

## THIRD DIVISION

[ G.R. No. 141115, June 10, 2003 ]

**POSADAS-MOYA AND ASSOCIATES CONSTRUCTION CO., INC.,  
PETITIONER, VS. GREENFIELD DEVELOPMENT CORPORATION,  
JARDINE LAND, INC. AND CASTLETON PROPERTY DEVELOPMENT  
CORPORATION, RESPONDENTS.**

### DECISION

#### PANGANIBAN, J.:

Dismissals based on pure technicalities should be avoided when the parties have substantially complied with the Rules. When a petition presents *prima facie* allegations of errors committed by a lower tribunal, the reviewing court should, as much as practicable, endeavor to decide the case on its merits.

#### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the October 29, 1999 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-GR SP No. 55051. The assailed Resolution reads:

"This Court resolved to DISMISS the above-entitled petition for failure on the part of the petitioner to attach thereto all pleadings (such as the complaint) and other material portions of the record as would support the allegations therein, a requirement under Section 2, Rule 42 of the 1997 Rules of Civil Procedure."<sup>[3]</sup>

#### The Facts

On March 23, 1999, Petitioner Posadas-Moya & Associates Construction Co., Inc. (hereinafter "Posadas-Moya") filed with the Construction Industry Arbitration Commission (CIAC) a Request for Adjudication,<sup>[4]</sup> through arbitration proceedings, of its formal Complaint against respondent corporations:<sup>[5]</sup> Jardine Land, Inc. ("JLI"); Greenfield Development Corporation ("GDC"); and United Laboratories, Inc. ("ULI"). The case was docketed as CIAC Case No. 08-99. In their Answer with Counterclaim<sup>[6]</sup> dated April 23, 1999, respondents interposed both negative and affirmative defenses. Petitioner then filed its Reply<sup>[7]</sup> on May 19, 1999.

On June 29, 1999, all the parties appeared for a preliminary conference to finalize the draft Terms of Reference (TOR),<sup>[8]</sup> a copy of which had earlier been furnished them. Like a pretrial order, a TOR limits the issues to be tried to those formulated therein and otherwise controls the course of arbitration proceedings. After lengthy discussions leading to the incorporation of suggestions for modifications of the TOR, the parties and their respective counsels, along with the Arbitral Tribunal,<sup>[9]</sup> signed

it on the same date.

In the same preliminary conference, the parties were informed that in arbitration proceedings, a witness' testimony on direct examination should be in the form of an affidavit. A list of the pieces of documentary evidence — each containing the exhibit marking, the description and the purpose for submission — should also be prepared and attached to the affidavit wherein they were mentioned. The affidavit should be personally served on opposing counsel at least three days before the hearing. Cross-examination would then be undertaken by the opposing counsel on the basis thereof.

The parties then agreed to a hearing on August 4, 1999. During the scheduled hearing, Posadas-Moya presented its president, January P. Posadas, as its lone witness. He was subjected to an extensive cross-examination by the counsel of respondents. The following day, August 5, 1999, they presented their witnesses: 1) Bob C. Zulueta, vice-president of JLI; 2) Zaldy Masarate, head of GDC's Construction Management Department and Construction Management Services; 3) Glenn Gaid, resident engineer of GDC; 4) Josephine de la Rosa, engineering assistant of GDC's Technical Services Division; and 5) Juan del Rosario, head of GDC's Technical Services Division. They executed a Joint Affidavit, whereupon they were cross-examined by petitioner's counsel.

At the close of the hearing, the parties were given until August 31, 1999 to submit their respective draft decisions. They did so on the said date, upon which the case was deemed submitted for resolution. On September 10, 1999, the CIAC rendered its 59-page Decision,<sup>[10]</sup> the dispositive portion of which reads:

### **"AWARD**

**"WHEREFORE**, judgment is hereby rendered and award is made on the monetary claims made by the parties as follows:

I. FOR THE CLAIMANT-CONTRACTOR PMACCI:

P1,052,233.78  
— for its work accomplishment for the period from 01-15 September 1998 to be paid separately, as follows:

P137,138.50 — for GDC

610,298.28 — for JLI

304,797.00 — for CPDC

P191,373[.19] for the total net additive costs to be paid  
— separately, as follows:

[P]47,302.69 for the net additive claim uncontested by JLI  
—

143,615.66 — GDC

454.84 — CPDC

P1,311,900.17 for the value of construction materials left at  
— project site. Said obligation shall be jointly and  
severally paid to the Claimant by the Respondents.

P5,400,735.25 as refund of retention moneys to be paid  
— separately as follows:

JLI	—	P2,708,356.05
GDC	—	1,395,780.56
CPDC	—	<u>1,296,599.12</u>
Total	—	P5,400.735.25 -

P7,956,242.39 GRAND TOTAL DUE TO THE CLAIMANT BROKEN  
— DOWN AS FOLLOWS:

P1,676,534.72 — from GDC

3,35,957.02<sup>[11]</sup> — from JLI

1,601,850.96 — from CPDC

1,311,900.17 — from all collectively

P7,956,242.39 — GRAND TOTAL

## II. FOR THE RESPONDENTS:

### GREENFIELD DEVELOPMENT CORPORATION

P8,800.00 — for the value of 100 bags of Portland Cement  
borrowed by the Claimant

P55,200.00 — for rental of construction equipment used by the  
Claimant in the works

P2,466,546.57  
— for the refund of the unrecouped downpayment

P259,780.13  
— for reimbursement of the amount paid for utilities

P74,455.58 — for liquidated damages on the SDUs

P2,864,782.28 Total due to GDC  
—

### CASTLETON PROPERTIES & DEVELOPMENT CORP.

P1,847,254.47 for the refund of the unrecouped downpayment

—  
274,156.34 — for liquidated damages on the SDUs

P2,121,410.81  
— Total due to CPDC

JARDINE LAND, INC.

[P]3,432,163.86  
— for the refund of the unrecouped downpayment

675,044.89 — for liquidated damages on the SDUs

P4,107,208.75  
— Total due to JLI

ALL RESPONDENTS COLLECTIVELY

P65,268.45 — reimbursement of amounts advanced for  
occupancy permit fee, inspection fee, certificate of  
electrical inspection, miscellaneous fee and city  
ordinance contractors' tax

P623,094.58 — as liquidated damages on the amenities contract

P1,041,727.92 Total due to all Respondents collectively  
—

P10,135,129.76 GRAND TOTAL DUE TO RESPONDENTS  
—

"Claimant is hereby further required to turn over to the Respondents the original of the building permits for the project and the project logbook.

"OFFSETTING the grand total amounts due to the Claimant-Contractor and the Respondents, respectively, a balance of P2,178,887.37 remains in favor of the Respondent-Owners. Claimant-Contractor POSADAS-MOYA AND ASSOCIATES CONSTRUCTION CO., INC. (PMACCI) is accordingly directed to pay said balance of P2,178,887.37 to the Respondents collectively. Interests on the foregoing amount shall be paid at the rate of 6% per annum from the date of this Decision. After finality of this Decision, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made, *`this interim period being deemed to be at that time already a forbearance of credit.'*"<sup>[12]</sup>

Petitioner received a copy of the foregoing Decision on September 16, 1999. On September 24, 1999, it filed a Motion for Extension of Time to File Petition for Review<sup>[13]</sup> before the CA, which received it on October 13, 1999. Petitioner had annexed the following documents to its Petition:

1. Annex "A" — Decision of the CIAC
2. Annex "B" — Request for Adjudication (Narrative Facts & Figures - An Arbitral Presentation)

3. Annex "C" — Respondents' Answer with Counterclaims
4. Annex "D" — petitioner's Reply to Respondents' Answer with Counterclaims
5. Annex "E" — Terms of Reference, which was signed by the parties, their counsels and the Arbitral Tribunal

Respondents averred that they had filed their own Petition for Partial Review on Certiorari under Rule 43 of the Revised Rules of Civil Procedure on October 18, 1999.<sup>[14]</sup> This Petition, docketed as CA-GR No. 55185, was raffled to and is pending before the Ninth Division of the CA.<sup>[15]</sup>

### **Ruling of the Court of Appeals**

In dismissing the appeal of Posadas-Moya, the CA ruled that the Petition had no attached pleadings — such as the Complaint and other material portions of the record — that would support the allegations therein.<sup>[16]</sup> The court *a quo* based its dismissal on the requirements of Section 2 of Rule 42 of the 1997 Rules of Court.<sup>[17]</sup>

Hence, this Petition.<sup>[18]</sup>

### **The Issues**

In its Memorandum,<sup>[19]</sup> petitioner submits the following issues for our consideration:

"I

Whether or not the Honorable Court of Appeals erred in dismissing the petition dated October 11, 1999, and docketed as CA-G.R. No. SP 55051, on the supposed ground that petitioner failed to attach a copy of the 'complaint,' inasmuch as petitioner indeed attached such copy as Annex 'B' to the CA petition.

"II

Whether or not the Honorable Court of Appeals erred in not exercising its jurisdiction to correct the grave error of law by the CIAC when the latter declared that, as of September 15, 1998, petitioner was 'in delay' in the completion of the Project, despite the undisputed facts on record.

"III

Whether or not the Honorable Court of Appeals erred in not exercising its jurisdiction to strike down the CIAC's holding that respondents' termination of the construction contract is legal.

"IV