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SECOND DIVISION

[G.R. No. 181961, December 05, 2011]

LVM CONSTRUCTION CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, ANDRES CHUA LAO, PETITIONER, VS. F.T. SANCHEZ/SOCOR/KIMWA (JOINT VENTURE), F.T. SANCHEZ CONSTRUCTION CORPORATION, SOCOR CONSTRUCTION CORPORATION AND KIMWA CONSTRUCTION AND DEVELOPMENT CORPORATION ALL REPRESENTED BY FORTUNATO O. SANCHEZ, JR., RESPONDENTS.

D E C I S I O N

PEREZ, J.:

Filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, the petition for review on *certiorari* at bench seeks the reversal of the 28 September 2007 Decision[1] rendered by the then Thirteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 94849,[2] the decretal portion of which states:

> WHEREFORE, premises considered, the assailed Decision dated April 26, 2006 of the Construction Industry Arbitration Commission in CIAC Case No. 25-2005 is hereby AFFIRMED.
>
> SO ORDERED.[3]

The Facts

Petitioner LVM Construction Corporation (*LVM*) is a duly licensed construction firm primarily engaged in the construction of roads and bridges for the Department of Public Works and Highways (*DPWH*). Awarded the construction of the Arterial Road Link Development Project in Southern Leyte (*the Project*), LVM sub-contracted approximately 30% of the contract amount with the *Joint Venture* composed of respondents F.T. Sanchez Corporation (*FTSC*), Socor Construction Corporation (*SCC*) and Kimwa Construction Development Corporation *(KCDC*). For the contract price of P90,061,917.25 which was later on reduced to P86,318,478.38,[4] the Joint Venture agreed to undertake construction of the portion of the Project starting from Sta. 154 + 210.20 to Sta. 160 + 480.00. With LVM as the *Contractor* and the Joint Venture as *Sub-Contractor*, the 27 November 1996 *Sub-Contract Agreement*[5] executed by the parties pertinently provided as follows:

> 3) That payment to the SUB-CONTRACTOR shall be on item of work accomplished in the sub-contracted portion of the project at awarded unit cost of the project less NINE PERCENT (9%). The SUB-CONTRACTOR

shall issue a BIR registered receipt to the CONTRACTOR.

4) Ten percent (10%) retention to be deducted for every billing of sub-contractor as prescribed under the Tender Documents.

x x x x

13) The payment to the SUB-CONTRACTOR shall be made within seven (7) days after the check issued by DPWH to CONTRACTOR has already been made good.[6]

For work rendered in the premises, there is no dispute regarding the fact that the Joint Venture sent LVM a total of 27 Billings. For Billing Nos. 1 to 26, LVM paid the Joint Venture the total sum of P80,414,697.12 and retained the sum of P8,041,469.79 by way of the 10% retention stipulated in the *Sub-Contract Agreement*.[7] For Billing No. 27 in the sum of P5,903,780.96, on the other hand, LVM paid the Joint Venture the partial sum of P2,544,934.99 on 31 May 2001,[8] claiming that it had not yet been fully paid by the DPWH.[9] Having completed the sub-contracted works, the Joint Venture subsequently demanded from LVM the settlement of its unpaid claims as well as the release of money retained by the latter in accordance with the *Sub-Contract Agreement*. In a letter dated 16 May 2001, however, LVM apprised the Joint Venture of the fact that its auditors have belatedly discovered that no deductions for E-VAT had been made from its payments on Billing Nos. 1 to 26 and that it was, as a consequence, going to deduct the 8.5% payments for said tax from the amount still due in the premises.[10] In its 14 June 2001 Reply, the Joint Venture claimed that, having issued Official Receipts for every payment it received, it was liable to pay 10% VAT thereon and that LVM can, in turn, claim therefrom an equivalent input tax of 10%.[11]

