

## SECOND DIVISION

[ G.R. No. 177556, December 08, 2010 ]

**TRANSCAPT CONSTRUCTION AND MANAGEMENT  
PROFESSIONALS, INC., PETITIONER, VS. TERESA C. AGUILAR,  
RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review assailing the 24 January 2007 Decision<sup>[1]</sup> and the 20 April 2007 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 93021.

#### The Antecedent Facts

From the decisions of the Court of Appeals and the Construction Industry Arbitration Commission (CIAC), we gathered the following facts:

On 18 August 2004, Teresa C. Aguilar (Aguilar) entered into an Owner-General Contractor Agreement (First Contract) with Transcept Construction and Management Professionals, Inc. (Transcept) for the construction of a two-storey split level vacation house (the Project) located at Phase 3, Block 3, Lot 7, Canyon Woods, Laurel, Batangas. Under the First Contract, the Project would cost P3,486,878.64 and was to be completed within 210<sup>[3]</sup> working days from the date of the First Contract or on 7 June 2005. Aguilar paid a downpayment of P1 million on 27 August 2004.

On 30 November 2004, Transcept submitted its First Billing to Aguilar for work accomplishments from start to 15 November 2004, in accordance with the Progressive Billing payment scheme. Aguilar paid P566,356.

On 1 February 2005, Aguilar received the Second Billing amounting to P334,488 for the period of 16 November 2004 to 15 December 2004. Transcept informed Aguilar that non-payment would force them to halt all works on the Project. Aguilar questioned the Second Billing as unusual for being 45 days ahead of actual accomplishment. Aguilar did not pay and on 2 February 2005, Transcept stopped working on the Project.

Thereafter, Aguilar hired ASTEC, a duly accredited testing laboratory, to test Transcept's quality of work. The test showed substandard works done by Transcept. In a letter dated 7 March 2005, Transcept outlined its program to reinforce or redo the substandard works discovered by ASTEC. On 28 March 2005, ASTEC, through Engr. Jaime E. Rioflorido (Engr. Rioflorido), sent Aguilar an

Evaluation of Contractor's Performance which showed that aside from the substandard workmanship and use of substandard materials, Transcept was unreasonably and fraudulently billing Aguilar. Of the downpayment amounting to P1,632,436.29, Engr. Rioflorido's reasonable assessment of Transcept's accomplishment amounted only to P527,875.94. Engr. Rioflorido recommended the partial demolition of Transcept's work.

On 30 May 2005, Transcept and Aguilar entered into a Construction Contract (Second Contract) to extend the date of completion from 7 June 2005 to 29 July 2005 and to use up the P1.6 million downpayment paid by Aguilar. Aguilar hired the services of Engr. Edgardo Anonuevo (Engr. Anonuevo) to ensure that the works would comply with the plans in the Second Contract.

Transcept failed to finish the Project on 29 July 2005, alleging that the delay was due to additional works ordered by Aguilar. Transcept also asked for payment of the additional amount of P290,824.96. Aguilar countered that the Second Contract did not provide for additional works.

On 2 September 2005, Aguilar sent a demand letter to Transcept asking for payment of P581,844.54 for refund and damages. Transcept ignored the demand letter. On 6 September 2005, Aguilar filed a complaint against Transcept before CIAC.

### **The Decision of the CIAC**

CIAC assessed the work accomplished with the corresponding costs, as against the downpayment of P1,632,436.29 which was the contract price in the Second Contract. On 16 January 2006, the CIAC promulgated its Decision.<sup>[4]</sup>

For Labor and Materials of the Scope of Work, the CIAC credited the accomplishment to be P1,110,440.13 representing Aguilar's estimate which was reassessed by the CIAC after the ocular inspection conducted by the parties. For indirect costs for General Requirements of the Scope of Work, the CIAC's computation was P275,355.50. The CIAC noted that Aguilar did not submit any evidence on indirect costs and her counsel did not cross-examine Transcept's witnesses on the matter. For the Septic Tank, which the CIAC found to be part of the Second Contract, the CIAC assessed the accomplishment to amount to P7,300. The CIAC added 5% Contingencies and 10% Contractor's Profit which are the minimum factors in making estimates practiced in the construction industry. The CIAC thus estimated that the total accomplishment amounted to P1,602,359.97 which was P30,076.72 below the contract price of P1,632,436.29. The tabulated amount shows:

