

MINDANAO PORTLAND CEMENT CORPORATION, PETITIONER-APPELLEE, VS. MCDONOUGH CONSTRUCTION COMPANY OF FLORIDA, RESPONDENT-APPELLANT.

G.R. No. L-23390. April 24, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On February 13, 1961, petitioner Mindanao Portland Cement Corporation and respondent McDonough Construction Company of Florida, U.S.A., executed a contract[1] for the construction by the respondent for the petitioner of a dry Portland cement plant at Iligan City. In a separate contract, Turnbull, Inc. - the "engineer" referred to in the construction contract - was engaged to design and manage the construction of the plant, supervise the construction, schedule deliveries and the construction work as well as check and certify all contractors' progress and fiscal requests for payment.

Alterations in the plans and specifications were subsequently made during the progress of the construction as set forth in Addenda 2 to 8 thereto. Due to this and to other causes deemed sufficient by Turnbull, Inc., extensions of time[2] for the termination of the project, initially agreed to be finished on December 17, 1961, were granted.

Respondent finally completed the project on October 22, 1962, except as to delivery of certain spare parts for replacements and installation of floodlamps; and on November 14, 1962, these latter items were complied with.

As to the Addenda in the plans and specifications, Addenda 2, 3 and 7 were not signed by petitioner altho the same were forwarded to it, after having been signed by respondent; these are still in its possession. Addenda 4, 5 and 6 were signed by petitioner and respondent.[3]

Differences later arose. Petitioner claimed from respondent damages in the amount of more than P2,000,000 allegedly occasioned by the delay in the project's completion. Respondent in turn asked for more than P450,000 from petitioner for alleged losses due to cost of extra work and overhead as of April 1962. A conference was held on or about May 29, 1962 between petitioner and Turnbull, Inc., on one hand, and respondent on the other, to settle the differences aforementioned, but no satisfactory results were reached.

Petitioner sent respondent, on August 8, 1962, and again on September 24, 1962, written invitations to arbitrate, invoking a provision in their contract regarding arbitration of disputes.

Instead of answering said invitations, respondent, on November 14, 1962, with Turnbull, Inc.'s approval, submitted to petitioner for payment its final statement of work accomplished, asking for P403,700 as unpaid balance of the consideration of the contract.

Petitioner, on January 29, 1963, filed the present action in the Court of First Instance of Manila to compel respondent to arbitrate with it concerning alleged disputes arising from their contract. It averred inter alia that deletions and additions to the plans and specifications were agreed upon during the progress of the construction; that disagreement arose between them as to the cost of the additional or extra work done, and respondent's

deviations from some agreed specifications; that petitioner claims having overpaid respondent by P33,810.81; that petitioner further claims to have suffered damages due to respondent's delay in finishing the project; that respondent, on the other hand, still claims an unpaid balance of about P403,700; that these matters fall under the general arbitration clause of their contract; and that respondent has failed to proceed to arbitration despite several requests therefor.

Respondent filed, on February 23, 1963, its answer. It denied the alleged existence of disagreement between the parties. And as special defense, it alleged that its claim for P403,700 was not disputed and that the respective claims for damages should be resolved by Turnbull, Inc., pursuant to the exception in the arbitration clause of the construction contract.

After stipulation of facts and submission of documentary evidence, the court, on May 13, 1964, rendered its decision finding that dispute or disagreement obtained between the parties with respect to their rights and obligations under their contract and that the same should be submitted to arbitration pursuant to par. 39 of said contract - the arbitration clause - and to Republic Act 876 - the Arbitration Law. And thus it ordered petitioner and respondent to proceed to arbitration in accordance with the terms of their contract.

Not satisfied with the ruling, respondent appealed therefrom to Us to raise the purely legal question of whether under these facts respondent is duty-bound to submit to arbitration.

The provision of the contract on "Arbitration of Disagreements" (par. 39) says:

"39. In the event of disagreement between the Owner and the Contractor in respect of the rights or obligations of either of the parties hereunder except the interpretation of the plans and specifications and questions concerning the sufficiency of materials, the time, sequence and method of performing the work, which questions are to be finally determined by the Engineer, they shall submit the matter to arbitration, the Owner choosing one arbitrator, the Contractor one, and the two so chosen shall select a third. The decision of such arbitrators or a majority of them shall be made in writing to both parties and when so made shall be binding upon the parties hereto." (Underscoring supplied)

Respondent, herein appellant, contends first, that there is no showing of disagreement; and second, that if there is, the same falls under the exception, to be resolved by the engineer.

As to the first point, the fact of disagreement has been determined by the court below upon the stipulation of facts and documentary evidence submitted. In this appeal involving pure questions of law, the above finding should not be disturbed. Furthermore, the existence of disagreement is plainly shown in the record. Respondent admits the existence of petitioner's claim but denies its merit.[4] It likewise admits that petitioner has refused to pay its claim for the unpaid balance of the price of the contract.[5] Paragraph 8 of the stipulation of facts shows the dispute of the parties regarding their mutual claims and that said dispute remained unsettled:

"8. That on or about May 29, 1962, a conference was held between petitioner and Turnbull, Inc., on the one hand, and respondent, on the other, to settle their differences involving the claim for damages of petitioner in the amount of more than P2,000,000, occasioned by the delay in the completion of the project, and the claim of respondent for losses due to the cost of extra plant and overhead in the amount of more than P450,000, as of April, 1962, but no satisfactory results were reached;" (Underscoring supplied)

Regarding the second point, the parties agreed by way of exception that disagreements with respect to the following matters shall be finally resolved by the engineer, instead of being submitted to arbitration: (1) The interpretation of plans and specifications; (2) sufficiency of materials; and (3) the time, sequence and method of performing the work.

