

THIRD DIVISION

[G.R. No. 165433, February 06, 2007]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND MCS
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^[1] of the Court of Appeals in CA-G.R. SP No. 76198, dated 19 July 2004, which dismissed Philippine National Construction Corporation's (PNCC's) Petition for Review of the Decision^[2] of the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal awarding herein respondent MCS Construction and Development Corporation (MCS) the amount of P6,352,791.33, with interest at the rate of 6% per annum from 6 June 1999 up to the date of award and an interest rate of 12% per annum as of the date the decision becomes final and executory until fully paid.

A contract for the construction of the Philippine Merchant Marine Academy's (PMMA's) Replication Project located in San Marcelino, Zambales, was entered into between the PNCC and PMMA. Included in the scope of works for the Replication Project was the construction of a gymnasium building. The construction of said gymnasium was subcontracted by PNCC to MCS under a Subcontract Agreement dated 28 September 1998 for a consideration in the amount of P19,483,572.65.

In a Certificate of Acceptance dated 6 April 2000, PNCC certified that MCS had satisfactorily completed the construction of the gymnasium building based on the plans, drawings, and specifications thereof on March 1999. However, despite several demands made by MCS, PNCC failed to pay the balance of the contract price left after deducting the partial payments made by the latter.

Hence, on 6 September 2002, MCS filed with the CIAC Arbitral Tribunal a Request for Adjudication praying for the award of various sums of money, including interest and damages, against PNCC in the total amount of P24,988,597.44. MCS maintained that notwithstanding the fact that the construction of the gymnasium had been satisfactorily completed as early as 1999, PNCC still failed to fully satisfy its obligation to pay the price of the construction project under the Subcontract Agreement despite several written demands.

For its defense, PNCC alleged that the request for arbitration was premature, as MCS had no cause of action against PNCC since the latter is still in the process of paying its obligation to MCS. Furthermore, PNCC claimed that although its payments were made in installments, said payments were made regularly, contrary

to the claim of MCS that said installment payments were irregular and took a very long period of time.

In a preliminary conference held on 4 December 2002, the parties defined the issues to be resolved in the proceedings before the CIAC Arbitral Tribunal as follows:

1. Was the filing of this case before CIAC premature for lack of cause of action?
 - 1.1 In the event this case is proven to have been prematurely filed, is Respondent entitled to its claim to be compensated for the alleged bad reputation suffered? If so, how much?
 - 1.2 If the filing of the case is not premature, is Claimant entitled to its claim for the balance of the contract price, damages and interest? If so, how much?
2. Who between the parties is entitled to attorney's fees?
3. Who between the parties shall shoulder the cost of arbitration?^[3]

On 10 March 2003, the CIAC Arbitral Tribunal rendered a Decision in favor of MCS, the decretal portion of which reads:

PNCC contends that Article IV of the Subcontract Agreement (Exhibit A) shows that MCS' cause of action is premature because the corresponding payments from PMMA had not been received. The pertinent portion of Article IV reads as follows:

Manner of Payment

4.1. The price referred to in Article 111 above shall be paid by PNCC to Subcontractor in the following manner and subject **to receipt by PNCC of corresponding payment/s from PMMA:**

xxxx

PNCC submitted in evidence a summary of the accounts payable to MCS and the payments made thereunder as of October 10, 2002 (Exhibit 14). Unfortunately for PNCC, the same document also listed down the payments it had received from PMMA on the "gymnasium building" project - the very same building for which MCS has been engaged to construct on behalf of PNCC.

Exhibit 14 clearly showed that PNCC had received a total of P31,249,223.30 from PMMA on the "gymnasium building", with a further balance of P6,972,043.44 still due from PMMA. Parenthetically, PNCC did not submit in evidence in these proceedings any copy of its contract or contracts with PMMA. Other than Exhibit 14, PNCC did not submit any evidence to show that the payments made to it by PMMA had reference to other accounts between PMMA and PNCC, or that said payments were inadequate to warrant PNCC's payment in full of the amounts due MCS.

On the contrary, having already received a total of P31,249,233.30 from PMMA on the "gymnasium building" project, PNCC saw fit to consider the same sufficient to justify payment to MCS of only P9,965,465.98 (as adjusted by this arbitral tribunal). Since there still appeared a receivable of P6,972,043.44 from PMMA, PNCC chose to relegate such receivable to the payment of the balance due MCS, in the amount of P6,352,791.33.

In other words, PNCC opted to reap and enjoy its margins from the PMMA contract before satisfying its obligations to its sub-contractor MCS. This, the arbitral tribunal finds to have been done in bad faith on the part of PNCC.

Noteworthy also is the fact that PNCC did not raise this defense in its answer nor among the special and affirmative defenses included in said answer. PNCC merely invoked its "financial difficulties" in trying to justify its belated payments due MCS.

The arbitral tribunal therefore holds that MCS' cause was not prematurely filed, and that its claim for payment of the balance of the contract consideration made in these proceedings was proper.

Aside from the said unpaid balance, to what other amount or amounts is MCS entitled arising from PNCC's breach in bad faith?

xxxx

xxx MCS is entitled to interest, attorney's fees and reimbursement of the costs of arbitration - which (aside from its claims on the deterioration of the value of the Phil. Peso) were all that MCS prayed for.

xxxx

It is the ruling of this arbitral tribunal that, there having been unwarranted and baseless delay in the payment required of the respondent PNCC, the claimant is entitled to interest at the legal rate of 6% p.a. on the amount of P6,352,791.33 adjudicated in its favor, computed from the date of first extrajudicial demand, which was on June 6, 1999 (Exhibit C). However, when the award herein becomes executory, the amount thereof will then partake of the nature of a forbearance of credit and will thereupon be entitled therefrom to the interest rate of 12% p.a. until fully paid (*Eastern Shipping Lines, Inc. vs. Court of Appeals*, 234 SCRA 78, 95-97 [1994]); reiterated in *Bangko Sentral ng Pilipinas vs. Santamaria*, G.R. No. 139885, Jan. 13, 2003, page 13).

In respect of the costs of arbitration, Sec. 5, Article XV of the Rules of Procedure Governing Construction Arbitration states:

Decision as to Cost of Arbitration. - In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitrator(s), the award shall, in addition to dealing with the merits of the case, fix the

cost of arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each.

Rule 142 of the Revised Rules of Court of the Philippines governing the imposition of costs likewise provides the following:

Section 1. *Costs Ordinarily follow the result of suit.* Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power for special reasons, to adjudge that either party shall pay the cost of an action, or that the same shall be divided, as may be equitable.

Since the institution of this arbitration case was necessitated by respondent PNCC's refusal to pay claimant MCS the amounts due the latter, this tribunal holds that respondent PNCC should exclusively bear the costs of arbitration. PNCC had refused to satisfy MCS' valid and demandable claims; consequently, MCS had been compelled to institute the present proceedings to protect its interests. Furthermore, PNCC was in gross and evident bad faith in delaying the payment of MCS' claim. It is, therefore, only just and equitable that respondent PNCC be ordered to pay the costs of arbitration and to refund to MCS all the amounts the latter had advanced in instituting and pursuing these arbitration proceedings.

The same aforementioned circumstances warranting the award of arbitration costs in favor of the claimant likewise constitute justification for an award of attorney's fees by way of damages, also in favor of claimant (Art. 2208 [5] and [11]). Considering the years of travail which claimant went through in waiting and following-up the payment of the contract consideration to which claimant was lawfully entitled, eventually culminating in these arbitration proceedings, the arbitral tribunal finds that an amount equivalent to ten per cent (10%) of the principal claim plus the interests accruing thereon up to the date of payment is just; equitable and reasonable in the premises.

WHREFORE, arbitral award is hereby rendered in favor of claimant MCS Construction and Development Corp. and against respondent Philippine National Construction Corporation, ordering the latter to pay the former the following amounts:

(a) The principal claim of P6,352,791.33, with interest thereon at 6% per annum computed from June 6, 1999 provided however that said rate shall be increased to 12% per annum effective as of the date that the decision herein becomes final and executory, until the aforesaid principal amount is paid in full;

(b) Attorney's fees equivalent to ten per cent (10%) of such principal claim and the interests accruing thereon until all of such principal claim and interests are paid in full; and,

(c) To reimburse the claimant the costs of arbitration paid and/or

advanced thereby.

Respondent's counterclaim is dismissed for lack of basis.^[4]

Asserting that the CIAC Arbitral Tribunal committed error in ruling that the claim of MCS is not premature, PNCC filed a Petition for Review before the Court of Appeals, which was dismissed by the appellate court in a Decision dated 19 July 2004. According to the Court of Appeals:

Petitioner PNCC avers that the claims of respondent MCS are not yet ripe for court and/or legal action because petitioner PNCC has yet to violate the rights of respondent MCS, since, before the filing of the complaint, petitioner was already in the process of paying its obligations to respondent MCS. In fact, petitioner PNCC argues that its last installment payment was made in July 2002 while respondent MCS' last written demand was in April 2002.

We disagree.

As alleged in the complaint of respondent MCS, in pursuance to the agreement, the latter made billings for various amounts on different dates. However, aside from making its payments irregularly, petitioner also took a long time to make the payments, so much so, that even after the lapse of more [than] three years from the time the gymnasium project was satisfactorily completed in 1999, petitioner has not been able to fully settle its obligation without lawful ground.

It has been held that a cause of action is defined as an act or omission of one party in violation of the legal rights of the other which causes the latter injury (*Rebollido v. Court of Appeals*, 170 SCRA 800 [1989]).

In determining whether or not a cause of action exists the following elements must be present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant to respect or not violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages (*Relucio v. Lopez*, 373 SCRA 578 [2002]).

In the instant case, respondent MCS has a right to be paid for its services in constructing the gymnasium and petitioner PNCC recognized this right under the Subcontractors Agreement. Notwithstanding several written demands made by the respondent MCS and considering the lapse of a considerable period of time since the project was completed, petitioner PNCC has not complied with its duty to pay respondent for its services. Petitioner maintains that it was suffering from "financial difficulties" but no evidence was shown to substantiate the same.

Well-settled is that rule that the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with his duty