

MAVIMA GROUP INCORPORATED, PETITIONER, VS. CHRISTIAN BIBLE CHURCH OF THE PHILIPPINES, INC. AND PRUDENTIAL GUARANTEE AND ASSURANCE, INC., RESPONDENTS.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is a Petition for Review[1], filed pursuant to Rule 43 of the Revised Rules of Court, seeking to reverse the Final Award dated August 16, 2013[2] issued by the Construction Industry Arbitration Commission in CIAC Case No. 46-2012.

Stripped of unnecessary details, the antecedent facts are the following:

Around October 2009, respondent Christian Bible Church of the Philippines Inc. (CBCPI), a religious corporation, hired Eduardo S. Casares Architects and Associates (ECCA) to design what was eventually known as the Construction of the Proposed Christian Bible Church of the Philippines Addition and Renovation Works to be located at Nos. 72 and 74 Talayan Road corner Maria Clara Street, Talayan Village, Quezon City.

A bidding for the construction of the project was conducted and petitioner Mavima Group Incorporated (Mavima) won with the lowest bid. Several negotiations between respondent CBCPI and petitioner Mavima ensued until finally, on September 19, 2011, CBCPI and Mavima executed the Construction Contract[3] based on the agreed bid price of P95,757,183.52. The work to be performed was supposed to commence not later than on October 1, 2011 and to be completed not later than on November 30, 2012.

The project however proved to be riddled with problems as CBCPI's neighbors and the Talayan Ladies Association were opposed to the construction project. This situation was unfortunate because the acquisition of the neighbor's consent was claimed by petitioner Mavima to be one of the requirements for the issuance of a barangay clearance for the construction of the project. Moreover, the design of the project violated the height restrictions of the Talayan Village in the Quezon City Zoning Ordinance.

In response to the issues, Pastor Albert See, a representative of CBCPI, instructed ECCA to reduce the height of the building from more than 20 meters to only 10 meters. Pastor Albert See then assured petitioner Mavima that the revised plan was already submitted to the barangay captain and that neighbors of respondent CBCPI would be informed about the revised plan. Relying on Pastor Albert See's representations, petitioner Mavima performed some additional works, as instructed by Pastor Albert See, such as restoration of fence and rear portion of the church, construction of additional fences, parking area development and re-installation of gate in the area.

As the project continued to be burdened with problems, Pastor Albert See met with Engr. Juancho Maglalang, the vice president and managing director of petitioner Mavima, to discuss alternatives to the project such as moving the project to a different location, the execution of a new contract and the termination of the existing one.

The events that transpired thereafter were debated upon by the parties before the arbitration commission. CBCPI claimed that it was exploring the possibility of mutually terminating the contract but that the parties did not agree

with the computation of the refund of CBCPI's down payment/advance payment to Mavima. As there was no agreement to terminate the project, CBCPI directed Mavima to finish the project but, instead of finishing the project, petitioner Mavima abandoned the project. On the other hand, Mavima argued that CBCPI already terminated the contract.

Petitioner Mavima received a Notice of Default dated October 10, 2012 from respondent CBCPI. Less than a month later, or on November 6, 2012, respondent CBCPI filed a Request for Arbitration and Complaint with CIAC, claiming against Prudential Guarantee and Assurance, Inc., herein petitioner contractor Mavima and Romeo Vinco (president of Mavima Group Incorporated), refund of down payment, liquidated damages, additional costs and escalation to complete the project, reimbursement of premiums and other costs/charges, moral damages, exemplary damages, legal interest and cost of money, attorney's fees and litigation expenses, plus filing and arbitration fees. Petitioner Mavima and Prudential Guarantee and Assurance, Inc. presented their counter-claims and cross-claims.

On August 22, 2013, the CIAC issued its challenged Final Award, pertinent portion of which reads as follows:

“IV. AWARD

WHEREFORE, award is hereby made as follows:

Description

Claim

Award

Full refund of Down payment / advance payment

P19,151,436.70

19, 151, 436.7

Liquidated damages

P37,249,544.39

0.00

Additional costs to complete and escalation

P17,600,000.00

0.00

Reimbursement of premiums and other costs/ charges

P340,516.09

0.00

Moral damages

P250,000.00

0.00

Exemplary damages

P250,000.00

0.00

Legal interest and/or cost of money

P2,298,172.40

0.00

Attorney's fees and costs of arbitration

P1,000,000.00

0.00

TOTAL CBCPI

P78,139,669.58

19, 151,436.71

Award to Respondent MAVIMA

-1, 121, 071.52

Net Award to Claimant

18, 030, 365.19

Cost of Arbitration chargeable to MAVIMA

698,106.56 -

460,612.61

237, 493.95

Award Chargeable to MAVIMA

18, 267, 859.14

Cost of Arbitration payable to PGAI

2, 663.83

-2, 663.83

TOTAL AWARD TO CLAIMANT

18, 265, 195.31

RESPONDENT MAVIMA

Delay damages

P6,445,020.00

0.00

Work accomplishment

P3,664,937.07

1, 121, 071.52

Additional VAT, Withholding and City taxes

P1,156,959.20

0.00

Additional works

P282,471.16

0.00

Unrealized income

P10,453,915.50

0.00

Exemplary damages

P1,500,000.00

0.00

Attorney's fees

P1,000,000.00

0.00

TOTAL MAVIMA

P24,513,303.03

1, 121, 071.52

Cost of Arbitration

237, 493.95

Net Award to Respondent MAVIMA

883, 577.57

Cross Respondent VINCO

Cost of Arbitration

0.00

0.00

Total Award to Cross Respondent VIMCO

0.00

0.00

Cross Claimant PGAI

Attorney's fees

P300,000.00

0.00

Cost of Arbitration

2, 663.83

2, 663.83

Net Award PGAI

2, 663.83

Cross Claimant/Respondent PGAI is awarded P2,663.83.

No award or charges to Respondent Vinco.

Claimant is awarded the net amount of P18,267,859. Claimant however is required to refund the arbitration fee of P2,663.83 to PGAI.

Claimant is ordered to pay PGAI the amount of P2,663.83.

Respondent therefore is ordered to pay the amount of P19,151,436.71 less the amount of accomplishment of P1,121,071.52, plus the cost of arbitration chargeable of P237,493.95 or a total of P18,267,859.14 to Claimant CBCPI within fifteen days from the promulgation of this award.

Claimant CBCPI is ordered to pay Cross Respondent PGAI the amount of P2,663.83 within 15 days from the promulgation of this award.

The award shall carry an interest of six percent (6%) per annum from the date of this Award until the same becomes final and executory and a further six percent (6%) per annum from finality of the award until the same is paid in full.

SO ORDERED.”[4]

Not in conformity with CIAC's award, the petitioner filed the instant appeal, raising the following issues and/or assignment of errors, to wit:

I.

THE ARBITRAL TRIBUNAL ERRED IN LIMITING MAVIMA'S AWARD TO WORK ACCOMPLISHMENT AND REJECTING THE CLAIM FOR UNREALIZED INCOME IN THE AMOUNT OF P10,453,915.50.

II.

THE ARBITRAL TRIBUNAL ERRED IN NOT AWARDING THE CLAIM FOR ADDITIONAL WORK IN THE AMOUNT OF P282,471.16 IN FAVOR OF MAVIMA.

III.

THE ARBITRAL TRIBUNAL ERRED IN NOT AWARDING DELAY DAMAGES IN THE AMOUNT OF P6,444,020.00 IN FAVOR OF MAVIMA.[5]

At the outset, considering that respondent CBCPI filed a Comment with Motion to Dismiss[6] based on petitioner Mavima's supposed violation of Section 7 of Rule 43 of the Rules of Court, in relation to Section 6(c) of Rule 43 of the same Rules of Court, we shall first discuss the technical and procedural aspect of this case.

