

SECOND DIVISION

[G.R. No. 139885, January 13, 2003]

BANGKO SENTRAL NG PILIPINAS, PETITIONER, VS. JESUS G. SANTAMARIA, DOING BUSINESS UNDER THE NAME AND STYLE OF J. SANTAMARIA & ASSOCIATES, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

For review on certiorari is the Court of Appeals' decision^[1] dated May 21, 1999, in CA-G.R. SP No. 47274, which dismissed the *Bangko Sentral ng Pilipinas'* (BSP) petition for review under Rule 43 of the 1997 Rules of Civil Procedure of the decision^[2] dated February 9, 1998 and Amended Award^[3] dated February 20, 1998 of the Construction Industry Arbitration Commission (CIAC), in CIAC Case No. 37-97. The appellate court affirmed *in toto* the CIAC decision ordering BSP to pay herein respondent Jesus G. Santamaria (JGS), doing business under the name and style of J. Santamaria and Associates (JSA), unpaid billings amounting to P621,666.53 plus the corresponding interest. Before us, BSP likewise assails the appellate court's resolution^[4] dated August 19, 1999 denying its motion for reconsideration.

The facts, as culled from the records, are as follows:

Petitioner BSP, thru its Prequalification, Bids & Awards Committee (PBAC), invited respondent herein to submit a sealed proposal for Project Construction Management (PCM) services of petitioner's Regional Unit Building in Lucena City. Initially, respondent's proposal amounted to P1,087,963.56 but this was later reduced to a lump sum fee of P676,044.35, broken down into P59,278.86 pre-construction phase fee for two months and P616,765.49 construction/post-construction phase fee for the succeeding eight (8) months, or a total service period of 10 months.

On January 7, 1993, BSP issued the Notice of Award to JSA for the said project.

On March 13, 1993, BSP and respondent entered into a "Contract for the Project Construction Management Services,"^[5] with the following pertinent provisions:

ARTICLE I – SCOPE OF WORK

The PCM^[6] shall undertake the project management, design management and construction management, with the end-view of ensuring for the BANK a high degree of quality control and inspection, and that all phases of the construction, such as architectural, structural, electrical, mechanical, sanitary/plumbing, airconditioning, civil works and other phases of work that are necessary to complete the project, are properly accomplished. Its services shall supplement and/or complement

administrative supervision by the BANK and the PCM shall provide an on-site Construction Management Staff to monitor and closely coordinate the different phases of the construction work.

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ARTICLE II- COMPENSATION AND MANNER OF PAYMENT

For services to be rendered by the PCM for ten (10) months, inclusive of the pre-construction, construction and post-construction periods, the BANK shall pay the amount of SIX HUNDRED SEVENTY SIX THOUSAND FORTY FOUR PESOS & 35/100 (P676,044.35) Philippine Currency, broken down as follows:

Pre-Construction Phase	- P59,278.86 to be paid in two (2) equal payments: 1st payment to be released after the opening of bids while the 2nd payment will be released after the issuance of the Notice of Award (NOA)
Construction, Post-Construction & Project Close-out Phase	- P616,765.49 to be paid as progress billings on the value of work accomplished including cost of owner-furnished materials.

Supervision of construction work beyond the original contract completion time, unless officially authorized by the BANK, shall not entitle the PCM to additional compensation and shall be undertaken by the PCM for his own account.

Contract completion time may, however, be extended only for the following reasons:

1. Delay in delivery of owner-furnished materials
2. Change in scope of work due to revisions
3. Hold orders on areas requiring the decision of the BANK
4. Unreasonably delayed payments
5. *Force majeure*

Supervision by the PCM during duly authorized extensions of contract time shall be compensated on the basis of actual man-months rendered and approved rates multiplied by a factor of 1.5.

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On September 9, 1994, BSP and C.T. Gumaru Construction (CTGC) entered into a "Contract for the Complete Supply of Labor and Materials for the Proposed Construction of the *Bangko Sentral* Regional Unit Building in Lucena City." By virtue of said agreement, CTGC bound itself to, among other things, undertake the proposed construction of BSP's building in Lucena City to be completed within two hundred forty (240) calendar days, to be reckoned from ten (10) calendar days after CTGC's receipt of the Notice to Proceed.

Construction commenced on September 29, 1994 with a target completion date on May 26, 1995, after CTGC received the Notice to Proceed on September 19, 1994.

The construction incurred delays. On January 26, 1995, the construction was suspended pending finalization of revisions and issuance by BSP of Variation Orders. [7]

On June 28, 1995, BSP issued Variation Order No. 1 for the relocation of the guardhouse, pump room, underground water tank, front property fence and gate, and the electrical service pedestal. As a result, construction work came to a halt in the areas affected by the order.

On July 18, 1995, BSP lifted the suspension and came out with Variation Order No. 2 covering the increase in height of the additional columns, walls, additional filling works, and additional height of shoring for the second floor at the main building. Once more, work on the construction was suspended in the affected areas.

On August 16, 1995, BSP issued Variation Order No. 3 with certain revisions for the exterior site development.

In view of the Variation Orders, BSP granted CTGC's request for a 90-day extension of the construction period. The target completion date of the project was reset to April 9, 1996.

On January 8, 1996, CTGC requested the BSP for temporary suspension of the contract time pending resolution of CTGC's unpaid billings, request for unit price adjustment and the effect of the Expanded Value Added Tax on its contract. Respondent recommended denial of the request for lack of merit and suggested that BSP rescind CTGC's contract should the delay in the construction schedule reach the critical limit.

On February 23, 1996, respondent submitted to BSP claims for payment for extended services from *May 27, 1995 to January 31, 1996* in the amount of **P450,604.96** (stress supplied). [8] However, BSP took no action on said request for payment.

Upon the expiration of the April 9, 1996 extended completion date, CTGC had completed only 32.8884% of the project but continued working on the site, while JSA continued to provide project management services.

On July 31, 1996, CTGC pulled out of the project, having only completed only about one-third or 33.1881% of the work. The following day, respondent likewise ceased to provide management services.

On September 10, 1996, JSA submitted another claim for payment of extended services from *February 1, 1996 to April 9, 1996* in the amount of **P62,451.05**.^[9] Again, BSP played deaf and dumb to the request for payment. Respondent sent several follow-up letters to BSP regarding this as well as the previous claim but without any response from BSP.

On August 4, 1997, BSP and CTGC entered into a "Supplemental Contract for the Proposed Construction of the *Bangko Sentral* Regional Unit in Lucena City." Under this new agreement, the project was to be completed within two hundred forty (240) calendar days effective from receipt of the Notice to Resume Work.

On August 14, 1997, BSP issued to CTGC the Notice to Resume Work.

On September 25, 1997, BSP advised respondent of CTGC's resumption of work. It then requested that respondent remobilize and deploy his resident/project engineer at the project site. Respondent, however, refused to comply with BSP's request pending resolution of his claims for payment for the extended services previously rendered.

In its letter of October 27, 1997, BSP explained its position on the contract saying that payments were to be made on a lump sum basis. It promised to pay respondent after a definite milestone had been reached in the project. It again reiterated its request for remobilization of respondent's resident/project engineer.

On November 12, 1997, respondent filed a Request for Adjudication before the CIAC to demand payment from BSP of unpaid billings amounting to P746,867.93, inclusive of interest and arbitration fees. CIAC found respondent's claims to be valid, thus:

On the basis of the above findings, it is the conclusion of this Arbitrator that the claim of JGS is valid. Accordingly, BSP is ordered to pay JGS its first billing in the amount of P450,604.96, with interest at the rate of 6% per annum from February 23, 1996 until it is fully paid; and its second billing for the amount of P62,451.05 with interest also at the rate of 6% per annum from September 10, 1996 until it is fully paid.

In view of the long delay in the construction of the Project, the prices quoted by JGS are no longer realistic. It would be unjust and inequitable for JGS to be required to complete the balance of the work which is estimated to be 66% in accordance with the unit rates made by JGS in his proposal. This Arbitrator would have no basis for determining the appropriate adjustment taking into consideration cost escalation. The parties are, therefore, directed to negotiate and determine the amount of cost escalation to be allowed JGS for work already performed and for performing the balance of 66% of the work....

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In view of the finding that neither party acted in bad faith, no award for attorney's fees is made. Both parties are ordered to pay in equal share the cost of arbitration including the arbitrator's fees.^[10]

The CIAC noted that the contract itself had allowed additional compensations on authorized extensions and that any delays in this case are solely attributable to BSP first, due to design revision and second, due to its delay in resolving the issues raised by CTGC, so that the project completion date had gone far beyond what the parties had contemplated. Hence, BSP should bear any resulting losses.

Upon respondent's request, CIAC amended the first paragraph of the award to read as follows:

On the basis of the above findings, it is the conclusion of this Arbitrator that the claim of JGS is valid. Accordingly, BSP is ordered to pay JGS its first billing in the amount of P450,604.96, with interest at the rate of 6% per annum from February 23, 1996 until it is fully paid; and its second billing for the amount of P62,451.05 with interest also at the rate of 6% per annum from September 10, 1996 until it is fully paid; *and the amount of P108,610.52 for services rendered from April 10, 1996 to July 31, 1996.*^[11] (Italics supplied)

On March 11, 1998, BSP filed a Motion for Correction/ Reconsideration, which the CIAC denied in its Order^[12] of March 16, 1998.

BSP then filed a petition for review before the Court of Appeals, but the latter affirmed *in toto* the decision and amended award of the CIAC, to wit:

FOR ALL THE FOREGOING, the instant petition is hereby DISMISSED and the challenged decision dated February 9, 1998 and Amended Award dated February 20, 1998, both of the Construction Industry Arbitration Commission in CIAC Case No. 37-97 AFFIRMED (*sic*) *in toto*.

SO ORDERED.^[13]

The Court of Appeals found that while the PCM contract provided for a lump-sum payment for services rendered, it also provided for additional compensation for services rendered beyond the original completion date, if officially authorized by BSP. Thus, it is purely lump sum only when the project is accomplished on the original completion date. The appellate court likewise observed that the absence of formal authorization to extend the completion date cannot be a source of comfort for BSP, as the contract was ambiguous on this point. It was not comprehensive enough to include mechanisms for respondent to compel BSP to issue an official authorization to extend the project period, should circumstances call for such an issuance. It noted that the delays were clearly not attributable to respondent. Hence, it would be utterly oppressive to respondent if the "progress billing" provisions be strictly applied as such presupposes that the project will be completed within the targeted completion date. The appellate court ruled that respondent should not be made to pay for the consequence of CTGC's incompetence, negligence or abandonment of the project since respondent rendered full service within the project period.

Hence, the instant petition, alleging that the Court of Appeals erred in not finding that:

1. ...THE PCM CONTRACT IS A LUMP SUM CONTRACT IN AND FOR THE SUM OF P676,044.35.