

## THIRD DIVISION

**[ G.R. No. 174665, September 18, 2013 ]**

**PHILIPPINE RECLAMATION AUTHORITY (FORMERLY KNOWN AS THE PUBLIC ESTATES AUTHORITY), PETITIONER, VS. ROMAGO, INCORPORATED, RESPONDENT.**

**[G.R. No. 175221]**

**ROMAGO, INCORPORATED, PETITIONER, VS. PHILIPPINE RECLAMATION AUTHORITY (FORMERLY PUBLIC ESTATES AUTHORITY), RESPONDENT.**

### ***DECISION***

**ABAD, J.:**

These cases pertain to the defense of novation by virtue of the debtor's assignment to a third party of its contractual liability to the creditor.

#### **The Facts and the Case**

In order to convert former military reservations and installations to productive use and raise funds out of the sale of portions of the country's military camps,<sup>[1]</sup> in 1992 Congress enacted Republic Act 7227,<sup>[2]</sup> creating the Bases Conversion and Development Authority (BCDA). Pursuant to this law, the President issued Executive Order 40,<sup>[3]</sup> Series of 1992, setting aside portions of Fort Bonifacio in Taguig, Metro Manila, for the Heritage Park Project, aimed at converting a 105-hectare land into a world class memorial park for the purpose of generating funds for the BCDA.<sup>[4]</sup>

On August 9, 1993 the BCDA entered into a Memorandum of Agreement<sup>[5]</sup> (MOA) with the Philippine Reclamation Authority (PRA), formerly the Public Estates Authority, designating it as the Project Manager. On September 9, 1994 the BCDA, PRA, and the Philippine National Bank (PNB) executed a Pool Formation Trust Agreement (PFTA)<sup>[6]</sup> under which BCDA, as project owner, was to issue Heritage Park Investment Certificates that would evidence the holders' right to the perpetual use and care of specific interment plots. The PFTA designated PRA as Project Manager, tasked with the physical development of the park. The PNB was to act as trustee for the Heritage Park securitization.<sup>[7]</sup>

After public bidding, the PRA awarded the outdoor electrical and lighting works for the park to respondent Romago, Inc. (Romago) with which it entered into a Construction Agreement on March 18, 1996 for the contract price of P176,326,794.10.<sup>[8]</sup> On receipt of the PRA's notice to proceed,<sup>[9]</sup> Romago immediately began construction works.<sup>[10]</sup>

Meanwhile, the parties to the PFTA organized the Heritage Park Management Corporation (HPMC) to take over the management of the project.<sup>[11]</sup> On February 24, 2000 the Chairman of HPMC Board of Trustees, Mr. Rogelio L. Singson, sent a notice of termination of management to then PRA General Manager Carlos P. Doble with a demand for the turnover of the park to HPMC.<sup>[12]</sup> The letter reads:

Pursuant to Article 11 of the Pool Formation Trust Agreement (PFTA), the certificate holders of the Heritage Park Management Corporation (HPMC) duly elected its Board of Trustees at the 03 January 2000 meeting held at the BCDA Corporate Center. Attached is a copy of the Secretary's Certificate attesting to said election of the HPMC Board of Trustees.

Section 11.07 of the PFTA provides that upon the election of the Board of Trustees, the PNB shall turnover to the Board all its functions and responsibilities, and all documents in its custody, including all Heritage Park Accounts, except the General Fund, which will go to BCDA. Upon such turnover and upon the complete and faithful performance by PNB and [PRA] of their respective obligations under this Agreement, the respective obligations of [PRA] and PNB under this Agreement shall be deemed terminated. *[PRA] shall turnover to the Board of Trustees all the documents and equipment it has in its possession relating to the Project and the Park, including the computer hardware and software pertaining to the geographical information system of the Park."*

Pursuant to the foregoing provision, we hereby formally advise you of the termination of [PRA's] obligations, duties and responsibilities as Project Manager under the PFTA, effective upon receipt of this letter. We also formally request for [PRA] to turn over, within fifteen (15) days from receipt of this letter, the documents and equipment relating to the Heritage Park Project, including the computer hardware and software in [PRA's] possession pertaining to the geographical information system of the Park.<sup>[13]</sup>

