

THIRD DIVISION

[G.R. No. 187543, February 08, 2017]

**WERR CORPORATION INTERNATIONAL, PETITIONER, VS.
HIGHLANDS PRIME, INC., RESPONDENT.**

[G.R. No. 187580]

**HIGHLANDS PRIME, INC., PETITIONER, VS. WERR
CORPORATION INTERNATIONAL, RESPONDENT.**

D E C I S I O N

JARDELEZA, J.:

These are consolidated petitions^[1] seeking to nullify the Court of Appeals' (CA) February 9, 2009 Decision^[2] and April 16, 2009 Resolution^[3] in CA-G.R. SP No. 105013. The CA modified the August 11, 2008 Decision^[4] of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 09-2008, viz.:

WHEREFORE, premises considered, the instant petition for review is **PARTLY GRANTED**. The assailed Decision dated August 11, 2008 of the Construction Industry Arbitration Commission in CIAC Case No. 09-2008 is hereby **MODIFIED** as follows:

- 1) Respondent Werr Corporation International shall pay petitioner Highlands Prime, Inc. liquidated damages in the amount of P8,969,330.70;
- 2) Petitioner Highlands Prime, Inc. shall return to respondent Werr Corporation International the balance of its retention money in the amount of P10,955,899.80 with the right to offset the award for liquidated damages in the aforesaid amount of P8,969,330.70; and
- 3) The cost of arbitration shall be shared equally by the parties.

The rest of the decision stands.

SO ORDERED.^[5]

Facts

Highlands Prime, Inc. (HPI) and Werr Corporation International (Werr) are domestic corporations engaged in property development and construction, respectively. For the construction of 54 residential units contained in three clusters of five-storey condominium structures, known as "The Horizon-Westridge Project," in Tagaytay Midlands Complex, Talisay, Batangas, the project owner, HPI, issued a Notice of Award/Notice to Proceed^[6] to its chosen contractor, Werr, on July 22, 2005.

Thereafter, the parties executed a General Building Agreement^[7] (Agreement) on November 17, 2005.^[8]

Under the Agreement, Werr had the obligation to complete the project within 210 calendar days from receipt of the Notice of Award/Notice to Proceed on July 22, 2005, or until February 19, 2006.^[9] For the completion of the project, HPI undertook to pay Werr a lump sum contract price of P271,797,900.00 inclusive of applicable taxes, supply and transportation of materials, and labor.^[10] It was agreed that this contract price shall be subject to the following payment scheme: (1) HPI shall pay 20% of the contract price upon the execution of the agreement and the presentation of the necessary bonds and insurance required under the contract, and shall pay the balance on installments progress billing subject to recoupment of downpayment and retention money;^[11] (2) HPI shall retain 10% of the contract price in the form of retention bond provided by Werr;^[12] (3) HPI may deduct or set off any sum against monies due Werr, including expenses for the rectification of defects in the construction project;^[13] and (4) HPI has the right to liquidated damages in the event of delay in the construction of the project equivalent to 1/10 of 1% of the contract price for every day of delay.^[14]

Upon HPI's payment of the stipulated 20% downpayment in the amount of P54,359,580.00, Werr commenced with the construction of the project. The contract price was paid and the retention money was deducted, both in the progress billings. The project, however, was not completed on the initial completion date of February 19, 2006, which led HPI to grant several extensions and a final extension until October 15, 2006. On May 8, 2006, Werr sought the assistance of HPI to pay its obligations with its suppliers under a "Direct Payment Scheme" totaling P24,503,500.08, which the latter approved only up to the amount of P18,762,541.67. The amount is to be charged against the accumulated retention money. As of the last billing on October 25, 2006, HPI had already paid the amount of P232,940,265.85 corresponding to 93.18% accomplishment rate of the project and retained the amount of P25,738,258.01 as retention bond.^[15]

The project was not completed on the last extension given. Thus, HPI terminated its contract with Werr on November 28, 2006, which the latter accepted on November 30, 2006.^[16] No progress billing was adduced for the period October 28, 2006 until the termination of the contract.^[17]

On October 3, 2007, Werr demanded from HPI payment of the balance of the contract price as reflected in its financial status report which showed a conditional net payable amount of P36,078,652.90.^[18] On January 24, 2007, HPI informed Werr that based on their records, the amount due to the latter as of December 31, 2006 is P14,834,926.71.^[19] This amount was confirmed by Werr.^[20] Not having received any payment, Werr filed a Complaint^[21] for arbitration against HPI before the CIAC to recover the P14,834,926.71 representing the balance of its retention money.

In its Answer,^[22] HPI countered that it does not owe Werr because the balance of the retention money answered for the payments made to suppliers and for the additional costs and expenses incurred after termination of the contract. From the

retention money of P25,738,258.01, it deducted (1) P18,762,541.67 as payment to the suppliers under the Direct Payment Scheme, and (2) P7,548,729.15 as additional costs and expenses further broken down as follows: (a) P3,336,526.91 representing the unrecouped portion of the 20% downpayment; (b) P542,500.00 representing the remainder of Werr's unpaid advances; (c) P629,702.24 for the waterproofing works done by Dubbel Philippines; and (d) P3,040,000.00 for the rectification works performed by A.A. Manahan Construction after the termination of the contract. Deducting the foregoing from the accumulated retention money resulted in a deficiency of P573,012.81 in its favor.^[23] By way of counterclaim, HPI prayed for the payment of liquidated damages in the amount of P11,959,107.60 for the 44-day delay in the completion of the project reckoned from October 15, 2006 up to the termination of the Agreement on November 28, 2006; for actual damages in the sum of P573,012.81; and for attorney's fees of P500,000.00 and litigation expenses of P100,000.00.^[24]

CIAC's Ruling

After due proceedings, the CIAC rendered its Decision^[25] on August 11, 2008 where it granted Werr's claim for the balance of the retention money in the amount of P10,955,899.79 and arbitration costs. It also granted BPI's claim for liquidated damages in the amount of P2,535,059.01 equivalent to 9.327 days of delay,^[26] but denied its counterclaim for damages, attorney's fees, and litigation expenses.

From the claims of HPI, the CIAC only deducted the amounts of (1) P10,903,331.30 representing the direct payments made from September 26, 2006 until December 31, 2006,^[27] (2) P3,336,526.91 representing the unrecouped retention money, and (3) P542,500.00 representing the unpaid cash advances from the P25,738,258.01 retention money. It disallowed the direct payments charged by HPI in 2007 and 2008 for having been supplied after the termination of the project, for not corresponding to the list of suppliers submitted, and for HPI failing to show that Werr requested it to continue payments even after termination of the Agreement. It also disallowed the amount of P629,702.24 for the waterproofing works done by Dubbel Philippines for being works done after the termination of the contract. The P3,040,000.00 for the rectification works performed after the termination of the contract was also disallowed because while HPI presented its contract with A.A. Manahan Construction for rectification and completion works, it failed to present proof of how much was specifically paid for rectification works only, as well as the proof of its payment. Moreover, prior notice of such defective works was not shown to have been given to Werr as required under the Agreement, and even noted that HPI's project manager approved of the quality of the works up to almost 94%.^[28]

The CIAC further ruled that Werr incurred only 9.327 days of delay. Citing Article 1376^[29] of the Civil Code and considering the failure of the Agreement to state otherwise, it applied the industry practice in the construction industry that liquidated damages do not accrue after achieving substantial compliance. It held that delay should be counted from October 27, 2006 until the projected date of substantial completion. Since the last admitted accomplishment is 93.18% on October 27, 2006, the period it will take Werr to perform the remaining 1.82% is the period of delay. Based on the past billings, since it took Werr 5.128 days^[30] to achieve 1% accomplishment, it will therefore take it 9.327 days to achieve substantial

completion. Thus, the CIAC concluded that the period of delay until substantial completion of the project is 9.327 days. The liquidated damages under the Agreement being 1/10 of 1% of the P271,797,900.00 or P271,797.90 per day of delay, Werr is liable for liquidated damages in the amount of P2,535,048.95.^[31]

Since the liquidated damages did not exhaust the balance of the retention money, the CIAC likewise denied the claim for actual damages.^[32]

Thereafter, HPI filed its petition for review^[33] under Rule 43 with the CA on August 28, 2008.

