

SECOND DIVISION

[G.R. No. 176535, September 07, 2011]

**NATIONAL HOUSING AUTHORITY, PETITIONER, VS. FIRST
UNITED CONSTRUCTORS CORPORATION, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner National Housing Authority (NHA), seeking to reverse and set aside the 1 August 2006 Decision^[1] of the Court of Appeals (CA) and its Resolution dated 31 January 2007^[2] in CA-G.R. SP No. 81635.

In the questioned Decision, the appellate court affirmed with modification the Decision promulgated on 7 January 2004^[3] by the Construction Industry Arbitration Commission (CIAC), thru a three member Arbitral Tribunal^[4] in CIAC Case No. 14-2003 entitled "*First United Constructors Corporation v. National Housing Authority*," that granted an arbitral award in favor of respondent First United Constructors Corporation (FUCC); and in its assailed Resolution, refused to reconsider its Decision.

The Facts

From the Petition,^[5] the Comment^[6] thereon of respondent, petitioner's Reply,^[7] and their respective Annexes,^[8] particularly the Complaint^[9] of respondent, petitioner's Answer^[10] and the Joint Stipulations^[11] of the parties incorporated as Admitted Facts in the Supplemental Terms of Reference,^[12] all filed with the CIAC, and from the CA Decision and the CIAC Decision, the Court gathers the following relevant facts and antecedents:

Respondent FUCC was the contractor of Phase I of the Freedom Valley Resettlement Project (the FVR Project or the Project) of petitioner NHA.^[13]

The FVR Project was a proposed resettlement site for informal settlers of Metro Manila. Conceived in May 1996, it was the subject of a Memorandum of Agreement entered into by and among the Housing & Urban Development Coordinating Council (HUDCC), the Department of Environment & Natural Resources (DENR), the Metro Manila Development Authority (MMDA) and the Marilaque Commission.^[14]

The FVR Project sits on a 750-hectare property reserved as a resettlement site for the landless and homeless residents of Metro Manila under Presidential Proclamation No. 799 dated 3 June 1996, situated in *Sitio Boso-Boso, Brgy. San Jose, Antipolo City*.^[15]

Phase I of the FVR Project called for the development of an area of roughly 300 hectares of the resettlement site into 7,500 home lots of 60 to 80 square meters per lot in three (3) residential Clusters, namely: Cluster 1, Cluster 2 and Cluster 3.^[16]

FUCC won the public bidding for the works contract of the FVR Project conducted by NHA on 26 February 1998 with a bid price of P568,595,780.00.^[17]

The work consisted principally of bulk earthworks and the construction of roads, drainage, water supply and sewerage systems, slope protection and bridge structures, as well as survey works, titling of the lots and other off-site works.^[18]

On 2 March 1998, NHA issued a Notice of Award^[19] for Phase I of the FVR Project to FUCC.

On 10 March 1998, NHA and FUCC entered into a "*Contract for Land Development of Freedom Valley Resettlement Project, Phase I, Sitio Boso-Boso, Bgy. San Jose, Antipolo, Rizal*"^[20] (the "Contract") that covered the terms of the agreement between the parties for the works contract of Phase I of the FVR Project.

The work duration stipulated in the Contract was three hundred sixty five (365) days. The contract amount was the bid price of FUCC, or P568,595,780.00.^[21]

FUCC commenced actual contract works on 16 March 1998. Counting 365 days, the original contract expiration date was 15 March 1999.^[22]

Unfortunately, the FVR Project suffered various work suspensions and delays, so much so that the project was not completed on 15 March 1999.^[23] There were also changes in the scope of work that necessitated the issuance of variation orders, specifically *Variation Order No. 1*,^[24] and *Variation Order No. 2*,^[25] which delayed the completion of the project further.

Variation Order No. 1 reduced the number of home lots to be generated, from 7,500 - under the original development plan - to only 4,980. *Variation Order No. 2* further reduced that number to 4,032. These changes in the scope of work resulted in the reduction of the contract price from the original P568,595,780.00 to P488,393,466.98.^[26]

Because of the delays engendered by the suspension orders and the changes in the scope of the contract works, NHA granted time extensions to FUCC, to wit: an additional 279 calendar days under *Time Extension No. 1*,^[27] another extension of 200 calendar days in conjunction with the issuance of *Variation Order No. 2*,^[28] and finally, 200 more calendar days under *Resumption Order No. 2*.^[29] All told, a total of 679 calendar days were added to the original work duration stipulated in the Contract. From 15 March 1999, the contract completion date was moved, initially, to 19 December 1999, and finally, to 11 November 2001.^[30]

In the course of the contract works, FUCC submitted five (5) Progress Billings, all of which were paid by NHA, to wit: Progress Billing No. 1^[31] in the amount of

P52,707,464.21, for the period 16 March to 30 June 1998; Progress Billing No. 2^[32] in the amount of P14,343,039.55, for the period 1 July to 31 December 1998; Progress Billing No. 3^[33] in the amount of P47,329,827.89, for the period 1 January to 15 October 1999; Progress Billing No. 4^[34] in the amount of P114,494,481.30, for the period 16 October 1999 to 31 January 2001; and Progress Billing No. 5^[35] in the amount of P42,333,109.23, for the period 31 January to 30 June 2001.

The FVR Project was never completed as envisioned and planned because NHA abandoned the original concept of the Project. In a Resolution passed on 25 September 2001,^[36] the Board of Directors of NHA reclassified the FVR Project from a resettlement site of informal settlers into a mixed-market site and services type of project, and terminated the Contract.^[37]

In a letter dated 17 October 2001,^[38] NHA formally advised FUCC of the termination of the Contract.

