

## THIRD DIVISION

[ **G.R. No. 152545/165687, November 15, 2005** ]

**R-II BUILDERS, INC., PETITIONER, VS. CONSTRUCTION  
INDUSTRY ARBITRATION COMMISSION (CIAC) AND MIVAN  
BUILDERS, INC., RESPONDENTS.**

**G.R. NO. 165687**

**R-II BUILDERS, INC., PETITIONER, VS. MIVAN BUILDERS, INC.,  
RESPONDENT.**

### **D E C I S I O N**

**GARCIA, J.:**

Submitted for resolution are these two (2) consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court to nullify and set aside the following:

In **G.R. No. 152545:**

1. **Decision dated October 26, 2001,**<sup>[1]</sup> of the Court of Appeals (CA) in **CA G.R. SP No. 56142** which affirmed *in toto* the decision dated November 23, 1999 of CIAC Sole Arbitrator Alfredo F. Tadiar in CIAC Case No. 22-99; and
2. **Resolution dated March 6, 2002,**<sup>[2]</sup> denying petitioner's motion for reconsideration; and

In **G.R. No. 165687:**

3. **Decision dated June 14, 2004,**<sup>[3]</sup> in **CA G.R. SP No. 68178** which annulled the Orders dated July 9, 2001 and October 15, 2001 of CIAC Sole Arbitrator Alfredo F. Tadiar and directed said public respondent to issue a writ of execution of the Decision dated November 23, 1999 in CIAC Case No. 22-99; and
4. **Resolution dated September 28, 2004,**<sup>[4]</sup> denying petitioner's motion for reconsideration.

From the petitions, the comment thereon of private respondent, their respective annexes, and other pleadings filed by the parties, the Court gathers the following relevant facts:

On September 3, 1997, **R-II Builders, Inc. (R-II,** for brevity) and the Bases Conversion Development Authority (BCDA) entered into an agreement<sup>[5]</sup> (*R-II – BCDA Agreement*, hereinafter) for the construction, on a 7-hectare area in Fort Bonifacio, Taguig, Metro Manila, of the Philippine Army Officer's Quarters Project. In

it, R-II agreed to undertake, for P788,973,413.00, inclusive of taxes and fees, among other conditions, the site planning and development of the property in question and the design/construction thereon of twenty-eight (28) 4-storey medium-rise buildings, in accordance with the detailed architectural and engineering plans and specifications as prepared by R-II and approved by BCDA. Appointed by BCDA as project construction manager was Techpil, Inc. (TECHPIL, for short).

Records show that even before the contract signing of the *R-II-BCDA Agreement*, steps were taken and negotiations already conducted towards a sub-contracting arrangement between **R-II and Mivan Builders, Inc. (Mivan, for brevity)**. As a matter of fact, R-II appeared to have given Mivan advance copies of the drawing plans submitted to BCDA. Then, on August 25, 1997, R-II issued to Mivan the contract drawings and specifications upon which the latter would base its September 3, 1997 estimate and tender of the sub-contract price in the amount of P459,000,000.00. A "*Notice to Proceed*" dated September 6, 1997 addressed to Mivan followed, stipulating a 180-day completion period from September 8, 1997 or until March 6, 1998. Mivan forthwith mobilized and set up its labor camp at the job site. By September 26, 1997, its formworks had started to arrive in the port of Manila.

It would appear that what commended Mivan for the project sub-contract award was its advanced aluminum framework system. This method eliminated the use of hollow blocks in constructing the superstructures of buildings, and, instead, utilized pre-fabricated aluminum formworks into which concrete is poured covering at the same time, if appropriate, several floors to obtain the desired shape. Because the frameworks were so designed to allow multiple re-use, this innovative system translated into huge savings in terms of construction time and costs.<sup>[6]</sup>

On October 3, 1997, R-II and Mivan executed the formal sub-contract agreement (the *R-II - Mivan Agreement*, or sub-contract agreement, hereafter)<sup>[7]</sup> for the construction of the twenty (28) buildings contemplated in the *R-II -BCDA Agreement*. Under the terms of the sub-contract agreement, R-II agreed to pay Mivan a fixed lump sum total amount of P459,000,000.00 plus the applicable value added tax (VAT) based on contract drawings issued by R-II on August 25, 1997. Included in Mivan's scope of work were structural, electrical, and other finishing works necessary to complete the buildings in accordance with the plans and specifications prepared by R-II. As set forth in the sub-contract agreement, the construction project was divided into two (2) categories: (a) twenty (20) 4-storey buildings with four (4) apartments at 120 square meters each floor, referred to as "M120 Buildings"; and (b) eight (8) 4-storey buildings with two (2) apartments at 180 square meters each floor, referred to as "M180 Buildings".

