

THIRD DIVISION

[G.R. No. 200401, January 17, 2018]

**METRO RAIL TRANSIT DEVELOPMENT CORPORATION,
PETITIONER, V. GAMMON PHILIPPINES, INC., RESPONDENT.**

DECISION

LEONEN, J.:

This resolves a Petition for Review on Certiorari^[1] assailing the Court of Appeals October 14, 2011 Decision^[2] and January 25, 2012 Resolution^[3] in CA-GR. SP No. 98569. The assailed Decision affirmed the Construction Industry Arbitration Commission (CIAC) Decision,^[4] which awarded Gammon Philippines, Inc. (Gammon) its monetary claims for lost profits and reimbursements for engineering services, design work, and site de-watering and clean up, due to breach of contract.^[5] The assailed Resolution denied Metro Rail Transit Development Corporation's (MRT) Motion for Reconsideration.^[6]

This case involves MRT's MRT-3 North Triangle Description Project (Project), covering 54 hectares of land, out of which 16 hectares were allotted for a commercial center. Half of the commercial center would be used for a podium structure (Podium), which was meant to provide the structure for the Project's Leasable Retail Development and to serve as the maintenance depot of the rail transit system.^[7]

Parsons Interpro JV (Parsons) was the Management Team authorized to oversee the construction's execution.^[8]

On April 30, 1997, Gammon received from Parsons an invitation to bid for the complete concrete works of the Podium. The scope of the work involved supplying the necessary materials, labor, plants, tools, equipment, facilities, supervision, and services for the construction of Level 1 to Level 4 of the Podium.^[9]

On May 30, 1997, Gammon submitted three (3) separate bids and several clarifications on certain provisions of the Instruction to Bidders and the General Conditions of Contract.^[10]

Gammon won the bid. On August 27, 1997, Parsons issued a Letter of Award and Notice to Proceed (First Notice to Proceed) to Gammon.^[11] It was accompanied by the formal contract documents. The First Notice to Proceed stated:

We are pleased to inform [you] that you have been awarded the work on the construction of the Podium Structure for the MRT-3 EDSA-North Triangle Development Project. The formal contract document, which is the product of a series of discussions and negotiation[,], is herewith attached for your signature.

The Work includes the furnishing of labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with contract document, approved drawings, specifications and your over-all Breakdown of Lump Sum Bid (marked Exhibit "A") amounting to ONE BILLION FOUR HUNDRED ONE MILLION SIX HUNDRED SEVENTY[-]TWO THOUSAND NINETY[-] FIVE PESOS (P1,401,672,095.00). It is understood that due to the existing squatters in the Area, the work shall be divided in two (2) separate geographical areas designated as Phase I and Phase II - but shall be treated as one contract and still totaling to P1,401,672,095.00. Further, this award is predicated on the commitments contained in the attached comfort letter (marked Exhibit "B") issued by Gammon Construction Limited, your associate company overseas and receipt of the duly signed letter from the Chief Executive of Gammon Construction Limited that is expected within seven days from the date hereof.

. . . .

You may, therefore, proceed with the work at Phase I starting seven (7) days from receipt of this Notice or from the time that Site is dewatered and cleaned up, whichever is the later. It is further understood that Gammon agrees to continue Phase II at the price stated above and the starting time thereof will depend on the completion by others of the footings in time to allow construction of the superstructure in accordance with Gammon's Tender Programme dated 13 August 1997.

. . . .

Please signify your concurrence by signing the appropriate space below and in the accompanying contract documents and return to Parsons-Interpro the originals. We will send to you a complete set of documents as soon as it is signed by the Owner.^[12]

In a Letter dated September 2, 1997 (First Letter), Gammon signed and returned the First Notice to Proceed without the contract documents.^[13] The First Letter stated:

MRT 3 North Triangle Development
Superstructure Contract
Letter of Award/Notice to Proceed

We return herewith the original copy of the above[-]mentioned letter which we have countersigned dated 28 August '97. (Please note that Mr. Salagdo's signature is missing).

The contract documentation submitted under cover of your letter is being reviewed now, and should be signed and returned to you tomorrow. The Letter of Comfort has now been signed by the Chief Executive of Gammon Construction Ltd., and is being returned this week.

We confirm that we mobilised resources to site on Friday, 29 August '97 to pump out floodwater. Cleaning up of mud and debris will follow on this week.

During this mobilisation phase, our Site Manager is Mr. Ferdinand Fabro who we introduced to you during the Preconstruction meeting last

Thursday, 28 August '97.

We enclose herewith a copy of our Mobilisation Programme dated 1 September '97 (4 x A3 sheets) which includes Design activities, Mobilisation activities, initial Construction activities, key plant and formwork items.

Our Design Team have now relocated to our office in Makati, and are continuing with preparation of shop drawings of all slabs.

We will submit a project organisation chart shortly but in the meantime, we confirm that the following senior [Gammon Philippines, Inc.] staff are now allocated to the project:

. . . .

As soon as layout of temporary facilities has been agreed with you, establishment will commence in the very limited space allocated ...

We have today received ... drawings marked "For Construction", and unless we hear from you to the contrary, we will proceed to procure materials for, plan and construct walls and columns based on these drawings. However, please note that the 3 sheets of construction notes have not been issued. We therefore request issue of these drawings. In addition, there are fifteen 'Requests for Information' (RFIs) which were forwarded to you yesterday - these cover queries which affect both design of slabs and construction of walls, columns and beams. In particular, we urgently need instructions to clarify the reinforcement specification generally, and connectors/splicing of column reinforcement.

Finally, our Performance Bond and Advance Payment Bond are being prepared now - we hope to submit these by end of this week.^[14]

In a Letter dated September 3, 1997 (Second Letter), Gammon transmitted to Parsons a signed Letter of Comfort to guarantee its obligations in the Project.^[15]

However, in a Letter dated September 8, 1997, MRT wrote Gammon that it would need one (1) or two (2) weeks before it could issue the latter the Formal Notice to Proceed:^[16]

Re: Contract for LRT3 North Triangle Podium Structure

Gentlemen:

Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to proceed to your company. When these possible effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.^[17]

On September 9, 1997, Gammon transmitted the contract documents to Parsons.
^[18]

In a facsimile transmission sent on the same day, Parsons directed Gammon "to hold any further mobilization activities."^[19]

In a Letter dated September 10, 1997, Gammon stated:

"A NOTICE OF AWARD & NOTICE TO PROCEED addressed to Gammon Philippines Inc. (GPI) was issued by your Project Managers, Parsons Interpro JV dated 27th August 1997 and has been signed, accepted and an original returned to them by our authorised people, therefore a contract exists between MTRDC and GPI.

The formal contract document has been issued to us for final review and has been signed and returned to your Project Managers.

In accordance with the NOA & NTP Gammon Construction Ltd. have provided you with the required letter of guarantee in respect of fulfillment by GCL of GPI's obligations under the Contract in the event of GPI's insolvency.

By the [Notice of Award] & [Notice to Proceed] [Gammon] were (sic) required to proceed with the work starting seven days from receipt of that Notice and it was agreed we would commence dewatering of the flooded site and clean up immediately, under a Change Order, and that the construction period would run from the date of achieving the clean up of the site. It was anticipated that these clean up works would take 11 days.

We are therefore bound by these commitments."^[20]

On September 11, 1997, Gammon sent Parsons a facsimile to confirm if all requirements in the contract documents were temporarily suspended pending the clarification of the scope and programming of the Project.^[21]

In a facsimile transmission dated September 12, 1997, Parsons confirmed "the temporary suspension of all [the] requirements under the contract except the re-design of the project floor slabs and the site de-watering and clean up."^[22]

Thereafter, MRT decided to downscale the Podium's construction and to proceed with the Project's conceptual redesign.^[23]

Upon Parson's request order, Gammon studied and discussed with MRT the best option to phase the work.^[24]

On November 7, 1997, Gammon presented to MRT the sequencing and phasing of the work.^[25]

MRT decided to adopt Gammon's recommendation to construct the Podium up to Level 2 only. ^[26]

Due to these revisions on the scope of work, MRT also decided to re design the Level 2 slab, which it perceived would be exposed to more load stresses from prolonged exposure to elements and the weight of heavy construction equipment. MRT asked Gammon to re-design.^[27]

On February 18, 1998, Parsons issued Gammon a Notice of Award and Notice to Proceed (Second Notice to Proceed) for the engineering services based on the redesigned plan.^[28] The Second Notice to Proceed stated:

This Notice to Proceed is for the work to be rolled-in into a Lump Sum Contract. In the event that this contract will not be finalized in the near future, any and all expenses that are necessary and directly incurred by you in connection therewith shall be reimbursed based on actual cost plus a negotiated fee.^[29]

Gammon signed the Second Notice to Proceed on March 11, 1998 with qualification:

The Contractor refers to the Notice of Award and Notice to Proceed dated 27 August 1997, and understands that this Notice to Proceed effectively lifts the suspension of work notified in MRTDC letter dated 8 September 1997, in respect of the design activities only for all of the Level 2 slab and that part of the Level 3 slab over the Depot Maintenance Shop and office area . . . ; and that the existing Notice of Award dated 27 August 1997 is still valid.^[30]

On March 3, 1998, Gammon submitted to Parsons a Revised Lump Sum Price Proposal of P1,044,055,102.00^[31] for the construction of the Podium up to Level 2, including the design of the floor slab at Level 2.^[32] At this time, Gammon had already started its engineering services pursuant to the Second Notice to Proceed.^[33]

In its Letter dated March 6, 1998, Gammon sent Parsons a breakdown of the Revised Extra Contract Expenses it allegedly incurred in connection with the works' suspension amounting to P17,241,505.16. ^[34]

In its Letter dated March 11, 1998, Gammon notified Parsons of its revised Breakdown of Lump Sum Price worth P1,062,986,607.00.^[35]

On April 2, 1998, MRT issued in favor of Gammon another Notice of Award and Notice to Proceed (Third Notice to Proceed).^[36]

In its Letter dated April 8, 1998, Gammon acknowledged receipt of the Third Notice to Proceed and requested clarification of certain items.^[37]

On April 22, 1998, Parsons wrote Gammon, stating that "since the building ha[d] been revised . . . structural changes [would] be needed and quantities may change."^[38]

On April 29, 1998, Gammon wrote Parsons, confirming its readiness to start mobilization and requesting clarification of "urgent issues requiring resolution."^[39]

In its Letter dated May 7, 1998, Parsons informed Gammon that MRT was temporarily rescinding the Third Notice to Proceed, noting that it remained unaccepted by Gammon.^[40]

On June 11, 1998, Gammon received from Parsons the Contract for the Construction and Development of the Superstructure, MRT-3 North Triangle - Amended Notice to Proceed dated June 10, 1998 (Fourth Notice to Proceed).^[41]