NHA terminated the Contract under the "Contractor Not at Fault" clause of the General Conditions of the Contract.^[39]

At the time the Contract was terminated, FUCC had various claims pending with NHA in connection with the FVR Project.

It appears that over a period of almost five (5) years, FUCC pleaded and negotiated with various NHA officials for the payment of these claims but its pleas fell on deaf ears.^[40]

This impelled FUCC to pursue its claims before the CIAC pursuant to Article XVII^[41] of the Contract by filing a Complaint^[42] against NHA on 17 July 2003. The case was docketed as CIAC Case No.14-2003 entitled "*First United Constructors Corporation vs. National Housing Authority.*"

In its Complaint, FUCC prayed thus:

WHEREFORE, it is respectfully prayed that after proper arbitration proceedings, claimant be adjudged entitled to the payment of its claims, as follows:

- 1) Payment for Accomplished Works Not Yet Billed in the amount of P9,672,784.98;
- 2) Payment for the Cost of Materials, Equipment, Facilities, etc. Included for the Project in the amount of P4,801,992.82;
- 3) Payment for Price Escalation in the amount of P27,794,126.25;
- 4) Payment for Price Adjustment in the amount of P14,768,770.22;
- 5) Payment for Disengagement Costs in the amount of P83,242,365.73;
- 6) Payment for Idle Equipment in the amount of

- P142,780,800.00;
- 7) Payment for Interest on Idle Equipment in the amount of P44,262,048.00;
 - 8) Payment for Attorney's Fees equivalent to Ten Percent (10%) of the total of the foregoing claims; and
 - 9) Payment of Twelve Percent (12%) interest on the total arbitration award from the date of promulgation of judgment until fully paid.

Other reliefs just and equitable are likewise prayed for.^[43]

The CIAC appointed a 3-member Arbitral Tribunal (CIAC Arbitral Tribunal) to adjudicate FUCC's claims.

NHA initially filed a Motion to Dismiss,^[44] claiming that FUCC had failed to exhaust all administrative remedies, which was opposed by FUCC. In an Order dated 8 September 2003, the CIAC Arbitral Tribunal denied the motion and ordered NHA to file its answer to FUCC's Complaint.^[45]

In its Answer,^[46] NHA raised the following defenses, *viz*: FUCC had no right of action since its recourse to arbitration was premature; there was no actual suspension of contract works notwithstanding the suspension orders issued by NHA; the Contract was not unilaterally terminated by NHA; FUCC's Progress Billing No. 6 should only be for the amount of P6,496,926.29; FUCC's claim for Price Escalation for Progress Billings Nos. 1 to 5 came too late in the day, and that the amount that should be paid is only P26,297,951.62 and payable only after FUCC procured the required surety bond; and the claims for Payment for Cost of Materials, Equipment and Facilities, Disengagement Cost, Cost of Idle Equipment and interests thereon, are non-arbitrable issues. By way of counter-claim, NHA prayed that it be allowed to recover from FUCC the amount of P38 Million, which represents the remaining balance or unliquidated portion of the P85.2 Million that NHA had advanced to FUCC at the start of the FVR Project.

The issues having been joined, the CIAC Arbitral Tribunal called the parties to a Preliminary Conference. The parties subsequently agreed upon a Terms of Reference^[47] and a Supplemental Terms of Reference^[48] to guide the CIAC Arbitral Tribunal in the arbitration process and in the resolution of the case. The parties also submitted to the CIAC Arbitral Tribunal their "Joint Stipulations,"^[49] which were incorporated in the Supplemental Terms of Reference as "Admitted Facts."^[50]

Under the Terms of Reference and the Supplemental Terms of Reference, the CIAC Arbitral Tribunal was called upon to resolve the following issues to determine the validity of FUCC's claims against NHA, to wit:

1. Did Claimant exhaust all administrative remedies before filing this arbitration case?

- 1.1 Is claimant's recourse to arbitration premature?
2. Is claimant entitled to its claims for:
 - 2.1 payment for accomplished works not yet billed (Progress Billing No. 6)? If so, how much?
 - 2.1.1 Is the submission by the Claimant of the files and folders covering the unpaid claims of the planters/farmers necessary for the processing of its claim for accomplished works not yet billed (Progress Billing No. 6)?
 - 2.2 payment for cost of materials, equipment, pro-rated cost of facilities constructed for the project, etc.? If so, how much?
 - 2.2.1 Whether or not these claims are arbitrable or not [sic]
 - 2.3 Price Escalation? If so, how much?
 - 2.4 Price Adjustment? If so, how much?
 - 2.5 Disengagement Costs? If so, how much?
 - 2.5.1 Whether or not this claim is arbitrable or not [sic]
 - 2.6 Idle Equipment? If so, how much?
 - 2.6.1 Whether or not this claim is arbitrable or not [sic]
 - 2.6.2 Was there actual or physical suspension of the works for the period covered by the suspension orders?
 - 2.7 Interest on Idle Equipment? If so, how much?
3. Is Respondent entitled to the recoupment of the remaining portion of the advance payment made for the Project?
4. Are the parties entitled to their respective claims for interest on the total arbitration amount that would be adjudged in their own favor?
 - 4.1 If so at what rate and from what period?
5. Who between the parties is liable for the cost of arbitration?
6. Whether or not the termination of the Contract is unilateral
 - 6.1 Whether or not the Claimant opposed, contested or protested the termination
7. Who caused the alleged delays in the processing or payment of Claimant FUCC's claims, if any?