Section 6(c) of Rule 43 of the Rules of Court mandates that the petition shall be accompanied by a "clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers". In relation thereto, Section 7 of Rule 43 of the Rules of Court states in part that the failure of the petitioner to comply shall be sufficient ground for the dismissal of the petition.

We find that, although petitioner Mavima attached a certified true copy of the judgment appealed from, along with some other documents, petitioner Mavima failed to attach several documents in support of its allegations and assignment of errors. Notwithstanding this procedural lapse on the part of petitioner Mavima, in order to serve the higher interest of justice that the case be decided on the merits, especially considering that the relevant documents adverted to by respondent CBCPI in its Comment with Motion to Dismiss were eventually included in the record of the case on appeal, we find it prudent to brush aside technical lapses and, instead, let the substantial aspects of the case prevail.

Hence, we now delve into the substantial aspects or merits of the case.

After a careful scrutiny of the allegations of the parties and of the voluminous record of the case, we find that the assertions of petitioner Mavima are unconvincing and devoid of legal grounds to stand on.

In its first assignment of error, petitioner prays for an award of unrealized profits in the amount of P10,453,915.50. Firstly, petitioner Mavima imputes fault on respondent CBCPI for failure to obtain a barangay clearance because CBCPI allegedly did not even show that it consulted the residents before proceeding with the project. If efforts were exerted by the CBCPI towards its neighbors, these were either too late or simply not enough to placate the neighbors and obtain their consent. As a result, the barangay clearance cannot be issued and petitioner Mavima did not realize its expected profits. Secondly, the failure of the construction plan to conform with the zoning ordinance was also allegedly the fault of CBCPI and ECCA. If CBCPI was not at fault, it was, at the very least, allegedly in bad faith. Thirdly, petitioner Mavima sets forth the proposition that the September 11, 2011 Construction Contract was already terminated. Consequently, the legal consequences attached to the termination, such as the award of unrealized income, are supposed to apply.

In its Comment (with Motion to Dismiss) dated December 18, 2013,[7] respondent CBCPI explained that the application for barangay clearance was still pending at the time of the arbitration proceedings and that CBCPI coordinated and cooperated with the barangay. It was allegedly petitioner Mavima which abandoned the project and which abandonment was the ultimate reason why the project could not proceed. As to the height of the project, respondent CBCPI pointed out that, at the time of the bidding, the parties knew that the height of the project was 25.9 meters and, thus, petitioner Mavima should have known that it would have to secure a height exemption for the project from the agencies concerned.

We find that petitioner Mavima is not entitled to unrealized profits.

Under Articles 2199[8] and 2200[9] of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done. There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him.[10] The second kind is likewise referred to as "ganacias frustradas" or "lucrum cessans"[11]. The injured party must produce the best evidence of which his case is susceptible and, if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but, for the defendant's wrongful act, he is entitled to recover.[12]

Prescinding from the foregoing, an award for unrealized income may be had for the purpose of repairing a "wrong that has been done". It is based on the other party's "wrongful act". No such wrongful act is however present in the case at bench.

The respondent CBCPI cannot be faulted for the fact that the neighbors' consent cannot be obtained as this is outside its will and control. As evidence shows, CBCPI exerted all efforts to secure the consent of the neighbors. Whether merely for peace within the community as petitioner Mavima suggests or for the actual acquisition of the neighbors' consent for the construction of the project, it does not matter as what is important is that CBCPI endeavored to obtain the agreement of its neighbors. This is a far cry from the acts of petitioner Mavima who, as the arbitration commission found, took the role of a "mere observer"[13].