CA's Ruling

The CA rendered the assailed decision, affirming the CIAC's findings on the allowable charges against the retention money, and on the attorney's fees and litigation expenses. It, however, disagreed with the CIAC decision as to the amount of liquidated damages and arbitration costs. According to the CA, delay should be computed from October 27, 2006 until termination of the contract on November 28, 2006, or 33 days, since the contract prevails over the industry practice. Thus, the total liquidated damages is P8,969,330.70. As to the arbitration costs, it ruled that it is more equitable that it be borne equally by the parties since the claims of both were considered and partially granted.^[34]

Hence, these consolidated petitions.

Arguments

Werr argues that the CA erred in modifying the CIAC decision on the amount of liquidated damages and arbitration costs. It insists that the appellate court disregarded Articles 1234, 1235, and 1376 of the Civil Code and the industry practice (as evidenced by Clause 52.1 of the Construction Industry Authority of the Philippines [CIAP] Document No. 101 or the "General Conditions of Contract for Government Construction" and Article 20.11 of CIAP Document No. 102 or the "Uniform General Conditions of Contract for Private Construction") when it did not apply the construction industry practice in computing liquidated damages only until substantial completion of the project, and not until the termination of the contract.^[35] Werr further emphasizes that the CIAC, being an administrative agency, has expertise on the subject matter, and thus, its findings prevail over the appellate court's findings.^[36]

On the other hand, HPI argues that Werr was unjustly enriched when the CA disallowed HPI's recovery of the amounts it paid to suppliers. HPI claims that: (1) payments made to suppliers identified in the Direct Payment Scheme even after the termination of the contract should be charged against the balance of the retention money, the same having been made pursuant to Werr's express instructions; (2) the payments to Dubbel Philippines and the cost of the contract with A.A. Manahan Construction are chargeable to the retention money, pursuant to the terms of the Agreement; and (3) the expenses incurred in excess of the retention money should be paid by Werr as actual damages. These payments, while made after the termination of the contract, were for prior incurred obligations.^[37] HPI also argues

that it is not liable for arbitration costs, and reiterates its claims for actual damages, and payment of attorney's fees and litigation expenses.^[38]

Issues

- I. Whether the payments made to suppliers and contractors after the termination of the contract are chargeable against the retention money.
- II. Whether the industry practice of computing liquidated damages only up to substantial completion of the project applies in the computation of liquidated damages. Consequently, whether delay should be computed until termination of the contract or until substantial completion of the project.
- III. Whether the cost of arbitration should be shouldered by both parties.
- IV. Whether HPI is entitled to attorney's fees and litigation expenses.

Our Ruling

We deny the consolidated petitions.

I. Charges against the Retention Money

Anent the first issue, we emphasize that what is before us is a petition for review under Rule 45 where only questions of law may be raised.^[39] Factual issues, which involve a review of the probative value of the evidence presented, such as the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, may not be raised unless it is shown that the case falls under recognized exceptions.^[40]

In cases of arbitral awards rendered by the CIAC, adherence to this rule is all the more compelling.^[41] Executive Order No. 1008,^[42] which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, clearly provides that the arbitral award shall be binding upon the parties and that it shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.^[43] This rule on the finality of an arbitral award is anchored on the premise that an impartial body, freely chosen by the parties and to which they have confidence, has settled the dispute after due proceedings:

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the