468 Phil. 305

SECOND DIVISION

[G.R. No. 153310, March 02, 2004]

MEGAWORLD GLOBUS ASIA, INC., PETITIONER, VS. DSM CONSTRUCTION AND DEVELOPMENT CORPORATION AND PRUDENTIAL GUARANTEE AND ASSURANCE, INC., RESPONDENTS.

D E C I S I O N

TINGA, J,:

Before this Court is a *Petition for Review on Certiorari* assailing the *Decision* dated February 14, 2002, of the Court of Appeals in CA G.R. SP No. 67432,[1] which affirmed the *Decision*[2] of the Construction Industry Arbitration Commission (CIAC)[3] dated September 8, 2001, in CIAC Case No. 22-2000 finding petitioner Megaworld Globus Asia, Inc., liable to DSM Construction in the amount of P62,760,558.49.

The antecedents are as follows:

Relative to the construction of a condominium project called "The Salcedo Park," located at H.V. dela Costa St., Salcedo Village, Makati City, the project owner, Megaworld, entered into three separate contracts with DSM Construction, namely: (1) Contract for Architectural Finishing Works; (2) Contract for Interior Finishing Works; and (3) Contract for Supply and Installation of Kitchen Cabinets and Closets. The total contract price, which was initially placed at P300 Million, was later reduced to P240 Million when the items for kitchen cabinets and walk-in closets were deleted.[4] The contracts also contain a stipulation for *Retention Money*, which is a portion of the total contract price (usually, as in this case, 10%) set aside by the project owner from all approved billings and retained for a certain period to guarantee the performance by the contractor of all corrective works during the defect-liability period which, in this case, is twelve months from the issuance of the *Taking Over Certificate of Works*.[5]

The *Letter of Award for Architectural Finishing Works* provides that the period for commencement and completion shall be twelve months, from August 1, 1997 to July 31, 1998. However, on February 21, 2000, representatives of both Megaworld and DSM Construction entered into an *Interim Agreement* whereby they agreed on a new schedule of the turnover of units from the 26th floor to the 40th floor, which was the last of the contracted works.[6] The consideration agreed upon in the *Interim Agreement* was P53,000,000.00. Of this amount, P3,000,000.00 was to be released immediately while five (5) equal installments of P7,000,000.00 were to be released depending on the turn-over of units from the 26th floor to the 40th floor. The remaining amount of P15,000,000.00 of the P53,000,000.00 consisted of half of the retention money.[7]

Because of the differences that arose from the billings, DSM Construction filed on August 21, 2002, a *Complaint* before the CIAC for compulsory arbitration, claiming payment of P97,743,808.33 for the outstanding balance of the three construction contracts, variation works, labor escalation, preliminaries loss and expense, earned retention money, interests, and attorney's fees.[8] DSM Construction alleged that it already commenced the finishing works on the existing 12 floors on August 1, 1997, instead of waiting for the entire 40-floor structure to be completed. At one time, DSM Construction worked with other contractors whose work often depended on, interfered or conflicted with said contractors. Delay by a trade contractor would start a chain reaction by delaying or putting off other works.[9]

Interposing mainly the defense of delay in the turn-over of units and the poor quality of work of DSM Construction, Megaworld filed its *Answer* and made a counter-claim for loss of profits,

liquidated damages, costs of take-over and rectification works, administration expenses, interests, attorney's fees and cost of arbitration in the total amount of P85,869,870.28.[10]

Prudential Guarantee and Assurance, Inc. (PGAI), which issued a *Performance Bond* to guarantee Megaworld's contractual obligation on the project, was impleaded by Megaworld as a third-party respondent.[11]

On March 28, 2001, the parties signed before the members of the Arbitral Tribunal the *Terms of Reference*[12] (TOR) where they setforth their admitted facts,[13] respective documentary evidence, [14] summary of claims[15] and issues to be resolved by the tribunal.[16] After presenting their evidence in the form of affidavits of witnesses,[17] the parties submitted their respective memoranda/draft decisions.[18]

