

EN BANC

[G.R. No. 204835, September 22, 2015]

**MOVERTRADE CORPORATION, PETITIONER, VS. THE
COMMISSION ON AUDIT AND THE DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS, RESPONDENTS.**

D E C I S I O N**DEL CASTILLO, J.:**

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.^[1]

This Petition for *Certiorari*^[2] under Rule 65, in relation to Rule 64, of the Rules of Court assails the December 29, 2011 Decision^[3] of respondent Commission on Audit (COA), which denied petitioner Movertrade Corporation's claim for payment for dredging works with side dumping of spoils in Pampanga Bay and the primary Pasac-Guagua-San Fernando Waterways in Pampanga amounting to P7,354,897.10. Likewise assailed is the November 5, 2012 Resolution^[4] of respondent COA denying petitioner's Motion for Reconsideration.

Factual Antecedents

On February 7, 1996, petitioner and respondent Department of Public Works and Highways (DPWH) entered into a Contract Agreement^[5] for dredging and other related works in Pampanga Bay and the primary Pasac-Guagua-San Fernando Waterways in Pampanga, which were affected by the Mt. Pinatubo eruptions and mudflows, in the total amount of PI 88,698,000.00, broken down as follows:

Particulars	Volume	Amount
Dredging Works	3.35 million cu. m.	P148,698,000.00
Distance Pumping	provisional sum	20,000,000.00
Spoil Site Development	provisional sum	<u>20,000,000.00</u>
Total		P188,698,000.00 ^[6]

The Mount Pinatubo Emergency-Project Management Office of respondent DPWH, headed by Director Florante Soriquez (Director Soriquez), implemented and supervised the project.^[7]

On August 13, 1997, due to the alleged absence of spoil sites, petitioner requested permission from Director Soriquez to allow it to undertake side dumping (dumping within the river) chargeable against the dredging works.^[8]

On August 18, 1997, Director Soriquez issued a letter^[9] denying the request. He reminded petitioner that side dumping was not allowed and that as per the report of Engr. Marcelino P. Bustos (Engr. Bustos), the Area Engineer of respondent DPWH, petitioner could still pump the dredge spoils to the following spoil sites: Pascual "A," Pascual "B," and the Regala fishpond.

On September 29, 1997, Engr. Bustos issued a letter^[10] requiring petitioner to provide additional pipelines for distance pumping. Engr. Bustos also reiterated in his letter that "Pascual spoil site can still accommodate more materials" and that "[respondent DPWH] is not allowing or giving any instruction to use side dumping process for whatsoever reason."^[11]

However, despite the denial and the prohibition issued by Director Soriquez and Engr. Bustos, petitioner continued to side dump.^[12] Thus, on October 1, 1997, Director Soriquez issued another letter,^[13] which reads:

We were informed by our field personnel that in spite of the field memo dated 29 September 1997 x x x issued to your Engineer at the 28" [diameter] dredger and followed by a letter dated 30 September 1997 by Jose C. Gabriel, Engineer IV of this office, your 28" [diameter] dredger presently operating near the town proper of Sasmuan, is still dredging through side dumping.

Please be informed that side dumping activities in the area is not allowed which this office has previously informed your end thru our letter of 18 August 1997. There is still an available spoil site where spoils could be dumped thru distance pumping and the other one is the Regala spoil site, which has to be developed as previously instructed based on our previous letters.^[14]

Still, petitioner ignored the prohibition and continued to side dump.^[15]

When the project was in its final phase of completion, petitioner, through its President, Mr. Wenceslao Zingapan, wrote a letter^[16] dated October 15, 1997 to then DPWH Secretary Gregorio Vigilar (Secretary Vigilar) asking for payment for the dredging work it rendered. In the letter, petitioner explained that it was forced to side dump the dredge spoils along the project waterway for the following reasons:

