

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 147410 **February 5, 2004**

THE INSULAR LIFE ASSURANCE COMPANY, LTD., petitioner

vs.

ASSET BUILDERS CORPORATION, respondent.

DECISION

PANGANIBAN, J.:

Where the parties merely exchange offers and counteroffers, no agreement or contract is perfected. A party may withdraw its offer or counteroffer prior to its receipt of the other party's acceptance thereof. To produce an agreement, the offer must be certain and the acceptance timely and absolute.

The Case

Before us is a Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court, assailing the September 20, 2000 Decision² and the March 7, 2001 Resolution³ of the Court of Appeals (CA) in CA-GR CV No. 61607. The dispositive part of the Decision reads as follows:

"IN THE LIGHT OF ALL THE FOREGOING, the appeal of the [petitioner] is DISMISSED. The Decision of the Court a quo is AFFIRMED."⁴

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The appellate court summarized the facts of the case as follows:

"Sometime in November, 1992, the Insular Life Assurance Company, Limited, [petitioner], invited companies/corporations engaged in the building construction business to participate in the bidding of [petitioner's] proposed Insular Life building in Lucena City. [Petitioner] distributed copies of 'Bid Document[s]', including the general construction x x x contract, with the winning bidder and 'Bid Proposal Forms'[,] and furnished copies of the 'Instruction to Bidders' to participating bidders, containing the rules to be followed in the bidding, including the following rules: (a) all bond proposals shall be accompanied with a bid bond from the Insular General Insurance Company, Inc., in an amount equivalent to ten (10) percent of the bid

or five (5) percent of the bid in Manager's or Cashier's check payable to Insular Life, which bid bonds will be returned to the bidder after sixty (60) days from opening of bids or after award of the project, whichever date comes first;⁵ (b) the bid shall be valid for sixty (60) days [after] opening of bids[,] but the owner of the project (the [petitioner]) had the option to request the bidder to extend the bid validity period after expiration of the original validity period;⁶ [and] (c) the bidder, whose proposal had been deemed acceptable and complying with the requirements of the owner ([petitioner]) and the project, shall be notified **in writing** to personally appear to execute the 'Contract Agreements' within five (5) days after the receipt of the 'Notice of Award'[,] and that failure on the part of the winning bidder to execute the contract shall constitute a breach of the agreement, as effected by acceptance of the proposal, resulting in the nullification of the award; and that the bond heretofore, offered by the winning bidder shall be retained by the owner ([petitioner]) as payment due for liquidated damages.⁷

"Asset Builders Corporation, [respondent], with four (4) other bidders, namely, **Q.K. Calderon Construction [Co., Inc.]**, Specified Contractors, A.[A.] Alarilla Construction[,] and **Serg Construction**, submitted their respective bid proposals secured by bid bonds, valid for sixty (60) days.⁸ Under its 'Proposal Form' which the [respondent] submitted to the [petitioner], [respondent] bound and obliged itself to enter into a 'Contract' with the petitioner within ten (10) days from notice of the award, with good and sufficient securities for the faithful compliance thereof.⁹

"On **November 9, 1993**, the respective proposals of the bidders were opened. The [petitioner] forwarded a 'Summary of Bids and Tender Documents' to Adrian Wilson International Associate[s], Inc.¹⁰ (AWIA for brevity), [petitioner's] designated 'Project Manager[,] for the proposed Insular Life Building in Lucena City for its evaluation and analysis. AWIA, in due time, submitted a report of its evaluation to the 'Real Property Division' of the [petitioner]. As [could] be gleaned from the Report of AWIA, [respondent's] ₱12,962,845.54¹¹ bid was the lowest among the bidders.

"On January 21, 1994, Engineer Pete S. Espiritu (**Espiritu for brevity**) of the 'Real Property Department', who was designated as 'Project Coordinator' of the petitioner[,] recommended that [respondent] and the other bidders, 'Q.K. CALDERON [CONSTRUCTION] CO., INC.' AND 'SPECIFIED CONTRACTORS', be subjected to post-qualification proceedings, including the inspection of their respective offices, equipment, as well as past and present projects, and that said bidders be subjected to credit and financial investigations.¹²

"[Petitioner] concurred with the recommendation of Espiritu and, indeed, post-qualification, inspection[,] and evaluations of [respondent] and Q.K. Calderon Construction Co., Inc. were effected. On January 25, 1994, [petitioner], with concurrence of [respondent], visited [respondent's] main office at the Tektite Tower and its past and present projects, i.e., the four (4) and two (2) storey Air Transportation buildings in its compound; the Government Service Insurance System (GSIS) Headquarters Complex; and the National Historical Institute Building, and [respondent's] equipment. On February 14, 1994, Espiritu suggested that a bid clarification and negotiation be undertaken with prospective contractors.

