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THIRD DIVISION

[G.R. NO. 126619, December 20, 2006]

UNIWIDE SALES REALTY AND RESOURCES CORPORATION, PETITIONER, VS. TITAN-IKEDA CONSTRUCTION AND DEVELOPMENT CORPORATION, RESPONDENT

D E C I S I O N

TINGA, J.:

This Petition for Review on Certiorari under Rule 45 seeks the partial reversal of the 21 February 1996 Decision[1] of the Court of Appeals Fifteenth Division in CA-G.R. SP No. 37957 which modified the 17 April 1995 Decision[2] of the Construction Industry Arbitration Commission (CIAC).

The case originated from an action for a sum of money filed by Titan-Ikeda Construction and Development Corporation (Titan) against Uniwide Sales Realty and Resources Corporation (Uniwide) with the Regional Trial Court (RTC), Branch 119,[3] Pasay City arising from Uniwide's non-payment of certain claims billed by Titan after completion of three projects covered by agreements they entered into with each other. Upon Uniwide's motion to dismiss/suspend proceedings and Titan's open court manifestation agreeing to the suspension, Civil Case No. 98-0814 was suspended for it to undergo arbitration.[4] Titan's complaint was thus re-filed with the CIAC.[5] Before the CIAC, Uniwide filed an answer which was later amended and re-amended, denying the material allegations of the complaint, with counterclaims for refund of overpayments, actual and exemplary damages, and attorney's fees. The agreements between Titan and Uniwide are briefly described below.

PROJECT 1.[6]

The first agreement (Project 1) was a written "Construction Contract" entered into by Titan and Uniwide sometime in May 1991 whereby Titan undertook to construct Uniwide's Warehouse Club and Administration Building in Libis, Quezon City for a fee of P120,936,591.50, payable in monthly progress billings to be certified to by Uniwide's representative.[7] The parties stipulated that the building shall be completed not later than 30 November 1991. As found by the CIAC, the building was eventually finished on 15 February 1992[8] and turned over to Uniwide.

PROJECT 2.

Sometime in July 1992, Titan and Uniwide entered into the second agreement (Project 2) whereby the former agreed to construct an additional floor and to renovate the latter's warehouse located at the EDSA Central Market Area in Mandaluyong City. There was no written contract executed between the parties for this project. Construction was allegedly to be on the basis of drawings and

specifications provided by Uniwide's structural engineers. The parties proceeded on the basis of a cost estimate of P21,301,075.77 inclusive of Titan's 20% mark-up. Titan conceded in its complaint to having received P15,000,000.00 of this amount. This project was completed in the latter part of October 1992 and turned over to Uniwide.

PROJECT 3.[9]

The parties executed the third agreement (Project 3) in May 1992. In a written "Construction Contract," Titan undertook to construct the Uniwide Sales Department Store Building in Kalookan City for the price of P118,000,000.00 payable in progress billings to be certified to by Uniwide's representative.[10] It was stipulated that the project shall be completed not later than 28 February 1993. The project was completed and turned over to Uniwide in June 1993.

Uniwide asserted in its petition that: (a) it overpaid Titan for unauthorized additional works in Project 1 and Project 3; (b) it is not liable to pay the Value-Added Tax (VAT) for Project 1; (c) it is entitled to liquidated damages for the delay incurred in constructing Project 1 and Project 3; and (d) it should not have been found liable for deficiencies in the defectively constructed Project 2.

An Arbitral Tribunal consisting of a chairman and two members was created in accordance with the CIAC Rules of Procedure Governing Construction Arbitration. It conducted a preliminary conference with the parties and thereafter issued a Terms of Reference (TOR) which was signed by the parties. The tribunal also conducted an ocular inspection, hearings, and received the evidence of the parties consisting of affidavits which were subject to cross-examination. On 17 April 1995, after the parties submitted their respective memoranda, the Arbitral Tribunal promulgated a Decision,[11] the decretal portion of which is as follows:

> "WHEREFORE, judgment is hereby rendered as follows:
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> **<u>On Project 1 – Libis:</u>**
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> [Uniwide] is absolved of any liability for the claims made by [Titan] on this Project.
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> **<u>Project 2 – Edsa Central:</u>**
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> [Uniwide] is absolved of any liability for VAT payment on this project, the same being for the account of the [Titan]. On the other hand, [Titan] is absolved of any liability on the counterclaim for defective construction of this project.
>
> [Uniwide] is held liable for the unpaid balance in the amount of P6,301,075.77 which is ordered to be paid to the [Titan] with 12% interest per annum commencing from 19 December 1992 until the date of payment.
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> **<u>On Project 3 – Kalookan:</u>**

> [Uniwide] is held liable for the unpaid balance in the amount of P5,158,364.63 which is ordered to be paid to the [Titan] with 12% interest per annum commencing from 08 September 1993 until the date of payment.
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> [Uniwide] is held liable to pay in full the VAT on this project, in such amount as may be computed by the Bureau of Internal Revenue to be paid directly thereto. The BIR is hereby notified that [Uniwide] Sales Realty and Resources Corporation has assumed responsibility and is held liable for VAT payment on this project. This accordingly exempts Claimant Titan-Ikeda Construction and Development Corporation from this obligation.
>
> Let a copy of this Decision be furnished the Honorable Aurora P. Navarette Recina, Presiding Judge, Branch 119, Pasay City, in Civil Case No. 94-0814 entitled *Titan-Ikeda Construction Development Corporation, Plaintiff – versus – Uniwide Sales Realty and Resources Corporation,* Defendant, pending before said court for information and proper action.
>
> SO ORDERED."[12]

Uniwide filed a motion for reconsideration of the 17 April 1995 decision which was denied by the CIAC in its Resolution dated 6 July 1995. Uniwide accordingly filed a petition for review with the Court of Appeals,[13] which rendered the assailed decision on 21 February 1996. Uniwide's motion for reconsideration was likewise denied by the Court of Appeals in its assailed Resolution[14] dated 30 September 1996.

