

SECOND DIVISION

[G.R. No. 199705, April 03, 2019]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),
PETITIONER, VS. ROGUZA DEVELOPMENT CORPORATION,
RESPONDENT.**

DECISION

CAGUIOA, J:

The Case

This is a Petition for Review on *Certiorari*^[1] filed under Rule 45 of the Rules of Court against the Decision^[2] dated April 26, 2011 (assailed Decision) and Resolution^[3] dated December 14, 2011 (assailed Resolution) in CA-G.R. SP No. 107412 rendered by the Court of Appeals (CA), Special Seventeenth Division (CA Special 17th Division) and Former Special Seventeenth Division (Former Special 17th Division), respectively.

The assailed Decision and Resolution stem from a petition for review assailing the following issuances of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 05-2008, a collection case filed by respondent Roguza Development Corporation (RDC) against petitioner Department of Public Works and Highways (DPWH):

1. Arbitral Award^[4] dated July 17, 2008 (Arbitral Award) granting RDC's claim in the **reduced** amount of P22,409,500.00;
2. Order dated December 8, 2008 (First CIAC Order) denying RDC's motion for reconsideration of the Arbitral Award (First CIAC MR) for having been filed out of time; and
3. Order dated January 26, 2009 (Second CIAC Order) denying RDC's motion for reconsideration of the First CIAC Order (Second CIAC MR).

The assailed Decision and Resolution: (i) increased the Arbitral Award granted in RDC's favor from P26,142,577.09 to P61,748,346.00; and (ii) set aside the First and Second CIAC Orders for having been issued under the signature of only one of the three members of the Arbitral Tribunal.^[5]

The Facts

The undisputed facts, as narrated by RDC in its Complaint, and thereafter adopted by the CA Special 17th Division, are as follows:

x x x [RDC] was awarded the construction of the Rosario-Pugo-Baguio Road Rehabilitation Project, Contract Package I by [DPWH]. The project, with a contract duration of 12 months, is a 2.10[-]kilometer diversion road. Accordingly, the Notice to Proceed (NTP) was issued by [DPWH] to [RDC] on May 15, 1997.

x x x Thereafter, [RDC] mobilized its manpower, equipment and other resources necessary for the project and eventually, [RDC] actually commenced construction activities on May 24, 1997.

x x x However, the project was suspended effective June 4, 1997 due to [DPWH's] failure to secure the required Environmental Clearance Certificate (ECC) and to settle the attendant right of way (ROW) problems. The suspension lasted for almost 32 months or until February 8, 2001 when [RDC] was furnished by [DPWH] with the Resume Order.

x x x The project was finally accomplished and completed by [RDC] on September 6, 2001.

x x x Meanwhile, [RDC] made its claim upon [DPWH] for the idle time of equipment and other expenses incurred due to the suspension of work on the project in the amount of P93,782,093.64 pursuant to Clause 42.2 in relation to Clause 54.1 of the Conditions of Contract Volume III, Part I (FIDIC) x x x[.]

x x x x

x x x Essentially, the equipment rental component of the foregoing claim was based on the equipment guidebook published by the Association of Carriers and Equipment Lessors, Inc. [ACEL]. x x x

x x x Consequently, [DPWH] created an Ad Hoc Committee to evaluate the foregoing claim of [RDC]. **On September 1, 2003, the Ad Hoc Committee recommended payment of [RDC's] claim but only in the reduced amount of P26,142,577.09 and subject to the condition that [RDC] should waive or no longer claim the balance of its claim including damages.** The Ad Hoc Committee's recommendation was eventually approved by [DPWH's] then Acting Secretary Florante Soriquez.

x x x Notably, the computation for the idle time of equipment component in the above-mentioned recommendation of the Ad Hoc Committee was based on [the lower bare rental rate submitted by RDC in its detailed unit price estimate which forms part of the parties' contract, and *not* the higher ACEL rates^[6]].

x x x [RDC] was [purportedly] constrained to accept the [amount tendered by DPWH through a Letter dated November 14, 2006 (Letter-Waiver)^[7] because it was already in financial distress at that time and its financial condition was aggravated by the considerable length of time that elapsed since [RDC's] claim was made until [DPWH] finally decided to tender a substantially reduced settlement amount of its obligation to [RDC].

x x x x

x x x [Subsequently], [RDC] made various representations and demands, both oral and written, upon [DPWH] for the payment of the balance of its entire claim, the final notice of claim having been served upon [DPWH] on January 14, 2008. However, [DPWH] x x x denied [RDC's] claim x x x.^[8] (Emphasis and underscoring supplied)

CIAC Proceedings

Prompted by DPWH's repeated refusal to heed its demand for additional compensation, RDC filed a Complaint against the DPWH before the CIAC (CIAC Complaint) demanding payment of P67,639,576.55, representing the *balance* of its original claim for idle time compensation corresponding to four (4) bulldozers, two (2) backhoes and two (2) payloaders which were left idle during the suspension of the project.^[9]

After due proceedings, the CIAC rendered its Arbitral Award, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered and AWARD is made in favor of Claimant-CONTRACTOR [RDC] and against [DPWH] directing [DPWH] to pay [RDC] the amount of P22,409,500.00.

