

THIRD DIVISION

[G.R. No. 167022, April 04, 2011]

LICOMCEN INCORPORATED, PETITIONER, VS. FOUNDATION SPECIALISTS, INC., RESPONDENT.

[G.R. NO. 169678]

FOUNDATION SPECIALISTS, INC., PETITIONER, VS. LICOMCEN INCORPORATED, RESPONDENT.

D E C I S I O N

BRION, J.:

THE FACTS

The petitioner, LICOMCEN Incorporated (*LICOMCEN*), is a domestic corporation engaged in the business of operating shopping malls in the country.

In March 1997, the City Government of Legaspi awarded to LICOMCEN, after a public bidding, a lease contract over a lot located in the central business district of the city. Under the contract, LICOMCEN was obliged to finance the construction of a commercial complex/mall to be known as the LCC Citimall (*Citimall*). It was also granted the right to operate and manage Citimall for 50 years, and was, thereafter, required to turn over the ownership and operation to the City Government.^[1]

For the Citimall project, LICOMCEN hired E.S. de Castro and Associates (*ESCA*) to act as its engineering consultant. Since the Citimall was envisioned to be a high-rise structure, LICOMCEN contracted respondent Foundation Specialists, Inc. (*FSI*) to do initial construction works, specifically, the construction and installation of bored piles foundation.^[2] LICOMCEN and FSI signed the Construction Agreement,^[3] and the accompanying Bid Documents^[4] and General Conditions of Contract^[5] (GCC) on September 1, 1997. Immediately thereafter, FSI purchased the materials needed for the Citimall^[6] project and began working in order to meet the 90-day deadline set by LICOMCEN.

On December 16, 1997, LICOMCEN sent word to FSI that it was considering major design revisions and the suspension of work on the Citimall project. FSI replied on December 18, 1997, expressing concern over the revisions and the suspension, as it had fully mobilized its manpower and equipment, and had ordered the delivery of steel bars. FSI also asked for the payment of accomplished work amounting to P3,627,818.00.^[7] A series of correspondence between LICOMCEN and FSI then followed.

ESCA wrote FSI on January 6, 1998, stating that the revised design necessitated a

change in the bored piles requirement and a substantial reduction in the number of piles. Thus, ESCA proposed to FSI that *only 50% of the steel bars be delivered to the jobsite* and the rest be shipped back to Manila.^[8] Notwithstanding this instruction, all the ordered steel bars arrived in Legaspi City on January 14, 1998.^[9]

On January 15, 1998, LICOMCEN instructed FSI to "hold all construction activities on the project,"^[10] in view of a pending administrative case against the officials of the City Government of Legaspi and LICOMCEN filed before the Ombudsman (OMB-ADM-1-97-0622).^[11] On January 19, 1998, ESCA formalized the suspension of construction activities and ordered the construction's demobilization until the case was resolved.^[12] In response, FSI sent ESCA a letter, dated February 3, 1998, requesting payment of costs incurred on account of the suspension which totaled P22,667,026.97.^[13] FSI repeated its demand for payment on March 3, 1998.^[14]

ESCA replied to FSI's demands for payment on March 24, 1998, objecting to some of the claims.^[15] It denied the claim for the cost of the steel bars that were delivered, since the delivery was done in complete disregard of its instructions. It further disclaimed liability for the other FSI claims based on the suspension, as its cause was not due to LICOMCEN's fault. **FSI rejected ESCA's evaluation of its claims in its April 15, 1998 letter.**^[16]

On March 14, 2001, FSI sent a final demand letter to LICOMCEN for payment of P29,232,672.83.^[17] Since LICOMCEN took no positive action on FSI's demand for payment,^[18] FSI filed a petition for arbitration with the Construction Industry Arbitration Commission (CIAC) on October 2, 2002, docketed as CIAC Case No. 37-2002.^[19] In the arbitration petition, FSI demanded payment of the following amounts:

a. Unpaid accomplished work billings.....	P 1,264,404.12
b. Material costs at site.....	15,143,638.51
c. Equipment and labor standby costs.....	3,058,984.34
d. Unrealized gross profit.....	9,023,575.29
e. Attorney's fees.....	300,000.00
f. Interest expenses	equivalent to 15% of the total claim

LICOMCEN again denied liability for the amounts claimed by FSI. It justified its decision to indefinitely suspend the Citimall project due to the cases filed against it involving its Lease Contract with the City Government of Legaspi. LICOMCEN also assailed the CIAC's jurisdiction, contending that FSI's claims were matters not subject to arbitration under GC-61 of the GCC, but one that should have been filed before the regular courts of Legaspi City pursuant to GC-05.^[20]

During the preliminary conference of January 28, 2003, LICOMCEN reiterated its objections to the CIAC's jurisdiction, which the arbitrators simply noted. Both FSI and LICOMCEN then proceeded to draft the Terms of Reference.^[21]

On February 4, 2003, LICOMCEN, through a collaborating counsel, filed its *Ex Abundati Ad Cautela Omnibus* Motion, insisting that FSI's petition before the CIAC should be dismissed for lack of jurisdiction; thus, it prayed for the suspension of the arbitration proceedings until the issue of jurisdiction was finally settled. The CIAC denied LICOMCEN's motion in its February 20, 2003 order,^[22] finding that the question of jurisdiction depends on certain factual conditions that have yet to be established by ample evidence. As the CIAC's February 20, 2003 order stood uncontested, the arbitration proceedings continued, with both parties actively participating.

The CIAC issued its decision on July 7, 2003,^[23] ruling in favor of FSI and awarding the following amounts:

- a. Unpaid accomplished work billings..... P 1,264,404.12
- b. Material costs at site..... 14,643,638.51
- c. Equipment and labor standby costs..... 2,957,989.94
- d. Unrealized gross profit..... 5,120,000.00

LICOMCEN was also required to bear the costs of arbitration in the total amount of P474,407.95.

LICOMCEN appealed the CIAC's decision before the Court of Appeals (CA). On November 23, 2004, the CA upheld the CIAC's decision, modifying only the amounts awarded by (a) reducing LICOMCEN's liability for material costs at site to P5,694,939.87, and (b) deleting its liability for equipment and labor standby costs and unrealized gross profit; all the other awards were affirmed.^[24] Both parties moved for the reconsideration of the CA's Decision; LICOMCEN's motion was denied in the CA's February 4, 2005 Resolution, while FSI's motion was denied in the CA's September 13, 2005 Resolution. Hence, the parties filed their own petition for review on *certiorari* before the Court.^[25]

LICOMCEN's Arguments

LICOMCEM principally raises the question of the CIAC's jurisdiction, insisting that FSI's claims are non-arbitrable. In support of its position, LICOMCEN cites GC-61 of the GCC:

GC-61. DISPUTES AND ARBITRATION

Should **any dispute of any kind** arise between the LICOMCEN INCORPORATED and the Contractor [referring to FSI] or the Engineer [referring to ESCA] and the Contractor **in connection with, or arising out of the execution of the Works**, such dispute shall first be referred

to and settled by the LICOMCEN, INCORPORATED who shall within a period of thirty (30) days after being formally requested by either party to resolve the dispute, issue a written decision to the Engineer and Contractor.

Such decision shall be final and binding upon the parties and the Contractor shall proceed with the execution of the Works with due diligence notwithstanding any Contractor's objection to the decision of the Engineer. If within a period of thirty (30) days from receipt of the LICOMCEN, INCORPORATED's decision on the dispute, either party does not officially give notice to contest such decision through arbitration, the said decision shall remain final and binding. However, should any party, within thirty (30) days from receipt of the LICOMCEN, INCORPORATED's decision, contest said decision, the dispute shall be submitted for arbitration under the Construction Industry Arbitration Law, Executive Order 1008. The arbitrators appointed under said rules and regulations shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the LICOMCEN, INCORPORATED. Neither party shall be limited to the evidence or arguments put before the LICOMCEN, INCORPORATED for the purpose of obtaining his said decision. No decision given by the LICOMCEN, INCORPORATED shall disqualify him from being called as a witness and giving evidence in the arbitration. It is understood that the obligations of the LICOMCEN, INCORPORATED, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.^[26]

LICOMCEN posits that only disputes "in connection with or arising out of the execution of the Works" are subject to arbitration. LICOMCEN construes the phrase "**execution of the Works**" as referring to the *physical construction activities*, since "Works" under the GCC specifically refer to the "structures and facilities" required to be constructed and completed for the Citimall project.^[27] It considers FSI's claims as mere **contractual monetary claims** that should be litigated before the courts of Legaspi City, as provided in GC-05 of the GCC:

GC-05. JURISDICTION

Any question between the contracting parties that may arise out of or in connection with the Contract, or breach thereof, shall be litigated in the courts of Legaspi City except where otherwise specifically stated or except when such question is submitted for settlement thru arbitration as provided herein.^[28]

LICOMCEN also contends that FSI failed to comply with the condition precedent for arbitration laid down in GC-61 of the GCC. An arbitrable dispute under GC-61 must first be referred to and settled by LICOMCEN, which has 30 days to resolve it. If within a period of 30 days from receipt of LICOMCEN's decision on the dispute, either party does not officially give notice to contest such decision through arbitration, the said decision shall remain final and binding. However, should any

party, within 30 days from receipt of LICOMCEN's decision, contest said decision, the dispute shall be submitted for arbitration under the Construction Industry Arbitration Law.

LICOMCEN considers its March 24, 1998 letter as its final decision on FSI's claims, but declares that FSI's reply letter of April 15, 1998 is not the "notice to contest" required by GC-61 that authorizes resort to arbitration before the CIAC. It posits that nothing in FSI's April 15, 1998 letter states that FSI will avail of arbitration as a mode to settle its dispute with LICOMCEN. While FSI's final demand letter of March 14, 2001 mentioned its intention to refer the matter to arbitration, LICOMCEN declares that the letter was made three years after its March 24, 1998 letter, hence, long after the 30-day period provided in GC-61. Indeed, FSI filed the petition for arbitration with the CIAC only on October 2, 2002.^[29] Considering FSI's delays in asserting its claims, LICOMCEN also contends that FSI's action is barred by laches.

With respect to the monetary claims of FSI, LICOMCEM alleges that the CA erred in upholding its liability for material costs at site for the reinforcing steel bars in the amount of P5,694,939.87, computed as follows^[30]:

2 nd initial rebar requirements purchased from Pag-Asa Steel Works, Inc.....	P 799,506.83
Reinforcing steel bars purchased from ARCA Industrial Sales (total net weight of 744,197.66 kilograms) - 50% of net amount due.....	<u>5,395,433.04</u>
Subtotal.....	6,194,939.87
<i>Less</i>	
Purchase cost of steel bars by Ramon Quinquileria.....	<u>(500,000.00)</u>
TOTAL LIABILITY OF LICOMCEN TO FSI FOR MATERIAL COSTS AT SITE.....	5,694,939.87

Citing GC-42(2) of the GCC, LICOMCEN says it shall be liable to pay FSI "[t]he cost of materials or goods **reasonably ordered for the Permanent or Temporary Works** which have been **delivered to the Contractor** but not yet used, and which delivery has been **certified by the Engineer.**"^[31] None of these requisites were allegedly complied with. It contends that FSI failed to establish that the steel bars delivered in Legaspi City, on January 14, 1998, were for the Citimall project. In fact, the steel bars were delivered not at the site of the Citimall project, but at FSI's batching plant called Tuanzon compound, a few hundred meters from the site. Even if delivery to Tuanzon was allowed, the delivery was done in violation of ESCA's instruction to ship only 50% of the materials. Advised as early as December 1997 to suspend the works, FSI proceeded with the delivery of the steel bars in January 1998. LICOMCEN declared that it should not be made to pay for costs that FSI willingly incurred for itself.^[32]

Assuming that LICOMCEN is liable for the costs of the steel bars, it argues that its