

THIRD DIVISION

[G.R. No. 194960, February 03, 2016]

**PRO BUILDERS, INC., PETITIONER, VS. TG UNIVERSAL
BUSINESS VENTURES, INC., RESPONDENT.**

DECISION

PEREZ, J.:

This Petition for Review on *Certiorari* assails the Decision^[1] dated 13 October 2010 and Resolution^[2] dated 16 December 2010 issued by the Court of Appeals in CA-G.R. SP No. 106407 which modified the Decision of the Arbitral Tribunal of the Construction Industry Arbitration Commission. (CIAC)

On 29 May 2007, TG Universal Business Ventures, Inc. (TG) entered into an Owner-Contractor Agreement (Agreement) with Pro Builders, Inc. (Pro Builders) for the construction of a 15-storey building at Asiatown I.T. Park in Lahug, Cebu City. In consideration of the sum of Seventy Million Pesos (P70,000,000.00), Pro Builders undertook to provide the labor, materials and equipment, and to perform all structural works for the project. On the other hand, TG undertook to pay Pro Builders a down payment of Twenty-One Million Pesos (P21,000,000.00), or equivalent to 30% of the amount of contract. Pursuant to the Agreement, the completion of the project is slated on 31 May 2008 but is subject to extension upon request of Pro Builders to TG, through its Project Manager, Prime Edifice, Inc., on the grounds of force majeure or fortuitous event and/or additional work approved by TG, or any other special circumstances as may be determined by TG.^[3] Upon signing of the Agreement, Pro Builders posted a performance bond obtained from Prudential Guarantee and Assurance, Inc.

The Notice of Award was issued to Pro Builders on 15 May 2007. The project site was turned over to Pro Builders on 22 May 2007. The construction was set to officially begin on 1 June 2007.^[4]

On 19 June 2007, Pro Builders received the 30% down payment equivalent to P21,000,000.00.

Extremely unsatisfied with the progress of the works, TG took over the project, hired another contractor to finish the work, and demanded the balance of its overpayment from Pro Builders. The parties failed to reach an amicable settlement, prompting TG to file a Request for Arbitration with the CIAC praying for the payment of cost to complete the project, amounting to P13,489,807.48.^[5]

Request for Arbitration filed by TG

According to the Project Manager, Project Manager, Prime Edifice, Inc., Pro Builders

missed its target milestone for July 2007. On 28 August 2007, Project Manager, Prime Edifice, Inc. wrote to Pro Builders raising, serious concerns on the latter's ability to complete the project as scheduled. Project Manager, Prime Edifice, Inc. presented a Performance Evaluation for the period ending 28 August 2007 showing that Pro Builders only accomplished 13.37% out of the 19.09% target accomplishment or a variance of 5.72%. Project Manager, Prime Edifice, Inc. attributed Pro Builders' failure to meet the target to its inability to deploy the required manpower and equipment. On 31 August 2007, Project Manager, Prime Edifice, Inc. recommended to TG a full takeover by a more competent contractor to take effect immediately. Pro Builders responded to Project Manager, Prime Edifice, Inc.'s letter and alleged that some of the delays were attributable to TG, such as the delayed release of down payment and delivery of owner-supplied materials, particularly the reinforcing bars (rebars). For September 2007, Project Manager, Prime Edifice, Inc. revealed that Pro Builders again failed to meet its September milestones, accomplishing only 18.11% out of the 33.42% target accomplishment or slippage of 15.32%.

Due to the dismal performance of Pro Builders, TG invoked Article 9 of the Agreement or the Option to Complete Work Takeover. Pro Builders refused to turn over the works and demanded the payment of its unpaid progress billings.

On 11 January 2008, TG sent a Statement of Account to Pro Builders demanding payment of the excess cost to complete the project amounting to P13,489,807.48, which is broken down as follows:

P5,582,921.10 - unconsumed down payment (21,000,000.00-15,417,078.90 assessed value of Pro Builders accomplishment as of 15 October 2007)

P7,771,553.04 - additional expenses by engaging another contractor

P135,333.34 - miscellaneous expenses (violation of Asiatown's guidelines, damage to property, lot rental)^[6]

On 26 February 2008, TG filed a claim against the surety bond and performance bond.

The summary of TG's claim is as follows:

Unliquidated down payment	P5,582,921.10
Cost to complete	7,771,553.04
Miscellaneous expenses	135,333.34
Litigation expenses	700,000.00
Attorney's fees	300,000.00
Total Claims	P14,489,807.48^[7]

Pro Builder's Amended Answer with Counterclaims

In its Answer, Pro Builders claimed that TG incurred delay when it only delivered 16% of the total requirement of rebars, an owner-supplied material. Pro Builders insisted that the targeted milestones were duly accomplished. Pro Builders added

that the reckoning date of the performance evaluation should be within seven days upon receipt of the 30% down payment. Pro Builders counterclaimed for the following amounts and damages:

Unpaid work accomplishment	P2,104,642.11
Compensatory damages	5,000,000.00
Rental deposit of the forms & scaffoldings for the period of one year	1,500,000.00
Surety bond	157,000.00
Construction all risk bond	142,000.00
Performance bond	96,450.00
Litigation expenses	1,000,000.00
Exemplary damages	500,000.00
Attorney's fees	200,000.00
Total counterclaims	P10,700,092.11^[8]

An Arbitral Tribunal was created and composed of Jacinto M. Butalid, as Chairman, Guadalupe O. Mansueto and Kian Hun T. Tiu.