"On February 23, 1994, Abraham Torrijos of [petitioner's] 'Real Property Department' (hereinafter referred to as Torrijos) recommended the approval by the Board of Directors of [petitioner] of the award of the general construction of the Proposed Lucena Building, **in favor of** [respondent], emphasizing that:

'2. Asset Builders Corporation is a (sic) 'AAA' category Contractor. It has extensive experience in vertical and horizontal projects. The company [has been] subjected to a post qualification and credit investigation, the results of which are satisfactory and acceptable, thus making it technically competent and financially capable of contracting the work.¹³

"On February 24, 1994, a conference was held by and among the representatives of the [petitioner] and of the [respondent], including [respondent's] Operations Manager, Engineer Ramon Abu, for some clarifications. [Petitioner] proposed that [respondent] adjust its bid from ₱12,961,845.54 to ₱13,000,000.00 to accommodate the wage increase brought about by Wage Order No. 03, series of 1993, effective December 3, 1993. However, [respondent's] representatives were noncommittal, declaring that they had [to] report to the management of the [respondent] the proposal of [petitioner's] representatives, for its consideration and approval. Subsequently, the [respondent] agreed to the readjustment of the amount of its bid as proposed by the [petitioner].

"On March 9, 1994, Januario L. Flores (Flores for brevity), head of the 'Real Property Department' and Assistant Vice-President of the [petitioner], submitted to Mabini L. Juan, the Chief Operating Officer and Senior Executive Vice-President of the [petitioner], his findings on the post-qualification, evaluation and credit investigation of [respondent], with the recommendation that the award be given to the [respondent]:

'2. On the basis of the above very positive indicators, RPD[,] E.L. Mariano, [F. B.] Mariano Associates and Co.[,] and Adrian Wilson Int'l Associates, [Inc.] recommen[d] to award the Lucena [p]roject to Asset Builders Corporation. We honestly believe that they will do a good job.

'3. For your consideratio[n/a]pproval.¹⁴

"On March 14, 1994, [Flores] signed a 'Notice to Proceed', addressed to the [respondent], for the conformity of the latter's President, Rogelio P. Centeno. Under the [ultimate] paragraph of the 'Notice to Proceed', the [respondent] may start its mobilization and proceed with the construction immediately[,] pending execution of the 'Construction Agreement'.¹⁵ The [petitioner prepared] a draft of the contract to be executed by the [petitioner] and the [respondent].

"On the same day, [Torrijos] informed, by letter, Engineer Bernardo A. Sajorda (Sajorda for brevity's sake), 'Project Manager' of AWIA, that [petitioner] had awarded the general construction contract of the proposed Lucena Building to the [respondent] and advised AWIA to coordinate with [respondent] and inform the latter that a pre-construction meeting [would] be

held on March 22, 1994 at the job site.¹⁶ A copy of the 'Notice of Award' was appended to said letter.¹⁷ Sajorda forthwith informed Rogelio P. Centeno, the President of [respondent], by 'Memorandum' that, pursuant to the AWARD to [respondent], of the general construction of the Proposed Lucena Building, a pre-construction conference [would] be held on March 22, 1994 at the job site, during which the following will be discussed:

- '1. Contract Amount and completion time
2. Role of AWIA
3. Project Contractors Key [p]ersonnel [l]ist with [s]ignatures and [p]ositions
4. Channel of [c]ommunications among Architect, Insular Life, ASSET and AWIA
5. [Contractor submittals i.e. - Work Schedule, Schedule of] Prices, etc.
6. As-built[s] drawings
7. Submitt[al] of shop drawings prior to use of materials
8. Sanitation
9. Safety programs (first aid kit and hard hats)
10. Night work
11. CAR (Contractor's All Ris[k] I]nsurance)
12. Owners review of payrolls, vouchers, etc. (sic) payments etc.
13. Sub-contracting [for] approval of subs.
14. Photographs every month
15. Billings based on actual work accomplishments. Undistributed materials not billable
16. Security measures
17. Tests as required by spec[']s
18. Take note of specific requirements before final payment is made¹⁸

"The [respondent] received a copy of the 'Memorandum' of Sajorda, on March 17, 1994. On March 18, 1994, the [petitioner] transmitted to the [respondent] the following documents,

evidenced by a 'Transmittal Sheet', received by Roy Roxas, for the [respondent], to enable the latter to secure a 'Building Permit' for the project:

'ONE (1) LOT DOCUMENTS/PLANS FOR BUILDING PERMIT

4 SETS OF STRUCTURAL COMPUTATION

5 SETS OF SPECS FOR GENERAL CONSTRUCTION

3 SETS OF ELECTRICAL LOAD COMPUTATION

5 COPIES OF PRC ID [&] PTR OF DESIGN ENGRS.

6 SETS OF ELMA PLANS

5 SETS OF [R]MDA PLANS/SPECS¹⁹

"On March 22, 1994, the 'Pre-Construction Conference' ensued with the representatives of the [petitioner] and its Project Manager and of the [respondent], in the person of its Project Engineer, J.G. Quizon, in attendance:

'Attendees: CARLOS M. ESPIRITU -- AWIA Asst. Project Manager

BERNARDO [A]. SAJORDA -- AWIA Project Manager

EDMUNDO C. SABATER -- AWIA Resident Engineer

JANUARIO L. FLORES -- IL/RPD Manager

J.G. QUIZON -- ASSET Project Manager

PETE S. ESPIRITU -- IL/RPD Project Coordinator

ABRAHAM P. TORRIJOS -- IL/RPD Asst. Manager²⁰

"During the conference, the following were discussed and clarified:

'1. Contract Amount and Completion Time: Contract is for ₱13,000,000.00, to be completed within 210 calendar days; day one to be 5 days after receipt of NTP by the Contractor. Actual site mobilization to be first week of April 1994, per Mr. J.G. Quizon. Issuance of building and other permits being worked out by the Contractor.'²¹

"On March 26, 1994, Jacobo G. Quizon, the Project Manager of [respondent], sent to AWIA a letter requesting for the TCT lot description for the purpose of relocation of the monuments and the staking out of the building:

'We have the honor to request your good office, in relocating the monuments[,] as per TCT lot description[s,] prior to staking out the building[;] likewise, we can do the relocation[,] provided the cost will be reimbursed to the Owner[,] with an approximate fee of ₱5,000.00 lump sum.

'Further, problems may occur regarding structur[al] excavation for footing [and footing] tie beams at Grid Line A & 4. As per plan, the proposed depth [of] excavation of about 2.5[0M] along the existing adjacent building walls will expose the CHB footing.'²²

"Thereafter, a Ground Breaking ceremony was held at the project site, with Rogelio B. Centeno, the President of [respondent], [and] Pete S. Espiritu and Januario L. Flores of the [petitioner] in attendance. A billboard announcing the construction of [the] Insular Life Building in Lucena City, with the [respondent] as the General Contractor, was also erected in the project site.

"However, the [respondent] did not affix its conformity to any 'Notice of Award', much less commence its construction of the project. Neither did it execute any 'Construction Agreement'. Subsequently, the [respondent] wrote the [petitioner] a letter dated April 5, 1994, informing the [petitioner] that the [respondent would] not be able to undertake the project anymore[,] because the prerequisite paper work and attendant processing could not be fast-trac[k]ed and that, since the previous two (2) weeks, prices had escalated, which rendered its bid unattractive.²³ On April 25, 1994, the [petitioner] wrote a letter to the [respondent], in response to its April 5, 1994 [letter], informing the [respondent] that, in view of the unjust withdrawal of the [respondent] from the project, despite the award of the project to the [respondent], the [petitioner] was impelled to engage the services of another contractor to complete the project[,] without prejudice to further action of the [petitioner] against the [respondent] for its withdrawal, pursuant to Section 10 of the 'Instruction to Bidders', quoted, *infra*:

'The exact amount of damages to the Owner due to the failure to execute the Contract may be deemed difficult to determine. Failure, thereof, to execute the Contract within five (5) days after the receipt of the Notice of Award shall cause [the] annulment of the award. The amount of bid bond deposited with the proposal shall be retained by the Owner as payment due for liquidated damages incurred.

"By way of riposte, the [respondent] sent a letter to the [petitioner] averring that: (a) it never received any written 'Notice of Award' from the [petitioner]; [and] (b) since its bid offer had a lifetime of sixty (60) days from November 9, 1993 or until January 8, 1993 (*sic*)[,] its offer was automatically withdrawn after said date, since the [petitioner] had not requested the [respondent] for the extension of the lifetime thereof.

"On December 23, 1994, the [petitioner] filed a complaint²⁴ against the [respondent], with the Regional Trial Court²⁵ of Makati City, for 'Damages', x x x:

x x x x x x x x x

"The [petitioner] alleged, *inter alia*, in its complain[t t]hat the [respondent] was duly notified **by AWIA** of the award, in its favor, by the [petitioner], of the project[,] but the [respondent] unjustly and arbitrarily withdrew from the project and refused to execute the 'Construction Contract' with the [petitioner,] which impelled the latter to engage the services of another contractor for the project at the price of ₱14,500,000.00 and that, consequently, the [petitioner] was obliged to pay the amount of ₱1,500,000.00 which was [the] difference between the contract price of the project with the [respondent] in the amount of ₱13,000,000.00 and ₱14,500,000.00, by way of actual damages or, alternatively, by way of liquidated damages. In its Answer²⁶ to the complaint, the [respondent] alleged, *inter alia*, that it never received any 'Notice of Award' or 'Notice to Proceed'; its bid had expired by January 8, 1994, without the [petitioner] asking the [respondent] for the extension thereof[,] and interposed counterclaims for damages against the [petitioner], praying that, after due proceedings, judgment be rendered in its favor, x x x:

x x x x x x x x x

"After due proceedings, the Court *a quo* rendered a Decision,²⁷ dated December [5], 1997, in favor of the [respondent] and against the [petitioner], ordering the dismissal of the complaint of the [petitioner] and ordering the latter to pay damages to the [respondent], the dispositive portion of which is quoted, *infra*:

'WHEREFORE, judgment is rendered DISMISSING the Complaint with costs against [petitioner].'

