

THIRD DIVISION

[G.R. No. 143273, September 20, 2004]

**RISER AIRCONDITIONING SERVICES CORPORATION,
REPRESENTED BY FERNANDO C. RAYMUNDO, PETITIONER, VS.
CONFIELD CONSTRUCTION DEVELOPMENT CORPORATION,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari assailing the Decision^[1] of the Court of Appeals dated November 5, 1999 in CA-G.R. CV No. 55731, reversing the Decision of the Regional Trial Court (RTC), Quezon City, Branch 98, in Civil Case No. Q-95-25181. Also assailed in this petition is the Appellate Court's Resolution^[2] dated May 29, 2000 denying petitioner's motion for reconsideration.

The factual antecedents as borne out by the records are:

Early in 1994, ABS-CBN Broadcasting Corporation entered into a contract with Confield Construction Development Corporation (CONFIELD), respondent, to install air-conditioning and ventilation systems in its facilities in Quezon City.

On August 10, 1994, respondent CONFIELD, in turn, entered into a Sub-Contract with Riser Airconditioning Services Corporation (RISER), petitioner, to supply and install the air-conditioning and ventilation systems at the ABS-CBN Main Building as well as its Studios 4 and 5 for a total consideration of ₱15,700,000.00.

Under the terms of the Sub-Contract, petitioner agreed to work on the ABS-CBN project from August 1994 until the end of June 1995^[3] using its own manpower and capital.

The parties likewise stipulated that should petitioner incur delay or its work is found unsatisfactory by respondent, the latter shall have the right to take over the work and be entitled to liquidated damages, thus:

"Article V

FAILURE TO COMPLETE; LIQUIDATED DAMAGES:
RIGHT TO TAKE OVER WORK

Whereas time being of the essence in this Agreement and it is agreed that the CONTRACTOR would suffer losses by the delay or failure of the SUB-CONTRACTOR to have the work contracted for completed in all parts within the time stipulated in Article IV above, the SUB-CONTRACTOR hereby expressly covenants and agrees to pay to the CONTRACTOR for

each day of delay, Sundays and Holidays included, the sum of ONE THOUSAND FIVE HUNDRED SEVENTY PESOS (₱1,570.00) only Philippine Currency, per day as liquidated damages notwithstanding, if as assessed by the CONTRACTOR, the progress of work is slow or that from all indications as adjudged by the CONTRACTOR, the SUB-CONTRACTOR will not be able to complete the work in all parts within the stipulated time or that construction and/or installations are not in accordance with the approved plans and specifications, the CONTRACTOR shall have the right to take over the construction and/or installation work either by itself or through another SUB-CONTRACTOR charging against the SUB-CONTRACTOR and its sureties any excess cost occasioned the CONTRACTOR, thereby, together with any liquidated damages that may be due to the CONTRACTOR under this Article.

Any sum which may be payable to the CONTRACTOR under this Agreement may be deducted and retained by the CONTRACTOR from any balance which may be due to the SUB-CONTRACTOR when said work shall have been finished and accomplished as herein provided.

This written Agreement may be suspended by the CONTRACTOR, in whole or in part, after a prior written notice to the SUB-CONTRACTOR. It is apparent that the SUB-CONTRACTOR shall not be able to complete the work called for under this agreement within the agreed and required schedule.^[4]

The parties also agreed that payments shall be made based upon the actual quantity of work accomplished. Petitioner shall submit a progress billing every 15th and 30th day of the month, thus:

Article III

CONTRACT SUM

The CONTRACTOR, for and in consideration of fulfilling this agreement, will compensate the SUB-CONTRACTOR in the amount of FIFTEEN MILLION SEVEN HUNDRED THOUSAND (PHP 15,700,000.00), Philippine Currency, the basis of payment will be the actual quantities of works carried out or measured by the contractor subjected to the submitted provisional and estimated bill of quantities.

x x x

Article X

PROGRESS PAYMENT

The CONTRACTOR shall make payments on account of this Agreement as follows:

1. 10% downpayment
2. By progress billing every 15th and 30th day of the month

3. All progress payment shall be subjected to ten percent (10%) retention and the usual Expanded Withholding Tax (EWT). One Hundred percent (100%) of the retention to be released three (3) months after final inspection and acceptance of the project.
4. No payment on the contract cost shall be made unless a statement under oath is submitted by the SUB-CONTRACTOR to the effect that all bills for labors, other than current wages, and all bills for materials ordered and used in the project, shall have been fully paid by the SUB-CONTRACTOR.”^[5]

Upon evaluation by the Design Coordinator, Inc. (DCI), ABS-CBN Project Manager, substantial changes were made in the original plan of the ABS-CBN project requiring additional works. These additional works entailed the installation of air-conditioning and ventilation systems at Studios 2, 3, 6 and 7 of ABS-CBN at a total cost of P4,078,155.15. Respondent also engaged petitioner to undertake these additional works.

Starting August 1994, petitioner submitted to respondent six (6) billings based on the actual extent of its accomplishment. Respondent then paid the amounts due.

In addition to the ABS-CBN project, respondent also engaged the services of petitioner for the installation of air-conditioning facilities at various commercial establishments in Greenbelt, Makati City in the amount of P1,385,000.00. Like the ABS-CBN project, additional works were required in the various projects. Again, respondent availed of petitioner’s services for these additional works. Upon completion of these projects, petitioner sent a billing to respondent for an unpaid balance of P620,140.32.^[6]

On April 6, 1995, respondent sent petitioner a letter^[7] informing the latter that it was terminating their contract concerning the installation of the air-conditioning and ventilation systems of Studios 2, 3, 6 and 7 of ABS-CBN.

