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

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

These are the two consolidated[1] cases: Petition for Review[2] 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[3] filed by Luisito M. Canlas ("Canlas") in CA-G.R. SP No. 122847. Both petitions assail the Final Award dated 21 November 2011[4] 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[5] 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,[6] 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,[7] Electrical Design,[8] Structural Engineering Design Requirements,[9] and Consultancy Services & Pre-construction Deliverables Accomplishment to Date;[10] then, I & I Realty (represented by its President, Castañeda), and L.M. Canlas Construction (represented by its President, Canlas) executed the Construction Contract[11] which stipulated Php 27,800,000.00 as the Contract Price[12] (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;[13] Approved Architectural, Structural, Electrical, Mechanical, Sanitary/Plumbing Designs/Accomplished Building Permits Application inclusive of Electrical, Mechanical, Sanitary/Plumbing Permits Application;[14] Bill of Quantities for Barangay Clearance Purposes;[15] Site Instruction;[16] and revised Architectural Plans);[17] 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[18] 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[19] 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,[20] 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[21] 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.[22]

The Tribunal conducted a preliminary conference and issued the Terms of Reference (TOR),[23] 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:
>
> a. Dewatering - P 1,142,120.00
>
> b. Mobilization/Demobilization/Demolition/
> Chipping/Clearing/Compaction/
> Design and Installation of Electrical and Temporary Facilities/
> Meralco Power application Leg Works including Representations
>
> - 2,850,000.00

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c. Design Fee - 3,000,000.00

d. Work Accomplishment (Aug. to Dec. 2010) - 2,659,837.50

e. Detained Equipment/ Tools/ Documents etc. - 1,466,116.00

f. Unrealized Profit (based on P169,086,706.01 verbal contract) -14,458,057.10

g. Litigation Expenses - 100,000.00

h. Attorney's Fee - 500,000.00

i. Exemplary Damages - 2,000,000.00

j. Filing Fee - 440,277.24

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?”[24]

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

f. Filing Fee (2/3 of 440,277.24) - 293,518.16

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."[25]

The Final Award held: despite the lack of a board resolution from I & Realty authorizing its President, Castañeda to enter into the Construction Contract with Canlas, I & I Realty impliedly ratified Castañeda's undertaking through subsequent acts (i.e.: receipt of the benefits of the construction works rendered by Canlas; and payment of Canlas' services without objection); Castañeda's defense of accommodation did not deserve credence because Castañeda signed various documents (i.e.: Structural Plan, Sanitary/Plumbing Plan, Electrical Plan, etc.,) which did not serve the purpose of enhancing the financial standing of Canlas, but pertained to the construction of the subject building; the Contract Price of Php 27,800,000.00 was binding to the parties, because there was no proof that the actual cost of the project was Php 169,086,706.01; Canlas was partially entitled to his claim for dewatering expenses in the total amount of Php 744,660.00 (claim was for Php 1,142,120.00) because records show that the dewatering services were only to the extent of 21,276 cubic meters, as acknowledged by Noli Fabic (representative of I & I Realty and Castañeda); Canlas was partially entitled to his claim for mobilization expenses of Php 442,323.04 (Canlas' claim was for Php 2,850,000.00); Canlas was partially entitled to his claim for design fees of Php 1,946,000.00 (Canlas' claim was for Php 3,000,000.00) which represented 7% of the Contract Price of Php 27,800,000.00; Canlas was partially entitled to his claim of Php 823,698.57 for work accomplishment covering August 2010 to December 2010 (Canlas' claim was for Php 2,659,837.50), using 10% (not 30%) as mark-up because the expenses for payroll and materials were all for the account of I & I Realty and Castañeda; Canlas was partially entitled to his claim for arbitration costs, and Canlas, I & I Realty, and Castañeda, should bear the costs of arbitration equally; Canlas was not entitled to his claim for demobilization because there was no demobilization performed; Canlas was not entitled to his claim for detained equipment, tools, and documents, because there was no evidence on the particularity of the alleged equipment, tools, and documents, detained; Canlas was not entitled to his claim for unrealized profit (Php 14,458,057.10) because the Construction Contract only stipulated the Contract Price of Php 27,800,000.00, and not the alleged Php 169,086,706.01; Canlas was not entitled to his claim for litigation expenses and attorney's fees, because his claims were unsubstantiated, and there was no stipulation in the Construction Contract for the payment of attorney's fees; Canlas was not entitled to his claim for exemplary damages because the pre-termination of the Construction Contract did not automatically signify bad faith.

