

EN BANC

[G.R. Nos. 187552-53, October 15, 2019]

SHANGRI-LA PROPERTIES, INC. (NOW KNOWN AS SHANG PROPERTIES, INC.), PETITIONER, V. BF CORPORATION, RESPONDENT.

[G.R. Nos. 187608-09, October 15, 2019]

BF CORPORATION, PETITIONER, V. SHANGRI-LA PROPERTIES, INC. (SLPI), NOW KNOWN AS EDSA PROPERTIES HOLDINGS, INC.; THE PANEL OF VOLUNTARY ARBITRATORS (ENGR. ELISEO I. EVANGELISTA, MS. ALICIA TIONGSON, AND ATTY. MARIO EUGENIO V. LIM), ALFREDO C. RAMOS, RUFO B. COLAYCO, ANTONIO B. OLBES, GERARDO O. LANUZA, JR., MAXIMO G. LICAUCO III, AND BENJAMIN C. RAMOS, RESPONDENTS.

DECISION

BERSAMIN, C.J.:

As a rule, the factual findings of the arbitrators of the Construction Industry Arbitration Commission (CIAC), being final and conclusive, are not reviewable by this Court on appeal. But the rule admits of several exceptions, such as when the findings of the Court of Appeals (CA) are contrary to those made by the arbitrators.^[1]

The Case

Before the Court are the consolidated appeals of Shangri-la Properties, Inc. (SLPI) and BF Corporation (BFC) to separately assail the decision promulgated on August 12, 2008^[2] and the resolution promulgated on April 16, 2009,^[3] whereby the CA partially modified the award of the Arbitral Tribunal composed of Engr. Eliseo Evangelista, Ms. Alicia Tiongson and Atty. Mario Eugenio Lim (Arbitral Tribunal) in connection with their dispute arising from their construction agreement.

This Court finds no reason to disturb the factual findings of the CIAC arbitrators as affirmed by the CA for being supported by the evidence on record. However, the Court proceeds to review the modifications of the arbitral award made by the CA.

Antecedents

The CA summarized the procedural and factual antecedents, as follows:

The present controversy originated from the agreement of Shangri-la Properties, Inc. (SLPI) and BF Corporation (BFC) for the execution of the builder's work for Phases I and II, and the Car Parking Structure (Carpark) of the EDSA Plaza Project (Project) in Mandaluyong City, embodied in the parties' contract documents. SLPI was the project owner and BFC was the trade contractor. BFC sued SLPI and the members of the latter's board of directors (Alfredo C. Ramos, Rufo B. Colayco, Antonio B. Olbes, Gerardo O. Lanuza Jr., Maximo G. Licauco III and Benjamin C. Ramos) for the collection of P228,630,807.80. The case was docketed as Civil Case No. 63400 in the Regional Trial Court of Pasig City (Branch 157). The proceedings before the trial court was stayed by this court, as affirmed by the Supreme Court, until termination of an arbitration proceeding as required in their contract.

BFC filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC), but the same was eventually dismissed, without prejudice, on the ground that the arbitration between BFC and SLPI must be undertaken in accordance with Republic Act No. 876. Subsequently, the trial court revived the case and directed the parties to proceed with the arbitration proceeding in accordance with R.A. No. 876. Engr. Eliseo Evangelista, Ms. Alicia Tiongson and Atty. Mario Eugenio Lim were tasked to resolve the controversy as

members of the Arbitral Tribunal. The issues submitted for the resolution of the Arbitral Tribunal include:

1. *Is Plaintiff [BFC] entitled to its claim for damage and repair? If so, how much?*
 - 1.1 *Is the claim for fire damage and repairs of BF Corporation already settled under the Release and Discharge Agreement (Exhibit C-10) dated 23 May 1991?*
 - 1.2 *Is the claim for fire damage and repairs of Plaintiff an arbitral issue?*
 - 1.3 *Was SLPI actually paid the insurance amount?*
2. *Is Plaintiff entitled to its claim for the following damages?*
 - 2.1 *Unpaid Progress Billings? If so, how much?*
 - 2.2 *Unpaid Change Orders? If so, how much?*
 - 2.3 *Fixed and provisional attendances? If so, how much?*
 - 2.4 *Damages by nominated sub-contractors? If so, how much?*
 - 2.5 *Retention money? If so, how much?*
 - 2.6 *Other damages? If so, how much?*
3. *Is Plaintiff entitled to its claim for legal interest? If so, how much?*
4. *Is Defendant SLPI entitled to its counterclaim for liquidated damages under the Construction Agreements (Exhibits C-13 and C-14)?*
 - 4.1 *Did Plaintiff incur delays in completion of works for such projects?*
 - 4.2 *Is Plaintiff entitled to time extensions?*
5. *Is Defendant SLPI entitled to its counterclaim for other damages in the amount of P 4 million plus legal interest?*
6. *Are the individual defendants entitled to their counterclaims against Plaintiff? If so, how much?*
 - 6.1 *Are the individual defendants jointly and severally liable with SLPI for the claims of the Plaintiff?*
7. *Which among the parties is entitled to attorney's fees and if so, how much?*
8. *Which among the parties shall bear the cost of arbitration?*

After weighing the evidence on hand, the Arbitral Tribunal arrived at its assailed decision and made the following award:

WHEREFORE, in light of the foregoing discussions, judgment is hereby rendered awarding the Parties of their various claims as follows:

AWARD To Plaintiff BF Corporation (BFC):

1. Award in issue
no. 2.1 for
BFC's unpaid
progress billing
for Contract
Bills and
Change Orders

*P11,709,
468.13*

| | |
|--|-----------------------|
| 2. Award in issue no. 2.2 for accomplished but unpaid Change Orders | 6,201,278.50 |
| 3. Award in issue no. 2.3. for unpaid Fixed and Provisional attendances provided by BFC | 4,351, 874.23 |
| 4. Award in issue no. 2.4 for damages by SLPI's Nominated sub- contractor | 381,000.19 |
| 5. Award in issue no. 2.5 for compensatory damages consisting of retention money | 10,422,356.21 |
| 6. Award in issue no. 3 for legal interest in the amount of | 12,382,710.73 |
| 7. Arbitration Costs | <u>1,457,290.80</u> |
| Total | P46,905,978.79 |
| AWARD to | |
| Defendant | |
| Shangri-La | |
| Properties, Inc. | |
| (SLPI): | |
| 1. Liquidated damages in Issue no. 4.1 | P7,590,000.00 |
| 2. Other counterclaims in Issue no. 5 | 540,315.10 |
| 3. Arbitration Costs | <u>257,168.96</u> |
| Total | P8,387,484.06 |
| NET AWARD TO BFC | P38,518,494.73 |

After offsetting the respective awards to the parties, Defendant Shangri-La Properties, Inc. (SLPI) is hereby ordered by this Tribunal to pay Plaintiff BF Corporation (BFC) a net amount of Thirty Eight Million Five Hundred Eighteen Thousand Four Hundred Ninety Four & 73/100 (P38,518,494.73) Pesos plus legal interest at the rate of Six (6%) Percent per annum beginning from the date of this Decision (July 31 2007) until Decision becomes final and executory, and the rate to be increased to Twelve (12%) Percent per annum from the date the herein Decision becomes final and executory until fully paid.

SO ORDERED.^[4]

Ruling of the Arbitral Tribunal

In the ruling of the Arbitral Tribunal,^[5] the varying claims of both parties were partially upheld, with BFC being awarded P46,905,978.79 and SLPI P8,387,484.06. Offsetting, the Arbitral Tribunal ordered SLPI to pay BFC the final net award of P38,518,494.73 plus legal interest.^[6]

The Arbitral Tribunal discussed each issue, starting with those on the fire damage and repairs. It denied BFC's claims for fire damage and repairs because the agreement only allowed BFC to recover said claims from fire insurance proceeds. It explained that BFC could not recover upon its claim because there was no clear and convincing proof showing that SLPI had actually collected any insurance proceeds arising from the fire.^[7]

As for BFC's claims for unpaid progress billings, the Arbitral Tribunal segregated the claims into two types, namely: of the first type were the billings for the original scope of work under the agreement (contract bills), and of the second were the billings for unpaid variation orders.^[8] The Arbitral Tribunal ruled that BFC was entitled to the payment of the contract bills for having completed the original scope of work by finishing construction of Phase I, Phase II, and the Carpark of the Project,^[9] but allowed only P1,745,116.07 for the contract bills due to the absence of SLPI's conformity and in view of the discrepancies in BFC's computation.^[10] As to the second type, the Arbitral Tribunal concluded that SLPI had given the required written authorization for the performance of the works,^[11] and allotted P9,513,987.91 to BFC;^[12] hence, it granted P11,709,468.13 for the unpaid progress billings (inclusive of 4% VAT).^[13]

For the unpaid change orders not included in the progress billings, the Arbitral Tribunal held that there was written authorization from SLPI;^[14] hence, it granted P6,201,278.50 to BFC for the change orders shown to have SLPI's written authorization.^[15]

The Arbitral Tribunal upheld BFC's claims for fixed and provisional attendances amounting to P4,351,874.23 considering that such claims were provided for under the parties' agreement. ^[16]

The Arbitral Tribunal partially upheld BFC's claim for damages amounting to P381,000.19 caused by SLPI's nominated sub-contractors because the parties had agreed that damages caused by nominated subcontractors would be charged by SLPI to the concerned nominated subcontractor, and thereafter credited by SLPI to BFC.^[17]

As for BFC's claim for retention money, the Arbitral Tribunal awarded P10,422,356.21 because the parties' agreement clearly provided for the release of the retention money. Moreover, SLPI admitted that there was basis for the claim and agreed to return said amount to BFC.^[18]

On the other hand, SLPI was awarded P7,590,000.00 in liquidated damages for the delays incurred in finishing phases I and II of the Project.^[19] In addition, SLPI was partially awarded on its other counterclaims worth P540,315.10 for costs incurred to correct and/or repair the defective works of BFC.^[20]

Finally, the Arbitral Tribunal ruled that both parties were liable for the arbitration costs divided *pro rata*. As such, SLPI was ordered to pay P257,168.96 while BFC was ordered to pay P1,457,290.80 representing arbitration costs shared in proportion to their respective awards.^[21]

Decision of the CA

Dissatisfied, SLPI and BFC separately appealed to the CA (respectively docketed as C.A.-G.R. No 100179 and C.A.-G.R. No. 100272).

On August 12, 2008, the CA promulgated the assailed decision partially granting the consolidated petitions.^[22]

The CA affirmed the Arbitral Tribunal's ruling on the following matters, namely: (1) the denial of BFC's reimbursement for fire damage repairs for failure to prove that SLPI received fire insurance proceeds;^[23] (2) BFC's award consisting of fixed and provisional attendances;^[24] (3) BFC's award of compensatory damages consisting of the retention money;^[25] and (4) SLPI's award of other counterclaims.^[26]

The CA modified the following awards, as follows: (1) increased BFC's award of unpaid progress billings based on the original scope of work; (2) reduced BFC's award of unpaid progress billings on variation orders; (3) reduced BFC's award for the legal interest due on the works on variation orders and the retention money; (4) modified the arbitration costs to be shouldered equally by SLPI and BFC; (5) deleted BFC's award for damages caused by SLPI's nominal sub-contractors; and (6) reduced SLPI's award of liquidated damages.^[27]

The CA disposed thusly:

WHEREFORE, the consolidated petitions are hereby **PARTIALLY GRANTED**. The 31 July 2007 decision of the Arbitral Tribunal is hereby **MODIFIED** as follows:

A. Award to BFC:

1. Unpaid progress billings based on the original scope of work in the amount of **P24,497,555.91**, as increased accordingly;
2. Unpaid progress billing on the works on variation orders in the amount of **P325,209.74**, as reduced accordingly;
3. Unpaid fixed and provisional attendances in the amount of **P4,351,874.23**, as awarded by the Arbitral Tribunal;
4. Compensatory damages consisting of the retention money amounting to **P10,422,356.21**, as awarded by the Arbitral Tribunal
5. Legal interest due on the unpaid progress billings on the works on variation orders and the retention money, in the amount of **P9,054,824.31**; and
6. Arbitration costs in the amount of **P857,229.88**, as reduced accordingly.

The award of P,381,000.19 representing damages caused by the other contractors to BFC, is deleted.

B. Award to SLPI:

1. Liquidated damages in the amount of **P780,000.00**, as reduced accordingly;
2. Other counterclaims in the amount of **P540,315.10**, as awarded by the Arbitral Tribunal; and
3. Arbitration costs in the amount of **P857,229.88**, as increased accordingly.

Offsetting the respective awards to BFC and SLPI leaves the amount of Forty Seven Million Three Hundred Thirty One Thousand Five Hundred Five Pesos and Thirty Cents (**P47,331,505.30**). **Shangri-la Properties, Inc. (now known as Shang Properties, Inc.) is directed to pay BF Corporation the amount of P47,331,505.30 plus legal interest at the rate of six percent (6%) per annum from 31 July 2007 (the date of the decision of the Arbitral Tribunal) until the finality of this decision and thereafter, at the rate of twelve percent (12%) per annum, until said amount is fully paid.**

The aspects of the decision of the Arbitral Tribunal, not otherwise modified by this decision, are AFFIRMED.