

THIRD DIVISION

[G.R. No. 192948, December 07, 2016]

**B.F. CORPORATION AND HONORIO PINEDA, PETITIONERS, V.
FORM-EZE SYSTEMS, INC., RESPONDENT.**

DECISION

PEREZ, J.:

This petition for review assails the 15 January 2010 Decision^[1] and 13 July 2010 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 102007 which affirmed the Final Award rendered by the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal on 7 December 2007.

FACTUAL ANTECEDENTS

Petitioner B.F. Corporation (BFC) is a corporation engaged in general engineering and civil works construction. Petitioner Honorio H. Pineda (Pineda) is the President of BFC. Respondent Form-Eze Systems Inc. (Form-Eze) is a corporation engaged in highway and street construction.

On 29 August 2006, SM Prime Holdings, Inc. awarded the contract for general construction of the SM City-Marikina mall (the Project) to BFC whereby the latter undertook to supply materials, labor, tools, equipment and supervision for the complete construction of the Project.^[3] In turn, BFC engaged Form-Eze for the lease of formwork system and related equipment for and needed by the Project. Accordingly, five (5) contracts and two (2) letter-agreements were executed by the BFC, represented by its President Pineda, and Form-Eze, represented by its President, James W. Franklin. These contracts and their salient provisions are provided in the following table:

CONTRACT NO. 1: Contract for the Lease of the Equipment for the Beam and Slab Hardware for the Formwork on SM Marikina Mall Project dated 20 December 2006^[4]	
Obligations of Form-Eze	<ol style="list-style-type: none">1. Furnish all hardware required in the formwork system for the poured in place beam and slab concrete decks excluding the scaffoldings and accessories required to support the system; and2. Provide consumable beam ties and steel accessories needed to maintain the rigidity and alignment of the plywood formed surfaces.
Obligations of BFC	<ol style="list-style-type: none">1. Furnish all scaffoldings as required to support the system at no ,cost to Form-Eze;2. Furnish all plywood and lumber as required in the formwork operation as no cost to Form-Eze;

	<ol style="list-style-type: none"> 3. Purchase materials for the formwork as requested by Form-Eze. The direct cost of materials shall be deducted from the contract and the balance paid to Form-Eze; and 4. Responsible for the freight of the equipment to and fro the Marikina jobsite and the Form-Eze warehouse in Cainta, Rizal.
Work Specifications	The amount of hardware to be furnished is sufficient to provide 7,000 contact square meters of formwork.
Contract Price	Total contract amount for the equipment: 126,000 contact square meters (equipment to be used) x P225.00/contact square meter (cost per use of the hardware for forming the elevated beam and slab)= P28,350,000.00.
Terms of Payment	<ol style="list-style-type: none"> 1. 15% down payment or P4,252,500.00 paid to Form-Eze on or before pick up of equipment; 2. When concrete is placed on the slab forms, the equipment rental per contact square meter is due and payable to Form-Eze and shall be paid on the first day of the following month; 3. All equipment purchased by BFC as requested by Form-Eze shall be prorated and deducted equally in the first 4-month duration of the equipment lease; and 4. Monthly progress payments for the equipment lease shall be made timely.
<p>CONTRACT NO. 2: Contract for Stripping and Moving Form-Eze Systems Inc. Equipment from Location to Location on SM Marikina Mall Project dated 20 December 2006 [5]</p>	
Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Furnish forklift for the movement of the deck forms and related hardware of the forming system from location to location; 2. Strip all formwork from under the poured concrete slab and beam deck. Move all equipment to the next location where it will be reset by BFC; and 3. Assist BFC in setting the deck forms to the proper grade and locations provided that BFC has laid out the grid lines as needed for placing the scaffoldings under the deck forms and provided the scaffoldings is readily available for placement under the deck forms.
Obligations of BFC	<ol style="list-style-type: none"> 1. Furnish additional hoisting; and 2. Provide all labor requested by Form-Eze and deducted from the contract at P60.00 per carpenter man-hour.
Contract Price	Total contract amount for moving equipment: 126,000 x P50.00/contact square meter (cost for stripping and movement of the equipment, excluding cost of

	resetting to grade, cleaning plywood surfaces and applying release agent) P6,300,000.00.
Terms of Payment	<ol style="list-style-type: none"> 1. 15% down payment or P945,000.00 paid to Form-Eze on or before pick up of equipment; and 2. Monthly progress billing will coincide with the contact square meters formed with the Form-Eze equipment.
CONTRACT NO. 3: Contract for Column Formwork on the SM Marikina Mall Project dated 20 December 2006^[6]	
Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Furnish sufficient number of built up column forms as required to complete 6 poured in place full height concrete columns per day provided the installation of the rebar and the placement of the concrete can maintain that schedule of performance; 2. Provide supervision for the column formwork operation; 3. Responsible for bracing the columns to maintain them plumb when poured; 4. Correct any defects in the poured column due to failure in the formwork. (Not responsible for air entrapment or aggregate separation caused by improper placement or improper vibration of the concrete; and 5. Furnish chamfer and form release agent
Obligations of BFC	<ol style="list-style-type: none"> 1. Furnish all hoisting and moving of the columns; 2. Responsible for installation of the rebar and placement of the concrete; 3. Furnish labor as required by Form-Eze for forming columns and will deduct fro Form-Eze P60.00 per man-hour for each carpenters for the column framework; and 4. Responsible for all column grid lay-out and establishing elevations on the columns
Terms of Payment	<ol style="list-style-type: none"> 1. Total Contract Amount: 9,100 contact square meters of formwork x P355.00/contact square meter= P3,230,500.00; 2. Downpayment of P484,575.00 (15%) on or before pick up of equipment; 3. BFC agrees to purchase all materials for the formwork as required by Form-Eze and the direct cost of those materials will be deducted from this contract and the balance paid to Form-Eze; and 4. When columns are poured and stripped, P355.00 per contact square meter is due and payable at that time. Progress payments will be made for the work completed in a particular month and paid on the first day of the following month. Any materials or equipment purchased by BFC at the request of

Form-Eze shall be deducted from this contract and prorated equally over a 4-month period.