'On the counter-claim, Insular Life Assurance Co., Ltd., is hereby ordered to pay Asset Builders Corporation the sums of Pesos: Five Hundred Thousand (₱500,000.00) as compensation for the injury to the latter's business standing, and Pesos: Seventy Five Thousand (₱75,000.00) by way of attorney's fees and expenses of litigation.

'Filing fees on the amount of ₱2,135,000.00 [respondent] sought in the counter-claim shall constitute a first lien on the recovery from [petitioner].'

x x x x x x x x x

"The [petitioner] interposed its appeal from the Decision of the Court *a quo* and posed, for [the CA's] resolution, the threshold issues of whether or not: (a) a construction contract was perfected by and between the [petitioner] and the [respondent] for the construction of petitioner's building project in Lucena City; (b) the [respondent] waived Section 9 of the Instruction to Bidders and was estopped from claiming that no construction contract was perfected between it and the [petitioner]; [and] (c) the [respondent] was liable for damages to the [petitioner]."²⁸

Ruling of the Court of Appeals

The CA affirmed the lower court's Decision. According to the appellate court's ruling, the failure of petitioner to prove that it gave respondent a written notice of the former's unqualified acceptance of the latter's bid, as required in the Instruction to Bidders, did not give birth to consent. The appellate court explained that when the exact terms desired were not in the offer, any modification or variation therefrom would annul that offer. Furthermore, estoppel did not apply because of petitioner's own carelessness or want of diligence.

Hence this Petition.²⁹

The Issues

"I. The Court of Appeals gravely erred in not holding that there exists a valid contract for the construction of the building project between IL³⁰ and ABC.³¹

"II. The Court of Appeals gravely erred in not holding that IL has notified ABC of the award of the construction of the building project to it before it withdrew its bid proposal.

"III. The Court of Appeals gravely erred in not holding that ABC's withdrawal from the contract constituted a breach of that contract.

"IV. The Court of Appeals gravely erred in not holding that the contract had been perfected and that its consummation stage [had] in fact been commenced.

"V. The Court of Appeals gravely erred in not holding that ABC is estopped from claiming the contract was not perfected.

"VI. The Court of Appeals gravely erred in not holding that ABC, instead of IL, is liable for damages[,] and that, at worst, there is no evidence that supported the award in favor of ABC.

"VII. In any event, there is no basis to penalize IL for going to court."³²

There is really only one major issue: Was there a valid contract between petitioner and respondent?

The Court's Ruling

The Petition is unmeritorious.

Sole Issue:

Existence of a Contract

No Notice of Award,

No Contract

It is elementary that, being consensual,³³ a contract³⁴ is perfected³⁵ by mere consent.³⁶ From the moment of a meeting³⁷ of the offer and the acceptance³⁸ upon the object and the cause that would constitute the contract,³⁹ consent arises.⁴⁰ However, "the offer must be certain"⁴¹ and "the acceptance seasonable and absolute;⁴² if qualified,⁴³ the acceptance⁴⁴ would merely constitute a counter-offer."⁴⁵

Equally important are the three distinct stages of a contract -- its "preparation or negotiation, its perfection, and finally, its consummation."⁴⁶ Negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. The perfection or birth of the contract⁴⁷ occurs when they agree upon the essential elements thereof.⁴⁸ The last stage is its consummation, wherein they "fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof."⁴⁹

In the case at bar, the parties did not get past the negotiation stage. The events that transpired between them were indeed initiated by a formal offer, but this policitación was merely an imperfect promise that could not be considered a binding commitment.⁵⁰ At any time, either of the prospective contracting parties may stop the negotiation and withdraw the offer.

In the present case, in fact, there was only an offer and a counteroffer⁵¹ that did not sum up to any final arrangement containing the elements of a contract.⁵² Clearly, no meeting of minds was established.⁵³ First, only after the bid bond had lapsed were post-qualification proceedings, inspections, and credit investigations conducted. Second, the inter-office memoranda issued by petitioner, as well as other memoranda between it and its own project manager, were simply documents to which respondent was not privy. Third, petitioner proposed a counteroffer to adjust respondent's bid to accommodate the wage increase of December 3, 1993.