Canlas filed the Motion for Correction of Final Award,[26] but the Tribunal denied the Motion.[27]

I & I Realty and Castañeda, and Canlas filed their respective Petitions for Review before the Court of Appeals. The Thirteenth Division of the Court of Appeals consolidated the Petitions.[28] The following are the parties' respective assignments of errors:

ASSIGNMENT OF ERRORS OF I & I REALTY
AND CASTAÑEDA

I. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT HELD THAT BOARD OF DIRECTORS OF I & I REALTY IMPLIEDLY RATIFIED THE ACTS OF ITS PRESIDENT, MR. CASTAÑEDA, IN ENTERING INTO A CONSTRUCTION AGREEMENT WITH MR.

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CANLAS, THUS MAKING I & I REALTY LIABLE.

II. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR IN UPHOLDING THE VALIDITY AND ENFORCEABILITY OF THE SO-CALLED CONSTRUCTION CONTRACT DESPITE CLEAR INDICATIONS OF ITS BEING A SIMULATED AND FICTITIOUS DOCUMENT.

III. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT AWARDED ACTUAL DAMAGES IN THE AMOUNT OF P4,250,199.77 AS PAYMENT FOR RESPONDENT'S CLAIMS.

IV. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT DID NOT AWARD ATTORNEY'S FEES AND LITIGATION EXPENSES TO THE PETITIONERS.

V. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT FAILED TO CONSIDER THE MODUS OPERANDI OF RESPONDENT OF FABRICATING CLAIMS AS A MEANS TO OFFSET HIS LAWFUL OBLIGATIONS.

VI. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR IN HOLDING PETITIONERS LIABLE FOR TWO-THIRDS OF THE ARBITRATION FEES AND COSTS.

VII. THE HONORABLE ARBITRAL TRIBUNAL COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT HELD I & I REALTY AND MR. CASTAÑEDA JOINTLY AND SOLIDARILY LIABLE FOR THE ALLEGED MONETARY LIABILITIES TOWARDS THE RESPONDENT.

ASSIGNMENT OF ERRORS OF CANLAS

I. THAT THE FINAL AWARD RENDERED BY CIAC RELATIVE TO PETITIONER'S CLAIMS WAS NOT BASED ON EVIDENCE SUBMITTED, CONSTRUCTION INDUSTRY PRACTICE, EQUITY AND APPLICABLE LAWS.

II. THAT CIAC ERRED IN NOT AWARDING PETITIONER HIS CLAIM FOR UNREALIZED PROFIT, LITIGATION EXPENSES, ATTORNEY'S FEES AND EXEMPLARY DAMAGES.

The issues are: 1) whether the Construction Contract was valid; 2) whether I & I Realty and Castañeda were liable to Canlas; 3) whether the award to Canlas was proper.

ARGUMENTS OF I & I REALTY AND CASTAÑEDA

Anent the first issue, I & I Realty and Castañeda answer in the negative. The Construction Contract was not valid.

The Petition for Review[29] of I & I Realty and Castañeda thrusts: the Construction Contract was void because it was simulated (i.e.: the Construction Contract had no provision regarding the period of completion of the construction of the subject building), and Castañeda signed the Construction Contract only to accommodate Canlas' request; the Construction Contract lacked the necessary requirements and documents required for a valid construction contract (i.e.: it lacked the Master Construction Schedule, CARI, Manpower and Equipment Utility Schedule, Contractor's Quality Control Program, and Performance/Warranty/Guaranty bonds); Canlas was not a general contractor, but was only the construction supervisor or manager in the construction of the subject building.

With respect to the second issue, I & I Realty and Castañeda answer in the negative. I & I Realty and Castañeda were not liable to Canlas.

The Petition for Review of I & I Realty and Castañeda thrusts: I & I Realty did not authorize Castañeda to enter into a contract with Canlas, thus the Construction Contract entered into by Castañeda did not bind the I & I

Realty; I & I Realty did not clothe Castañeda with apparent authority, and Canlas should have ascertained Castañeda's authority before entering into the contract with Castañeda.