*Inter-alia*, the *R-II-Mivan Agreement* contained provisions relating to escalation/adjustment of contract price and allowed variations/alterations orders, incorporating, by express reference thereto, the provisions of Presidential Decree (P.D.) No. 1594, entitled "*Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts*".<sup>[8]</sup>

Notwithstanding what appeared to be a comprehensive sub-contracting arrangement, R-II would later further sub-contract part of the original subcontracted works, *i.e.*, the supply and erection of formworks for the superstructure of buildings #16, 17 & 21, to Rigid Systems, Inc. (RSI, for brevity) and bring in additional

workforce to the project site. As things turned out, however, RSI was not up to the task, which thus impelled Mivan to either rework RSI's defective accomplishments or complete the latter's unfinished sub-contracted works. Also, in the course of project implementation, R-II, addressing BCDA's request, asked the accommodative Mivan to fast-track the completion of five (5) buildings, albeit the November 1997 deadline therefor was later moved to January 1998. Needless to stress, the engagement of RSI and its inability to satisfactorily perform its part of the bargain, the employment of additional hired hands, the acceleration of the turn-over of structures and other deviations from the original plans/specifications distorted construction schedules and upped the original overall construction cost.

All told, Mivan was able to finish its sub-contracted undertakings, but forty-nine (49) days beyond the original completion date and only after incurring additional costs which it attributed to overhead costs and events causing disruptions/delays, such as but not limited to variations to the Contract Drawings and other change orders, the requirement for early completion of a number of buildings, the necessity to repair works carried out by others, and the introduction of other formwork systems into the construction of superstructures. Hence, it demanded additional and/or differential payments, itemized as follows:

|                   |                        |
|-------------------|------------------------|
| Variation Claims  | P58,477,320.27         |
| Escalation Claims | 11,027,204.00          |
| Disruption Claims | <u>+ 48,273,305.22</u> |
| Total             | P117,747,829.49        |
| Add: 10% VAT      | <u>+ 11,774,782.95</u> |
| GRAND TOTAL       | P129,522,612.44        |

R-II readily admitted liability for variation cost but only to the extent of P15,095,597.20, plus escalation cost in the amount of P 747,585.82. As it would later insist, the figure P15,095,597.20 was the amount arrived at after a joint quantification and costing of the As-Built Drawings and the Contract Drawings was made by the parties on December 2-4, 1998, upon BCDA's intercession, to resolve the issue of quantifying the variation or additional work done on the substructures and superstructures of the buildings.

As a measure to break the R-II- Mivan impasse, TECHPHIL, the BCDA project construction manager, came into the picture. In its report dated December 14, 1998<sup>[9]</sup> to BCDA, TECHPHIL, after evaluating the quantifying results based on Mivan's detailed computation, which in turn was based on the revised tender cost submitted on September 3, 1997, found the amount of P40,719,802.41 - out of Mivan's P58.477 Million variation claim - to be valid and legitimate. Accordingly, TECHPHIL recommended that R-II be made to pay the amount of P 40,719,802.41.

R-II proved, however, to be unyielding. This impelled Mivan to pursue its claims before the Construction Industry Arbitration Commission (CIAC) pursuant to par. 14.1, Article XIV of the sub-contract agreement.<sup>[10]</sup> The case was docketed as CIAC Case No. 22-99.