In effect, the rule on the concurrence of the offer and its acceptance⁵⁴ did not apply, because other matters or details -- in addition to the subject matter and the consideration -- would still be stipulated and agreed upon by the parties.⁵⁵ While there was an initial offer made, there was no acceptance; but when there allegedly came an acceptance that could have had a binding effect, the offer was already lacking. The offer and its acceptance "did not meet to give birth to a contract."⁵⁶

Moreover, the Civil Code provides that no contract shall arise unless its acceptance is communicated to the offeror.⁵⁷ That is, the mere determination to accept the proposal of a bidder does not constitute a contract; that decision must be communicated to the bidder.⁵⁸

Although consent may be either express or implied,⁵⁹ the Instruction to Bidders prepared by petitioner itself expressly required (1) a formal acceptance and (2) a period within which such acceptance was to be made known to respondent. The effect of giving the Notice of Award to the latter would have been the perfection of the contract.⁶⁰ No such acceptance was communicated to respondent; therefore, no consent was given. Without that express manifestation, as required by the terms of its proposal, there was no contract. The due execution of documents representing a contract is one thing, but its perfection is another.⁶¹

There is no issue as regards the subject of the contract or the cause of the obligation. The controversy lies in the consent -- whether there was an acceptance by petitioner of the offer made by respondent; and, if so, whether that acceptance was communicated to the latter, thereby perfecting the contract. The period given to the former within which to accept the offer was not itself founded upon or supported by any consideration. Therefore, under the law, respondent still had the freedom and the right to withdraw the offer by communicating such withdrawal to petitioner⁶² before the latter's acceptance of the offer;⁶³ or, if the offer has been accepted,⁶⁴ before the acceptance came to be known by respondent.⁶⁵

Petitioner avers that an acceptance was made, but this allegation has not been proven. Respondent had no knowledge of such acceptance when it communicated its withdrawal to the former. Notably, this right to withdraw was not exercised whimsically or arbitrarily by respondent. It did send a formal letter on April 5, 1994, expressing and explaining its withdrawal. As of that date, the decision to award the contract had not been made according to the terms of the Instruction to Bidders.

Besides, the subsequent acts between the parties did not even serve as a confirmation of that decision. The existence of a second proposal -- petitioner's request for an adjustment of the bid to accommodate the wage increase -- in fact belies the perfection of any contract arising from the first.⁶⁶ To the Court's mind, there was indeed no acceptance of the offer made by respondent. Such failure to comply with a condition imposed for the perfection of a contract resulted in failure of the contract.⁶⁷

Subsistence of an Offer

Even Without a Bid Bond

Certainly, the "bid bond is an indispensable requirement for the validation of a bid proposal."⁶⁸ This requisite ensures the good faith of bidders and binds them to enter into a contract with the owner, should their proposal be accepted.⁶⁹ One who submits a bid not only signifies assent to the terms and conditions of a proposal, but impliedly binds oneself to them, if and when the bid is considered. The Invitation to Bidders even provided that incomplete proposals might be sufficient cause for their rejection.⁷⁰ If mere insufficiency of a bond required of a bidder is a ground for rejection, a fortiori, all the more so is the total want thereof.

The proposal of respondent was merely validated by its bid bond, which was considered by petitioner. The expiration of the bond on January 8, 1994,⁷¹ did not mean that the bid also lapsed on the same date. The bond, which was an accessory, merely guaranteed the performance of the principal obligation and could not exist without the latter.⁷² The former was given for the benefit of petitioner, which could legally waive it. The bid continued without a bond, but still no formal acceptance was made. Again, on that basis, no contract was perfected.

In the interpretation of a contract, the literal meaning of its stipulations controls, if their terms are clear and leave no doubt as to the intention of the contracting parties.⁷³ When "there is no ambiguity in the language of a contract, there is no room for construction,⁷⁴ only compliance."⁷⁵ This rule applies to the Instruction to Bidders, which provides that "failure to execute the Contract shall constitute a breach of agreement as effected by acceptance of the proposal."⁷⁶ The language is clear and, like contracts in general, is the law between the parties.⁷⁷ The contract must be fulfilled according to its literal sense.⁷⁸

No Estoppel

As aptly held by the appellate court, respondent's acts subsequent to the expiration of the bid bond did not constitute a waiver of Section 9 of the Instruction to Bidders. To be valid and effective, waivers must be couched in clear and unequivocal terms, leaving no doubt as to the intention of those giving up a right or a benefit that legally pertains to them.⁷⁹ Respondent, contrary to the claim of petitioner, despite its repeated requests, never received a copy of the Notice of Award. Indeed, the former never adopted an inconsistent position, attitude or course of conduct that caused loss or injury to the latter.⁸⁰ The attendance of respondent in the pre-construction conference and the ground-breaking ceremony was part of the negotiation process. Thus, petitioner's claim of estoppel against it could not be applied.

"Estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence."⁸¹ It is hardly separable from the waiver of a right.⁸² The party claiming estoppel must show the following elements: "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice."⁸³

None of these elements was proven.

