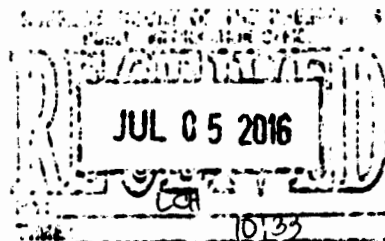




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

VIL-REY PLANNERS and G.R. No. 189401
BUILDERS,

Petitioners,

- versus -

LEXBER, INC.,

Respondent.

x ----- x

G.R. No. 189447

STRONGHOLD INSURANCE
COMPANY, INC.,

Petitioner,

Present:

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

- versus -

LEXBER, INC.,

Respondent.

x ----- x

Promulgated:

JUN 15 2016

DECISION

SERENO, *CJ*:

Before us are petitions for review on certiorari under Rule 45 of the Rules of Court seeking to nullify the Court of Appeals (CA) Decision¹ and Resolution² in CA-G.R. CV No. 90241. The CA Decision found Vil-Rey Planners and Builders (Vil-Rey) and Stronghold Insurance Company, Inc. (Stronghold), solidarily liable to Lexber, Inc. (Lexber) in the amount of

* Designated additional Member/ in lieu of Associate Justice Estela M. Perlas-Bernabe per raffle dated 23 May 2016.

¹ *Rollo* (G.R. No. 189447), pp. 40-50. The Decision dated 16 April 2009 issued by the Court of Appeals (CA) Thirteenth Division was penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court), with Associate Justices Amelita G. Tolentino and Ramon M. Bato, Jr., concurring.

² *Id.* at 52, dated 1 September 2009.

₱284,084.46 plus attorney's fees of ₱50,000. The CA Resolution denied the motions for reconsideration filed by Vil-Rey and Stronghold.

FACTS

Vil-Rey and Lexber entered into a Construction Contract dated 17 April 1996³ (first contract) whereby the former undertook to work on the compacted backfill of the latter's 56,565-square-meter property in *Barangay Bangad*, Cabanatuan City. Based on the first contract, Vil-Rey shall complete the project in 60 days for a consideration of ₱5,100,000. Lexber released to Vil-Rey a mobilization downpayment of ₱500,000 secured by Surety Bond G(16) No. 066915⁴ (first surety bond) issued by Stronghold. For its part, Vil-Rey agreed to indemnify Stronghold for whatever amount the latter might be adjudged to pay Lexber under the surety bond.⁵

Vil-Rey and Lexber mutually terminated the first contract and entered into a Construction Contract dated 1 July 1996⁶ (second contract) to cover the remaining works, but under revised terms and conditions. The contract amount was ₱2,988,700.20, and the scope of work was required to be completed in 60 days.

On 23 December 1996, Vil-Rey and Lexber executed Work Order No. CAB-96-09⁷ (third contract) for the completion of the remaining works by 15 January 1997. Under the third contract, a consideration of ₱1,168,728.37 shall be paid on the following basis: 50% downpayment to be secured by a surety bond in the same amount issued by Stronghold upon approval of the work order and 50% balance upon completion of the works. Accordingly, Stronghold issued Surety Bond G(16) No. 077258⁸ (second surety bond) in the amount of ₱584,364.19 in favor of Lexber. Vil-Rey again obligated itself to indemnify Stronghold for whatever amount the latter might be held to pay under the surety bond.⁹

In a letter dated 21 January 1997¹⁰ addressed to Lexber, Vil-Rey requested the extension of the contract period to 31 January 1997. Lexber granted the request for extension.¹¹ However, Vil-Rey failed to complete the works by the end of the extended period, or even after Lexber gave it another five days to finish the works.¹² Lexber then wrote Stronghold seeking to collect on the two surety bonds issued in favor of the former.¹³

³ Id. at 55-61.

⁴ Id. at 53.

⁵ Id. at 54.

⁶ Id. at 70-74.

⁷ Id. at 77-78.

⁸ Id. at 79.

⁹ Id. at 80.

¹⁰ Id. at 81.

¹¹ Id. at 81, 82.

¹² Id. at 82.

¹³ Id. at 83.

When negotiations failed, Lexber filed a Complaint¹⁴ for sum of money and damages against Vil-Rey and Stronghold before the Regional Trial Court of Quezon City, Branch 93 (RTC).