On November 12, 1999, the CIAC-appointed Sole Arbitrator Alfredo F. Tadiar rendered a decision in CIAC Case No. 22-99, as follows:

## **A W A R D**

**WHEREFORE**, Judgment is hereby rendered in favor of the claimant Contractor [Mivan] and Award is hereby made on its monetary claims as follows:

Respondent [R-II] is directed to pay the Claimant the following amounts:

|   |  |
|---|--|
| P 39,000,000.00                           | for its variation claims.  |
| 3,198,170.00                              | for the increased costs of labor, materials and equipment arising from the accelerated schedule of turn-over of 5 buildings. |
| 3,099,089.76                              | for reimbursement of the amount overcharged for the additional labor force supplied by the Respondent.                       |
| 747,585.82                                | for escalation claims.   |
| 4,294,575.58                              | for Value Added Tax (VAT) computed at 10% of the amounts awarded except that for reimbursement.                              |
| <hr style="width: 15%; margin-left: 0;"/> |  |
| <b>P 50,339,421.16</b>                    | <b>Total amount due to the Claimant.</b>   |

Interest on the foregoing amount of **P 46,044,845.58**, excluding the Value Added Tax, shall be paid at the rate of 6% per annum from the date of this Decision. After finality of this Decision, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made, *"this interim period being deemed to be at that time already a forbearance of credit"* (*Eastern Shipping Lines, Inc. v. Court of Appeals, et al*, 243 SCRA 78 [1994]; *Keng Hua Papers Products Co., Inc. v. Court of Appeals*, 286 SCRA 257 [1998]; *Crismina Garments, Inc. v. Court of Appeals*, G.R. No. 128721, March 9, 1999).

**SO ORDERED.** (Words in bracket added.)

In time, R-II went to the Court of Appeals (CA) on a petition for review under Rule 43 of the Rules of Court, thereat docketed as **CA G.R. No. SP No. 56142**. Mivan also interposed a similar recourse only to withdraw the same later with the appellate court's approval.

On October 26, 2001, the Court of Appeals rendered a Decision<sup>[11]</sup> dispositively stating:

**WHEREFORE**, the petition is **DENIED DUE COURSE** and **DISMISSED**. The assailed decision is hereby **AFFIRMED in toto** and the application for injunctive relief denied.

SO ORDERED.

Dissatisfied with aforesaid ruling, coupled with the denial of its motion for reconsideration of the appellate court's Resolution<sup>[12]</sup> dated March 6, 2002, petitioner elevated the case to this Court in the present **G.R. No. 152545**, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR IN THE APPRECIATION OF THE FINDINGS OF THE RESPONDENT CIAC AS TO THE ALLEGED LIABILITY OF THE PETITIONER.

II

WHETHER OR NOT THE CLAIMS OF THE RESPONDENT MIVAN FOR INCREASED COSTS AND ADDITIONAL MONETARY CLAIMS ARE NOT BARRED UNDER THE CONSTRUCTION AGREEMENT BETWEEN THE PARTIES.

III

WHETHER OR NOT THE COURT OF APPEALS AND RESPONDENT CIAC ERRED IN AWARDING VALUE ADDED TAX IN FAVOR OF THE RESPONDENT MIVAN.

In the meantime, or before the Court of Appeals could resolve the petition in CA-G.R. SP No. 56142, Mivan moved for the execution of the aforesaid November 23, 1999 CIAC decision. Sole Arbitrator Tadiar, however, denied the motion to execute in separate Orders dated July 9, 2001 and October 15, 2001, prompting Mivan to challenge these denial orders before the Court of Appeals *via* a petition for certiorari and mandamus under Rule 65 of the Rules of Court, docketed therein as **CA G.R. SP No. 68178**. In its Decision<sup>[13]</sup> dated June 14, 2004, the Court of Appeals ruled:

**WHEREFORE**, the petition is granted. The Orders dated July 9, 2001 and October 15, 2001 of public respondent are annulled and public respondent is directed to issue a writ of execution of the Decision dated November 23, 1999 in CIAC Case No. 22-99.

**SO ORDERED.**

Following the appellate court's denial through Resolution<sup>[14]</sup> dated September 28, 2004, of its motion for reconsideration, R-II came to this Court by way of a petition of review, herein docketed as **G.R. No. 165687**, which was eventually consolidated with G.R. No. 152545.

In the interim, however, Sole Arbitrator Tadiar had a change of heart and directed on August 23, 2004 the issuance of a writ of execution of his November 23, 1999 decision, conditioned upon Mivan's putting up a bond. Mivan posted the required bond on December 17, 2004. Sole Arbitrator Tadiar approved the bond on January 11, 2005 and forthwith ordered that the writ of execution issue.

Acting on R-II's motion, however, to hold in abeyance the implementation of the writ of execution, the CIAC Proper directed, per its Order of January 27, 2005,<sup>[15]</sup> the