Direct Costs for Labor and Materials	P1,110,440.13
Indirect Costs for General Requirements Septic Tank	275,355.50
	<u>7,300.00</u>
Sub-Total	P1,393,095.63
Plus 5% Contingencies	69,654.78

Add 10% of Sub-Total 139,309.56  
for Contractor's Profit  
Total P1,602,359.97

The CIAC ruled that the accomplishment of P1,602,359.97 was 98.16% of P1,632,436.29, which was way above 95% and should therefore be considered as substantial completion of the Project. As such, the CIAC ruled that liquidated damages could not be awarded to Aguilar. The CIAC, however, ruled that Aguilar was entitled to P75,000 as Consultancy Expenses.

The CIAC also found that Aguilar demanded extra works which entailed additional working days. The CIAC computed that the additional works performed over and above the Second Contract amounted to P189,909.91.

The dispositive portion of the CIAC's decision reads:

In view of all the foregoing, it is hereby ordered that:

1. Respondent [Transcept] shall pay Claimant [Aguilar] the amount of P30,076.72, representing the unaccomplished works in the contract, plus 6% interests from the date of the promulgation of this case, until fully paid.
2. Respondent shall pay Claimant the amount of P75,000.00, representing the cost of Consultancy Services, plus 6% interests from the date of the promulgation of this case, until fully paid.
3. Claimant shall pay Respondent the amount of P189,909.91, representing the cost of work performed over & above the scope of work in the contract.
4. The cost for liquidated damages and cost representing interests of construction bond, prayed for the Claimant, are denied for being without merit.
5. Attorney's fees prayed for by both parties are denied for being without merit.
6. Cost of Arbitration shall be shared equally by the parties.

SO ORDERED. [5]

Aguilar assailed the CIAC's decision before the Court of Appeals.

### **The Decision of the Court of Appeals**

In its 24 January 2007 Decision, the Court of Appeals reversed the CIAC's decision.

The Court of Appeals agreed with the CIAC that Aguilar did not allege in her complaint the amount corresponding to the indirect costs for General

Requirements. However, the Court of Appeals made a recomputation of the indirect costs for General Requirements based on P1,632,436.29 and made the following findings:

Direct Costs for Labor and Materials	P1,110,440.13
Indirect Costs for General Requirements Septic Tank	128,799.22
	<u>7,300.00</u>
Sub-Total	P1,246,539.35
Plus 5% Contingencies	62,326.96
Add 10% of Sub-Total for Contractor's Profit	<u>124,653.93</u>
Total	1,433,520.93

The Court of Appeals then deducted P1,433,520.24 from P1,632,436.29 and concluded that Aguilar is entitled to P198,916.05 instead of P30,076.72.

From the above computation, the Court of Appeals ruled that Transcept only accomplished 87.81% of the contract price thus entitling Aguilar to liquidated damages equivalent to 10% of P1,632,436.29 or P163,243.63.

The Court of Appeals further ruled that Transcept was not entitled to payment for additional works because they were in fact only rectifications of the works poorly done by Transcept. Finally, the Court of Appeals ruled that Aguilar was able to prove that she paid P135,000 for consultancy services.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the foregoing considered, the instant petition is hereby GRANTED and the assailed decision REVERSED AND SET ASIDE. Accordingly, a new one is entered ordering respondent to pay petitioner the following:

- 1) P198,916.02 for unaccomplished works in the second contract, plus 6% interest from the date of the filing of the case, until fully paid;
- 2) P135,000.00, representing the cost of consultancy services, plus 6% interest from the filing of the case, until fully paid; and
- 3) P163,243.63 as and by way of liquidated damages.

The award of P189,909.91 in favor of Aguilar for additional works is hereby deleted.

No costs.