

## SECOND DIVISION

[ G.R. No. 154885, March 24, 2008 ]

**DIESEL CONSTRUCTION CO., INC., Petitioner, VS. UPSI  
PROPERTY HOLDINGS, INC., Respondent.**

[G.R. No. 154937]

**UPSI PROPERTY HOLDINGS, INC., Petitioner, VS. DIESEL  
CONSTRUCTION CO., INC. and FGU INSURANCE CORP.,  
Respondents.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

Before the Court are these petitions for review under Rule 45 separately interposed by Diesel Construction Co., Inc. (Diesel) and UPSI Property Holdings, Inc. (UPSI) to set aside the Decision<sup>[1]</sup> dated April 16, 2002 as partly modified in a Resolution<sup>[2]</sup> of August 21, 2002, both rendered by the Court of Appeals (CA) in CA-G.R. SP No. 68340, entitled *UPSI Property Holdings, Inc. v. Diesel Construction Co., Inc., and FGU Insurance Corporation*. The CA Decision modified the Decision dated December 14, 2001 of the Arbitral Tribunal of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 18-2001, while the CA Resolution granted in part the motion of Diesel for reconsideration and denied a similar motion of UPSI.

#### **The Facts**

The facts, as found in the CA Decision under review, are as follows:

On August 26, 1995, Diesel, as Contractor, and UPSI, as Owner, entered into a Construction Agreement<sup>[3]</sup> (Agreement) for the interior architectural construction works for the 14th to 16th floors of the UPSI Building 3 Meditel/Condotel Project (Project) located on Gen. Luna St., Ermita, Manila. Under the Agreement, as amended, Diesel, for PhP 12,739,099, agreed to undertake the Project, payable by progress billing.<sup>[4]</sup> As stipulated, Diesel posted, through FGU Insurance Corp. (FGU), a performance bond in favor of UPSI.<sup>[5]</sup>

*Inter alia*, the Agreement contained provisions on contract works and Project completion, extensions of contract period, change/extra works orders, delays, and damages for negative slippage.

Tasked to oversee Diesel's work progress were: Grace S. Reyes Designs, Inc. for interior design and architecture, D.L. Varias and Associates as Construction Manager,

and Ryder Hunt Loacor, Inc. as Quantity Surveyor.<sup>[6]</sup>

Under the Agreement, the Project prosecution proper was to start on August 2, 1999, to run for a period of 90 days or until November 8, 1999. The parties later agreed to move the commencement date to August 21, 1999, a development necessitating the corresponding movement of the completion date to November 20, 1999.

Of particular relevance to this case is the section obliging the contractor, in case of unjustifiable delay, to pay the owner liquidated damages in the amount equivalent to one-fifth (1/5) of one (1) percent of the total Project cost for each calendar day of delay.<sup>[7]</sup>

In the course of the Project implementation, change orders were effected and extensions sought. At one time or another, Diesel requested for extension owing to the following causes or delaying factors: (1) manual hauling of materials from the 14th to 16th floors; (2) delayed supply of marble; (3) various change orders; and (4) delay in the installation of shower assembly.<sup>[8]</sup>

UPSI, it would appear, disapproved the desired extensions on the basis of the foregoing causes, thus putting Diesel in a state of default for a given contract work. And for every default situation, UPSI assessed Diesel for liquidated damages in the form of deductions from Diesel's progress payments, as stipulated in the Agreement.<sup>[9]</sup>

Apparently irked by and excepting from the actions taken by UPSI, Diesel, thru its Project manager, sent, on March 16, 2000, a letter notice to UPSI stating that the Project has been completed as of that date. UPSI, however, disregarded the notice, and refused to accept delivery of the contracted premises, claiming that Diesel had abandoned the Project unfinished. Apart therefrom, UPSI withheld Diesel's 10% "retention money" and refused to pay the unpaid balance of the contract price.<sup>[10]</sup>

