

## THIRD DIVISION

[ G.R. No. 169095, December 08, 2008 ]

**HEUNGHWA INDUSTRY CO., LTD., PETITIONER, VS. DJ BUILDERS CORPORATION, RESPONDENT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the August 20, 2004 Decision<sup>[2]</sup> and August 1, 2005 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP Nos. 70001 and 71621.

The facts of the case, as aptly presented by the CA, are as follows:

Heunghwa Industry Co., Ltd. (petitioner) is a Korean corporation doing business in the Philippines, while DJ Builders Corporation (respondent) is a corporation duly organized under the laws of the Philippines. Petitioner was able to secure a contract with the Department of Public Works and Highways (DPWH) to construct the Roxas-Langogan Road in Palawan.

Petitioner entered into a subcontract agreement with respondent to do earthwork, sub base course and box culvert of said project in the amount of Php113, 228, 918.00. The agreement contained an arbitration clause. The agreed price was not fully paid; hence, on January 19, 2000, respondent filed before the Regional Trial Court (RTC) of Puerto Princesa, Branch 51, a Complaint for "Breach of Contract, Collection of Sum of Money with Application for Preliminary Injunction, Preliminary Attachment, and Prayer for Temporary Restraining Order and Damages" docketed as Civil Case No. 3421.<sup>[4]</sup>

Petitioner's Amended Answer<sup>[5]</sup> averred that it was not obliged to pay respondent because the latter caused the stoppage of work. Petitioner further claimed that it failed to collect from the DPWH due to respondent's poor equipment performance. The Amended Answer also contained a counterclaim for Php24,293,878.60.

On September 27, 2000, parties through their respective counsels, filed a "Joint Motion to Submit Specific Issues To The Construction Industry Arbitration Commission"<sup>[6]</sup> (CIAC), to wit:

5. Parties would submit only specific issues to the CIAC for arbitration, leaving other claims to this Honorable Court for further hearing and adjudication. Specifically, the issues to be submitted to the CIAC are as follows:

- a. Manpower and equipment standby time;
- b. Unrecouped mobilization expenses;

- c. Retention;
- d. Discrepancy of billings; and
- e. Price escalation for fuel and oil usage.<sup>[7]</sup>

On the same day, the RTC issued an Order<sup>[8]</sup> granting the motion.

On October 9, 2000, petitioner, through its counsel, filed an "Urgent Manifestation"<sup>[9]</sup> praying that additional matters be referred to CIAC for arbitration, to wit:

1. Additional mobilization costs incurred by [petitioner] for work abandoned by [respondent];
2. Propriety of liquidated damages in favor of [petitioner] for delay incurred by [respondent];
3. Propriety of downtime costs on a daily basis during the period of the existence of the previous temporary restraining order against [petitioner].<sup>[10]</sup>

On October 24, 2000, respondent filed with CIAC a Request for Adjudication<sup>[11]</sup> accompanied by a Complaint. Petitioner, in turn filed a "Reply/ Manifestation" informing the CIAC that it was abandoning the submission to CIAC and pursuing the case before the RTC. In respondent's Comment on petitioner's Manifestation, it prayed for CIAC to declare petitioner in default.

CIAC then issued an Order<sup>[12]</sup> dated November 27, 2000 ordering respondent to move for the dismissal of Civil Case No. 3421 pending before the RTC of Palawan and directing petitioner to file anew its answer. The said Order also denied respondent's motion to declare petitioner in default.

Respondent filed a Motion for Partial Reconsideration of the November 27, 2000 Order while petitioner moved to suspend the proceeding before the CIAC until the RTC had dismissed Civil Case No. 3421.

On January 8, 2000, CIAC issued an Order<sup>[13]</sup> setting aside its Order of November 27, 2000 by directing the dismissal of Civil Case No. 3421 only insofar as the five issues referred to it were concerned. It also directed respondent to file a request for adjudication. In compliance, respondent filed anew a "Revised Complaint"<sup>[14]</sup> which increased the amount of the claim from Php23,391,654.22 to Php65,393,773.42.

On February 22 2001, petitioner, through its new counsel, filed with the RTC a motion to withdraw the Order dated September 27, 2000 which referred the case to the CIAC, claiming it never authorized the referral. Respondent opposed the motion<sup>[15]</sup> contending that petitioner was already estopped from asking for the recall of the Order.

Petitioner filed in the CIAC its opposition to the second motion to declare it in default, with a motion to dismiss informing the CIAC that it was abandoning the submission of the case to it and asserting that the RTC had original and exclusive jurisdiction over Civil Case No. 3421, including the five issues referred to the CIAC.

On March 5, 2001, the CIAC denied petitioner's motion to dismiss on the ground that the November 27, 2000 Order had already been superseded by its Order of January 8, 2001.<sup>[16]</sup>

On March 13, 2001, the CIAC issued an Order setting the preliminary conference on April 10, 2001.<sup>[17]</sup>

On March 23, 2001 petitioner filed with the CIAC a motion for reconsideration of the March 5, 2001 Order.

