

THIRD DIVISION

[G.R. NO. 153033, June 23, 2005]

DEL MONTE PHILIPPINES, INC., PETITIONER, VS. NAPOLEON N. ARAGONES, RESPONDENT.

DECISION

CARPIO-MORALES, J.:

The decision in the present Petition for Review on *Certiorari* hinges on the nature of the contract denominated "**Supply Agreement**"^[1] which was forged between Dynablock Enterprises, represented by its Manager herein respondent Napoleon N. Aragones (Aragones) and Mega-Engineering Services in joint venture with WAFF Construction System Corporation (MEGA-WAFF) — whether it was one of sale or for a piece of work.

On September 18, 1988, herein petitioner Del Monte Philippines Inc. (DMPI) entered into an "**Agreement**"^[2] with MEGA-WAFF, represented by "Managing Principal" Edilberto Garcia (Garcia), whereby the latter undertook "the supply and installation of modular pavement" at DMPI's condiments warehouse at Cagayan de Oro City within 60 calendar days from signing of the agreement.

To source its supply of concrete blocks to be installed on the pavement of the DMPI warehouse, MEGA-WAFF, as CONTRACTOR represented by Garcia, entered into a "**Supply Agreement**" with Dynablock Enterprises, represented by herein respondent Aragones, as SUPPLIER, under the following terms:

1. ITEMS TO BE SUPPLIED

The SUPPLIER at its own expense shall provide the CONTRACTOR with labor and all materials, equipment, tools and supplies necessary and incident thereto, the required concrete blocks at the contractor's specified casting site, all in accordance with the **terms and conditions of this agreement**, as well as the **requirements of the project specifications** and provisions with respect to the fabrication of concrete blocks.

2. PRICE

The CONTRACTOR will pay the supplier in consideration for the full and total performance of the above undertaking, inclusive of all applicable taxes, the unit price of P7.00 per supplied and accepted piece. This price is based on the assumption that the cost per bag of premium cement is P54.00 and aggregate at P95.00 per cu. m. Any increase of the above raw materials shall be to the account of the contractor. All taxes shall be for the account of the contractor.

3. PLANT/EQUIPMENT

3.1 - The machines for the fabrication/casting of the concrete blocks, including all necessary equipment and accessories, shall be provided by the SUPPLIER. The machines and equipment shall be mobilized and made operational at the specified casting location/stockpiling yard designated and provided by the CONTRACTOR.

3.2 - The SUPPLIER shall ensure that all plant facilities/equipment must, at all times, be accessible for inspection by the representatives of the CONTRACTOR.

3.3 - The SUPPLIER shall ensure that the plant/casting machines actual operating capacities shall not be lower than 75,000 pieces every month. If at any time within the life of this agreement the plant/casting machines are proven to be operating below the required minimum capacity as aforesaid, the SUPPLIER shall be obliged to take the necessary actions to upgrade the plant/casting machines and/or make the necessary rehabilitation to increase the capacity to the required level.

4. QUALITY OF MATERIALS

4.1 - The SUPPLIER guarantees that all materials supplied to the CONTRACTOR shall meet the approved specifications (Attached Annex "A") at 5,000 pci.

In this connection, the CONTRACTOR shall assign an inspector at the casting site to ensure that all items supplied shall conform with the approved standards.

4.2 - The CONTRACTOR may reject any finished product or materials which do not pass the approved standards.

4.3 - There shall be a system of sampling the output of the plant and/or each casting machine for testing in accordance with the quality standards specified. Result of such sampling tests shall be the basis for acceptance or rejection of the finished materials.

4.4 - Where the CONTRACTOR has provided materials to the SUPPLIER to be incorporated into the SUPPLIER's production, as in the case of cement and aggregates, the cost of such materials which becomes part of the rejected products **due to faulty batching/mixing/curing** shall be for the account of the SUPPLIER.

5. MATERIALS AND OTHER PROVISIONS SUPPLIED BY THE CONTRACTOR

5.1 - All the materials are for the account of the SUPPLIER. The CONTRACTOR shall, however, provide all the cement and aggregates requirement for the fabrication of the concrete blocks, in which the corresponding cost shall be deducted from the periodical proceeds due to the SUPPLIER.

5.2- The CONTRACTOR shall provide and make available to the SUPPLIER the following provisions/facilities free of charge:

- a) Casting/Fabrication Area
- b) Stockpile Area
- c) Warehouse for Cement
- d) An all-weather working shed for workers
- e) Night Watchers

5.3 – The CONTRACTOR shall arrange for the installation of electrical and water facilities for the work in which the cost of electricity and water actually consumed shall be borne by the SUPPLIER.

5.4 – The SUPPLIER shall be responsible for all materials already turned over by the CONTRACTOR at the casting area. The responsibility, however, of the SUPPLIER on the finished products ceases upon loading of the same to the CONTRACTOR's truck on way to the project site.

6. OBLIGATIONS OF SUPPLIER

6.1 – **To fabricate and provide the required block machines** in such number adequate to cope up with time schedule.

6.2 – To provide concrete mixers: one (1) unit of two-bagger, and two (2) units of one-bagger.

6.3 – To provide drying racks, **measuring boxes**, wheel borrows and other necessary hand tools.

6.4 – To supervise and provide the required manpower for the operation and production of concrete blocks.

6.5 – To undertake the following:

- a) mixing and formulation of proper mix.
- b) to consolidate, form and compress the blocks.
- c) to unload the formed blocks into the drying racks.
- d) after initial setting of blocks, to unload and arrange them to wooden pallets.
- e) curing of blocks as per approved standards.

7. OTHER OBLIGATIONS OF CONTRACTOR

7.1 - To provide tarpaulin or canvas or plastic sheets to cover blocks during the seasoning stage.

7.2 - To provide forklift and wooden pallets.

8. EXCLUSIVITY OF PRODUCTION

8.1 - Effective upon the execution of this agreement, the SUPPLIER binds itself to **devote the entire plant/casting machines and its accessories for the CONTRACTOR's exclusive use** and full operation and production of the required concrete blocks for the intended project.

8.2 - The SUPPLIER or his agents or representatives shall not, directly or indirectly, enter into any contract, agreement, concessions or transactions of whatever nature or kind with the project owner or of its representative which will affect the rights, interest or participation of the CONTRACTOR in regard to the execution and accomplishment of the project.

8.3 - In case of violation of this exclusivity clause, utmost fidelity and good faith being of the essence, the CONTRACTOR shall have the right to demand reasonable amount of damages or terminate this agreement upon due notice.

9. CONDITIONS OF PAYMENT

9.1 - Upon mobilization of the casting machines, equipments accessories and making some operational at the casting area by the SUPPLIER, the CONTRACTOR shall advance to the supplier a downpayment or mobilization fund of TEN THOUSAND (P10,000.00) PESOS per machine. Said mobilization fee shall be deducted from the proceeds of the SUPPLIER at two (2) equal installments beginning at the first billing.

9.2 - The SUPPLIER shall present its billing every fifteen days based on the below indicated payment schedule:

a) Billing from 1st/day/month to 15th day payable after fifteen days from the date the billing is submitted.

b) Billing from the 16th day of the month to the 31st day of the month, payable after fifteen days from the date the billing is submitted.

10. EFFECTIVITY OF CONTRACT

This agreement shall be co-terminus with the terms of the contract for the project and/or upon completion of all requirements therefor; PROVIDED, However, that if for some reason or another the production of the concrete blocks is temporarily suspended, this agreement shall remain in force and effective for a period of fifteen (15) days from the date of the cessation of production. In case the said grace period expires

without the production having resumed, the CONTRACTOR shall be obliged to pay reasonable compensation for the period of suspension counted from the expiration of the said grace period.

11. PERFORMANCE BOND

The SUPPLIER shall post a SURETY/PERFORMANCE BOND in such sums which may be deemed adequate to secure its faithful compliance of the terms and conditions of this agreement.

12. PENALTY CLAUSE

In the event the SUPPLIER fails to meet the requirements demanded in this agreement or when the SUPPLIER is in delay in the performance of its obligation to the prejudice of the CONTRACTOR, the SUPPLIER shall answer for the corresponding damages equivalent to one-tenth (1/10) of the rated monthly production capacity. (Emphasis and underscoring supplied).^[3]

Aragones thereupon started assembling the machines for the fabrication/casting of the concrete blocks which MEGA-WAFF specified to be hexagonal shaped. MEGA-WAFF, through Garcia, later directed Aragones to instead fabricate machines for S shaped blocks.

As stated in the "Agreement" between DMPI and MEGA-WAFF, the deadline for the installation of the pavement of the warehouse was November 18, 1988, but it was not met. As extended, the installation was finished on or about February 28, 1989, but MEGA-WAFF was, in accordance with its agreement with DMPI, penalized for the delay, albeit at a reduced amount.

Aragones, having in the meantime gotten wind of MEGA-WAFF & DMPI's "**Agreement**," more particularly the imposition of a penalty by DMPI for the delay in the completion of the installation of the warehouse pavement, appealed to DMPI, by letter of March 4, 1989,^[4] for leniency in the imposition of the penalty which "would affect [him] also although [he] was not a direct party to the contract," he inviting attention to the "intricacy and enormity of the job involved."

Aragones later failed to collect from MEGA-WAFF the full payment of the concrete blocks. He thus sent DMPI a letter dated March 10, 1989,^[5] received by the latter on March 13, 1989,^[6] advising it of MEGA-WAFF's unpaid obligation and requesting it to earmark and withhold the amount of P188,652.65 "from [MEGA-WAFF's] billing" to be paid directly to him "[I]est Garcia collects and fails to pay [him]."

DMPI, in the meantime, verbally advised Aragones to secure a court order directing it to withhold payment of the amount due MEGA-WAFF for, in the absence of such court order, DMPI was under its agreement with MEGA-WAFF obliged to release full payment within 30 days from acceptance of the completed work.

It appears that Aragones reiterated his request to DMPI for direct payment to him, by letter of March 28, 1989.^[7] This was followed by another letter dated April 6, 1989^[8] which was received on April 8, 1989^[9] by DMPI, copy of which it referred to