- 1.0) The strong and heavy siltation if not avoided will ground our 28" Dredge and the grounding will render the equipment inutile for a considerable time beyond the contract despite the application of extraneous salvaging measures, and
- 2.0) Even if the extraordinary effort of the Project Implementing Office shall be factored in the provision and making available to us the needed spoil site, the Regala Property which was presented to us for development of a dike thereon, is a mere 2-hectare size and in our long experience in shallow river dredging, is uneconomical, unsafe and inoperable for utilization as an effective dumping site. If the development of

the Regala property is pursued, the disproportionate heavy pressure pumping induced by our huge deep sea 28" Dredge will cause a dangerous spillage back to the middle of the waterway. The resultant volume equivalent to the containment capacity of the 2-hectare size Regala property will create a dike-like [blockade] transversal to the length of the waterway. Navigation and commerce along the waterway then will be put to standstill.^[17]

On October 24, 1997, Director Soriquez issued a letter^[18] informing petitioner of the denial of its request for payment. He said:

Please be informed that side dumping of your [dredge] spoils between Sta. 15+000 to Sta. 14+000 was not allowed by this Office thru our letters of August 18, 1997 and October 1, 1997 to your end. The strong and heavy siltations you are mentioning at the vicinity of Sta. 14+000 (mouth of San Pedro Creek) was not too alarming, since the flow of the floodwaters and siltations coming from the confluence of Pasig-Potrero River is x x x going downstream through San Francisco River at Minalin, as a result of the heavy rains caused by typhoon Ibiang and not at Guagua River and San Pedro Creek. The siltations at the subject section were already there since the breaching of the transverse dike.

Furthermore, with respect to spoil site availability, you have two (2) alternatives: a] Utilize Pascual "A" spoil site, thru distance pumping wherein the volume of 50,000 cu. m. of silt materials could still be accommodated, and b] Utilize Regala fishpond, even with only two (2) hectares in area, can contain at least 60,000 cu. m. of dredge spoils, the same area as the spoil site at Malusac portion (S3-1) that you have used previously using your 25" dia. Dredger.

In view of the above, we cannot recommend any compensation for the volume of silt materials side dumped based on your letter of October 15, 1997.^[19]

When the project was completed, respondent DPWH paid petitioner the total amount of P180,029,910.15, covered by various disbursement vouchers.^[20] The amount of P7,354,897.10, representing the 165,576.27 cubic meters dredging work rendered by petitioner, however, was not paid.^[21]

On June 18, 1998, the Director III of the Legal Service of DPWH, Mr. Cesar D. Mejia, issued a Memorandum^[22] to Director Soriquez expressing his position that petitioner should be paid for work accomplished as shown in the As-Built Plans and the Statement of Work Accomplished without the necessity of issuing a variation order.

On January 4, 2000, then DPWH Secretary Vigilar wrote a letter stating that the agency will no longer entertain any request for reconsideration on the subject matter.^[23] Petitioner, however, continued to demand payment for the said dredging

works.

On February 24, 2005, former DPWH Acting Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane Jr.) issued Department Order No. 51, creating an Ad Hoc Committee to further evaluate the payment claim of petitioner.^[24]

On October 5, 2005, the Committee rendered a Resolution^[25] recommending payment of the claim in the amount of P7,354,897.91 provided petitioner restores to its original grade elevation the section where dredge spoils were dumped. One of the members of the Committee, Regional Director Ramon P. Aquino (Regional Director Aquino), DPWH-Region III, San Fernando City, Pampanga, however, did not agree with the recommendation and maintained that petitioner is not entitled to payment for breach of contract.^[26] And since Secretary Ebdane Jr. likewise did not agree with the Resolution, he resolved to return the same to the Committee for re-evaluation.^[27]

On December 8, 2006, the DPWH Ad Hoc Committee rendered an amended Resolution,^[28] to wit:

WHEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED THAT PAYMENT FOR THE CLAIM OF MOVERTRADE CORPORATION FOR WORK PERFORMED UNDER THE DUTCH-FUNDED MT. PINATUBO AFFECTED WATERWAYS PROJECT SHALL BE GRANTED PROVIDED THAT THE IMPLEMENTING OFFICE SHALL DETERMINE THE AMOUNT OF PAYMENT DUE TO THE CONTRACTOR.^[29]

