

THIRD DIVISION

[G.R. No. 168074, September 26, 2008]

EMPIRE EAST LAND HOLDINGS, INC., PETITIONER, VS. CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC., RESPONDENT.

DECISION

NACHURA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, of the Court of Appeals (CA) Decision^[1] dated November 3, 2004 and its Resolution^[2] dated May 10, 2005, in CA-G.R. SP No. 58980. The assailed decision modified the Decision^[3] of the Construction Industry Arbitration Commission (CIAC) dated May 16, 2000 in CIAC No. 39-99.

The facts of the case, as found by the CIAC and affirmed by the CA, follow:

On February 12, 1997, petitioner Empire East Land Holdings, Inc. and respondent Capitol Industrial Corporation Groups, Inc. entered into a Construction Agreement^[4] whereby the latter bound itself to undertake the complete supply and installation of "the building shell wet construction" of the former's building known as Gilmore Heights Phase I, located at Gilmore cor. Castilla St., San Juan, Metro Manila.^[5] The pertinent portion of the aforesaid agreement is quoted hereunder for easy reference:

ARTICLE II - SCOPE OF WORK

2.1. The CONTRACTOR shall complete the civil/structural and masonry works of the building based on the works (sic) items covered by the CONTRACTOR's Proposal of Complete Supply and Installation of Building Shell Wet Construction Works as indicated in the plans and specifications at the Contract Price and within the Contract time herein stipulated and in accordance with the plans and specifications. The CONTRACTOR shall furnish and supply all necessary labor, equipment and tools, supervision and other facilities needed and shall perform everything necessary for the complete and successful masonry works of the building described hereof, provided that it pertains to or is part of the above mentioned work or items covered by the Contract documents.

2.2. The scope of works as stated hereunder but not limited to the following:

a) CONCRETE WORKS - foundation and footings, tie beams, walls, columns, beams, girders, slabs, stairs, stair slabs, cement floor topping, ramps, rubbed concrete.

b) MASONRY WORKS - interior and exterior walls including stiffeners, CHB laying, interior and exterior plastering, non-skid tile installation and scratch coating for tile installation.

c) FORMWORKS

d) OTHER CONCRETE WORKS - trenches, platform for transformers, ger sets and aircons

e) METAL WORKS - trench grating, I-beam separator, manhole cover, ladder rungs of tanks, stair railings and stair nosing

f) MISCELLANEOUS WORKS

- installation of Doors and Jambs (metal and wood)
- Lintel Beams/Stiffener Columns
- Installation of Hardwares and accessories
- Window and Door Openings

g) MISCELLANEOUS ITEMS - column guard, wheel guard, waterstop, vapor barrier, incidental embeds, floor hardener, dustproofer, sealant, soil treatment, elevator block-outs for call button, block-outs for electro-mechanical works and concrete landing sills.

h) ROOFING WORKS -Steel Trusses/Purlins, Rib Type pre-painted roofing sheets, Insulation

i) Garbage Chutes

2.3. The work of the CONTRACTOR shall include but not be limited to, preparing the bill of materials, canvassing of prices, requisition of materials for purchase by OWNER, following up of orders, checking the quality and quantity of the materials within the premises of the construction site and returning defective materials.^[6]

Respondent further agreed that the construction work would be completed within 330 calendar days from "Day 1," upon the Construction Manager's confirmation.^[7] Petitioner initially considered February 20, 1997 as "Day 1" of the project. However, when respondent entered the project site, it could not start work due to the on-going bulk excavation by another contractor. Respondent thus asked petitioner to move "Day 1" to a later date, when the bulk excavation contractor would have completely turned over the site.^[8]

After a series of correspondence between petitioner and respondent, February 25, 1997 was proposed as "Day 1." Accordingly, respondent's completion date of the project was fixed on January 21, 1998.^[9]

Prior to and during the construction period, changes in circumstances arose, prompting the parties to make adjustments in the initial terms of their contract. The following pertinent changes were mutually agreed upon by the parties:

First, as the bulk excavation contractor refused to return to the project site, petitioner directed respondent to continue the excavation work;[10]

Second, in addition to respondent's scope of work, it was made to perform side trimmings.

Third, petitioner directed respondent to reduce the monthly target accomplishment to P1 million worth of work and up to one (1) floor only.
[11]

Fourth, the following were deleted from respondent's scope of work: a) Masonry works and all related items from 6th floor to roof deck; b) All exterior masonry works from 4th floor to roof deck; and c) Garbage chute.[12]

Fifth, as a consequence of the deletion of the above works, the contract price was reduced to P62,828,826.53.[13]

Sixth, the parties agreed: that the items of work or any part thereof not completed by the respondent as of February 28, 1999 should be deleted from its contract, except demobilization; the punch list items under respondent's scope of responsibility not yet made good/corrected as of the same period shall be done by others at a fixed cost to be agreed upon by all concerned; and respondent should be compensated for the cost of utilities it installed but were still needed by other contractors to complete their work.[14]

Lastly, they agreed that a joint quantification should be done to establish the bottom line figures as to what were to be deleted from the respondent's contract and the cost of completing the punch list items which were deductible from respondent's receivables.[15]