CONTRACT NO. 4: Contract for the Lease of the Heavy Duty Galvanized Scaffold Frames and Related Accessories on SM Marikina Mall Project dated 29 January 2007^[7]

Obligations of BFC	<ol style="list-style-type: none"> 1. Manufacture heavy duty galvanized scaffoldings and certain accessories for Form-Eze. The scaffoldings and accessories will be manufactured exactly as per the drawings and samples given to BFC by Form-Eze, provided the equipment produced is of excellent quality and to the exact specification specified by Form-Eze; 2. The agreement is for 1,500 pieces of heavy duty galvanized 6-ft frames and related accessories (3,000 pcs of 14-inch adjustable u-heads and 3,000 pcs heavy duty base plates); and 3. BFC will deduct P6,352,500.00 from Form-Eze equipment leased contract (all equipment must be in good condition and turned over to Form-Eze at the end of project). Form-Eze will own the equipment.
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Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Form-Eze will credit BFC with P4,235.00 per frame and related accessories; and 2. Form-Eze will accept all frames in good condition up to a maximum of 1,500 frames and related accessories.
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Agreement is contingent upon parties entering into an exclusive licensing agreement with BFC for the manufacture of Form-Eze equipment.

CONTRACT NO. 5: Contract for the Purchase and Lease of the Heavy Duty Galvanized X-Bracing on SM Marikina Mall Project dated 29 January 2007^[8]

Obligations of BFC	Manufacture heavy duty galvanized x-bracing.
Obligations of Form-Eze	Credit BFC with P400.00 per x-brace. If the x-bracing is not manufactured exactly as specified by Form-Eze, credit is P300.00 per x-brace.

Agreement is contingent upon parties entering into an exclusive licensing agreement for the manufacturing of Form-Eze equipment.

MEMORANDUM OF AGREEMENT dated 5 January 2007^[9]

BFC will manufacture Form-Eze equipment and will sell exclusively to Form-Eze.

LETTER-AGREEMENT dated 5 January 2007^[10]

Changes to Contract No.4

1. The 18-inch adjustable u-head will be changed to a 14-inch adjustable u-head.
2. The threading of the heavy duty screw will be accomplished in segments and then machined.

3. Form-Eze will send to the jobsite all 18-inch and 24-inch adjustable u-heads available in its current stock in order to start forming the project while BFC is fabricating the 14-inch adjustable u-heads. When the 3,000 pieces 14-inch u-heads are completed and are on the jobsite, Form-Eze will take back the 18-inch and 24-inch adjustable u-heads that were temporarily in use at the jobsite.
4. The creditable amount for the purchase of the 6-foot heavy duty galvanized scaffolding and related accessories is changed to P4,235.00 per 6-foot heavy duty galvanized frames, adjustable u-heads and heavy duty base plate.

On 30 March 2007, Form-Eze filed a Request for Arbitration^[11] before the CIAC. In its Complaint, Form-Eze alleged that BFC has an unpaid obligation amounting to P9,189,024.58; that BFC wanted to re-negotiate the equipment leases; and that it was not complying with the contractual and supplemental agreements in effect. Form-Eze prayed for the following relief:

1. [For BFC] to pay the current monthly equipment rentals;
2. Provisions made to guarantee the earned monthly equipment leased amounts are paid timely;
3. To legislate provisions to ensure the lease contracts are not breached during the construction of the SM Marikina Mall;
4. Provisions made to guarantee the performance of [BFC] for the manufacturing of the shoring equipment purchased by Form-Eze from BFC;
5. Provisions made to guarantee the return of all Form-Eze equipment when the concrete structure is completed and all lost and damaged equipment has been paid for by [BFC]; and
6. All cost related to Arbitration.^[12]

In its Amended Answer with Counterclaim, BFC sought for reformation of Contract #1 to incorporate a provision that BFC shall deduct from said billing the cost of labor supplied by it for the fabrication and assembly of the forming system and for the stripping, cleaning, resetting thereof at the rate of P60.00 per man-hour. BFC also demanded the refund of P5,773,440.00 as expenses for the manufacture of additional hardware to complete the 7,000 square meters of formwork required in Contract #1. BFC explained that Form-Eze had only furnished 4,682.4 square meters of formwork.^[13]

The CIAC appointed a 3-member Arbitral Tribunal (CIAC Arbitral Tribunal), composed of Atty. Custodio O. Parlade, Atty. Alfredo F. Tadiar and Engineer Romeo C. David, to adjudicate Form-Eze's claims.

Under the Terms of Reference, the parties made the following admissions:

1. The existence of five contracts, a memorandum of agreement and a supplemental contract.
2. BFC renegotiated Contract #1 but it did not result in a separate written contract.
3. Under Contract #1, BFC is willing and ready to pay Form-Eze the amount of P3,515,003.59, which amount shall be deducted from the amount of the latter's claim.