

# FIRST DIVISION

[ G.R. Nos. 193893-94, October 09, 2019 ]

## LAND BANK OF THE PHILIPPINES, PETITIONER, VS. MEGAWORLD CORPORATION, RESPONDENT.

### D E C I S I O N

#### **BERSAMIN, C.J.:**

Land Bank of the Philippines (Landbank) appeals to reverse and set aside the consolidated decision promulgated on September 27, 2010 by the Court of Appeals (CA) in C.A.-G.R. SP No. 102116 involving the proper computation of its counterclaim as against the claim of respondent Megaworld Corporation (Megaworld) arising from their contract for the construction of Landbank's corporate headquarters in Malate, Manila.<sup>[1]</sup>

#### **Antecedents**

Landbank is the registered owner of a parcel of land with an area of 12,739.30 square meters (property) situated in Malate, Manila. In 1995, it entered into a property development contract (agreement)<sup>[2]</sup> whereby Megaworld undertook to construct on the property a 35-storey building to be known as the Landbank Plaza, Landbank's proposed corporate headquarters that would include a first-class commercial and residential condominium complex (project).<sup>[3]</sup>

In 1999, Megaworld notified Landbank that it had already completed the project. Nonetheless, Landbank did not issue a certificate of completion and acceptance in favor of Megaworld, but only released PI68 million from the money retained under the agreement based on the accomplishment rate of 96.7586%.<sup>[4]</sup>

Almost three years following the notice of completion, Landbank had wholly occupied the project. Insisting that Landbank had not yet settled its balance in full, Megaworld demanded payment of the retention money equivalent to 10% of every progress billing,<sup>[5]</sup> as well as payment of its billings for various change orders and rectification works performed from July 1999 to August 2002. When its demands went unheeded, Megaworld brought a claim for collection against Landbank in the Construction Industry Arbitration Commission (CIAC).<sup>[6]</sup>

In its answer, Landbank denied liability for the several change orders being claimed by Megaworld; and countered that it had performed certain works at its own expense, for which it had to procure the services of other contractors [e.g., Landbank Realty and Development Corporation (LRDC) and Professor Torsten Calvi Corporation (PTCC)]<sup>[7]</sup> to complete the project because of Megaworld's delay in correcting the reported defects. Landbank asserted that Megaworld should reimburse it for the additional costs, and be further liable for exemplary damages

and attorney's fees.<sup>[8]</sup>

The parties agreed to Terms of Reference (TOR) in the CIAC.<sup>[9]</sup> The TOR partly stipulated:

## **X. PRESENTATION OF EVIDENCE**

Presentation of testimonial evidence shall be by way of affidavits of witnesses (with all the documentary evidence identified and attached thereto) in lieu of direct testimony, to be submitted to the CIAC Secretariat in two (2) copies, and one copy furnished the opposing party. All affidavits of witnesses shall be submitted simultaneously. All documentary evidence submitted by the parties shall be admitted, leaving to the Arbitral Tribunal the determination of the appropriate weight to be given to such evidence.

Conformably with the TOR, the parties submitted affidavits of their respective witnesses, the lists of exhibits, and offers of documents. They began presenting evidence on October 22, 2007.<sup>[10]</sup>

On October 30, 2007, Landbank offered additional documents as evidence in the CIAC<sup>[11]</sup> but without having previously furnished Megaworld with copies thereof prior to the trial.<sup>[12]</sup> In the order dated November 9, 2007, therefore, the CIAC denied Landbank's offer of additional documents as evidence for violating Section 13.9, Rule 13 of the *Revised Rules of Procedure Governing Construction Arbitration* (Arbitration Rules), to wit:

SECTION 13.9 Offer of documents. - All documents not offered with the Arbitral Tribunal at the hearing but which are arranged at the hearing subsequently by agreement of the parties to be submitted, shall be filed within five (5) days from the termination of the hearing. All parties shall be afforded an opportunity to examine such documents.

Landbank moved for the reconsideration of the denial, insisting that it had substantially complied with Section 13.9. It stated that, firstly, it had repeatedly manifested the intention to submit the additional documents during the formal hearing;<sup>[13]</sup> secondly, Megaworld had not objected to its manifestation;<sup>[14]</sup> thirdly, Megaworld had been given the opportunity to examine the additional documents being submitted because Landbank had personally served copies of the documents upon the latter's counsel on October 30, 2007; fourthly, it had submitted the documents within five days from the formal hearing's termination;<sup>[15]</sup> and, fifthly, some of the additional documents had been identified by its witnesses in the course of their testimonies and admitted by the CIAC.<sup>[16]</sup>

After Megaworld commented on Landbank's motion for reconsideration,<sup>[17]</sup> the CIAC granted the motion and admitted all of Landbank's additional documents on December 15, 2007.<sup>[18]</sup>

