

SECOND DIVISION

[G.R. No. 179545, July 11, 2012]

ENGR. EMELYNE P. CAYETANO-ABAÑO, OPERATING UNDER THE NAME AND STYLE JACOB JOSEPH BUILDERS & PLANNERS, AND ENGR. DARIO C. ABAÑO, PETITIONERS, VS. COLEGIO DE SAN JUAN DE LETRAN-CALAMBA, RESPONDENT.

DECISION

PEREZ, J.:

The Case

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] dated 31 August 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 99315 which set aside the Final Award^[2] dated 7 June 2007 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 20-2006 ordering Colegio De San Juan De Letran-Calamba (respondent) to pay herein Engr. Emelyne P. Cayetano-Abaño, operating under the name and style Jacob Joseph Builders & Planners, and Engr. Dario C. Abaño (petitioners) the total sum of P13,903,722.94.

The Antecedent Facts

In early 2003, respondent, an educational institution created and existing under Philippine laws, decided to build a central library building on its campus which would likewise house the classrooms and laboratory facilities of its Nursing program.^[3] Petitioners were commissioned to undertake the project.^[4] The corresponding Contract^[5] (the Contract) was executed on 17 November 2003 for a total project cost of P52,319,927.20.^[6] In connection with this, petitioners gave respondent a Technical Specifications Book^[7] which formed part of the Contract and which detailed how petitioners would implement the construction project. The parties agreed on a project duration of fourteen (14) months effective upon the signing of the Contract and the issuance of the necessary building permit. The requisite building permit was issued on 27 January 2004;^[8] hence, petitioners had until 27 March 2005 to complete the project.

On 16 February 2004, petitioners reminded respondent of the down payment consisting of 25% of the contract price, or a sum equivalent to P13,079,981.80. By this date, respondent had already paid a total of P6,000,000.00 starting 5 December 2003. The full amount of the down payment was settled on 27 February 2004.^[9]

On 16 April 2004, upon petitioners' request and representation that they needed urgent substantial funding, respondent paid P10 million although no progress report had been submitted.^[10]

Petitioners again requested payment on 12 July 2004 in the amount of P14,325,196.07 for work accomplishment equivalent to 27.38%. This time respondent required a progress report to substantiate the request for payment.^[11] Accordingly, on 2 August 2004, petitioners submitted their First Progress Billing Report covering the period 1 December 2003 to 30 June 2004. Respondent paid the billed amount in installments beginning 28 July 2004 until 26 October 2004.^[12]

In their First Progress Billing Report, petitioners indicated "28 February 2005" as the completion date of the project.^[13] As a result, respondent sent a Memorandum^[14] to petitioners, dated 21 January 2005, requesting documents necessary for the procurement of a Certificate of Occupancy. Instead of delivering the requested documents, petitioners submitted its Second Progress Billing Report on 8 February 2005, demanding payment of P9,586,057.06 and indicating a new move-out date:

April 2005 – a date fixed without prior consultation with and approval from respondent.^[15]

Subsequently, in a meeting held on 28 February 2005, petitioners undertook to turn over on 15 March 2005 the first two floors of the building and to make a partial turn over on 15 April 2005 of the third floor. For its part, respondent committed to pay P4,994,927.20 out of the P14,994,927.20 balance from the contract price. While respondent complied with its undertaking, petitioners failed to make even one partial turn over. Thus, 14 months after the construction permits were secured, or by 27 March 2005, the building had not been completed.^[16]

On 30 April 2005, petitioners submitted to respondent its Final Billing: (1) indicating a 100% completion of the project; (2) informing respondent that its unpaid balance was P10 million; and (3) requesting a final inspection of the building.^[17] The joint inspection was carried out on 16 and 17 May 2005. During the two-day inspection, serious problems regarding workmanship and the materials used were discovered and documented by respondents. The parties agreed that all the necessary corrective and completion works on the project would be done in accordance with the inspection results.^[18]

Petitioners resumed repair, rehabilitation and cleaning works on the building on 13 June 2005 only. At the same time, petitioners wrote respondent two letters: first, expressing readiness to comply with their undertaking to accomplish the incomplete works, but denying that they conformed to the punch list resulting from the joint inspection and second, demanding arbitration for respondent's unpaid amounts.^[19] Respondent replied through counsel, asserting that petitioners cannot deny having expressed conformity to the punch list report after accepting the obligation to correct and complete the project based on the same report. Respondent also rejected the demand for arbitration for being premature.^[20]