The disputes involved here, on the other hand, are on (1) the proper computation of the total contract price,[6] including the cost of additional or extra works;[7] and (2) the liability for alleged delay in completing the project and for alleged losses due to change in the plans and specifications.

Now from the contract itself We can determine the scope of the exceptions aforementioned. Thus, pars. 19 to 22 of its General Conditions deal with the subject "Interpretation of Plans and Specifications". And thereunder, the engineer is empowered to correct all discrepancies, errors or omissions in the plans and specifications; to explain all doubts that may arise thereon; and to furnish further plans and specifications as may be required. No mention is made therein as to the cost of the project; this matter is covered by the engineering contract, under which Turnbull, Inc.'s function is limited to making estimates of costs only.

"Sufficiency of materials" and "method of performing the work" - under the second and third exceptions abovementioned - are treated in pars. 2 to 6 of the General Conditions under the heading "QUALITY OF WORKS AND MATERIALS". Turnbull, Inc., is therein empowered to determine the amount, quality, acceptability and fitness of the several kinds of work and materials furnished and to reject or condemn any of them which, in its opinion, does not fully conform to the terms of the contract. In the present case, the dispute is not as to the quality of the materials or of the kind of work done.

"Time" and "Sequence of Work" are covered by pars. 9 to 17 of the General Conditions under the heading "SCHEDULING". Neither would the disputes fall under these exceptions. Turnbull, Inc.'s power here is to schedule the deliveries and construction work and expedite the same so that the project can be finished on time. It is also authorized, under par. 15, to determine whether any eventuality is sufficient enough to warrant an extension of time and if so, to determine the period of such extension. The delay envisioned here is one that occurs during the progress of the work which disturbs the pre-scheduling plan, thus necessitating an extension of the over-all dead-line precisely to prevent respondent from going beyond the same. Turnbull, Inc.'s function goes no further than to calculate and fix the period of extension. But the delay petitioner alleged is different: it is delay beyond the last date of extension fixed by Turnbull, Inc. Clearly, the question of liability therefor is not embraced in the exception.

To none of the exceptions then do the disagreements in question belong; the rule of arbitration therefore applies. The parties in fact also stipulated in their contract, under "EXTRA WORK", that the cost of extra work to be paid shall be subject to negotiation.[8] This negates the proposition that Turnbull, Inc.'s cost estimates appearing in Addenda 2, 3 and 7 are final and conclusive.

The reason, moreover, for the exceptions - interpretation of plans and specifications; sufficiency of materials; sequence, time and method of performing the work - is the need to decide these matters immediately, since the progress of the work would await their determination. The same is not true as to matters relating to the liability for delay in the project's completion; these are questions that the engineer does not have to resolve before the project can go on. Consequently, We view that it is not included in the exceptions, as indeed the related provisions of their agreement indicate.

Since there obtains herein a written provision for arbitration as well as failure on respondent's part to comply therewith, the court a quo rightly ordered the parties to proceed to arbitration in accordance with the terms of their agreement (Sec. 6, Republic Act 876). Respondent's arguments touching upon the merits of the dispute are improperly raised herein. They should be addressed to the arbitrators. This proceeding is merely a summary remedy to enforce the agreement to arbitrate. The duty of the court in this case is not to resolve the merits of the parties' claims but only to determine if they should proceed to arbitration or not. And altho it has been ruled that a frivolous or patently baseless claim should not be ordered to arbitration, it is also recognized that the mere fact

that a defense exists against a claim does not make it frivolous or baseless.[9]

WHEREFORE, the judgment appealed from, ordering the parties to proceed to arbitration according to the terms of their agreement, is hereby affirmed, with costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Said agreement was designated as Construction Contract III, Job 5910 of Turnbull, Inc.

[2] The first extension was up to February 1, 1962; the last up to June 3, 1962. RA, pp. 332, 376.

[3] Addendum 1 was without cost (Respondent's Brief, p. 35).

[4] Appellant's brief, pp. 42-44.

[5] Appellant's brief, p. 22; Petition, Annex B-2, RA, pp. 313-315.

[6] Respondent's computation is based on the original contract price of P3,867,454.00 whereas petitioner's computation is probably based on the cost of the actual work done under the unaltered plans and specifications which amounts to P3,534,121.00. There is a difference of P33,333.00.

[7] The additional work, as evidenced by Add. 2 to 8, totals P148,258.00. Respondent claims this whole amount although petitioner has not apparently approved Add. 2, 3 and 7 which amount to P132,581.00. The latter claims an overpayment since the total advance payments it made amounted to P3,612,012.00.

[8] Par. 23, General Conditions, provides: "When ordered by the Engineer in writing, extra work shall be done by the Contractor and paid for in accordance with the price negotiated for the extra work. No claims for extra work shall be allowed unless such work shall have been ordered prior to its commencement, or unless such claims shall be presented in writing on or before the tenth day of the month following that in which such work shall be completed." (Underscoring provided)

[9] Butte Miners' Union No. 1, etc. vs. Anaconda Co., 159 F. Supp. 431, affirmed in 267 F. 2d. 940.

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