

## THIRD DIVISION

[ G.R. No. 164186, October 04, 2010 ]

**FINANCIAL BUILDING CORPORATION, PETITIONER, VS. RUDLIN INTERNATIONAL CORPORATION, BLOOMFIELD EDUCATIONAL FOUNDATION, INC., RODOLFO J. LAGERA, MA. ERLINDA J. LAGERA AND JOSAPHAT R. BRAVANTE, RESPONDENTS.**

**[G.R. NO. 164347]**

**RUDLIN INTERNATIONAL CORPORATION, BLOOMFIELD EDUCATIONAL FOUNDATION, INC., RODOLFO J. LAGERA, MA. ERLINDA J. LAGERA AND JOSAPHAT R. BRAVANTE, PETITIONERS, VS. FINANCIAL BUILDING CORPORATION, RESPONDENT.**

### DECISION

**VILLARAMA, JR., J.:**

The present consolidated petitions for review under Rule 45 assail the Decision <sup>[1]</sup> dated December 12, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 41224 which affirmed with modification the Decision <sup>[2]</sup> dated January 12, 1993 of the Regional Trial Court (RTC) of Makati City, Branch 65 in Civil Case No. 16266.

#### The Facts

Sometime in October 1985, Rudlin International Corporation (Rudlin) invited proposals from several contractors to undertake the construction of a three-storey school building and other appurtenances thereto at Vista Grande, BF Resort Village, Las Piñas, Metro Manila. The contract was eventually awarded to Financial Building Corporation (FBC), with a bid of P6,933,268.00 as total project cost. On November 22, 1985, Rudlin represented by its Chairman of the Board and President Rodolfo J. Lagera, and FBC represented by its Vice-President and Treasurer Jaime B. Lo, executed a Construction Agreement <sup>[3]</sup> which, among others, provided for the total consideration and liability for delay as follows:

#### SECTION FOUR CONTRACT PRICE

The OWNER agrees to pay the CONTRACTOR, for the work stated in Section Two hereof, the total price of SIX MILLION NINE HUNDRED THIRTY THREE THOUSAND TWO HUNDRED SIXTY EIGHT PESOS (P6,933,268.00) in accordance with Section five et seq. Payment of this amount is subject to additions or deductions in accordance with the provisions of this Agreement and of the other documents to which this

Agreement is made subject to. [4]

x x x x

## SECTION TWELVE TIME OF ESSENCE; EXTENSION OF TIME

Time is of the essence in this Agreement and any delay not due to force majeure will result in injury and damage to the OWNER in view of which it is hereby stipulated that, in the completion of the work, the CONTRACTOR shall be liable to the OWNER in the sum equivalent to 1/10 of 1% of the total contract price for every calendar day of delay (Sundays and Legal Holidays included). Any sums accruing in favor of the OWNER under this provision shall be deductible from the stipulated Contract Price or any balance thereof due to the CONTRACTOR. [5]

The contract also provided for completion date not later than April 30, 1986 unless an extension of time has been "authorized and approved by the OWNER and the ARCHITECT in writing." [6] It appears that the construction was not finished on said date as Rudlin wrote FBC to complete the project not later than May 31, 1986, except for the administration wing which Rudlin expected to be turned over to it "100% complete by June 10, 1986." [7]

On June 5, 1986, Rudlin and FBC made amendments to their Construction Agreement dated November 22, 1985 through a Letter-Agreement [8] signed by Rodolfo J. Lagera and Jaime B. Lo, as follows:

1. Financial Building Corporation ("FBC") shall complete and deliver the Project to Rudlin International, Inc. ("RII") **on or before 10 June 1986.**

2. Payment of the balance due on the contract price shall be made **after the parties have reconciled their accounts with regard to the upgrading and downgrading of the work done on the Project**, which reconciliation shall be settled not later than 30 June 1986.

3. RII shall pay FBC the unpaid balance as determined under paragraph 2 hereof, under the following terms and conditions:

(a) RII shall pay FBC an additional payment of Two Hundred Fifty Thousand Pesos (P250,000.00) upon signing hereof, receipt of which is hereby acknowledged. This is in addition to the Two Hundred Fifty Thousand Pesos (P250,000.00) paid on 29 May 1986.

(b) The rest of the unpaid balance shall be payable within a period of ninety (90) days from the date the said balance is determined in accordance with paragraph 2 hereof, adequately secured by post dated checks and the same to earn interest at the prevailing bank rates. There shall be a moratorium of

thirty (30) days, the payments to be made in accordance with the following schedule:

On or before 15 July 1986	- 25%
On or before 31 July 1986	- 25%
On or before 15 August 1986	- 25%
On or before 31 August 1986	- <u>25%</u>
TOTAL PAYMENTS DUE	- 100%

This Letter-Agreement amends the corresponding provisions of the Construction Agreement dated 22 November 1985, except that Section 12 thereof is hereby waived. [9] (Emphasis supplied.)

On June 15, 1986, the subject school building, "Bloomfield Academy," was inaugurated and utilized by Rudlin upon the start of the school year. From the exchange of correspondence between FBC and Rudlin, it can be gleaned that no reconciliation of accounts took place pursuant to the Letter-Agreement dated June 5, 1986. FBC demanded payment of the balance of the adjusted contract price per its computation, but it was not heeded by Rudlin.

On March 10, 1987, FBC filed in the RTC a suit for a sum of money with prayer for preliminary attachment against Rudlin, Bloomfield Educational Foundation, Inc. (Bloomfield) and their officers, directors or stockholders, namely: Rodolfo J. Lagera, Ma. Erlinda J. Lagera and Josaphat R. Bravante. FBC alleged that the total and final contract price, inclusive of additives and deductives which are covered by valid documents, is P7,324,128.44; that Rudlin paid FBC only P4,874,920.14, thus leaving a balance of P2,449,208.30; and that despite repeated demands by FBC, Rudlin refused to pay its obligations. FBC further prayed for legal interest on the amount of P2,449,208.30 from the time it became due and demandable, attorney's fees equivalent to 25% of the total amount due, moral and exemplary damages and the cost of suit. [10]

The trial court granted the prayer for preliminary attachment but before the sheriff could implement the writ issued by the court, Rudlin filed the proper counter bond.

In their Answer with Counterclaim, [11] defendants denied the allegations of the complaint. Rudlin averred that the Construction Agreement did not reflect the true contract price agreed upon, which is P6,006,965.00. The amount of P6,933,268.00, which is FBC's bid price, was indicated in the Construction Agreement solely for the purpose of obtaining a higher amount of loan from the Bank of Philippine Islands (BPI). The execution of said document was made with the understanding between FBC and Rudlin that the contract price stated therein would be decreased to a mutually acceptable contract price. However, due to inadvertence, the parties forgot to sign an agreement fixing the true contract price.

Rudlin also denied that the construction of the project was completed by FBC. The original completion date, April 30, 1986, was later moved to June 10, 1986. But despite the extension given by Rudlin, FBC still has not completed the project. Neither did FBC deliver to Rudlin a complete release of all liens arising out of the

Construction Agreement or receipts in full in lieu thereof, as well as an affidavit that the releases and receipts include all the labor, interests and equipment for which a claim or action can be filed, as required under Section Eight of the Construction Agreement. In fact, for non-payment by FBC of one of its sub-contractors, Rudlin was sued as a co-defendant with FBC in Civil Case No. 15734 pending before the RTC of Makati, Branch 138.

Rudlin likewise claimed that many portions of the work performed by FBC are incomplete and/or faulty, defective and deficient (valued at P1,180,127.35), for which reason Architect Eduardo R. Quezon has not certified on the full performance and completion of the project. The work done by FBC was thus not accepted by Rudlin for valid reasons. Rudlin had already paid FBC the total amount of P5,564,219.58. After considering the 10% retention money and the value of additives and deductives, Rudlin had actually overpaid FBC by P415,701.34. Clearly, Rudlin does not owe FBC the amount stated in its Complaint; FBC likewise had sent a final demand letter dated March 2, 1987 to Rudlin which mentioned only the amount of P115,000.00 as Rudlin's outstanding accountability.

