform all of its obligations under the MOA as shown by the preparatory works it had undertaken. However, because of the non-issuance of building permits by Mayor Eusebio, the project could not push thru. Goldloop further alleged that GSIS made assurances that it would secure the necessary permits but GSIS still failed to obtain the same. Goldloop also alleged that GSIS delayed the issuance of notice to proceed despite repeated reminders from Goldloop.

Goldloop also claimed that during Zapanta's courtesy call to Pascual, the latter allegedly advised the former to just wait for the resolution of the problem and even remarked that "*at any rate the real estate market is still depressed in view of the Asian financial crisis.*" On the same day, Zapanta even handed to Pascual a letter<sup>25</sup> dated July 20, 1998 which also spoke of the same problem.

Hence, Goldloop asserted that the rescission was without basis and clearly made in bad faith. It therefore asked the RTC to declare the same as null and void, to direct GSIS to comply with the provisions of the MOA and the Addendum, and to secure all the necessary permits from Pasig City. It also prayed for actual damages of still undetermined amount due to its alleged continuing character, exemplary damages of ₱10 million, attorney's fees of ₱500,000.00 and costs of suit.

On June 15, 2000, Goldloop applied for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.<sup>26</sup> This was on account of its receipt of a letter<sup>27</sup> dated May 29, 2000 from GSIS wherein it was given a final notice to vacate the premises and to clear it from all debris, machineries and equipment within five days from receipt thereof, otherwise, GSIS would undertake the same on Goldloop's account. Goldloop also alleged that

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<sup>25</sup> Records, Vol. I, p. 30.

<sup>26</sup> See Goldloop's Petition/Application For Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, id. at 40-45.

<sup>27</sup> Id. at 47.

GSIS had already leased the premises to the Department of Interior and Local Government without its knowledge and consent.<sup>28</sup> Claiming lawful possession and occupancy of the premises on the strength of the MOA as well as grave and irreparable damage to it should GSIS take over the property, Goldloop prayed that GSIS be restrained from disturbing or interfering with its possession and occupancy of the premises.

Notwithstanding GSIS's opposition,<sup>29</sup> the RTC granted Goldloop's application for TRO and accordingly ordered GSIS to cease and desist from doing acts which would in any manner tend to disturb Goldloop's peaceful possession and occupation of the subject premises.<sup>30</sup> Upon the expiration of the said TRO, Goldloop applied for the issuance of a writ of preliminary injunction<sup>31</sup> which was likewise granted by the trial court.<sup>32</sup> GSIS moved for reconsideration<sup>33</sup> but was denied by the RTC.<sup>34</sup>

In its Answer with Affirmative Defenses and Compulsory Counterclaims,<sup>35</sup> GSIS contested Goldloop's claim that it had already advanced ₱24,824,683.00 in expense items supposed to be for GSIS's account. It averred that if at all, the

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<sup>28</sup> See the Contract of Lease entered into by and between GSIS and Department of Interior and Local Government (DILG) on May 11, 2000, id. at 48-55. The DILG subsequently sought the permission of the trial court to intervene in the case (See DILG's Motion to Admit Intervention, id. at 325-329 and Motion in Intervention to Modify Order of Preliminary Injunction dated July 10, 2000, id. at 365-369) but was denied intervention by the RTC in its Order dated December 20, 2000, Records, Vol. II, pp. 403-405.

<sup>29</sup> See GSIS's Opposition to the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, Records, Vol. I, pp. 63-68.

<sup>30</sup> See RTC Order dated June 16, 2000, id. at 69-71.

<sup>31</sup> See Goldloop's Petition/Application for Issuance of Writ of Preliminary Injunction filed on June 29, 2000, id. at 101-105.

<sup>32</sup> See RTC Orders dated July 10, 2000, id. at 157-160, and July 17, 2000, id. at 198; and the Writ of Preliminary Injunction, id. at 201.

<sup>33</sup> See GSIS's Urgent Motion for Reconsideration, id. at 203-213 and Supplement to Defendant's Motion for Reconsideration, id. at 215-218.