Interest on the foregoing amount shall be paid at the rate of **6%** per annum from the date of this [Arbitral Award]. After finality hereof, interest at the rate of **12%** per annum shall be paid thereon until full payment of the awarded amount shall have been made, *"this interim period being deemed to be at that time already a forbearance of credit"* x x x.^[10] (Additional emphasis supplied; italics in the original)

The Arbitral Tribunal held that RDC sufficiently established that it was in financial distress at the time DPWH offered to pay the reduced amount of P26,142,577.09, and that it was constrained to execute the Letter- Waiver to facilitate payment.^[11] On this basis, the Arbitral Tribunal declared the Letter-Waiver "inefficacious".^[12]

Based on the Daywork and Equipment Utilization Schedule RDC submitted as part of

its bid documents for the project, the Arbitral Tribunal further held that: (i) bare rental rates were agreed upon; and (ii) only four (4) bulldozers were contracted for the project. Proceeding therefrom, the Arbitral Tribunal found that RDC's total claim for idle time compensation amounts to P50,179,577.00, (*not* P93,782,093.64 as initially claimed), thus entitling it to recover additional compensation amounting to **P22,409,500.00** (*not* P67,639,576.55 as prayed for in the CIAC Complaint), computed as follows:

x x x From June 24, 1997 to [February] 8, 2000, the period of work suspension is for a total of 32 months calculated at 25 operating days per month (excluding Sundays). Translated into hours, this equals 800 days total suspension.

800 working days [at] 8 operating hours per day=
6400 [hours]

Cost of Idle Time of Equipment:

Bulldozers[:]

4 units x 6400 x P 1,000.00	= P
	25,600,000.00

Backhoes:

2 units x 6400 x P 900.00	=
	11,520,000.00

Payloaders

	=
	<u>11,520,000.00</u>
2 units x 6400 x P 900.00	P 48,640,000.00

TOTAL VALUE OF CLAIMS

A. Cost of Idle Time of Equipment	P 48,640,000.00
B. Equipment Yard Rental	112,000.00
C. Consultant's Quarters	110,000.00
D. Contractor[']s Staff House	69,000.00
E. Salary of Personnel	1,106,000.00
F. Performance Bond	<u>142,577.00</u>

TOTAL	P 50,179,577.00
-------	-----------------

Less[:] Payment received	<u>27,770,077.00</u>
--------------------------	----------------------

BALANCE PAYABLE	P 22,409,500.00^[13]
------------------------	---------------------------------------

DPWH's CA Petition

The records show that sometime on September 11, 2008, DPWH filed with the CA a petition for review (DPWH's CA Petition) under Rule 43 seeking the reversal of the Arbitral Award. This petition was docketed as CA-G.R. SP No. 104920.

RDC's First and Second CIAC MRs

Meanwhile, RDC filed its First CIAC MR seeking reconsideration of the Arbitral Award. On December 8, 2008, the CIAC issued the First CIAC Order denying said motion for having been filed four (4) days beyond the reglementary period. Notably, the First CIAC Order was signed only by CIAC Chairman Alfredo Tadiar (Chairman Tadiar).^[14]

Thereafter, RDC filed its Second CIAC MR, this time seeking reconsideration of the First CIAC Order, with a prayer for the partial execution of the Arbitral Award. This motion was also denied through the Second CIAC Order, which, again, only bore the signature of Chairman Tadiar.^[15]

RDC's CA Petition

Aggrieved, RDC filed a petition for review before the CA *via* Rule 43 (RDC's CA Petition). Said petition, docketed as CA-G.R. SP No. 107412, was filed sometime in March 2009.^[16] **Notably, RDC's CA Petition proceeded independent of DPWH's CA Petition, which had already been pending with another division of the same court.**^[17]

RDC assailed the validity of the First and Second CIAC Orders, for while they were purportedly issued upon the authority of the Arbitral Tribunal, they were signed by only one (1) out of its three (3) members.^[18] RDC also maintained that its First CIAC MR had been filed on time.^[19]

In addition, RDC argued that the Arbitral Tribunal erred in: (i) applying bare rental rates instead of ACEL rates as basis for determining the amount of idle time compensation due; and (ii) awarding compensation for idle time corresponding to only four (4) bulldozers instead of five (5).^[20] **Finally, RDC claimed that it is neither barred by laches nor estopped from demanding the balance of its original claim of P93,782,093.64, insisting that it was merely constrained to execute the Letter-Waiver due to financial distress.**^[21]

In its Comment, DPWH averred, among others, that motions for reconsideration and new trial constitute prohibited pleadings under Sections 17.1 and 17.2 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Revised Rules).^[22]

DPWH further argued that RDC should not be allowed to seek additional compensation for idle time in view of the Letter-Waiver. Assuming that such waiver cannot be enforced, DPWH asserted that RDC's claim remains barred pursuant to the principle of laches and estoppel.^[23]

Assailed Decision and Resolution

On April 26, 2011, the CA Special 17th Division issued the assailed Decision granting RDC's CA Petition. The dispositive portion of the assailed Decision reads: