

## THIRD DIVISION

[ G.R. No. 195552, April 18, 2016 ]

**ACS DEVELOPMENT & PROPERTY MANAGERS, INC., PETITIONER,  
VS. MONTAIRE REALTY AND DEVELOPMENT CORPORATION,  
RESPONDENT.**

### RESOLUTION

**REYES, J.:**

Before the Court is a Petition for *Certiorari*<sup>[1]</sup> filed by ACS Development & Property Managers, Inc. (ADPROM) against Mont-Aire<sup>[2]</sup> Realty and Development Corporation (MARDC) to assail the Decision<sup>[3]</sup> dated March 28, 2000 and Resolution<sup>[4]</sup> dated November 9, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 48805, which affirmed with modification the Decision<sup>[5]</sup> dated August 17, 1998 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 32-97.

ADPROM and MARDC were parties to a Construction Agreement<sup>[6]</sup> executed on April 25, 1996, whereby ADPROM, as contractor, was to construct 17 units of MARDC's Villa Fresca Townhomes in Barangay Kaybagal, Tagaytay City. The total consideration for the contract was P39,500,000.00, inclusive of labor, materials, supervision and taxes. ADPROM was to be paid periodically based on monthly progress billings, less 10% retention.<sup>[7]</sup> Angel Lazaro & Associates (ALA) was hired by MARDC as the project's construction manager.<sup>[8]</sup>

The parties later amended their Construction Agreement, reducing the number of units to be erected to 11 and the total contract price to P25,500,000.00. On May 2, 1996, ADPROM commenced with the construction of the townhouses.<sup>[9]</sup>

MARDC fully satisfied ADPROM'S Progress Billing Nos. 1 to 8 for a total amount of P23,169,183.43. In Progress Billing No. 9 for work performed in February 1997, ADPROM demanded from MARDC the amount of P1,495,345.24.<sup>[10]</sup> ALA, however, approved the payment of only P94,460.28, as it disputed specific amounts in the billing, including cost additives.<sup>[11]</sup> ADPROM refused to allow a reduction in its demanded amount. In a letter<sup>[12]</sup> dated March 14, 1997, it even insisted on MARDC's acceptance of the accomplishments identified in Progress Billing No. 9 before it could proceed further with construction works. Beginning March 18, 1997, when Progress Billing No. 9 remained unpaid, ADPROM decided on a work stoppage.<sup>[13]</sup>

The stoppage prompted MARDC to serve upon ADPROM on March 20, 1997 a notice of default.<sup>[14]</sup> After several meetings among the parties and ADPROM's issuance of consolidated Progress Billing Nos. 9 and 10<sup>[15]</sup> intended to supersede the contested Progress Billing No. 9, ALA still advised MARDC to defer the payment of ADPROM's

demand.<sup>[16]</sup> ADPROM's consolidated billing of P1,778,682.06 was still greater than ALA's approved amount of P1,468,348.60.<sup>[17]</sup>

On June 5, 1997, MARDC decided to terminate the subject Construction Agreement.<sup>[18]</sup> It demanded from ADPROM the return of alleged overpayments amounting to P11,188,539.69, after it determined from ALA that ADPROM's accomplished work constituted only 54.67%. An evaluation by another firm hired by MARDC, TCGI Engineers, also provided that ADPROM'S work accomplishment was only at 46.98%.<sup>[19]</sup> Feeling aggrieved, ADPROM instituted with the CIAC a case for sum of money against MARDC, which in turn filed its own counterclaim against ADPROM.

On August 17, 1998, the CIAC rendered its Decision<sup>[20]</sup> that concluded with the following awards:

#### **IX. SUMMARY OF AWARD**

The Tribunal therefore makes the summary of award as follows:

##### **A. FOR [ADPROM]**

	<b><i>Claims</i></b>	<b><i>Award</i></b>
1. Unpaid Billings	P1,468,348.60	P1,468,348.60
2. Interest on Billings	19,755.23	109,824.43 <sup>*</sup>
3. Refund of accumulated 10% retention	2,806,814.00	2,806,814.00
4. Interest on retention	<u>202,396.71</u>	<u>0.00</u>
Total	P4,497,314.54	P4,384,987.03

[<sup>\*</sup> computed at 6% per annum from 19 May 1997 up to 17 August 1998, the date of the promulgation of this award]

##### **B. FOR [MARDC]**

1. Refund for overpayment	P11,188,539.69	0.00
2. Interest on overpayment	167,828.10	0.00
3. Liquidated Damages	<u>6,517,500.00</u>	<u>0.00</u>
Total	P17,873,867.79	0.00