The PRA lost no time in informing Romago of the consequent termination of its services. Thus, it wrote Romago a letter<sup>[14]</sup> on March 13, 2000:

As a consequence of the assumption of functions, duties and responsibilities by the Heritage Park Management Corporation, as provided for under the provisions of the Pool Formation Trust Agreement, we are constrained to assign the Electrical Works contract entered with you on March 18, 1996 including all supplemental agreements relative thereto, effective March 18, 2000 in favor of the Heritage Park Management Corporation. The formal turnover on March 17, 2000 by [PRA] to the Heritage Park Management Corporation of all its obligations, duties and responsibilities, and all documents relating to the Heritage Park Project, was made pursuant to the attached letter of the Chairman of HPMC Board of Trustees, Mr. Rogelio L. Singson to the [PRA], received by us on March 02, 2000.

By virtue of this assignment, all the contractual functions, responsibilities and liabilities, if any, as well as any cause of action for or against [PRA] shall hereafter accrue to and devolve upon the assignee hereof.

Please be guided accordingly.<sup>[15]</sup>

Because the HPMC refused to recognize the PRA's contract with it, on March 17, 2004 Romago filed with the Construction Industry Arbitration Commission (CIAC) a complaint,<sup>[16]</sup> docketed as CIAC Case 18-2004, seeking to collect its claims totalling P24,467,621.64, plus interest from the PRA, HPMC, and Rosehills Memorial Management (Phils.), Inc. (RMMI). Romago claimed that it won the bidding for the construction of the electrical and lighting facilities at the Heritage Park for P181,779,800.00<sup>[17]</sup> but PRA deducted 3% from the bid amount, reducing the contract price to P176,326,794.10.<sup>[18]</sup>

Because of problems encountered with illegal settlers, only around 60 of the 105-hectare park was delivered to Romago for lighting work, reducing the contract price to P101,083,636.16.<sup>[19]</sup> But this amount was adjusted to P109,330,032.81 due to PRA variation orders.<sup>[20]</sup> Although Romago completed 96.15% of the works, it claimed that the PRA paid it only P82,929,577.22 instead of the P105,120,826.50 due it.<sup>[21]</sup> Romago also claimed that it should be reimbursed the P9,336,054.15 retention money that it posted since its services had already been terminated and since it had substantially completed the Heritage Park Project.<sup>[22]</sup>

Romago also sought payment of the additional costs and expenses that it incurred by reason of PRA's delays in turning over the project area, in delivering the owner-supplied equipment, and in solving the security problems at the worksite. These included price escalation of materials and supplies, at P857,799.10; and extended overhead costs, at P10,051,870.61.<sup>[23]</sup> And, for mobilizations costs that it spent preparing for works on the entire 105-hectare project area, Romago sought additional payment of P7,524,315.79 plus interest of P517,923.74 from April 12, 1999 to May 31, 1999 or a total of P8,042,239.53. It also claimed proportionate refund of P2,327,107.97 out of the 3% discount applied to its original bid<sup>[24]</sup> and P420,944.02 in damages for the unceremonious termination of its services.<sup>[25]</sup>

Romago admitted, however, owing the PRA P15,475,835.42 in unrecouped prepaid materials and P12,286,795.12 in unrecouped down payment.<sup>[26]</sup>

In its answer, the PRA denied liability, claiming that it entered into the construction agreement with Romago after its approval by the Heritage Park Executive Committee, the policy-making and governing body of the Heritage Park Project. The PRA merely processed and recommended payment of all the works done. The money came from the project's Construction and Development Fund that PRA did not control. PNB acted as trustee of the fund under the PFTA. Since these funds had all been turned over to the HPMC when the latter came into being, Romago should not address its claims to PRA.<sup>[27]</sup>

Rather than answer the complaint, the HPMC and RMMI moved to dismiss it, claiming that CIAC had no jurisdiction over them since they never agreed to arbitration.<sup>[28]</sup> Additionally, the HPMC said that the PRA's turnover of the Heritage Park project to it did not amount to assignment of the PRA's liabilities under the construction agreement. Further, its termination of the PRA's authority over the

project carried with it the termination of any Construction Agreement that the PRA entered into.