Regarding the final issue, I & I Realty and Castañeda answer in the negative. The award to Canlas was not proper.

The Petition for Review of I & I Realty and Castañeda thrusts: Canlas was not entitled to his claims because Castañeda paid all the construction expenses, and Castañeda had paid Canlas Php 397,500.00 for his services as manager/consultant.

The Comment[30] of I & I Realty and Castañeda added: Canlas was not entitled to his claims because Canlas' evidence were conflicting and self-serving.

I & I Realty and Castañeda filed the Petitioner's Reply[31] which reiterated their previous arguments.

ARGUMENTS OF CANLAS

Anent the first issue, Canlas answers in the affirmative. The Construction Contract was valid.

The Comment[32] of Canlas parries: I & I Realty impliedly ratified the Construction Contract, as shown by subsequent acts (i.e., signing of Purchase Orders), and the fact that I & I Realty benefited from Canlas' construction activities.

With respect to the second issue, Canlas answers in the affirmative. I & I Realty and Castañeda were liable to Canlas.

The Comment of Canlas parries: evidence showed that Canlas was a contractor, and not a supervisor or manager, thus I & I Realty and Castañeda were liable under the Construction Contract for the payment of Canlas' services as a contractor.

Regarding the final issue, Canlas answers in the negative. The award to Canlas was not proper.

The Comment, and Petition for Review,[33] of Canlas parry: the Tribunal erred in not considering that the parties intended the Contract Price to be Php 169,086,706.01 (and not the stipulated price of Php 27,800,000.00); the Tribunal misappreciated the evidence on the extent of the dewatering, because the logbooks (which were detained at the job site) indicated that the total extracted water was 31,596 cubic meters, thus I & I Realty and Castañeda were liable for Php 1,105,860.00 (31,596 cubic meters x P 35.00); the Tribunal erred in not awarding the value of the detained tools, equipment, and documents, because without these tools, Canlas could not have accomplished the work which lasted until December 2010; the Tribunal erred in not awarding the claims of Canlas based on standard industry practice, and in not awarding damages, attorney's fees, litigation expenses, and arbitration costs, considering that I & I Realty and Castañeda were in bad faith in suspending Canlas' construction operations, and in pre-terminating the Construction Contract.

Canlas filed the Reply to Respondents' Comment[34] which reiterated his previous arguments.

THE COURT'S RULING

Anent the first issue, we rule that the Construction Contract was an unenforceable contract, which was subsequently ratified.

Applicable are Article 1317, Article 1396, and Article 1403(1) of the New Civil Code. They read:

> Article 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

> A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)
>
> Article 1396. Ratification cleanses the contract from all its defects from the moment it was constituted. (1313)
>
> Article 1403. The following contracts are unenforceable, unless they are ratified:
>
> (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;
>
> xxx xxx xxx

As stated in Article 1317 of the New Civil Code above-quoted, the general rule is that no person may contract in the name of another. Under Articles 1317 and 1403(1) of the New Civil Code above-quoted, a contract entered into by a person who was not authorized by the person in whose behalf it was executed, or not authorized by law, or who has acted beyond the authority given by the person on whose behalf it was executed, is an unenforceable or unauthorized contract. An unenforceable contract can be ratified by the person on whose behalf it was executed. Under Article 1396 of the New Civil Code above-quoted, the effects of ratification retroact to the date the contract was entered into.

Physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[35] In this case, Castañeda, as President of I & I Realty, signed the Construction Contract in behalf of I & I Realty, without board resolution from the board of directors of I & I Realty. Pursuant to Article 1403(1) of the New Civil Code, the Construction Contract was unenforceable against I & I Realty.

However, an unenforceable contract is susceptible of ratification,[36] and the corporation may ratify the unauthorized act of its corporate officer.[37]

Ratification is the adoption or confirmation by one person of an act performed on his behalf by another without authority.[38] The substance of ratification is the confirmation after the act, amounting to a substitute for a prior authority.[39] Ratification can be made by the corporate board either expressly or impliedly.[40] Implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[41]

There was implied ratification by I & I Realty of the act of Castañeda in signing the Construction Contract, thus: (a) I & I Realty accepted the benefits from Canlas' construction works in the subject building from August 2010 to December 2010 without objection; (b) I & I Realty gave authority to Canlas to apply for permits related to the construction of the subject building; (c) I & I Realty paid Canlas for his services as a contractor.

