

## SECOND DIVISION

[ G.R. No. 192725, August 09, 2017 ]

**CE CONSTRUCTION CORPORATION, PETITIONER, VS. ARANETA  
CENTER INC., RESPONDENT.**

### DECISION

**LEONEN, J.:**

A tribunal confronted not only with ambiguous contractual terms but also with the total absence of an instrument which definitively articulates the contracting parties' agreement does not act in excess of jurisdiction when it employs aids in interpretation, such as those articulated in Articles 1370 to 1379 of the Civil Code. In so doing, a tribunal does not conjure its own contractual terms and force them upon the parties.

In addressing an iniquitous predicament of a contractor that actually renders services but remains inadequately compensated, arbitral tribunals of the Construction Industry Arbitration Commission (CIAC) enjoy a wide latitude consistent with their technical expertise and the arbitral process' inherent inclination to afford the most exhaustive means for dispute resolution. When their awards become the subject of judicial review, courts must defer to the factual findings borne by arbitral tribunals' technical expertise and irreplaceable experience of presiding over the arbitral process. Exceptions may be availing but only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy. These grounds are more exceptional than those which are regularly sanctioned in Rule 45 petitions.

This resolves a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed April 28, 2008 Decision<sup>[2]</sup> and July 1, 2010 Amended Decision<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 96834 be reversed and set aside. It likewise prays that the October 25, 2006 Decision<sup>[4]</sup> of the CIAC Arbitral Tribunal be reinstated.

The CIAC Arbitral Tribunal October 25, 2006 Decision awarded a total sum of P217,428,155.75 in favor of petitioner CE Construction Corporation (CECON). This sum represented adjustments in unit costs plus interest, variance in take-out costs, change orders, time extensions, attendance fees, contractor-supplied equipment, and costs of arbitration. This amount was net of the countervailing awards in favor of respondent Araneta Center, Inc. (ACI), for defective and incomplete works, permits, licenses and other advances.<sup>[5]</sup>

The assailed Court of Appeals April 28, 2008 Decision modified the CIAC Arbitral Tribunal October 25, 2006 Decision by awarding a net amount of P82,758,358.80 in favor of CECON.<sup>[6]</sup> The Court of Appeals July 1, 2010 Amended Decision adjusted

this amount to P93,896,335.71.<sup>[7]</sup>

Petitioner CECON was a construction contractor, which, for more than 25 years, had been doing business with respondent ACI, the developer of Araneta Center, Cubao, Quezon City.<sup>[8]</sup>

In June 2002, ACI sent invitations to different construction companies, including CECON, for them to bid on a project identified as "Package #4 Structure/Mechanical, Electrical, and Plumbing/Finishes (excluding Part A Substructure)," a part of its redevelopment plan for Araneta Center Complex.<sup>[9]</sup> The project would eventually be the Gateway Mall. As described by ACI, "[t]he Project involved the design, coordination, construction and completion of all architectural and structural portions of Part B of the Works[;] and the construction of the architectural and structural portions of Part A of the Works known as Package 4 of the Araneta Center Redevelopment Project."<sup>[10]</sup>

As part of its invitation to prospective contractors, ACI furnished bidders with Tender Documents, consisting of:

Volume I: Tender Invitation, Project Description, Instructions to Tenderers, Form of Tender, Dayworks, Preliminaries and General Requirements, and Conditions of Contract;

Volume II: Technical Specifications for the Architectural, Structural, Mechanical, Plumbing, Fire Protection and Electrical Works; and

Addenda Nos. 1, 2, 3, and 4 relating to modifications to portions of the Tender Documents.<sup>[11]</sup>

The Tender Documents described the project's contract sum to be a "lump sum" or "lump sum fixed price" and restricted cost adjustments, as follows:

## 6 TYPE OF CONTRACT

6.1 This is a Lump Sum Contract and the price is a fixed price not subject to measurement or recalculation should the actual quantities of work and materials differ from any estimate available at the time of contracting, except in regard to Cost-Bearing Changes which may be ordered by the Owner which shall be valued under the terms of the Contract in accordance with the Schedule of Rates, and with regard to the Value Engineering Proposals under Clause 27. The Contract Sum shall not be adjusted for changes in the cost of labour, materials or other matters.<sup>[12]</sup>

## TENDER AND CONTRACT

### Fixed Price Contract

1. The Contract Sum payable to the Contactor is a Lump Sum Fixed Price and will not be subject to adjustment, save only where expressly provided for within the Contract Documents and the Form

of Agreement.