On October 19, 2001, the Arbitral Tribunal promulgated its *Decision* dated September 28, 2001, awarding P62,760,558.49 to DSM Construction and P9,473,799.46 to Megaworld.[19]

Megaworld filed a *Petition for Review* under Rule 43 of the Rules of Civil Procedure before the Court of Appeals. It faulted the Arbitral Tribunal for finding that DSM Construction achieved a 95.56% level of accomplishment as of February 14, 2000; for absolving DSM Corporation of the consequences of the alleged delay in the performance of its work; and for ruling that DSM Construction had complied with the contractual requirements for filing requests for extension. Megaworld likewise questioned the sufficiency of evidence to justify the awards for liquidated damages; the balance of the contract price; the balance of amounts payable on account of the *Interim Agreement* of February 21, 2000; the amount of P6,596,675.55 for variation orders; the amount of P29,380,902.35 as reimbursement for preliminaries/loss and expense; the amount of P413,041.52 for labor escalation costs; and the balance of the retention money in the amount of P14,700,000.00 despite its award of P11,820,000.00 under the February 21, 2000, *Interim Agreement*. Finally, Megaworld claimed that the Arbitral Tribunal erred in denying its claim for liquidated damages, expenses incurred for the cost of take-over work, administrative expenses, and its recourse against PGAI and for limiting its recovery for rectification work to only P9,197,863.55. [20]

On February 14, 2002, the Court of Appeals promulgated its *Decision*[21] affirming that of the Arbitral Tribunal. The court pointed out that only questions of law may be raised before it on appeal from an award of the CIAC.[22] That pronouncement notwithstanding, the Court of Appeals proceeded to review the decision of the Arbitral Tribunal and found the same to be amply supported by evidence.[23]

Megaworld sought reconsideration of the Court of Appeals' *Decision* arguing, among other things, that the appellate court ignored the ruling in *Metro Construction, Inc. v. Chatham Properties*[24] that the review of the CIAC award may involve either questions of fact, law, or both fact and law.

The Court of Appeals denied the motion for reconsideration in its *Resolution*[25] dated April 25, 2002. While acknowledging that the findings of fact of the CIAC may be questioned in line with *Metro Construction*,[26] the appellate court stressed that the tribunal's decision is not devoid of factual or evidentiary support.

Megaworld elevated the case to this Court through the present *Petition*, advancing the following grounds, *viz:*

I

> THE COURT OF APPEALS IN EFFECT REFUSED TO HEED THE RULE LAID DOWN BY THIS HONORABLE COURT IN THE METRO CONSTRUCTION, INC. VS. CHATHAM PROPERTIES, INC. CASE WHEN IT DISMISSED MGAI'S PETITION DESPITE THE GRAVE QUESTIONS OF BOTH FACT AND LAW BROUGHT BEFORE IT BY THE PETITIONER.

II

THE FINDING OF THE APPELLATE COURT THAT THE DECISION WAS BASED ON SUBSTANTIAL EVIDENCE ADDUCED BY BOTH PARTIES SANS ANY REVIEW OF THE RECORD OR OF ATTACHMENTS OF DSM IS FATALLY WRONG, SUCH FINDING BEING MERELY AN ADOPTION OF THE TRIBUNAL'S DECISION WHICH, AS EARLIER POINTED OUT, WAS NOT SUPPORTED BY COMPETENT, CREDIBLE AND ADMISSIBLE EVIDENCE.

III

THE COURT OF APPEALS SERIOUSLY ERRED IN GIVING BLANKET APPROVAL OF ALL THE UNFOUNDED CLAIMS AND CONCLUSIONS OF THE CIAC ARBITRAL TRIBUNAL'S SEPTEMBER 28, 2001 DECISION TO THE DETRIMENT OF PETITIONER'S CARDINAL RIGHT TO DUE PROCESS, PARTICULARLY TO ITS RIGHT TO ADMINISTRATIVE DUE PROCESS.

IV

THE FINDINGS AND CONCLUSIONS MADE BY A HIGHLY PARTISAN CIAC ARBITRAL TRIBUNAL HAVE NO BASIS ON THE EVIDENCE ON RECORD. HENCE, THE EXCEPTION TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE BROUGHT TO THE HONORABLE COURT IS APPLICABLE IN THE CASE AT BAR.[27]

Although Megaworld, at the outset,[28] intimates that the case involves grave questions of both fact and law, a cursory reading of the *Petition* reveals that, except for the amorphous advertence to administrative due process, the alleged errors fundamentally involve only questions of fact. Megaworld's plea for the Court to pass upon the findings of facts of the Arbitral Tribunal, which were upheld by the appellate court, must perforce fail.

To jumpstart its bid, Megaworld exploits the Court of Appeals' pronouncement in the assailed decision that only questions of law may be raised before it from an award of the CIAC. The appellate court did so, Megaworld continues, in evident disregard of *Metro Construction.*[29]

Under Section 19 of Executive Order No. 1008,[30] the CIAC's arbitral award "shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court." In *Metro Construction*, however, this Court held that, with the modification of E.O. No. 1008 by subsequent laws and issuances,[31] decisions of the CIAC may be appealed to the Court of Appeals not only on questions of law but also on questions of fact and mixed questions of law and fact.

Of such subsequent laws and issuances, only Section 1,[32] Rule 43 of the 1997 Rules of Civil Procedure expressly mentions the CIAC. While an argument may be made that procedural rules cannot modify substantive law, adding in support thereof that Section 1, Rule 43 has increased the jurisdiction of the Court of Appeals by expanding the scope of review of CIAC awards, or that it contravenes the rationale for arbitration, extant from the record is the fact that no party raised such argument. Consequently, the matter need not be delved into.

In any case, the attack against the merits of the Court of Appeals' *Decision* must fail. Although *Metro Construction* may have been unbeknownst to the appellate court when it promulgated its *Decision*, the fact remains that, as noted therein,[33] it reviewed the findings of facts of the CIAC and ruled that the findings are amply supported by the evidence.

The Court of Appeals is presumed to have reviewed the case based on the *Petition* and its annexes, and weighed them against the *Comment* of DSM Construction and the *Decision* of the Arbitral Tribunal to arrive at the conclusion that the said *Decision* is based on substantial evidence. In administrative or quasi-judicial bodies like the CIAC, a fact may be established if supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[34]

The tenability of the assailed Decision is clear from the following discussion of the arguments raised by Megaworld before the Court of Appeals which significantly are the same arguments it has raised

before this Court.

Issue of Accomplishment Level

Megaworld contested the finding of 95.56% level of accomplishment by the Arbitral Tribunal, alleging that the receipts DSM Construction issued for payments under the ***Interim Agreement*** show that the latter only achieved 90% accomplishment up to the 31st floor while the 32nd to the 34th floors were only 60% completed.[35] Megaworld insisted, therefore, that the level of accomplishment was nowhere near 90%.

DSM Construction countered that Megaworld, in claiming a level of accomplishment of only 90%, contradicted its own Project Manager, TCGI,[36] which came up with a different percentage of accomplishment that are notably higher than Megaworld's computation.[37]

In resolving this issue, the Arbitral Tribunal relied on the computation of Davis Langdon & Seah (DLS), the project's independent surveyor,[38] which found the level of accomplishment as of February 14, 2000, to be 95.56%. DLS's computation is recited in Exhibit "NN",[39] thus:

Architectural Finishing :[40]

The 24th Progress Billing evaluated by DLS covering the period November 15, 1999 to December 15, 1999 over the Contract Price for Architectural Finishing Works.	Php213,658,888.77[41] / Php223,456,756.68[42]	= 95.62%

Kitchen Cabinets & Bedroom Closets:[43]

The 9th Progress Billing evaluated by DLS covering the period December 1, 1999 to December 9, 1999 over the contract price for Kitchen Cabinet and Bedroom Closet.	Php26,228,091.73[44] / Php28,556,915.17[45]	= 91.84%

Interior Finishing Works:[46]