## **The CIAC's Arbitral Award**

Six days later, or on December 21, 2007, the CIAC rendered its original award

recognizing Megaworld's claims totaling P77,820,406.03 and Landbank's counterclaims of P70,820,738.44, and awarding in favor of Megaworld the net amount of P6,999,667.59,<sup>[19]</sup> computed as follows:

Megaworld's Claims

Unpaid balance of the original contract	P58,807,095.16
Approved changed orders under Batch No. 1	708,975.80
Approved changed orders under Batch No. 2	8,240,058.00
Damages from forced work suspension	2,520,000.00
Balance of retention money held by Landbank	<u>7,544,277.07</u>
Subtotal	P77,820,406.03

Landbank's Counterclaims

*Items to be deducted from Megaworld's claim:*

As admitted by Megaworld	P1,776,791.50
Magnetic door contact and CCTV	2,924,000.00
Downgrading of the stainless to a painted steel tank	899,504.00
Telephone manholes	36,585.13
Works on open trenches at the basement and parking areas	2,017,377.12

*Rectification works*

Curtain wall/punched windows and ground floor glass curtain wall	40,975,126.41
Slope of parking areas	16,200,000.00

*Other costs*

Removal of protruding bars	61,155.00
Electrical works for the telephone system	4,717,619.28
Waterproofing at the toilet areas	603,050.00
Concrete topping at the toilet areas	189,530.00
Waterproofing at the 4th floor parking area	<u>420,000.00</u>

Subtotal	<u>70,820,738.44</u>
<b>Net award due to</b>	<b><u>P6,999,667.59</u></b>

## Megaworld

Landbank moved to correct the original award.<sup>[20]</sup>

After evaluating Landbank's motion and Megaworld's opposition,<sup>[21]</sup> the CIAC amended the award on January 28, 2008 by increasing Landbank's counterclaims to P71,640,607.82, and decreasing the net award in favor of Megaworld to P6,179,798.21 (amended award),<sup>[22]</sup> viz:

### Megaworld's Claims

#### **Unpaid balance of the original contract P58,807,095.16**

Approved changed orders under Batch No. 1 708,975.80

Approved changed orders under Batch No. 2 8,240,058.00

#### **Damages from forced work suspension 2,520,000.00**

Balance of retention money held by Landbank 7,544,277.07

Subtotal P77,820,406.03

### Landbank's Counterclaims

*Items to be deducted from Megaworld's claim:*

As admitted by Megaworld P1,776,791.50

Magnetic door contact and CCTV 2,924,000.00

Downgrading of the stainless to a painted steel tank 899,504.00

Telephone manholes 36,585.13

#### **Works on open trenches at the basement and parking areas 2,017,377.12**

#### **Megaworld's share in Meralco billings 288,000.00**

*Rectification works*

**Curtain wall/punched windows and ground floor glass curtain wall 40,975,126.41**

**Slope of parking areas 16,200,000.00**

Additional 399,453.66

*Other costs*

Removal of protruding bars	61,155.00
<b>Electrical works for the telephone system</b>	<b>4,717,619.28</b>
Waterproofing at the toilet areas	603,050.00
Concrete topping at the toilet areas	189,530.00
Waterproofing at the 4th floor parking area	420,000.00
<b>Land use and fees in securing location clearance</b>	<b>132,415.72</b>
Subtotal	<u>71,640,606.82</u>
<b>Net award due to Megaworld</b>	<b><u>P6,179,798.21</u></b>

Both parties appealed to the CA.

### **Decision of the CA**

On its part, Landbank disputed the following items in relation to Megaworld's claim, namely: (1) the unpaid balance of the original contract amounting to P58,807,095.16; and (2) damages from forced work suspension aggregating P2,520,000.00.

On the other hand, Megaworld assailed the following portions of the counterclaim of Landbank, specifically: (1) deductions from its claims pertaining to works on open trenches/canals valued at P2,017,377.12, and its share in the Meralco billings in the sum of P288,000.00; (2) rectification works pertaining to curtain wall/punched windows and ground floor glass curtain wall costing P40,975,126.41, and to the slope of parking areas costing P16,200,000.00; (3) other costs such as those for electrical works for the telephone system in the amount of P4,717,619.28, and land use and fees in securing location clearance in the sum of P132,415.72.

In its consolidated decision, the CA modified the net award in favor of Megaworld to P35,779,501.32, viz:

In view of all the foregoing, the Amended Award rendered by the Construction Industry Arbitration Commission (CIAC), as contained in the Order dated January 28, 2008, in CIAC Case No. 23-2007, is hereby MODIFIED in that:

(1) The award granted to Land Bank of the Philippines for rectification works on the curtain wall, punched windows and ground floor glass curtain wall is equitably **reduced** to **Php32,293,042.58** from Php40,975,126.41;

(2) The amount of Php16,200,000.00 awarded to Land Bank of the Philippines for rectification works on slopes for parking areas is **deleted**; and