

## SECOND DIVISION

**[ G.R. NOS. 167829-30, November 13, 2007 ]**

**FILIPINAS (PRE-FAB BLDG.) SYSTEMS, INC., PETITIONER, VS. MRT DEVELOPMENT CORPORATION; COURT OF APPEALS; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; AND VICTOR P. LAZATIN, ELISEO I. EVANGELISTA, AND JACINTO M. BUTALID, IN THEIR CAPACITIES AS CHAIRMAN AND MEMBERS OF THE ARBITRAL TRIBUNAL OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION, RESPONDENTS.**

### DECISION

**VELASCO, JR., J.:**

#### The Case

This Petition for Review on Certiorari under Rule 45 seeks to reverse and set aside the January 6, 2004 Decision<sup>[1]</sup> and April 8, 2005 Resolution<sup>[2]</sup> of the Court of Appeals (CA), dismissing petitioner's appeal and denying petitioner's February 4, 2004 Motion for Reconsideration,<sup>[3]</sup> respectively.

#### The Facts

The Metro Rail Transit Development Corporation (MRTDC) is the owner of the MRT-3 North Triangle Development Project located at the corner of Epifanio Delos Santos Avenue (EDSA) and North Avenue in Quezon City. The North Triangle Project was part of the Manila North Triangle Project, which was conceived as a major hub of the light rail transit line system along EDSA starting from the North Triangle area near the corner of Quezon Avenue and EDSA, and connecting to the Light Rail Transit-1 starting in Pasay City at the intersection of Taft Avenue and EDSA. Part of the North Triangle Project is a podium structure which would serve as the depot and maintenance area for the trains and would serve as the base or foundation for any commercial development.

MRTDC engaged Parsons Interpro JV (PIJV) to act as the Project Management Team (PMT) to supervise and monitor the project. PIJV was a joint venture company composed of Parsons International, an international project management firm, and Interpro, a local construction management company. Each of these companies appointed a representative as project managers to supervise the project, namely: Engr. Augustus Salgado for Interpro and Arch. Melvin Satok for PIJV. As joint project managers, their duties were to monitor the progress of construction on behalf of the owner, to recommend the payment of regular progress billings, to ensure that work was being completed in accordance with the construction schedule, and other similar matters. Directly under them was David Sampson, who was designated as the Area Construction Manager, tasked to monitor the day-to-day activities on the site with the help of other PIJV area engineers.

There were six contractors who submitted their respective bids for the construction of the four-level podium facility (Project). The Project was initially awarded to the lowest bidder, Gammon Philippines, Inc. (GPI), while Filipinas Systems, Inc. (FSI) submitted the second lowest bid. Subsequently, MRTDC decided to construct levels one and two of the Project only with a third level to be constructed on the area above the workshop. Thus, GPI submitted another proposal on March 11, 1998 for the revised Project specifications. Later, GPI was issued a Notice of Award/Notice to Proceed (NOA/NTP) dated June 10, 1998 in its favor by MRTDC which required GPI to accept the award and NTP within five (5) business days from receipt, failing which the award and the NTP would be automatically withdrawn.

While negotiations with GPI were ongoing, MRTDC was conducting negotiations with FSI as the second lowest bidder to ensure that another contractor would be in a position to immediately accept the Project and start construction.

Accordingly, FSI submitted a letter-proposal dated June 6, 1998<sup>[4]</sup> proposing to construct the two-level podium facility within 180 days for PhP 878,888,888.88. Paragraph 12, page 3 of the proposal stated that:

12. In case of delayed payment by the Owner, after 30 days from receipt by the Construction Manager of approved progress billings, the Owner shall be charged at the rate of 2% per month of delay and charge for standby time of equipment and manpower (direct cost + VAT) and shall give the Contractor an automatic time extension on the completion of the work of the same number of delays provided the works are in compliance with the plans and specifications. After 60 days of delay, the Contractor shall have the right to stop work and bill the Owner for remobilization expenses in case of resumption of work.

GPI refused the terms of the NOA/NTP dated June 10, 1998 due to the strict timetable imposed by MRTDC.