The 13th Progress Billing evaluated by DLS covering the period January 8, 2000 to February 7, 2000 for the Interior Finishing Works over the contract price for Interior Finishing Work.	Php49,383,114.67[47] / Php50,685,416.55[48]	= 95.55%

$$\frac{\text{Php213,658,888.77}}{\text{Php223,456,756.68}} + \frac{\text{Php26,228,091.72}}{\text{Php 28,556,915.17}} + \frac{\text{Php49,383,114.67}}{\text{Php50,685,416.55}} = \frac{289,270,295.17}{302,699,097.40} = 95.56\%$$

Clearly, thus, CIAC's finding that the level of accomplishment of DSM Construction as of February 12, 2002, stood at 95.56% was affirmed by the Court of Appeals because it is supported by

substantial evidence.

The Court of Appeals also noted that the Arbitral Tribunal did not give due course to all of DSM Construction's claims. Indeed, the Arbitral Tribunal rejected the construction company's demand for payment for subsequent works done after February 12, 2000, because *Exhibit "OO,"* on which DSM Construction's demand was based, does not bear any mark that it had been received by Megaworld. Thus, the Arbitral Tribunal concluded that subsequent works up to September 22, 2000, when DSM Construction supposedly stopped working on the project, had not been established.[49]

This Court observes that between the two contrasting claims of Megaworld and DSM Construction on the percentage of work accomplishment, the Arbitral Tribunal instead accorded weight to the assessment of DLS which is the project surveyor. Apart from being reasonable, DLS's evaluation is impartial. Thus, as correctly pointed out by the Arbitral Tribunal, DLS rejected DSM Construction's 99% accomplishment claim when it limited its evaluation to only 95.56%.

Issues of Delay and Liquidated Damages

Next, Megaworld attributed the delay in the completion of the construction project solely to DSM Construction. The latter countered that among the causes of delay was the lack of coordination among trade contractors and the absence of a general contractor.[50] Although the contract purportedly contains a provision for the coordination of trade contractors, the lack of privity among them prevented coordination such that DSM Construction could not require compliance on the part of the other trade contractors.

The Arbitral Tribunal decided this question by turning to Section 2.01 of the General Conditions of the Contract, which states:

> 2.01 SITE, ACCESS & WORKS
>
> The Contractor shall accept the Site as found on the date for possession and at their own expense clear the site of any debris which may have been left by the preceding occupants/contractors.

The Arbitral Tribunal held that Section 2.01 presupposes that on the date of possession by DSM Construction of the work premises, the preceding contractor had already left the same.[51] The tribunal explained that the delay incurred by other trade contractors also resulted in the delay of the work of DSM Construction.

It also pointed out that under Section 5.3 (1)[52] of the *Interim Agreement*,[53] Megaworld is required to complete and turn over to DSM Construction preceding works for the latter to complete their works in accordance with the Revised Work Schedule. Section 5.3 (1), the Arbitral Tribunal noted, even allows DSM Construction to recover losses incurred on account of the standby time of DSM's personnel/manpower or workers mobilized while Megaworld is not ready to turn over the preceding works. The Arbitral Tribunal further held that, in accordance with Section 5.3 (2)[54] of the *Interim Agreement*, DSM Construction was entitled to an extension of time corresponding to the number of days of delay reckoned from the time the preceding work item or area should have been turned over to DSM Construction. Consequently, such delay, which is not exclusively imputable to DSM Construction, negates the claim for liquidated damages by Megaworld.[55]

In affirming the Arbitral Tribunal's disposition of the issues of delay and payment of liquidated damages, the appellate court noted that the Arbitral Tribunal narrated the claims and defenses of both DSM Construction and Megaworld before making an evaluation thereof and arriving at its conclusion.[56] Clearly, the evidence and arguments were carefully weighed to justify the said disposition.

The Tribunal's finding that the project had already been delayed even before DSM Construction commenced its work is borne out by the evidence. In his letter, Exhibit X-2,[57] Project Management Consultant Eduardo C. Arrojado, conceded that the previous contractors had delayed the project, at the same time faulting DSM Construction for incurring its own delay. Furthermore,