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## SECOND DIVISION

[ G.R. No. 204423. September 14, 2016 ]

**PHILIPPINE SCIENCE HIGH SCHOOL-CAGAYAN VALLEY CAMPUS, PETITIONER,  
VS. PIRRA CONSTRUCTION ENTERPRISES, RESPONDENT.**

## DECISION

### **DEL CASTILLO, J.:**

This Petition for Review on *Certiorari* assails the January 20, 2012 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-GR. SP No. 118152, which modified the January 26, 2011 Final Award<sup>[2]</sup> of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 11-2010. Also challenged is the July 23, 2012 CA Resolution<sup>[3]</sup> denying Philippine Science High School-Cagayan Valley Campus' (PSHS) Motion for Reconsideration.

### ***Factual Antecedents***

PIRRA Construction Enterprises (PIRRA) is a business engaged in general contracting and a licensed contractor registered with the Philippine Domestic Construction Board. On the other hand, PSHS is a government academic institution under the Department of Science and Technology (DOST) and is located in Bayombong, Nueva Vizcaya. Artemio R. Perez is the owner of PIRRA<sup>[4]</sup> while Dir. Salvador Romo (Dir. Romo) is PSHS' Campus Director.<sup>[5]</sup>

On April 19, 2010, PIRRA tiled with the CIAC a Complaint<sup>[6]</sup> for Damages against PSHS relative to the construction contracts for PSHS' Project A (Academic Building I - Phases IV and V, and Girls' Dormitory Building I - Phase IV); and its Project C (Academic Building II - Phase I, Boys' Dormitory Building - Phase I, and School Canteen - Phase I).

### ***On Project A***

On October 27, 2008, PIRRA participated in and won the bidding for Project A for a total contract price of P24,290,854.10. On December 8, 2008, PSHS issued a Notice of Award<sup>[7]</sup> to PIRRA. Thereafter, the parties entered into a Contract Agreement<sup>[8]</sup> and a Notice to

Proceed<sup>[9]</sup> was issued to PIRRA. The duration of Project A was for 180 days from December 20, 2008,<sup>[10]</sup> with approved 65-day extension until August 22, 2009.<sup>[11]</sup> As mobilization fee, PSHS paid PIRRA 15% of the contract price.<sup>[12]</sup> Thereafter, it paid PIRRA its Partial Billing (PB) Nos. 1 to 4<sup>[13]</sup> amounting to P23,194,020.95.<sup>[14]</sup>

On July 29, 2009, PIRRA requested payment for its PB No. 5.<sup>[15]</sup> On August 6, 2009, it sent PSHS a letter<sup>[16]</sup> requesting for substantial acceptance and completion of Project A and submitted its Summary of Accomplishment Report<sup>[17]</sup> stating that as of July 24, 2009, the accomplishment for Project A was already at 94.09%. In its reply,<sup>[18]</sup> PSHS reminded PIRRA that the due date of the contract was August 22, 2009 but the power distribution activities had not yet been installed.

Meanwhile, PSHS created an Inspectorate Team, which conducted punch listing on Academic Building I, Phases IV and V on August 25, 2009, and on Dormitory Building I, Phase IV on September 1, 2009.<sup>[19]</sup>

On September 23, 2009, PSHS replied to PIRRA's request for substantial acceptance and completion of Project A, and for payment of PB No. 5. It stated that the payment thereof could not yet be made pending correction of the noted defects and remaining work activities, the final inspection of the concerned agencies, among other reasons. At the same time, PSHS declared that it considered PB No. 5 as PIRRA's final billing such that it had to account PIRRA's liabilities relating to Project A.<sup>[20]</sup>

On September 25, 2009, PSHS informed PIRRA that the Commission on Audit (COA) would inspect Project A on September 29, 2009 to validate PIRRA's accomplishment thereon.<sup>[21]</sup> On September 29, 2009, the COA proceeded with the inspection. PIRRA admitted that it failed to attend the inspection as it allegedly received PSHS' September 25, 2009 letter only on October 5, 2009.<sup>[22]</sup>

On October 2, 2009, PIRRA and PSHS entered into a Joint Inspection Agreement<sup>[23]</sup> before DOST Assistant Secretary for Administration, Legal and Financial Affairs, Mario P. Bravo.<sup>[24]</sup> They agreed that the inspection date must be mutually agreed upon by the parties; and that representatives from the COA, the DOST and the Consultant (D&D Engineering Co.) shall be invited for the inspection.

On October 30, 2009, PSHS informed PIRRA that its PB No. 5 could not be processed yet as it was awaiting the COA Report.<sup>[25]</sup> On the same day, the COA sent its Inspection Report dated October 7, 2009 to PSHS.<sup>[26]</sup>

Because of failure to abide by the October 2, 2009 Joint Inspection Agreement, the parties entered into another Joint Agreement<sup>[27]</sup> on November 20, 2009 and agreed to jointly request the COA for a re-inspection of Phase IV of Project A.

