

## FIRST DIVISION

**[ G.R. No. 141897, September 24, 2001 ]**

**METRO CONSTRUCTION, INC., PETITIONER, VS. CHATHAM  
PROPERTIES, INC., RESPONDENT.**

### DECISION

**DAVIDE, JR., C.J.:**

The core issue in this case is whether under existing law and rules the Court of Appeals can also review findings of facts of the Construction Industry Arbitration Commission (CIAC).

Respondent Chatham Properties, Inc. (CHATHAM) and petitioner Metro Construction, Inc. (MCI) entered into a contract for the construction of a multi-storey building known as the Chatham House located at the corner of Herrera and Valero Streets, Salcedo Village, Makati City, Metro Manila. In April 1998, MCI sought to collect from CHATHAM a sum of money for unpaid progress billings and other charges and instituted a request for adjudication of its claims with the CIAC. The case was docketed as CIAC Case No. 10-98. The arbitral tribunal was composed of Joven B. Joaquin as Chairman, and Beda G. Fajardo and Loreto C. Aquino as members.

The preliminary conference before the CIAC started in June 1998 and was concluded a month after with the signing of the Terms of Reference (TOR) of the Case.<sup>[1]</sup> The hearings immediately started with the presentation of MCI's witnesses, namely: Ms. Ma. Suzette S. Nucum, Chief Accountant; Ms. Isabela Redito, Office Engineer; Mr. John Romulo, Field Manager; and Dr. John Y. Lai, President. CHATHAM's witnesses were: Engr. Ruperto Kapunan III, Managing Director of RK Development and Construction Co., Inc. (RKDCCI), which was the Construction Manager firm hired by CHATHAM to oversee the construction work of the Chatham House; Engr. Alex Bautista, Area Manager of RKDCCI; Mr. Avelino M. Mercado, CHATHAM's Project Manager; and Engr. Jose T. Infante.

In the meantime, the TOR was amended and finalized on 19 August 1998.<sup>[2]</sup>

The facts, as admitted by the parties before the CIAC and incorporated in the original TOR, are as follows:

1. On 21 April 1994, the parties formally entered into a xxx contract for the construction of the "Chatham House" xxx for the contract price of P50,000,000.00 inclusive of value-added tax, subject to adjustments in accordance with Article 9 of the contract. Construction of the project, however, commenced on 15 April 1994 upon the release by CHATHAM of the downpayment.

2. On 12 July 1994, a Supplemental Contract was executed by and between the parties whereby CHATHAM authorized MCI to procure in behalf of the former materials, equipment, tools, fixtures, refurbishing, furniture, and accessories necessary for the completion of the project.
3. Under Section 1.04 of the Supplemental Contract, the total amount of procurement and transportation cost[s] and expenses which may be reimbursed by MCI from CHATHAM shall not exceed the amount of P75,000,000.00.
4. In the course of the construction, Change Orders No. 1, 4, 8A, 11, 12 and 13 were implemented, payment of which were recommended by xxx RKDCCI and approved by one of CHATHAM's Project Managers, Romulo F. Sugay.
5. On 15 September 1995, CHATHAM through its Project Manager, Romulo F. Sugay, agreed to give P20,000 per floor for five (5) floors, or a total of P100,000.00 as bonus/incentive pay to MCI's construction workers for the completion of each floor on schedule. CHATHAM reimbursed MCI the amount of P60,000.00 corresponding to bonuses advanced to its workers by the latter for the 14<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> floors.
6. CHATHAM's payments to MCI totaled P104,875,792.37, representing payments for portions of MCI's progress billings and xxx additional charges.

The parties then stipulated on the following issues, again, as set forth in the TOR:

1. Is MCI entitled to its claims for unpaid progress billings amounting to P21,062,339.76?
2. Were the approved Change Orders 1, 4, 8a, 11, 12 and 13 fully paid by CHATHAM? If not, is MCI entitled to its claim for the unpaid balance?
3. Is CHATHAM liable for Change Orders 7a, 7b, 10, 14, 15, 16, 17, 19 and 20?
4. Were the CHB works from the 8<sup>th</sup> to the 31<sup>st</sup> floors part of the original contract or in the nature of extra/additional works? Is CHATHAM liable for the same? If so, how much?
5. Is MCI entitled to an additional reimbursement of P40,000.00 for bonuses granted to workers as an incentive for the early completion of each floor?
6. Were the deductions in the amount of P1,393,458.84 made by CHATHAM in MCI's progress billing reasonable?

7. Is MCI's claim of P1,646,502.00 for labor escalation valid?
8. Is MCI entitled to payment of attendance fee? To what extent and how much?
9. Did MCI fail to complete and/or deliver the project within the approved completion period? If so, is MCI liable for liquidated damages and how much?
10. Whether or not CHATHAM is entitled to claim x x actual damages? If so, to what extent and how much?
11. Whether or not CHATHAM is entitled to x x x additional counterclaims as follows:
  - 11.1. Core testing expenses and penalty for concrete strength failure P3,630,587.38
  - 11.2. Expenses to rectify structural steel works for the foundation P1,331,139.74.
  - 11.3. Cost of additional materials (concrete & rebars) supplied by CPI P5,761,457.91
12. Are the parties entitled to their respective claims for attorney's fees and cost of litigation? If so, how much?<sup>[3]</sup>

In the resolution of these issues, the CIAC discovered significant data, which were not evident or explicit in the documents and records but otherwise revealed or elicited during the hearings, which the CIAC deemed material and relevant to the complete adjudication of the case. In its decision of 19 October 1998,<sup>[4]</sup> the CIAC made the following findings and conclusions:

It was established during the hearing that the contract was awarded to MCI through negotiation as no bidding was conducted. xxx It was also revealed that two agreements were entered into, one is labeled Construction Contract for the total fixed amount of P50,000,000.00 and the other a Supplemental Contract for an amount not to exceed P75,000,000.00. The latter is supposed to cover the procurement of materials for the project. The Construction Contract provides for monthly progress billings and payments based on actual accomplishments of the various phases of work. The Supplemental Contract provides for reimbursement of [the] total amount of procurement and transportation costs and expenses, upon MCI's presentation of suppliers' invoices/receipts.