The issue on the height restriction likewise cannot be blamed on respondent CBCPI as petitioner Mavima should have been well-aware of the height of the project when it took part in the bidding. Petitioner Mavima cannot thus be considered as coming to this Court with clean hands. According to Article 1412 (1) of the Civil Code, the guilty parties to an illegal contract cannot recover from one another and are not entitled to an affirmative relief because they are in *pari delicto* or in equal fault. The doctrine of *in pari delicto* is a universal doctrine that holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation; and where the parties are in *pari delicto*, no affirmative relief of any kind will be given to one against the other.[14] That no fault can be imputed on respondent CBCPI is even more apparent with the statement of facts[15] given by the petitioner Mavima itself, therein narrating that respondent CBCPI eventually reduced the height of the project to comply with the zoning ordinance.

As a final recourse, petitioner Mavima also based its claim for unrealized profit on its belief that the September 11, 2011 Construction Contract has been terminated. Such termination is premised on respondent CBCPI's letter dated June 4, 2012[16] wherein the respondent CBCPI, addressing petitioner Mavima, stated in part that, as agreed by the parties, the construction contract with the company will be terminated.

A study of the letter dated June 4, 2012 however reveals that this letter was merely an attachment to an email dated June 3, 2012 sent to petitioner Mavima by Pastor Albert See. The email dated June 3, 2012[17] apprised Mavima that the letter Mavima requested is attached to the email. That the letter was sent to petitioner Mavima, not upon the own volition of respondent CBCPI, is supported by an email dated June 2, 2012[18] sent by Romeo Vinco to CBCPI, requesting for a formal letter of CBCPI's desire to terminate the Construction Contract. Both parties are well aware, as is apparent in the email of Pastor Albert See, that a meeting to be held on June 4, 2012 regarding the matter of termination was still to come about. As correctly found by the CIAC, in the June 4, 2012 meeting, the parties still needed to agree on the amount of refund. However, with the parties not agreeing on the refund amount, CBCPI demanded for Mavima to proceed with the project. The CIAC thus held as follows:

“The Tribunal has already discussed the issue of whether the contract was terminated. The Tribunal ruled that the Contract was not terminated by Claimant CBCPI. There is therefore no basis to claim for unrealized profit as cited by Respondent MAVIMA.

The Tribunal finds that the parties could not agree on the amount of down payment to be returned, and thus were waiting for each other to comply with what each was expecting of the other as contracted in their Contract.

Claimant was expecting Respondent MAVIMA to complete the Project, in spite of the issues of height restrictions and objections; and Respondent MAVIMA was waiting for the issues to be resolved by Claimant CBCPI before it continues with the work on the Contract. When it became obvious that the issues for obtaining the building permit could not be resolved with the remaining contract time, CBCPI issued a Notice of Default to Respondent MAVIMA and filed a demand with the Surety for the non performance of Respondent MAVIMA. The Surety declined. The parties had now no choice but go to arbitration to resolve the impasse. Respondent MAVIMA, at this time, however, demanded more than what was claimed at the time, including unrealized profit.

As cited above, the alleged legal impossibility released Respondent MAVIMA from its obligation under the Contract; still it is liable to return or restitute what it has received in advance from Claimant CBCPI less allowable deductions.

From the discussions on the termination above and the discussions of the applicability of cited jurisprudence herein, the claim for unrealized profit is DENIED.”[19]

The September 11, 2011 Construction Contract not being deemed terminated, petitioner Mavima's claim for unrealized profit must fail.

In its second assignment of error, petitioner Mavima claims P282,471.16 for additional works that it undertook for respondent CBCPI. Petitioner Mavima believes that CBCPI clearly gave its go signal for Mavima to perform the additional works, relying on an email dated May 5, 2012,[20] sent by Pastor Albert See which states that, apart from some questions on the quotations, “all the rest are ok to go, including installation of gate”.

On the other hand, respondent CBCPI points out that, under Article 7 of the Construction Contract dated September 11, 2011 and under Article 1724 of the Civil Code, an agreement between the parties should be in writing. Again, we agree with the respondent CBCPI. Contracts are perfected by mere consent.[21] To this general rule, the Civil Code admits exceptions, set forth in the second portion of Article 1356, thus:

“xxx However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. xxx”

In connection with this, Art. 1724 of the Civil Code provides as follows:

“The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties.”