The Arbitral Tribunal limited the issues to the following:

1. Who between the parties failed to comply with the terms and conditions of the Contract Agreement?
 - 1.1. Was Respondent-CONTRACTOR in delay in the Performance of the Construction Agreement?
 - 1.2. Was CLAIMANT in delay in the release of down payment and delivery of the Owner-Supplied materials?
2. Is CLAIMANT entitled to its claim for unliquidated down payment in the amount of Php5,582,921.10?
3. Is CLAIMANT entitled to the amount of Php7,771,553.04 as cost to complete the Project?
 - 3.1. How much was CLAIMANT'S cost to complete the works?
 - 3.2. How much was the Claimant's cost to complete the works IN EXCESS of the balance of the original contract price?
4. Is CLAIMANT entitled to its claim of Php135,333.34 as miscellaneous expenses'?
5. Is CLAIMANT entitled to its claim for litigation expenses in the amount of Php700,000.00? If so, how much?
6. Is CLAIMANT entitled to its claim for attorney's fees in the amount of Php300,000.00? If so, how much?

7. Is Respondent-CONTRACTOR entitled to its counterclaim of Php2,104,642.11 as unpaid work accomplishment?
8. Is Respondent-CONTRACTOR entitled to its counterclaim of Php5,000,000.00 as compensatory damages? If so, how much?
9. Is Respondent-CONTRACTOR entitled to its counterclaim of Php1,500,000.00 as rental deposit of the forms & scaffoldings for the period of one year?
10. Is Respondent-CONTRACTOR entitled to its counterclaim of Php157,000.00 as cost incurred for its surety bond?
11. Is Respondent-CONTRACTOR entitled to its counterclaim of Php142,000.00 as cost incurred for the construction all risk bond?
12. Is Respondent-CONTRACTOR entitled to its counterclaim of Php96,450.00 as cost incurred for the performance bond?
13. Is Respondent-CONTRACTOR entitled to its counterclaim of Php1,000,000.00 as litigation expenses? If so, how much?
14. Is Respondent-CONTRACTOR entitled to its counterclaim of Php500,000.00 as exemplary damages? If so, how much?
15. Is Respondent-CONTRACTOR entitled to its counterclaim of Php200,000.00 as attorney's fees? If so, how much?
16. Is Respondent-Surety solidarily liable on its performance and surety bonds up to the total amount thereof?
17. Whether or not the right of the CLAIMANT to claim against the subject surety and performance bonds of the respondent PRUDENTIAL had already expired and/or become time-barred or deemed waived?
18. Whether or not the CLAIMANT as well as the other third-party Respondents are legally obliged jointly and severally to indemnify, pay or reimburse PRUDENTIAL in the unlikely event that the latter is held liable to pay CLAIMANT by virtue of the subject surety and performance bonds.^[9]

Arbitral Tribunal's Decision

On 1 October 2008, the Arbitral Tribunal rendered a Decision, the dispositive portion of which reads:

In view of the foregoing, it is hereby ordered that:

1. [TG] to pay [Pro Builders] for unpaid accomplishment in the amount of Php2,104,642.11.

2. [Pro Builders] to pay [TG] the amount of Php58,333.34 miscellaneous expenses as reimbursement of the said amount paid by [TG] for the rental of the staging area used by the [Pro Builders].

OFFSETTING Number 1 and 2, [TG] shall pay CONTRACTOR PRO Builders, Inc. the amount of Php2,046,308.77.

[TG's] claim for Unliquidated Down Payment, Cost to Complete the works, miscellaneous expenses except rental of the staging area, exemplary damages, litigation expenses and attorney's fees are denied for lack of merits.

[Pro Builders'] claim for compensatory damages, exemplary damages, rental deposit of forms and scaffoldings, cost of Surety Bond, Performance Bond and All Risk Bond, litigation expenses and attorney's fees are denied for lack of merits.^[10]

The Arbitral Tribunal found that both parties failed to comply with their respective obligations and responsibilities under the Agreement. The Arbitral Tribunal expounded that Pro Builders failed to meet its target due to inability to deploy the required resources, i.e. manpower and equipment. Pro Builders also committed violations of concrete protocol. On the other hand, TG made the down payment only on 19 June 2007 and not upon execution of the Agreement as provided therein. TG also did not pay Pro Builders' progress billings and change order and incurred delay in the delivery of the owner-supplied rebars.

The Arbitral Tribunal denied TG's claim of P5,582,921.10 representing the unliquidated portion of the dawn payment. The Arbitral Tribunal gave credence to Pro Builders' billed amount of P23,104,642.11 as the value of the accomplished works.

The Arbitral Tribunal did not agree with TG's claim of P7,771,553.04 as the cost to complete the project. The Arbitral Tribunal held that said value can only be determined after the project has been fully completed. The Arbitral Tribunal favored TG's claim of P58,333.34 for the advanced rental of the staging area after finding that TG paid in advance the rental for a property adjacent to the project site used by Pro Builders.

The Arbitral Tribunal did not find any justification to award cost of litigation and compensatory damages to both parties.

The Arbitral Tribunal ruled that Pro Builders is entitled to P2,104,642.11 as the amount of unpaid accomplishment by subtracting the P21,000,000.00 down payment from the total accomplishment of P23,104,642.11.

The Arbitral Tribunal found that Pro Builders is not entitled to its claim for rental deposit for the forms and scaffoldings.

With respect to the cost of the bonds, the Arbitral Tribunal held that there is no provision in the contract or in the policy issued by Prudential for the reimbursement of the costs of the bonds. But the Arbitral Tribunal held that Prudential and Pro