

## THIRD DIVISION

[ G.R. No. 127275, June 20, 2003 ]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER,  
VS. COURT OF APPEALS, WILLIAM GOLANGCO CONSTRUCTION  
CORP., CHAIRMAN ERNESTO S. DE CASTRO, AND MEMBERS  
LAURO M. CRUZ AND VICTOR P. LAZATIN OF THE ARBITRAL  
TRIBUNAL OF THE CONSTRUCTION INDUSTRY ARBITRATION  
COMMISSION, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

Petitioner Philippine Commercial Industrial Bank (PCIB) assails, by the present Petition for Certiorari and Mandamus, the September 25, 1996 Resolution of the Court of Appeals (CA) dismissing its petition for "Certiorari and/or Partial Review of CIAC Case No. 07-95," on motion of private respondent William Golangco Construction Corporation (WGCC).

PCIB contracted WGCC to construct the 5th to 21st floors of PCIB Tower II in Makati. Alleging that the "granite finish [of the tower] proved to be defective such that after all efforts at negotiations proved futile" it hired another contractor to redo the "defective finish", but that WGCC refused to pay it actual damages incurred in the process, PCIB filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC), which docketed it as CIAC Case No. 07-95, praying that WGCC be held liable for "construction deficiencies."

WGCC denied PCIB's claim, it alleging that it accomplished the project faithfully and in accordance with the specifications-requirements of PCIB which accepted it after due inspection. It counterclaimed that PCIB was actually indebted to it for material cost adjustment since the cost of materials substantially increased in the course of the construction of the project.

The CIAC, by Decision<sup>[1]</sup> of June 21, 1996, found that PCIB was entitled to recover from WGCC the sum of P9,741,829.00 representing cost of repairs done by another contractor on the project. On WGCC's counterclaim, finding that under the parties' contract, increase for labor and materials under certain conditions was allowed but that PCIB presented no strong, or at best, token opposition to the evidence presented by WGCC for the escalated cost of materials, the CIAC awarded WGCC the amount of P5,777,157.84. The CIAC accordingly disposed as follows:

After summing up the award to both parties this TRIBUNAL hereby awards the amount of THREE MILLION NINE HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED SEVENTY[-]ONE PESOS AND SIXTEEN CENTAVOS (P3,964,671.16) to CLAIMANT Philippine Commercial Industrial Bank. Respondent William Golangco Construction is hereby

ordered to pay the stated amount with legal interest of six (6%) percent from date of this decision until fully paid.<sup>[2]</sup>

PCIB filed on June 28, 1996 a Motion for Partial Reconsideration<sup>[3]</sup> of the CIAC Decision which is **not allowed** under Section 9, Article XV of the CIAC Rules of Procedure. It subsequently filed on July 12, 1996 before the CA a petition for "Certiorari and/or Partial Review"<sup>[4]</sup> which "may be treated as an original action for certiorari under Rule 65 of the Rules of Court or as a petition for review under Circular 1-95 of the Supreme Court," alleging that the CIAC acted in excess of its jurisdiction and contrary to law in awarding, without basis, an amount in favor of WGCC.

To PCIB's petition filed before the CA WGCC filed a Motion to Dismiss with Motion to Cite PCIB Counsel for Contempt<sup>[5]</sup> on the ground that it was filed beyond the 15-day reglementary period for filing an appeal, in support of which it alleged that, contrary to the allegation of counsel for PCIB that he acquired actual knowledge of the CIAC decision on June 28, 1996, PCIB actually received a copy thereof on **June 24, 1996**, hence, it had only until **July 9, 1996** within which to file before the CA a petition for review. Since PCIB filed before the CA its petition for "Certiorari and/or Partial Review" on **July 12, 1996**, WGCC concluded that it was late by 3 days. WGCC attached to its motion a certified photocopy<sup>[6]</sup> of the pertinent entry in the CIAC logbook showing that Engineer Bong Nuno received a copy of the decision for PCIB on June 24, 1996.

By its assailed Resolution,<sup>[7]</sup> the CA granted WGCC's Motion to Dismiss PCIB's petition upon a finding that indeed PCIB received a copy of the CIAC decision on June 24, 1996 and, therefore, its petition was belatedly filed. On the nature of the petition, the CA held that an original action for certiorari under Rule 65 and a petition for review under Circular 1-95 of the Supreme Court cannot be the subject of a single pleading.

PCIB's Motion for Reconsideration having been denied by the CA, it comes to this Court by the present petition for Certiorari and Mandamus upon the following grounds:

#### I

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION TO THE GRAVE AND IRREPARABLE DAMAGE TO THE PETITIONER AND FAILED OR UNLAWFULLY NEGLECTED TO DO AN ACT WHICH THE LAW ENJOINS IT TO DO WHEN IT DISMISSED THE PETITION IN CA G.R. SP NO. 41227.

#### II

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION TO THE GRAVE AND IRREPARABLE DAMAGE AND INJURY TO THE PETITIONER AND FAILED OR UNLAWFULLY NEGLECTED TO DO AN ACT WHICH THE LAW ENJOINS IT TO DO WHEN IT REFUSED TO ALLOW THE PETITIONER'S ALTERNATIVE RELIEFS FOR REVIEW AND/OR FOR CERTIORARI. (Underscoring supplied)

PCIB's counsel disclaims that Engineer Bong Nuno is his employee but submits anyway that he was not authorized to receive the CIAC decision for him in his (counsel's) capacity as, by his claim, "the authorized representative" of PCIB.

The present petition fails.

In the petition for "Certiorari and/or Partial Review of CIAC Case No. 07-95"<sup>[8]</sup> filed before the CA by PCIB, its counsel alleged, inter alia, as follows, quoted *verbatim*:

"Inasmuch as the undersigned counsel ha[s] not officially received its copy of the Decision sought to be reviewed because the Arbitral Tribunal had such copy served only on [PCIB], the reglementary period should be reckoned from the date when the undersigned counsel actually acquired knowledge thereof which was on 28 June 1996 when it filed [PCIB's] Motion for Partial Reconsideration. Accordingly, treated as a Petition for Review, pursuant to resolution No. 2-95, this petition is seasonable.

A copy of the Decision as served upon [PCIB] itself is attached marked as Annex `A' and made a part thereof."<sup>[9]</sup> (Underscoring supplied)

The copy of the CIAC decision attached to PCIB's petition before the CA is a computer print-out bearing the **original** signatures of the Chairman and two members of the Arbitral Tribunal.<sup>[10]</sup> When PCIB received that copy of the CIAC decision, the petition filed before the CA did not state.

As earlier stated, WGCC filed before the CA a Motion to Dismiss with Motion to Cite PCIB Counsel for Contempt,<sup>[11]</sup> on the grounds that:

THE . . . PETITION HAS BEEN FILED BEYOND THE REGLEMENTARY PERIOD OF FIFTEEN DAYS FROM PETITIONER'S RECEIPT OF THE ASSAILED DECISION.

PETITIONER'S COUNSEL IS GUILTY OF MISREPRESENTING FACTS IN A BLATANT ATTEMPT TO HIDE THE BELATED FILING OF THE . . . PETITION;

and in said Motion to Dismiss, WGCC alleged that per CIAC records, petitioner received its copy of the CIAC decision on June 24, 1996, hence, the petition filed before the CA on July 12, 1996 was late by 3 days.

In its Opposition [to WGCC's Motion to Dismiss], and Countermotion for Contempt,<sup>[12]</sup> PCIB's counsel admitted that PCIB was indeed served copy of the CIAC decision through Engineer Nuno but that it was only on June 28, 1996 that PCIB sent him a copy thereof. Thus PCIB's counsel alleged:

In its petition filed with this Honorable Court [of Appeals], the petitioner was candid in alleging that although it received a copy of a decision of the Arbitral Tribunal, no actual service thereof was made on the undersigned counsel. **Receipt by the petitioner itself** of the decision did not start the running of the period to appeal. It is basic that:

"xxx. The moment an attorney appears for any party, notice should be given to the furnished. `xxx where a party appears