In its letter^[8] dated April 8, 1995, petitioner questioned respondent’s unilateral termination of their agreement, claiming that the ground relied upon does not fall under any of the valid causes under Article V of the Sub-Contract.

In the meantime, DCI sent a letter to respondent stating that in the course of its on-site inspection, it found that the project works were not only behind schedule, they were also poorly done.^[9] DCI then issued a Memorandum dated June 7, 1995 to respondent calling its attention to the poor workmanship of its sub-contractor.^[10]

On June 16, 1995, respondent sent another letter to petitioner conveying its intention to terminate the agreement and to take over the ABS-CBN project, stressing that petitioner failed to meet the deadline due to its poor workmanship. Respondent then gave petitioner until June 17, 1995 to “start on full blast,” otherwise, respondent would send its own personnel to finish the project and that any cost incurred would be charged to petitioner.

In response, petitioner stated that it has never been informed about the deadline

set by ABS-CBN, but nonetheless it assured respondent it will finish the job as scheduled.

On June 20, 1995, petitioner submitted its 7th billing to respondent for ₱870,058.06 and informed it that 78.71271% of the ABS-CBN project has been completed.

Still, respondent terminated its Sub-Contract with petitioner.

Thereafter, respondent, through its Executive Vice-President, Martin Co, and petitioner, through its President, Sergio Rivera, orally agreed that respondent would issue to petitioner six (6) Allied Bank checks for ₱3,100,000.00 as payment for the ABS-CBN project, including the additional works, but excluding respondent's outstanding obligation in connection with the various projects undertaken in Greenbelt, Makati City.^[11] The parties likewise agreed that petitioner will not deposit the checks until respondent shall have re-evaluated the work accomplished.

Only two of the checks in the sum of ₱1,000,000.00 were made good by respondent. It instructed the bank to stop payment of the other four checks after its re-evaluation showed that the work accomplished by petitioner was not commensurate with the settlement amount.

Petitioner then made repeated demands on respondent to pay the outstanding settlement amount of ₱2,100,000.00 as well as the unpaid balance of ₱620,140.32 for the projects undertaken in Greenbelt, Makati City. Respondent, however, refused to comply with petitioner's demands.

On September 29, 1995, petitioner filed with the RTC of Quezon City a complaint for collection of a sum of money with damages against respondent, docketed as Civil Case No. 95-25181.

On March 19, 1997, the trial court decided Civil Case No. 95-25181 in favor of petitioner, thus:

"WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter –

1. To pay plaintiff the amount of ₱2,740,140.32, representing the unpaid obligation by the defendant;
2. To pay plaintiff interest at the legal rate on the amount of ₱2,740,140.32 per annum which is ₱438,422.45 from September 20, 1995;
3. To pay plaintiff the amount of ₱210,000.00 as actual damages;
4. To pay plaintiff 10% on the total amount of ₱3,388,562.77 which is ₱338,856.22 as and by way of attorney's fees; and
5. To pay plaintiff the amount of ₱100,000.00 as exemplary damages. Plus costs of suit.

The counterclaim is ordered dismissed for lack of merit.

SO ORDERED.”^[12]

On appeal, the Court of Appeals reversed the trial court’s Decision by dismissing the complaint and ordering petitioner to refund respondent the sum of ₱2,752,611.73, representing overpayment. The Appellate Court held:

“Moreover, it appears that on several occasions, ABS-CBN has called the attention of CONFIELD that during their site inspections, it was observed that the project works were delayed and poorly done. RISER does not deny the delay but merely states that it was not informed of the deadline set by ABS-CBN and that CONFIELD was also delayed in paying RISER. Of course, it is natural for RISER to defend its workmanship, but the ABS-CBN’s observation is more acceptable and objective, being the owner who does not have to take side with either the contractor or sub-contractor.

x x x

With respect to the first up to sixth billing, CONFIELD has paid RISER substantially on time. It was with regard to the seventh billing by RISER that the controversy arose. CONFIELD refused to pay the amount demanded by RISER. After CONFIELD agreed to pay ₱3.1 million, it refused to honor four (4) of the six (6) checks it previously issued to RISER because after re-evaluation of their work accomplished, it was found out that only 60%, not 80% of the entire project was done. Again, such refusal is not unjustified. After the work re-evaluation, it appears that CONFIELD has even made an overpayment. The accuracy or correctness of the re-evaluation report has not been rebutted. It is in consonance with their stipulation that –

‘The basis of payment will be the actual quantities work carried out or measured by the contractor subjected to the submitted provisional and estimated bill of quantities.’

x x x

The agreement upon which the balance of RISER’s claim in the amount of ₱2,740,140.32 is premised turned out to be vitiated by mistake. It does not correspond to its actual accomplishment. In RISER’s own computation, the amount of ₱2,329,434.05 was deducted representing the materials supplied by CONFIELD, ABS-CBN Deductions and works of other contractors. Subtracting it from the value of its total accomplishment of ₱9,659,800.00 will yield the amount of ₱7,330,365.95.

Considering that CONFIELD has already paid RISER ₱10,703,118.00, the overpayment amounts to ₱3,372,752.05. However, since CONFIELD still owes RISER the amount of ₱620,140.32 on the Makati Greenbelt project, the net total amount it overpaid is ₱2,752,611.75.”