First, petitioner had the knowledge and the means of knowledge of the truth as to the facts in question. It had the means of knowing if respondent had been served a copy of the Notice of Award, yet the former did not preserve a copy of such Notice, which supposedly bore the signature of the latter's employee who had received it. Petitioner did not even enter in its corporate logbooks the release to and receipt by respondent of that copy. The latter had every reason to withdraw its bid, given that the "prerequisite paper work and attendant processing could not be fast-tracked."⁸⁴

Second, respondent's conduct and statements were always consistent and reliable. The manner of acceptance of all bids was prescribed by petitioner itself. Applying Article 1321 of the Civil Code, such prescription must be complied with,⁸⁵ yet it did not follow its own rules. Of no moment was its reliance in good faith upon respondent. Good faith is always presumed, unless contrary evidence is adduced.⁸⁶

Third, the action or inaction of petitioner that caused its own injury was its own fault. The written Notice of Award, which constituted the acceptance of the proposal, was a sine qua non to the perfection of the contract.⁸⁷ The misplacement of such vital document was inexcusable. Without it, there was no contract. Moreover, the March 14, 1994 Notice to Proceed clearly stated that its issuance would depend upon the execution of the construction agreement.

Estoppel is a shield against injustice; the party invoking its protection should not be allowed to use it to conceal its own lack of diligence⁸⁸ or want of reasonable care and circumspection.⁸⁹

WHEREFORE, the Petition is hereby DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, and Carpio, JJ., concur. Azcuna, J., on official leave.

Footnotes

¹ Rollo, pp. 39-70.

² *Id.*, pp. 179-205. Penned by Justice Romeo J. Callejo Sr. (Division chairman and now a member of this Court) and concurred in by Justices Martin S. Villarama Jr. and Perlita J. Tria Tirona (members).

³ *Id.*, p. 207.

⁴ CA Decision, p. 28; *rollo*, p. 205. All upper case characters, bold fonts, italics, parentheses, CA corrections, and underscoring have been copied verbatim; but exhibit references in parentheses have been omitted. Reference to the parties herein have been replaced with terms enclosed in brackets.

⁵ Instruction to Bidders, p. 2; records, p. 11.

⁶ *Ibid.*

⁷ *Id.*, pp. 3 & 12.

⁸ Records, pp. 118-120.

⁹ Id., p. 353.

¹⁰ Id., p. 152.

¹¹ This amount should be ₱12,961,845.54; id., p. 352.

¹² Id., p. 119.

¹³ Id., p. 129.

¹⁴ Id., p. 131.

¹⁵ Id., p. 147.

¹⁶ Id., p. 145.

¹⁷ Ibid. It was not a "Notice of Award" that was attached to the letter, but a "Notice to Proceed."

¹⁸ Id., pp. 148-149.

¹⁹ Id., p. 150.

²⁰ Id., p. 152. "Januario" is misspelled "Juanario" in the Minutes of the Pre-Construction Conference.

²¹ Ibid.

²² Id., p. 156.

²³ Id., p. 385.

²⁴ Id., pp. 1-9.

²⁵ Hereinafter referred to as the "Court a quo," to be consistent with the CA's Decision.

²⁶ Id., pp. 57-65.

²⁷ Records, pp. 503-508.

²⁸ CA Decision, pp. 1-9; rollo, pp. 179-187.

²⁹ The case was deemed submitted for decision on February 26, 2002, upon receipt by this Court of petitioner's Memorandum, which was signed by Attys. Emmanuel P. J. Tamase and Aundre R. Dollete. The Memorandum of respondent, signed by Atty. Julio Arsenio V. Gonong III, was filed on February 13, 2002.

³⁰ "IL" refers to petitioner.

³¹ "ABC" refers to respondent.

³² Petitioner's Memorandum, p. 10; rollo, p. 306.

³³ Gomez v. CA, 340 SCRA 720, 728, September 21, 2000.

³⁴ Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, 1991 ed., p. 440.

³⁵ Uy v. Hon. Evangelista, 413 Phil. 403, 415, July 11, 2001.

³⁶ Article 1315 of the Civil Code. See Mindanao Terminal and Brokerage Service, Inc. v. Roldan-Confesor, 338 Phil. 671, 678, May 5, 1997.

³⁷ Perez v. CA, 380 Phil. 592, 598, January 28, 2000.

³⁸ "Notably, the word 'offer,' is subject to acceptance." Government Service Insurance System v. CA, 377 SCRA 54, 61, February 15, 2002, per Ynares-Santiago, J.

³⁹ Metropolitan Manila Development Authority v. JANCOM Environmental Corp., 375 SCRA 320, 331-332, January 30, 2002; Pua v. CA, 345 SCRA 233, 244, November 20, 2000.

⁴⁰ Article 1319 of the Civil Code.

⁴¹ Adelfa Properties, Inc. v. CA, 240 SCRA 565, 580, January 25, 1995, per Regalado, J.

⁴² "Acceptance in order to conclude the agreement must in every respect meet and correspond with the terms and conditions of the offer." Batañgan v. Cojuangco, 78 Phil. 481, 484, May 31, 1947, per Tuason, J. See also Metropolitan Bank and Trust Company v. Tonda, 338 SCRA 254, 267-268, August 16, 2000; First Philippine International Bank v. CA, 322 Phil. 280, 323-325, January 24, 1996; and Limketkai Sons Milling, Inc. v. CA, 325 Phil. 967, 987, March 29, 1996.