<sup>34</sup> See RTC Order dated December 20, 2000, Records, Vol. II, pp. 403-405. GSIS assailed the issuance of said Writ of Preliminary Injunction through a Petition for *Certiorari* filed with the CA docketed as CA-G.R. No. 63458. However, during the pendency of said petition, the RTC resolved the main case and promulgated its Decision dated June 23, 2003 where Goldloop emerged as the prevailing party. The RTC also made permanent the writ of preliminary injunction it earlier issued. This RTC Decision became the subject of the September 26, 2005 CA Decision now under review. In view of these events and of the fact of reversal by the CA of the RTC Decision, the Special Tenth Division of the same court dismissed CA-G.R. SP No. 63458 for being moot and academic, through a Resolution dated September 15, 2011. Said court likewise pronounced therein that the injunction issued by the RTC was automatically dissolved upon the CA's reversal of its decision.

<sup>35</sup> Id. at 413-423.



amount should only be ₱21,225,521.08 per the agreed valuation of said expense items as listed in Annex “C” of the Addendum and provided further that the works for which said items were intended were indeed completed. GSIS likewise denied for lack of knowledge and information Goldloop’s allegation that it incurred ₱44,075,910.70 for other expenses; that it delayed the issuance of the notice to proceed with the construction; and that Goldloop apprised Pascual of the situation, both personally and in writing.

Regarding the issue on tax liability, GSIS denied that it acted in bad faith in not informing Goldloop of the same as it was within its right to invoke tax exemption pursuant to its charter.

In gist, GSIS insisted that the rescission of the MOA and the Addendum was a valid and legitimate exercise of its right under the provisions thereof; hence, the complaint against it must be dismissed.

By way of compulsory counterclaims, GSIS prayed for Goldloop to pay it actual damages for lost income/unrealized revenues in the amount of ₱68,922,360.73, ₱10 million exemplary damages, and ₱1 million attorney’s fees.

### ***Ruling of the Regional Trial Court***

In a Decision<sup>36</sup> dated June 23, 2003, the RTC found GSIS’s rescission without valid basis. It ruled that the failure to proceed with the construction was not due to Goldloop’s fault and that GSIS was well aware of this. In fact, Sarino’s January 16, 1998 letter<sup>37</sup> to Goldloop would show that GSIS recognized that the

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<sup>36</sup> Records, Vol. III, pp. 1333-1351.

<sup>37</sup> Records, Vol. II, p.724. Said letter, as quoted in the RTC decision reads:

‘We acknowledge your letter dated December 10, 1997, where you brought to our attention the continued refusal of Pasig Mayor Vicente Eusebio to approve the application for the Demolition permit as well as the Building permit of the PHILCOMCEN Joint Venture Project – “ONE ADB CENTER”[.]

x x x I have referred this matter to our [L]egal Group for appropriate action x x x. At this point, prudence dictates that we defer the implementation of the project until this issue is fully resolved.

continuing stand-off between it and the City of Pasig on the issue of permits was the only stumbling block for Goldloop to proceed with the construction.

As to Goldloop's failure to fully pay the guaranteed amount, the RTC ruled that the same is likewise attributable to the non-issuance of permits. The RTC noted that when the construction failed to proceed due to said non-issuance, would-be buyers who made initial deposits and/or reservation fees for the condominium units backed out. Goldloop was thus constrained to return their deposits, some with interest, in the amount of ₱80 million. Said amount was apart from the ₱11 million that it already paid to agents and brokers as commissions. These hindered Goldloop from complying with its obligation to pay the guaranteed amount.

Consequently, the RTC adjudged GSIS liable to Goldloop for damages.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff [Goldloop] and against defendant [GSIS].

Accordingly, the unilateral cancellation or rescission of the Memorandum of Agreement and the Addendum to the MOA is hereby declared INVALID for lack of valid basis. Hence, defendant GSIS is hereby directed to comply with the Memorandum of Agreement dated June 16, 1995 and Addendum dated June 20, 1995.

Congruently, and pending compliance by defendant GSIS, the injunction issued on July 10, 2000 is hereby made permanent.

Consistent with the court's finding, defendant GSIS is hereby directed to pay to plaintiff the following:

1. Actual damages in the amount of ₱83,082,749.00;
2. Exemplary Damages in the amount of ₱5,000,000.00;
3. Attorney's Fees - ₱500,000.00;
4. Reimbursement of Filing Fees or Cost of litigation - ₱104,953.50.