On January 6, 2010, PSHS informed PIRRA that it would take over Project A in the interest of the government, and to prepare for its occupancy for School Year 2010-2011. It also stated that it would implement the repair of the identified defects through a third party, the expenses of which would be deducted from PIRRA's final billing. It declared that the disallowances indicated in the COA Report (particularly its Findings Nos. 3 and 7) and its construction materials, which PIRRA allegedly used without permission would also be deducted from the final billing.<sup>[28]</sup> Said COA Findings Nos. 3 and 7 are as follows:

### FINDINGS #3

The steel awning windows which were replaced by glass framed sliding windows were not presented during the course of the inspection, thereby disallowing it[s] cost equivalent computed as follows:

Total Area of steel awning windows X bid price per area  
115.96 X3,450.33/sq.m.  
Php400,099.73

x x x x

### FINDINGS #7

The item for Power distribution lines amounting to Php1,955,000.00 were not implemented at the time of the inspection, the contract time have elapsed on August 22, 2009, no request for time extension has been requested/presented hence, liquidated damages should be imposed with computation as shown below:

1 of 1%  
(1,955,000.00) (39 days)      Php76,245.00<sup>[29]</sup>  
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In a letter dated January 25, 2010, PIRRA questioned PSHS' takeover of the project; it pointed out that the parties already agreed to jointly request the COA for the re-inspection of Phase IV of Project A.<sup>[30]</sup> PIRRA claimed that PSHS' takeover of Project A is violative of its

rights as the winning contractor. It argued that COA's inspection on Project A was conducted without the presence of PIRRA; and, the findings of the COA are subject to protest for being one-sided. It added that PSHS agreed to having a COA re-inspection done as it was aware that the September 29, 2009 COA Inspection was invalid<sup>[31]</sup> since PIRRA was not properly notified thereof.

### *On Project C*

On December 2, 2008, PIRRA participated in and won the bidding for Project C for a contract price of P9,945,361.85. On January 29, 2009, PSHS issued a Notice of Award<sup>[32]</sup> to PIRRA. On June 22, 2009, the parties entered into a Contract Agreement.<sup>[33]</sup> On July 9, 2009, PIRRA, received a Notice to Proceed.<sup>[34]</sup> The project duration was 150 days, from July 20, 2009 until December 17, 2009.<sup>[35]</sup> PSHS paid PIRRA 15% of the contract price as mobilization fee.<sup>[36]</sup>

On July 24, 2009, PIRRA requested the suspension of the construction of the canteen because PSHS decided to relocate the canteen site to a difficult place of construction.<sup>[37]</sup> PSHS granted this request.<sup>[38]</sup>

On August 3, 2009, PIRRA requested a time suspension on Project C because of affected footings, columns, and footing tie beams.<sup>[39]</sup> On August 19, 2009, PSHS informed PIRRA that suspension was not the solution, there being no changes in the structural design. Instead, it directed PIRRA to file a variation order (VO) with time extension.<sup>[40]</sup>

As cited above, on October 2, 2009, the parties entered into a Joint Inspection Agreement.<sup>[41]</sup> As regards Project C, they agreed that PIRRA shall submit to the Consultant the shop drawing for the foundation; in turn, the Consultant shall submit the cross-sections of the foundation and evaluate PIRRA's claim.

On October 12, 2009, PIRRA sent a letter<sup>[42]</sup> to PSHS stating that delay was incurred on Project C because it received no response from PSHS or from the Consultant on its request for time suspension. In the same letter, PIRRA requested a total time suspension on Project C. In its reply,<sup>[43]</sup> PSHS alleged that it found out that as of October 12, 2009, PIRRA suspended work on Project C without its approval.

As previously stated, on November 20, 2009, the parties entered into a Joint Agreement.<sup>[44]</sup> As regards Project C, they agreed, among others, that PSHS, along with the Consultant, would visit the site and that the Consultant will prepare a detailed drawing (for the VO) to

be submitted to PIRRA. After more than two months from said Joint Agreement, and through a letter<sup>[45]</sup> dated February 8, 2010, PSHS informed PIRRA that it was terminating the Project C contract because of the latter's delay, default, and abandonment. On February 23, 2010, it issued an Order of Termination against PIRRA.<sup>[46]</sup>

PIRRA contended that the termination of the contract is unjustified. It stressed that PSHS failed to give it the intended revisions of the building plan for Project C as well as the necessary documents to secure a building permit for the project; and, as a result, Project C was stopped and PIRRA incurred a slippage of 75.99%.<sup>[47]</sup>

For its part, PSHS countered that it a) validly took over Project A, and b) validly terminated the contract for Project C.