For its part, RMMI averred that it was merely the undertaker at the Heritage Park, tasked with providing services for embalming, burial, cremation, and other activities for the care of the dead.<sup>[29]</sup>

On July 22, 2004 the CIAC issued an order dropping RMMI as respondent but denying the HPMC's motion to dismiss the case against it.<sup>[30]</sup> The HPMC elevated the CIAC order to the Court of Appeals (CA) by special civil action of *certiorari* and prohibition in CA-G.R. SP 86342.

Meantime, after due proceedings, on October 22, 2004 the CIAC rendered a decision,<sup>[31]</sup> holding the PRA and the HPMC jointly and severally liable to Romago for the following amounts:

The unpaid balance of the 96.15% accomplishment -----	P22,191,249.38
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Interest from 15 May 2002 to 31 January 2004 at 6% per annum -----	2,276,372.31
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Plus:

1.1.1 – Retention Charges -----	P9,336,054.15
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1.1.2 – Price Escalation -----	775,793.55
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1.1.3 – Damages for Closure of Area ----	8,042,239.53
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1.1.4 – Reimbursement for Pro-rata discount ---	(not entitled)
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1.1.5 – Damages for Stoppage of Works	420,944.02
Sub-Total -----	P18,575,031.25

Less:

Unrecouped prepaid materials and unrecouped downpayment -	27,762,642.54
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Actual Damages Due -	P15,280,012.35
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Plus:

Additional 6% interest from

February 1, 2004  
to August 31, 2004  
on the  
P15,280,012.35 -----  
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-- 534,800.43

Costs of Arbitration:

Filing Fee -----	P26,834.39
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Administrative	
Fee -----	28,164.39
Arbitrator's	
Fees -----	316,296.95
ADF -----	
-----	25,323.99
Total Cost of Arbitration -----	P396,608.73
Total Award -----	P16,211,421.51 <sup>[32]</sup>

Not satisfied with the CIAC decision, the PRA filed a petition for review of the same with the CA in CA-G.R. SP 88059.

Meantime on February 18, 2005 the CA rendered a Decision in CA-G.R. SP 86342, dismissing Romago's complaint before the CIAC against the HPMC on the ground that the latter did not have an arbitration agreement with Romago.<sup>[33]</sup>

On December 20, 2005 the CA rendered a Decision<sup>[34]</sup> in CA-G.R. SP 88059, the main case, finding that the unpaid accomplishment of Romago should be reduced from P22,191,249.33 to P18,641,208.89, and that interests on the damages awarded to Romago arising from the reduction in project area and on its unpaid accomplishment from May 15, 2002 to January 31, 2004 should be deleted, therefore entitling it to actual damages in the amount of P8,935,673.86<sup>[35]</sup> plus interest from February 1, 2004 to August 31, 2004 and the costs of arbitration.

The CA rejected the PRA's argument that it can no longer be held liable to Romago after turning over and assigning the project, including all its duties and obligations relating to it, to the HPMC. Romago was not a party to the PFTA and it did not give consent to the PRA's supposed assignment of its obligations to the HPMC.

The PRA and Romago separately moved for reconsideration of the decision but the CA denied both motions in its August 24, 2006 Resolution.<sup>[36]</sup> Undeterred, both parties filed separate petitions for review before this Court in G.R. 174665 for the PRA and in G.R. 175221 for Romago.

### **The Issues Presented**

These consolidated cases present the following issues:

1. Whether or not the CA erred in holding the PRA still liable to Romago under the Construction Agreement despite the subsequent turnover of the Heritage Park Project to the HPMC; and
2. Whether or not the CA erred in reducing the CIAC award for actual damages to