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Your offer to advance the tax payment is appreciated, however, the proposed compromise agreement where GSIS pays part of the assessed tax, is unacceptable to GSIS as this would set a bad precedent which other local government units might invoke. Besides the law is very clear on the tax exemption of the GSIS.'

SO ORDERED.<sup>38</sup>

GSIS filed a Notice of Appeal<sup>39</sup> which was approved by the RTC in its Order<sup>40</sup> of August 8, 2003.

### ***Ruling of the Court of Appeals***

In resolving GSIS's appeal, the CA noted that under Section 2.4, Article II of the MOA, GSIS may exercise its right to rescind, to wit: (1) upon Goldloop's failure to start the construction works within 30 working days from the date all relevant permits and licenses from concerned agencies are obtained; (2) or within six months from the date of execution of the agreement, whichever is earlier; or (3) at any given time, should Goldloop abandon the project or otherwise commit any breach of its obligations and commitments.

The CA concluded that GSIS cannot rescind the agreement based on the first two circumstances considering that Goldloop's failure to proceed with the construction works within the said periods was the necessary consequence of the non-issuance of permits which, however, cannot be attributed to Goldloop's fault. Nevertheless, since nine years had already passed since the execution of the MOA and the Addendum, Goldloop is deemed to have abandoned the project under the third circumstance, even if the same be due to a justifiable cause, that is, the non-issuance of permits. The CA declared that the delay in the implementation of the project has been detrimental to the interest of GSIS and its members but not on the part of Goldloop, which, on the contrary, had been benefiting from the same because it had been using the property free of charge. To the appellate court, this amounts to unjust enrichment and, hence, the MOA must be equitably rescinded under this ground. The CA also extinguished the obligations of the parties relative

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<sup>38</sup> Records, Vol. III, pp. 1350-1351.

<sup>39</sup> Id. at 1363-1365.

<sup>40</sup> Id. at 1369.

thereto and ordered each of them to bear its own damage. The dispositive portion of the CA's September 26, 2005 Decision<sup>41</sup> reads:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The June 23, 2003 Decision of the trial court is REVERSED and SET ASIDE. A new judgment is entered RESCINDING the MOA and its Addendum, the obligations of the parties relative thereto are deemed extinguished, and each to bear its own damages.

SO ORDERED.<sup>42</sup>

Goldloop filed a Motion for Reconsideration,<sup>43</sup> but the same was denied in the Resolution<sup>44</sup> dated January 11, 2006.

Hence, the present Petition for Review on *Certiorari*.

### Issues

Goldloop faults the CA in rescinding the MOA and the Addendum, in extinguishing the obligations of the parties relative thereto, in declaring that each party should bear its own damage and, in discarding the findings of facts and conclusions of the RTC.<sup>45</sup>

### Our Ruling

The Court upholds the rescission but for a reason different from that upon which the CA based its conclusion.

*Reciprocal obligations of the parties  
under the MOA.*

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<sup>41</sup> CA *rollo*, pp. 196-207.

<sup>42</sup> Id. at 206.

<sup>43</sup> Id. at 214-226.

<sup>44</sup> Id. at 242.

<sup>45</sup> *Rollo*, p. 15.

“Reciprocal obligations are those which arise from the same cause, and which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.”<sup>46</sup> Here, the parties’ reciprocal obligations are embodied in Article I of the MOA, viz:

ARTICLE I  
ABSOLUTE SALE

Section 1.1 That **GOLDLOOP PROPERTIES INC. will pay the GSIS a guaranteed amount of ONE HUNDRED FORTY MILLION EIGHT HUNDRED NINETY THOUSAND PESOS (₱140,890,000.00) as payment for the 1,195 sq. m. portion of the lot on which the second tower will stand** in accordance with the following schedule:

<u>Period from signing of the Agreement</u>	<u>Percentage of Total Amount</u>	<u>Amount to be Remitted</u>
Six Months	10%	₱ 14,089,000.00
Twelve Months	15%	21,133,500.00
Eighteen Months	15%	21,133,500.00
Twenty-four Months	15%	21,133,500.00
Thirty Months	15%	21,133,500.00
Thirty-Six Months	10%	14,089,000.00
Forty-Two Months	10%	14,089,000.00
Forty-Eight Months	<u>10%</u>	<u>14,089,000.00</u>
	100%	₱ 140,890,000.00

Without prejudice to the right of GSIS to collect the interest provided for in Section 1.3 hereof, the aforesaid periods may be extended in the event that GOLDLOOP PROPERTIES INC. fails to obtain all the necessary permits and [licenses] for causes beyond the control of GOLDLOOP or by reason of force majeure.

