

## THIRD DIVISION

[ G.R. Nos. 198916-17, January 11, 2016 ]

**MALAYAN INSURANCE COMPANY, INC., PETITIONER, VS. ST. FRANCIS SQUARE REALTY CORPORATION, RESPONDENT.**

[G.R. NOS. 198920-21]

**ST. FRANCIS SQUARE REALTY CORPORATION, PETITIONER, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This resolves the *Petition for Partial Review on Certiorari under Rule 45 of the Rules of Court* filed by Malayan Insurance Company, Inc. and the *Petition for Review* filed by St. Francis Square Realty Corporation, both seeking to reverse and/or modify the Court of Appeals Decision<sup>[1]</sup> dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, which affirmed with modifications the Award<sup>[2]</sup> dated March 27, 2009 of the Construction Industry Arbitration Commission (CIAC) in CIAC CASE No. 33-2008 entitled "ST. FRANCIS SQUARE REALTY CORPORATION, Claimant, -versus- MALAYAN INSURANCE COMPANY, INC., Respondent."

Malayan Insurance Company, Inc. (*Malayan*) is a duly-organized domestic corporation engaged in insurance business. Formerly known as ASB Realty Corporation (ASB), St. Francis Square Realty Corporation (St. Francis) is a duly-organized domestic corporation engaged in real estate development.

The admitted facts are as follows:

1. The parties' respective juridical existence;
  - 1.1 The ASB Group of Companies, which include the ASB Realty Corporation (now St. Francis Square Realty Corp.), is under rehabilitation with the Securities and Exchange Commission (SEC) pursuant to a petition dated May 2, 2000;
2. [Malayan], as Owner, and [St. Francis], as Developer, executed a Joint Project Development Agreement (JPDA) on 09 November 1995 for the construction, development and completion of what was then known as "ASB Malayan Tower" ("the Project"), originally a 50-storey office/residential condominium located at the ADB Avenue

cor. Opal St., Ortigas Center, Pasig City.

3. [Malayan] is the absolute and registered owner of the parcel of land (the Lot) in Pasig City where the Project is located, as evidenced by Transfer Certificate of Title No. PT-78585 xxx;
4. The Certificate of Registration No. 96-04-2701 issued by the Housing Land Use and Regulatory Board (HLURB) on 12 April 1996 shows that [Malayan] is the Owner and [St. Francis] is the developer xxx;
5. The License to Sell No. 96-05-2844 issued by the HLURB also refers to [Malayan] as the Owner and [St. Francis] as Developer xxx;
6. The Master Deed with Declaration of Restrictions of the ASB-Malayan Tower dated 13 May 1996 approved by the FILURB and registered with the Register of Deeds of Pasig City, sets forth Malayan as "the Developer (absolute and registered owner) xxx;
7. ASB Realty Corporation [now, St. Francis] was not able to complete the Project;
  - 7.1 The parties executed a Memorandum of Agreement (MOA) on 30 April 2002, under which [Malayan] undertook to complete the condominium project then known as "ASB Malayan Project" that later became "Malayan Plaza Tower" xxx;
8. The MOA was approved by the SEC;
9. The Lot was the subject of a Contract to Sell between [Malayan] as seller and [St. Francis] as buyer, but [St. Francis] was unable to completely perform its obligation under the Contract to Sell;
10. Under Sec. 2 of the MOA, [Malayan] "*shall invest the amount necessary to complete the Project*", among other obligations;
11. The basis for the distribution and disposition of the condominium units is the parties' respective capital investments in the Project as provided in Sec. 4 of the MOA;
  - 11.1 [St. Francis] represented and warranted to Malayan that Malayan can complete the Project at a cost not exceeding Php452,424,849.00 (the Remaining Construction Cost [RCC]) [Sec. 9 of MOA].
12. The net saleable area included in Schedule 4 of the 30 April 2002 MOA ("Reserved Units") originally covered fifty-three (53) units with thirty-eight (38) parking spaces. The aforesaid 53 Reserved Units became only thirty-nine (39) units after a reconfiguration was done;
13. The aggregate monetary value of the Reserved Units as fixed by [St. Francis], is One Hundred Seventy-Five Million Eight Hundred

Fifty-Six Thousand Three Hundred Twenty-Three Pesos and 05/100 (P175,856,323.05);

14. Under the MOA, [Malayan] assumed vast powers and revoked all authorities previously granted to [St. Francis] (Section 8 of the MOA, xxx), with the exception of including [St. Francis] in the bidding committee for bidding of material and services requirements of the Project (Section 9, paragraph v of the MOA, xxx). The general supervision, management and control of the day-to-day operations were undertaken by [Malayan] (Section 5, paragraph b of the MOA, xxx) but under Sec. 9 of the MOA, "Malayan shall allow one (1) representative of [St. Francis] to observe the development and completion of the Project";
15. On 24 August 2006, [St. Francis] sent a letter to [Malayan] seeking to reconcile several items amounting to P133.64 million xxx;
16. There was a change in the specification of the floor finish from Narra Parque[t] to Kendall Laminated Flooring;
17. [Malayan] made interest expense, amounting to P37,705,346.62 as of August 2006, as part of its actual construction cost on that date;
18. [St. Francis] filed a case against the Register of Deeds of Pasig City and Atty. Francis Serrano docketed as OMB-C-C-06-0583-J before the Office of the Ombudsman due to alleged alterations on the Condominium Certificates of Title over the units comprising the net saleable area in Schedule 4 of the MOA;
19. [Malayan] has included some of the units under Schedule 4 of the MOA in the condotel pool managed by Quantum Hotels and Resorts from which it derives income;
20. Despite the completion of the Project and the turnover of the units to [St. Francis], [Malayan], and other buyers of units, the issue of actual cost of construction has not been resolved to the mutual satisfaction of the parties; and
21. The parties agreed to submit a list of documents that they admitted the authenticity and due execution thereof.<sup>[3]</sup>

