

THIRD DIVISION

[G.R. NO. 156251, April 02, 2007]

**PHILIPPINE REALTY HOLDINGS CORPORATION, PETITIONER,
VS. FIREMATIC PHILIPPINES, INC., RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63791 and its Resolution^[2] dated November 19, 2002.

The Antecedents

On December 12, 1989, Philippine Realty and Holdings Corporation (PRHC), entered into a Construction Agreement^[3] with Firematic Philippines, Inc. (Firematic) for the installation of a sprinkler system in the proposed Tektite Towers, located at Tektite Road corner Pearl Avenue, Mandaluyong, Metro Manila. The project had two phases - Phase I (Tower I) and Phase II (Tower II)

The scope of the work to be done by Firematic is provided in Article II of the Contract, thus:

1.0 The CONTRACTOR, in consideration of the payments to be made by OWNER, of certain sums of money in the manner hereinafter specified, shall fully and faithfully deliver, perform and undertake to finish and supply all the materials, tools, equipment, supervision and to do all the skills and labor necessary or proper for the due completion of the Sprinkler System for the above-mentioned project, and does hereby warrant and guarantee that the said work and labor shall be performed in the most proper and workmanlike manner and in full conformity with the corresponding plans and specifications duly prepared therefor and/or the pertinent contract documents.

2.0 The work of the CONTRACTOR shall include, but shall not be limited to ordering materials, following-up of orders, checking the quantity and quality of materials within the premises of the construction site, and rejecting or returning defective materials.

3.0 The CONTRACTOR is hereby expressly required to refer to all Mechanical, Plumbing, Electrical, Structural and Architectural plans and specifications and shall investigate any possible interference and conditions affecting its contract work.

4.0 All materials supplied by the CONTRACTOR shall be in conformity with the Sprinkler System specifications prepared by R. Villarosa —

Architects.

5.0 It is not intended that the drawings shall show every pipe, fittings, and valve. All such items, whether or not those parts have been specifically mentioned or indicated on the drawings, shall be furnished and installed by CONTRACTOR, if necessary to complete the system in accordance with the best practice of Sprinkler System and to the satisfaction of the OWNER.^[4]

Under Article I of the Contract, the following documents were incorporated into the agreement:

1.0 Sprinkler System Plans: FP-1 to FP-18, all consisting of eighteen (18) sheets as prepared by R. Villarosa — Architects.

2.0 Fire Protection Specification consisting of Forty-nine (49) pages.

3.0 Bid Documents consisting of the following:

a) Invitation to Bid — One (1) sheet;

b) Instruction to Bidders — Three (3) sheets;

c) Bid Proposals of Firematic Phils., Inc. consisting of Three (3) pages dated Oct. 31, 1989;

d) Bid Bulletin No. 1 — Fourteen (14) sheets;

e) Letter of Intent dated November 21, 1989 duly signed by the Owner and the Contractor consisting of Two (2) sheets.^[5]

Article IX of the Contract enumerates the responsibilities of Firematic relative to the supply and installation of the sprinkler supplies:

1.0. The CONTRACTOR shall remove all portions of work which the OWNER or its representative may condemn as in any way having failed to conform with the corresponding Sprinkler Systems plans and specifications, and the CONTRACTOR shall properly make good all such work so condemned by the OWNER. The cost of making good any/all work shall be solely borne by the CONTRACTOR.

x x x x

7.0. The CONTRACTOR warrants the Sprinkler System installations under this contract to be free from faults or defects in materials and workmanship for a period of One (1) year from the date of initial operations. Faults caused by or due to ordinary wear and tear or those caused by the OWNER or its employees are excluded from this guarantee.

The CONTRACTOR further warrants all equipment and accessories thereto to be free from defects in materials and faulty workmanship for a period of One (1) year from the date of initial operation.

The equipment or parts thereof which are found defective within the said period of guarantee shall be replaced by the CONTRACTOR at no cost to the OWNER.

On December 11, 1990, PRHC informed^[6] Firematic that it had decided to delete Phase II (Tower II) from the original contract, and consequently, the contract price for Phase I was reduced to P22,153,424.52.^[7] However, by reason of the change orders approved by PRHC, the contract price was increased to P24,773,376.48.^[8]

On December 13, 1990, PRHC and Firematic entered into another Construction Agreement^[9] under which the latter undertook to *supply, deliver and install the fire alarm system* for Phase I of the Tektite Project for a total contract price of P3,780,000.00. This agreement contains substantially the same terms and conditions as the earlier contract for fire sprinklers.

The Technical Specification for Fire Protection^[10] (which is an integral part of the contract) provides, among others:

1.02. QUALIFICATIONS

x x x x

D. LISTED AND APPROVED:

When the words "listed" and "approved" appear in the Contract Documents, or the Standard Specifications and Codes, they shall be interpreted to require products to bear labels indicating the listing, or approval of items of equipment, components, devices, assemblies and apparatus; by an internationally recognized testing laboratory for the specific service intended.

1.03. STANDARD SPECIFICATIONS AND CODES:

x x x x

1. NFPA-20; Centrifugal Fire Pumps^[11]

The contract price and terms of payment for the project are as follows:

The OWNER shall pay the CONTRACTOR for the full, faithful and complete performance of the works called for under this agreement, a fixed amount of PESOS: **THIRTY THREE MILLION NINE HUNDRED NINETY FIVE THOUSAND FORTY ONE & 24/100 (P33,995,041.24) ONLY**, the manner of payment of which shall be in accordance with Article V hereof. The contract price shall not be subject to escalation, except due to work addition approved by the Owner and the Architect and due to official increase in minimum wage as covered by the Labor Cost Adjustment Clause below. x x x It is understood that there shall be no escalation in the price of materials. x x x.

ARTICLE IV — ADJUSTMENT OF CONTRACT PRICE

The OWNER or ARCHITECT may, without invalidating this Agreement or the Contract Documents, order at anytime in writing additional work or alterations by correcting, altering or deducting from the work to be undertaken or being undertaken by the CONTRACTOR. All such work shall be evidenced by Change Orders signed by the OWNER and shall be executed under the conditions hereof and of the Contract Documents.

No claims for additions or deductions to the Contract Price herein stipulated by reason of extra or alteration shall be valid unless ordered in writing by the Owner. The value of any extra work or alterations shall be separately agreed upon by the parties in writing.

Any value of Change Orders approved shall be considered as part of the Contract and to be included in progress billing.

ARTICLE V — TERMS OF PAYMENT

3.0. No payment made hereunder shall be construed as a waiver of any claim against the CONTRACTOR by the OWNER for any faulty workmanship, materials used or defect in work completed.

On March 30, 1992, Firematic requested^[12] PRHC for financial assistance due to its tight business credit and rising costs. Consequently, the purchases of materials for the project were directly paid by PRHC.

Firematic submitted to PRHC the Catalogue of Peerless Fire Pumps,^[13] and PRHC approved the use of 500 GPM (12 LB-F model) Peerless Vertical Turbine Fire Pumps.^[14] To facilitate the purchase of the approved model and specifications of the fire pumps from Technotrade Industrial Sales, Inc., and pursuant to the financial assistance earlier requested by Firematic, the latter presented to PRHC for approval Purchase Order No. 108^[15] dated August 6, 1992. PRHC approved the purchase order. The subject materials were delivered and eventually installed by Firematic.

On the other hand, the Technical Specifications for Fire Alarm and Detection System^[16] provides:

2.01. FIRE ALARM CONTROL PANEL (FACP):

x x x x

B. The FACP shall be solid state design with full capability for sensing automatic detectors, and manual stations and have the provision for integrating with security system.^[17]

Paragraph 9 of Bid Bulletin No. 1^[18] dated September 10, 1990 provides that the requirement for interfacing with Security System Section under Section 2.01(B) is actually for interfacing with the Building Management System (BMS).^[19]

The materials were installed by Firematic. The project became operational and was turned over to PRHC, which then issued the Certificate of Completion.^[20] The

Municipal Mayor issued a Certificate of Occupancy in favor of PRHC on January 12, 1993.^[21]

In the meantime, PRHC requested the Connel Bros. Co., Philippines for a quotation of the Peerless UL/FU Fire pump similar to those installed by Firematic in Tektite Tower I.^[22] However, Connel Bros. Philippines, Inc. replied by letter dated September 2, 1993 that it would be difficult for them to trace whether they had records of transactions with Technotrade-USA, because the pump model and serial number that PRHC furnished were not of Peerless origin."^[23]

Meanwhile, on October 14, 1993, Firematic billed PRHC P1,402,559.93 for the balance of the amount of the automatic sprinkler supplies installed.^[24] However, PRHC rejected the claim. On October 20, 1993, PRHC, through counsel, sent a letter^[25] to Firematic claiming that, based on its Purchase Order, the brand "Peerless" should have been used; however, the manufacturer of the brand (Peerless Pump Co., USA), did not have any record of having manufactured the pumps that Firematic delivered and installed on the Tektite Towers project.

Firematic did not respond to the letter. Instead, its managing director, Ms. Jojie Gador, went to the Fire Department of the City of Pasig and inquired about the fire incident that occurred at Tower II while construction was ongoing.^[26] In response to the inquiry, the City Fire Marshall issued a report^[27] dated June 10, 1994 stating that "said fire could have turned into a conflagration size without the swift response of the company guards on duty plus the existing firefighting equipment installed thereat."

In a letter^[28] dated March 2, 1994, Connel Bros. stated that Peerless Pump Co. never had direct negotiation with Technotrade, and as such, the latter is not a dealer of "Peerless" pump.

On January 12, 1995, Firematic sent its final billing^[29] and a demand letter^[30] prepared by its counsel to PRHC for the payment of the latter's balance of the contract price amounting to P3,919,283.13, including the unacted charge order attached thereto.

In answer to the final billing of Firematic, PRHC denied^[31] liability for the following reasons:

1. [The] installation is incomplete and has not been fully commissioned.
2. [The] Fire Alarm Panels could not be interfaced with Building Management System as required in [the] contract x x x.
3. [The] Fire Alarm Panels do not follow the specifications required in the contract.

In a letter^[32] dated March 6, 1995, PRHC informed Firematic that all the fire pumps and accessories supplied by it shall be removed, and the cost of replacement, including the labor cost of the installation, would be chargeable to its account. Again, Firematic failed to respond.^[33]