

FIRST DIVISION

[G.R. No. 147410, February 05, 2004]

**THE INSULAR LIFE ASSURANCE COMPANY, LTD., PETITIONER,
VS. ASSET BUILDERS CORPORATION, RESPONDENT.**

DECISION

PANGANIBAN, J.:

Where the parties merely exchange offers and counteroffers, no agreement or contract is perfected. A party may withdraw its offer or counteroffer prior to its receipt of the other party's acceptance thereof. To produce an agreement, the offer must be certain and the acceptance timely and absolute.

The Case

Before us is a Petition for Review on Certiorari^[1] under Rule 45 of the Rules of Court, assailing the September 20, 2000 Decision^[2] and the March 7, 2001 Resolution^[3] of the Court of Appeals (CA) in CA-GR CV No. 61607. The dispositive part of the Decision reads as follows:

"IN THE LIGHT OF ALL THE FOREGOING, the appeal of the [petitioner] is **DISMISSED**. The Decision of the Court *a quo* is **AFFIRMED.**"^[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The appellate court summarized the facts of the case as follows:

"Sometime in November, 1992, the Insular Life Assurance Company, Limited, [petitioner], invited companies/corporations engaged in the building construction business to participate in the bidding of [petitioner's] proposed Insular Life building in Lucena City. [Petitioner] distributed copies of '**Bid Document[s]**', including the general construction x x x contract, with the winning bidder and '**Bid Proposal Forms**'[,] and furnished copies of the '**Instruction to Bidders**' to participating bidders, containing the rules to be followed in the bidding, including the following rules: (a) all bond proposals shall be accompanied with a bid bond from the Insular General Insurance Company, Inc., in an amount equivalent to ten (10) percent of the bid or five (5) percent of the bid in Manager's or Cashier's check payable to Insular Life, which bid bonds will be returned to the bidder after sixty (60) days from opening of bids or after award of the project, whichever date comes first;^[5] (b) the bid shall be valid for sixty (60) days [after]

opening of bids[,] but the owner of the project (the [petitioner]) had the option to request the bidder to extend the bid validity period after expiration of the original validity period;[6] [and] (c) the bidder, whose proposal had been deemed acceptable and complying with the requirements of the owner ([petitioner]) and the project, shall be notified **in writing** to personally appear to execute the '**Contract Agreements**' within five (5) days after the receipt of the '**Notice of Award**'[,] and that failure on the part of the winning bidder to execute the contract shall constitute a breach of the agreement, as effected by acceptance of the proposal, resulting in the nullification of the award; and that the bond heretofore, offered by the winning bidder shall be retained by the owner ([petitioner]) as payment due for liquidated damages.[7]

"Asset Builders Corporation, [respondent], with four (4) other bidders, namely, **Q.K. Calderon Construction [Co., Inc., Specified Contractors, A.[A.] Alarilla Construction[,]** and **Serg Construction**, submitted their respective bid proposals secured by bid bonds, valid for sixty (60) days.[8] Under its '**Proposal Form**' which the [respondent] submitted to the [petitioner], [respondent] bound and obliged itself to enter into a '**Contract**' with the petitioner within ten (10) days from notice of the award, with good and sufficient securities for the faithful compliance thereof.[9]

"On **November 9, 1993**, the respective proposals of the bidders were opened. The [petitioner] forwarded a '**Summary of Bids and Tender Documents**' to Adrian Wilson International Associate[s], Inc.[10] (**AWIA for brevity**), [petitioner's] designated '**Project Manager**[,] for the proposed Insular Life Building in Lucena City for its evaluation and analysis. AWIA, in due time, submitted a report of its evaluation to the '**Real Property Division**' of the [petitioner]. As [could] be gleaned from the Report of AWIA, [respondent's] P12,962,845.54[11] bid was the lowest among the bidders.