#### *On Project A*

PSHS explained that it put on hold PB No. 5 as there were still works that must first be resolved and final inspection must first be carried out on the project.<sup>[48]</sup> It further alleged that after signing the November 20, 2009 Joint Agreement, PSHS received no communication from PIRRA so that they could jointly prepare a communication addressed to COA; thereafter, upon inquiry to the COA, PSHS learned that if there was no subsequent accomplishment or rectification in Project A, then there was no more reason for a re-inspection.<sup>[49]</sup> It stated that the contract for Project A ended on August 22, 2009 but only at about 92% completion;<sup>[50]</sup> thus, it took over the same.

#### *On Project C*

PSHS claimed that after inspecting Project C and evaluating the scope of a supposed VO, the shop drawings were finished and ready for submission to PIRRA but it did not release it as PIRRA's owner and even his representative no longer communicated with them, as well as refused to receive communication from PSHS. Despite the meeting before the DOST, PIRRA still filed a complaint against PSHS' officers with the Ombudsman, among other reasons.<sup>[51]</sup>

PSHS insisted that it validly terminated the contract for Project C since PIRRA had abandoned its work thereon since October 12, 2009; on December 17, 2009, the contract for Project C expired and through PIRRA's own fault, it incurred a negative slippage of 75.99%. PSHS added that the continued refusal of PIRRA to receive communication from PSHS was a clear showing of abandonment and sabotage of a government project.<sup>[52]</sup>

On July 30, 2010, the CIAC appointed Engr. Potenciano A. Leoncio, Jr. as Technical Expert who would conduct ocular and technical inspection on Projects A and C.<sup>[53]</sup>

Subsequently, PIRRA filed its Supplemental Complaint<sup>[54]</sup> maintaining that tie delay in Project C was due to PSHS' failure to submit the new design plan based on the change of elevation. It argued that for such breach, PSHS should pay PIRRA its lost profits, overhead contingency miscellaneous expense if Project C was completed, and a performance bond.

On December 8, 2010, the Technical Expert submitted his Final Report<sup>[55]</sup> on Project Ocular and Technical Inspection and Subsequent Technical Conference.

### ***Ruling of the Construction Industry Arbitration Commission***

On January 26, 2011, the CIAC rendered its Final Award, the dispositive portion of which reads:

WHEREFORE, the Tribunal renders its award in favor of Claimant (PIRRA) and against Respondent (PSHS), (a) holding it liable for delay in paying partial Billing No. 5 and in taking over Project A without any legal basis; (b) holding it liable for delay in submitting the revised drawings and extra work order to Claimant the following sums:

1. P1,273,001.64 as residual value of Partial Billing No. 5 for Project A;
2. P2,050,176.59 as reasonable compensation and actual damages due for the wrong termination of the Project C Contract;
3. P300,000.00 in moral damages;
4. P200,000.00 in exemplary damages;
5. P100,000.00 as attorney's fees; and
6. Costs of arbitration, including professional fee of the Technical Expert and transcription costs.

Within five (5) working days from his receipt of the Final Award, Claimant shall deliver to Respondent the following finished or fabricated items due to Respondent:

- (a) 61.86 square meters of steel awning windows that were replaced by glass frame sliding windows, valued at P400,099.73; and

(b) fabricated steel bars, steel awnings, windows with security grills and steel railings for Academic Building II, Phase I with a total value of P202,925.18.

Claimant shall submit his Compliance within five (5) working days from notice of this Final Award, showing proof of delivery to or receipt by Respondent of the finished or fabricated items. Respondent shall receive the same items upon delivery by the Claimant.

If Claimant fails to deliver or to tender delivery of the finished or fabricated items to Respondent within the period stated, the value of such items shall be deducted from the sums due to Claimant.

SO ORDERED.<sup>[56]</sup>

The CIAC decreed that PSHS had no basis in taking over Project A. It stressed that during the pendency of said project, PIRRA requested payment of its PB No. 5 based on substantial acceptance and completion with 94.09% accomplishment; in turn, PSHS created an Inspectorate Team for the turnover of the project. It noted that the punch listings of the Inspectorate Team, the COA inspection and its Report, were all made beyond the project completion date on August 22, 2009.

The CIAC also stressed that the COA inspection is not a condition precedent for the payment of any progress billing or for the acceptance of Project A; thus, the COA Report cannot be used to refuse or delay payment of PB No. 5. It likewise declared that the contract for Project A did not specify that the completion date on August 22, 2009 was due to the opening of classes in June 2010, and the notice of takeover did not elite PIRRA's purported delay as the cause of the takeover.

