

## THIRD DIVISION

**[ G.R. No. 200250, August 06, 2014 ]**

**UPSI PROPERTY HOLDINGS, INC., PETITIONER, VS. DIESEL  
CONSTRUCTION CO., INC., RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court filed by UPSI Property Holdings, Inc. (*UPSI*) assails the November 11, 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 110926, and its January 17, 2012 Resolution<sup>[2]</sup> denying its petition for *certiorari*.

The present controversy stemmed from a complaint filed by respondent Diesel Construction Co., Inc. (*Diesel*) against UPSI before the Construction Industry Arbitration Commission (CIAC) for collection of unpaid balance of the contract price and retention money under their construction agreement, damages for unjustified refusal to grant extension of time, interest, and attorney's fees.

On December 4, 2001, Arbitral award<sup>[3]</sup> was rendered by the CIAC in favor of Diesel, to wit:

Summary of Awards:

Wherefore, judgment is hereby rendered and the AWARD of monetary claims is made as follows:

**CLAIMANT:**

<b>Description</b>	<b>Amount Claimed</b>	<b>Award</b>
Unpaid Balance of Construction Agreement	P3,943,000.00	P3,661,692.60
Additional Labor Costs	1,509,756.00	
	0.00	
Interest	690,942.23	
Attorney's Fees	1,000,000.00	366,169.00
Total	P7,143,698.23	P4,027,861.60

**RESPONDENT:**

<b>Description</b>	<b>Amount Claimed</b>	<b>Award</b>
Cost to Complete the Project	P1,321,500.92	P 0.00
Liquidated Damages	4,340,000.00	0.00
Attorney's Fees	900,000.00	0.00
<b>Total</b>	<b>P6,561,500.92</b>	<b>0.00</b>

Net Award to Claimant:

P4,027,861.60

Claimant, Diesel Construction Corporation, Inc., is hereby awarded the amount of FOUR MILLION TWENTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY-ONE PESOS AND SIXTY CENTAVOS plus legal interest of six percent (6%) per annum on the said amount computed from June 4, 2001 and at the rate of twelve percent (12%) per annum from the date of finality of the decision herein until fully paid.

Respondent is further ordered to pay the full cost of arbitration in the amount of TWO HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED SIX PESOS AND THREE CENTAVOS and to reimburse the Claimant of all advances made in this regard.

SO ORDERED.<sup>[4]</sup>

The CIAC judgment became the subject of a petition for review before the CA, which rendered a decision, dated April 16, 2002, quoted as follows:

WHEREFORE, premises considered, the petition is GRANTED and the questioned Decision is MODIFIED in this wise:

a. The claim of petitioner UPSI for liquidated damages is GRANTED to the extent of PESOS: ONE MILLION THREE HUNDRED NINE THOUSAND AND FIVE HUNDRED (P1,309,500.00) representing forty-five (45) days of delay at P29,100 *per diem*;

b. We hold that respondent [Diesel] substantially complied with the Construction Contract and is therefore entitled to one hundred percent (100%) payment of the contract price. Therefore, the claim of respondent Diesel for an unpaid balance of PESOS: TWO MILLION FOUR HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED EIGHTY-TWO and SIXTY-FOUR centavos (P2,441,482.64), which amount already includes the retention on the additional works or Change Orders, is GRANTED, minus liquidated damages. In sum, petitioner UPSI is held liable to respondent Diesel in the amount of PESOS: ONE MILLION ONE HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED EIGHTY-TWO and sixty four centavos (P1,131,982.64), with legal interest until the same is fully paid;

c. The parties are liable equally for the payment of arbitration costs;

d. All claims for attorney's fees are DISMISSED; and

e. Since there is still due and owing from UPSI an amount of money in favor of Diesel, respondent FGU is DISCHARGED as surety for Diesel.

*Costs de officio.*

SO ORDERED.<sup>[5]</sup>

UPSI filed its Motion for Partial Reconsideration,<sup>[6]</sup> dated May 6, 2002, while Diesel filed its Motion for Reconsideration,<sup>[7]</sup> dated May 7, 2002. The CA denied that of UPSI, but partially granted that of Diesel. Thus:

WHEREFORE, the Motion for Reconsideration of respondent Diesel Construction Co., Inc. is partially GRANTED. The liquidated damages are hereby reduced to P1,146,519.00 (45 days multiplied by P25,478.20 *per diem*). However, in accordance with the main opinion, We hold that petitioner is liable to respondent Diesel for the total amount of P3,661,692.64, representing the unpaid balance of the contract price plus the ten-percent retention, from which the liquidated damages, must, of course, be deducted. Thus, in sum, as amended, We hold that petitioner is still liable to respondent Diesel in the amount of P2,515,173.64, with legal interest until the same is fully paid.

The main opinion, in all other respects, STANDS.

SO ORDERED.<sup>[8]</sup>

Unsatisfied, Diesel and UPSI filed their separate petitions for review before the Court, docketed as G.R. No. 154885 and G.R. No. 154937, respectively, which were later consolidated. The Court then rendered judgment on March 24, 2008, the dispositive portion of which reads:

**WHEREFORE**, Diesel's petition is **PARTIALLY GRANTED** and UPSI's Petition is **DENIED** with qualification. The assailed Decision dated April 16, 2002 and Resolution dated August 21, 2002 of the CA are **MODIFIED**, as follows:

- (1) The award for liquidated damages is **DELETED**;
- (2) The award to Diesel for the unpaid balance of the contract price of PhP 3,661,692.64 is **AFFIRMED**;
- (3) UPSI shall pay the costs of arbitration before the CIAC in the amount of PhP 298,406.03;
- (4) Diesel is awarded attorney's fees in the amount of PhP 366,169; and
- (5) UPSI is awarded damages in the amount of PhP 310,834.01, the same to be deducted from the retention money, if there still be any, and, if necessary, from the amount referred to in item (2) immediately above.

In summary, the aggregate award to Diesel shall be PhP 3,717,027.64. From this amount shall be deducted the award of actual damages of PhP 310,834.01 to UPSI which shall pay the costs of arbitration in the amount of PhP 298,406.03.

FGU is released from liability for the performance bond that it issued in favor of Diesel.

No costs.

**SO ORDERED.**<sup>[9]</sup>

UPSI moved for a reconsideration<sup>[10]</sup> and Diesel filed its Motion for Leave to File and Admit Attached Comment and/or Opposition (to UPSI Property Holdings, Inc.'s Motion for Reconsideration) with Motion for Clarification.<sup>[11]</sup> In its Resolution,<sup>[12]</sup> dated August 20, 2008, the Court denied with finality the motion filed by UPSI and granted that of Diesel's.

On October 8, 2008, the March 24, 2008 Decision of the Court became final and executory.

Eventually, Diesel filed the Motion for Issuance of Writ of Execution with the CIAC.

On February 17, 2009, despite numerous pleadings filed by UPSI opposing the execution of the Court's decision, the CIAC granted<sup>[13]</sup> the execution sought by Diesel. Still unsatisfied, UPSI questioned by *certiorari* the execution granted by the CIAC before the CA, docketed as CA-G.R. SP No. 108423. On July 9, 2009, the CA denied<sup>[14]</sup> the UPSI petition and later its motion for reconsideration.

Meanwhile, pending the resolution of the petition for *certiorari* in CA-G.R. SP No. 108423, Diesel sought the amendment of the writ of execution before the CIAC so that the payment of legal interest be included in the writ as well as in the reimbursement of half of the arbitration costs. Despite the opposition by UPSI, CIAC partially granted Diesel's motion in its Order,<sup>[15]</sup> dated July 29, 2009, which considered the interest being claimed by Diesel. But as far as the reimbursement of half of the arbitration costs was concerned, the CIAC denied it. UPSI questioned the CIAC order via a petition for *certiorari* with the CA, docketed as CA-G.R. SP 110926, arguing that the CIAC gravely abused its discretion when it substantially modified the writ of execution by holding that Diesel was entitled to legal interest. The CA, however, denied the petition in its ruling that:

Hence, the issue of legal interest was never raised, nor quibbled about by the petitioner, making it final and binding regardless of what the principal award may turn out to be.

An incisive scrutiny of the portion of the Supreme Court's Decision stating that, "[The] award to Diesel for the unpaid balance of the contract price of Php3,661,692.64 is AFFIRMED." only goes to show that such amount represents the balance of the contract price plus the ten-percent retention, from which the liquidated damages must be deducted; the difference or the net amount of which bears legal interest until fully paid as awarded by this Court. Hence, the confirmation by the Supreme Court that the final award should indeed be P3,661,692.64 addressed the question as to what should be the unpaid balance due to the private respondent. Logically, whatever the amount is awarded necessarily bears the legal interest as awarded previously by this Court.

We disagree with petitioner's contention that the Supreme Court deleted the legal interest by its silence on that matter. If such was its intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to herein petitioner.

[16]

The CA further explained that there was no substantial variance between the assailed judgment and the writ of execution rendered to enforce it because the whole context of the controversy pointed to the rightful provision of legal interest in the total execution of the final judgment.[17]

UPSI subsequently filed a motion for reconsideration, but it was likewise denied.

Hence, the present petition assigning the following

### **ERRORS:**

**THE COURT OF APPEAL SERIOUSLY ERRED AND DECIDED IN A MANNER NOT IN ACCORDANCE WITH THE LAW AND PREVAILING JURISPRUDENCE WHEN IT RULED THAT:**

**I. CIAC IS ALLEGEDLY CORRECT IN ISSUING THE ASSAILED ORDER SINCE THE ISSUE OF LEGAL INTEREST WAS SUPPOSEDLY NEVER RAISED BY PETITIONER BEFORE THE SUPREME COURT IN ITS EARLIER PETITION, THEREBY CONSIDERING THE MATTER ALLEGEDLY AS ALREADY A SETTLED ISSUE. ON THE CONTRARY, PETITIONER HAS CONSISTENTLY PUT IN ISSUE CIAC'S ERRONEOUS IMPOSITION OF LEGAL INTEREST AS EARLY AS 28 DECEMBER 2001 IN ITS PETITION FOR REVIEW FILED BEFORE THE HONORABLE COURT OF APPEALS.**

**II. IT WAS ALLEGEDLY CORRECT AND PROPER THAT CIAC SUPPOSEDLY CLARIFIED THE PROVISION ON PAYMENT OF INTEREST IN THE WRIT OF EXECUTION IT ISSUED ALLEGEDLY PURSUANT TO THE CONTEXT OF THE FINAL JUDGMENT RENDERED BY THE SUPREME COURT. ON THE CONTRARY, CIAC PURPOSELY CHANGED THE PROVISIONS OF THE SUPREME COURT'S DECISION TO FAVOR RESPONDENT DIESEL.**[18]

The crucial issue for resolution revolves around the propriety of the inclusion of the legal interest in the writ of execution despite the "silence" of the Court in the dispositive portion of its judgment which has become final and executory.

Before ruling on the propriety of the assailed CA decision, the issue of forum