2. The Contract Sum shall not be subject to any adjustment "in respect of rise and fall in the cost of materials[,], labor, plant, equipment, exchange rates or any other matters affecting the cost of execution of Contract, save only where expressly provided for within the Contract Documents or the Form of Agreement.
3. The Contract Sum shall further not be subject to any change in subsequent legislation, which causes additional or reduced costs to the Contractor.<sup>[13]</sup>

The bidders' proposals for the project were submitted on August 30, 2002. These were based on "design and construct" bidding.<sup>[14]</sup>

CECON submitted its bid, indicating a tender amount of P1,449,089,174.00. This amount was inclusive of "both the act of designing the building and executing its construction." Its bid and tender were based on schematic drawings, i.e., conceptual designs and suppositions culled from ACI's Tender Documents. CECON's proposal "specifically stated that its bid was valid for only ninety (90) days, or only until 29 November 2002." This tender proposed a total of 400 days, or until January 10, 2004, for the implementation and completion of the project.<sup>[15]</sup>

CECON offered the lowest tender amount. However, ACI did not award the project to any bidder, even as the validity of CECON's proposal lapsed on November 29, 2002. ACI only subsequently informed CECON that the contract was being awarded to it. ACI elected to inform CECON verbally and not in writing.<sup>[16]</sup>

In a phone call on December 7, 2002, ACI instructed CECON to proceed with excavation works on the project. ACI, however, was unable to deliver to CECON the entire project site. Only half, identified as the Malvar-to-Roxas portion, was immediately available. The other half, identified as the Roxas to-Coliseum portion, was delivered only about five (5) months later.<sup>[17]</sup>

As the details of the project had yet to be finalized, ACI and CECON pursued further negotiations. ACI and CECON subsequently agreed to include in the project the construction of an office tower atop the portion identified as Part A of the project. This escalated CECON's project cost to P1,582,810,525.00.<sup>[18]</sup>

After further negotiations, the project cost was again adjusted to P1,613,615,244.00. Still later, CECON extended to ACI a P73,615,244.00 discount, thereby "reducing its offered project cost to P1,540,000.00."<sup>[19]</sup>

Despite these developments, ACI still failed to formally award the project to CECON. The parties had yet to execute a formal contract. This prompted CECON to write a letter to ACI, dated December 27, 2002,<sup>[20]</sup> emphasizing that the project cost quoted to ACI was "based upon the prices prevailing at December 26, 2002" price levels.<sup>[21]</sup>

By January 2003 and with the project yet to be formally awarded, the prices of steel

products had increased by 5% and of cement by P5.00 per bag. On January 8, 2003, CECON again wrote ACI notifying it of these increasing costs and specifically stating that further delays may affect the contract sum.<sup>[22]</sup>

Still without a formal award, CECON again wrote to ACI on January 21, 2003<sup>[23]</sup> indicating cost and time adjustments to its original proposal. Specifically, it referred to an 11.52% increase for the cost of steel products, totalling P24,921,418.00 for the project; a P5.00 increase per bag of cement, totalling P3,698,540.00 for the project; and costs incurred because of changes to the project's structural framing, totalling P26,011,460.00. The contract sum, therefore, needed to be increased to P1,594,631,418.00. CECON also specifically stated that its tender relating to these adjusted prices were valid only until January 31, 2003, as further price changes may be forthcoming. CECON emphasized that its steel supplier had actually already advised it of a forthcoming 10% increase in steel prices by the first week of February 2003. CECON further impressed upon ACI the need to adjust the 400 days allotted for the completion of the project.<sup>[24]</sup>

On February 4, 2003, ACI delivered to CECON the initial tranche of its down payment for the project. By then, prices of steel had been noted to have increased by 24% from December 2002 prices. This increase was validated by ACI.<sup>[25]</sup>

Subsequently, ACI informed CECON that it was taking upon itself the design component of the project, removing from CECON's scope of work the task of coming up with designs.<sup>[26]</sup>

