

## **EIGHTH DIVISION**

**[ CA-G.R. SP. NO. 122589, January 23, 2015 ]**

**I & I REALTY AND DEVELOPMENT INC. AND RICARDO C. CASTAÑEDA, PETITIONERS, VS. LUISITO M. CANLAS, RESPONDENT.**

**CA-G.R. SP. NO. 122847**

**LUISITO M. CANLAS, PETITIONER, VS. I & I REALTY AND DEVELOPMENT INC. AND RICARDO C. CASTAÑEDA, RESPONDENTS.**

### **D E C I S I O N**

**ANTONIO-VALENZUELA, J.:**

These are the two consolidated<sup>[1]</sup> cases: Petition for Review<sup>[2]</sup> filed by I & I Realty and Development Inc. ("I & I Realty") and Ricardo C. Castañeda ("Castañeda") in CA-G.R. SP No. 122589; and Petition for Review<sup>[3]</sup> filed by Luisito M. Canlas ("Canlas") in CA-G.R. SP No. 122847. Both petitions assail the Final Award dated 21 November 2011<sup>[4]</sup> issued by the Arbitral Tribunal ("Tribunal") of the Construction Industry Arbitration Commission ("CIAC") in CIAC Case No. 02-2011, entitled "*Luisito M. Canlas v. I & I Realty and Development Inc. and Ricardo C. Castañeda.*"

Canlas filed the Complaint for Unpaid Works Rendered and Damages for Breach of Contract<sup>[5]</sup> before the CIAC. The Complaint alleged: Canlas and Castañeda entered into a verbal contract for the construction of the office building of Royale Business Club International, Inc. ("subject building") located at Quezon Avenue, Quezon City, and immediately, Canlas executed documents preparatory to construction (i.e., Consultancy Services/Various Trade Disciplines Recommendations/Preparation and Submission of Existing Structure Layouts in 3D Printouts/Pre Construction Activities); pending the execution of a written agreement, Castañeda issued to Canlas the Notice to Proceed,<sup>[6]</sup> ordering Canlas to start specified works on the subject building (i.e., execution of Design [Structural, Architectural, Mechanical, Plumbing, & Sanitary and Electrical]; Construction Management & Supervision; Construction Implementation, and Permits & Licenses); prior to actual construction, Canlas caused the dewatering of the basement because it was submerged in water, and thereafter, Canlas submitted the Preliminary Design,<sup>[7]</sup> Electrical Design,<sup>[8]</sup> Structural Engineering Design Requirements,<sup>[9]</sup> and Consultancy Services & Pre-construction Deliverables Accomplishment to Date;<sup>[10]</sup> then, I & I Realty (represented by its President, Castañeda), and L.M. Canlas Construction (represented by its President, Canlas) executed the Construction Contract<sup>[11]</sup> which stipulated Php 27,800,000.00 as the Contract Price<sup>[12]</sup> (although the parties intended that Php 169,086,706.01 was the real contract price) after Castañeda

suggested to misrepresent the Contract Price in order to save on Contractor's All Risk Insurance ("CARI") premium, and despite reservations, Canlas agreed to lower the Contract Price in the Construction Contract; Canlas submitted to Castañeda several documents (*i.e.*, Structural Designs Revision;<sup>[13]</sup> Approved Architectural, Structural, Electrical, Mechanical, Sanitary/Plumbing Designs/Accomplished Building Permits Application inclusive of Electrical, Mechanical, Sanitary/Plumbing Permits Application;<sup>[14]</sup> Bill of Quantities for Barangay Clearance Purposes;<sup>[15]</sup> Site Instruction;<sup>[16]</sup> and revised Architectural Plans);<sup>[17]</sup> Castañeda made unauthorized structural design alterations different from Canlas' submitted plans; despite completion of the dewatering of the basement, Castañeda failed to pay Canlas the dewatering expenses of Php 1,142,200.00; Castañeda suspended the construction operations of Canlas, and barred Canlas' workers from returning to the jobsite; Canlas sent the letter<sup>[18]</sup> to I & I Realty and Castañeda, which made a demand for the payment of Php 11,118,073.50 (Php 1,142,200.00 for dewatering; Php 2,850,00.00 for mobilization, demolition, clearing, hauling, slab on fill, chipping, topping, design and installation of electrical and temporary facilities, Meralco power application, leg works including representations; Php 3,000,000.00 for design fee and project management; Php 2,659,837.50 for work accomplishment from August to December 2010; Php 1,466,116.00 for documents, tools & equipment detained at the construction site); I & I Realty sent the letter<sup>[19]</sup> reply which denied liability to Canlas.

The Complaint prayed for the payment of: Php 9,651,957.50 for actual works rendered; Php 14,458,057.10 for unrealized profits; Php 500,000.00 and 25% of the award as attorney's fees, plus Php 5,000.00 per court appearance; Php 394,600.00 as filing fees; the return of equipment, tools, documents and other belongings worth Php 1,466,116.00, or in the alternative, the payment of Php 125,000.00.

Castañeda filed the Respondent Castañeda's Answer with Special and Affirmative Defenses and Compulsory Counterclaim,<sup>[20]</sup> and alleged: Canlas was merely the coordinator/supervisor (not the contractor) in the dewatering operations, and it was Castañeda who paid all the dewatering expenses (*i.e.*: rentals for equipment; salaries of laborers; Canlas' fees as supervisor), thus Canlas' claims for dewatering had no basis; Canlas' preliminary design and temporary facilities electrical design, were only proposals which Castañeda did not agree to; the Construction Contract was void for several reasons (*i.e.*: the Construction Contract was a simulated contract, because it was signed by Castañeda to accommodate Canlas, and the parties had no meeting of the minds regarding the consideration; the Construction Contract had no stipulation for bonds [*i.e.*, performance, surety and warranty/guaranty bonds]; Canlas' services were limited to the dewatering and demolition operations, and did not extend to actual construction works; Canlas' workers were not allowed to enter the jobsite because the dewatering operations were already completed); Castañeda extended loans to Canlas in the total amount of Php 6,251,000.00, evidenced by several promissory notes, thus the complaint filed in CIAC was only Canlas' scheme to evade his obligations to Castañeda. By way of counterclaim, Castañeda prayed for the award of Php 500,000.00, as attorney's fees.

I & I Realty filed the Motion to Dismiss<sup>[21]</sup> and alleged: the Complaint should be dismissed for lack of jurisdiction (because there was no construction dispute

between Canlas and I & I Realty, there being no contract between Canlas and I & I Realty, and instead, the dispute was between Canlas and Castañeda, in their personal capacities as debtor-creditor), and for lack of cause of action (because Canlas did not make a demand before filing the Complaint, thus the Complaint was premature, and should be dismissed for lack of cause of action).

The Tribunal denied I & I Realty's Motion to Dismiss.<sup>[22]</sup>

The Tribunal conducted a preliminary conference and issued the Terms of Reference (TOR),<sup>[23]</sup> which the parties signed. The TOR limited the issues as follows:

*"1. Did the Respondent Corporation (I & I Realty), through its Board of Directors, authorize Respondent Castañeda to enter into the contract denominated as Construction Contract (Annex "H")? If not, what is the liability, if any, of Respondent Castañeda?*

*2. Was there a valid construction contract between the parties?*

*3. Is Claimant entitled to payment of his claim, as follows:*

<i>a. Dewatering</i>	<i>- P</i> <i>1,142,120.00</i>
<i>b. Mobilization/Demobilization/Demolition/ Chipping/Clearing/Compaction/ Design and Installation of Electrical and Temporary Facilities/ Meralco Power application Leg Works including Representations</i>	<i>- 2,850,000.00</i>
<i>c. Design Fee</i>	<i>- 3,000,000.00</i>
<i>d. Work Accomplishment (Aug. to Dec. 2010)</i>	<i>- 2,659,837.50</i>
<i>e. Detained Equipment/ Tools/ Documents etc.</i>	<i>- 1,466,116.00</i>
<i>f. Unrealized Profit (based on P169,086,706.01 verbal contract)</i>	<i>-14,458,057.10</i>
<i>g. Litigation Expenses</i>	<i>- 100,000.00</i>
<i>h. Attorney's Fee</i>	<i>- 500,000.00</i>
<i>i. Exemplary Damages</i>	<i>- 2,000,000.00</i>
<i>j. Filing Fee</i>	<i>- 440,277.24</i>

*4. Is Respondent Castañeda entitled to Attorney's fees of P700,000.00 and Litigation Expenses of P50,000.00?*

*5. Is Respondent Corporation entitled to Attorney's fees of P700,000.00 and Litigation expenses of P50,000.00?*

*6. Who should shoulder the cost of arbitration?"*<sup>[24]</sup>

The Tribunal conducted hearings, and received the evidence of the parties.

The evidence for Canlas is summarized thus: in September 2009, Canlas and Castañeda entered into a verbal contract for the construction of the subject building, and immediately, Canlas executed several documents, (i.e.: Consultancy Services/

Various Trade Disciplines Recommendations/ Preparation and Submission of Existing Structure Layouts in 3D Print Outs/ Pre-construction Activities); in addition to the construction of the subject building, Castañeda requested Canlas to dewater the basement because the subject building was submerged in water; prior to the execution of a written contract between the parties, Castañeda issued to Canlas the Notice to Proceed dated 17 February 2010, authorizing Canlas to commence work on the subject building, thus Canlas commenced the dewatering and submitted various documents (*i.e.*, Preliminary Design; Temporary Facilities-Electrical Design; Structural Design Activities Update; Consultancy and Design Services, and Pre-construction Activities; Accomplishment Pay Items Update); on 26 July 2010, Canlas, as President of L.M. Canlas Construction, and Castañeda, as President of I & I Realty, entered into the Construction Contract with the intention that the Contract Price would be Php 169,086,706.01, however, upon the initiative of Castañeda, and despite reservations of Canlas, the Construction Contract indicated Php 27,800,000.00 as the Contract Price in order to avoid higher CARI premiums; subsequently, Canlas conducted meetings with the representatives (*i.e.*, Arch. Noli Fabic and Arch. Rey E. Somera) of I & I Realty, and submitted additional documents (*i.e.*, Preparation and Submission of Structural Designs Revision; Approved Architectural, Structural, Electrical, Mechanical, Sanitary/Plumbing Designs/ Accomplished Building Permits Application inclusive of Electrical, Mechanical, Sanitary/Plumbing Permits Application, Bill of Quantities for barangay clearance purposes); on 7 December 2010, Canlas completed the dewatering of the subject building involving approximately 32,632 cubic meters volume of water; Canlas rendered actual construction works until the unceremonious easing out of Canlas and his workers from the jobsite; on 11 December 2010, representatives of I & I Realty verbally suspended the Construction Contract, and barred Canlas' workers from returning to the jobsite; Canlas served the incident report on the forced restraint of work, to the barangay; Castañeda performed several acts of bad faith in the implementation of the Construction Contract (*i.e.*, Castañeda instructed Canlas to process the barangay clearance, and to indicate reduced construction costs; Castañeda engaged other contractors to render the works assigned to Canlas under the Construction Contract; Castañeda made unauthorized structural design alteration/adulteration on Canlas' plans); despite lack of board resolution from the members of the board of I & I Realty, the other members of the board of I & I Realty expressly ratified the Construction Contract (*i.e.*, Irma Castañeda [chairwoman of the board of I & I Realty] issued the authority to apply for temporary electrical permit; Richard F. Castañeda [member of the board of I & I Realty] issued the check for the payment of construction materials); despite knowledge of Canlas' construction works, the members of the I & I Realty's Board of Directors did not object to the implementation of the Construction Contract, and received the benefits of the actual construction services rendered by Canlas; Canlas' claims were based on the Construction Contract which provided the scope of work to be accomplished by Canlas.

The evidence for I & I Realty and Castañeda is summarized thus: there was no verbal contract entered by Canlas and Castañeda for the construction of the subject building; the written Construction Contract was fictitious and simulated, because Castañeda signed the Construction Contract to accommodate Canlas for the purpose of enhancing Canlas' standing to his financiers and creditors; Canlas' filing of the Complaint before the CIAC was just a scheme to evade Canlas' payment of his obligations to Castañeda in the amount of Php 6,251,000.00; I & I Realty did not authorize Castañeda to enter into the Construction Contract, and Canlas did not

present a valid board resolution from the Board of Directors of I & I Realty, thus the Construction Contract entered into by Castañeda without authority from the Board did not bind I & I Realty; the Construction Contract was void because it lacked several documents (*i.e.*, Master Construction Schedule; Performance Bond; Warranty/Guaranty Bond; Contractor's all Risk Insurance; Manpower and Equipment Utilization Schedule; Contractor's Quality Control Program) which were considered integral parts of the Construction Contract; the Construction Contract failed to fix the contract period, and the object was not certain (*i.e.*: Canlas stated that the subject building was a three-storey office building, while Canlas' witnesses claimed otherwise [*i.e.*, Engr. Roy Taway claimed that the subject building was a 39-storey building, while Arch. Lopez-Tan claimed it to be a 14-storey building]); Canlas' participation in the construction of the subject building was that of a project manager/consultant, and Canlas was paid for his services as a project manager; Canlas could not have been a contractor because there was no down payment given to Canlas, and Canlas did not give progress billings and progress reports during his services as contractor; Canlas was not entitled to his claims for actual damages and loss of profits because his claims were unsubstantiated and lacked basis.

After the parties submitted their respective memoranda, the Tribunal issued the Final Award. The dispositive portion of the Final Award stated:

*"WHEREFORE, an award is hereby rendered as follows:*

*1. Respondents are jointly and severally liable to pay Claimant the following amounts plus legal interests at the rate of 6% per annum from January 28, 2011 (date of filing of request for arbitration) up to the time this decision becomes final; and, 12% per annum computed from the date this decision becomes final until fully paid, to wit:*

<i>a. Dewatering</i>	<i>- P 744,660.00</i>
<i>b. Mobilization/ Demobilization/ Demolition/ Chipping/ Clearing/ Compaction/ Design and Installation of Electrical and Temporary Facilities/ Meralco Power application Leg Works including Representations</i>	<i>- 442,323.04</i>
<i>c. Design Fee - 1,946,000.00</i>	
<i>d. Work Accomplishment (Aug. to Dec. 2010)</i>	<i>- 823,698.57</i>
<i>e. Detained Equipment/ Tools/ Documents etc.</i>	<i>- 0</i>
<i>f. Filing Fee (2/3 of 440,277.24)</i>	<i>- 293,518.16</i>

*The said amount shall bear interest at*

*6% - from January 28, 2011 until this Award becomes final and executory, and*

*12% - from the date this Award becomes final until fully paid.*

*2. Respondents' counterclaims are all denied for lack of merit.*

*SO ORDERED.*"<sup>[25]</sup>