

THIRD DIVISION

[G.R. No. 138700, June 09, 2004]

**MINDANAO STATE UNIVERSITY, PETITIONER, VS. ROBLETT
INDUSTRIAL AND CONSTRUCTION CORP., ET. AL.
RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

From the November 27, 1998 Decision^[1] of the Court of Appeals affirming that dated January 23, 1991 of the Regional Trial Court (RTC) of Marawi City (Branch 8)^[2] which dismissed the Complaint for sum of money and damages of herein petitioner Mindanao State University (MSU), the petition for review^[3] subject of the present decision was lodged.

On December 17, 1974, MSU, a government educational institution, represented by its then President Mauyag A. Tamano, and Roblett Industrial Construction Corporation (Roblett), represented by its "Manager-Sales and Contractor" Vicente D. Diana, Jr., forged a Construction Contract^[4] for the construction of a Student Center and Cafeteria building for a consideration of FIVE MILLION EIGHT HUNDRED THOUSAND (P5,800,000.00) PESOS. Contract time was fixed at eighteen months, to begin "at the tenth (10th) calendar day following the receipt by [Roblett] of the Notice to Proceed with the work to be issued by the [MSU] after the signing of the [Contract]."

To the Contract was attached an addendum^[5] reading:

Anent to the contract executed by the University and the Roblett Industrial Construction Corporation, a provision has been provided that materials delivered by the contractors to the jobsite must be certified by the ARCHITECT and the PROJECT ENGINEER. Inasmuch as the contractor has already delivered the materials and the Architect's certification will take time to be secured and in order to avail ourselves of the prevailing prices in the market, may we request authority that such procedure be revised. Upon delivery of materials on the jobsite, they will be inspected by the auditor for quantity and cost consideration per auditing regulations and the University engineer or his representative shall certify whether such materials delivered are within the specifications of that project. **Payment could then be released to the contractor on this basis.** (Emphasis and underscoring supplied)

The contract price was subsequently twice escalated by a total of P2,441,725.00. The price, as escalated, thus amounted to P8,241,725.00.

In mid 1975, Tamano was replaced as President by Tukod Macaraya who adopted

the policy that all contracts had to be first approved by the MSU Board of Regents, thus resulting in the suspension of the construction of the Student Center and Cafeteria. The suspension was to last for around seven months.

In November 1975, Tamano reassumed as President of MSU.

On June 22, 1976, MSU, represented by Tamano, and Roblett, represented by its Provincial Manager Cornelio Tan, entered into another Construction Contract for the construction of a Girls Dormitory and Recreation Hall for a consideration of TWO MILLION (P2,000,000.00) PESOS,^[6] within a contract period of six calendar months commencing on the tenth (10th) calendar day following the receipt by ROBLETT of the Notice to proceed with the construction. Shortly after the forging of this second contract, Tamano was again replaced as President, this time by then Provincial Governor Ali Dimaporo who suspended the construction projects.

In the meantime, a committee was formed by the MSU to appraise the construction of the Student Center and Cafeteria so far accomplished by ROBLETT. The committee, referred to as the Zozobrado Committee as it was headed by Public Works District Engineer II Roque Zozobrado, by Report dated November 15, 1976,^[7] concluded that ROBLETT had "subsequently completed 58.747 or **59 percentum** more or less of the total work . . . in the original contract."

The two escalations in the contract price for the construction of the Student Center and Cafeteria were subsequently approved by the MSU Board of Regents in its Resolution of March 21, 1977,^[8] after considering "the phenomenal soaring of prices of labor and construction materials and to allow the contractor, Roblett . . . , to continue and proceed with the project . . . ; Provided further that . . . 3) [Roblett's] Performance Bond shall be renewed or updated and that [Roblett] shall finish the projects within a period of EIGHT (8) months from April 1977." The construction of both projects resumed soon after.

On June 8, 1978, QUAZAR INSURANCE AGENCY represented by Douglas Paalam with limited authority, as agent of PARAMOUNT INSURANCE CORPORATION, and ROBLETT executed in favor of MSU Performance Bond No. 0149^[9] in the amount of P1,606,400.00 "to secure the full and faithful performance" by ROBLETT "its part of [the contracts]" and the "satisfaction of obligations for materials used and labor employed upon the work."

Alleging that in mid 1978, even after Roblett had incurred delay in finishing the projects subject of the two contracts, it unjustifiably stopped construction and abandoned and refused to resume it, MSU filed a June 26, 1980 Complaint^[10] before the Regional Trial Court of Marawi City, for sum of money and damages, subject of the case at bar, against ROBLETT, its representatives and PARAMOUNT INSURANCE CORPORATION.