As to Bloomfield and the individual defendants, they contended that not being parties to the Construction Agreement, FBC has no cause of action against them. Moreover, in their dealings with FBC, they acted with justice, honesty and good faith.

Under its counterclaim, Rudlin invoked the provision in the Construction Agreement granting the Owner the right to terminate the contract and take over the construction works upon default of the Contractor who abandons or fails to complete the project, or fails to carry out the work in accordance with the provisions of the Contract Documents, and to deduct the costs from whatever payment is due or to become due to the Contractor. Rudlin asserted that despite demands it made upon FBC, the latter still failed and refused to complete and make good its obligations under the Construction Agreement and to correct faulty and defective works.

In its Reply, <sup>[12]</sup> FBC asserted that the demand letter dated March 2, 1987 pertains to another account of Rudlin. FBC asserted that its failure to deliver releases of some liens was due to Rudlin's failure to pay the amount claimed in the complaint. At any rate, by the very fact that Rudlin is actually making use of the school building constructed by FBC, it is deemed to have accepted the work.

By agreement of the parties, the trial court appointed three Commissioners to resolve factual issues pertaining to the construction of the subject building, specifically the following:

- 1) Adherence or non-adherence to the plan and specifications;
- 2) Additives, deductives, defects and faults in the construction; [and]
- 3) Completion or non-completion of the project. <sup>[13]</sup>

The Commissioners conducted ocular inspection of the subject school building on February 23, 1988, March 6, 1988, March 12, 1988, April 25, 1988, April 26, 1988

and May 12, 1988. <sup>[14]</sup> On September 28, 1989, they submitted a detailed report on their findings and conclusions, including the additives (modifications and additional works, the value of which are to be reimbursed by the Owner) and deductives (deficiencies and cost of repairs done by the Owner and other expenses which shall be deducted from the contract price due to the Contractor). <sup>[15]</sup> FBC submitted its comments on the said report denying any responsibility for the alleged defects and deficiencies found by the commissioners and insisting that it had fully performed all the works in accordance with the plans, specifications and modifications as approved by Rudlin.

During the trial, the following witnesses testified: Jaime Beltran Lo, Alexander E. Reyes, Gregorio P. Pineda, Rodolfo J. Lagera, Teresita L. Ngan Tian, Carolina F. Bodoy, and the court-appointed commissioners Engr. Alberto R. Payumo, Architect Agaton R. Sabino and Edmundo B. Flores.

### **Ruling of the RTC**

In its decision, <sup>[16]</sup> the trial court concluded that as shown by the Commissioners' Report, the subject school building had several defects. It found untenable FBC's denial of any responsibility for the defects caused by the inferior quality of waterproofing material used by its subcontractor, INDESCO, citing Section Eleven of the Construction Agreement whereby the Contractor assumes full responsibility for the acts, negligence or omissions of all its employees, as well as for those of its subcontractor and the latter's employees. Moreover, the modifications to the original plans and specifications, which gave rise to the deductives and additives, were not shown to have been approved by Rudlin nor concurred in by the project Architect, contrary to FBC's allegation.

The trial court thus decreed:

In view of the foregoing, the complaint against defendant Rudlin is dismissed. Considering that defendant Bloomfield Educational Foundation was not a party to the Construction Agreement, the complaint against the latter is dismissed. Plaintiff having failed to prove that defendants Rodolfo Lagera, Ma. Erlinda Lagera and Josaphat Bravante acted in their personal capacities, the complaint against them is likewise dismissed.

There being bad faith on the part of defendant Rudlin in that it deliberately failed to disclose the true contract price, defendants' counterclaim is dismissed.

No pronouncement as to costs.

SO ORDERED. <sup>[17]</sup>

Both FBC and Rudlin filed notices of appeal.

### **Ruling of the CA**

While the CA upheld the dismissal of the complaint as against the individual