On June 2, 2003, ACI finally wrote a letter<sup>[27]</sup> to CECON indicating its acceptance of CECON's August 30, 2002 tender for an adjusted contract sum of P1,540,000.00 only:

Araneta Center, Inc. (ACI) hereby accepts the C-E Construction Corporation (CEC) tender dated August 30, 2002, submitted to ACI in the adjusted sum of One Billion Five Hundred Forty Million Pesos Only (P1,540,000,000.00), which sum includes all additionally quoted and accepted items within this acceptance letter and attachments, Appendix A, consisting of one (1) page, and Appendix B, consisting of seven (7) pages plus attachments, which sum of One Billion Five Hundred Forty Million Pesos Only (P1,540,000,000.00) is inclusive of any Government Customs Duty and Taxes including Value Added Tax (VAT) and Expanded Value Added Tax (EVAD, and which sum is hereinafter referred to as the Contract Sum.<sup>[28]</sup>

Item 4, Appendix B of this acceptance letter explicitly recognized that "all design except support to excavation sites, is now by ACI."<sup>[29]</sup> It thereby confirmed that the parties were not bound by a design-and-construct agreement, as initially contemplated in ACI's June 2002 invitation, but by a construct-only agreement. The letter stated that "[CECON] acknowledge[s] that a binding contract is now existing."<sup>[30]</sup> However, consistent with ACI's admitted changes, it also expressed ACI's corresponding undertaking: "This notwithstanding, formal contract documents embodying these positions will shortly be prepared and forwarded to you for execution."<sup>[31]</sup>

Despite ACI's undertaking, no formal contract documents were delivered to CECON or otherwise executed between ACI and CECON.<sup>[32]</sup>

As it assumed the design aspect of the project, ACI issued to CECON the construction drawings for the project. Unlike schematics, these drawings specified "the kind of work to be done and the kind of material to be used."<sup>[33]</sup> CECON laments, however, that "ACI issued the construction drawings in piece-meal fashion at times of its own choosing."<sup>[34]</sup> From the commencement of CECON's engagement until its turnover of the project to ACI, ACI issued some 1,675 construction drawings. CECON emphasized that many of these drawings were partial and frequently pertained to revisions of prior items of work.<sup>[35]</sup> Of these drawings, more than 600 were issued by ACI well after the intended completion date of January 10, 2004: Drawing No. 1040 was issued on January 12, 2004, and the latest, Drawing No. 1675, was issued on November 26, 2004.<sup>[36]</sup>

Apart from shifting its arrangement with CECON from design-and-construct to construct only, ACI introduced other changes to its arrangements with CECON. CECON underscored two (2) of the most notable of these changes which impelled it to seek legal relief.

First, on January 30, 2003, ACI issued Change Order No. 11,<sup>[37]</sup> which shifted the portion identified as Part B of the project from reinforced concrete framing to structural steel framing. Deleting the cost for reinforced concrete framing meant removing P380,560,300.00 from the contract sum. Nevertheless, replacing reinforced concrete framing with structural steel framing "entailed substitute cost of Php217,585,000, an additional Php44,281,100 for the additional steel frames due to revisions, and another Php1,950,000 for the additional pylon."<sup>[38]</sup>

Second, instead of leaving it to CECON, ACI opted to purchase on its own certain pieces of equipment-elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks-which were to be installed in the project. This entailed "take-out costs"; that is, the value of these pieces of equipment needed to be removed from the total amount due to CECON. ACI considered a sum totalling P251,443,749.00 to have been removed from the contract sum due to CECON. This amount of P251,443,749.00 was broken down, as follows:

- (a) For elevators/escalators, PhP106,000,000;
- (b) For Chillers, PhP41,152,900;
- (c) For Generator Sets, PhP53,040,000;
- (d) For Indoor Substation, PhP23,024,150;
- (e) For Cooling Towers, PhP5,472,809; and
- (f) For Pumps and Tanks, PhP22,753,890.<sup>[39]</sup>

CECON avers that in removing the sum of P251,443,749.00, ACI "simply deleted the amount in the cost breakdown corresponding to each of the items taken out in the contract documents."<sup>[40]</sup> ACI thereby disregarded that the corresponding stipulated costs pertained not only to the acquisition cost of these pieces of equipment but also to so-called "builder's works" and other costs relating to their preparation for and installation in the project. Finding it unjust to be performing auxiliary services