Pursuant to Article 1396 of the New Civil Code above-quoted, I & I Realty's ratification retroacted to the date of Castañeda's signing of the Construction Contract, and validated all Castañeda's actions pertaining to the implementation of the Construction Contract.

With respect to the second issue, we rule that I & I Realty and Castañeda, were solidarily liable to Canlas under the Construction Contract.

As discussed above, the Construction Contract was effective and binding against I & I Realty and Castañeda. Considering that the Construction Contract was effective and binding, I & I Realty and Castañeda were bound by all the provisions of the Construction Contract, including the obligation to pay therein specified.

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To evade liability under the Construction Contract, I & I Realty and Castañeda argue that the Construction Contract was absolutely simulated, hence void. Castañeda only signed the Construction Contract to accommodate Canlas, and the parties had no intention to be bound by the Construction Contract

We are not convinced.

An absolutely simulated contract is one where the parties do not intend to be bound at all.[42] An absolutely simulated contract is void, and the parties may recover from each other what they may have given under the simulated contract.[43]

The Construction Contract was not absolutely simulated. The parties intended to be bound by the Construction Contract.

Under Article 1371 of the New Civil Code,[44] in order to judge the intention of the contracting parties, the contemporaneous and subsequent acts of the contracting parties shall be principally considered.

In this case, the contemporaneous and subsequent acts of I & I Realty and Castañeda, and Canlas showed that they intended to be bound by the Construction Contract. Thus, Castañeda signed various documents (i.e.: Structural Plan, Sanitary/ Plumbing Plan, Electrical Plan, etc.,) pertaining to the construction of the subject building. If the parties' intention in signing the Construction Contract was only to show that Canlas had an on-going project, then Castañeda could have limited his accommodation by signing the Construction Contract only. However, Castañeda also signed various documents relating to the construction of the subject building which did not serve the purpose of enhancing Canlas' financial standing. Significantly, both parties had implemented the Construction Contract, and Canlas rendered services, pursuant to the Construction Contract which showed the parties' intention to be bound by the Construction Contract.

I & I Realty and Castañeda denied liability under the Construction Contract on the ground that Canlas was not a contractor, but was merely a project manager. According to I & I Realty and Castañeda, since I & I Realty and Castañeda paid Canlas' services as a project manager, Canlas' claims under the Construction Contract could not prosper.

We do not agree.

It is stated in Article 3 of the Construction Contract[45] that, aside from the obligations of Canlas to perform construction works as a contractor, Canlas shall oversee and administer the construction in the subject building, and coordinate and monitor the construction works, to ensure the timely and orderly completion of the project.

Further, the Notice to Proceed[46] signed by Castañeda stated that Canlas was also responsible for the construction, management, and supervision, among other works (i.e., Design [Structural, Architectural, Mechanical, Plumbing, & Sanitary and Electrical]; Construction Implementation; Permits and Licenses). Corollarily, the Construction Contract under Article 2, stipulated that the Notice to Proceed was an integral part of the Construction Contract, and thus was similarly binding on both parties.

Thus, Canlas was both a contractor and a project manager, and the payment of Canlas' services as a project manager did not preclude Canlas from claiming payment for his services as a contractor.

Regarding the final issue, we affirm the Tribunal's award in favor of Canlas for dewatering, mobilization, design fee, work accomplishment, and detained equipment, tools and document. However, we find I & I Realty and Castañeda solidarily liable for exemplary damages and arbitration costs.

1. Dewatering expenses

While the Construction Contract did not provide for the dewatering of the subject building, records show that I & I Realty and Castañeda contracted the dewatering of the subject building to Canlas. In the Memorandum dated 27 May 2010,[47] Castañeda signed and acknowledged that the civil works in the subject building included the "dewatering operation of flooded basement."

We affirm the findings of the Tribunal that Canlas was partially entitled to his claim for dewatering expenses of Php 744,660.00. Canlas' logbook entries (Exhibit C-8),[48] (and acknowledged by Engineer Noli Fabic [representative of I & I Realty and Castañeda]), showed Canlas had only performed dewatering to the extent of 21,276 cubic meters.