On November 7, 2008, St. Francis filed with the CIAC a Complaint with Prayer for Interim Relief against Malayan. St. Francis alleged that in August 2006, it secured a copy of a document entitled "cost to complete" from Malayan which fixed the Actual Remaining Construction Cost (ARCC) at P614,593,565.96. It disputed several cost items in the ARCC, amounting to P145,487,496.42, and argued that their exclusion would entitle it to some reserved units.

On December 8, 2008, Malayan filed a Verified Answer (*With Grounds for Immediate Dismissal*), claiming that St. Francis failed to state a cause of action because the ARCC had already reached P635,018,369.05 as of November 30, 2008, thereby

exceeding the Remaining Construction Cost (RCC) [P452,424,849.00] by more than the aggregate value of the reserved units [P175,856,323.05]; hence, St. Francis is no longer entitled to any of such units.

On January 20, 2009, a preliminary conference was held where the parties stipulated on facts, formulated issues, and drafted and signed the Terms of Reference (*TOR*) which would govern the proceedings of the case. Aside from the above-stated admitted facts, the *TOR*, which was later amended, listed the following issues to be determined by the CIAC:

2. What is the meaning or scope of the term Remaining Construction Cost (RCC) as used in the MOA as stated in Par. 11.1 of the Admitted Facts?

2.1. What is the meaning or scope of the term "actual remaining construction cost" as used in the MOA?

2.2. Specifically, were the following costs and expenses part of the actual remaining construction cost incurred by [Malayan] and questioned by [St. Francis] to wit:

2.2.1. Awarded contracts, specifically those pertaining to Narra Parquet Works, Interior Design Works, Sanitary/Plumbing and Fire Protection Works, Additional Consultant's Fees and Audio Intercom and Paging System;

2.2.2. Change Orders, pursuant to the reconfiguration done on several of the units;

2.2.3. Interest Expense from loans incurred to finance the construction, development and completion of the Project;

2.2.4. Input Value Added Taxes ("VAT") paid to the government for goods and services utilized from the Project;

2.2.5. Attendance Fees;

2.2.6. Alleged Prolongation Costs and Extended Overhead;

2.2.7. Judgment Award in CIAC Case No. 27-2007 (*TVI v MICO*); [*Additional issue from TOR Amendment*]

2.2.8. Contractor's All Risk Insurance;

2.2.9. Contingency Costs.

2.2.10 Other costs as mentioned in Exhibit "R-24" [*Additional issue from TOR Amendment*]

3. What is the total capital investment or contribution respectively of [St. Francis] and [Malayan] to the Project per MOA? [*Additional issue from TOR Amendment*]

4. What is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?

5. After completion of the Project and computation of the actual remaining construction costs to complete the same, is [St. Francis] still entitled to any of the Reserved units in Schedule 4 of the MOA?

5.1. If so, is [St.. Francis] entitled to the income therefrom?

6. Is [Malayan] entitled to its Counterclaim for the excess in the actual remaining construction cost it incurred vis-a-vis the value of the Reserved Units?

7. Which party is entitled to attorney's fees?

[7.1] How much?

[8.] Which party shall bear the cost of arbitration?<sup>[4]</sup>

On March 2, 2009, St. Francis submitted the *Joint Affidavit of Witnesses of Claimant*, while Malayan submitted the *Joint Affidavit of Respondent's Witnesses*. Thereafter, both parties submitted their respective Joint Reply-Affidavits. Malayan also filed a *Joint Affidavit of Respondent's Witnesses by Way of (1) Evidence for New Issue No. 3 Defined under the Amended Terms of Reference; (2) Sur-Rejoinder Affidavit of Claimant's Witnesses; and (3) Redirect Examination*.

Trial ensued during which the witnesses of St. Francis and Malayan testified. Both parties likewise submitted Lists of Exhibits. After trial, the parties simultaneously filed on April 27, 2009 their respective Memoranda in the form of Draft Decisions.

On May 27, 2009, the CIAC rendered its Award, the dispositive portion of which states:

**WHEREFORE**, AWARD is hereby made as follows:

**FOR THE CLAIMANT**[St. Francis]:

**GRANT[S]** its claims for **DISALLOWANCES** amounting to P52,864,385.00 from the ARCC of **P614,593.565.96** under Exhibit C-3;

**ALLOCATES** 37.8% ownership over the Reserved Units (**P66,551,993.09/P175,856,325.05**);

As a consequence of these awards, Respondent [Malayan] is hereby DIRECTED to deliver possession and transfer title over the Reserved Units in the proportion hereby stated.

**GRANTS 37.8% proportionate share of the income realized from rentals of the Reserved Units up to the present date.**

As a consequence of these awards, Respondent [Malayan] is hereby DIRECTED to pay the Claimant [St. Francis] its proportionate share in the income from the Reserved Units.

**FOR THE RESPONDENT** [Malayan]: