

SPECIAL THIRD DIVISION

[G.R. Nos. 198916-17, July 23, 2018]

MALAYAN INSURANCE COMPANY, INC., PETITIONER, VS. ST. FRANCIS SQUARE REALTY CORPORATION, RESPONDENT.

[G.R. Nos. 198920-21]

ST. FRANCIS SQUARE REALTY CORPORATION, PETITIONER, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

RESOLUTION

PERALTA, J.:

This resolves Malayan Insurance Company, Inc.'s Motion for Partial Reconsideration and St. Francis Square Realty Corporation's Motion for Reconsideration of the Court's Decision dated January 11, 2016, the dispositive portion of which states:

WHEREFORE, premises considered, the Court of Appeals Decision dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, is **AFFIRMED** with the following **MODIFICATIONS**:

- 1) The total amount of P57,474,561.39 should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of P562,866,135.02 to arrive at the net ARCC of P505,391,573.63;
- 2) Malayan is entitled to 30% ownership over the reserved units (P52,966,724.63/P175,856,325.05), together with the corresponding interest in the income realized thereon in the same proportion; while St. Francis is entitled to 70% (P122,889,598.42/P175,856,325.05) ownership of the said units, as well as to its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;
- 3) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion above stated, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, and to render full accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis;
- 4) Arbitration costs are maintained pursuant to the *pro rata* sharing that the parties had initially shared in accordance with

the amounts claimed and counterclaimed by them, namely, St. Francis: P936,775.29; and Malayan: P127,742.09;

- 5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis;
- 6) The Register of Deeds of Pasig City is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Condominium Certificates of Title covering the reserved units awarded to St. Francis; and
- 7) All other awards granted by CIAC in its Award dated 27 May 2009 which are not affected by the above modifications are affirmed. No costs.

SO ORDERED.

Malayan raises the following grounds in support of its motion:

A.

Assuming *arguendo* that interest expense and other cost items were properly excluded from the Actual Remaining Construction Cost ("ARCC"), the Decision nonetheless has mathematical and clerical errors which, if corrected, will entitle *Malayan* to at least 59.9% of the Reserved Units, and not just 30% thereof as was computed in the *Decision*.

A.1. Malayan's interest expense of Php39,348,659.88 was excluded TWICE from the ARCC.

A.2. The sum of the items under "Total Exclusions" is Php15,158,864.73 not Php16,768,864/73, resulting in an over-deduction of Php610,000.00.

A.3. At least 3 items under "Total Exclusions" are fully supported by official receipts, checks and check vouchers and/or other documents. These 3 items were not "unsubstantiated" and should therefore not have been put under "Total Exclusions."

B.

There was no issue in the proceedings *a quo* as to whether Malayan had incurred its ARCC amounting to Php647,319,513.96. This was admitted by the parties and accepted by the arbitral tribunal. At any rate, this amount was proven by substantial evidence.

C.

The entire monetary award of Php21,948,852.39 which *Malayan* paid to TVI (in TVI vs. Malayan docketed as CIAC Case No. 27-2007) should be included in the ARCC, because the components of this award are purely

"traditional" or "direct" construction costs.

D.

The peculiar signification which the parties gave to the term "Actual Remaining Construction Cost" in the 30 April 2002 Memorandum of Agreement (the "MOA"), prevails over the "primary and general acceptation" of the term "construction cost" in the construction industry.

E.

The terms of the MOA and the contemporaneous acts of the parties indicate that costs incurred to finance the completion of the Project, such as interest expense, must be included in the ARCC.

F.

Malayan implemented the "change orders not due to reconfiguration" with an aggregated value of Php971,796.29 in order to address security, safety and marketability concerns. Therefore, these costs should have been included in the ARCC.

G.

Considering that the increase in the costs for "interior design works" is presumed fair and regular, and St. Francis failed to prove otherwise, the entire increase should have been included in the ARCC.

H.

The "Contingency Costs" of Php631,154.39 should have been included in the ARCC, because these were necessary to ensure the continued construction of the Project.

I.

There are several costs incurred or paid after June 2006 which were still necessary for the completion of the Project. They should therefore have been included in the ARCC.

J.

Considering that there is no legal basis to exclude any of the costs in *Malayan's* ARCC in the amount of Php647,319,513.96, St. Francis is *not* entitled to share in the Reserved Units.

K.

