

SPECIAL TWELFTH DIVISION

[CA–G.R. SP No. 131619, May 07, 2014]

MAVIMA GROUP INCORPORATED, PETITIONER, VS. CHRISTIAN BIBLE CHURCH OF THE PHILIPPINES, INC. AND PRUDENTIAL GUARANTEE AND ASSURANCE, INC., RESPONDENTS.

D E C I S I O N

DICDICAN, J.:

Before this Court is a Petition for Review^[1], filed pursuant to Rule 43 of the Revised Rules of Court, seeking to reverse the Final Award dated August 16, 2013^[2] issued by the Construction Industry Arbitration Commission in CIAC Case No. 46-2012.

Stripped of unnecessary details, the antecedent facts are the following:

Around October 2009, respondent Christian Bible Church of the Philippines Inc. (CBCPI), a religious corporation, hired Eduardo S. Casares Architects and Associates (ECCA) to design what was eventually known as the Construction of the Proposed Christian Bible Church of the Philippines Addition and Renovation Works to be located at Nos. 72 and 74 Talayan Road corner Maria Clara Street, Talayan Village, Quezon City.

A bidding for the construction of the project was conducted and petitioner Mavima Group Incorporated (Mavima) won with the lowest bid. Several negotiations between respondent CBCPI and petitioner Mavima ensued until finally, on September 19, 2011, CBCPI and Mavima executed the Construction Contract^[3] based on the agreed bid price of P95,757,183.52. The work to be performed was supposed to commence not later than on October 1, 2011 and to be completed not later than on November 30, 2012.

The project however proved to be riddled with problems as CBCPI's neighbors and the Talayan Ladies Association were opposed to the construction project. This situation was unfortunate because the acquisition of the neighbor's consent was claimed by petitioner Mavima to be one of the requirements for the issuance of a barangay clearance for the construction of the project. Moreover, the design of the project violated the height restrictions of the Talayan Village in the Quezon City Zoning Ordinance.

In response to the issues, Pastor Albert See, a representative of CBCPI, instructed ECCA to reduce the height of the building from more than 20 meters to only 10 meters. Pastor Albert See then assured petitioner Mavima that the revised plan was already submitted to the barangay captain and that neighbors of respondent CBCPI would be informed about the revised plan. Relying on Pastor Albert See's representations, petitioner Mavima performed some additional works, as instructed by Pastor Albert See, such as restoration of fence and rear portion of the church,

construction of additional fences, parking area development and re-installation of gate in the area.

As the project continued to be burdened with problems, Pastor Albert See met with Engr. Juancho Maglalang, the vice president and managing director of petitioner Mavima, to discuss alternatives to the project such as moving the project to a different location, the execution of a new contract and the termination of the existing one.

The events that transpired thereafter were debated upon by the parties before the arbitration commission. CBCPI claimed that it was exploring the possibility of mutually terminating the contract but that the parties did not agree with the computation of the refund of CBCPI's down payment/advance payment to Mavima. As there was no agreement to terminate the project, CBCPI directed Mavima to finish the project but, instead of finishing the project, petitioner Mavima abandoned the project. On the other hand, Mavima argued that CBCPI already terminated the contract.

Petitioner Mavima received a Notice of Default dated October 10, 2012 from respondent CBCPI. Less than a month later, or on November 6, 2012, respondent CBCPI filed a Request for Arbitration and Complaint with CIAC, claiming against Prudential Guarantee and Assurance, Inc., herein petitioner contractor Mavima and Romeo Vinco (president of Mavima Group Incorporated), refund of down payment, liquidated damages, additional costs and escalation to complete the project, reimbursement of premiums and other costs/charges, moral damages, exemplary damages, legal interest and cost of money, attorney's fees and litigation expenses, plus filing and arbitration fees. Petitioner Mavima and Prudential Guarantee and Assurance, Inc. presented their counter-claims and cross-claims.

On August 22, 2013, the CIAC issued its challenged Final Award, pertinent portion of which reads as follows:

"IV. AWARD

WHEREFORE, award is hereby made as follows:

Description	Claim	Award
Full refund of Down payment / advance payment	P19,151,436.70	19, 151, 436.7
Liquidated damages	P37,249,544.39	0.00
Additional costs to complete and escalation	P17,600,000.00	0.00
Reimbursement of premiums and other costs/ charges	P340,516.09	0.00
Moral damages	P250,000.00	0.00
Exemplary damages	P250,000.00	0.00