In its Answer (with Counterclaim),¹⁵ Vil-Rey denied that it was guilty of breach of contract and insisted that it was Lexber that owed the amount of ₱1,960,558.40 to the former. Vil-Rey alleged that under the first contract, it was able to finish 75.33% of the works, but that Lexber paid an amount equivalent to only 50% of the contract, thereby leaving a balance of ₱1,291,830 in Vil-Rey's favor. Furthermore, considering that almost 100% of the works were finished under the third contract, Vil-Rey had receivables of ₱668,728.40 representing the contract amount of ₱1,168,728.37 less the downpayment of ₱500,000. It also prayed for the payment of moral damages and attorney's fees.

Stronghold filed its Answer¹⁶ alleging that its liability under the surety bonds was very specific. Under the first surety bond, it guaranteed only the mobilization down payment of 10% of the total consideration for the first contract. The mobilization downpayment was fully liquidated prior to the mutual termination of the first contract. Also, no collection could be made on the second surety bond, because Lexber failed to allege that there were defects in the materials used and workmanship utilized by Vil-Rey in undertaking the works. Stronghold put forward its counterclaim against Lexber for attorney's fees, litigation expenses, and cross-claim against Vil-Rey for any and all amounts Stronghold may be ordered to pay under the surety bonds pursuant to the indemnity agreements.

RULING OF THE RTC

In a Decision dated 12 December 2005,¹⁷ the RTC adjudged Vil-Rey and Stronghold jointly and severally liable to Lexber in the amount of ₱2,988,700.20, with interest at the rate of 12% per annum as actual and compensatory damages from the time of the breach until full satisfaction. The trial court also ordered Vil-Rey and Stronghold to pay attorney's fees in the amount of ₱500,000 plus the costs of suit. It upheld the indemnity agreements and granted Stronghold's cross-claim against Vil-Rey.

The RTC emphasized that parties to a contract are bound by the stipulations therein. When the contract requires the accomplishment of tasks at a given time and the obligor fails to deliver, there is breach of contract that entitles the obligee to damages. In this case, when Vil-Rey failed to finish the works on time, it became liable to Lexber for damages brought about by the breach. The trial court found no merit in the claim of Vil-Rey that there was underpayment and brushed aside the latter's counterclaim.

¹⁴ Id. at 87-90.

¹⁵ Id. at 108-112.

¹⁶ Id. at 99-105.

¹⁷ Id. at 212-220. The Decision was penned by Pairing Judge Samuel H. Gaerlan.



As regards Stronghold, the trial court found that the wording of the surety bonds did not embody the parties' true intent, which was to ensure the faithful performance by Vil-Rey of its obligations. Considering its failure in this regard, Stronghold should pay the total amount of the two surety bonds to Lexber.

In an Order dated 22 October 2007,¹⁸ the RTC decreed a partial reconsideration and ordered Vil-Rey and Stronghold to pay Lexber *in solidum* in the amount of ₱1,084,364.19. This represented the true total amount of the two surety bonds, with 12% interest per annum as actual and compensatory damages from the time of the breach until full satisfaction. Furthermore, attorney's fees were reduced to ₱200,000.

Vil-Rey and Stronghold filed an appeal before the CA.

RULING OF THE CA

In the assailed Decision dated 16 April 2009,¹⁹ the CA modified the RTC Order and further lowered the liability of Vil-Rey and Stronghold to ₱284,084.46 with interest at the rate of 6% per annum from 11 February 1997 until the finality of the Decision. Thereafter, the amount shall earn 12% interest per annum until full satisfaction. The appellate court also reduced attorney's fees to ₱50,000.


The CA ruled that, considering the mutual termination of the first and second contracts, no liability could be assessed against Vil-Rey. Whatever claims Lexber had against Vil-Rey had been deemed waived with the execution of the third contract. Consequently, Stronghold could not be made to pay under the first surety bond, which covered only the mobilization downpayment under the first contract.

Nevertheless, there was a clear breach of the third contract, and Vil-Rey should be held liable for the natural and probable consequences of the breach as duly proven. In this case, Lexber was able to prove that it sustained damages in the amount of ₱284,084.46, which was the amount it paid another contractor tasked to complete the works left unfinished by Vil-Rey. That amount was charged against the second surety bond, which guaranteed not only the workmanship and the quality of the materials used in the project, but also the obligations of Vil-Rey.

The CA modified the interest imposed considering that the obligation breached was not a loan or forbearance of money. Like the RTC, it denied the counterclaims of Vil-Rey and Stronghold against Lexber, but upheld Stronghold's cross-claim against Vil-Rey.

¹⁸ Id. at 255-257. The Order was penned by Presiding Judge Ramon Paul L. Hernando.

¹⁹ Id. at 40-50.



Vil-Rey's motion for reconsideration and Stronghold's motion for partial reconsideration were denied by the CA in the challenged Resolution dated 1 September 2009.²⁰

ISSUES

Dissatisfied, Vil-Rey and Stronghold filed the instant petitions before us raising the following issues for our resolution:

1. Whether Vil-Rey is liable for breach of contract
2. Whether Stronghold's liability under the second surety bond was extinguished by the extension of the third contract
3. Whether Lexber is entitled to attorney's fees

OUR RULING

I.

Vil-Rey is liable for breach of contract.

In resisting the ruling of the CA that Vil-Rey was guilty of breach of contract, the latter alleges that the appellate court's findings are based on a misapprehension of facts.²¹ Vil-Rey argues that the consideration for the third contract was ₱1,168,728.37, of which it was paid only ₱500,000. Considering that there remained a balance of ₱668,728.37, the amount was more than enough to offset that incurred by Lexber in order to finish the works.

The argument misses the point.

Breach of contract is the failure of a party, without legal reason, to comply with the terms of a contract or perform any promise that forms either a part or the whole of it.²² The failure of Vil-Rey to complete the works under the third contract was never an issue in this case. In fact, that failure was readily admitted by Moises Villarta, its managing partner,²³ in his testimony before the trial court:

- Q. What happened after you accomplished 95% under the [third contract]?
- A. The only remaining there would be the compaction and fill density test.
- Q. Could you please tell us why you did not finish the compaction and density test under the [third] contract.
- A. Because I lacked funds. I was not paid anymore.²⁴


²⁰ Id. at 52.

²¹ *Rollo* (G.R. No. 189401), pp. 24-26.

²² *R.S. Tomas, Inc. v. Rizal Cement Co., Inc.*, 685 Phil. 9 (2012).

²³ *Rollo* (G.R. No. 189401), p. 16.

²⁴ Id. at 23.



To clarify, aside from this testimony, no proof was presented to show that Vil-Rey was able to accomplish 95% of the works under the third contract. Nevertheless, even if we were to assume that this claim is true, it still falls short of the obligation to finish 100% of the works.

In the third contract, Vil-Rey and Lexber agreed on the following terms of payment:

- 50% downpayment upon approval of this work order against a surety bond from Stronghold Insurance Corporation
- 50% balance upon completion of work

The work will be completed on or before 15 January 1997 x x x.²⁵

It is clear that the next payment for Vil-Rey would have fallen due upon completion of the works. Thus, it cannot put up the defense that its failure to comply with its obligation was because it was not paid.

Under the above provisions, the parties clearly took on reciprocal obligations. These are obligations that arise from the same cause, such that the obligation of one is dependent upon that of the other.²⁶

The reciprocal obligation in this case was Lexber's payment of the 50% balance upon Vil-Rey's completion of the works on or before 15 January 1997. However, despite the grant of extension until 31 January 1997, and even after the lapse of another five-day grace period, Vil-Rey failed to finish the works under the third contract.

The law provides that the obligation of a person who fails to fulfill it shall be executed at that person's cost.²⁷ The CA was correct in ruling that Vil-Rey should be held liable for the amount paid by Lexber to another contractor to complete the works. Furthermore, Article 2201 of the Civil Code provides:

Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

In the absence of a clear showing of bad faith on the part of Vil-Rey, it shall be liable for damages only with regard to those that are the natural

²⁵ *Rollo* (G.R. No. 189447), p. 78.

²⁶ *Metropolitan Bank and Trust Co. v. Chiok*, G.R. Nos. 172652, 175302 & 175394, 26 November 2014, 742 SCRA 435, 472.

²⁷ CIVIL CODE, Article 1167.

and probable consequences of its breach. In this case, the failure of Vil-Rey to finish the works compelled Lexber to secure the services of another contractor, to which the latter paid a total of ₱284,084.46. Considering that this amount was not a loan or forbearance of money, We impose interest at the rate of 6% per annum²⁸ from 17 February 1997²⁹ until the finality of this Decision. Thereafter, it shall earn interest at the rate of 6% per annum until satisfaction.³⁰

We shall not close this discussion without passing upon another reciprocal obligation assumed by the parties under the third contract. As agreed, Vil-Rey shall acquire a surety bond from Stronghold equivalent to 50% of the contract price of ₱1,168,728.37 upon Lexber's downpayment of the same amount. Accordingly, on 24 December 1996, Vil-Rey secured the second surety bond in the amount of ₱584,364.19. On the same day, Lexber made a downpayment of only ₱500,000.³¹

Article 1169 of the Civil Code provides that in reciprocal obligations, delay by one of the parties begins from the moment the other fulfills the obligation. In this case, Lexber is guilty of delay with regard to the amount of ₱84,364.19, which should be paid. Also, the delay shall make it liable to Vil-Rey for damages,³² which We impose in the form of interest at the rate

²⁸ *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 458. The Court ruled thus:

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

- I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
- II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.


²⁹ The day after the lapse of the five-day grace period that Lexber gave Vil-Rey. The notice of delay and noncompliance sent by Lexber was received by Vil-Rey on 11 February 1997 [*Rollo* (G.R. No. 189447), p. 49]. In the said notice, Lexber gave Vil-Rey a grace period of five days from notice within which to complete the project.

³⁰ *Id.*

³¹ *Rollo* (G.R. No. 189447), p. 132.

³² CIVIL CODE, Article 1170, which states:

Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.



of 6% per annum³³ from 24 December 1996 until the finality of this Decision. Thereafter, it shall earn interest at the rate of 6% per annum until satisfaction.³⁴

The parties shall be allowed to compensate the amounts due them to the extent of their respective obligations.

II.

The extension of the third contract did not extinguish Stronghold's liability under the second surety bond.

Stronghold claims that the extension of time for the completion of the works under the third contract from 15 January 1997 to 31 January 1997 was made without its consent as surety.³⁵ It is argued that an extension of payment given by the creditor to the debtor without notice to or consent of the surety extinguishes the surety's obligation, unless a continuing guarantee was executed by the surety. Stronghold insists that the CA erred in construing the second surety bond as a continuing guarantee despite clear stipulations to the contrary.³⁶ Furthermore, considering that the second surety bond guaranteed only the materials and the workmanship that would be utilized by Vil-Rey, the absence of any complaint from Lexber in this respect discharged Stronghold.³⁷

The following were the conditions and the obligations assumed by Stronghold under the second surety bond:

TO GUARANTEE [VIL-REY'S] OBLIGATIONS AND TO ANSWER FOR ANY DEFECTS IN THE MATERIALS USED AND WORKMANSHIP UTILIZED IN THE LAND FILLING OF LEXBER HOMES CABANATUAN (REMAINING WORKS).

AND THAT THE LIABILITY OF THIS BOND SHALL NOT EXCEED THE SUM OF PESOS, FIVE HUNDRED EIGHTY FOUR THOUSAND THREE HUNDRED SIXTY FOUR & 19/100 ONLY, (P584,364.19), PHILIPPINE CURRENCY.³⁸

The second surety bond clearly guaranteed the full and faithful performance of the "obligations" of Vil-Rey under the third contract, and it was not secured just to answer for "defects in the materials used and workmanship utilized." As a performance bond, the second surety bond guaranteed that Vil-Rey would perform the contract, and provided that if the

³³ Supra note 29.

³⁴ Id.

³⁵ *Rollo* (G.R. No. 189447), pp. 21-25.

³⁶ Id. at 25-30.

³⁷ Id. at 30-32.

³⁸ Id. at 79.

latter defaults and fails to complete the contract, Stronghold itself shall complete the contract or pay damages up to the limit of the bond.³⁹

A surety bond is an accessory contract dependent for its existence upon the principal obligation it guarantees.⁴⁰ Being so associated with the third contract as a necessary condition or component thereof, the second surety bond cannot be separated or severed from its principal.⁴¹ Considering that the third contract provided that the works shall be completed on or before 15 January 1997, the second surety bond was deemed to have guaranteed the completion of the works on the same date.

It is true that a surety is discharged from its obligation when there is a material alteration of the principal contract, such as a change that imposes a new obligation on the obligor; or takes away some obligation already imposed; or changes the legal effect, and not merely the form, of the original contract.⁴² Nevertheless, no release from the obligation shall take place when the change in the contract does not have the effect of making the obligation more onerous to the surety.⁴³

In this case, the extension of the third contract for 15 days and the grant of an additional five-day grace period did not make Stronghold's obligation more onerous. On the contrary, the extensions were aimed at the completion of the works, which would have been for the benefit of Stronghold. This perspective comes from the provision of the second surety bond that "if [Vil-Rey] shall in all respects duly and fully observe and perform all xxx the aforesaid covenants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, otherwise to remain in full force and effect."⁴⁴ The completion of the works would have discharged Stronghold from its liability.

We find no merit in the contention of Stronghold that the extensions extinguished its obligation as a surety.⁴⁵ We note that it also realized the importance of the completion of the works as far as it was concerned, as shown in its letter to Vil-Rey dated 25 March 1997:

Enclosed is a copy of the letter dated February 18, 1997 we received on February 20, 1997 from Lexber, Inc., posting formal claim against our bonds at caption due to your failure to complete your contracted project within the stipulated period.

Please take appropriate action to make good your commitment and contractual obligations to the Obligee within five (5) days from receipt

³⁹ *J Plus Asia Development Corp. v. Utility Assurance Corp.*, G.R. No. 199650, 26 June 2013, 700 SCRA 134, 158.

⁴⁰ *Prudential Guarantee & Assurance, Inc. v. Anscor Land, Inc.*, 644 Phil. 634 (2010).

⁴¹ *Id.*

⁴² *Stronghold Insurance Co., Inc. v. Tokyu Construction Co., Ltd.*, 606 Phil. 400, 413 (2009).

⁴³ *Id.*

⁴⁴ *Rollo* (G.R. No. 189447), p. 79.

⁴⁵ *Id.* at 29-30.

hereof and advise us on any development you have with them on the matter for our guidance.⁴⁶

Even as late as 25 March 1997, Stronghold still sought the completion of the works to the point of giving Vil-Rey a period of five days to fulfill its commitments. Clearly, it cannot now claim that it was prejudiced by the extensions given by Lexber, when it was prepared to give an extension of its own just so Vil-Rey could finish the works.

Stronghold contends that the extension of time for the completion of the third contract without its knowledge discharged it from its obligation under the second surety bond. What further militates against this contention is the fact that it was raised for the first time in the Motion for Partial Reconsideration⁴⁷ of the CA Decision dated 16 April 2009. Prior to the filing of that motion by Stronghold, its consistent argument before the RTC and even before the CA was that the second surety bond guaranteed only the materials and the workmanship utilized by Vil-Rey; and that the absence of any complaint from Lexber in this regard discharged Stronghold.

We have ruled that issues, grounds, points of law, or theories not brought to the attention of the trial courts cannot be passed upon by reviewing courts.⁴⁸ Thus, when a party deliberately adopts a certain theory, which becomes the basis for the manner on which the case is tried and decided, the party will not be permitted to change that theory on appeal; otherwise, it would be unfair to the adverse party.⁴⁹

At any rate, as surety, Stronghold has the right to be indemnified for whatever it may be ordered to pay Lexber. This right is provided in the law and not merely based on the indemnity agreement Stronghold executed with Vil-Rey.

In *Escaño v. Ortigas, Jr.*,⁵⁰ we explained the right to full reimbursement by a surety for whatever it pays the creditor:

[E]ven as the surety is solidarily bound with the principal debtor to the creditor, the surety who does pay the creditor has the right to recover the full amount paid, and not just any proportional share, from the principal debtor or debtors. Such right to full reimbursement falls within the other rights, actions and benefits which pertain to the surety by reason of the subsidiary obligation assumed by the surety.

What is the source of this right to full reimbursement by the surety? We find the right under Article 2066 of the Civil Code, which assures that “[t]he guarantor who pays for a debtor must be indemnified by the latter,” such indemnity comprising of, among others, “the total amount

⁴⁶ Id. at 84.

⁴⁷ Id. at 391-396.