Hence, Uniwide comes to this Court via a petition for review under Rule 45. The issues submitted for resolution of this Court are as follows:[15] (1) Whether Uniwide is entitled to a return of the amount it allegedly paid by mistake to Titan for additional works done on Project 1; (2) Whether Uniwide is liable for the payment of the Value-Added Tax (VAT) on Project 1; (3) Whether Uniwide is entitled to liquidated damages for Projects 1 and 3; and (4) Whether Uniwide is liable for deficiencies in Project 2.

As a rule, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals.[16] In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.[17] This rule, however admits of certain exceptions.

In *David v. Construction Industry and Arbitration Commission*,[18] we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such

disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[19]

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion[20] resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, [21] (2) when the findings of the Court of Appeals are contrary to those of the CIAC, [22] and (3) when a party is deprived of administrative due process.[23]

Thus, in *Hi-Precision Steel Center, Inc. v. Lim Kim Builders, Inc.*,[24] we refused to review the findings of fact of the CIAC for the reason that petitioner was requiring the Court to go over each individual claim and counterclaim submitted by the parties in the CIAC. A review of the CIAC's findings of fact would have had the effect of "setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution." Further, petitioner therein failed to show any serious error of law amounting to grave abuse of discretion resulting in lack of jurisdiction on the part of the Arbitral Tribunal, in either the methods employed or the results reached by the Arbitral Tribunal, in disposing of the detailed claims of the respective parties. In M*etro Construction, Inc. v. Chatham Properties, Inc.*,[25] we reviewed the findings of fact of the Court of Appeals because its findings on the issue of whether petitioner therein was in delay were contrary to the findings of the CIAC. Finally, in *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*,[26] we declined to depart from the findings of the Arbitral Tribunal considering that the computations, as well as the propriety of the awards, are unquestionably factual issues that have been discussed by the Arbitral Tribunal and affirmed by the Court of Appeals.

In the present case, only the first issue presented for resolution of this Court is a question of law while the rest are factual in nature. However, we do not hesitate to inquire into these factual issues for the reason that the CIAC and the Court of Appeals, in some matters, differed in their findings.

We now proceed to discuss the issues in *seriatim*.

Payment by Mistake for Project 1

The first issue refers to the P5,823,481.75 paid by Uniwide for additional works done on Project 1. Uniwide asserts that Titan was not entitled to be paid this amount because the additional works were without any written authorization.

It should be noted that the contracts do not contain stipulations on "additional works," Uniwide's liability for "additional works," and prior approval as a requirement before Titan could perform "additional works."

Nonetheless, Uniwide cites Article (Art.) 1724 of the New Civil Code as basis for its claim that it is not liable to pay for "additional works" it did not authorize or agree upon in writing. The provision states:

> Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
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> 1. Such change has been authorized by the proprietor in writing; and
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> 2. The additional price to be paid to the contractor has been determined in writing by both parties.

The Court of Appeals did take note of this provision, but deemed it inapplicable to the case at bar because Uniwide had already paid, albeit with unwritten reservations, for the "additional works." The provision would have been operative had Uniwide refused to pay for the costs of the "additional works." Instead, the Court of Appeals applied Art. 1423[27] of the New Civil Code and characterized Uniwide's payment of the said amount as a voluntary fulfillment of a natural obligation. The situation was characterized as being akin to Uniwide being a debtor who paid a debt even while it knew that it was not legally compelled to do so. As such debtor, Uniwide could no longer demand the refund of the amount already paid.

Uniwide counters that Art. 1724 makes no distinction as to whether payment for the "additional works" had already been made. It claims that it had made the payments, subject to reservations, upon the false representation of Titan-Ikeda that the "additional works" were authorized in writing. Uniwide characterizes the payment as a "mistake," and not a "voluntary" fulfillment under Art. 1423 of the Civil Code. Hence, it urges the application, instead, of the principle of *solutio indebiti* under Arts. 2154[28] and 2156[29] of the Civil Code.

To be certain, this Court has not been wont to give an expansive construction of Art. 1724, denying, for example, claims that it applies to constructions made of ship vessels,[30] or that it can validly deny the claim for payment of professional fees to the architect.[31] The present situation though presents a thornier problem. Clearly, Art. 1724 denies, as a matter of right, payment to the contractor for additional works which were not authorized in writing by the proprietor, and the additional price of which was not determined in writing by the parties.

Yet the distinction pointed out by the Court of Appeals is material. The issue is no longer centered on the right of the contractor to demand payment for additional works undertaken because payment, whether mistaken or not, was already made by Uniwide. Thus, it would not anymore be incumbent on Titan to establish that it had the right to demand or receive such payment.

But, even if the Court accepts Art. 1724 as applicable in this case, such recognition does not *ipso facto* accord Uniwide the right to be reimbursed for payments already made, since Art. 1724 does not effect such right of reimbursement. It has to be understood that Art. 1724 does not preclude the payment to the contractor who performs additional works without any prior written authorization or agreement as to the price for such works if the owner decides anyway to make such payment. What the provision does preclude is the right of the contractor to insist upon