

SECOND DIVISION

[G.R. No. 176439, January 15, 2014]

THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, PETITIONER, VS. BTL CONSTRUCTION CORPORATION, RESPONDENT.

[G.R. No. 176718]

BTL CONSTRUCTION CORPORATION, PETITIONER, VS. THE PRESIDENT OF THE MANILA MISSION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS AND BPI-MS INSURANCE CORPORATION, RESPONDENTS.

DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on *certiorari*^[1] both assailing the Decision^[2] dated August 15, 2006 and Resolution^[3] dated January 26, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 84068 which modified the Decision^[4] dated April 27, 2004 of the Construction Industry Arbitration Commission (CIAC), awarding the following amounts: (a) P1,248,179.87 as 10% retention money, and P1,612,017.74 as unpaid balance of the original contract price in favor of BTL Construction Corporation (BTL); and (b) P526,400.00 as cost overrun, P300,533.49 as overpayment for the works taken in the change orders subject of these cases, and P1,800,560.00 as liquidated damages in favor of the Church of Jesus Christ of Latter Day Saints^[5] (COJCOLDS).

The Facts

On January 10, 2000, COJCOLDS and BTL entered into a Construction Contract^[6] (Contract) for the latter's construction of the former's meetinghouse facility at Barangay Cabug, Medina, Misamis Oriental (Medina Project). The contract price was set at P12,680,000.00 (contract price), and the construction period from January 15 to September 15, 2000.^[7] However, due to bad weather conditions, power failures, and revisions in the construction plans (as per Change Order Nos. 1 to 12 agreed upon by the parties),^[8] among others, the completion date of the Medina Project was extended.

On May 18, 2001, BTL informed COJCOLDS that it suffered financial losses from another project (*i.e.*, the Pelaez Arcade II Project) and thereby requested that it be allowed to: (a) bill COJCOLDS based on 95% and 100% completion of the Medina

Project; and (b) execute deeds of assignment in favor of its suppliers so that they may collect any eventual payments directly from COJCOLDS.^[9] COJCOLDS granted said request which BTL, in turn, acknowledged.^[10]

On August 13, 2001, BTL ceased its operations in the Medina Project because of its lack of funds to advance the cost of labor necessary to complete the said project, as well as the supervening increase in the prices of materials and other items for construction.^[11] Consequently, COJCOLDS terminated its Contract with BTL^[12] on August 17, 2001 and, thereafter, engaged the services of another contractor, Vigor Construction (Vigor), to complete the Medina Project.^[13]

On November 12, 2003, BTL filed a complaint against COJCOLDS before the CIAC, claiming a total amount of P28,716,775.40 broken down as follows: (a) P12,464,005.11 as cost of labor, materials, equipment, overhead expenses, lost profits and interests; (b) P1,248,179.87 as the 10% retention money stipulated in the contract; (c) P373,838.42 as interest on said retention money; (d) P14,330,752.00 as actual damages;^[14] (e) P300,000.00 as attorney's fees; (f) moral and exemplary damages; and (g) costs of arbitration.^[15]

For its part, COJCOLDS filed its answer with compulsory counterclaim, praying for the award of P4,134,693.49 which consists of: (a) P2,307,760.00 as liquidated damages in view of BTL's delay in completing the pending project; (b) P300,533.49 as reimbursement of the payments it directly made to BTL's suppliers as per the latter's request; (c) P526,400.00 as cost overrun; and (d) P1,000,000.00 as attorney's fees.^[16]

During the preliminary conference held on February 10, 2004, the parties agreed to a Terms of Reference (TOR)^[17] which was later amended on March 4, 2004.^[18] Under the amended TOR, it was stipulated that the parties' relationship with respect to the Medina Project is governed by, among others, the Contract,^[19] and the General Conditions of the Contract^[20] (General Conditions). They also stipulated that 98% of the said project had been completed.

The CIAC Ruling

In a Decision^[21] dated April 27, 2004, the CIAC found both parties' claims to be partly meritorious and thus ordered: (a) COJCOLDS to pay BTL the amount of P2,760,838.79 as the unpaid balance of the original contract price, plus the unpaid additional works, and P300,000.00 as attorney's fees; and (b) BTL to pay COJCOLDS the amount of P1,191,920.00 as liquidated damages, and P300,533.49 as reimbursement of the balance of the latter's direct payments to the former's suppliers.^[22]

Based on the parties' stipulations, COJCOLDS was found liable only for 98% of the original contract price (*i.e.*, P12,680,000.00) in the amount of P12,426,400.00. Considering its previous payments in the total amount of P10,814,382.26, COJCOLDS was then ordered to pay BTL the unpaid balance of **P1,612,017.74**, as well as the costs of the additional works made on the Medina Project, particularly, P804,460.89^[23] for the concrete retaining wall, and P344,360.16 for the unpaid

balances from the works done under Change Order Nos. 8 to 12.^[24] On the other hand, BTL was ordered to pay COJCOLDS liquidated damages at the rate of P12,680.00 per day, or a total of P1,191,920.00, pursuant to Article 3(B) of the Contract as well as Article 29.04 of the General Conditions, due to the former's 94-day delay, notwithstanding several extensions (238 days in total).^[25]

Dissatisfied with the CIAC's ruling, COJCOLDS elevated the matter to the CA.^[26]

The CA Ruling

In a Decision^[27] dated August 15, 2006, the CA modified the CIAC's ruling in that it ordered COJCOLDS not only to pay BTL the amount of P1,612,017.74 representing the unpaid portion of 98% of the contract price, but also to return to BTL the 10% retention money in the amount of P1,248,179.87, after deducting the cost overrun of P526,400.00 that BTL was held to shoulder as per Article 3(E) of the Contract^[28] (under which COJCOLDS was allowed to engage the services of another contractor, *i.e.*, Vigor, to complete the Medina Project using the 10% retention amount).

Meanwhile, the CA ordered BTL to return to COJCOLDS the amount of P300,533.49 which was found to be an overpayment made by the latter pursuant to the change orders.^[29]

The CA also increased the award of liquidated damages in COJCOLDS's favor from P1,191,920.00 to P1,800,560.00 since BTL was actually in delay for 142 days (and not 94 days as found by the CIAC). The CA clarified that pursuant to Article 21.04(A) of the General Conditions as well as the practice in the construction industry, the architect's recommendation regarding the grant of extensions should be controlling and thus BTL was only given an extension of 190 days (and not 238 days as found by the CIAC).^[30]

Further, the CA deleted the awards for the additional works (*i.e.*, P804,460.89 for the concrete retaining wall, and P344,360.16 for the unpaid balances from the works taken under Change Order Nos. 8 to 12) adjudged by the CIAC in favor of COJCOLDS because: (a) the retaining wall should be properly deemed as part of the original works, considering that it was not covered by any change order, unlike the other additional works performed on the Medina Project; and (b) there is no basis in saying that COJCOLDS failed to pay the balance for the works taken under Change Order Nos. 8 to 12, considering that COJCOLDS paid such balance directly to BTL's suppliers, pursuant to BTL's May 18, 2001 request to COJCOLDS.^[31]

Finally, the CA deleted the award of attorney's fees in BTL's favor as COJCOLDS was not in bad faith in refusing to pay the former's claims.

Dissatisfied, both parties moved for reconsideration, which were, however, denied in a Resolution^[32] dated January 26, 2007, hence, these petitions.^[33]

The Issues Before the Court

The issues raised for the Court's resolution are as follows: (a) whether or not the 10% retention money that COJCOLDS was ordered to release in favor of BTL is

separate and distinct from the unpaid balance of the contract price amounting to P1,612,017.74; (b) whether or not COJCOLDS is liable for the “additional works” performed by BTL, specifically the concrete retaining wall and the works taken under Change Order Nos. 8 to 12; (c) whether or not BTL incurred delay in its obligation to complete the Medina Project and thus, must pay COJCOLDS liquidated damages at the rate of P12,680.00 for every day of delay; (d) whether or not BTL is liable to pay COJCOLDS the value of cost overrun in the amount of P526,400.00; (e) whether or not BTL received overpayments in the change orders from COJCOLDS amounting to P300,533.49 and thus, should be held liable to return the same; and (f) whether or not the parties are liable to pay each other’s attorney’s fees, arbitration costs, and costs of suit.

The Court’s Ruling

COJCOLDS’s petition in G.R. No. 176439 is partly meritorious, while BTL’s petition in G.R. No. 176718 is without merit. The Court shall resolve the above-mentioned issues in the order that they are mentioned.

I. Liabilities of COJCOLDS to BTL.

a. The 10% Retention Money and the Unpaid Balance of the Contract Price.

In its petition, COJCOLDS concedes that it has yet to pay BTL the unpaid balance of the contract price amounting to P1,612,017.74 and that it has withheld the 10% retention money in the amount of P1,248,179.87 which should be returned to BTL. It, however, argues that the CA erred in ruling that the retention money should be paid **in addition** to the unpaid balance of the contract price. COJCOLDS contends that treating the retention money as a separate and distinct liability from the unpaid balance would unduly increase its total liability from the Medina Project (including the amount of P10,814,382.26 which it had already paid to BTL) from P12,426,400.00 to P13,674,579.87.^[34]

The Court agrees with COJCOLDS.

In *H.L. Carlos Construction, Inc. v. Marina Properties Corp.*,^[35] the Court held that in the construction industry, the 10% retention money **is a portion of the contract price automatically deducted from the contractor’s billings, as security for the execution of corrective work** – if any – becomes necessary.^[36]

Articles 3(E) and 5 of the Contract and Article 22.14 of the General Conditions govern the application of the 10% retention money in these cases, viz.:

CONSTRUCTION CONTRACT

X X X X

ARTICLE 3. TIME AND COMPLETION AND SCHEDULE OF CONSTRUCTION

x x x x

E. The CONTRACTOR'S TEN (10) percent retention under Article V hereof shall be retained by the OWNER until all items on the Substantial Inspection are satisfactorily completed and accepted by the OWNER. If the CONTRACTOR shall refuse or fail to complete the Substantial Inspection punchlist, within the time fixed by a written notice, the OWNER shall then have the right to hire the services of another contractor to complete the same using the contractor's TEN (10) percent retention amount and the balance, if any, shall be returned to the CONTRACTOR.^[37]

x x x x

ARTICLE 5. PAYMENTS

The OWNER shall make payment on account of this Contract based on the value of work accomplished less TEN (10) percent retention and Expanded Withholding Tax (One percent of the amount due), for the duration of the Contract. The percentage value of work to be paid is in order of 15%, 30%, 45%, 60%, 75%, 90% and 100% accomplishments.

x x x x

The full and final payment, together with the ten (10) percent retention shall be paid to the CONTRACTOR as provided for and upon compliance of all requisites under Article 22.11 of the General Conditions.^[38]

x x x x

GENERAL CONDITIONS OF THE CONTRACT

x x x x

22.14 RELEASE OF RETENTION

The amount retained by the owner under the provision of the Contract shall be released within three (3) months after the date of final payment.^[39]

x x x x

A reading of the foregoing contractual provisions would reveal that the nature of the 10% retention money under the parties' Contract is no different from the description laid down by jurisprudence – that it is **a portion of the contract price** withheld from the contractor **to function as a security** for any corrective work to be performed on the infrastructure covered by a construction contract. As such, the 10% retention money **should not be treated as a separate and distinct liability** of COJCOLDS to BTL as it merely forms part of the contract price. While COJCOLDS