Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

SANDOVAL SHIPYARDS, INC. and RIMPORT INDUSTRIES, INC. represented by ENGR. REYNALDO G. IMPORTANTE,
Petitioners,

- versus -

PHILIPPINE MERCHANT MARINE ACADEMY (PMMA),
Respondent.

G.R. No. 188633

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

Promulgated:

APR 10 2013

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DECISION

SERENO, *CJ*:

In this Petition for Review on Certiorari[1] under Rule 45, petitioners come before us seeking a reversal of the Decision[2] dated 26 February 2009 and Resolution[3] dated 06 July 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 88094. The CA Decision partly granted the appeal of petitioners by deleting the attorney's fees awarded to respondent by the Regional Trial Court, Branch 146, Makati City (RTC) in Civil Case No. 99-052.[4] The CA Resolution denied their Motion for Reconsideration of its Decision.[5]

Philippine Merchant Marine Academy (respondent) entered into a Ship Building Contract (contract) with Sandoval Shipyards, Inc. through the latter's agent, Rimport Industries, Inc. (petitioners) on 19 December 1994. The contract states that petitioners would construct two units of 9.10-meter lifeboats (lifeboats) to be used as training boats for the students of

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[1] *Rollo*, pp. 10-28.
[2] Id. at 37-46, penned by Associate Justice Josefina Guevara-Salonga, Chairman and concurred by Associate Justice Arcangelita M. Romilla-Lontok and Romeo F. Barza.
[3] Id. at 47-49.
[4] Id. at 46.
[5] Id. at 49.

respondent. These lifeboats should have 45-HP Gray Marine diesel engines and should be delivered within 45 working days from the date of the contract-signing and payment of the mobilization/organization fund. Respondent, for its part, would pay petitioners ₱1,685,200 in installments based on the progress accomplishment of the work as stated in the contract.[6]

As agreed upon, respondent paid petitioners ₱236,694.00 on 08 March 1995 as mobilization fund for the lifeboats; ₱504,947.20 on 15 March 1995 for its first progress billing; and ₱386,600.00 on 25 March 1995 as final payment for the lifeboats.[7] On 10 August 1995, Angel Rosario (Rosario), a faculty member of respondent who claimed to have been verbally authorized by its president, allegedly received the lifeboats at the Philippine Navy Wharf in good order and condition.[8]

In November 1995, respondent sent an inspection team to where the two lifeboats were docked to check whether the plans and work specifications had been complied with. The team found that petitioners had installed surplus Japan-made Isuzu C-240 diesel engines with plates marked "Isuzu Marine diesel engine" glued to the top of the cylinder heads instead of the agreed upon 45-HP Gray Marine diesel engines; that for the electric starting systems of the engines, there was no manual which was necessary in case the systems failed; and that the construction of the engine compartment was not in conformity with the approved plan. For these reasons, respondent's dean submitted a report and recommendation to the president of petitioners stating the latter's construction violations and asking for rectification.

Consequently, a meeting was held between representatives of respondent and petitioners on 01 December 1995. The latter were reminded that they should strictly comply with the agreed plan and specifications of the lifeboats, as there were no authorized alterations thereof. Petitioners were also advised to put into writing their request for an extension of time for the delivery of the lifeboats.[9] In compliance, they wrote a letter dated 18 December 1995, requesting an extension of time for the delivery, from 01 December 1995 to January 1996.[10]

On 18 July 1996, the Commission on Audit (COA), through its technical audit specialist Benedict S. Guantero (Guantero), conducted an ocular inspection of the lifeboats. His report indicated that the lifeboats were corroded and deteriorating because of their exposure to all types of weather elements; that the plankings and the benches were also deteriorating, as they were not coated with fiberglass; that the lifeboats had no mast sails or row locks installed on the boats; that the installed prime mover was an Isuzu engine, contrary to the agreed plans and specifications;

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[6] Id. at 73.
[7] Id. at 75-76.
[8] Id. at 77.
[9] Id. at 39.
[10] Id. at 74.

and that the lifeboats had been paid in full except for the 10 percent retention.[11]

Despite repeated demands from respondent, petitioners refused to deliver the lifeboats that would comply with the agreed plans and specifications. As a result, respondent filed a Complaint for Rescission of Contract with Damages against petitioners before the RTC,[12] and trial ensued.