Thus, MRTDC issued a NOA/NTP dated June 17, 1998<sup>[5]</sup> to FSI which contained, among others, the following provision:

The successful operation of the depot and the related rail system is of national importance. In the light of this fact and to conform with the schedule provided for in the BLT Agreement, FSI in accepting this NTP agrees to finish the Work within 6 months from acceptance of this NTP, inclusive of any rain delays but subject to force majeure as defined in the BLT Agreement a photocopy of which is attached herewith. In addition, Filsystem hereby agrees to a bonus/penalty scheme as follows:

Liquidated	US\$100,000.00 per day of delay based on the
Damages:	Six-month period.
Bonus:	US\$30,000.00 per day of early accomplishment

FSI, through its President, Felipe A. Cruz, Jr., as indicated by his conformity on the NOA/NTP, accepted the NOA/NTP.

In a letter dated October 5, 1998 issued by MRTDC to FSI, day one of the construction period was reckoned on July 14, 1998 to end 180 days after or on January 14, 1999.

In the course of the construction, there were several change orders issued by MRTDC to FSI which included the realignment or shifting of several columns and the construction of a sewerage treatment plant and septic tank, among others.

FSI finished 98.7% of the Project on April 30, 1999 or 106 days from the original January 14, 1999 deadline. Full completion was achieved on May 17, 1999.

On October 8, 1999 or almost six months after the completion of the Project, FSI issued a letter to David Sampson, the PIJV Construction Manager, requesting an extension of 228 days. Attached to the letter was a spreadsheet showing the time extensions that they were entitled to, which allegedly moved the Project deadline to August 30, 1999. At the bottom right hand corner of the spreadsheet was the signature of David Sampson, ostensibly approving the extension but only until August 2, 1999 for a period of 200 days.<sup>[6]</sup>

Thereafter, FSI issued several letters to MRTDC asking for payment of additional amounts for owner-caused delays. FSI claimed that by virtue of par. 12 of its letter-proposal dated June 6, 1998, for each day MRTDC was delayed in paying FSI's progress billing, the latter was entitled to a corresponding additional day for the completion of the Project. FSI contended that payment of the progress billings had been delayed for 1,800 days. Adding that to the previous 200-day extension approved by David Sampson, the extension period would total 2,000 days.

Reckoning the completion of the Project on May 30, 1999 and taking into account the 2,000-day extension FSI claimed it was entitled to, FSI alleged that it completed the Project 1,894 days ahead of schedule which would amount to an early accomplishment bonus of USD 56,820,000.

FSI also demanded from MRTDC the payment of actual extended cost in the amount of PhP 33,145,515.13 due to the extended Project time attributable to MRTDC's change orders. Additionally, FSI claimed that MRTDC's change orders which affected the design of the Project necessarily required it to change the construction methodology from the sliding hydraulic-lift table formwork system to the conventional formworks, resulting in extra costs amounting to PhP 99,515,759.

MRTDC refused to pay the claims. It alleged that FSI failed to finish the construction of the Project within the 180-day period agreed upon and that it had already paid FSI the amounts due for work accomplished as well as for interest on delayed payments.

Thus, on June 5, 2002, FSI filed with the Construction Industry Arbitration Commission (CIAC) a Request for Adjudication of its claims against MRTDC. In its June 3, 2002 Complaint, FSI reduced its claim for early completion bonus to USD 19,590,000 allegedly to lower the prohibitive filing fees of the CIAC.

After due hearing, the CIAC issued an Award dated May 6, 2003 in favor of FSI for

USD 2,820,000 as early completion bonus, denying FSI's other claims, the dispositive portion of which states:

**WHEREFORE,** in view of all the foregoing, the Arbitral Tribunal hereby renders the following award:

1. Filsystem's claim for early completion bonus in the amount of TWO MILLION EIGHT HUNDRED EIGHT HUNDRED TWENTY THOUSAND US DOLLARS (US\$2,820,000.00) is hereby granted.
2. Filsystems' claim for extra costs due to change in methodology in the amount of P99,515,790.00 is hereby denied.
3. Filsystems' claim for extra overhead costs in the amount of P33,140,515.13 is hereby denied.
4. MRTDC's claim for liquidated damages is hereby denied.
5. MRTDC's claim for reimbursement for interest is hereby denied.
6. Filsystems and MRTDC are ordered to share the cost of arbitration equally.

