

THIRD DIVISION

[G.R No. 179103, September 17, 2009]

NATIONAL POWER CORPORATION, PETITIONER, VS. PREMIER SHIPPING LINES, INC., RESPONDENT.

[G.R. NO. 180209]

PREMIER SHIPPING LINES, INC., PETITIONER, VS. NATIONAL POWER CORPORATION, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us are Petitions for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by Premier Shipping Lines, Inc. (Premier) and National Power Corporation (NAPOCOR) assailing the Decision^[1] of the Court of Appeals^[2] dated 19 July 2007 in CA-G.R. CV No. 73650 which set aside the Decision^[3] of the Regional Trial Court (RTC) of Cebu City, Branch 11. Premier filed a Motion for Reconsideration which the Court of Appeals denied in a Resolution^[4] dated 12 September 2007.

The factual antecedents of this case are as follows:

NAPOCOR is a public corporation duly organized and existing under and by virtue of Republic Act No. 6395, as amended, while Premier is a private corporation engaged in the domestic transport of cargo duly registered and existing under and by virtue of the laws of the Republic of the Philippines.

On 18 June 1996, NAPOCOR conducted a public bidding to procure the services of a contractor that would haul/deliver nine hundred twenty-four (924) wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes. In a pre-bidding conference, the participants, one of which was Premier, were informed that, if awarded the job, it would provide labor, materials, tools and equipment to carry out the job; that the delivery of the wood poles would be on a door-to-door basis; that the wood poles were already segregated according to size in the port of origin; and, that the bid price was a lot price.

Premier won the public bidding with a bid of P2,398,000.00. A Notice of Award^[5] dated 25 June 1996 signed by Salvador D. Faelnar, OIC - RAFS^[6] was issued to Premier under Job Order No. ADM-TWSS-96-03-28. On 2 August 1996, NAPOCOR and Premier entered into a contract^[7] for the said service. Thereafter, a Notice to Proceed^[8] dated 5 August 1996 signed by Jose C. Troyo, Group Manager-RAFS, was issued to Premier, advising the latter to commence the work to provide labor, materials, tools and equipment, including payments of all taxes, fees, insurance and freight, thru government and private agencies.

On 13 August 1996, Premier received a fax message^[9] from NAPOCOR's Island Grid Project Office in Quezon City requesting some revision of the delivery point due to a change in priority of construction. One of the requested changes was the delivery of wood poles from Bacolod City to San Jose, Mindoro instead of Bacolod City to Calapan, Mindoro. On account thereof, in a letter^[10] dated 15 August 1996 signed by Benson E. Go, General Manager/President of Premier, Premier asked for the time suspension of the contract. It informed NAPOCOR that such a revision would entail additional expenses, since the number of ports would increase from four to five, together with the number of days of usage of the vessel. The change would mean additional 70 nautical miles in distance and ten hours of travel time.

In a meeting on 19 August 1996, NAPOCOR agreed to pay Premier P65,000.00, representing costs of fuel oil and lube oil, for the change of delivery point from Calapan, Mindoro to San Jose, Mindoro. In a letter^[11] dated 20 August 1996 of Jose C. Troyo to Mr. Benson E. Go regarding the amount agreed upon during the aforesaid meeting, the latter gave his conforme by affixing his signature thereto. The changes in the quantities of the wood poles and their delivery locations were contained in a letter dated 20 August 1996 of J.D. de Mesa, Project Manager, Island Grid Project.^[12] A Supplemental Contract^[13] involving the aforesaid agreement was entered into by NAPOCOR and Premier on 10 June 1997. Said Supplemental Contract was incorporated into and made part of the original contract.

After threshing out with NAPOCOR the changes in quantity and delivery locations, Premier sent its motor vessel, M/V Arthur II, to Bacolod City in order to load thereon the wood poles for delivery to the different points of destination. The vessel arrived in Bacolod City on 31 August 1996, and Premier's personnel began loading the wood poles on 3 September 1996. As testified to by Mr. Go, they were surprised to discover that some of the poles at the stockyard at Mansilingan, Bacolod City were already rotten and about to break. This gave them a problem, for it would cause considerable delay in the loading of the poles to the vessel. Without such rotten poles, three to five poles could be lifted at a time and it would take from five to eight days to finish the loading of all the poles; however, with some rotten poles, they could not lift three to five poles at a time. They had to segregate one by one the serviceable poles from the unserviceable ones. This segregation, according to Mr. Go, was not part of the original and supplemental contracts between NAPOCOR and Premier. They, nevertheless, performed the segregation per instruction given by defendant, acting through its Island Grid Project Manager. A certification to this effect was issued by J. D. de Mesa.^[14] After segregating the serviceable from the unserviceable wood poles, Premier loaded to its vessels 879 out of the 924 poles, the difference being the unserviceable ones. Premier took eighteen (18) days to load the poles, allegedly resulting in Premier's incurring an additional cost in the sum of P 964,900.00, broken down as follows^[15]:

1. 1 Prime mover w/ trailer @ = P 96,000.00
P1,200.00/hr. x 10 days
2. 1 Trailer @ P750.00/hr. x 10= 60,000.00
days
3. 1 Crane @ P1,500.00/hr. x= 120,000.00
10 days

4.	1 Crane Operator @ =	1,500.00
	P150.00/day x 10 days	
5.	1 Driver (Prime Mover) @ =	1,500.00
	P150.00/day x 10 days	
6.	1 Auto Mechanic @ =	1,500.00
	P150.00/day x 10 days	
7.	23 Laborers @ P120.00/day x =	27,600.00
	10 days	
8.	1 Supervisor @ P250.00/day =	2,500.00
	x 10 days	
9.	Meals for 27 persons @ =	24,300.00
	P90.00/day/person x 10 days	
10.	Vessel @ P90,000.00/day x 7 =	<u>630,000.00</u>
	days	
		P
		964,900.00

Upon delivering the wood poles at the port of San Jose, Mindoro, Premier claimed that it incurred an additional cost amounting to P243,777.26, because the distance from the pier to the stockyard where the poles were delivered was 17 kilometers, which was nine kilometers more than the distance **as stipulated in the contract**. The situation was compounded by the fact that the stockyard was not cleared, and that it was Premier that did the job of clearing the area. It took two days to clear the area. The clearing job was confirmed by a certification dated 2 October 1996 issued by A.C. Villanueva, Property Officer A, Island Grid Project.^[16] A Certification^[17] dated 14 January 1997 was also issued by A.C. Villanueva stating that Premier rendered overtime service for three days in connection with the hauling of the wood poles from the Mansilingan Stockyard at Bacolod City.

In a letter^[18] dated 30 January 1997 sent to NAPOCOR, Premier asked for the settlement of an additional billing amounting to P1,208,677.26 [(P964,900.00 - segregation of serviceable from unserviceable poles at the Mansilingan Stockyard) + (P243,777.26 - additional distance of 9 kilometers from the pier to the stockyard in San Jose, Mindoro)] representing additional costs incurred in the hauling and delivery of the wood poles.

NAPOCOR did not pay the additional billing. As a consequence, Premier, through its counsel, sent a demand letter to NAPOCOR on 2 October 1997.^[19] With NAPOCOR's refusal to pay, Premier was constrained to file the instant case for collection of sum of money, with damages and attorney's fees, before the RTC of Cebu City.

In its complaint, Premier asked that, after trial on the merits, NAPOCOR be ordered to pay the following: (a) P1,208,677.26 - representing the unpaid bill for additional service; (b) P23,000.00 - amount withheld on the contract since only 879 out of 924 poles were delivered; (c) P50,000.00 as attorney's fees; (d) P10,000.00 - litigation expenses; (e) interest from the time of the demand; and (f) costs of suit.^[20] The case was raffled to Branch 11 and docketed as Civil Case No. CEB-24636.

NAPOCOR filed its Answer,^[21] arguing that the additional service allegedly costing P1,208,677.26, was actually contained in the contract, while the withholding of P23,000.00 was justified because only 879 out of the 924 poles were delivered. It

asked that the complaint be dismissed, and, in its counterclaim, it asked that Premier be ordered to pay exemplary damages in the amount of P500,000.00, P300,000.00 as attorney's fees, and P150,000.00 as expenses of litigation. Premier filed its Reply.^[22]

Pre-trial was conducted on 8 November 2000 with the parties manifesting that there was no possibility of amicable settlement. The parties did not stipulate any other facts, except that Premier's admission that the segregation work was included in the scope of works that the contractor was bound to perform, with the qualification that the definite number of wood poles segregated was only 879 and not 924. The parties agreed that the issues to be tried and resolved were: (1) whether or not the plaintiff had valid causes of action against the defendant for the sum of money and damages; (2) whether or not the withholding of the P23,000.00 of the lot price was valid or legal; and (3) whether or not the plaintiff was liable to the defendant for the latter's counterclaim.^[23]

Mr. Benson Go,^[24] General Manager/President of Premier, and Mr. Gerardo Cabatingan,^[25] Assistant Field Supervisor of Premier, testified for the plaintiff.

