

## EN BANC

[ G.R. No. 207348, August 20, 2014 ]

**ROWENA R. SOLANTE, PETITIONER, VS. COMMISSION ON  
AUDIT, CHAIRPERSON MA. GRACIA PULIDO-TAN,  
COMMISSIONER JUANITO G. ESPINO, JR., COMMISSIONER  
HEIDI L. MENDOZA, AND FORTUNATA M. RUBICO, DIRECTOR IV,  
COA COMMISSION SECRETARIAT, in their official capacities,  
RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This is a petition for review filed under Rule 64 assailing the February 15, 2008 Decision<sup>[1]</sup> and November 5, 2012 Resolution,<sup>[2]</sup> denominated as Decision Nos. 2008-018 and 2012-190, respectively, of the Commission on Audit (COA). The assailed issuances affirmed the Notice of Disallowance No. (ND) 2000-002-101(97) dated November 14, 2001 issued by Remy M. Ramos, COA State Auditor IV, pursuant to COA Assignment Order No. 2000-63.<sup>[3]</sup>

#### The Facts

On April 26, 1989, the City of Mandaue and F.F. Cruz and Co., Inc. (F.F. Cruz) entered into a Contract of Reclamation<sup>[4]</sup> in which F.F. Cruz, in consideration of a defined land sharing formula thus stipulated, agreed to undertake, at its own expense, the reclamation of 180 hectares, more or less, of foreshore and submerged lands from the Cabahug Causeway in that city. The timetables, i.e., commencement of the contract and project completion, are provided in paragraphs 2 and 15 of the Contract which state:

2. COMMENCEMENT. Work on the reclamation shall commence not later than [July 1989], after this contract shall be ratified by the Sanggunian Panlungsod;

x x x x

15. CONTRACT DURATION. **The project is estimated to be completed in six (6) years:** (3 years for the dredge-filling and seawall construction and 3 years for the infrastructures completion). However, if all the infrastructures within the OWNERS' share of the project are already completed within the six (6) year period agreed upon, any extension of time for works to be done within the share of the DEVELOPERS, shall be at the discretion of the DEVELOPERS, as a growing city, changes in

requirements of the lot buyers are inevitable.

On a best effort basis, the construction of roadways, drainage system and open spaces in the area designated as share of the City of Mandaue, shall be completed not later than December 31, 1991. (emphasis supplied)

Subsequently, the parties inked in relation to the above project a Memorandum of Agreement (MOA) dated October 24, 1989<sup>[5]</sup> whereby the City of Mandaue allowed F.F. Cruz to put up structures on a portion of a parcel of land owned by the city for the use of and to house F.F. Cruz personnel assigned at the project site, subject to terms particularly provided in paragraphs 3, 4 and 5 of the MOA:

3) That [F.F. Cruz] desires to use a portion of a parcel of land of the [City of Mandaue] described under paragraph 1 hereof to the extent of 495 square meters x x x to be used by them in the construction of their offices to house its personnel to supervise the Mandaue City Reclamation Project x x x.

x x x x

4) That the [City of Mandaue] agrees to the desire of [F.F. Cruz] to use a portion of the parcel of land described under paragraph 1 by [F.F. Cruz] for the latter to use for the construction of their offices to house its personnel to supervise the said Mandaue City Reclamation Project with no rental to be paid by [F.F. Cruz] to the [City of Mandaue].

5) That the [City of Mandaue] and [F.F. Cruz] have agreed that **upon the completion of the Mandaue City Reclamation Project, all improvements introduced by [F.F. Cruz] to the portion of the parcel of land owned by the [City of Mandaue]** as described under paragraph 3 hereof existing upon the completion of the said Mandaue City **Reclamation Project shall ipso facto belong to the [City of Mandaue] in ownership** as compensation for the use of said parcel of land by [F.F. Cruz] without any rental whatsoever. (emphasis supplied)

Pursuant to the MOA, F.F. Cruz proceeded to construct the contemplated housing units and other facilities which included a canteen and a septic tank.

Later developments saw the City of Mandaue undertaking the Metro Cebu Development Project II (MCDP II), part of which required the widening of the Plaridel Extension Mandaue Causeway. However, the structures and facilities built by F.F. Cruz subject of the MOA stood in the direct path of the road widening project. Thus, the Department of Public Works and Highways (DPWH) and Samuel B. Darza, MCDP II project director, entered into an Agreement to Demolish, Remove and Reconstruct Improvement dated July 23, 1997<sup>[6]</sup> with F.F. Cruz whereby the latter would demolish the improvements outside of the boundary of the road widening project and, in return, receive the total amount of PhP 1,084,836.42 in compensation.

Accordingly, petitioner Rowena B. Rances (now Rowena Rances-Solante), Human Resource Management Officer III, prepared and, with the approval of Samuel B. Darza (Darza), then issued Disbursement Voucher (DV) No. 102-07-88-97 dated July 24, 1997<sup>[7]</sup> for PhP 1,084,836.42 in favor of F.F. Cruz. In the voucher, Solante certified that the expense covered by it was "**necessary, lawful and incurred under my direct supervision.**"

Thereafter, Darza addressed a letter-complaint to the Office of the Ombudsman, Visayas, inviting attention to several irregularities regarding the implementation of MCDP II. The letter was referred to the COA which then issued Assignment Order No. 2000-063 for a team to audit the accounts of MCDP II. Following an audit, the audit team issued Special Audit Office (SAO) Report No. 2000-28, par. 5 of which states:

F.F. Cruz and Company, Inc. was paid P1,084,836.42 for the cost of the property affected by the widening of Plaridel Extension, Mandaue Causeway. However, under Section 5 of its MOA with Mandaue City, the former was no longer the lawful owner of the properties at the time the payment was made.<sup>[8]</sup>

Based on the above findings, the SAO audit team, through Remy Ramos, issued the adverted ND 2000-002-101-(97)<sup>[9]</sup> disallowing the payment of PhP 1,084,836.42 to F.F. Cruz and naming that company, Darza and Solante liable for the transaction. Therefrom, Solante sought reconsideration, while F.F. Cruz appealed, but the motion for reconsideration and the appeal were jointly denied in Legal and Adjudication Office (LAO) Local Decision No. 2004-040 dated March 5, 2004, which F.F. Cruz in time appealed to COA Central.

In the meantime, the adverted letter-complaint of Darza was upgraded as an Ombudsman case, docketed as OMB-V-C-03-0173-C, against Solante, et al., albeit the Ombudsman, by Resolution of June 29, 2006,<sup>[10]</sup> would subsequently dismiss the same for lack of merit.

### **The Ruling of the Commission on Audit**

In its February 15, 2008 Decision,<sup>[11]</sup> the COA, as indicated at the outset, affirmed ND 2000-002-101-97 on the strength of the following premises:

From the above provision of the MOA, it is clear that the improvements introduced by F.F. Cruz x x x would be owned by the City upon completion of the project which under the Contract of reclamation should have been in 1995. However, the project was not completed in 1995 and even in 1997 when MDCP paid for these improvements. **The fact that the reclamation project had not yet been completed or turned over to the City of Mandaue by F.F. Cruz in 1997 or two years after it should have been completed, does not negate the right over such improvements by the City x x x. Clearly, the intention of the stipulation is for F.F. Cruz x x x to compensate the**

**government for the use of the land on which the office, pavement, canteen, extension shed, house and septic tank were erected. Thus, to make the government pay for the cost of the demolished improvements will defeat the intention of parties as regards compensation due from the contractor for its use of [the] subject land.** Under Article 1315 of the Civil Code, from the moment a contract is perfected, the parties are bound to the fulfillment to what has been expressly stipulated and all the consequences which according to their nature, may be in keeping with good faith, usage and law. Thus, even if the contractual stipulations may turn out to be financially disadvantageous to any party, such will not relieve any or both parties from their contractual obligations.<sup>[12]</sup> (emphasis supplied)

From such decision, Solante filed a Motion for Reconsideration dated June 28, 2010 purportedly with Audit Team Leader, Leila Socorro P. Domantay. This motion was denied by the COA in a Resolution dated November 5, 2012<sup>[13]</sup> wherein the commission held:

x x x The arguments of Ms. Solante that as long as the Project has not yet been turned over, the ownership of the said improvements would not be acquired yet by the City would put the entire contract at the mercy of F.F. Cruz & Co., Inc., thus, negating the mutuality of contracts principle expressed in Article 1308 of the New Civil Code, which states:

Art. 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

On February 15, 2013, Solante received a Notice of Finality of Decision (NFD)<sup>[14]</sup> stating that the COA Decision dated February 15, 2008 and Resolution dated November 5, 2012 have become final and executory, a copy of the Resolution having been served on the parties on November 9, 2012 by registered mail. Notably, Solante never received a copy of the COA Resolution. She came to get one only on May 8, 2013 after inquiring from the Cebu Central Post Office, which, in a *Certification of Delivery* dated May 8, 2013,<sup>[15]</sup> stated that the registered mail containing said copy was in fact not delivered.

Hence, the instant petition.

### **The Issue**

The resolution of the present controversy rests on the determination of a sole issue: who between the City of Mandaue and F.F. Cruz owned during the period material the properties that were demolished.

### **The Court's Ruling**

The petition is meritorious. The COA and its audit team obviously misread the