

[G.R. NO. 158253, March 02, 2007]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, COMMISSION
ON AUDIT AND THE NATIONAL TREASURER, PETITIONER, VS.
CARLITO LACAP, DOING BUSINESS UNDER THE NAME AND
STYLE CARWIN CONSTRUCTION AND CONSTRUCTION SUPPLY,
RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assailing the Decision^[1] dated April 28, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 56345 which affirmed with modification the Decision^[2] of the Regional Trial Court, Branch 41, San Fernando, Pampanga (RTC) in Civil Case No. 10538, granting the complaint for Specific Performance and Damages filed by Carlito Lacap (respondent) against the Republic of the Philippines (petitioner).

The factual background of the case is as follows:

The District Engineer of Pampanga issued and duly published an "Invitation To Bid" dated January 27, 1992. Respondent, doing business under the name and style Carwin Construction and Construction Supply (Carwin Construction), was pre-qualified together with two other contractors. Since respondent submitted the lowest bid, he was awarded the contract for the concreting of *Sitio 5 Bahay Pare*.^[3] On November 4, 1992, a Contract Agreement was executed by respondent and petitioner.^[4] On September 25, 1992, District Engineer Rafael S. Ponio issued a Notice to Proceed with the concreting of *Sitio 5 Bahay Pare*.^[5] Accordingly, respondent undertook the works, made advances for the purchase of the materials and payment for labor costs.^[6]

On October 29, 1992, personnel of the Office of the District Engineer of San Fernando, Pampanga conducted a final inspection of the project and found it 100% completed in accordance with the approved plans and specifications. Accordingly, the Office of the District Engineer issued Certificates of Final Inspection and Final Acceptance.^[7]

Thereafter, respondent sought to collect payment for the completed project.^[8] The DPWH prepared the Disbursement Voucher in favor of petitioner.^[9] However, the DPWH withheld payment from respondent after the District Auditor of the Commission on Audit (COA) disapproved the final release of funds on the ground that the contractor's license of respondent had expired at the time of the execution of the contract. The District Engineer sought the opinion of the DPWH Legal Department on whether the contracts of Carwin Construction for various Mount

Pinatubo rehabilitation projects were valid and effective although its contractor's license had already expired when the projects were contracted.^[10]

In a Letter-Reply dated September 1, 1993, Cesar D. Mejia, Director III of the DPWH Legal Department opined that since Republic Act No. 4566 (R.A. No. 4566), otherwise known as the Contractor's License Law, does not provide that a contract entered into after the license has expired is void and there is no law which expressly prohibits or declares void such contract, the contract is enforceable and payment may be paid, without prejudice to any appropriate administrative liability action that may be imposed on the contractor and the government officials or employees concerned.^[11]

In a Letter dated July 4, 1994, the District Engineer requested clarification from the DPWH Legal Department on whether Carwin Construction should be paid for works accomplished despite an expired contractor's license at the time the contracts were executed.^[12]

In a First Indorsement dated July 20, 1994, Cesar D. Mejia, Director III of the Legal Department, recommended that payment should be made to Carwin Construction, reiterating his earlier legal opinion.^[13] Despite such recommendation for payment, no payment was made to respondent.

Thus, on July 3, 1995, respondent filed the complaint for Specific Performance and Damages against petitioner before the RTC.^[14]

On September 14, 1995, petitioner, through the Office of the Solicitor General (OSG), filed a Motion to Dismiss the complaint on the grounds that the complaint states no cause of action and that the RTC had no jurisdiction over the nature of the action since respondent did not appeal to the COA the decision of the District Auditor to disapprove the claim.^[15]

Following the submission of respondent's Opposition to Motion to Dismiss,^[16] the RTC issued an Order dated March 11, 1996 denying the Motion to Dismiss.^[17] The OSG filed a Motion for Reconsideration^[18] but it was likewise denied by the RTC in its Order dated May 23, 1996.^[19]

On August 5, 1996, the OSG filed its Answer invoking the defenses of non-exhaustion of administrative remedies and the doctrine of non-suability of the State.^[20]

Following trial, the RTC rendered on February 19, 1997 its Decision, the dispositive portion of which reads as follows:

WHEREFORE, in view of all the foregoing consideration, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter, thru its District Engineer at Sindalan, San Fernando, Pampanga, to pay the following:

- a) representing the contract for the concreting P457,000.00 -project of Sitio 5 road, Bahay Pare, Candaba,

Pampanga plus interest at 12% from demand until fully paid; and

b) The costs of suit.

SO ORDERED.^[21]

The RTC held that petitioner must be required to pay the contract price since it has accepted the completed project and enjoyed the benefits thereof; to hold otherwise would be to overrun the long standing and consistent pronouncement against enriching oneself at the expense of another.^[22]

Dissatisfied, petitioner filed an appeal with the CA.^[23] On April 28, 2003, the CA rendered its Decision sustaining the Decision of the RTC. It held that since the case involves the application of the principle of estoppel against the government which is a purely legal question, then the principle of exhaustion of administrative remedies does not apply; that by its actions the government is estopped from questioning the validity and binding effect of the Contract Agreement with the respondent; that denial of payment to respondent on purely technical grounds after successful completion of the project is not countenanced either by justice or equity.

The CA rendered herein the assailed Decision dated April 28, 2003, the dispositive portion of which reads:

WHEREFORE, the decision of the lower court is hereby AFFIRMED with modification in that the interest shall be six percent (6%) per annum computed from June 21, 1995.

SO ORDERED.^[24]

Hence, the present petition on the following ground:

THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT HAS NO CAUSE OF ACTION AGAINST PETITIONER, CONSIDERING THAT:

(a) RESPONDENT FAILED TO EXHAUST ADMINISTRATIVE REMEDIES; AND

(b) IT IS THE COMMISSION ON AUDIT WHICH HAS THE PRIMARY JURISDICTION TO RESOLVE RESPONDENT'S MONEY CLAIM AGAINST THE GOVERNMENT.^[25]

123Petitioner contends that respondents recourse to judicial action was premature since the proper remedy was to appeal the District Auditor's disapproval of payment to the COA, pursuant to Section 48, Presidential Decree No. 1445 (P.D. No. 1445), otherwise known as the Government Auditing Code of the Philippines; that the COA has primary jurisdiction to resolve respondent's money claim against the government under Section 2(1),^[26] Article IX of the 1987 Constitution and Section 26^[27] of P.D. No. 1445; that non-observance of the doctrine of exhaustion of administrative remedies and the principle of primary jurisdiction results in a lack of cause of action.

Respondent, on the other hand, in his Memorandum^[28] limited his discussion to Civil Code provisions relating to human relations. He submits that equity demands that he be paid for the work performed; otherwise, the mandate of the Civil Code provisions relating to human relations would be rendered nugatory if the State itself is allowed to ignore and circumvent the standard of behavior it sets for its inhabitants.

The present petition is bereft of merit.

The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes.^[29] The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.^[30]

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.^[31]

Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; **(c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant;** (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; **(e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice;**^[32] (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot;^[33] (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings.^[34] Exceptions (c) and (e) are applicable to the present case.

Notwithstanding the legal opinions of the DPWH Legal Department rendered in 1993 and 1994 that payment to a contractor with an expired contractor's license is proper, respondent remained unpaid for the completed work despite repeated demands. Clearly, there was unreasonable delay and official inaction to the great prejudice of respondent.

Furthermore, whether a contractor with an expired license at the time of the execution of its contract is entitled to be paid for completed projects, clearly is a pure question of law. It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or