The evidence on record showed that Canlas failed to substantiate his additional claims for dewatering of 31,596 cubic meters. The alleged evidence of Canlas that he had extracted 32,632 cubic meters of water (Exhibit C-10)[49] pertained to a list made by Canlas himself, and was not verified nor signed by any representative of I & I Realty and Canlas. Thus it cannot be given credence.

2. Demobilization/Mobilization Expenses

We deny Canlas' claims for demobilization. Notably, the Memorandum dated 27 May 2010[50] provided only for mobilization. Thus, the Tribunal was correct in denying Canlas' claims for demobilization.

We affirm the award of the Tribunal for mobilization expenses. Perusal of the Final Award showed that the Tribunal based the award on the evidence on record, particularly Exhibits C-8,[51] C-34,[52] C-36,[53] and C-37.[54]

3. Design Fee

The Tribunal's award to Canlas of Design Fee finds basis in the Construction Contract, specifically under the provisions of the Scope of Work,[55] which read:

> SCOPE OF WORK
>
> 1.1 The CONTRACTOR shall render the Architectural and Interior Design consultancy services in connection with the design and specification and furnishing plans of the proposed ROYALE BUSINESS CLUB INTERNATIONAL, INC MAIN OFFICE BUILDING. For this purpose, the CONTRACTOR shall be responsible for the preparation, drafting of all necessary Architectural and Interior plans inclusive or required Sanitary, Mechanical, Fire Protection, Electrical, Civil and Structural plans and specifications.
>
> 1.2 Preliminary Architectural and Interior Design plans inclusive or required Sanitary, Mechanical, Fire Protection, Electrical, Civil and Structural plans consisting of general concept renderings shall be submitted for the approval of the PROJECT OWNER/REPRESENTATIVE within a mutually agreed period of time.
>
> 1.3 Upon final approval of the PROJECT OWNER/ REPRESENTATIVE of the preliminary Architectural/Interior Design plans inclusive or required Sanitary, Mechanical, Fire Protection, Electrical, Civil and Structural plans and specifications, the CONTRACTOR shall commence preparation of detailed designed plans and specifications for the implementation of the proposed PROJECT.
>
> 1.4 The CONTRACTOR shall provide and furnish all the necessary labor, supervision and management of tools, supplies, materials, equipment and plant, as well as power and required utilities, and perform all acts and things necessary to carry out and complete the WORKS within the timetable and to the satisfaction of the OWNER, ready for service and turn-over to the OWNER, all in strict compliance with the foregoing hereof, and to the terms and conditions of this CONTRACT.
>
> 1.5 The CONTRACTOR shall also be responsible for specific undertakings that also compromise the WORKS

as indicated in the “List of Specific Undertakings” forming part of the Contract Documents herein.

The above-quoted Scope of Work encompassed Canlas' claims for design fee. In addition, the Notice to Proceed, an integral part of the Construction Contract, listed “Design (Structural, Architectural, Mechanical, Plumbing, & Sanitary and Electrical)” as part of the works contracted by I & I Realty and Castañeda to Canlas.

On Canlas claims for design fee, we affirm the Tribunal's award which limited Canlas' claims based on the project cost of Php 27,800,000.00, and not Canlas' alleged contract price of Php 169,086,706.01.

The Construction Contract specifically stated that the contract price was Php 27,800,000.00.

Under Rule 130, Section 9 of the Rules of Court,[56] the terms of a contract are rendered conclusive upon the parties and evidence aliunde is not admissible to vary or contradict a complete and enforceable agreement embodied in a document.[57]

The Construction Contract specifically stated that the contract price was Php 27,800,000.00. Applying the parol evidence rule, both the parties were bound by the provision of the Construction Contract stating that the contract price was Php 27,800,000.00.

4. Work Accomplishment (August 2010 to December 2010)

Canlas claimed Php 9,821,881.92 for work accomplishment from August 2010 to December 2010 through the Construction (August-December 2010) memorandum.[58] Perusal of Canlas' evidence (i.e., payroll, vouchers of materials, receipt for services) showed that Canlas was able to prove, only the amount of Php 8,236,985.70, as affirmed by the Tribunal. Further, the Tribunal was justified in decreasing the mark-up percentage of Canlas' claims from 30% to 10%, because Canlas admitted that payrolls and materials were paid by Castañeda.