##### **C. NET AWARD for CLAIMANT** **P4,384,987.03**

**NET  
AWARD  
P4,384,987.03**

## **X. AWARD**

[MARDC] therefore is ordered to pay [ADPROM] the amount of PESOS **FOUR MILLION [THREE] HUNDRED [EIGHTY-FOUR] THOUSAND [NINE] HUNDRED [EIGHTY-SEVEN] AND [03]/100 (P4,384,987.03)** within fifteen (15) days from receipt of notice hereof. Interest of twelve percent (12%) per annum shall be charged on said amount or any balance thereof from the time due until fully paid.<sup>[21]</sup>

### **Ruling of the CA**

Dissatisfied, MARDC appealed the CIAC decision to the CA *via* a petition for review. On March 28, 2000, the CA rendered its Decision<sup>[22]</sup> deleting the award of interest on unpaid billings, and holding ADPROM liable to MARDC for liquidated damages at P39,500.00 per calendar day from March 20, 1997 until September 1, 1997. Thus, the dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the assailed Decision of [CIAC] is hereby MODIFIED. It is affirmed in part, insofar as it awards [ADPROM] its unpaid billings and the refund of its retention. The award of interest on the unpaid billings is set aside for lack of merit. Finally, [ADPROM] is hereby held liable to [MARDC] for liquidated damages in the amount of Thirty[-]Nine Thousand Five Hundred Pesos (Php39,500.00) per calendar day, computed from March 20, 1997, the date ADPROM was served a notice of default for unjustified work stoppage, until September 1, 1997, when [MARDC] contracted another construction corporation, the Ulanday Contractors, Inc., to complete the project.

### **SO ORDERED.**<sup>[23]</sup>

ADPROM filed a motion for reconsideration while MARDC filed a motion for partial reconsideration. Both motions were denied by the CA in its Resolution<sup>[24]</sup> dated November 9, 2010.

Unyielding, ADPROM filed the Petition for *Certiorari* before this Court arguing that the CA gravely abused its discretion in deleting the award of interest on unpaid billings and in ordering it to pay liquidated damages.

### **Ruling of the Court**

The Court dismisses the petition.

At the outset, the Court emphasizes that ADPROM availed of the wrong remedy when it filed with the Court a petition for *certiorari* to question the CA decision that reviewed the CIAC's rulings. Instead of filing a petition for *certiorari* under Rule 65 of the Rules of Court, ADPROM should have filed a petition for review under Rule 45.<sup>[25]</sup> In *Spouses Leynes v. Former Tenth Division of the CA, et al.*,<sup>[26]</sup> the Court emphasized:

The proper remedy of a party aggrieved by a decision of the [CA] is a petition for review under Rule 45 which is not similar to a petition for

*certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders, or resolutions of the [CA] in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.<sup>[27]</sup>

Even granting that the Court adopts a liberal application of the rules and treats the present petition as a petition for review, there still exists no cogent reason for a reversal of the rulings made by the CA.

The appellate court sufficiently explained its bases in modifying the CIAC's monetary awards. As regards the deletion of the interest on the unpaid billings, the CA explained that with the parties' agreement that ALA would have to first approve ADPROM's progress billings before MARDC would be obligated to pay, the latter did not incur any delay in the payment of ADPROM's demands. On the award of liquidated damages, the CA cited ADPROM's unjustified work stoppage that resulted in MARDC's clear disadvantage. Even the non-payment of its demands upon MARDC failed to justify ADPROM's decision, given its own refusal to adjust its billings in accordance with the findings of ALA. Moreover, the subject Construction Agreement provided that in case of disputes that would arise from the contract, the parties should strive to resolve them through an amicable settlement.<sup>[28]</sup>

The foregoing pronouncements of the CA were in accord with the pertinent provisions of the parties' Construction Agreement. First, ADPROM was not entitled to CIAC's awarded interest of P109,824.43, which was supposedly computed based on the unpaid billings at six percent (6%) *per annum* from May 19, 1997 up to the date of promulgation of the CIAC decision.<sup>[29]</sup> Specifically on the accrual of MARDC's obligation to pay for work performed by ADPROM, the parties deemed necessary the prior approval by ALA of the billings to be paid, as recognized in the following stipulations:

### Article III SCOPE OF OWNER'S RESPONSIBILITY

3.1 [MARDC] shall make payments directly to [ADPROM] based on the latter's progress billing **as approved by [ALA]**.

### Article IV CONTRACT PRICE AND TERMS OF PAYMENT

x x x x

#### 4.2 Terms of Payment

x x x

x

4.2.3 [MARDC] shall pay [ADPROM] within seven (7) working days from receipt of the progress billing submitted by [ADPROM],