It is upon the foregoing factual backdrop that Diesel filed a complaint before the CIAC, praying that UPSI be compelled to pay the unpaid balance of the contract price, plus damages and attorney's fees. In an answer with counterclaim, UPSI denied liability, accused Diesel of abandoning a project yet to be finished, and prayed for repayment of expenses it allegedly incurred for completing the Project and for a declaration that the deductions it made for liquidated damages were proper. UPSI also sought payment of attorney's fees.<sup>[11]</sup>

After due hearing following a protracted legal sparring, the Arbitral Tribunal of the CIAC, on December 14, 2001, in CIAC Case No. 18-2001, rendered judgment for Diesel, albeit for an amount lesser than its original demand. To be precise, the CIAC ordered UPSI to pay Diesel the total amount of PhP 4,027,861.60, broken down as follows: PhP 3,661,692.60, representing the unpaid balance of the contract price; and PhP 366,169 as attorney's fees. In the same decision, the CIAC dismissed UPSI's counterclaim<sup>[12]</sup> and assessed it for arbitration costs in the amount of PhP 298,406.03.<sup>[13]</sup>

In time, UPSI went to the CA on a petition for review, docketed as CA-G.R. SP No.

68340. Eventually, the appellate court rendered its assailed Decision dated April 16, 2002, modifying that of the CIAC, thus:

WHEREFORE, premises considered, the petition is GRANTED and the questioned Decision is MODIFIED in this wise:

- a. The claim of [UPSI] for liquidated damages is GRANTED to the extent of PESOS: ONE MILLION THREE HUNDRED NINE THOUSAND AND FIVE HUNDRED (P1,309,500.00) representing forty-five (45) days of delay at P29,100 *per diem*;
- b. We hold that [Diesel] substantially complied with the Construction Contract and is therefore entitled to one hundred percent (100%) payment of the contract price. Therefore, the claim of [Diesel] for an unpaid balance of PESOS: TWO MILLION FOUR HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED EIGHTY TWO and SIXTY FOUR centavos (P2,441,482.64), which amount already includes the retention on the additional works or Change Orders, is GRANTED, minus liquidated damages. In sum, [UPSI] is held liable to [Diesel] in the amount of PESOS: ONE MILLION ONE HUNDRED THIRTY ONE THOUSAND NINE HUNDRED EIGHTY TWO and sixty four centavos (P1,131,982.64), with legal interest until the same is fully paid;
- c. The parties are liable equally for the payment of arbitration costs;
- d. All claims for attorney's fees are DISMISSED; and
- e. Since there is still due and owing from UPSI an amount of money in favor of Diesel, respondent FGU is DISCHARGED as surety for Diesel.

Costs *de officio*.

SO ORDERED.<sup>[14]</sup>

Therefrom, Diesel and UPSI each sought reconsideration. On August 21, 2002, the CA issued its equally assailed Resolution denying reconsideration to UPSI, but partially granting Diesel's motion, disposing as follows:

WHEREFORE, the Motion for Reconsideration of [Diesel] is partially GRANTED. The liquidated damages are hereby reduced to P1,146,519.00 (45 days multiplied by P25,478.20 *per diem*). However, in accordance with the main opinion, We hold that [UPSI] is liable to [Diesel] for the total amount of P3,661,692.64, representing the unpaid balance of the contract price plus the ten-percent retention, from which the liquidated damages, must, of course, be deducted. Thus, in sum, as amended, We hold that petitioner is still liable to respondent Diesel in the amount of P2,515,173.64, with legal interest until the same is fully paid.

The main opinion, in all other respects, STANDS.

SO ORDERED.<sup>[15]</sup>

Hence, these separate petitions are before us.

Per its Resolution of March 17, 2003, the Court ordered the consolidation of the petitions.