The RTC in its Decision[13] dated 10 April 2006 held that although the caption of the Complaint was "Rescission of Contract with Damages," the allegations in the body were for breach of contract. Petitioners were found to have violated the contract by installing surplus diesel engines, contrary to the agreed plan and specifications. Thus, petitioners were made jointly and severally liable for actual damages in the amount of ₱1,516,680 and were awarded a penalty of one percent of the total contract price for every day of delay. The RTC also directed petitioners to pay ₱200,000 as attorney's fees plus the costs of suit, because their unjustified refusal to pay respondent compelled it to resort to court action for the protection and vindication of its rights. It also ruled that petitioners were estopped from questioning respondent's noncompliance with mediation proceedings, because they nevertheless actively participated in the trial of the case.[14]

As a result, petitioners brought an ordinary appeal to the CA via Rule 41.[15] They opined that the RTC committed reversible errors when it ruled that, first, the case was one for breach of contract and not for rescission; second, when it did not dismiss the case as a sanction for respondent's deliberate failure to attend the mediation session; third, when it found that petitioners had not fully complied with their obligations in the contract; and fourth, when it awarded attorney's fees without explanation.[16]

The CA ruled that petitioners indeed committed a clear substantial breach of the contract, which warranted its rescission. Rescission requires a mutual restoration of benefits received. However, petitioners failed to deliver the lifeboats; their alleged delivery to Rosario was invalid, as he was not a duly authorized representative named in the contract. Hence, petitioners could not compel respondent to return something it never had possession or custody of. Nonetheless, the CA deleted the award of attorney's fees, as it found that the RTC failed to cite any specific factual basis to justify the award.[17]

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[11] Id. at 39-40.
[12] Id. at 40.
[13] Id. at 73-79.
[14] Id. at 78.
[15] Id. at 85.
[16] Id. at 88-89.
[17] Id. at 43-35.

Dissatisfied, petitioners filed a Motion for Reconsideration[18] dated 20 March 2009, arguing that respondent had agreed to substitute engines of equivalent quality in the form of surplus engines that were not secondhand or used, but were rather old stock kept in their warehouse.[19] Furthermore, they asserted that the acceptance of the lifeboats was implied by the act of respondent's president, who christened them with the names *MB Amihan* and *MB Habagat*.[20]

In its Resolution[21] dated 06 July 2009 the CA denied petitioners' Motion, ruling that the fact that the engines installed were different from what had been agreed was a breach of the specifications in the contract.[22] Additionally, documentary and testimonial evidenced proffered by both parties established that the lifeboats remained docked at Navotas in the possession of petitioners.[23]

Hence, this Rule 45 Petition before us. Petitioners rehash the arguments they posited before the CA with the additional contention that the judge who wrote the Decision was not present during the trial and did not have the advantage of firsthand assessment of the testimonies of the witnesses. For this reason, the Court should reconsider Rosario's testimony and progress report, as well as the delivery receipt for the lifeboats. We required respondent to comment,[24] which it did.[25] Thereafter, petitioners filed their Reply.[26]

The issues brought before us by petitioners are as follows:

I. Whether a factual review is warranted, considering that the trial judge who penned the Decision was different from the judge who received the evidence of the parties;
II. Whether the case is for rescission and not damages/breach of contract;
III. Whether failure to attend mediation proceedings warrants a dismissal of the case.

We deny the Petition.

In a Rule 45 Petition, parties may only raise questions of law, because this Court is not a trier of facts.[27] Generally, this court will not review

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[18] Id. at 50-56.
[19] Id. at 52-53.
[20] Id. at 53-54.
[21] Id. at 47-49.
[22] Id. at 48.
[23] Id. at 49.
[24] Id. at 102.
[25] Id. at 108-134.
[26] Id. at 140-147.
[27] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, 06 June 2011, 650 SCRA 656.

findings of fact of lower courts, unless the case falls under any of the following recognized exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
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> (2) When the inference made is manifestly mistaken, absurd or impossible;
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> (3) Where there is a grave abuse of discretion;
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> (4) When the judgment is based on a misapprehension of facts;
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> (5) When the findings of fact are conflicting;
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> (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
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> (7) When the findings are contrary to those of the trial court;
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> (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
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> (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
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> (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[28]

The fact that the trial judge who penned the Decision was different from the one who received the evidence is not one of the exceptions that warrant a factual review of the case. Petitioners cannot carve out an exception when there is none. We have already addressed this matter in *Decasa v. CA*,[29] from which we quote:

> x x x we have held in several cases that the fact that the judge who heard the evidence is not the one who rendered the judgment; and that for the same reason, the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous. Even though the judge who penned the decision was not the judge who heard the testimonies of the witnesses, such is not enough reason to overturn the findings of fact of the trial court on the credibility of witnesses. It may be true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, but it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial. That a judge did not hear a case does not necessarily render him less competent in assessing the credibility of witnesses. He can rely on the transcripts of stenographic notes of their testimony and calibrate them in accordance with their conformity to common experience, knowledge and observation of

[28] Id.
[29] G.R. 172184, 10 July 2007,527 SCRA 267.