In its Complaint, MSU alleged that as of November 15, 1976, before the MSU Board approved on March 21, 1977 the two escalations in the construction cost of the Student Center and Cafeteria, Roblett drew "through fraudulent means the total amount of P6,638,509.08 . . . although the percentage of accomplishment was only 59%;" that at the time of the filing of the complaint, ROBLETT had accomplished only 67% of the Student Center and Cafeteria but had "withdrawn" the total

amount of P8,0891,919.45^[11] representing 97% of the escalated contract price of P8,241,725.00, hence, it was overpaid by P2,496,963.75; that with respect to the Dormitory and Recreation Hall, ROBLETT had accomplished only **94%** of the project and had collected P1,670,000.00, and albeit there was no overpayment, since it incurred delay in the completion thereof, which would have been on November 30, 1977, the liquidated penalty provision of the contract covering it called for it to pay damages; that in view of ROBLETT's refusal to finish the projects, MSU was constrained to rescind the contracts, by letter of December 15, 1978^[12] addressed to ROBLETT officials, and engage the services of another contractor to finish the projects; and that it notified PARAMOUNT INSURANCE CORPORATION, by letter of January 10, 1979,^[13] that it was confiscating the Performance Bond but it refused to comply with its obligations thereunder.

ROBLETT, in its Answer with Counterclaim and Crossclaim,^[14] denied abandoning the projects and being overpaid, it claiming that, *inter alia*, with respect to the Student Center and Cafeteria contract, it did not accept the terms and conditions of the MSU Board Resolution of March 21, 1977 and that it received less than P8,241,725.00 "in accordance with the percentage of accomplishment duly certified to and approved by [MSU]" and not due to fraud; that stoppage of the construction of the Student Center Cafeteria and the dormitory was "involuntary . . . because no funds were made available and released by [MSU] for the completion of the buildings;" that it finished the construction of the dormitory and "if there was any delay in the accomplishment of the work therein, it was because [MSU] itself delayed and/or refused to release the necessary funds therefor," hence, the provision on liquidated penalty cannot apply; and that the contract paid for the Student Center and Cafeteria "has not expired . . . because [MSU] has not yet made available and released the remaining funds for the completion" thereof.

In its Answer with Counterclaim and Crossclaim^[15] too, PARAMOUNT INSURANCE CORPORATION, denying any liability under the Performance Board, alleged that, *inter alia*, Douglas Paalam was never empowered to execute the bond and, in any event, he violated its guidelines including failure to remit any premium as allegedly he was not paid therefor by MSU; and that the bond was executed only on June 8, 1978 after expiration, not prior to the execution, of the construction contracts as provided for therein (construction contracts).

In its decision,^[16] the trial court, noting the testimony of MSU witness Atty. Abdul Aguam, MSU Director for Legal Services, that there were three notices of suspension of work, and that of ROBLETT witness former MSU Assistant University Engineer Abdullah Sarangani that:

. . . the MSU is located in this area and because of long rainy season, sometimes it lasts for seven days and certainly, it has adverse effect on the accomplishment of the project. Secondly, the MSU had undergone changes of leadership and it would appear that the changes of leadership brought about different policy. In the case of contract, there is usually investigation and this causes stoppage of work and also the weather affected the work; the labor force must have been disturbed. (Emphasis and underscoring supplied),

found that the delay in the completion of the Student Center and Cafeteria was not attributable to Roblett.

With respect to the issue of overpayment regarding the construction of the Student Center and Cafeteria, the trial court held that under the express provisions of the contract (Art. 5 [Exhibit "2"] and Art. 6 [Exh. "1-13"]), "the University Engineer is the one empowered to determine the rate of progress of work and since witness [former MSU Assistant Engineer] Sarangani had positively identified the last Progress billing approved and signed by him, Exhibit '1' showing that as of period ending June 15, 1976 75.50% of the project had been completed], then this exhibit should prevail over all other evaluation."

The trial court went on to pass upon the effect of the MSU Board Resolution of March 21, 1977 on a) the November 15, 1976 Report of the Zozobrado Committee re the percentage of work (59%) done by Roblett, b) the payments to Roblett in excess of the original contract price, and c) the delay incurred by Roblett, in this wise:

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The findings [in the November 15, 1976 Report] of the Zozobrado Commi[ttee] was evidently available to the Board before its meeting [on March 21, 1977]. The Board, however, did not order any investigation of any anomaly or asked (sic) Roblett to make a refund. **Instead the Board approved the two escalations requested which in effect legalized all payments made previous to March 21, 1977 although it may have exceeded the original contract.**

When the [March 21, 1977] resolution was adopted, the defendant Roblett ha[d] already incurred in delay, having exceeded the time frame of his original contract. However, the board adopted a new time frame from April 1 to Nov. 30, 1977. **However, the Board Resolution was not converted into an addendum to the original contract and neither was it signed by both parties. It can be inferred from this fact that the defendant did not agree to this new time frame.**

4. Can the plaintiff be permitted to deny and disclaim the official acts of its own university officials acting within the limits of their official capacities, in the absence of allegations and proofs of fraud and collusion with the defendant?

The witnesses for the defendant Roblett – Albino Rivera and Abdullah Sarangani – testified in a credible, frank and candid manner that **all requests for payments were supported by Progress Reports** which the staff of the Physical Plant Division had to verify, investigate, **and assess first before it could be approved. And the billings and vouchers underwent further approval by the Administrative Division** including the University President. There was **never any allegation and proof of fraud and collusion** and no university official was indicted for approving the vouchers. **The university must therefore be estopped from denying the official acts of its own officials.** Art. 1431 of the New Civil Code specifically provides thus –