⁴⁸ *General Credit Corp. v. Alsons Development and Investment Corp.*, 542 Phil. 219 (2007).

⁴⁹ *Chua v. CA*, 449 Phil. 25 (2003).

⁵⁰ 553 Phil. 24 (2007).

of the debt.” Further, Article 2067 of the Civil Code likewise establishes that “[t]he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.”

Articles 2066 and 2067 explicitly pertain to guarantors, and one might argue that the provisions should not extend to sureties, especially in light of the qualifier in Article 2047 that the provisions on joint and several obligations should apply to sureties. We reject that argument, and instead adopt Dr. Tolentino’s observation that “[t]he reference in the second paragraph of [Article 2047] to the provisions of Section 4, Chapter 3, Title I, Book IV, on solidary or several obligations, however, does not mean that suretyship is withdrawn from the applicable provisions governing guaranty.” For if that were not the implication, there would be no material difference between the surety as defined under Article 2047 and the joint and several debtors, for both classes of obligors would be governed by exactly the same rules and limitations.

Accordingly, the rights to indemnification and subrogation as established and granted to the guarantor by Articles 2066 and 2067 extend as well to sureties as defined under Article 2047. x x x⁵¹

III.

Lexber is entitled to reduced attorney’s fees.

Section 9.3 of the first contract provides that in the event Lexber has to institute judicial proceedings in order to enforce any term or condition therein, Vil-Rey shall pay attorney’s fees equivalent to not less than 25% of the total amount adjudged.⁵² This provision was adopted in the second contract⁵³ and even in the third contract, which provides that all conditions in the second contract shall remain in force.⁵⁴

Attorney’s fees as provided for in the contracts are in the nature of liquidated damages agreed upon by the parties. These fees are to be paid in case of breach of the contractual stipulations necessitating a party to seek judicial intervention to protect its rights.⁵⁵ Normally, the obligor is bound to pay the stipulated indemnity without the necessity of proof of the existence or the measure of damages caused by the breach.⁵⁶

In this case, the failure of Vil-Rey to fulfill its obligation to finish the works under the third contract compelled Lexber to seek judicial intervention. Pursuant to a contractual stipulation therefor, the payment of attorney’s fees to Lexber shall be the obligation of Vil-Rey and Stronghold.

However, considering the circumstances surrounding this case, We reduce the award to 10% of ₱284,084.46, which was the amount Lexber paid

⁵¹ Id. at 42-44.

⁵² *Rollo* (G.R. No. 189447), p. 60.

⁵³ Id. at 73.

⁵⁴ Id. at 78.

⁵⁵ *Spouses Suatengco v. Reyes*, 594 Phil. 609 (2008).

⁵⁶ Id.




to another contractor for the completion of the works. Liquidated damages may be equitably reduced by the courts.⁵⁷ Since the failure of Vil-Rey to fulfill its obligations was apparently caused by financial difficulties, and Lexber was also guilty of delay with regard to the latter's reciprocal obligation to make a downpayment of 50% of the amount of the third contract upon Vil-Rey's acquisition of a surety bond in the same amount, the courts' power may be properly exercised in this case.

WHEREFORE, the Court of Appeals Decision dated 16 April 2009 and Resolution dated 1 September 2009 in CA-G.R. CV No. 90241 are hereby **MODIFIED** as follows:

1. Vil-Rey Planners and Builders and Stronghold Insurance Company, Inc., are hereby **ORDERED** to jointly and severally pay the following amounts to Lexber, Inc.:
 - a. ₱284,084.46, with interest at the rate of 6% per annum from 17 February 1997 until full payment
 - b. 10% of ₱284,084.46 as attorney's fees
2. Vil-Rey Planners and Builders is hereby **ORDERED** to indemnify Stronghold Insurance Company, Inc., for whatever amount the latter shall pay Lexber, Inc.
3. Lexber, Inc. is hereby **ORDERED** to pay Vil-Rey Planners and Builders the amount of ₱84,364.19, with interest at the rate of 6% per annum from 24 December 1996 until full payment.

Vil-Rey Planners and Builders and Lexber, Inc., shall be allowed to compensate the amounts due them to the extent of their respective obligations.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

⁵⁷ CIVIL CODE, Article 2227, which states:

Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
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
MARIA LOURDES P. A. SERENO
Chief Justice