

THIRD DIVISION

[G.R. No. 151402, August 22, 2008]

BENGUET CORPORATION, DENNIS R. BELMONTE, EFREN C. REYES AND GREGORIO A. FIDER, PETITIONERS, VS. CESAR CABILDO, RESPONDENT.

DECISION

NACHURA, J.:

This is a petition for review on *certiorari* assailing the Court of Appeals (CA) decision^[1] in CA-G.R. CV No. 37123 which affirmed with modification the decision^[2] of the Regional Trial Court (RTC), Branch 6, Baguio City in Civil Case No. 593-R.

Petitioner Benguet Corporation is a mining company with three (3) mining sites: Balatoc, Antamok and Acupan. Petitioners Dennis R. Belmonte,^[3] Efren C. Reyes,^[4] and Gregorio A. Fider^[5] are all officers and employees of Benguet Corporation.^[6] On the other hand, respondent Cesar Cabildo and Rolando Velasco, defendant before the lower courts, were former employees of Benguet Corporation.

At the time of his retirement on August 31, 1981, Cabildo was Department Manager of Benguet Corporation's Transportation and Heavy Equipment Department and had worked there for twenty-five (25) years. Thereafter, Cabildo became a service contractor of painting jobs.

Sometime in February 1983, Cabildo submitted his quotation and bid for the painting of Benguet Corporation's Mill Buildings and Bunkhouses located at Balatoc mining site. He then negotiated with petitioners Reyes and Fider, the recommending approval and approving authority, respectively, of Benguet Corporation, on the scope of work for the Balatoc site painting job which included necessary repairs. Reyes and Cabildo discussed the price schedule, and the parties eventually agreed that Benguet Corporation would provide the needed materials for the project.

Upon approval of his quotation and bid, Cabildo forthwith wrote Reyes on March 5, 1983 requesting the needed materials, so that he could immediately commence work. On March 7, 1983, even without a written contract, Cabildo began painting the Mill Buildings at Balatoc.

On March 9, 1983, Cabildo again wrote Reyes requesting the assignment of a representative by Benguet Corporation to closely monitor the daily work accomplishments of Cabildo and his workers. According to Cabildo, the request was made in order to: (1) preclude doubts on claims of payment; (2) ensure that accomplishment of the job is compliant with Benguet Corporation's standards; and (3) guarantee availability of the required materials to prevent slowdown and/or stoppage of work.

On even date, Cabildo submitted his first work accomplishment covering carpentry work and installation of the scaffolding for which he received a partial payment of P10,776.94.

Subsequently, on March 23, 1983, Cabildo and Benguet Corporation, represented by petitioner Belmonte, formally signed the Contract of Work for the painting of the Mill Buildings and Bunkhouses at the Balatoc mining site including the necessary repair works thereon. The Contract of Work, in pertinent part, reads:

(1) [Cabildo] shall paint the Mill Buildings at Balatoc Mill and all the bunkhouses at Balatoc, Itogon, Benguet, including certain repair works which may be necessary.

(2) For and in consideration of the work to be done by [Cabildo], [Benguet Corporation] shall pay [Cabildo] at the rate herein provided, as follows:

(a) Painting	<u>Steel & Concretes</u>	<u>Wood</u>
1 st coat	P2.90/sq. m.	P2.50/sq. m.
2 nd coat	2.50/sq. m.	2.10/sq. m.
(b) Scrapping and Cleaning		P1.85/sq. m.
(c) Scaffolding		P0.50/sq. m.
(d) De-zincing		P1.25/sq. m.
(e) Dismantling of sidings & ceilings		P2.50/sq. m.
(f) Installation of sidings & ceilings		P5.50/sq. m.
(g) Handling of Lumber & installation		P275.00/cu. m.

(3) [Cabildo] shall employ his own workers and employees, and shall have the sole and exclusive obligation to pay their basic wage, overtime pay, ECOLA, medical treatment, SSS premiums, and other benefits due them under existing Philippine laws or other Philippine laws which might be enacted or promulgated during the life of this Contract. If, for any reason, BENGUET CORPORATION is made to assume any liability of [Cabildo] on any of his workers and employees, [Cabildo] shall reimburse [Benguet Corporation] for any such payment.

(4) [Cabildo] shall require all persons before hiring them in the work subject of this Contract to obtain their clearance from the Security Department of Baguio District Gold Operations of BENGUET

CORPORATION.

(5) BENGUET CORPORATION shall retain 10% of every performance payment to [Cabildo] under the terms and conditions of this Contract. Such retention shall be cumulative and shall be paid to [Cabildo] only after thirty (30) days from the time BENGUET CORPORATION finally accepts the works as fully and completely finished in accord with the requirements of [Benguet Corporation]. Before the 10% retention of performance payments will, however, be fully paid to [Cabildo], all his workers and employees shall certify under oath that they have been fully paid their wages, SSS, medicare, and ECC premiums, ECOLA, overtime pay, and other benefits due them under laws in force and effect and that they have no outstanding claim against [Cabildo]. BENGUET CORPORATION has the right to withhold from the 10% retention any amount equal to the unsatisfied claim of any worker against [Cabildo] until the claim of the worker is finally settled.

(6) [Cabildo] shall not be allowed to assign or subcontract the works, or any phase thereof, and any violation of this provision will entitle BENGUET CORPORATION the sole and exclusive right to declare this Contract as cancelled and without any further force and effect.