On 8 July 2005, petitioners' counsel wrote respondent to convey that petitioners had fully accomplished the project under the Contract, including the agreements reached on 6 June 2005, and requested a joint inspection anew. The second joint inspection was conducted on 25 July 2005. The following day, 26 July 2005, respondent wrote petitioners a letter detailing the various defects and deficiencies in the building that need to be corrected and completed before respondent finally accepts the project and pay the final billing. The defects highlighted were: (1) the brand of electrical wirings used were not "Phelps Dodge" or its accepted equivalent, as specified in the Contract;

(2) absence of any waterproofing in the gutters; (3) uneven floor patterns; and (4) absence of a number of electrical materials required to be installed. Respondent reiterated its demand for corrective and other rehabilitative works on the project in a letter dated 12 August 2005.^[21]

In another meeting held on 26 August 2005, petitioners demanded full payment of its billings. No payment from respondent apparently forthcoming, petitioners, on 26 September 2005, gave respondent a second notice and demand for arbitration to press settlement of their unpaid claims. Petitioners named their arbitrator and gave respondent fifteen days within which to respond.^[22]

In a letter^[23] dated 10 October 2005, counsel for respondent denied the request for arbitration and insisted that petitioners enter the construction site within seven days from notice to complete and correct all the unfinished and defective works consistent with respondent's letter of 26 July 2005. Respondent warned petitioners that should they ignore the matter, they would be considered to have abandoned the project, giving respondent the right to take full possession of the building and allow other contractors to complete the unfinished works, with a right to collect the costs of completion from petitioners.

Petitioners did not respond to respondent's ultimatum within the given period; neither did they undertake remedial measures to correct and finish the deficiencies in the project. With no word either from petitioners or their counsel, respondent was compelled to take-over the building on 19 October 2005 in the presence of *barangay* and police officials from Calamba City. Upon take-over of the building, respondent re-confirmed and re-documented the various defects and deficiencies earlier noted and determined.^[24]

In order to ascertain the extent of petitioners' accomplishment on the project and its corresponding value, respondent engaged the services of Davis Langdon and Seah Philippines, Inc. (DLSPI), a specialized quantity surveyor firm. Contrary to petitioners' claim of 100% project completion, the cost analysis and evaluation performed by DLSPI revealed that the building was only 94.12% complete and that the actual cost of work performed was worth only P49,244,814.09. Aggrieved, respondent filed an arbitration complaint before the CIAC pursuant to the arbitration clause contained in the Technical Specifications Book.^[25]

Respondent claimed that it is entitled to payment in the total amount of P18,923,519.54 representing expenses incurred in the construction of temporary facilities, hiring of consultants for the detailed inspection of the building, damages, attorney's fees and arbitration expenses.^[26]

The Decision of the CIAC

After hearing, the CIAC issued a Final Award in favor of petitioners, ordering respondent to pay the following amounts:

Unpaid balance of Progress Billing No. 2 dated 10 February 2005	P4,581,129.86
Final Billing	5,418,870.14
Monthly surcharge of 2% on unpaid	799,999.99

claims	
Moral damages	1,500,000.00
Exemplary damages	500,000.00
Attorney's fees and litigation expenses	800,000.00
Arbitration cost	<u>303,722.94</u>
TOTAL:	P13,903,722.94 ^[27]

The award of the CIAC is basically anchored on the fact that respondent did not pay the down payment and progress billings within the time and manner provided for in the Contract and Technical Specifications.

According to the CIAC, respondent's legal basis for its claims was petitioners' failure to deliver on schedule a complete building pursuant to their Contract. The CIAC noted, however, that respondent did not pay the 25% down payment and progress billings in accordance with the Contract and Technical Specifications. Under the Contract, the down payment should be paid within seven (7) days from the signing of the Contract, or on 24 November 2003, since the Contract was signed on 17 November 2003. However, respondent paid the full amount of the down payment only on 27 February 2004 or three (3) months after the Contract was signed and on a staggered basis starting 9 December 2003. Also, by 12 July 2004, petitioners had accomplished works on the project equivalent to P14,325,196.07 but respondent paid the amount over a period of more than three (3) months starting 28 July 2004 up to 26 October 2004. Then, on 8 February 2005, petitioners submitted their second progress billing for the sum of P9,586,057.06 but respondent paid only P4,994,927.20, likewise on a staggered basis from March to April 2005. Under the Technical Specifications Book, approved requests for payment should be paid within five (5) days from date of approval of the request or the issuance of a certificate of payment by the Architect.^[28]