"On January 21, 1994, Engineer Pete S. Espiritu (**Espiritu for brevity**) of the 'Real Property Department', who was designated as '**Project Coordinator**' of the petitioner[,] recommended that [respondent] and the other bidders, '**Q.K. CALDERON [CONSTRUCTION] CO., INC. AND 'SPECIFIED CONTRACTORS'**', be subjected to post-qualification proceedings, including the inspection of their respective offices, equipment, as well as past and present projects, and that said bidders be subjected to credit and financial investigations.[12]

"[Petitioner] concurred with the recommendation of Espiritu and, indeed, post-qualification, inspection[,] and evaluations of [respondent] and Q.K. Calderon Construction Co., Inc. were effected. On January 25, 1994, [petitioner], with concurrence of [respondent], visited [respondent's] main office at the Tektite Tower and its past and present projects, i.e., the four (4) and two (2) storey Air Transportation buildings in its compound; the Government Service Insurance System (GSIS) Headquarters Complex; and the National Historical Institute Building, and

[respondent's] equipment. On February 14, 1994, Espiritu suggested that a bid clarification and negotiation be undertaken with prospective contractors.

"On February 23, 1994, Abraham Torrijos of [petitioner's] '**Real Property Department**' (**hereinafter referred to as Torrijos**) recommended the approval by the Board of Directors of [petitioner] of the award of the general construction of the Proposed Lucena Building, **in favor of** [respondent], emphasizing that:

'2. Asset Builders Corporation is a (sic) 'AAA' category Contractor. It has extensive experience in vertical and horizontal projects. The company [has been] subjected to a post qualification and credit investigation, the results of which are satisfactory and acceptable, thus making it technically competent and financially capable of contracting the work.'^[13]

"On February 24, 1994, a conference was held by and among the representatives of the [petitioner] and of the [respondent], including [respondent's] Operations Manager, Engineer Ramon Abu, for some clarifications. [Petitioner] proposed that [respondent] adjust its bid from P12,961,845.54 to P13,000,000.00 to accommodate the wage increase brought about by Wage Order No. 03, series of 1993, effective December 3, 1993. However, [respondent's] representatives were noncommittal, declaring that they had [to] report to the management of the [respondent] the proposal of [petitioner's] representatives, for its consideration and approval. Subsequently, the [respondent] agreed to the readjustment of the amount of its bid as proposed by the [petitioner].

"On March 9, 1994, Januario L. Flores (**Flores for brevity**), head of the '**Real Property Department**' and Assistant Vice-President of the [petitioner], submitted to Mabini L. Juan, the Chief Operating Officer and Senior Executive Vice-President of the [petitioner], his findings on the post-qualification, evaluation and credit investigation of [respondent], with the recommendation that the award be given to the [respondent]:

'2. On the basis of the above very positive indicators, RPD[,], E.L. Mariano, [F. B.] Mariano Associates and Co.[,] and Adrian Wilson Int'l Associates, [Inc.] recommen[d] to award the Lucena [p]roject to Asset Builders Corporation. We honestly believe that they will do a good job.

'3. For your consideratio[n/a]pproval.'^[14]

"On March 14, 1994, [Flores] signed a '**Notice to Proceed**', addressed to the [respondent], for the conformity of the latter's President, Rogelio P. Centeno. Under the [ultimate] paragraph of the '**Notice to Proceed**', the [respondent] may start its mobilization and proceed with the construction immediately[,], pending execution of the '**Construction**

Agreement'^[15] The [petitioner prepared] a draft of the contract to be executed by the [petitioner] and the [respondent].

"On the same day, [Torrijos] informed, by letter, Engineer Bernardo A. Sajorda (**Sajorda for brevity's sake**), '**Project Manager**' of AWIA, that [petitioner] had awarded the general construction contract of the proposed Lucena Building to the [respondent] and advised AWIA to coordinate with [respondent] and inform the latter that a pre-construction meeting [would] be held on March 22, 1994 at the job site.

^[16] A copy of the '**Notice of Award**' was appended to said letter.^[17] Sajorda forthwith informed Rogelio P. Centeno, the President of [respondent], by '**Memorandum**' that, pursuant to the **AWARD** to [respondent], of the general construction of the Proposed Lucena Building, a pre-construction conference [would] be held on March 22, 1994 at the job site, during which the following will be discussed:

- '1. Contract Amount and completion time
2. Role of AWIA
3. Project Contractors Key [p]ersonnel [l]ist with [s]ignatures and [p]ositions
4. Channel of [c]ommunications among Architect, Insular Life, ASSET and AWIA
5. [Contractor submittals i.e. — Work Schedule, Schedule of] Prices, etc.
6. As-built[s] drawings
7. Submitt[al] of shop drawings prior to use of materials
8. Sanitation
9. Safety programs (first aid kit and hard hats)
10. Night work
11. CAR (Contractor's All Ris[k I]nsurance)
12. Owners review of payrolls, vouchers, etc. (sic) payments etc.
13. Sub-contracting [for] approval of subs.
14. Photographs every month
15. Billings based on actual work accomplishments. Undistributed materials not billable
16. Security measures
17. Tests as required by spec[']s
18. Take note of specific requirements before final payment is made'^[18]

"The [respondent] received a copy of the '**Memorandum**' of Sajorda, on March 17, 1994. On March 18, 1994, the [petitioner] transmitted to the [respondent] the following documents, evidenced by a '**Transmittal Sheet**', received by Roy Roxas, for the [respondent], to enable the latter to secure a '**Building Permit**' for the project:

'ONE (1) LOT DOCUMENTS/PLANS FOR BUILDING PERMIT
4 SETS OF STRUCTURAL COMPUTATION
5 SETS OF SPECS FOR GENERAL CONSTRUCTION
3 SETS OF ELECTRICAL LOAD COMPUTATION

5 COPIES OF PRC ID [&] PTR OF DESIGN ENGRS.

6 SETS OF ELMA PLANS

5 SETS OF [R]MDA PLANS/SPECS'[19]

"On March 22, 1994, the '**Pre-Construction Conference**' ensued with the representatives of the [petitioner] and its Project Manager and of the [respondent], in the person of its Project Engineer, J.G. Quizon, in attendance:

'Attendees: CARLOS M. ESPIRITU — AWIA Asst.
Project Manager
BERNARDO [A]. SAJORDA — AWIA Project
Manager
EDMUNDO C. SABATER — AWIA Resident
Engineer
JANUARIO L. FLORES — IL/RPD Manager
J.G. QUIZON — ASSET Project Manager
PETE S. ESPIRITU — IL/RPD Project
Coordinator
ABRAHAM P. TORRIJOS — IL/RPD Asst.
Manager'[20]

"During the conference, the following were discussed and clarified:

'1. Contract Amount and Completion Time:
Contract is for P13,000,000.00, to be completed within
210 calendar days; day one to be 5 days after receipt of
NTP by the Contractor. Actual site mobilization to be
first week of April 1994, per Mr. J.G. Quizon. Issuance of
building and other permits being worked out by the
Contractor.[21]

"On March 26, 1994, Jacobo G. Quizon, the Project Manager of [respondent], sent to AWIA a letter requesting for the TCT lot description for the purpose of relocation of the monuments and the staking out of the building:

'We have the honor to request your good office, in relocating the monuments[,] as per TCT lot description[s,] prior to staking out the building[;] likewise, we can do the relocation[,] provided the cost will be reimbursed to the Owner[,] with an approximate fee of P5,000.00 lump sum.

'Further, problems may occur regarding structur[al] excavation for footing [and footing] tie beams at Grid Line A & 4. As per plan, the proposed depth [of] excavation of about 2.5[0M] along the existing adjacent building walls will expose the CHB footing.[22]

"Thereafter, a Ground Breaking ceremony was held at the project site, with Rogelio B. Centeno, the President of [respondent], [and] Pete S. Espiritu and Januario L. Flores of the [petitioner] in attendance. A