In view of the limitation on the target accomplishment to P1 million worth of work per month, respondent asked that the topping-off be moved to February 1999. Respondent likewise requested a price adjustment with respect to overhead and equipment expenses and legislated additional labor cost. These requests were not, however, acted upon by petitioner.[16]

After the completion of the side trimmings and excavation of the building's foundation, respondent demanded the payment of P2,248,507.70 and P1,805,225.90, respectively. Instead of paying the amount, petitioner agreed with the respondent on a negotiated amount of P900,000.00 for side trimmings.[17] However, respondent's claim for foundation excavation was not acted upon.[18] During the construction period, petitioner granted, on separate occasions, respondent's requests for payroll and material accommodations.[19]

On March 13, 1999, respondent submitted its final billing, amounting to P4,442,430.90 representing its work accomplishment and retention, less all deductions. On March 23, 1999, a punch list was drawn as a result of the joint inspection undertaken by the parties. Petitioner, on the other hand, refused to issue

a certificate of completion. It, instead, sent a letter to respondent informing the latter that it was already in default.^[20]

On September 14, 1999, respondent was constrained to file a Request for Adjudication^[21] with the CIAC. Respondent specifically prayed, thus:

WHEREFORE, premises considered, the Claimant-Contractor prays that this Honorable Commission render judgment against Respondent-Owner EMPIRE EAST LAND HOLDINGS, INC., ordering said Respondents to pay the Claimant the amount of PhP22,770,976.66 plus costs of suit, broken down as follows:

- a. PhP4,442,430.90 as unpaid amount from the contract price;
- b. PhP3,153,733.60 as the amount remaining unpaid for additional works;
- c. PhP13,976,427.00 as overhead expenses; and
- d. PhP1,198,385.16 as additional costs due to wage escalation;

Other reliefs equitable under the premises are also prayed for.^[22]

On May 16, 2000, the CIAC rendered a decision^[23] in favor of the respondent, disposing, as follows:

WHEREFORE, judgment is hereby rendered and AWARD of monetary claims is hereby made as follows:

FOR THE CLAIMANT:

1. Retention	P4,502,886.64
Money	
Unpaid Billings	(P1,607,627.65)
Retention	(6,110,514.29)
Money	
2. Additional Work: Excavation	1,805,225.90
for Foundations	
3. Overhead Expenses	1,397,642.70
4. Labor Costs Escalation	<u>308,226.57</u>
Total due the Claimant	P8,013,981.81

FOR THE RESPONDENT:

1. Punch List Items	P248,350.00
Total due the Respondent	P248,350.00

All other claims and counterclaims are dismissed.

OFFSETTING the lesser amount due from Claimant with the bigger

amount from the Respondent, EMPIRE EAST LAND HOLDINGS, INC. is hereby ordered to pay CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC. the net amount of SEVEN MILLION SEVEN HUNDRED SIXTY-FIVE THOUSAND SIX HUNDRED THIRTY-ONE AND 81/100 (P7,765,631.81) with 6% legal interest from the time the request for adjudication was filed with the CIAC on September 14, 1999 up to the time this Decision becomes final and executory.

Thereafter, interest at the rate of 12% per annum shall accrue on the final judgment until it is fully paid.

The arbitration fees and expenses shall be paid on a pro rata basis as initially shared by the parties.

SO ORDERED.^[24]

As to petitioner's counterclaim, the CIAC denied those which referred to masonry and other works that it took over, considering that they were formally deleted from respondent's scope of work, which in turn caused the reduction of their total contract price.^[25] Petitioner's claim for liquidated damages was likewise found unmeritorious because it allowed respondent to complete the works despite knowledge that the latter was already in default.^[26] On the other hand, as the punch list was drawn after the joint inspection by the parties, CIAC found for the petitioner and thus awarded a total amount of P248,350.00^[27]

Aggrieved, petitioner elevated the matter to the CA *via* a petition for review under Rule 43 of the Rules of Court. On November 3, 2004, the CA affirmed the CIAC's findings of fact and conclusions of law with a slight modification, and ruled:

WHEREFORE, the Decision, dated 16 May 2000, of the Construction Industry Arbitration Commission Arbitral Tribunal is hereby AFFIRMED WITH MODIFICATION in that CIAC's award on Labor Cost Escalation is hereby DELETED for lack of factual basis and, consequently, for lack of cause of action and CIAC's award on Additional Work for Foundation Excavation is hereby equitably REDUCED to P980,376.34. All other awards, as well as the rates of interest, are hereby AFFIRMED.

Accordingly, the total amount due to CICG is P6,880,905.68. While EELH is entitled P248,350.00. Offsetting the award of EELH from the amount due to CICG, EELH is hereby ORDERED to pay CICG the total amount of SIX MILLION SIX HUNDRED THIRTY-TWO THOUSAND FIVE HUNDRED FIFTY-FIVE PESOS (P6,632,555.00). No costs at this instance.

SO ORDERED.^[28]

In deleting respondent's claim for labor cost escalation and reducing its claim for the cost of the excavation of foundation, the appellate court said that respondent failed to show that it in fact paid said wage increase pursuant to the New Wage Order,^[29] while the reduction of the cost of foundation excavation was the result of the reduction of its cost per cubic meter.^[30]