Additionally, Article 7 of the September 11, 2011 Construction Contract, covering “changes in the plans and specification,” provides in part as follows:

“xxx Such changes shall be ordered by the OWNER in writing without which no change or omission from the plans and specifications shall be considered to have been authorized. xxx”[22]

Surely, the alleged email sent by Pastor Albert See declaring “all the rest are ok to go, including installation of gate” does not satisfy the requirements of the above-quoted provisions of law and contract. Moreover, a study of the entire email even shows that the parties have not even finalized anything as they are still continually communicating.

On another point, it is very significant to note that the CIAC did not even find substantial evidence for such additional works. Hence, the CIAC observed:

“Respondent MAVIMA did not argue this point in its Final Memorandum. However, it offered as evidence in its computation of additional work of Exhibit RA-555 in which on May 5, 2012, it estimated the additional works for the following items: xxx xxx xxx Other than this document, no other proof whatsoever was presented that this additional works were indeed completed and accepted. More so, being in the realm of additional works, there should have been documents to show that these were ordered by the owner, the price negotiated and accepted by the owner in writing and subsequently, after accomplishment, billed to the owner. Having none of the above, this claim for additional works is DENIED.”[23]

Equally lacking merit is petitioner Mavima's third assignment of error wherein it claims delay damages for the period of November 2011 to May 2012. During that time, petitioner Mavima allegedly could not just summarily decide to demobilize, as matters surrounding the project such as neighbors' consent and height restrictions were pending. In fact, Pastor Albert See allegedly instructed petitioner Mavima to do additional works during this time until May 2012 when he suddenly announced that CBCPI no longer intends to proceed with the works.

For its part, respondent CBCPI pointed out that the CIAC already awarded petitioner Mavima's claim for actual accomplishment in the amount of P1,121,071.52. As there is no evidence that the prayer for delay damages was already included in the claim for actual accomplishment, the grant of delay damages may lead to double recovery.

The records show that the CIAC did not err in denying petitioner Mavima's claim for delay damages. Aside from there being no proper substantiation for the cost of damage, there was legal impossibility of completing the construction of the project considering that the building permit cannot be issued. Hence, we agree with the CIAC when it observed that, “as a good father to the family, manpower and resources should not have been mobilized and, if mobilized, demobilized, instead of being idle at the site”[24].

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby DENIED. The Final Award dated August 16, 2013 issued by the Construction Industry Arbitration Commission in CIAC Case No. 46-2012 is hereby AFFIRMED in toto.

SO ORDERED.

Acosta[*] and Elbinias,**] JJ., concur.

[1] Rollo, Volume I, Petition pp. 9-59

[2] Ibid., pp.62-170

[3] Rollo, Volume II, pp. 1068-1076

[4] Rollo, Volume I, pp.168-170

[5] Ibid., pp.23-24

[6] Ibid, pp. 705-792

[7]id.

[8] Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[9] Art. 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

[10]Tolentino, Civil Code of the Phil., Vol. V, 1992 ed., pp. 633-636

[11]Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultores de Talisay-Silay, Inc., 247 SCRA 361 [1995]

[12] Casino vs Court of Appeals, G.R. No. 133803, September 16, 2005

[13] Rollo, Volume I, Final Award, page 86

[14] Gonzalo vs Tarnate, G.R. No. 160600, January 15, 2014

[15] Rollo, Volume I, Petition, page 17

[16] Rollo, Volume III, page 2357

[17] Ibid., page 2356

[18] Ibid., page 2358

[19] Rollo, Volume I, Final Award, pp.161-162

[20] Rollo, Volume III, page 1961

[21] ART. 1315 of the Civil Code

[22] Rollo, Volume II, page 1071

[23] Rollo, Volume I, Final Award, page 159

[24] Rollo, Volume I, Final Award, page 140

[*] Acting member vice J. Paredes per raffle dtd. March 3, 2014

[**] Acting senior member per raffle dtd. March 3, 2014

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