

## THIRD DIVISION

[ G.R. No. 211504, March 08, 2017 ]

**FEDERAL BUILDERS, INC., PETITIONER, VS. POWER FACTORS, INC., RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

An agreement to submit to voluntary arbitration for purposes of vesting jurisdiction over a construction dispute in the Construction Industry Arbitration Commission (CIAC) need not be contained in the construction contract, or be signed by the parties. It is enough that the agreement be in writing.

#### The Case

Federal Builders Inc. (Federal) appeals to reverse the decision promulgated on August 12, 2013,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the adverse decision rendered on May 12, 2010 by the Construction Industry Arbitration Commission (CIAC) with modification of the total amount awarded.<sup>[2]</sup>

#### Antecedents

Federal was the general contractor of the Bullion Mall under a construction agreement with Bullion Investment and Development Corporation (BIDC). In 2004, Federal engaged respondent Power Factors Inc. (Power) as its subcontractor for the electric works at the Bullion Mall and the Precinct Building for P18,000,000.00.<sup>[3]</sup>

On February 19, 2008, Power sent a demand letter to Federal claiming the unpaid amount of P11,444,658.97 for work done by Power for the Bullion Mall and the Precinct Building. Federal replied that its outstanding balance under the original contract only amounted to P1,641,513.94, and that the demand for payment for work done by Power after June 21, 2005 should be addressed directly to BIDC.<sup>[4]</sup> Nonetheless, Power made several demands on Federal to no avail.

On October 29, 2009, Power filed a request for arbitration in the CIAC invoking the arbitration clause of the Contract of Service reading as follows:

15. ARBITRATION COMMITTEE - All disputes, controversies or differences, which may arise between the parties herein, out of or in relation to or in connection with this Agreement, or for breach thereof shall be settled by the Construction Industry Arbitration Commission (CIAC) which shall have original and exclusive jurisdiction over the aforementioned disputes.<sup>[5]</sup>

On November 20, 2009, Atty. Vivencio Albano, the counsel of Federal, submitted a letter to the CIAC manifesting that Federal agreed to arbitration and sought an extension of 15 days to file its answer, which request the CIAC granted.

On December 16, 2009, Atty. Albano filed his withdrawal of appearance stating that Federal had meanwhile engaged another counsel.<sup>[6]</sup>

Federal, represented by new counsel (Domingo, Dizon, Leonardo and Rodillas Law Office), moved to dismiss the case on the ground that CIAC had no jurisdiction over the case inasmuch as the Contract of Service between Federal and Power had been a mere draft that was never finalized or signed by the parties. Federal contended that in the absence of the agreement for arbitration, the CIAC had no jurisdiction to hear and decide the case.<sup>[7]</sup>

On February 8, 2010, the CIAC issued an order setting the case for hearing, and directing that Federal's motion to dismiss be resolved after the reception of evidence of the parties.<sup>[8]</sup>

Federal did not thereafter participate in the proceedings until the CIAC rendered the Final Award dated May 12, 2010,<sup>[9]</sup> disposing:

In summary: Respondent Federal Builders, Inc. is hereby ordered to pay claimant Power Factors, Inc. the following sums:

- |                                                                    |                |
|--------------------------------------------------------------------|----------------|
| 1. Unpaid balance on the original contract                         | P4,276,614.75; |
| 2. Unpaid balance on change order nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9 | 3,006,970.32;  |
| 3. Interest to May 13, 2010                                        | 1,686,149.94;  |
| 4. Attorney's Fees                                                 | 250,000.00;    |
| 5. Cost of Arbitration                                             | 149,503.86;    |

**P9,369,238.87**

The foregoing amount shall earn legal interest at the rate of 6% per annum from the date of this Final Award until this award becomes final and executory, Claimant shall then be entitled to 12% per annum until the entire amount is fully satisfied by Respondent.

Federal appealed the award to the CA insisting that the CIAC had no jurisdiction to hear and decide the case; and that the amounts thereby awarded to Power lacked legal and factual bases.

On August 12, 2013, the CA affirmed the CIAC's decision with modification as to the amounts due to Power,<sup>[10]</sup> viz.:

**WHEREFORE**, the CIAC Final Award dated 12 May 2010 in CIAC Case No. 31-2009 is hereby **AFFIRMED** with **MODIFICATION**.

As modified, FEDERAL BUILDERS, INC. is ordered to pay POWER FACTORS, INC. the following:

1. Unpaid balance on the original contract P4,276,614.75;
2. Unpaid balance on change orders 2,864,113.32;
3. Attorney's Fees 250,000.00;
4. Cost of Arbitration 149,503.86;

The interest to be imposed on the net award (unpaid balance on the original contract and change order) amounting to P7,140,728.07 awarded to POWER FACTORS INC. shall be six (6%) per annum, reckoned from 4 July 2006 until this Decision becomes final and executory. Further, the total award due to POWER FACTORS INC. shall be subjected to an interest of twelve percent (12%) per annum computed from the time this judgment becomes final and executory, until full satisfaction.

SO ORDERED.<sup>[11]</sup>

Anent jurisdiction, the CA explained that the CIAC *Revised Rules of Procedure* stated that the agreement to arbitrate need not be signed by the parties; that the consent to submit to voluntary arbitration was not necessary in view of the arbitration clause contained in the Contract of Service; and that Federal's contention that its former counsel's act of manifesting its consent to the arbitration stipulated in the draft Contract of Service did not bind it was inconsequential on the issue of jurisdiction.

<sup>[12]</sup>

Concerning the amounts awarded, the CA opined that the CIAC should not have allowed the increase based on labor-cost escalation because of the absence of the agreement between the parties on such escalation and because there was no authorization in writing allowing the adjustment or increase in the cost of materials and labor.<sup>[13]</sup>

After the CA denied Federal's motion for reconsideration on February 19, 2004,<sup>[14]</sup> Federal has come to the Court on appeal.

### **Issue**

The issues to be resolved are: (a) whether the CA erred in upholding CIAC's jurisdiction over the present case; and (b) whether the CA erred in holding that Federal was liable to pay Power the amount of P7,140,728.07.

### **Ruling of the Court**

The appeal is bereft of merit.

1.

**The parties had an effective agreement to submit to voluntary arbitration; hence, the CIAC had jurisdiction**

The need to establish a proper arbitral machinery to settle disputes expeditiously was recognized by the Government in order to promote and maintain the development of the country's construction industry. With such recognition came the creation of the CIAC through Executive Order No. 1008 (E.O. No. 1008), also known as *The Construction Industry Arbitration Law*. Section 4 of E.O. No. 1008 provides:

Sec. 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. **For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.** x x x

Under the *CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Revised Rules)*, all that is required for the CIAC to acquire jurisdiction is for the parties of any construction contract to agree to submit their dispute to arbitration.<sup>[15]</sup> Also, Section 2.3 of the *CIAC Revised Rules* states that the agreement may be reflected in an arbitration clause in their contract or by subsequently agreeing to submit their dispute to voluntary arbitration. The *CIAC Revised Rules* clarifies, however, that the agreement of the parties to submit their dispute to arbitration need not be signed or be formally agreed upon in the contract because it can also be in the form of other modes of communication in writing, *viz.*:

RULE 4 - EFFECT OF AGREEMENT TO ARBITRATE

SECTION 4.1. Submission to CIAC jurisdiction - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute **shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction**, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.

4.1.1 When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the Claimant may invoke the jurisdiction of CIAC.

4.1.2 An **arbitration agreement** or a **submission to arbitration** shall be in *writing*, but it **need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration. It may be in the form of exchange of letters sent by**