## **The Issues**

In its petition in G.R. No. 154885, Diesel raises the following issues:

1. Whether or not the [CA] has the discretion, indeed the jurisdiction, to pass upon the qualifications of the individual members of the CIAC Arbitral Tribunal and declare them to be non-technocrats and not exceptionally well-versed in the construction industry warranting reversal and nullification of the tribunal's findings.
2. Whether or not the [CA] may intervene to annul the findings of a highly specialized agency, like the CIAC, on the ground that essentially the question to be resolved goes to the very heart of the substantiality of evidence, when in so doing, [CA] merely substituted its own conjectural opinion to that of the CIAC Arbitral Tribunal's well-supported findings and award.
3. Whether or not the [CA] erred in its findings, which are contrary to the findings of the CIAC Arbitral Tribunal.<sup>[16]</sup>

On the other hand, in G.R. No. 154937, UPSI presents the following issues:

### **I**

Whether or not portion of the Decision dated April 16, 2002 of the Honorable [CA] denying additional expenses to complete the unfinished and abandoned work of [Diesel], is null and void for being contrary to clean and convincing evidence on record.

### **II**

Whether or not portion of the Decision x x x of the [CA] finding delay of only forty five (45) days is null and void for being not in accord with contractual stipulations upon which the controversy arise.

### **III**

Whether or not the resolution of the Honorable Court of Appeals denying the herein petitioner's motion for reconsideration and partially granting the respondent's motion for reconsideration is likewise null and void as it does not serve its purpose for being more on expounding than rectifying errors.<sup>[17]</sup>

The issues shall be discussed in *seriatim*.

## **The Court's Ruling**

We resolve to modify the assailed CA Decision.

### **First Issue**

Diesel maintains that the CA erred in its declaration that it may review the CIAC's decision considering the doctrine on the binding effect of conclusions of fact of highly specialized agencies, such as the CIAC, when supported by substantial

evidence.

The above contention is erroneous and, as couched, misleading.

As is noted, the CA, in its assailed resolution, dismissed as untenable Diesel's position that the factual findings of the CIAC are binding on and concludes the appellate court. The CA went to clarify, however, that the general rule is that factual conclusions of highly specialized bodies are given great weight and even finality when supported by substantial evidence. Given this perspective, the CA was correct in holding that it may validly review and even overturn such conclusion of facts when the matter of its being adequately supported by substantial evidence duly adduced on record comes to the fore and is raised as an issue.

Well-established jurisprudence has it that "[t]he consequent policy and practice underlying our Administrative Law is that courts of justice should respect the findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial."<sup>[18]</sup>

There can be no serious dispute about the correctness of the CA's above posture. However, what the appellate court stated later to belabor its point strikes the Court as specious and uncalled for. Wrote the CA:

This dictum finds greater application in the case of the CIAC because x x x as pointed out by petitioner in its Comment, the doctrine of primary jurisdiction relied upon by [Diesel] is diluted by the indubitable fact that the CIAC panel x x x is not at all composed of technocrats, or persons exceptionally well-versed in the construction industry. For instance, its chair x x x is a statistician; another member, x x x a former magistrate, is a member of the Bar. Doubtless, these two are preeminent in their fields, and their competence and proficiency in their chosen professions are unimpeachable. However, when it comes to determining findings of fact with respect to the matter before Us, the said panel which they partly comprise cannot claim to have any special advantage over the members of this Court.<sup>[19]</sup>

The question of whether or not the findings of fact of the CIAC are supported by substantial evidence has no causal connection to the personal qualifications of the members of the arbitration panel. Surely, a person's undergraduate or postgraduate degrees, as the case may be, can hardly be invoked as the sole, fool proof basis to determine that person's qualification to hold a certain position. One's work experiences and attendance in relevant seminars and trainings would perhaps be the more important factors in gauging a person's fitness to a certain undertaking.

Correlatively, Diesel, obviously having in mind the disputable presumption of regularity, correctly argues that highly specialized agencies are presumed to have the necessary technical expertise in their line of authority. In other words, the members of the Arbitral Tribunal of the CIAC have in their favor the presumption of possessing the necessary qualifications and competence exacted by law. A party in whose favor the legal presumption exists may rely on and invoke such legal presumption to establish a fact in issue. One need not introduce evidence to prove that the fact for a presumption is *prima facie* proof of the fact presumed.<sup>[20]</sup>