It is expressly agreed that extension of time[/]period provided for herein may not be claimed unless GOLDLOOP has, prior to the expiration of the contract time and within fifteen (15) calendar days after the circumstances leading to such claim have arisen, delivered an appropriate written notice to the GSIS to enable the latter to have [the] reason for extension investigated. The GSIS shall, on the basis of the facts and circumstances and of the merits or lack of merit of the request, grant or deny the request for extension, as it may deem proper. The decision of the GSIS on this matter shall be final and binding. Failure to provide such notice constitutes a waiver by x x x GOLDLOOP of any claim for extension.

Section 1.2 That after the project has been completed and sold but not later than six (6) months after the 48[-month] period, in reference to the schedule of payment in Item 1 above, a calculation of the gross sales net of the 8% marketing fee will be made. The GSIS will be entitled (in addition to the

<sup>46</sup> Cortes v. Court of Appeals, G.R. No. 126083, July 12, 2006, 494 SCRA 570, 576.

guaranteed amount in excess of P140.89 Million) to 9.86% of the amount in excess of the P1,428.28 Million (the guaranteed revenue for sharing) while GOLDLOOP will be entitled to the balance of 90.14% in case the gross sales net of the 8% marketing fee does not exceed P1,428.28 Million, the GSIS will not be entitled to any additional amount.

GSIS has the right to full information as to all matters requisite in the determination of the gross sales relative to this project that may be in its possession and a full disclosure of any information that it may deem material and relevant for the purpose.

Section 1.3 Payment to GSIS of the amounts provided for in the preceding paragraphs shall be remitted by GOLDLOOP within the periods stated therein without need of prior notice or demand; and failure to so pay within said periods shall entitle the GSIS to an interest of 18% per annum, compounded monthly, without prejudice to the other rights and remedies of the GSIS under the Agreement and under applicable laws.

Section 1.4 **GSIS warrants that it has title over the subject [p]roperty and subject to the obligation of GOLDLOOP to undertake the conversion of the same to a condominium property and the identification of the 1,195 sq. m. of vacant lot as a unit thereof capable of being legally sold by GSIS to GOLDLOOP, that same is transferable, free from all liens and encumbrances whatsoever.**

Section 1.5 After full compliance by GOLDLOOP of its obligations under the preceding Section, **GSIS shall execute [in] its favor, or in favor of its nominee a Deed of Absolute Sale for the 1,195 sq. m. portion of the subject property.**<sup>47</sup> (Emphasis supplied.)

Clearly, Goldloop's obligation is to pay for the portion of the property on which the second tower shall stand and to construct and develop thereon a condominium building. On the other hand, GSIS is obliged to deliver to Goldloop the property free from all liens and encumbrances and to execute a deed of absolute sale in Goldloop's favor.

*Goldloop failed to complete its payment of the guaranteed amount in the manner prescribed in the contract.*

Under Sec. 1.1 of the MOA, Goldloop undertook to pay GSIS the guaranteed amount of ₱140,890,000.00, in eight installments, the first installment of which would fall due on December 16, 1995 and the subsequent payments

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<sup>47</sup> Records, Vol. I, pp. 13-15.

every six months thereafter until June 16, 1999. The dates of payment may be extended if Goldloop fails to obtain all the necessary permits and licenses for causes beyond its control or by reason of *force majeure*. However, such request for extension must be in writing and made prior to the expiration of the contract *and* within 15 calendar days after the circumstances leading to such claim for extension have arisen.

Sec. 1.3, on the other hand, provides for the remittance to GSIS of such payments without need of demand as well as for the consequence of nonpayment.

