

THIRD DIVISION

[G.R. No. 110871, July 02, 1998]

**AMALIO L. SARMIENTO, DOING BUSINESS UNDER THE NAME
AND STYLE OF A.L. SARMIENTO CONSTRUCTION, PETITIONER,
VS. COURT OF APPEALS (NINTH DIVISION) AND METROPOLITAN
WATERWORKS AND SEWERAGE SYSTEM (MWSS),
RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

In this petition for review on certiorari, petitioner seeks the annulment of the decision of the Court of Appeals (CA-G.R. Civil Case No. 31602) promulgated on 23 October 1992 and its resolution dated 30 June 1993 denying petitioner's motion for reconsideration.

The facts leading to the present controversy are as follows:

On 15 December 1981, private respondent MWSS advertised for bidding by pre-qualified contractors, Contract No. RS-4 which involved the:

- 1) Modification and improvement of its eleven (11) existing pumping stations within Metro Manila;
- 2) Demolition and complete reconstruction of the existing Cubao Booster Pumping Station;
- 3) Construction of a new Booster pumping station at Novaliches and a 7 megalitre (ML) reinforced concrete reservoir, as well as other accessories and services necessary and incidental to construct and complete the work in accordance with the technical specification No. 1.1 of the Contract Documents.

On 6 April 1982, MWSS held the public bidding which petitioner won, his bid in the amount of P60,000,000.00 being the lowest. Included in said amount was the price of P13,500,000.00 for the supply, delivery and supervision of installation of new pump units (prime cost items) for the project.

On 14 October 1982, MWSS awarded petitioner the contract pursuant to Board Resolution No. 121-82 adopted on 9 September 1982.

On 21 December 1982, MWSS and petitioner executed the contract for the RS-4 project.

On 15 March 1983, MWSS issued petitioner the Notice to Proceed, upon receipt of which petitioner commenced construction of the project.

On 3 May 1983, MWSS released P9,000,000.00 to petitioner as advance payment for mobilization.

During the construction period, petitioner furnished MWSS eight (8) vehicles to be used in the RS-4 project and for which MWSS agreed to compensate petitioner.

On 14 August 1984, due to his tight financial situation brought about by rising inflation, petitioner wrote MWSS requesting a joint termination of the contract.

On 16 July 1984, pursuant to General Condition No. 62^[1] of the bid documents providing force majeure as basis for joint termination, MWSS and petitioner approved the joint termination of said project.

On 28 September 1984, MWSS informed petitioner that effective 1 October 1984, it would take over the rehabilitation of the Cubao, Makati and Novaliches pumping stations.

On 14 February 1989, due to MWSS' refusal to pay petitioner its alleged indebtedness, the latter filed a complaint for sum of money with the Regional Trial Court of Quezon City, to collect from MWSS the following:

1). The amount of P13,735,095.18 as net payable to plaintiff Sarmiento broken down as follows:

a). Exceeded quantities/overrun for civil works accomplished by plaintiff Sarmiento	P 10,925.62
b). For the use by MWSS of plaintiff Sarmiento's vehicles	101,849.65
c). For the loss by MWSS of plaintiff Sarmiento's vehicles	180,000.00
d). For foreign currency adjustment in the import of materials and equipment under SGC 10 of the contract documents	11,822,082.37
e). For the cost of exceeded quantities in the materials and equipment imported and delivered by plaintiff Sarmiento to MWSS	1,236,562.96
f). For the balance	

unspent in the prime cost items 6,135,784.14

g). For price escalation on plaintiff's accomplishment per Presidential Decree No. 1594

192,000.00

Total P9,679,207.74

Less: Partial Payment made by MWSS to plaintiff Sarmiento

1,854,303.19

Gross Amount Payable by MWSS to plaintiff Sarmiento

17,824,904.55

Less: Balance on 15%

Advance Payment For 4,089,809.37

Mobilization Given by MWSS

Net payable of MWSS to Plaintiff

P13,735,095.18

2) The amount of P500,000.00 as plaintiff's loss on trade discount for prime cost pump units.

3) The amount of P1,000,000.00 by way of attorney's fees.

4) The cost of suit. ^[2]

The Commission on Audit (COA) was impleaded as a nominal party. However, in an Order dated 29 June 1989, the trial court dismissed the complaint against the COA.

On 5 May 1989, MWSS filed its answer and set up the following counter-claims:

a) Unpaid balance of the mobilization fund

P4,089,809.37

b) Interest on the unpaid balance of the mobilization fund

3,896,043.20

c) Interest on the interest on the unpaid balance of the mobilization fund

3,178,530.82

d) Interest on the loan availed

of by the defendant MWSS

from Asian Development Bank for importation of materials and equipment	1,002,943.46
e)Interest on the interest on the loan availed of by MWSS from ADB	456,019.13
f)Customs charges advanced by defendant	317,861.36
g)Interest on the amount paid for customs charges advanced by defendant	86,812.89
h)Additional 3% mark-up for the cost of the imported equipment paid by defendant MWSS but disallowed by the Commission on Audit	503,628.38
i) Amount representing liquidated damages	6,000,000.00
j) Amount representing exemplary damages	2,000,000.00
k)Amount as and for attorney's fees equivalent to 10% of the total amount claimed	1,744,183.92 ^[3]

On 28 February 1991, the trial court rendered a decision in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby (sic) ordering defendant MWSS to pay plaintiff the net amount of P13,555,095.18 itemized as follows:

A. For overrun in civil works:	10,925.62
B. For defendant's use of plaintiff's vehicles:	101,849.65
C. For foreign currency adjustment under SGC 10:	11,822,082.37
D. For costs of exceeded quantities of imported materials and equipments:	1,236,562.96
E. For the balance of the bid price for prime cost items:	6,135,784.14
F. For trade discount for the prime cost items:	<u>500,000.00</u>

Total	P 19,499,207.74
Less: partial payment	17,644,904.56
P1,854,303.19	
Less: Bal. of 15% advance payment: 4,089,809.37	
Net payable to plaintiff:	P 13,555,095.18

Defendant is likewise ordered to pay plaintiff the sum of P1,000,000.00 as and by way of attorney's fees.

All other items (i.e. value of carnapped vehicle) are hereby excluded. Defendant's counterclaims are hereby DISMISSED.

Costs against defendant.

SO ORDERED.^[4]

Aggrieved by the trial court's decision, MWSS sought redress from the Court of Appeals.

On 23 October 1992, the Court of Appeals reversed the decision of the trial court:

WHEREFORE, the decision appealed from is hereby REVERSED to the extent that the amounts awarded to Amalio L. Sarmiento by the lower court are offset by MWSS's counterclaim which we have granted in the amount of P6,385,713.1 (excluding attorney's fees) computed as follows:

Amounts due MWSS

A. Unpaid balance of advance amount for mobilization	P3,896,043.20
B. Interest on A from June 18, 1983 to September 30, 1992 at 6% p.a	P2,170,745.30
C. Customs charges of imported Butterfly valves	P 317,861.36
D. Interest on C from April 23, 1987 and July 20, 1987, respectively, to September 30, 1992 at 6% p.a.	P 103,018.79
T O T A L	P6,487,758.50
Less	

Amounts due A.L. Sarmiento

A. For overrun in civil works due A.L. Sarmiento	P 195.78
B. Compensation for use of A.L. Sarmiento's eight (8)	P 101,849.65