

THIRD DIVISION

[G.R. Nos. 193969-193970, July 05, 2017]

**KA KUEN CHUA, DOING BUSINESS UNDER THE NAME AND STYLE
KA KUEN CHUA ARCHITECTURAL, PETITIONER, VS. COLORITE
MARKETING CORPORATION, RESPONDENT.**

[G.R. Nos. 194027-194028]

**COLORITE MARKETING CORPORATION, PETITIONER, VS. KA
KUEN CHUA, DOING BUSINESS UNDER THE NAME AND STYLE KA
KUEN CHUA ARCHITECTURAL, RESPONDENT.**

DECISION

REYES, J.:

These are consolidated petitions for review on *certiorari* assailing the Decision^[1] dated July 28, 2009 and Resolution^[2] dated October 4, 2010 of the Court of Appeals (CA) in CA-G.R. SP Nos. 103892 and 103899, which affirmed with modifications the Final Award^[3] of the Construction Industry Arbitration Commission (CIAC) dated May 27, 2008 in CIAC Case No. 32-2007.

The Facts

On November 15, 2003, Colorite Marketing Corporation (Colorite) and Architect Ka Kuen Tan Chua (Chua), doing business under the name and style "Ka Kuen Chua Architectural" (KKCA), signed a construction contract whereby the latter undertook to build a four-storey residential/commercial building for the former on a parcel of land located at St. Paul Road, comer Estrella Avenue, Makati City.^[4]

The parties agreed to a full contract price of Thirty-Three Million Pesos (Php33,000,000.00), subject, among others, to the following stipulations: a) the project will commence in seven days from the time KKCA received a notice to proceed from Colorite, and will be completed within 365 days reckoned from the seventh day after the release of the down payment;^[5] b) in the event that the project is not completed on time, the amount of Php10,000.00 for each calendar day of delay shall be paid by KKCA to Colorite;^[6] c) only a maximum of 20% of slippage, or 73 calendar days of delay, is allowed, and Colorite has the right to terminate the contract if the delay exceeded the maximum number of days allowed;^[7] and d) Colorite has the right to take over and complete the construction of the project, and all costs incurred thereby will be deducted from the amount due to KKCA.^[8]

In addition to the main construction contract, the parties also agreed on complementary provisions embodied in Addendum #01^[9] and Addendum #02.^[10]

Thereafter, Colorite issued the *Notice to Proceed*, and paid the agreed down payment in the amount of Php6,600,000.00 corresponding to 20% of the contract price.^[11]

To undertake the excavation work, Colorite engaged the services of WE Construction Company (WCC).^[12] On January 10, 2004, full-blast excavation work began.^[13] However; on January 17, 2004, the excavation resulted in erosion, which caused damage to the adjacent property owned by the Hontiveros family. This prompted the latter to file a formal complaint before the City Government of Makati. In view of this development, a Hold Order was issued by the Building Officials of Makati City dated January 22, 2004 directing KKCA to *stop immediately all its excavation activities in the premises, and to immediately restore the eroded portion of the adjacent property*. The incident resulted in the delay of the project because the Hontiveros family refused to sign a waiver that was required for the lifting of the Hold Order unless their property was restored.^[14]

The restoration of the Hontiveros property was completed in October 2005.^[15] Notwithstanding this development, the Hontiveros family's quitclaim remained forthcoming. As a consequence, the Hold Order remained effective and the construction suspended.

After 878 days of delay, Colorite demanded from KKCA to pay damages pursuant to the contract. KKCA refused contending that: (a) the agreed completion period was suspended when the City Government of Makati issued the Hold Order; and (b) Colorite failed to pay the costs of soil protection, as well as the 70% of the restoration cost of the Hontiveros property, which allegedly formed part of the agreement.^[16]

The dispute impelled Colorite to file the instant claim before the CIAC.^[17] According to Colorite, reckoning from the date the down payment was made less the seven-day interval before KKCA commenced its work, and the 73 calendar days allowed slippage, the project should have been completed on March 5, 2005.^[18] Hence, from March 6, 2005 up to the commencement of the action on July 31, 2007, the project was already delayed for 878 days. This renders KKCA liable to Colorite for payment of liquidated damages in the amount of Eight Million, Seven Hundred Eighty Thousand Pesos (Php8,780,000.00), plus Ten Thousand Pesos (Php10,000.00) per additional day of delay until the project is completed.^[19]

In addition to its claim for liquidated damages, Colorite also asserted that upon its completion, the building will have a total leasable area of 1,320.12 square meters. Computed at a minimum monthly rental of Php350.00 per sq m, the building should generate a total of Php460,189.00 lease income per month.^[20]

Accordingly, Colorite prayed for the following: (a) liquidated damages in the amount of Php8,780,000.00; (b) loss of rental earnings in the amount of Php13,345,481.00; (c) Php500,000.00 attorney's fees; and, (d) litigation expenses in the amount of Php300,000.00.^[21]

In his Answer,^[22] Chua asserted the following:

- a) He is capable[,] competent and duly licensed to undertake the project in accordance with the plans and specifications but [his liability cannot] extend to the excavation works[,] which were not undertaken by KKCA but by a subcontractor;
- b) His obligation to complete the construction of [Colorite's] residential/commercial building in 365 days reckoned from the seventh day after release of the downpayment was suspended by the stoppage of the excavation by the Makati City Building Officer[,] and by [Colorite's] failure to pay the cost of soil protection and the balance of its 70% share in the costs of restoration work of the Hontiveros property[,] which not only delayed the construction and increased its costs but rendered the performance of the contract extremely difficult;
- c) On January 10, 2004, full blast excavation work in the construction project was begun by [WCC]. On January 17, 2004, substantial soil erosion occurred and caused damages to the adjacent Hontiveros property and [on] January 27, 2004, the Makati City Building Office ordered the suspension of the excavation which lasted up to the present despite [diligent] effort on the part of [KKCA] to lift the suspension order and repair the damage to the Hontiveros property. On February 28, 2004[,] another erosion occurred causing further damage to the Hontiveros property;
- d) [Colorite] agreed to share 70% in the restoration cost of the Hontiveros property [but] the remaining 30% was [KKCA's] share; as proof of [Colorite's] commitment to the new agreement[,] it paid Php150,000.00 for the boring test, but [Colorite] reneged on its undertaking to share in the restoration costs of the Hontiveros property thereby compelling [KKCA] to advance [the] costs[,] which claimant was duly notified [of] and billed[.] [H]owever, the latter refused further payment and instead offered the amount of Php800,000.00 as its donation not by way of sharing;
- e) [KKCA] denied the claim of [Colorite] for rental income loss in the sum of Php13,345,481.00 as without basis and purely speculative; [KKCA] further denied [Colorite's] claim for liquidated damages in the sum of Php8,780,000.00 because the period of construction was deemed suspended with the suspension of the excavation by [Colorite's] failure to pay its share in the soil protection and restoration costs of the Hontiveros property; [and]
- f) On its counterclaims[,] [KKCA] claimed for soil protection installed in the sum of Php1,324,340.64, soil protection for the unexcavated portion in the sum of Php3,583,872.00, design fee in the sum of Php2,310,000.00, ECC permit in the sum of Php50,000.00, balance of 70% share in the restoration of Hontiveros property in the sum of Php1,777,011.00; cost of maintaining the project site in the sum of Php2,047,269.00,

moral damages for Php500,000.00, exemplary damages for Php500,000.00 and attorney's fees for Php500,000.00.^[23]

Ruling of the CIAC

On May 27, 2008, the CIAC rendered its Final Award.^[24] It ruled as follows:

On the basis of the evidence submitted by the parties the Arbitral Tribunal finds and so holds:

[COLORITE]:

1. [Colorite] is entitled to its claim for liquidated damages but only for 50% thereof (Php8,780,000.00) or for the sum of Php4,390,000.00 because it is equally responsible for the delay; [and]
2. [Colorite] is not entitled to recover its other claims for loss of rental earnings, attorney's fees and litigation expenses.

[KKCA]:

1. [KKCA] is entitled to his claim for soil protection works but only for the sum of Php552,840.60 but cannot recover his claim for soil protection works for the unexcavated portion;
2. [KKCA] is entitled to recover [its] claim for design fee in the sum of Php2,310,000.00;
3. [KKCA] is not entitled to [its] claim for recovery of ECC permit fee inasmuch as there is evidence [that] it was paid by [Colorite];
4. [KKCA] is entitled to [its] claim for restoration costs but only for the sum of Php523,579.20, which is 50% of [its] proven total claim of Php1,047,157.40;
5. [KKCA] is entitled to [its] claim for recovery of the costs of maintaining the project site but only for the sum of Php313,684.32[,] which is 50% of [its] total proven costs of Php627,368.64, inasmuch as the costs are part of the restoration costs of the Hontiveros property;
6. [KKCA] is not entitled to [its] claim for moral and exemplary damages and for attorney's fees; [and]
7. The parties shall bear their respective arbitration costs.^[25]

Not satisfied with the CIAC award, both parties filed their respective petitions for review before the CA.

Ruling of the CA

On July 28, 2009, the CA promulgated the assailed Decision^[26] affirming with modifications the Final Award of CIAC. The *fallo* of the CA decision reads:

WHEREFORE, in view of the foregoing, the instant **PETITION** is partially **GRANTED**. The assailed Final Award dated May 27, 2008 of the [CIAC] in CIAC Case No. 32-2007 is **AFFIRMED** with **MODIFICATIONS**.

Accordingly, the assailed Award IS hereby **AFFIRMED** with respect to the following:

FOR COLORITE:

1. Colorite is entitled to its claim for liquidated damages but only for 50% of Php8,780,000.00 or for the sum of Php4,390,000.00.
2. Colorite is not entitled to loss of rental earnings, attorney's fees and litigation/arbitration expenses.

FOR KKCA:

1. KKCA is entitled to its claim for soil protection works but only in the amount of Php552,840.60.
2. KKCA is entitled to its claim for design fee in the amount of Php2,310,000.00.
3. KKCA is not entitled to its claim for increase in the price of construction materials, moral and exemplary damages, attorney's fees and litigation/arbitration costs.

In addition, the Final Award is **MODIFIED** with respect to the following:

FOR COLORITE:

1. Colorite is hereby ordered to pay KKCA the amount of Php550,000.00 (Php700,000.00 less P150,000.00 which it already advanced) as part of its share in the restoration costs of the Hontiveros property;
2. Colorite is ordered to share 50% in the total maintenance costs (Php2,047,268.75) or a total amount of Php1,023,634.30.
3. Colorite is ordered to reimburse KKCA the amount paid by the latter for the ECC permit in the amount of Php50,000.00.
4. In satisfying Colorite's obligations, the necessary deductions should be made from its down payment of Php6,600,000.00 as may be appropriate.

FOR KKCA:

1. KKCA is directed to finish the subject construction project subject to the necessary adjustments in the contract price;