Legal interest and/or cost of money	P2,298,172.40	0.00
Attorney's fees and costs of arbitration	P1,000,000.00	0.00
TOTAL CBCPI	P78,139,669.58	19,151,436.71
Award to Respondent MAVIMA		-1, 121, 071.52
Net Award to Claimant		18, 030, 365.19
Cost of Arbitration chargeable to MAVIMA	698,106.56 - 460,612.61	237, 493.95
Award Chargeable to MAVIMA		18, 267, 859.14
Cost of Arbitration payable to PGAI	2, 663.83	-2, 663.83
TOTAL AWARD TO CLAIMANT		18, 265, 195.31
RESPONDENT MAVIMA		
Delay damages	P6,445,020.00	0.00
Work accomplishment	P3,664,937.07	1, 121, 071.52
Additional VAT, Withholding and City taxes	P1,156,959.20	0.00
Additional works	P282,471.16	0.00
Unrealized income	P10,453,915.50	0.00
Exemplary damages	P1,500,000.00	0.00
Attorney's fees	P1,000,000.00	0.00
TOTAL MAVIMA	P24,513,303.03	1, 121, 071.52
Cost of Arbitration		237, 493.95
Net Award to		883,

Respondent MAVIMA		577.57
Cross Respondent VINCO		
Cost of Arbitration	0.00	0.00
Total Award to Cross Respondent VIMCO	0.00	0.00
Cross Claimant PGAI		
Attorney's fees	P300,000.00	0.00
Cost of Arbitration	2, 663.83	2, 663.83
Net Award PGAI		2, 663.83

Cross Claimant/Respondent PGAI is awarded P2,663.83.

No award or charges to Respondent Vinco.

Claimant is awarded the net amount of P18,267,859. Claimant however is required to refund the arbitration fee of P2,663.83 to PGAI.

Claimant is ordered to pay PGAI the amount of P2,663.83.

Respondent therefore is ordered to pay the amount of P19,151,436.71 less the amount of accomplishment of P1,121,071.52, plus the cost of arbitration chargeable of P237,493.95 or a total of P18,267,859.14 to Claimant CBCPI within fifteen days from the promulgation of this award.

Claimant CBCPI is ordered to pay Cross Respondent PGAI the amount of P2,663.83 within 15 days from the promulgation of this award.

The award shall carry an interest of six percent (6%) per anum from the date of this Award until the same becomes final and executory and a further six percent (6%) per anum from finality of the award until the same is paid in full.

SO ORDERED.”^[4]

Not in conformity with CIAC's award, the petitioner filed the instant appeal, raising the following issues and/or assignment of errors, to wit:

I.

THE ARBITRAL TRIBUNAL ERRED IN LIMITING MAVIMA'S AWARD TO WORK ACCOMPLISHMENT AND REJECTING THE CLAIM FOR UNREALIZED INCOME IN THE AMOUNT OF P10,453,915.50.

II.

THE ARBITRAL TRIBUNAL ERRED IN NOT AWARDING THE CLAIM FOR ADDITIONAL WORK IN THE AMOUNT OF P282,471.16 IN FAVOR OF MAVIMA.

III.

THE ARBITRAL TRIBUNAL ERRED IN NOT AWARDING DELAY DAMAGES IN THE AMOUNT OF P6,444,020.00 IN FAVOR OF MAVIMA.^[5]

At the outset, considering that respondent CBCPI filed a Comment with Motion to Dismiss^[6] based on petitioner Mavima's supposed violation of Section 7 of Rule 43 of the Rules of Court, in relation to Section 6(c) of Rule 43 of the same Rules of Court, we shall first discuss the technical and procedural aspect of this case.

Section 6(c) of Rule 43 of the Rules of Court mandates that the petition shall be accompanied by a "clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers". In relation thereto, Section 7 of Rule 43 of the Rules of Court states in part that the failure of the petitioner to comply shall be sufficient ground for the dismissal of the petition.

We find that, although petitioner Mavima attached a certified true copy of the judgment appealed from, along with some other documents, petitioner Mavima failed to attach several documents in support of its allegations and assignment of errors. Notwithstanding this procedural lapse on the part of petitioner Mavima, in order to serve the higher interest of justice that the case be decided on the merits, especially considering that the relevant documents adverted to by respondent CBCPI in its Comment with Motion to Dismiss were eventually included in the record of the case on appeal, we find it prudent to brush aside technical lapses and, instead, let the substantial aspects of the case prevail.

Hence, we now delve into the substantial aspects or merits of the case.

After a careful scrutiny of the allegations of the parties and of the voluminous record of the case, we find that the assertions of petitioner Mavima are unconvincing and devoid of legal grounds to stand on.

In its first assignment of error, petitioner prays for an award of unrealized profits in the amount of P10,453,915.50. Firstly, petitioner Mavima imputes fault on respondent CBCPI for failure to obtain a barangay clearance because CBCPI allegedly did not even show that it consulted the residents before proceeding with the project. If efforts were exerted by the CBCPI towards its neighbors, these were either too late or simply not enough to placate the neighbors and obtain their consent. As a result, the barangay clearance cannot be issued and petitioner Mavima did not realize its expected profits. Secondly, the failure of the construction plan to conform with the zoning ordinance was also allegedly the fault of CBCPI and ECCA. If CBCPI was not at fault, it was, at the very least, allegedly in bad faith. Thirdly, petitioner Mavima sets forth the proposition that the September 11, 2011 Construction Contract was already terminated. Consequently, the legal consequences attached to the termination, such as the award of unrealized income, are supposed to apply.