As regards Project C, the CIAC stated that PSHS failed to comply with the November 20, 2009 Joint Agreement that PSHS would submit revised drawings and issue a VO on Project C. It thus held that PSHS breached its obligations and invalidly terminated the contract for Project C. However, despite such invalid termination, the CIAC explained that PSHS may withdraw at will the construction of work, subject to indemnification for the expenses, work, and the uselessness PIRRA may have obtained, and damages.

The CIAC held that PIRRA was also entitled to moral damages as PSHS committed bad faith in refusing to submit the revised drawings and to issue the VO for Project C. It likewise

awarded exemplary damages because of PSHS' bad faith in refusing to perform its obligations under Project A and C contracts, in challenging the CIAC's jurisdiction, and in objecting to arbitrate. Lastly, it awarded attorney's fees on the ground that PIRRA was compelled to arbitrate to protect its interests; and that since exemplary damages was awarded, the costs of the arbitration, including the fee of the Technical Expert, and the transcription costs were granted to PIRRA.

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

Unsatisfied, PSHS filed with the CA a Petition for Review assailing the CIAC's Final Award.

Anent Project A, PSHS denied that it incurred delay in paying PB No. 5. It clarified that it never treated Project A as substantially completed as the creation of the Inspectorate Team was only to determine the work done and the project specifications that were implemented. It added that the parties may treat a project as substantially completed only when it reached a 95% accomplishment; since Project A showed a 94.09% accomplishment only, and after its supposed validation, such accomplishment was reduced to 92.21%, then it was justified in refusing to pay PB No. 5.

With regard to Project C, PSHS maintained that for PIRRA's abandonment of work and failure to comply with a valid instruction of the procuring entity, it terminated the contract for Project C. It also averred that PIRRA's claims for rental income (for the standby cost of its equipment affected by PSHS' supposed delay), fabricated steel bars, steel awnings windows with security grills and steel railings were without basis.

Moreover, PSHS argued that it is not liable for moral and exemplary damages as it had legal bases for refusing to pay PB No. 5 for Project A, and for terminating the contract for Project C. It likewise insisted that it is not liable for attorney's fees, and it should be PIRRA which should pay arbitration costs, the fee of the Technical Expert, and transcription costs.

PIRRA, on its end, countered that PSHS treated Project A as substantially completed when it received its request for substantial acceptance and completion on August 6, 2009. Such date was 13 days earlier than the completion date of the project (August 22, 2009). It also asserted that an Inspectorate Team is required only in cases of substantial compliance; and that PSHS must pay PB No. 5 since the items therein were already completed by PIRRA.

Furthermore, PIRRA alleged that PSHS did not validly terminate the contract for Project C. It maintained that PSHS breached the contract when it failed to submit the revised drawing



and issue a VO on Project C, giving rise to PIRRA's entitlement to damages.

On January 20, 2012, the CA rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition for review is PARTIALLY GRANTED. Accordingly, the January 26, 2011 Final Award of the Construction Industry Arbitration Commission (CIAC) is MODIFIED as follows:

1. Petitioner (PSHS) is ordered to pay respondent (PIRRA) the residual value of Partial Billing No. 5 in the amount of P706,077.28;
2. Petitioner is ordered to pay respondent the amounts of P1,019,399.59 representing the value of the 25.25% accomplishment of Project C, and P202,925.18 representing the value of fabricated steel bars, steel awnings, windows with security grills and steel railings;
3. The awards for rental income and lost profits from project C are deleted;
4. The awards for moral and exemplary damages are deleted;
5. The award for attorney's fees in the amount of P100,000.00 is affirmed; and
6. Petitioner is exempt from payment of the cost of filing fee and transcription cost; however, it shall jointly pay with the respondent the fees for the arbitrator and the technical expert.

In all other respects, the Final Award is hereby AFFIRMED.

SO ORDERED.<sup>[57]</sup>

With regard to Project A, the CA ruled that when PSHS created an Inspectorate Team and ordered an inspection for punch listing, it treated Project A as substantially completed. It noted that even the COA Report indicated that Project A was practically 100% complete, save for some minor deficiencies. Thus, it held that PSHS should be held liable for the PB No. 5 less the defective works.

Anent Project C, the CA decreed that PSHS validly terminated the contract for it. It held that during the pendency of Project C contract, PIRRA requested the suspension of work due to the relocation of the canteen site; PSHS approved this request. PIRRA requested another suspension, this time, for time suspension; PSHS denied this second request.

The CA reasoned that since there was no showing that the affected work fell on critical path, there was no reason for the second suspension of work. It noted that without PSHS' approval, PIRRA suspended work on Project C on October 12, 2009; thus, even before the November 20, 2009 Agreement (which CIAC used as basis in justifying PIRRA's work suspension), PIRRA already incurred delay on Project C. The CA added that PIRRA not only incurred delay but was also guilty of refusing to accept correspondences from PSHS and of failing to comply with the requirements for a VO.

Furthermore, the CA ruled that the CIAC erred in awarding rental income for PIRRA's equipment. It explained that PIRRA was the one which proceeded with the suspension of work on Project C; if its equipment became idle, PIRRA should bear the loss caused by their use or non-use. Also, it found PSHS not guilty of any act that would support the grant of moral and exemplary damages. It likewise held that both parties were liable for the fees of the Arbitrator and the Technical Expert as their respective claims were partly meritorious.

Nonetheless, the CA affirmed that PSHS is liable for the value of the work done on Project C because otherwise there would be unjust enrichment on the part of PSHS. It also sustained the award of the value of fabricated steel bars, steel awnings, windows with grills and steel ratings to PIRRA as there was no showing that the CIAC misappreciated facts in arriving at this technical finding. Lastly, it agreed that PIRRA was entitled to attorney's fees since it was compelled to litigate to protect its rights.

On July 23, 2012, the CA denied<sup>[58]</sup> PSHS' Motion for Reconsideration.

Thus, PSHS filed this Petition raising these grounds:

I.

WHEN THE JUDGMENT OF THE COURT OF APPEALS IS BASED ON A MISAPPREHENSION OF FACTS AND WHEN IT MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES, WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION, THE HONORABLE COURT MAY UNDERTAKE THE REVIEW AND RE-APPRECIATION OF THE EVIDENCE.

II.

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER TREATED PROJECT A AS SUBSTANTIALLY COMPLETED AND THAT IT IS LIABLE FOR THE RESIDUAL VALUE OF PARTIAL BILLING NO. 5.

III.

ALTHOUGH THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONER VALIDLY TERMINATED THE CONTRACT FOR PROJECT C, IT, HOWEVER, ERRED WHEN IT FOUND PETITIONER LIABLE TO PAY RESPONDENT THE VALUE OF THE WORK DONE SO FAR FOR PROJECT C IN THE AMOUNT OF P1,019,399.59.

IV.

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS LIABLE FOR THE VALUE OF THE FABRICATED STEEL BARS, STEEL AWNING WINDOWS WITH SECURITY GRILLS AND STEEL RAILINGS IN THE AMOUNT OF P202,925.18 FOR PROJECT C.

V.

THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S FEES IN FAVOR OF RESPONDENT.

VI.

THE FUNDS OF PETITIONER ARE EXEMPT FROM EXECUTION.<sup>[59]</sup>

### ***Petitioner's Arguments***

PSHS contends that the CA Decision is based on a misapprehension of facts, such that a recourse to the Court, through a Rule 45 Petition, is proper.

PSHS reiterates that it did not consider Project A as substantially completed, and that it is not liable for the residual value of PB No. 5. It further asserts that even assuming that there

was substantial completion of Project A, it is still not liable for the residual value of PP No. 5. It insists that after deducting from PB No. 5 the 30% mobilization fee, withholding tax; awning windows, liquidated damages, and plywood and lumber, PIRRA still owed PSHS P487,315.02.

As regards Project C, PSHS asserts that it already paid the value of the work done for Project C. It likewise claims that it is not liable for the value of the fabricated steel bars, steel awning windows with security grills and steel railings being claimed by PIRRA.

Finally, PSHS alleges that attorney's fees should not be awarded to PIRRA since the latter has no valid claim as far as PB No. 5 on Project A is concerned; and PSHS already paid the value of work done on Project C. It also posits that even if it is ultimately held liable for the residual value of PB No. 5 for Project A, and of the value of the work done on Project C, its funds, being government funds, cannot be seized under a writ of execution.

### ***Respondent's Arguments***

PIRRA counters that PSHS should be held liable for PB No. 5 because when PSHS created the Inspectorate Team, PSHS treated Project A as substantially completed. It also questions PSHS's belated submission of the Summary of Progress Billings when it filed a Motion for Reconsideration with the CA, and argues that PSHS' claim for overpayment is without merit. In fine, PIRRA argues that PSHS never contested its Monthly Certificate of Payment attached to its letter dated July 29, 2009, and which was submitted during the proceedings with the CIAC.

With regard to Project C, PIRRA maintains that PSHS invalidly terminated the contract as the latter failed to submit the required drawings and to issue a VO for the project. It insists that it was PSHS which incurred delay and breached the contract for Project C.

Lastly, PIRRA claims that it is entitled to moral and exemplary damages as PSHS unjustifiably failed to pay its PB No. 5 for Project A, and invalidly terminated the contract for Project C as well. It also claims that it is entitled to the value of the fabricated steel bar, awning windows with security grills and railing as well attorney's fees awarded by the CIAC, and which awards were affirmed by the CA.

### **Issues**

The Petition seeks a review of the factual findings of the CIAC and the CA on: a) whether PSHS treated Project A as substantially completed such that it is liable for the residual value of PB No. 5; b) whether PSHS validly terminated the contract for Project C; c) whether PSHS is liable for the value of the steel bars, awning windows with security grills and railings fabricated by PIRRA; and for attorney's fees.

## **Our Ruling**

The Court denies the Petition.

Settled is the rule that the findings of fact of quasi-judicial bodies, which have acquired expertise on specific matters within their jurisdiction, are generally accorded respect and finality, especially when affirmed by the CA.<sup>[60]</sup> As such, in this case, the Court upholds the factual findings of the CIAC, a quasi-judicial body that has jurisdiction over construction disputes, that are affirmed by the CA and are fully supported by the evidence on record.<sup>[61]</sup>

First, the Court sustains the finding that PSHS accepted and treated Project A as a substantially completed project, and for which reason, PSHS' takeover thereof is of no moment.

When PIRRA requested substantial acceptance and completion of Project A, PSHS did not object to such a request. It acted upon it and even created an Inspectorate Team for punch listing, and for the purpose of determining PIRRA's PB No. 5. Notably, PSHS repeatedly referred to PB No. 5 as the final billing for Project A. In fact, PSHS initially expressed its willingness to pay only to put it on hold because of the COA Report. Nonetheless, as correctly explained by the CIAC, such Report cannot affect PSHS' obligation to pay PIRRA because the existence of the defective or undelivered items was not an excuse to avoid payment of the progress billing, as the payment was due on the performed items that were completed or were otherwise performed, save for the defects.<sup>[62]</sup>

In addition, as provided for under Article 1234 of the Civil Code, if the obligation had been substantially performed in good faith, the obligor, in this case, PIRRA, may recover as if it had strictly and completely fulfilled its obligation, less the damages suffered by the obligee or in this instance, PSHS.<sup>[63]</sup>

More importantly, consistent with the foregoing rule that the Court accords respect and finality on the factual findings of the CIAC, as affirmed by the CA, the Court sustains the

finding that PSHS treated Project A as substantially completed; thus, it is liable to pay PIRRA the residual value of PB No. 5, computed by the CA as follows:

(a) 10% retention for defective items	[P]127,300.1 6
(b) Partial payment on power distribution line that claimant (PIRRA) failed to deliver	391,000.00
(c) 20 deleted/uninstalled lighting fixtures at P2,431.21 each	<u>48,624.20</u>
Total deductions	[P]566,924.3 6
<b>Net Due to Claimant on Partial Billing No. 5</b>	<b><u>706,077.29</u></b>
Value of Partial Billing No. 5	P1,273,001.6 4 <sup>[64]</sup>

The foregoing computation is consistent with that contained in the body of the CIAC's Final Award. However, as noted by the CA, in the dispositive portion of its Final Award, the CIAC indicated the value of PB No. 5 without deductions. As a result, the CA correctly modified the amount due, which is the Net Value of PB No. 5 amounting to P706,077.29.

Second, the Court affirms the finding that PSHS is liable to pay the value of the steel bars, steel awning windows with security grills and steel railings fabricated by PIRRA. It being apparent that the CIAC arrived at this finding only after a thorough consideration of the adduced evidence, and which finding was in fact duly affirmed by the CA, the same may no longer be reviewed by the Court.<sup>[65]</sup>

Additionally, as discussed by the CA, "[t]here is likewise no showing of competent evidence to prove that the [CIAC] misappreciated certain facts in arriving at this technical finding. We thus give weight also to such factual finding of the [CIAC]."<sup>[66]</sup> Since the CIAC possesses such expertise in construction arbitration, and its finding on this issue is well supported by evidence and was sustained by the CA, the Court sees no reason to disturb the same.<sup>[67]</sup>

Third, the Court agrees with the CA that the contract for Project C was validly terminated.

It is worth stressing that the CIAC and the CA arrived at varying conclusions on whether PSHS validly terminated the contract for Project C. On one hand, the CIAC opined that PSHS breached its obligation under this contract when it failed to submit the revised drawings and to issue the VO per the parties' Agreement on November 20, 2009. On the other hand, the CA ruled that PSHS validly terminated the contract because PIRRA suspended work on the project as early as October 12, 2009 without any approval from

PSHS, and as such, PIRRA was in default even prior to the November 20, 2009 Agreement.

In the November 20, 2009 Agreement, the parties agreed on how to proceed with the contract for Project C, and the pertinent portions of their Agreement read:

1. [PSHS] together with its consultant shall visit the project site and the latter shall prepare a detailed drawing for the variation order to be submitted to [PIRRA].
2. [PIRRA], based on the detailed drawing submitted by Consultant, shall prepare a proposal for variation order.
3. [PSHS] shall evaluate the variation order.
4. [PIRRA] shall submit revised payment schedule (Bar Chart) for [PSHS]'s approval.
5. [PSHS] shall process Billing 1 and 2 of the project.<sup>[68]</sup>

While records reveal that PSHS failed to submit the revised drawing for the preparation of a VO, PIRRA, on its end, is not entirely faultless. This is because after the November 20, 2009 Agreement, PIRRA no longer coordinated with PSHS. Neither did it explain why it did not demand from PSHS the submission of the needed drawing, as observed by the CA as follows:

Moreover, We take note of petitioner's (PSHS) allegations that it already prepared the required drawings but did not release them to respondent (PIRRA) because (a) the respondent did not anymore communicate with the petitioner and refused to receive written communications from the latter; (b) respondent refused to receive petitioner's instruction to explain why a sagged beam should not be demolished or corrected; (c) the negative attitude of respondent; and (d) the respondent already filed a complaint against the officials of petitioner before the Ombudsman. Indeed, the record shows that several letters from the petitioner were refused acceptance by the respondent.<sup>[69]</sup>

Thus, similar to their non-compliance with their October 2, 2009 Joint Agreement, both

parties failed to abide by their November 20, 2009 Agreement. Such being the case, PIRRA and PSHS were brought back to their previous situation as if the November 20, 2009 Agreement was not entered. Thus, the suspension of work as of October 12, 2009 made by PIRRA on Project C, without PSHS' approval, cannot be ignored.

Pursuant to the General Conditions of Contract, PSHS may terminate the contract if PIRRA incurs delay, abandons the project, causes stoppage of work without the authority of PSHS, among other grounds, viz.:

#### 15. Termination for Default of Contractor

15.1. The Procuring Entity shall terminate this Contract for default when any of the following conditions attend it is implementation:

15.2 Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870, regardless of whether or not previous warnings and notices have been issued for the contractor to improve his performance;

15.3 Due to its own fault and after this Contact time has expired, the Contractor incurs delay in the completion of the Work after this Contact has expired; or

15.4. The Contractor:

(a) abandons the contact Works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity[.]

x x x x

#### 17. Termination for Other Causes

x x x x

17.2 The Procuring Entity or the Contractor may terminate this contract if the other party causes a fundamental breach of this Contract:

17.3 Fundamental breaches of Contract shall include, but shall not be limited to, the following:



(a) The Contractor stops work' for twenty eight (28) days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the Procuring Entity's Representative;<sup>[70]</sup>

Indeed, by reason of PIRRA's delay, suspension of work without any approval from PSHS, and abandonment of the project, PSHS has sufficient basis to terminate the contract for Project C.

The Court, nonetheless, agrees with the CA that PIRRA is entitled to the value of the work done on Project C pursuant to the principle of *quantum meruit* and to avoid unjust enrichment on the part of PIRRA. "*Quantum meruit* means that, in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves x x x as it is unjust for a person to retain any benefit without paying for it."<sup>[71]</sup> Here, records show that PIRRA had a 25.25 % accomplishment on Project C. To deny payment thereof would result in unjust enrichment of PSHS at the expense of PIRRA. Hence, PSHS must pay PIRRA the value of the work done on Project C.

Fourth, the Court affirms the award of attorney's fees since PIRRA was compelled to file this case to recover what is rightfully due to it and to protect its interests relating to its contracts with PSHS.<sup>[72]</sup>

Finally, the Court holds that PSHS,' contention - that even if it is held liable for the residual value of PB No. 5 for Project A, and of the value of the work done on Project C, its funds cannot be seized as they are government funds - is untenable. The State, through PSHS, had received and accepted the services rendered by PIRRA. It should therefore be held liable to pay the latter for otherwise a grave injustice would be caused to PIRRA, and there would be unjust enrichment on the part of the State. Indeed, justice and equity demand that contractors be duly paid for the construction work they had done on government projects.<sup>[73]</sup>

In view of the foregoing, the Court finds that the CA committed no reversible error in ruling that PSHS is liable to pay PIRRA (a) the residual value of PB No. 5 for Project A; (b) the value of the fabricated steel bars, steel awning windows with security grills and steel railings, and of the work done for Project C; and (c) attorney's fees. Pursuant to prevailing jurisprudence, the Court imposes interest on all monetary awards at six percent (6%) *per annum* computed from the time they attained finality until full payment thereof.<sup>[74]</sup>

**WHEREFORE**, the Petition is **DENIED**. The Decision dated January 20, 2012 and

Resolution dated July 23, 2012 of the Court of Appeals in CA-G.R. SP No. 118152 are **AFFIRMED with MODIFICATION** that the monetary awards shall earn interest at the rate of 6% *per annum* from the time the awards become final until their full satisfaction.

**SO ORDERED.**

*Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.*

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<sup>[1]</sup> CA *rollo*, pp. 1138-1171; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate justice Franchito N. Diamante.

<sup>[2]</sup> Id. at 11 -53; penned by Sole Arbitrator Roberto N. Dio.

<sup>[3]</sup> Id. at 1278-1280.

<sup>[4]</sup> Id. at 631.

<sup>[5]</sup> Id. at 127.

<sup>[6]</sup> Id. at 318-344.

<sup>[7]</sup> Id. at 346.

<sup>[8]</sup> Id. at 177-180.

<sup>[9]</sup> Id. at 347.

<sup>[10]</sup> Id. at 232. It is, however, noted that under the CIAC's Final Award, it is stated that the contract for Project A commenced on December 10, 2008; id. at 20.

<sup>[11]</sup> Id. at 181-182.

<sup>[12]</sup> Id. at 187.

<sup>[13]</sup> Id. at 183-197.

<sup>[14]</sup> Id. at 633.

<sup>[15]</sup> Id. at 361.

<sup>[16]</sup> Id. at 199.

<sup>[17]</sup> Id. at 200.

<sup>[18]</sup> Id. at 201.

<sup>[19]</sup> Id. at 202.

<sup>[20]</sup> Id. at 205.

<sup>[21]</sup> Id. at 207.

<sup>[22]</sup> Id. at 223.

<sup>[23]</sup> Id. at 208.

<sup>[24]</sup> Id. at 321.

<sup>[25]</sup> Id. at 301.

<sup>[26]</sup> Id. at 210-218.

<sup>[27]</sup> Id. at 209.

<sup>[28]</sup> Id. at 219.

<sup>[29]</sup> Id. at 218.

<sup>[30]</sup> Id. at 222-225.

<sup>[31]</sup> Id. at 334-336.

<sup>[32]</sup> Id. at 265.

<sup>[33]</sup> Id. at 261-264.

<sup>[34]</sup> Id. at 266.

<sup>[33]</sup> Id. at 289.

<sup>[36]</sup> Id. at 267-268.

[37] Id. at 269.

[38] Id. at 270.

[39] Id. at 271-272.

[40] Id. at 279.

[41] Id. at 208.

[42] Id. at 300.

[43] Id. at 301.

[44] Id. at 209.

[45] Id. at 281.

[46] Id. at 317.

[47] Id. at 337-339.

[48] Id. at 458-459.

[49] Id. at 462, 464-465.

[50] Id. at 453.

[51] Id. at 465-466.

[52] Id. at 484-487.

[53] Id. at 659.

[54] Id. at 602-609.

[55] Id. at 667-679.

[56] Id. at 52-53.

[57] Id. at 1170-1171.

<sup>[58]</sup> *Id.* at 1278-1280.

<sup>[59]</sup> *Rollo*, pp. 36-37.

<sup>[60]</sup> *Malayan Insurance Co., Inc. v. St. Francis Square Realty Corporation*, G.R. Nos. 198916-17 & 198920-21, January 11, 2016.

<sup>[61]</sup> *National Housing Authority v. First United Constructors Corporation*, 672 Phil. 621, 658, 666 (2011).

<sup>[62]</sup> *CA rollo*, p. 32.

<sup>[63]</sup> See *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, 572 Phil. 494, 509 (2008).

<sup>[64]</sup> *CA rollo*, pp. 1156-1157; emphasis supplied.

<sup>[65]</sup> *National Housing Authority v. First United Constructors Corporation*, *supra* note 61 at 666.

<sup>[66]</sup> *CA rollo*, p. 1168.

<sup>[67]</sup> *Philippine Race Horse Trainer's Association, Inc. v. Piedras Negras Construction and Development Corporation*, G.R. No. 192659, December 2, 2015.

<sup>[68]</sup> *CA rollo*, p. 209.

<sup>[69]</sup> *Id.* at 1164.

<sup>[70]</sup> *Id.* at 831-833;

<sup>[71]</sup> *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corporation (Resolution)*, 724 Phil. 508, 518 (2014).

<sup>[72]</sup> *Department of Public Works and Highways v. Foundation Specialists, Inc.*, G.R. No. 191591, June 17, 2015.

<sup>[73]</sup> *Department of Health v. C.V. Canchela & Associates Architects (CVCAA)*, 511 Phil. 654, 678-681 (2005).

<sup>[74]</sup> *ACS Development & Property Managers, Inc. v. Montaire Realty and Development Corp.*,

G.R. No. 204423. September 14, 2016

G.R. No. 195552 (Resolution), April 18, 2016.

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