St. Francis is *not* entitled to any share in the income from the Reserved Units. Under the MOA, its right to the Reserved Units, if any, and, therefore, to the income therefrom, arises only *after* the determination of

the ARCC.

L.

St. Francis's Complaint was without basis. It should therefore be held liable for attorney's fees and arbitration costs.^[1]

On the other hand, St. Francis' motion for partial reconsideration takes exception only to the Court's ruling that the input value added tax (VAT) in the amount of P45,419,770.44 should be considered as part of the ARCC. St. Francis states that the issue of input VAT is not limited to or purely about technical classifications of taxes or accounting rules, and that input VAT can neither be considered an expense under tax laws nor be deemed part of the ARCC under the plain and ordinary meaning of cost. Citing VAT Ruling No. 053-94,^[2] St. Francis posits that the VAT paid by a VAT-registered person on his purchases is an asset account in the Balance Sheet and cannot be treated as an expense unless he is exempt from VAT, in which case the VAT paid would form part of the cost to acquire what was purchased. According to St. Francis, this is the reason why under Malayan's own documentary evidence consisting of cash vouchers, input VAT was treated separately from the actual construction cost, and was treated in its audited financial statements under the heading "Other Assets" as opposed to expense.

St. Francis further contends that since Malayan admitted that the input VAT were used to offset its output VAT and thus lessen its tax liability, input VAT can no longer be charged as part of the ARCC. St. Francis asserts that Malayan has not made any actual expenditure as regards the input VAT because Malayan was able recover what it paid for the input VAT when it offset the same against its output VAT. St. Francis theorizes that there will be unjust enrichment if Malayan would be allowed to benefit twice by still including the input VAT in the ARCC, which will result in a corresponding decrease of its share in the reserved units. Finally, St. Francis posits that under the MOA, the reserved units are considered its property and will only be diminished should the ARCC exceed the RCC (Remaining Construction Cost). As such, there is no actual transfer or sale of said units from Malayan to St. Francis, and there would be no occasion for St. Francis to incur input VAT which it can use to offset against its output VAT.

Malayan counters that St. Francis is barred by estoppel from claiming that input VAT should not be included in the ARCC because it included such tax in computing its investment in the project which, in turn was the basis for determining its share in some of the units in the project. In support of its claim of a contemporaneous act revealing the intention of the parties to include input VAT as a component of the ARCC, Malayan calls attention the telefax dated August 1, 2000 where St. Francis included "Com.&VAT" in the amount of P47,739,805.00 as part of the "computation for reimbursement" for certain units in the project. Malayan insists that input VAT is considered a cost under the law and the principles of accounting, and is part of the ARCC as contemplated in the MOA.

There is partial merit in both the Motions for Partial Reconsideration filed by St. Francis and Malayan.

It is well settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally

accorded not only respect, but also finality if they are supported by substantial evidence, especially when affirmed by the CA.^[3] This is because when technical matters or intricate question of facts are involved, they require for their resolution the expertise, specialized skills and knowledge of a quasi-judicial body.^[4] In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by the Court on appeal.^[5]

To recall, factual findings of construction arbitrators may be reviewed by the Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (7) when the findings of the CA are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.^[6]

After a careful review of the records, the Court finds that St. Francis was able to show that the CIAC imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC. Instead of resolving the said issue, the CIAC failed to explain why input VAT is a direct construction cost, and digressed in this wise:

Unlike the issue of interest, here, there is no question that input VAT is a direct construction cost and therefore, should be included in the ARCC. The only question that remains is What is the arrangement between Respondent [Malayan] on the one hand and its contractors/suppliers on the other?

Claimant's [St. Francis] draft decision admits that VAT "*appear to have been deducted from the billings of the concerned supplier or subcontractor totaling P45,419,770.44 as reflected in the pertinent cash vouchers in Exhibit R-48-series.*" Claimant questions whether said amounts deducted for VAT was actually remitted by Respondent. Thus, Claimant inferentially admits that Respondent is entitled to add the input VAT as part of the ARCC.

While "*submission of the quarterly and annual VAT return*" would have provided incontrovertible proof of Respondent's remittance to the BIR, as Claimant asserts, there is no prohibition against considering the pertinent cash vouchers. Examination of the documentary evidence submitted by Respondent (**Exhibit R-44** and **Exhibit R-48**), series) as well as those submitted by Claimant itself (**Exhibits C-7 up to C-40**) has persuaded the Tribunal of their sufficiency to show such remittance. As earlier