Mr. Go testified that Premier had been performing hauling jobs for NAPOCOR for the last fifteen years. He was a signatory to the contract between NAPOCOR and Premier for the hauling and delivery of nine hundred twenty-four (924) of NAPOCOR's wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes. He explained that the segregation for which Premier was claiming P964,900.00 was for the segregation of the serviceable wood poles from the unserviceable ones at the port of origin at the Mansilingan Stockyard in Bacolod City, and not at the port of delivery in San Jose, Mindoro. He further testified that Premier incurred additional cost in San Jose, Mindoro because the distance from the pier to the stockyard was 17 kilometers as against the 8 kilometers contained in the contract. He added that the stockyard in San Jose, Mindoro was not ready to receive the wood poles, and that they conducted the cleaning of the area where the poles were to be delivered. He said Premier was not in direct control of the delivery, and the delay was due to the fault of NAPOCOR.

Mr. Cabatingan testified that he discovered that some poles were already rotten and about to break up. When he informed NAPOCOR's representative of this, the latter told him that only serviceable poles should be loaded into the vessel, and that they should segregate the serviceable poles from the unserviceable ones. They sorted the poles one by one, and it took them 18 days to finish the loading instead of the targeted 5 to 8 days. Another delay was caused in the delivery of the poles to San Jose, Mindoro, because the distance from the pier to the stockyard was 17 to 18 kilometers, and not 8 kilometers as contained in the contract. Thereafter, they had to clear the area because the stockyard was not ready to receive the poles. This resulted in another two-day delay in the delivery of the poles.

For the defendant, Mr. Salvador Faelnar,^[26] Regional Administration Manager of the Finance Group of NAPOCOR, and Atty. Marianito de los Santos,^[27] Regional Legal Counsel of NAPOCOR Visayas, took the witness stand.

Mr. Faelnar testified that the segregation job adverted to in Article II(4) of the contract included the segregation at the point of origin of the poles to be hauled and

delivered. He was not aware that Premier performed a segregation job at the port of origin in Bacolod City. It was his belief that the P65,000.00 stipulated in the Supplemental Contract^[28] covered all costs arising from the change of location of the delivery point of the poles hauled from Bacolod City to San Jose, Mindoro.

Atty. De los Santos disclosed that he came across the contract involved in this case and the claim of Premier for P1,208,677.26 for incremental costs in the implementation of the contract. He was aware of Mr. J.D. de Mesa's query to the General Counsel of NAPOCOR on whether Premier's claim should be paid. The General Counsel, he said, answered the query in the negative.^[29] He added that he was aware of the letter^[30] of Jose C. Troyo dated 29 May 1997 sent to Mr. Go of Premier, where Mr. Troyo denied the claims of Mr. Go. Atty. De los Santos declared that Premier's claims were without legal basis.

In its Decision dated 29 November 2001, the trial court ruled in favor of Premier, disposing of the case as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court in this case ordering the defendant to pay to the plaintiff the sum of P1,208,677.26 representing unpaid bill for additional works performed by it and the sum of P23,150.25 representing the amount deducted or withheld from the contract price due to the plaintiff, together with interests thereon at the rate of 6% per annum to be computed from the date of filing of the complaint in this case until the full payment of said sums before finality of judgment. Thereafter, i[f] the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied (pursuant to the ruling laid down in *Eastern Shipping Lines, Inc. vs. Court of Appeals*, 234 SCRA 88)

The Court also hereby orders the defendant to pay to the plaintiff the sums of P10,000.00 as attorney's fees and P4,000.00 as expenses of litigation.

No pronouncement is hereby made as to cost of this suit.^[31]

The trial court found NAPOCOR liable to pay for the costs of the segregation of the unserviceable poles from the serviceable ones at the Mansilingan Stockyard in Bacolod City (port of origin); for the clearing of the stockyard in San Jose, Mindoro; and for the extended time to effect the delivery of about 435 wood poles from the pier in San Jose, Mindoro to the stockyard in Pulang Lupa Diesel Power Plant caused by the longer distance of 17 kilometers as compared with eight kilometers, which was stipulated in the contract. It likewise ruled that the P23,051.25, withheld or deducted by NAPOCOR from the contract price, should be given to Premier because the contract price was a lot price. It explained:

In the first place, the segregation of poles at the point of origin does not appear to be included in, or covered by, the contract entered into and executed by and between the parties on August 2, 1996. What is