(7) [Cabildo] and his heirs shall be solely and directly liable - to the exclusion of BENGUET CORPORATION, its stockholders, officers, employees, and agents and representatives - for civil damages for any injury or death of any of his employees, workers, officers, agents and representatives or to any third person and for any damage to any property due to faulty or poor workmanship or negligence or willful act of [Cabildo], his workers, employees, or representatives in the course of, during or when in any way connected with, the works and construction. If for any reason BENGUET CORPORATION is made to assume any liability of [Cabildo], his workers, employees, or representatives in the course of, during or when in any way connected with, the works and construction. If for any reason BENGUET CORPORATION is made to assume any liability of [Cabildo], his workers, employees, or agents or representatives under this provision, [Cabildo] and his heirs shall reimburse the CORPORATION for any payment.

(8) [Cabildo] hereby undertakes to complete the work subject of this Contract within (no period fixed) excluding Sundays and Holidays, otherwise, [Benguet Corporation] shall have the sole and exclusive right to cancel this Contract.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures on this 23rd day of March, 1983 at Itogon, Benguet Province.

BENGUET CORPORATION

By:

(sgd.)
DENNIS R. BELMONTE

(sgd.)
CESAR Q. CABILDO Contractor

Vice-President
Benguet Gold Operations

SIGNED IN OUR PRESENCE:

_____sgd._____ Witnesses _____sgd._____ [7]

Apart from the price schedule stipulated in the Contract of Work, which only reproduced the quotation and bid submitted by Cabildo, and the preliminary discussions undertaken by the parties, all the stipulations were incorporated therein by Benguet Corporation which solely drafted the contract.

To undertake the project, Cabildo recruited and hired laborers - thirty-three (33) painters and carpenters - including petitioner Velasco as his general foreman.

The succeeding events, narrated by the trial court as echoed by the appellate court in their respective decisions, led to the parties' falling out:

[I]t must be pointed out that the Mill Buildings in Balatoc were about 28 buildings in all interconnected with each other grouped into 9 areas with some buildings very dangerous since it housed the machineries, agitators and tanks with cyanide solutions to mill the ores while the bunkhouses, which housed the laborers, were about 38 buildings in all averaging about 30 to 35 meters in height or more than 100 feet and thus would take sometime to paint and repair probably for about one and a half (1½) years.

Thus, the need for scaffoldings to paint the Mill buildings and bunkhouses so that the workers would be safe, can reach the height of the buildings and avoid the fumes of cyanide and other chemicals used in the Milling of the ores.

Payment was to be made on the basis of work accomplished at a certain rate per square meter in accordance with the prices indicated in the Contract. The procedure followed was that [Cabildo] requested the office of Reyes for measurement; then Reyes assign[s] an employee to do the measurement; the employee was accompanied by [Cabildo] or his authorized representative for the measurement; upon completion of the measurement, the computations were submitted to Engr. Manuel Flores, the Supervisor assigned to the work area; if Engr. Flores approved the computation, it was then recommended to Reyes for liquidation; and Reyes thereafter issued the Liquidation Memo to schedule payment of work accomplished.

[Cabildo] was represented in the measurement by either his foreman or his son while Mr. Licuben was assigned to do the measurement for the company.

x x x x

On May 30, 1983, Velasco left [Cabildo] as the latter's general foreman

and went on his own as contractor, offering his services for painting jobs.

On June 6, 1983, Velasco entered into a Contract of Work with [Benguet Corporation], represented by Godofredo Fider, to paint the Breakham bridge at Antamok Mine, Barangay, Loakan, Itogon Benguet for the sum of P2,035.00.

x x x Apparently, the above contract of work of Velasco is in Antamok while the Contract of Work of [Cabildo] is in Balatoc.

On June 9, 1983 (6/9/83), Reyes recommended approval of the Quotation of Velasco for the painting of the inner mill compound of Balatoc for Areas 2, 3, 5, 6 & 7 and approved by Fider on June 13, 1983 at a lower price schedule per sq. meter than that of [Cabildo].

Hence, on June 13, 1983, Rolando Velasco entered into another Contract of Work with [Benguet Corporation], represented by Godofredo Fider, to paint the underneath of Mill Buildings No. 702 at Balatoc Mill, Barangay Virac, Itogon, Benguet and install the necessary scaffoldings for the work for the sum of P5,566.60.

On the same date of June 13, 1983, Velasco entered into another Contract of Work with [Benguet Corporation], represented by Godofredo Fider, to scrape, clean and paint the structural steel members at the Mill crushing plant at Balatoc Mill, Barangay Virac, Itogon, Benguet and install the necessary scaffoldings for the purpose for the consideration of P8,866.00.

x x x x

[Cabildo] complained and protested but Reyes said the Contract of Work of [Cabildo] covers only the painting of exterior of the Mill Buildings in Balatoc but not the interior although the same was not expressly stated in the Contract. This caused the souring of relationship of [Cabildo] and [petitioners] because at that time [Cabildo] had already painted the top roof and three (3) sidings both interior and exterior of Mill Building 702.

[8]

Because of these developments, Cabildo enlisted the services of Atty. Galo Reyes, who wrote both Fider and Jaime Ongpin, President of Benguet Corporation, regarding the ostensibly overlapping contracts of Cabildo and Velasco.

Parenthetically, at some point in June 1983, Cabildo was allowed to paint the **interiors** of various parts of the Mill Buildings, specifically, the Mill and Security Office, Electrical Office, Baldemor Office, and Sala Shift Boss.

On June 30, 1983, Cabildo was prevented from continuing work on the job site, as Fider and Reyes were supposedly investigating Cabildo's participation in the incident where a galvanized iron sheet fell on one of the agitator tanks. For three (3) months, Cabildo was not allowed to perform work stipulated in the agreement and complete painting of the Mill Buildings and Bunkhouses at Balatoc. He was only allowed to do repairs for previously accomplished work. Further, Benguet