Admittedly, Goldloop failed to pay the first installment on time; hence, the parties stipulated in the Addendum that Goldloop shall advance the payment for expense items which were for GSIS's account. The money advanced shall then be credited as full payment of the first installment and the excess therefrom, as partial payment of the second. By way of said expense items, Goldloop claimed to have already advanced in favor of GSIS the sum of ₱24,824,683.00.<sup>48</sup>

Assuming said figure is correct for purposes of this discussion, the same only covers the full payment of the first installment which is ₱14,089,000.00 and the excess therefrom, the partial payment for the ₱21,133,500.00 second installment. However, we note that the Addendum was executed on June 18, 1996 or two days after the second installment payment was supposed to be remitted (June 16, 1996). Hence, by that time, Goldloop's duty to complete the payment for the second installment had already arisen. However, the records fail to show that Goldloop, from that time on, endeavored to at least complete such second installment. Worse, it totally failed to remit the other subsequent installments. This was confirmed by Zapanta during the hearing on the application for writ of preliminary injunction, *viz*:

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<sup>48</sup> See Complaint, *supra* note 23; TSN dated July 6, 2000, pp. 16-17, 37.

[ATTY. SILVERA]

q So [is it] not true that under Art. 1, Sec. 1.1 of the MOA[,] that is, there is in effect a transaction of sale?

WITNESS [Zapanta]

a I don't know what is the meaning of sale.

ATTY. SILVERA

[q] [Okay], let's put it [this] way, did you review or did you have an opportunity to review this MOA prior to signing?

a Well, frankly, GSIS we were all in good faith.

q You [mean] you were obligated to pay a guarantee[d] amount of 140 million and merely...is that your position?

a That was the agreement, when we say in good faith we agreed to the 140 million without even foreseeing the problem.

COURT

q Of the 140 million provided for, I'm speaking only not [of] your advances but of the 140 million you are supposed to pay the GSIS, how many times did you pay, and how much?

a I cannot say Your Honor, because the addendum to the contract it says there in the advances...

q [Okay], according to you the advances are there, it is clear, 24 million.

x x x x

I'm asking you whether or not pursuant to the schedule of payment you are obligated to pay 140 million, right?

[Okay], how much have you paid the GSIS in connection with the schedule of payments?

a **Nothing on this project.** (Emphasis supplied.)

q In other words, you are trying to tell this Court [that] there were advances which are covered by the MOA?

a Yes.

q And this is for the account of GSIS[?]

a Yes[,] Your Honor.

ATTY. SILVERA

q And there were advances when [you were] suppose[d] to start paying this amount?

a It's already in the agreement.

ATTY. SILVERA

q If [based] in this Addendum which is the guiding provision here, it say[s] here the advances of [G]oldloop shall be credited as full payment of the first [guaranteed] installment and partial payment of the [second] installment under Sec. 1.1 of the MOA?



COURT

For the information of the Court, how much is supposed to be the payment, per month?

a Per six (6) months Your Honor.

COURT

q Under the scheduled payment?

a The first payment is [14] million Your Honor.  
And then after 6 months it[’s] 21 million.

q So far according to you[,] you have advance[d] [...]

a 24 million Your Honor.

ATTY. SILVERA

That covers the whole payment for the first installment. And there had been no subsequent payment pursuant to Sec. 1.1 of the MOA [?].

a. **No sir, we were already up to our neck in our expenses.**<sup>49</sup> (Emphasis supplied.)

The RTC ratiocinated that Goldloop’s failure to comply with the said obligation was due to the non-issuance of permits. According to it, Goldloop experienced financial difficulty when the construction did not push thru since it had to return the deposits, some with interest, of would-be buyers and had already paid the commission of brokers and agents of the condominium units, and these amounted to millions of pesos. Hence, its failure to pay was justified.

While the Court is inclined to agree with the RTC that the non-issuance of permits indeed affected Goldloop’s ability to pay, it cannot, however, ignore the fact that Goldloop itself failed to avail of the protection granted to it by the MOA in case of failure to obtain the necessary permits and licenses. Under the circumstances, Goldloop could have applied for an extension within which to pay the installments of the guaranteed amount as clearly provided for under the second and third paragraphs of said Sec. 1.1. Yet again, the records are bereft of any showing that it ever availed of such extension. When asked regarding this, Zapanta evaded the question and instead answered that the contract has not yet expired, viz:

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<sup>49</sup> TSN dated July 6, 2000, pp. 34-37.

ATTY. SILVERA

q Would you agree with me in case that those permits could not be secured Goldloop could ask for an extension of time subject only to the conditions cited in the second paragraph and 3<sup>rd</sup> paragraph of Sec. 1.1, Art. 1 of the MOA on page 3?

a Yes[,] it says here.

q And would you please tell us if Goldloop ever availed of this option afforded by the MOA?

a Well, insofar as advising the GSIS of the refusal of the Pasig City we have voluminous paper...of that, now with regard to the filing of an extension of time prior to the expiration of the contracts, we are contending that the contract is not expired.<sup>50</sup>

Apparently, Zapanta would want to impress that Goldloop could still avail of the said extension had not GSIS untimely rescinded the agreements on February 23, 2000. This was because of Goldloop's belief that on said date, the four-year period within which to pay the guaranteed amount had not yet lapsed considering that the same should have been reckoned from the date of the execution of the Addendum on June 18, 1996 and not from the date of the execution of the MOA on June 16, 1995.<sup>51</sup> The Court, however, thinks otherwise. Sec. 9 of the Addendum reads:

9. **GOLDLOOP shall start the renovation of the façade of the existing tower and construction of the condominium building on the vacant lot within thirty (30) working days from date all relevant permits and licenses from concerned agencies are obtained, or within six (6) months from date of execution of this Addendum to Memorandum of Agreement, whichever is earlier.** Failure of GOLDLOOP in this respect shall entitle GSIS to exercise its right provided for under Section 2.4, Article II of the Memorandum of Agreement.<sup>52</sup>

From the above, it is clear that said section did not extend the four-year period within which to pay the guaranteed amount. In fact, no mention was made regarding this. What was extended was the period within which Goldloop should have started the construction, which was changed from six months from the date

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<sup>50</sup> Id. at 34.

<sup>51</sup> See Goldloop's allegations in par. 5 of its Opposition (to Urgent Motion for Reconsideration) filed with the RTC, Records, Vol. I, p. 223.

<sup>52</sup> Id. at 24.

of the execution of the MOA to six months from the date of execution of the Addendum. This is very plain from the said provision.

Be that as it may, it would be too late in the day for Goldloop to request for an extension. As may be recalled, such request must be made not only prior to the expiration of the contract but *also* within 15 calendar days after the event leading to such claim for extension has arisen. And since the problem with the non-issuance of permits had long arisen during that time, Goldloop cannot anymore avail of the extension even if by then the contract has not yet expired.

At this point, it bears to stress that:

It is basic that a contract is the law between the parties, and the stipulations therein – provided that they are not contrary to law, morals, good customs, public order or public policy – shall be binding as between the parties. In contractual relations, the law allows the parties much leeway and considers their agreement to be the law between them. This is because ‘courts cannot follow one every step of his life and extricate him from bad bargains x x x relieve him from one-sided contracts, or annul the effects of foolish acts.’ The courts are obliged to give effect to the agreement and enforce the contract to the letter.<sup>53</sup>

Here, as the parties voluntarily and freely executed the MOA and the Addendum, the terms contained therein are the law between them.<sup>54</sup> Hence, Goldloop should have completed its payment of the guaranteed amount in the manner prescribed by the contract. When it could not do so as a consequence of the non-issuance of permits, it should have asked for an extension within which to pay the same. However, since Goldloop neither completed the payment nor sought for an extension, it is considered to have breached its commitment and obligation under Sec. 1.1 of the MOA.

*GSIS rescinded the contract pursuant to its right to rescind under the relevant*

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<sup>53</sup> *National Power Corporation v. Premier Shipping Lines*, G.R. Nos. 179103 & 180209, September 17, 2009, 600 SCRA 153, 175-176.

<sup>54</sup> *Id.*

*provisions of the MOA.*

“Concededly, parties may validly stipulate the unilateral rescission of a contract.”<sup>55</sup> Such is the case here since the parties conferred upon GSIS the right to unilaterally rescind the MOA in the earlier quoted Sec. 2.4 and hereinafter reproduced:

Section 2.4. **Should GOLDLOOP fail to start the construction works within the thirty (30) working days from date all relevant permits and licenses from concerned agencies are obtained, or within six (6) months from the date of the execution of this Agreement, whichever is earlier, or at any given time abandon the same or otherwise commit any breach of their obligations and commitments under this Agreement, this agreement shall be deemed terminated and cancelled without need of judicial action by giving thirty (30) days written notice to that effect to GOLDLOOP who hereby agrees to abide by the decision of the GSIS. x x x**<sup>56</sup> (Emphasis supplied.)

Under the above-quoted provision, one of the grounds under which GSIS may validly rescind the MOA is if at any given time, Goldloop abandons the construction or otherwise commit any breach of its obligations and commitments thereunder.

The February 23, 2000 notice clearly specified that GSIS is rescinding the contract for failure of Goldloop to pay the guaranteed amount of ₱140,890,000.00 under Sec. 1.1 of the MOA. This falls under the said ground, it being a breach of an obligation and commitment under the said agreement. Because of said breach, Sec. 1.3 of the MOA which provides for the consequence of the nonpayment thereof should be read in relation to Sec. 2.4.

Under Sec. 1.3, Goldloop’s failure to pay the guaranteed amount within the periods provided for in Sec. 1.1 of the MOA shall entitle GSIS to interest, *without prejudice to its other rights and remedies under the agreement and applicable*

<sup>55</sup> *Associated Bank v. Pronstroller*, G.R. No. 148444, July 14, 2008, 558 SCRA 113, 131.

<sup>56</sup> Records, Vol. I, pp. 15-16.

*laws.* This right referred to is the right of rescission under Sec. 2.4 authorizing GSIS to exercise the same upon Goldloop's breach of any of its obligations and commitments. Clearly therefore, when GSIS rescinded the MOA and the Addendum, it merely exercised its right to rescind under Sec. 2.4 in relation to Sec. 1.3 of the MOA.

*However, GSIS is not entirely faultless since it likewise failed in its obligation to deliver the property free from burden.*

GSIS is, however, not entirely faultless. It also failed to comply with its obligation, although it cannot be conclusively determined when it actually begun as the same only became apparent to Goldloop after the execution of the MOA and the Addendum. This was when the City of Pasig formally notified GSIS that it was holding in abeyance any action on the latter's application for building permits due to its outstanding real estate taxes in the amount of ₱54 million. The fact that GSIS disputes such tax liability because of its firm stand that it was tax exempt is beside the point. What is plain is that the property was by then not free from burden since real estate taxes were imposed upon it and these taxes remained unpaid. There was, therefore, on the part of GSIS, a failure to comply with its obligation to deliver the property free from burden.

This is not to say, however, that Goldloop's obligation to pay the guaranteed amount, as discussed above, did not arise considering that GSIS could not comply with its concurrent obligation to deliver the property free from burden. It is well to note that even before Goldloop became aware of GSIS's supposed tax liability with the City of Pasig through the latter's October 8, 1997 letter, Goldloop was already in default in its payment of the guaranteed amount. As can be recalled and again under the assumption that Goldloop advanced ₱24,824,683.00 on behalf of GSIS which amount was credited as full and partial payment of the first and second installments, the remaining balance for the second installment should have been paid as early as June 16, 1996. No such payment was, however,

made. The same thing is true with respect to the third and fourth installments which respectively became due on December 16, 1996 and June 16, 1997. Clearly, Goldloop had already defaulted in its payments even before it became aware of GSIS's tax issues. In short, even before such failure of GSIS became apparent to Goldloop, the latter had already committed a breach of its own obligation.

As to when GSIS actually committed its breach of failing to deliver the property free from any burden, the same is a different matter which will be discussed later.

*In view of the rescission, mutual restitution is required.*

As correctly observed by the RTC, the rescissory action taken by GSIS is pursuant to Article 1191<sup>57</sup> of the Civil Code. In cases involving rescission under the said provision, mutual restitution is required.<sup>58</sup> The parties should be brought back to their original position prior to the inception of the contract.<sup>59</sup> "Accordingly, when a decree of rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in [their] original situation."<sup>60</sup> Pursuant to this, Goldloop should return to GSIS the possession and control of the property subject of their agreements while GSIS should reimburse Goldloop whatever amount it had received from the latter by reason of the MOA and the Addendum.

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<sup>57</sup> Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

<sup>58</sup> *Unlad Resources Development Corporation v. Dragon*, G.R. No. 149338, July 28, 2008, 560 SCRA 63, 78.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 79.