With its claims still unpaid despite the lapse of more than four (4) years from the completion of the sub-contracted works, the Joint Venture, thru its Managing Director, Fortunato O. Sanchez, Jr., filed against LVM the 30 June 2005 complaint for sum of money and damages which was docketed before the Construction Industry Arbitration Commission (CIAC) as CIAC Case No. 25-2005.[12] Having submitted a Bill of Particulars in response to LVM's motion therefor,[13] the Joint Venture went on to file an Amended Complaint dated 23 December 2005 specifying its claims as follows: (a) P8,041,469.73 as retention monies for Billing Nos. 1 to 26; (b) P3,358,845.97 as unpaid balance on Billing No. 27; (c) P6,186,570.71 as interest on unpaid retention money computed at 12% per annum reckoned from 6 August 1999 up to 1 January 2006; and (d) P5,365,677.70 as interest at 12% per annum on delayed payment of monies collected from DPWH on Billing Nos. 1 to 26. In addition, the Joint Venture sought indemnity for attorney's fees equivalent to 10% of the amount collected and/or in a sum not less than P1,000,000.00.[14]

In its 21 October 2005 Answer with Compulsory Counterclaim, LVM maintained that it did not release the 10% retention for Billing Nos. 1 to 26 on the ground that it had yet to make the corresponding 8.5% deductions for E-VAT which the Joint Venture should have paid to the Bureau of Internal Revenue (BIR) and that there is, as a consequence, a need to offset the sums corresponding thereto from the retention

money still in its possession. Moreover, LVM alleged that the Joint Venture's claims failed to take into consideration its own outstanding obligation in the total amount of P21,737,094.05, representing the liquidated damages it incurred as a consequence of its delays in the completion of the project. In addition to said liquidated damages, LVM prayed for the grant of its counterclaims for exemplary damages and attorney's fees.[15] In its 2 January 2006 supplemental answer, LVM likewise argued that the Joint Venture's prayer for imposition of 12% interest on the retention money and the balance of Billing No. 27 is bereft of factual and legal bases since no interest was stipulated in the parties' agreement and it was justified in refusing the release of said sums claimed.[16]

With the parties' assent to the 19 December 2005 Terms of Reference which identified, among other matters, the issues to be resolved in the case,[17] the CIAC proceeded to receive the parties' evidence in support of their respective causes. On 26 April 2006, the CIAC rendered its decision granting the Joint Venture's claims for the payment of the retention money for Billing Nos. 1 to 26 as well as the interest thereon and the unpaid balance billing from 6 August 1999 to 1 January 2006 in the aggregate sum of P11,307,646.68. Discounting the contractual and legal bases for LVM's claim that it had the right to offset its E-VAT payments from the retention money still in its possession, the CIAC ruled that the VAT deductions the DPWH made from its payments to LVM were for the whole project and already included all its supplies and subcontractors. Instead of withholding said retention money, LVM was determined to have - to its credit and for its use - the input VAT corresponding to the 10% equivalent VAT paid by the Joint Venture based on the BIR-registered official receipts it issued. Finding that the delays incurred by the Joint Venture were justified, the CIAC likewise denied LVM's counterclaim for liquidated damages for lack of contractual basis.[18]

Elevated by LVM to the CA through a petition for review filed pursuant to Rule 43 of the *1997 Rules of Civil Procedure*,[19] the CIAC's decision was affirmed *in toto* in the herein assailed Decision dated 28 September 2007 rendered by said court's Thirteenth Division in CA-G.R. SP No. 94849.[20] In upholding the CIAC's rejection of LVM's insistence on the offsetting of E-VAT payments from the retention money, the CA ruled as follows:

> Clearly, there was no provision in the Sub-Contract Agreement that would hold Sanchez liable for EVAT on the amounts paid to it by LVM. As pointed out by the CIAC in its Award, `*the contract documents provide only for the payment of the awarded cost of the project* ***less 9%****. Any other deduction must be clearly stated in the provisions of the contract or upon agreement of the parties. xxx The tribunal finds no provision that EVAT will be deducted from the sub-contractor. xxx If [the Joint Venture] should pay or share in the payment of the EVAT, it must be clearly defined in the sub-contract agreement.'*
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> Elucidating further, CIAC pointed out that Sanchez, under the contract was required to issue official receipts registered with the BIR for every payment LVM makes for the progress billings, which it did. For these official receipts issued by Sanchez to LVM, Sanchez already paid 10% VAT to the BIR, thus: `*The VAT Law is very clear. Everyone must pay*

10% VAT based on their issued official receipts. These receipts must be official receipts and registered with the BIR. Respondent (LVM) must pay its output Vat based on its receipts. Complainant (Sanchez) must also pay output VAT based on its receipts. The law however allow each entity to deduct the input VAT based on the official receipts issued to it. Clearly, therefore, respondent [LVM], *has to its credit the 10% output VAT paid by claimant* [Joint Venture] *based on the official receipts issued to it. Respondent* [LVM] *can use this input VAT to offset any output VAT respondent* [LVM] *must pay for any of its other projects.*"[21]

LVM's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's 26 February 2008 Resolution,[22] hence, this Rule 45 petition for review on *certiorari*.

The Issues

LVM urges the grant of its petition for review upon the following errors imputed against the CA, to wit:

I

CONTRARY TO THE FINDING OF THE COURT OF APPEALS, RESPONDENTS' LIABILITY TO PAY VALUE ADDED TAX NEED NOT BE STATED IN THE SUB-CONTRACT AGREEMENT DATED 27 NOVEMBER 1996 AS THE PROVISIONS OF REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES, FORM PART OF, AND ARE DEEMED INCORPORATED AND READ INTO SAID AGREEMENT.

II

THE COURT OF APPEALS ERRED WHEN IT RULED THAT RESPONDENTS ARE DEEMED TO HAVE ALREADY PAID VALUE ADDED TAX MERELY BECAUSE RESPONDENTS HAD ALLEGEDLY ISSUED RECEIPTS FOR SERVICES RENDERED.[23]

The Court's Ruling

The petition is bereft of merit.

For lack of any stipulation regarding the same in the parties' *Sub-Contract Agreement*, we find that the CA correctly brushed aside LVM's insistence on deducting its supposed E-VAT payments from the retention money demanded by the Joint Venture. Indeed, a contract constitutes the law between the parties who are, therefore, bound by its stipulations[24] which, when couched in clear and plain language, should be applied according to their literal tenor.[25] That there was no agreement regarding the offsetting urged by LVM may likewise be readily gleaned from the parties' contemporaneous and subsequent acts which are given primordial

consideration in determining their intention.[26] The record shows that, except for deducting sums corresponding to the 10% retention agreed upon, 9% as contingency on sub-contract, 1% withholding tax and such other itemized miscellaneous expenses, LVM settled the Joint Venture's Billing Nos. 1 to 26 without any mention of deductions for the E-VAT payments it claims to have advanced.[27] It was, in fact, only on 16 May 2001 that LVM's Managing Director, Andres C. Lao, apprised the Joint Venture in writing of its intention to deduct said payments,[28] to wit:

> If you would recall, during our last meeting with Deputy Project Manager of the DPWH-PJHL, Eng. Jimmy T. Chan, last March 2001 at the PJHL Office in Palo, Leyte, our company made a commitment to pay up to 99% accomplishment and release the retention money up to the 23rd partial billing after receipt by our company of the 27th partial billing from JBIC and GOP relative to the above mentioned project.
>
> Much as our company wants to comply with said commitment, our auditors recently discovered that all payments made by us to your Joint Venture, relative to the above mentioned project **were made without the corresponding deduction of the E-VAT of 8.50% x 10/11, which your Joint Venture should have paid to the BIR.** Records would show that from billing number 1 up to 26, no deductions for E-VAT were made. As a matter of fact, **our company was the one who shouldered all payments due for the E-VAT which should have been deducted from the payments made by us to your Joint Venture.** Copy of the payments made by our company to the BIR relative to the E-VAT is hereto attached as **Annex** "**1**" for your perusal and ready reference.
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> This being the case and to offset the advances made by our company, we would like to inform you that *our company would deduct the payments made for E-VAT to the amount due to your Joint Venture.* Only by doing so, would our advances be settled and liquidated. We hope that our auditor and your auditor can discuss this matter to avoid any possible conflict regarding this matter.

From the foregoing letter, it is evident that LVM unilaterally broached its intention of deducting the subject E-VAT payments only on 15 May 2001 or long after the project's completion on 9 July 1999.[29] In the absence of any stipulation thereon, however, the CA correctly disallowed the offsetting of said sums from the retention money undoubtedly due the Joint Venture. Courts are obliged to give effect to the parties' agreement and enforce the contract to the letter.[30] The rule is settled that they have no authority to alter a contract by construction or to make a new contract for the parties; their duty is confined to the interpretation of the one which the parties have made for themselves, without regard to its wisdom or folly. Courts cannot supply material stipulations, read into the contract words it does not contain[31] or, for that matter, read into it any other intention that would contradict its plain import.[32] This is particularly true in this case where, in addition to the dearth of a meeting of minds between the parties, their contemporaneous and