5. Detained Equipment/Tools/Documents

We affirm the ruling of the Tribunal in not awarding Canlas' claims for detained equipment, tools and documents. Canlas did not present substantial evidence to prove with particularity the alleged detained equipment, tools, and documents.

6. Exemplary damages

In contracts, exemplary damages may be awarded if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[59]

Considering the attending bad faith of I & I Realty and Castañeda in pre-terminating the Construction Contract, we hold I & I Realty and Castañeda solidarily liable for exemplary damages. Canlas was entitled to exemplary damages by way of correction to I & I Realty and Castañeda, and in view of the malevolent manner by which Canlas was treated.

However, we find Canlas' claims for Php 2,000,000.00 as excessive. Damages are not intended to enrich a party at the expense of the other. Thus, we grant Canlas exemplary damages of P50,000.00.

7. Attorney's fees and Arbitration Costs

Under Article 2208 of the New Civil Code,[60] in the absence of stipulation, attorney's fees and expenses of litigation may be recovered where the defendant (I & I Realty and Castañeda) acted in gross and evident bad faith in refusing to satisfy plaintiff's (Canlas) valid claim, and in any other case where the court deems it just and equitable.

We hold I & I Realty and Castañeda solidarily liable for the full payment of the arbitration costs considering the

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attending bad faith of I & I Realty and Castañeda.

However, we deny Canlas' claims for attorney's fees because there was no evidence or testimony presented to substantiate Canlas' claims for attorney's fees. Attorney's fees, being in the nature of actual damages, must be duly substantiated by competent proof.[61]

We MODIFYthe Final Award dated 21 November 2011 issued by the Arbitral Tribunal of the Construction Industry Arbitration Commission, and ORDER I & I Realty and Development Inc. and Ricardo C. Castañeda, solidarily, to pay Luisito M. Canlas, in addition to the other sums awarded in the Final Award, the following amounts: Php 50,000.00 (as exemplary damages); Php 440,277.24 (representing filing fees).

IT IS SO ORDERED.

Lampas Peralta, F., Chairperson and Cruz, S.C., JJ., concur.

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[1] Pursuant to the Resolution of the Thirteenth Division dated 25 June 2013, CA Rollo of CA-G.R. SP NO. 122589, (unpaginated).

[2] CA Rollo of CA-G.R. SP NO. 122589, p. 9.

[3] CA Rollo of CA-G.R. SP NO. 122847, p. 17.

[4] CA Rollo of CA-G.R. SP NO. 122589, p. 90.

[5] CA Rollo of CA-G.R. SP NO. 122589, p. 126.

[6] CA Rollo of CA-G.R. SP NO. 122589, p. 135.

[7] CA Rollo of CA-G.R. SP NO. 122589, p. 136.

[8] CA Rollo of CA-G.R. SP NO. 122589, p. 147.

[9] CA Rollo of CA-G.R. SP NO. 122589, p. 149.

[10] CA Rollo of CA-G.R. SP NO. 122589, p. 151.

[11] CA Rollo of CA-G.R. SP NO. 122589, p. 184.

[12] CA Rollo of CA-G.R. SP NO. 122589, p. 186.

[13] CA Rollo of CA-G.R. SP NO. 122589, p. 154.

[14] CA Rollo of CA-G.R. SP NO. 122589, p. 156.

[15] CA Rollo of CA-G.R. SP NO. 122589, p. 158.

[16] CA Rollo of CA-G.R. SP NO. 122589, p. 159.

[17] CA Rollo of CA-G.R. SP NO. 122589, p. 162.

[18] CA Rollo of CA-G.R. SP NO. 122589, p. 193.

[19] CA Rollo of CA-G.R. SP NO. 122589, p. 195.

[20] CA Rollo of CA-G.R. SP NO. 122589, p. 196.

[21] CA Rollo of CA-G.R. SP NO. 122589, p. 268.

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[22] CA Rollo of CA-G.R. SP NO. 122589, p. 287.

[23] CA Rollo of CA-G.R. SP NO. 122589, p. 290.