The foregoing monetary award shall bear interest at the rate of six percent (6%) per annum on the total amount due from the date hereof until finality of this Award, after which interest at the rate of twelve percent (12%) per annum shall be paid on the said total amount until full payment.

**SO ORDERED.**

In the Award, as there was no actual contract for the Project, the CIAC made a finding that the following documents shall govern in the relationship of the parties:

- a. The NOA/NTP dated June 17, 1998;
- b. The June 6, 1998 Letter of FSI to MRTDC;
- c. The General Conditions and the Drawing and Specifications included with the Bid Documents except to the extent that the same is inconsistent with the two (2) previous documents.

The CIAC found that David Sampson was the Project Manager and thus could authorize change orders, contrary to MRTDC's allegation that he was not the Project Manager. It also found that no specific construction methodology was agreed upon.

With regard FSI's claim for early completion bonus, specifically as to the financial time extension, that is, time extension for delayed payment of progress billings, the CIAC found that MRTDC was already sufficiently penalized for any delay in payment by the two percent (2%) interest per month. Furthermore, the CIAC determined that additional time for delayed payment would amount to double payment and is unconscionable resulting in a 1,800-day time extension or 1000% increase from the original contract period of 180 days.

As to the technical time extension which arose from the change orders of MRTDC,

the latter claimed that David Sampson was not the Project Manager and was not authorized to issue change orders in behalf of MRTDC. However, the CIAC found that MRTDC itself represented David Sampson as its Project Manager and that documentary exhibits prove that he was indeed the Project Manager. Thus, by virtue of Articles 20.07 and 21.04 of the General Conditions of Contract,<sup>[7]</sup> David Sampson could authorize change orders in behalf of MRTDC. This was further supported by the Construction Industry Authority of the Philippines (CIAP) Document No. 102, par. 21.04-A(a) which allows the adjustment of completion time due to delays caused by the owner.

The CIAC ruled that FSI is entitled to a technical time extension of 200 days or until August 2, 1999 as authorized by David Sampson. Therefore, FSI substantially finished construction of the Project on April 30, 1999 or 94 days before the deadline. This translates to an early accomplishment bonus of USD 2,820,000.

As to the extended overhead costs, the CIAC determined that such claim partakes of a claim for actual damages, and explained that jurisprudence dictates that such claim be established with actual pieces of evidence, which include receipts, invoices, and other similar documents. FSI failed to present any piece of evidence. Thus, this claim was denied by the CIAC.

With regard FSI's claim for extra cost due to construction methodology, the CIAC denied the claim holding that such claim was not supported by any contractual or legal basis as well as the fact that FSI could have used the sliding hydraulic-lift formworks in some areas, but chose not to.

From such Award, both parties filed their respective petition for review under Rule 43 of the Rules of Court with the CA.

On January 6, 2004, the CA issued the assailed Decision, the dispositive portion of which reads:

WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered partially reversing and setting aside the Award of the Construction Industry Arbitration Commission (CIAC) in these consolidated cases and MODIFYING the same by deleting the award of US\$2,820,000.00, representing early completion bonus in favor of Filsystems, while the rest of the Award is AFFIRMED.

In view of the modification of the CIAC Award as stated above, MRTDC's application for the issuance of a temporary restraining order/writ of preliminary injunction is hereby declared moot and academic considering that the modified Award no longer contains monetary award that may be enforced by the CIAC pursuant to the provisions of Sec. 4 of the CIAC Rules of Procedure Governing Construction Arbitration.

In deleting the award for financial time extension, the CA reasoned that the consent of the Project Manager was insufficient as change orders require a modification of the contract which must be consented to by MRTDC itself.

Hence, FSI filed this Petition for Review on Certiorari.