Regional Director Aquino and Secretary Ebdane Jr., however, did not sign amended Resolution as they did not agree with the recommendation.^[30]

On July 14, 2009, petitioner offered a reduction of P300,000.00 on its claim if payment is made within a month.^[31]

On January 22, 2010, Assistant Secretary Dimas S. Soguilon, the Chairman of the Extraordinary Claims and Review Committee, DPWH, issued a Memorandum finding petitioner's claim for payment to be a money claim, which is under the jurisdiction of respondent COA.^[32]

Accordingly, on February 19, 2010, petitioner filed with respondent COA a money claim against respondent DPWH for payment of dredging works with side dumping of spoils in Pampanga Bay and the primary Pasac-Guagua-San Fernando Waterways in Pampanga amounting to P7,354,897.10.^[33]

Ruling of the Commission on Audit

On December 29, 2011, respondent COA rendered Decision No. 2011-106 denying the money claim^[34] of petitioner for lack of merit.^[35] Respondent COA ruled that petitioner is not entitled to payment for the dredging works for breach of contract.^[36] Paragraph 11 of the Contract Agreement prohibits side dumping as it specifically

requires that dredge spoils should be dumped at pre-designated areas to prevent them from spilling back into the channel.^[37] It also noted that petitioner's claim for payment was never approved by respondent DPWH as the Resolution and amended Resolution issued by the DPWH Ad Hoc Committee were not signed by Secretary Ebdane Jr.^[38]

Aggrieved, petitioner moved for reconsideration^[39] insisting that there was no breach of contract and that even if there was a breach, it is still entitled to payment under the principle of *quantum meruit*.

On November 5, 2012, respondent COA issued a Resolution denying the motion for reconsideration for lack of merit.^[40] It stood pat on its finding that there was a breach of contract as the side dumping employed by petitioner was never authorized, verbally or in writing.^[41] As to the principle of *quantum meruit*, respondent COA explained that the principle applies only when there is no written contract between the parties.^[42] In this case, since there is a written contract entered into by the parties, the principle of *quantum meruit* cannot be applied.^[43] Thus, petitioner should bear the loss for breaching the contract.^[44]

Issue

Hence, petitioner filed the instant Petition raising the core issue of whether petitioner is entitled to the payment of P7,354,897.10 for dredging works.

Petitioner's Arguments

Petitioner ascribes grave abuse of discretion on the part of respondent COA in denying its money claim.^[45] It insists that it did not violate paragraph 11 of the Contract Agreement and alleges it was respondent DPWH who failed to provide adequate spoil sites.^[46] To substantiate its allegation, petitioner cites Director Soriquez's letter^[47] dated June 6, 1997 addressed to the Executive Director of the Mt. Pinatubo Commission, where Director Soriquez mentioned that "[petitioner's] equipment can no longer continue the dredging works due to non-availability of spoil sites [as] the spoil sites being used in the area have already been utilized to full capacity."^[48] This statement allegedly proves that respondent DPWH knew that there were no available spoil sites left, which justifies petitioner's non-compliance with paragraph 11 of the Contract Agreement.^[49]

Petitioner likewise denies side dumping the dredge spoil and claims that what it did was actually "free dumping," wherein the spoils during dredging were exposed to strong current of the water and were carried away by it towards the mouth of Manila Bay.^[50] Although it admits that it used the term "side dumping" in its letters, it claims that it was used to refer to a situation where the spoils are not being dumped at the spoil sites.^[51] In any case, petitioner claims that despite the method of disposal used, the waterways remained navigable except for minimal siltation when the DPWH engineers inspected the subject waterways.^[52] And since the dredging works benefited the public and the government, petitioner asserts that it is entitled to its money claim in the highest interest of justice and equity.^[53]