

## THIRD DIVISION

[ G.R. NO. 159417, January 25, 2007 ]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,  
PETITIONER, VS. THE HON. COURT OF APPEALS AND CMS  
CONSTRUCTION AND DEVELOPMENT CORPORATION,  
RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, assailing the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 66968, dated 26 August 2002, which dismissed Philippine National Construction Corporation's (PNCC's) Petition for Review of the Decision<sup>[2]</sup> of Sole Arbitrator Victor P. Lazatin of the Construction Industry Arbitration Commission (CIAC) awarding herein respondent CMS Construction and Development Corporation (CMS) the amount of P1,978,746.90 with interest at the rate of 6% per annum from 7 July 2000 up to the date of award and thereafter, at an interest rate of 12% per annum until fully paid.

The present case arose when CMS submitted for arbitration before the CIAC a complaint for sum of money with damages against PNCC in connection with the relocation of the 450 mm diameter steel pipes along the East Service Road of the South Luzon Tollway.

On 26 July 1996, PNCC entered into a Memorandum of Agreement with the Toll Regulatory Board, Citra Metro Manila Tollways Corporation and Metropolitan Waterworks Sewerage System (MWSS) involving the task of relocating MWSS utilities along the South Superhighway affected by the construction of the Manila South Skyway Project. In undertaking said task, PNCC subcontracted the relocation of the 450 mm diameter steel pipes to CMS as the winning bidder. On 13 October 1997, even before the signing of a contract, CMS proceeded to carry out the project upon request of PNCC.

A Subcontract Agreement was executed between PNCC and CMS on 21 October 1997. It was stated therein that the estimated contract price was P7,990,172.61, inclusive of taxes, and that the project was to be completed within seventy-five (75) calendar days from the signing of the contract. It was further stipulated therein that the contract price was merely an estimate and that the final price shall be computed based on the actual accomplishment of the subcontractor as approved and accepted by PNCC, the Toll Regulatory Board, and the MWSS.

On 5 December 1997, PNCC informed CMS that it would provide the necessary equipment, manpower, and materials to assure the completion of the project and that all costs pertaining thereto would be charged to the latter's account. In another

letter dated 19 December 1997, PNCC again reiterated that it would provide manpower and equipment to CMS in order that the stated schedule for the completion of the project shall be met. On 7 January 1998, petitioner informed CMS that the seventy-five (75) days period for the relocation of the steel pipes had already elapsed; however, the said project was still far from completion. It was only sometime in April 1999 that the project was finally completed.

In conformity to the letters sent by PNCC to CMS regarding the manpower and equipment supplied by the former to ensure the completion of the project, the following amounts were deducted by petitioner from CMS's billings as "accommodations":

Billing No. 3.....	P 274,548.87
Billing No. 4.....	150,043.12
Billing No. 5.....	<u>666,895.54</u>
TOTAL	P1,091,487.53

Thereafter, PNCC and CMS amended the Subcontract Agreement on 23 November 1999, stating therein the final contract price in the amount of P8,872,593.74, inclusive of taxes. It was also agreed upon by the parties under the Contract Amendment that Appendix "A" thereof constituted the final Bill of Quantities for scope of works undertaken by the subcontractor (CMS) and superseded Annex "C" of the 21 October 1997 Agreement and any bill of quantities earlier agreed upon by the parties in connection with the project. Furthermore, it was expressed therein that the said amendment superseded the price stipulated in the original Subcontract Agreement dated 21 October 1997 and any other commitment or agreement on price pertaining to works covered therein.

According to CMS, the amended contract price has not been fully paid by PNCC since Billing Nos. 3, 4, and 5 were only partially paid because of the deductions made by the latter in the form of "accommodations," which CMS insists must be disallowed.

After the proceedings, Sole Arbitrator Lazatin issued an Award, the pertinent portions of which read:

Before resolving the specific issues raised by the parties, it would be helpful to state certain findings established at the hearings which are pivotal.

Initially, there is no dispute that the retention money amounts to P887,259.37 which is exactly equal to ten percent (10%) of the Subcontract Price (TSN, 13 August 2001, pp. 7-8). Both parties confirmed that no claim for defects was made by the Respondent or the Owner/Client after April 19, 1999 to rectify what was completed by the Claimant. (TSN, 13 August 2001, p. 10).

Secondly, at the initial hearing, the Claimant no longer insisted on its claim for hydrotesting works (Issue No. 4) amounting to P563,675.00 due to paragraph 3 of the Contract Amendment (Exhibit C-2) (TSN, 13 August, p. 3).

Thirdly, some of the important details of Billing Nos. 3, 4 and 5 are as

follows:

a) Billing No. 3 was for P920,601.03. It was received by the Respondent on June 1, 1998 and approved on September 25, 1998. The deductions for asserted accommodations amounted to P274,548.87. The amount paid was P646,052.12 which was paid in three (3) tranches, to wit:

- (i) P400,000 on January 21, 1999
- (ii) P100,000 on April 11, 2000
- (iii) P146,000 on February 8, 2001

b) Billing No. 4 was for P255,334.13. It was received by the Respondent on March 15, 1999 and approved on May 31, 1999. The deductions for asserted accommodations amounted to P150,043.12. The amount paid was P105,181.00 which paid on February 10, 2000.

c) Billing No. 5 was for P1,681,888.21. It was received by the Respondent on December 3, 1999 and approved on August 4, 2000. The deductions for asserted accommodations amounted to P666,895.54. The amount paid was P921,706.79 which was paid on June 7, 2001.

Fourthly, on 23 November 1999 (after the Project was completed), the parties executed the Contract Amendment wherein the parties agreed, among others, to wit:

(i) To constitute "Appendix A" thereof as the final Bill of Quantities for scope of works undertaken by the Claimant and superseded/replaced Annex C of the 21 October 1997 Subcontract Agreement (Exh. C-1).

(ii) P8,872,593.74 as the final Subcontract Price which "supersede(d) the price stipulated in the original Subcontract Agreement dated 21 October 1997 P7,990,172.61 and any other commitment or agreement on price pertaining to works covered herein."

(iii) "no further adjustment in price shall be effected and that (Claimant) hereby waived any and all claims for price adjustments and whatsoever in connection with the work herein covered except as that stated in pa. 3 above of this Contract Amendment." (emphasis supplied).

Fifthly, there is no clear documentation that Respondent sent, and the Claimant received, much more accepted, the various charges for the accommodations deducted by the Respondent. The testimony of the witnesses of both parties are diametrically opposite. Likewise in conflict are the respective verbal assertion of both sides that manpower, equipment, and/or materials were actually provided by the Respondent to the Claimant.

Sixth, the documentation of the Respondent with respect to its invocation of Section 6.2 of the Subcontract Agreement (Exhibit R-5) is faulty. The

seven (7) day notice was not strictly complied with. There was no specification of the items and costings of the charges now asserted in the deductions/accommodations. The Claimant is likewise remiss in failing to reply to Respondents' various letters (Exhibits R-20 to R-40, except for two (2) response) and take issue with the same. The Respondent could not present proof that the Claimant received and acknowledged the accommodations, despite its verbal assertions that the Project Manager of the Claimant did. There is also assertion that Claimant refused to acknowledge receipt of the accommodations.

Lastly, and more importantly, the Claimant asserts that when the parties agreed on the Contract Amendment (which is effectively a compromise agreement) on 23 November 1999, Respondent's claims for deductions of the accommodations were deemed included in the compromise. The Contract Amendment states that it "accordingly supersedes the price stipulated x x x and any other commitment or agreement on price pertaining to works covered herein" and "no further adjustment in price shall be effected." It should be pointed out that on 23 November 1999, respondent had already approved Billing No. 3 (on September 25, 1998) and Billing No. 4 (on May 31, 1999) and asserted the deductions of the accommodations. Moreover, all the claim for accommodations were already in existence on 23 November 1999. x x x.

x x x x

WHEREFORE, PREMISES CONSIDERED, an award is hereby rendered ordering the respondent to pay the Claimant the amount of P1,978,746.90 with interest at the rate of 6% per annum from 7 July 2000 up to the date of this Award. Thereafter, the Award shall earn interest at the rate of 12% per annum until fully paid.<sup>[3]</sup>

Aggrieved, PNCC sought recourse through a Petition for Review filed before the Court of Appeals maintaining that there is no basis in fact nor in law for the findings of the Sole Arbitrator that the deductions for "accommodations" for Billing Nos. 3, 4, and 5 should be disallowed as they already formed part of the compromise agreement and that the said "accommodations" were not properly documented and proved to bind CMS.

On 26 August 2002, the appellate court rendered a Decision affirming the findings of Sole Arbitrator Lazatin. According to the Court of Appeals:

It must be recalled that the parties initially agreed to a subcontract price of P7,990,172.61 (par. 3.1 Subcontract Agreement, Exh. "R-3", p. 80, rollo); however, the same was increased to P8,872,593.74 (par. 9.1. Terms of Reference, p. 58, rollo; Final Bill of Quantities, p. 65, rollo) subject to petitioner PNCC's outright deduction of 10% net which would answer for any and all defect/s and/or deficiency/ies in the workmanship. And all the accumulated retentions shall be released within thirty days from the date of final acceptance of subcontracted work and which could be attained only after the lapse of the warranty period stipulated. (pars. 4.4 & 4.5., Subcontract Agreement, p. 81, rollo; Contract Amendment,

Exh. "R-15", p. 98, rollo). Thus, 10% of the subcontract price of P8,872,593.74 is P887,259.37, which should be automatically deducted, it being part of the Subcontract Agreement" which to Our mind should be respected, since the same was not part of the amendment of the contract. When the terms of an agreement have been reduced to writing, it is to be considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. (Sec. 9, par. 1, Rule 130 Rules on Evidence) And there being no evidence on record which showed that petitioner PNCC claimed for any defects on the completed project against respondent CMS after April 1999, the aforementioned amount of P887,259.37 should now be released/paid to the latter.

Coming now to the resolutions of whether or not the deductions for accommodations made by petitioner PNCC in billing nos. 3 to 5 were part of the compromise settlement and whether the same were properly documented, We opine that the same were part of the compromise settlement and the same were not properly documented.

Petitioner PNCC contended that in view of respondent CMS delay in the execution of the project, it supplied the necessary manpower, equipment and materials in order to assure the completion of the works; however, the record of the case is bereft of any evidence which would show that indeed petitioner PNCC had supplied the necessary manpower, equipment and materials for the project, aside from petitioner's letter dated December 5, 1997 which stated that it would supply the same. (p. 92, rollo).

Petitioner's reliance on Article VI, par. 6.2.1 of the Subcontract Agreement which states:

"In the event Subcontractor fails to comply with the requirement stated therein within seven (7) days from notice/demand to comply, PNCC shall have the authority to secure the necessary manpower, equipment from other sources, to assure completion of the works. All costs and expenses, including handling of charges, transportation, rentals for machinery/equipment and other expenses incidental thereto shall be for the account of Subcontractor and may be deducted from whatever amount that may be due or become due to Subcontractor under this or in any agreement between the parties.

is basically misplaced. While there was petitioner PNCC's letter dated February 16, 1998 sent to respondent CMS informing the latter that it had not coped up (sic) with the work schedule and thus requiring it to submit other requirements such as daily accomplishment reports and target weekly accomplishments; nevertheless, the same is not determinant of whether or [not] the seven day notice was strictly complied with. (Exh. "R-32" p. 95, rollo).