Here, out of the total amount of expenses which Goldloop claims to have incurred for the project, it appears that the only sum it paid to GSIS was that amount it expended by way of change order of expense items supposed to be for GSIS's account and, which under the Addendum was to be credited as full payment and partial payment of the first and second installments of the guaranteed amount, respectively. The figure, however, remains disputed. Goldloop alleges that the same amounts to ₱24,824,683.00. Yet, there is nothing in the records to support the same. Said amount was not clearly specified in Goldloop's Consolidated Financial Statements for years 1995 to 2000 and Auditor's Report.<sup>61</sup> What is in the records is a mere self-serving list of expenses that it submitted and which indicates the said figure as "Expenses/Charges on Change Orders".<sup>62</sup> GSIS, on the other hand, asserts that the expense items for its account, per Annex "C" of the Addendum, is only ₱21,225,521.08 and provided that the works for which the items were supposed to be used, that is, the relocation of the powerhouse and cistern tank, were indeed completed. Unfortunately, said Annex "C" is likewise not part of the records of this case and GSIS merely quoted the relevant portion of the same in its Answer. Be that as it may, Zapanta testified that the installation of the cistern tank was already 100% complete,<sup>63</sup> although there was no mention regarding the status of the powerhouse. In view of this, the Court can only consider the sum spent with respect to the completed installation of the cistern tank which the GSIS admitted in its Answer as amounting to ₱4,122,133.19.<sup>64</sup> Aside from the said amount, GSIS must also return to Goldloop all equipment, machineries and other properties of the latter which may be found in the premises of the subject property.

### *Damages*

As discussed, both parties failed to comply with their respective obligations

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<sup>61</sup> Records, Vol. II, pp. 731-740.

<sup>62</sup> Exhibit "T", Records, Vol. I, p. 137.

<sup>63</sup> TSN dated July 6, 2000, pp. 40-41.

<sup>64</sup> See note 8.

under their agreements. Hence, relevant is the provision of Article 1192 of the Civil Code which reads:

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. **If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages.** (Emphasis supplied.)

In this case, it cannot be determined with certainty which between the parties is the first infractor. It could be GSIS because of the high probability that even before the execution of the agreements, real property taxes were already imposed and unpaid such that when GSIS applied for building permits, the tax liability was already in the substantial amount of ₱54 million. It was just that GSIS could not have been mindful of the same because of its stand that it is tax exempt. But as this cannot be conclusively presumed, there exists an uncertainty as to which between the failure to comply on the part of each party came first; hence, the last portion of Article 1192 finds application. Pursuant thereto, the parties' respective claims for damages are thus deemed extinguished and each of them shall bear its own damage.

**WHEREFORE**, finding the rescission of the Memorandum of Agreement and the Addendum to the Memorandum of Agreement by the Government Service Insurance System to be proper, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 26, 2005 and Resolution dated January 11, 2006 of the Court of Appeals in CA-G.R. CV No. 80135 are hereby **AFFIRMED with MODIFICATIONS**.

Goldloop Properties Inc. is **DIRECTED** to immediately surrender to the Government Service Insurance System the control and possession of the 2,411-square meter property located in ADB Avenue cor. Sapphire St., Ortigas Center, Pasig City including the Philcomcen Building standing thereon. The Government Service Insurance System is **ORDERED** to reimburse Goldloop Properties Inc.



the amount of ₱4,122,133.19 and return to the latter all its equipment, machineries and other materials which may be found in the premises of the subject property. The parties' respective claims for damages are deemed **EXTINGUISHED** and each of them shall bear its own damage.

**SO ORDERED.**

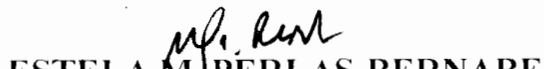
  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*  
*Acting Chairperson*

  
**MARTIN S. VILLARAMA, JR.**  
*Associate Justice*

  
**BEINVENIDO L. REYES**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*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.

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*  
*Acting Chairperson*

## CERTIFICATION

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.

A handwritten signature in black ink, appearing to read "Antonio T. Carpio", written in a cursive style.

**ANTONIO T. CARPIO**

Senior Associate Justice

(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)