> ordinary men. Such reliance does not violate substantive and procedural due process of law.[30] (Citations omitted)

Petitioners also claim that the CA erred in upholding the RTC's substitution of respondent's cause of action from rescission to breach of contract. Had it not done so, then it would have merely ordered mutual restoration of what each of them received – the two lifeboats in exchange for ₱1,516.680.

The RTC did not substitute the cause of action. A cause of action is an act or omission which violates the rights of another.[31] In the Complaint before the RTC, the respondent alleged that petitioners failed to comply with their obligation under the Ship Building Contract. Such failure or breach of respondent's contractual rights is the cause of action. Rescission or damages are part of the reliefs.[32] Hence, it was but proper for the RTC to first make a determination of whether there was indeed a breach of contract on the part of petitioners; second, if there was a breach, whether it would warrant rescission and/or damages.

Both the RTC and the CA found that petitioners violated the terms of the contract by installing surplus diesel engines, contrary to the agreed plans and specifications, and by failing to deliver the lifeboats within the agreed time. The breach was found to be substantial and sufficient to warrant a rescission of the contract. Rescission entails a mutual restitution of benefits received.[33] An injured party who has chosen rescission is also entitled to the payment of damages.[34] The factual circumstances, however, rendered mutual restitution impossible. Both the RTC and the CA found that petitioners delivered the lifeboats to Rosario. Although he was an engineer of respondent, it never authorized him to receive the lifeboats from petitioners. Hence, as the delivery to Rosario was invalid, it was as if respondent never received the lifeboats. As it never received the object of the contract, it cannot return the object. Unfortunately, the same thing cannot be said of petitioners. They admit that they received a total amount of ₱1,516,680 from respondent as payment for the construction of the lifeboats. For this reason, they should return the same amount to respondent.

Petitioners are likewise mistaken in their assertion that the trial court should have dismissed the Complaint for respondent's failure to attend the mediation session. In *Chan Kent v. Micarez*,[35] in which the trial court dismissed the case for failure of the plaintiff and her counsel to attend the mediation proceedings, this Court held:

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[30] Id. at 283-284.
[31] RULES OF COURT, Rule 2, Sec. 2.
[32] CIVIL CODE, Art. 1191.
[33] *Spouses Velarde v. CA*, G.R. 108346, 11 July 2001, 361 SCRA 56.
[34] Supra note 32.
[35] G.R. 185758, 09 March 2011, 645 SCRA 176.

> To reiterate, A.M. No. 01-10-5-SC-PHILJA regards mediation as part of pre-trial where parties are encouraged to personally attend the proceedings. The personal non-appearance, however, of a party may be excused only when the representative, who appears in his behalf, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. To ensure the attendance of the parties, A.M. No. 01-10-5-SC-PHILJA specifically enumerates the sanctions that the court can impose upon a party who fails to appear in the proceedings which includes censure, reprimand, contempt, and even dismissal of the action in relation to Section 5, Rule 18 of the Rules of Court. The respective lawyers of the parties may attend the proceedings and, if they do so, they are enjoined to cooperate with the mediator for the successful amicable settlement of disputes so as to effectively reduce docket congestion.
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> Although the RTC has legal basis to order the dismissal of Civil Case No. 13-2007, the Court finds this sanction too severe to be imposed on the petitioner where the records of the case is devoid of evidence of willful or flagrant disregard of the rules on mediation proceedings. There is no clear demonstration that the absence of petitioner's representative during mediation proceedings on March 1, 2008 was intended to perpetuate delay in the litigation of the case. Neither is it indicative of lack of interest on the part of petitioner to enter into a possible amicable settlement of the case.[36] (Citations omitted)

Here, there was no finding that the absence of respondent was in willful or flagrant disregard of the rules on mediation, that the absence was intended to effect a delay in litigation, or that respondent lacked interest in a possible amicable settlement of the case. In fact, the CA found that all efforts had been exerted by the parties to amicably settle the case during the pretrial.[37] Thus, RTC's nondismissal of respondent's Complaint was but appropriate.

WHEREFORE, in view of the foregoing, we **DENY** the Petition for Review on Certiorari dated 21 August 2009 and **AFFIRM** the Decision dated 26 February 2009 and Resolution dated 06 July 2009 of the Court of Appeals in CA-G.R. CV No. 88094.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

[36] Id. at 183.
[37] *Rollo*, p. 44.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice