

## THIRD DIVISION

**[ G.R. Nos. 180631-33, February 22, 2012 ]**

**PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER,  
VS. CENTRAL COLLEGES OF THE PHILIPPINES AND DYNAMIC  
PLANNERS AND CONSTRUCTION CORPORATION, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure challenging the June 29, 2007 Decision<sup>[1]</sup> and November 19, 2007 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in the consolidated cases CA-G.R. SP Nos. 90361, 90383 and 90384.

#### **THE FACTS**

On May 16, 2000, Central Colleges of the Philippines (CCP), an educational institution, contracted the services of Dynamic Planners and Construction Corporation (DPCC) to be its general contractor for the construction of its five (5)-storey school building at No. 39 Aurora Boulevard, Quezon City, with a total contract price of P248,000,000.00. As embodied in a Contract Agreement,<sup>[3]</sup> the construction of the entire building would be done in two phases with each phase valued at P124,000,000.00.

To guarantee the fulfillment of the obligation, DPCC posted three (3) bonds, all issued by the Philippine Charter Insurance Corporation (PCIC), namely: (1) Surety Bond No. PCIC-45542, dated June 25, 2003, amounting to P7,031,460.74;<sup>[4]</sup> (2) Performance Bond No. PCIC-45541<sup>[5]</sup> in the amount of P2,929,775.31 which was subsequently increased to P6,199,999.99 through Bond Endorsement No. E-2003/12527;<sup>[6]</sup> and (3) Performance Bond No. PCIC-46172 for P692,890.74.<sup>[7]</sup> All the bonds were callable on demand and set to expire on October 30, 2003.

The Phase 1 of the project was completed without issue. Thereafter, CCP paid DPCC P14,880,000.00 or 12% of the agreed price of P124,000,000.00 with a check dated March 14, 2002 as downpayment for the Phase 2 of the project.

The Phase 2 of the project, however, encountered numerous delays. When CCP audited DPCC on July 25, 2003, only 47% of the work to be done was actually finished.

Thus, in a letter dated October 29, 2003 addressed to DPCC and PCIC, CCP informed them of the breach in the contract and its plan to claim on the construction bonds. Pertinent portions of the letter are herein quoted:

You are both hereby NOTIFIED that the Bonds referred to above for the faithful performance of a Contract, dated 16 May 2000 for the construction of CCP EXTENSION BLDG. (Phase 2) at 39 Aurora Blvd., Quezon City, Metro Manila and the Variation Order No. 2 has been breached by the CONTRACTOR for which reason, the CENTRAL COLLEGES OF THE PHILIPPINES, as owner, hereby gives NOTICE that it will file an action on the said performance and surety bonds.<sup>[8]</sup>

On November 6, 2003, CCP notified DPCC and PCIC that only 51% of the project was completed, which was way behind the construction schedule, prompting it to declare the occurrence of default against DPCC. It formally requested PCIC to remit the proceeds of the bonds.<sup>[9]</sup>

On November 14, 2003, DPCC wrote PCIC confirming the finding that Phase 2 was only 51% finished and, at the same time, requesting for the extension of its performance and surety bonds because the supposed revision of the plans would require more days.<sup>[10]</sup>

In a letter dated November 21, 2003, CCP notified PCIC that because of DPCC's inability to complete the project on time, it decided to terminate its contract with the latter and to continue the construction on its own. The full text of the letter is herein reproduced:

We acknowledge the receipt of your letter dated November 14, 2003 and we are in the process of compiling the documents you requested. The said documents will be submitted as soon as possible.

Furthermore, we would like to reiterate that your principal, the Dynamic Planners & Construction Corporation has breached the Contract of Agreement dated May 16, 2000 by having completed only an estimated 51% of the construction of the 5-storey CCP Extension Building, Phase 2 and has therefore failed to perform the work within the agreed schedule.

In view thereof, as stated in our earlier letter of 6 November 2003, we were compelled to declare the occurrence of a default on the part of your principal, and have terminated their contract. Please remit to us the proceeds of the captioned Bonds within the earliest possible time.

The Central Colleges of the Philippines will complete the construction of the 5-storey CCP Extension Building, Phase 2 on its own.<sup>[11]</sup>

Meanwhile, on December 5, 2003, PCIC informed DPCC that it had approved its request for extension of the bonds.<sup>[12]</sup>

Eventually, negotiations to continue on with the construction between CCP and DPCC reached a dead end. CCP hired another contractor to work on the school site.

On August 13, 2004, CCP sent a letter to PCIC of its final demand for the payment

of P13,924,351.47 as indicated in the bonds.<sup>[13]</sup>

On August 20, 2004, PCIC denied CCP's claims against the three bonds.<sup>[14]</sup>

Thus, on October 28, 2004, CCP filed a complaint with request for arbitration before the Construction Industry Arbitration Commission (CIAC) against DPCC and PCIC.

<sup>[15]</sup> In its complaint, CCP prayed that CIAC hold DPCC and PCIC, jointly and severally liable, against the following bonds:

1. Under Surety Bond No. 45542, the amount of Php7,031,460.74 plus legal interest from the date of demand until full payment thereof;
2. Under Performance Bond Nos. PCIC-45541 [Bond Endorsement Nos. E-2003/12527] and PCIC-46172, the amount of Php6,892,890.73 plus legal interest from the date of demand until full payment thereof; and
3. Php100,000.00 as and for attorney's fees.<sup>[16]</sup>

In their Answer,<sup>[17]</sup> DPCC and PCIC denied any liability and proffered that CCP unlawfully withheld the materials, equipment, formworks and scaffoldings left at the premises amounting to P4,232,264.12.

On June 3, 2005, the CIAC rendered a decision in favor of CCP. It gave the following reasons:

1. Claimant was legally justified in terminating the Contract;
2. On the issue of whether claimant faithfully complied with its contractual obligation in respect of (a) the release of the downpayment, (b) the delivery of the drawings for construction, and (c) the payment of progress billings, there is no record that Dynamic protested the delay in the delivery of the site, the delay in the submission of technical plans and demanded as a result thereof the corresponding adjustment of the Contract Period or the Contract Price. The issue of delay in the reduction of the down payment is moot since Dynamic acquiesced in the reduction of the down payment from 15% to 12% and the issue of payment of the 12th progress billing arose as a consequence of a legitimate issue as to the percentage of completion of the work by Dynamic as of August 2003.
3. Dynamic's percentage of accomplishment as of the date of the termination of the Contract was 57.33% at P71,089,200.
4. The original Contract Price was P124,000,000. To this amount shall be added the price of Variation Order No. 2 of P13,857,814.87 or an adjusted Contract Price of P137,857,814.87. Deducting P110,000,792.87, the overpayment to Dynamic is P27,779,022.00. However, Claimant is entitled to an award not exceeding the amount of its claims in its Complaint and in the Terms of Reference.

5. Dynamic failed to produce evidence to show that it was not paid the balance of the Contract Price for Phase 1 of the Project.
6. Surety is liable to Claimant under the Performance and Surety Bonds it issued in favor of Claimant. The liability of Surety is to indemnify Claimant for the un-recouped down payment [which] shall not exceed P7,031,460.74 under the Surety Bond and for not more than P6,892,890.73 under the Performance Bonds.
7. If Surety is obliged to pay these amounts to Claimant, it is entitled, on its cross-claim, to indemnity from Dynamic.
8. Claimant's claims under the Surety and Performance Bonds are not time-barred.
9. Surety is not barred by estoppel from denying liability under the Surety and Performance Bonds.
10. Claimant's request to Dynamic to extend the term of these bonds, Dynamic's request to Surety to extend their terms and Surety's grant of the extension requested have no adverse legal effect upon the rights and obligations of the parties.
11. The contractual time-bar embodied in the bonds is valid and binding.
12. Dynamic is entitled to its claims for the payment of P1,732,264.14 for materials and of P2,500,000.00 for the equipment, formworks and scaffolding left at the site.
13. The claims for payment of moral, exemplary and temperate damages and for attorney's fees are denied.
14. The parties shall bear their own cost of arbitration.<sup>[18]</sup>

Thus, CIAC disposed of the case finding DPCC liable to pay CCP P7,031,460.74 from the Surety Bond representing the unrecouped downpayment and P6,892,890.73 from its Performance Bond for a total of P13,924,351.47. The CIAC likewise ordered CCP to pay DPCC P1,732,264.12 corresponding to the construction materials left at the site and P2,500,000.00 for the cost of equipment, formworks and scaffoldings appropriated by CCP or a total of P4,232,264.12. The fallo reads:

WHEREFORE, award is hereby made against Respondent Dynamic Planners and Construction Corporation and Respondent Philippine Charter Insurance Corporation, ordering them, jointly and severally, to pay Claimant, Central Colleges of the Philippines the amount of P7,031,460.74 under the Surety Bond as un-recouped down payment, and the amount of P6,892,890.73 under the Performance Bond or the total amount of P13,924,351.47.

Award is likewise made against Claimant, Central Colleges of the

Philippines, ordering the latter to pay Respondent Dynamic Planners and Construction Corporation, the amount of P1,732,264.12 for the latter's materials left at the Project Site and the amount of P2,500,000.00 as the cost of its equipment, formworks and scaffoldings which were appropriated by the former or the total amount of P4,232,264.12.

Offsetting the amount due claimant Central Colleges of the Philippines from Respondent Dynamic Planners and Construction Corporation and that due the latter from the former, there is a net amount of P9,692,087.37 which Respondent Dynamic Planners and Construction Corporation is hereby ordered to pay Claimant Central Colleges of the Philippines with interest at the rate of 6% per annum from the date of this Final Award and 12% per annum from the time this Final Award becomes final and executory and until it is fully paid in accordance with *Eastern Shipping Lines, Inc. vs. Court of Appeals* (1994) 234 SCRA 78.

The joint and several liability of Respondent Philippine Charter Insurance Corporation with Respondent Dynamic Planners and Construction Corporation is accordingly reduced to P9,692,087.37. In the event of payment by Respondent Philippine Charter Insurance Corporation, the latter is entitled to indemnity from its co-Respondent Dynamic Planners and Construction Corporation up to the full amount of such payment. In the event of delay in making payment to indemnify Respondent Philippine Charter Insurance Corporation, Respondent Dynamic Planners Charter Insurance Corporation shall pay interest at the rate of 21% per annum in accordance with the Indemnity Agreement between them.

All other claims, counterclaims and cross-claims not otherwise determined in this Final Award are deemed denied for lack of merit.

SO ORDERED.<sup>[19]</sup>

All the parties appealed the CIAC decision to the CA. PCIC's appeal was docketed as CA-G.R. SP No. 90361;<sup>[20]</sup> CCP's appeal was docketed as CA-G.R. SP No. 90383;<sup>[21]</sup> and DPCC's appeal was docketed as CA-G.R. SP No. 90384.<sup>[22]</sup> Eventually, the cases were consolidated.<sup>[23]</sup>

On June 29, 2007, the CA modified CIAC's earlier decision.<sup>[24]</sup> The CA found that DPCC was already in delay for managing to complete only 51% of the construction work necessary to finish the Phase 2 of the project. It held that due to DPCC's inexcusable delay, CCP was legally within its rights to terminate the contract with it. It likewise did not give weight to PCIC's defense that Bond No. 46172 was already released because the said issue was never raised before the CIAC and was raised for the first time on appeal.<sup>[25]</sup> The CA, however, deleted the award of cost of the materials, equipment, formworks and scaffoldings allegedly left by DPCC at the work site for its failure to prove the actual costs of said materials.<sup>[26]</sup> It added, "In any event, the cost of such materials, equipment, formworks and scaffoldings cannot be deducted from Philippine Charter's liability on the bond, as the credit does not belong to the latter but to Dynamic."<sup>[27]</sup> Accordingly, the decretal portion of the CA