However, from testimonies of witnesses from both parties, it was revealed that the two distinct manner(s) of payment to MCI was set aside. The earlier attempt by CHATHAM to prove that MCI was remiss in submitting suppliers' invoices and/or receipts in support of its billings against the Supplemental Contract was in fact later on abandoned when CHATHAM's witness Mercado admitted that the matter of adherence to the payment provision of the Supplemental Contract is a `non-issue.'

This was borne out by the fact that progress billings and payments under both contracts were made on the basis of percentage of project completion.

Both documentary and testimonial evidence prove that, effectively, the construction contract and supplemental contract is but one agreement for a lump sum contract amount of P125,000,000.00.

xxx

There was also the admitted fact that the contract was negotiated and awarded in the absence of a complete construction plan. In any case, in support of the total contract amount of P125 MILLION, is a Cost Breakdown (Exh. 17-L), where the estimated quantities of owner furnished materials (OFM) are indicated. It is however, understood that these quantities are estimates, based on (an) incomplete set of construction plans. It is likewise understood that except for the OFM, all the other costs in the Cost Breakdown form the basis for the lump-sum agreement under the contract, subject to adjustment only if there are any significant changes in the contract plans.

RKDCCI in its letter to MCI dated 15 Feb. 1995 (Exh. 4), informed MCI that it was confirming the agreement allegedly accepted by Dr. Lai that the Building Committee will take over the management of the construction operations (of the project) albeit under certain conditions. Specifically, the take over was for an interim period and will extend only after concreting of up to basement level 5 or up to 30 May 1995 whichever is later. The letter also stated that the Building Committee xxx will be responsible for management and direction including management of MCI engineers at the site, sequencing of work, additional labor, additional equipment and management of the yard and staging area. The letter, however, emphasized that the intent is not a take over of the contract or take over of the entire work and in fact, it was mentioned that MCI will still be responsible for earth anchoring and steel fabrication work.

CHATHAM claims that the interim take-over was necessitated by MCI's delay in the progress of its work, due allegedly to MCI's lack of manpower and equipment. During the hearings of this case, this claim of MCI's lack of manpower, necessary equipment, qualified engineers and inefficient construction management was testified to by both Mr. Mercado [of CHATHAM] and Engr. Kapunan of RKDCCI. CHATHAM's witnesses, however, testified that in spite of these alleged deficiencies, MCI was nevertheless allowed to continue to take full control of the operations. When asked why termination of the contract was not resorted to if truly, MCI was not performing its contracted obligations, witnesses Mercado and Kapunan cited "special relations" between the owner of MCI (Dr. John Lai) and the president of CHATHAM (Mr. Lamberto UnOcampo) as the reason.

On the other hand, Dr. Lai contends that, as explained in his letter to CHATHAM dated 17 February 1995, (Exh. 4-A) MCI's work was on

schedule. During the hearings, Dr. Lai also insisted that beginning 15 February 1995, MCI was relieved of full control of the construction operations, that it was relegated to (be) a mere supplier of labor, materials and equipment, and that the alleged interim takeover actually extended through the completion of the project. Dr. Lai cited CHATHAM's purchases of materials, fielding labor force and sub-contracting works allegedly for the project without his knowledge and consent as proof that CHATHAM had taken full control of the project.

To the above allegation of MCI that CHATHAM went ahead and procured materials, hired labor and entered into sub-contract agreements with the intention of eventually charging the costs thereof to MCI, witness Mercado countered, that CHATHAM has the right to do this under the provisions of Article 27 of the contract, dealing with 'Recision, Cancellation, Termination of Contract.'

By way of responding to the various counterclaims of CHATHAM, MCI referred to a letter of [the former] addressed to MCI dated 18 January 1997 (Exhibit E-1) the first paragraph of which reads as follows:

After evaluating all the documents issued and received from both Chatham Properties Inc. and Metro Construction, Inc., the Building Committee of Chatham Properties, Inc. evaluated them. The Building Committee finds the total receivable of Metro Construction is in the amount of EIGHT MILLION PESOS (P8,000,000.00) only.

When queried by the Tribunal if the said amount already took into account the costs and expenses (Chatham) claims to have incurred for the account of MCI, Mr. Mercado answered in the affirmative. When queried further how the amount was arrived at, Mr. Mercado replied that it was the sum the Building Committee figured it was willing to pay MCI simply to close the issue.

Mr. Mercado even added that while MCI is not actually entitled to this amount, it was out of "friendship" that CHATHAM offered this sum to MCI as final settlement under the contract.

It is with the above attendant circumstances that this Tribunal will be guided in the resolution of issues brought before it for adjudication. From what this Tribunal finds as peculiar circumstances surrounding the contracting and implementation of the CHATHAM House Project, it arrived at the following fundamental conclusions:

1. That indeed 'special friendly relations' were present between the parties in this case, although decisions by either party on any particular issue were made not purely on the basis of such special relations. For example, this Tribunal believes that, contrary to the allegation of (CHATHAM's) witnesses, the decision not to terminate the contract was not due to the admitted 'special relations' only, but also due to the greater problems the project would be faced with by terminating the MCI contract and mobilizing another