Considering that respondent did not pay the down payment and progress billings on time, the CIAC declared that it cannot demand that petitioners deliver on time a 100% completed building. The CIAC held that the Contract between petitioners and respondent created reciprocal obligations between them so that respondent, who did not comply faithfully with its terms, cannot demand performance by petitioners of their obligations thereunder, nor recover damages by reason of its own breach.^[29]

The CIAC justified its grant of the amounts claimed by petitioners in the following manner:

1. Petitioners are entitled to their claim for the unpaid balance of Progress Billing No. 2 because respondent refused to pay the amount, not because there was no accomplishment, but because it allegedly represented only 18.32% performance over a 6-month period compared to an 80% accomplishment earlier over the same period of time.^[30]

2. Petitioners should be paid their Final Billing covering accomplished works from 9 February to 30 April 2005 because the works performed resulted in the completion of the project as evidenced by the fact that respondent took over the building and had it blessed in the presence of officials from the Commission on Higher Education (CHED) and other guests and since then respondent has been using it for its purpose as a college of nursing and central library. The CIAC considered as "wrong" the Cost Evaluation Report of DLSPI engineer Mary Joyce C. Areola (Engr. Areola) stating that the percentage of completion of the building was only 94.12% because she did not

consider the revised plans, Bill of Quantities (BOQ) and detailed cost estimates. The CIAC believed that the opinion of petitioners' expert witness, Engr. Eustaquio T. Coronel (Engr. Coronel), that completion was 100% based on the joint inspection, review of construction plan, as-built plan, BOQ, and comparative table of costs, had more weight. The ocular inspection conducted by the Arbitration Tribunal on 12 February 2007 also gave it strong basis to support the conclusion that completion was 100% as the items inspected were observed to be punch list in nature.^[31]

3. Considering respondent's failure to pay the amounts demanded by petitioners, the latter are entitled to their claim for a monthly surcharge of 2% on the total of their claims from the time they were due until fully paid. The CIAC held that the reckoning date of the 2% surcharge on the unpaid Second and Final Billings totaling P9,999,999.99 is 30 April 2006, the date of expiration of the one (1) year retention period. Thus: from 30 April 2006 to 17 August 2006 (date of filing of the arbitration case), there are four (4) months. Hence, the total amount of the surcharge is P799,999.99 ($P9,999,999.99 \times 4 \text{ months} = P39,999,999.96 \times 2\%$).^[32]

4. Petitioners are entitled to moral damages for respondent's gross violation of their contract amounting to bad faith or malicious breach thereof. Respondent did not only fail to pay the down payment within seven (7) days from the signing of the Contract, it also paid the amount on a staggered basis. When respondent paid the sum of P4,994,927.20 for the Second Progress Billing, the same was paid in installments but the remaining balance of P4,581,129.86 was not paid. Lastly, respondent refused to pay the final billing of P5,418,870.14 even if the building had been completed. These circumstances drained the petitioners financially and emotionally. They had to apply for additional loans to finish the project. Their reputation and credit standing were adversely affected. They could not participate in biddings for other projects because of their financial problems. Considering that petitioners are entitled to moral damages, the CIAC ruled that they are also entitled to recover exemplary damages by way of example or correction for the public good.^[33]

5. Petitioners are entitled to recover attorney's fees inasmuch as they retained the services of counsel to protect their rights and interests under the contract.^[34]

6. Respondent should pay for the entire cost of arbitration having unnecessarily filed the Request for Arbitration. The CIAC administrative staff reported that respondent's share in the cost of arbitration was 45.34%, or the amount of P251,935.57 whereas petitioners' share was 54.66%, or the amount of P303,722.95. Hence, respondent should pay petitioners the sum of P303,722.95.^[35]

The Ruling of the Court of Appeals

On appeal by respondent, the CA completely reversed and set aside the ruling of the CIAC. The challenged Decision held:

x x x CIAC opined that **"[respondent] cannot demand fulfillment of [petitioners'] obligation to deliver a 100% completed project on time because [respondent] failed to pay the 25% down payment and the progress billings as provided in the contract."** CIAC construed the argued "25% down payment" as a suspensive condition to [petitioners'] obligation to deliver a 100% completed building.