⁴³ "A qualified acceptance, or one that involves a new proposal, constitutes a counter-offer and is a rejection of the original offer." ABS-CBN Broadcasting Corp. v. CA, 361 Phil. 499, 520, January 21, 1999, per Davide Jr., CJ.

⁴⁴ The acceptance may "be evidenced by some acts or conduct communicated to the offeror" either in "a formal or an informal manner" that "clearly manifest a present intention or determination to accept the offer." Adelfa Properties, Inc. v. CA, *supra*, p. 580.

⁴⁵ Regal Films, Inc. v. Concepcion, 414 Phil. 807, 813, August 9, 2001, per Vitug, J.

⁴⁶ Metropolitan Manila Development Authority v. JANCOM Environmental Corp., *supra*, p. 331, per Melo, J.

⁴⁷ "A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." Article 1305 of the Civil Code. See Metropolitan Manila Development Authority v. JANCOM Environmental Corp., *supra*, p. 331.

⁴⁸ "Law and jurisprudence recite three minimum elements for any valid contract -- (a) consent; (b) object certain which is the subject matter of the contract; and (c) cause of the obligation which is established." Regal Films, Inc. v. Concepcion, *supra*, p. 813; citing Article 1318 of the Civil Code.

⁴⁹ Bugatti v. CA, 343 SCRA 335, 346, October 17, 2000, per Gonzaga-Reyes, J. See Ang Yu Asuncion v. CA, 238 SCRA 602, 611, December 2, 1994.

⁵⁰ Spouses Litonjua v. L & R Corp., 385 Phil. 538, 548, March 27, 2000.

⁵¹ "A counter-offer is always considered in law a rejection of the original offer and an attempt to enter the negotiations between the parties on a different basis." Logan v. Philippine Acetylene Co., 33 Phil. 177, 183-184, January 11, 1916, per Moreland, J.

⁵² San Miguel Properties Philippines, Inc. v. Spouses Huang, 336 SCRA 737, 745, July 31, 2000.

⁵³ Article 1305 of the Civil Code.

"If there is completely no acceptance or if the offer is expressly rejected, there is no meeting of the minds." Vda. de Urbano v. Government Service Insurance System (GSIS), 419 Phil. 948, 975, October 19, 2001, per Puno, J. See Leoquinco v. Postal Savings Bank, 47 Phil. 772, August 25, 1925 and Gamboa v. Ronsalez, 17 Phil. 381, November 23, 1910.

⁵⁴ For concurrence to give rise to a perfected contract, the acceptance of an offer must be unconditional. Paculdo v. Regalado, 345 SCRA 134, 141, November 20, 2000.

⁵⁵ A. Magsaysay, Inc. v. Cebu Portland Cement Co., 100 Phil. 351, 354, November 26, 1956.

⁵⁶ Laudico v. Arias Rodriguez, 43 Phil. 270, 272, March 31, 1922, per Avanceña, J.

⁵⁷ Rodil Enterprises, Inc. v. CA, 371 SCRA 79, 90, November 29, 2001; citing Article 1319 of the Civil Code.

⁵⁸ Santander v. CA, 187 SCRA 706, 711, July 23, 1990; citing Jalandoni v. National Resettlement and Rehabilitation Administration, 108 Phil. 486, 492, May 30, 1960.

⁵⁹ Tolentino, *supra*, p. 447.

⁶⁰ Central Bank of the Philippines v. CA, 63 SCRA 431, 448, April 22, 1975; citing Valencia v. Rehabilitation Finance Corp., 103 Phil. 444, 450, April 25, 1958.

⁶¹ Santos v. Heirs of Jose P. Mariano & Erlinda Mariano-Villanueva, 344 SCRA 284, 292, October 24, 2000.

⁶² Spouses Litonjua v. L & R Corp., supra, p. 549.

⁶³ "Q. Mucius Scævola says apropos: 'To our mind, the power to revoke is implied in the criterion that no contract exists until the acceptance is known. As the tie or bond springs from the meeting or concurrence of the minds, since up to that moment there exists only a unilateral act, it is evident that he who makes it must have the power to revoke it by withdrawing his proposition, although with the obligation to pay such damages as may have been sustained by the person or persons to whom the offer was made and by whom it was accepted, if he in turn failed to give them notice of the withdrawal of the offer.'" *Laudico v. Arias Rodriguez*, supra, p. 273.

⁶⁴ Although an acceptance made by letter -- binding the person making the offer from the date it comes to his knowledge -- "may not be the best expression of modern commercial usage," still it is admitted that "its enforcement avoids uncertainty and tends to security." *Enriquez v. Sun Life Assurance Company of Canada*, 41 Phil. 269, 273, November 29, 1920, per Malcolm, J.

⁶⁵ *Jardine Davies, Inc. v. CA*, 389 Phil. 204, 212, June 19, 2000.

⁶⁶ *Weldon Construction Corp. v. CA*, 154 SCRA 618, 628-629, October 12, 1987.

⁶⁷ *Spouses Babasa v. CA*, 352 Phil. 1142, 1154, May 21, 1998 (citing *Romero v. CA*, 320 Phil. 269, 280, November 23, 1995; and *Lim v. CA*, 331 Phil. 853, 864, October 24, 1996).

⁶⁸ *Republic v. Capulong*, 199 SCRA 134, 144, July 12, 1991, per Medialdea, J.

⁶⁹ *Padilla v. Zaldivar*, 120 Phil. 1052, 1057, October 31, 1964.

⁷⁰ *Invitation to Bidders*, p. 3.

⁷¹ *Answer*, p. 1; records, pp. 57, 66.

⁷² *Valencia v. Rehabilitation Finance Corp.*, supra, p. 450.

⁷³ *Ong Yong v. Tiu*, 375 SCRA 614, 631, February 1, 2002; citing Article 1370 of the Civil Code. See *German Marine Agencies, Inc. v. NLRC*, 350 SCRA 629, 641, January 30, 2001; *Mortel v. KASSCO, Inc.*, 348 SCRA 391, 397, December 15, 2000; and *Palmares v. CA*, 351 Phil. 664, 679, March 31, 1998 (citing *Abella v. CA*, 327 Phil. 270, 275, June 20, 1996).

⁷⁴ "In the interpretation of contracts, the ascertainment of the intention of the contracting parties is to be discharged by looking to the words they used to project that intention in their contract, all the words, not just a particular word or two, and words in context, not words standing alone." *Limson v. CA*, 357 SCRA 209, 216, April 20, 2001, per Bellosillo, J.; citing *Fernandez v. CA*, 166 SCRA 577, 587, October 18, 1988, per Feliciano, J.

⁷⁵ *Leaño v. CA*, 420 Phil. 836, 848, November 15, 2001, per Pardo, J.

⁷⁶ Item 9, Instruction to Bidders, p. 3.

⁷⁷ *Jardine Davies, Inc. v. CA*, supra, p. 211.

⁷⁸ *Roble v. Arbasa*, 414 Phil. 343, 355, July 31, 2001.

⁷⁹ *Marawi Marantao General Hospital, Inc. v. CA*, 349 SCRA 321, 331, January 16, 2001. See also *Thomson v. CA*, 358 Phil. 761, 778, October 28, 1998; *Gatchalian v. Delim*, 203 SCRA 126, 132, October 21, 1991; *Yepes v. Samar Express Transit*, 123 Phil. 948, 949, May 19, 1966; *Andres v. The Crown Life Insurance Co.*, 102 Phil. 919, 924, January 28, 1958; *Lang v. Acting Provincial Sheriff of Surigao*, 93 Phil. 661, 669, August 31, 1953; and *Fernandez v. Sebido*, 70 Phil. 151, 159, June 25, 1940.

⁸⁰ *Padcom Condominium Corp. v. Ortigas Center Association, Inc.*, 382 SCRA 222, 230, May 9, 2002. See *Cruz v. CA*, 354 Phil. 1036, 1054, July 27, 1998.

"Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts." *City of Cebu v. Spouses Dedamo*, 381 SCRA 754, 761, May 7, 2002, per Davide Jr., CJ.; citing *Ibaan Rural Bank, Inc. v. CA*, 378 Phil. 707, 712-713, December 17, 1999, per Quisumbing, J. and *Philippine National Bank v. CA*, 373 Phil. 942, 947, September 28, 1999, per Bellosillo, J.

⁸¹ *Kalalo v. Luz*, 145 Phil. 152, 161, July 31, 1970, per Zaldivar, J.

⁸² *Arcelona v. CA*, 345 Phil. 250, 284, October 2, 1997. See *Tropical Homes, Inc. v. CA*, 338 Phil. 930, 939, May 14, 1997.

⁸³ *Mijares v. CA*, 338 Phil. 274, 284-285, April 18, 1997, per Kapunan, J.; citing *Kalalo v. Luz*, supra, p. 162.

⁸⁴ Records, p. 47.

⁸⁵ This provision states that "the person making the offer may fix the x x x manner of acceptance x x x which must be complied with."

An acceptance that is not made in the manner prescribed by the offeror is not effective, but constitutes a counteroffer that the offeror may accept or reject. (Tolentino, supra, p. 462.)

⁸⁶ *Rosencor Development Corp. v. Inquiring*, 354 SCRA 119, 137, March 8, 2001; citing *Heirs of Severa P. Gregorio v. CA*, 360 Phil. 753, 764, December 29, 1998.

⁸⁷ Valencia v. Rehabilitation Finance Corp., supra, p. 450.

⁸⁸ Mijares v. CA, supra, p. 286.

⁸⁹ Kalalo v. Luz, supra, p. 162.