[24] CA Rollo of CA-G.R. SP NO. 122589, p. 293.

[25] CA Rollo of CA-G.R. SP NO. 122589, p. 111.

[26] CA Rollo of CA-G.R. SP NO. 122589, p. 90.

[27] CA Rollo of CA-G.R. SP NO. 122589, p. 74.

[28] Supra, note 1.

[29] Supra, note 2.

[30] CA Rollo of CA-G.R. SP NO. 122847, p. 2565.

[31] CA Rollo of CA-G.R. SP NO. 122589, p. 1323.

[32] CA Rollo of CA-G.R. SP NO. 122589, p. 1285.

[33] Supra, note 3.

[34] CA Rollo of CA-G.R. SP NO. 122847, p. 2615.

[35] Monfort Hermanos Agricultural Development Corp., v. Monfort III et al., G.R. Nos. 152542 & 155472, 8 July 2004.

[36] Sen Po Ek Marketing Corporation v. Martinez et al., G.R. No. 134117, 9 February 2000 citing Article 1403, New Civil Code.

[37] Yasuma v. Heirs of De Villa et al., G.R. No. 150350, 22 August 2006 citing Arts. 1898 and 1910 of the New Civil Code.

[38] Prieto v. Court of Appeals, et al., G.R. No. 158597, 18 June 2012.

[39] Ibid., citing Manila Memorial Park Cemetery v. Linsangan, G.R. No. 151319, November 22, 2004, 443 SCRA 377, 394.

[40] MWSS v. Court of Appeals, G.R. No. 126000, 7 October 1998.

[41] ECE Realty and Development, Inc., v. Mandap, G.R. No. 196182, 1 September 2014 citing Viloria v. Continental Airlines, Inc., G.R. No. 188288, January 16, 2012, 663 SCRA 57.

[42] Taghoy et al., v. Sps. Tigol, G.R. No. 159665, 3 August 2010 citing CIVIL CODE, Art. 1345.

[43] Ibid., citing Heirs of the late Spouses Balite v. Lim, 487 Phil. 281, 293; Sps. Velasquez v. Court of Appeals, 399 Phil. 193, 200 (2000).

[44] Article 1371. - In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (1282)

[45] Article 3 – Project Management

3.1 Other obligations and undertakings of CONTRACTOR. Aside from the obligations of CONTRACTOR hereinabove.

3.2 The CONTRACTOR shall provide the services that will oversee and administer the construction of the proposed ROYALE BUSINESS CLUB INTERNATIONAL, INC MAIN OFFICE BUILDING herein referred to as the “PROJECT” and coordinate and monitor the WORKS to ensure the timely and orderly completion of the PROJECT.

3.3 The CONTRACTOR shall furnish the OWNER with copies of all documents, communications, proposals and the like received by it in the course of the performance of its services which are connected with the PROJECT.

3.4 The CONTRACTOR shall assist the OWNER in securing all necessary permits and clearances. However, all expenses, feesand representations shall be borne by the OWNER.

[46] Supra, note 6.

[47] CA Rollo of CA-G.R. SP NO. 122847, p. 320.

[48] CA Rollo of CA-G.R. SP NO. 122847, p. 131.

[49] CA Rollo of CA-G.R. SP NO. 122847, p. 398.

[50] CA Rollo of CA-G.R. SP NO. 122847, p. 320.

[51] Supra, note 46.

[52] CA Rollo of CA-G.R. SP NO. 122847, p. 508.

[53] CA Rollo of CA-G.R. SP NO. 122847, p. 1002.

[54] CA Rollo of CA-G.R. SP NO. 122847, p. 1228.

[55] CA Rollo of CA-G.R. SP NO. 122847, p. 74.

[56] Section 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
>
> The term "agreement" includes wills.

[57] Rosario Textile Mills Corporation et al., v. Home Bankers Savings and Trust Company, G.R. No. 137232, 29 June 2005.

[58] CA Rollo of CA-G.R. SP NO. 122847, p. 1002.

[59] Olivarez Realty Corporation et al., v. Castillo, G.R. No. 196251, 9 July 2014.

[60] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

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(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[61] Lo v. KJS Eco-Formwork System Phil., Inc., G.R. No. 149420, 8 October 2003.

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