For clarity, the succeeding proceedings before the RTC and CIAC are presented in graph form in chronological order.

RTC	CIAC
	April 5, 2001 - Petitioner filed a Motion to Suspend proceedings because of the Motion to Recall it filed with the RTC.
	April 6, 2001 - CIAC granted petitioner's motion and suspended the hearings dated April 10 and 17, 2001.
May 16, 2001 - the RTC issued a Resolution <sup>[18]</sup> granting petitioner's Motion to Recall. <sup>[19]</sup>	
June 1, 2001- Respondent moved for a reconsideration of the May 16, 2001 Resolution and prayed for the dismissal of the case without prejudice to the filing of a complaint with the CIAC. <sup>[20]</sup>	
June 11, 2001- Petitioner opposed respondent's motion for reconsideration and also prayed for the dismissal of the case but with prejudice. <sup>[21]</sup>	
July 6, 2001 - The RTC denied respondent's motion for reconsideration but stated that respondent may file a formal motion to dismiss if it so desired. <sup>[22]</sup>	
July 16, 2001- Respondent filed with the RTC a Motion to Dismiss <sup>[23]</sup> Civil Case No. 3421 praying for the dismissal of the complaint without prejudice to the filing of the proper complaint with the CIAC. <b>On the same day, the RTC granted the motion without prejudice to petitioner's counterclaim.</b> <sup>[24]</sup>	

August 1, 2001- Petitioner moved for a reconsideration of the July 16, 2001 Order claiming it was denied due process. <sup>[25]</sup>	
	August 7, 2001 - Respondent filed with the CIAC a motion for the resumption of the proceedings claiming that the dismissal of Civil Case No. 3421 became final on August 3, 2001.
	August 15, 2001 - Petitioner filed a counter-manifestation <sup>[26]</sup> asserting that the RTC Order dated July 16, 2001 was not yet final. Petitioner reiterated the prayer to dismiss the case.
	August 27, 2001 - CIAC issued an Order maintaining the suspension but did not rule on petitioner's Motion to Dismiss.
	January 22, 2002 - CIAC issued an Order setting the case for Preliminary Conference on February 7, 2002.
	February 1, 2002 - Petitioner filed a Motion for Reconsideration of the January 22, 2002 Order which also included a prayer to resolve the Motion for Reconsideration of the July 16, 2001 Order.
	February 5, 2002 - CIAC denied petitioner's Motion for Reconsideration.
	February 7, 2002 - CIAC conducted a preliminary conference. <sup>[27]</sup>
<b>March 13, 2002 - the RTC issued a Resolution<sup>[28]</sup> declaring the July 16, 2001 Order which dismissed the case "without force and effect" and set the case for hearing on May 30, 2002.</b>	

	March 15, 2002 - Petitioner filed a Manifestation before the CIAC that the CIAC had no authority to hear the case.
	March 18, 2002 - CIAC issued an Order setting the hearing on April 2, 2002.
	March 21, 2002 - Petitioner filed a Manifestation/Motion that the RTC had recalled the July 16, 2001 Order and had asserted jurisdiction over the entire case and praying for the dismissal of the pending case. <sup>[29]</sup>
	<b>March 22, 2002 - CIAC issued an Order<sup>[30]</sup> denying the Motion to Dismiss filed by petitioner and holding that the CIAC had jurisdiction over the case.</b>
March 25, 2002- Respondent moved for a reconsideration <sup>[31]</sup> of the March 13, 2002 Order recalling the July 16, 2001 Order which petitioner opposed.	March 26, 2002 - CIAC ordered respondent to file a reply to petitioner's March 21, 2002 Manifestation.
<b>June 17, 2002 - RTC denied respondent's Motion for Reconsideration.</b>	

The parties, without waiting for the reply required by the CIAC,<sup>[32]</sup> filed two separate petitions for *certiorari*: petitioner, on April 5, 2002, docketed as CA-G.R. SP No. 70001; and respondent, on July 5, 2002, docketed as CA-G.R. SP No. 71621 with the CA.

In CA-G.R. SP No. 70001, petitioner assailed the denial by the CIAC of its motion to dismiss and sought to enjoin the CIAC from proceeding with the case.

In CA-G.R. SP No. 71621, respondent questioned the March 13, 2002 Order of the RTC which reinstated Civil Case No. 3421 as well as the Order dated June 17, 2002 which denied respondent's motion for reconsideration. Respondent also sought to restrain the RTC from further proceeding with the civil case.

In other words, petitioner is questioning the jurisdiction of the CIAC; while respondent is questioning the jurisdiction of the RTC over the case.

Both cases were consolidated by the CA.