

NAYONG PILIPINO FOUNDATION, PETITIONER, VS. BSP & COMPANY, INC., RESPONDENTS.

Ponente: LANTION, J.A.C., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c10c19bc02aa/>

LANTION, J.A.C., J.:

This Petition for Review[1] under Rule 43 of the Rules of Court seeks to annul and set aside the Decision[2] dated 28 January 2013 of the Construction Industry Arbitration Commission (CIAC), in CIAC Case No. 24-2012, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of Claimant BSP and against Respondent NPF the total/net amount of P1,489,204.00, as follows:

In favor of Claimant BSP:

Description

Unpaid Outstanding Balance

P1,489,204.00

P1,489,204.00

In favor of Respondent NPF:

Description

Cost of Locational/Zoning Clearance

P0.00

P 0.00

Respondent NPF is further assessed the CIAC fees corresponding its permissive counterclaim above-mentioned in the amount of P79,893.39.

Upon this Final Award becoming final, interest at 12% per annum shall be further paid on the outstanding amount until payment thereof shall have been made, “this interim period being deemed to be at that time already a forbearance of credit” (Eastern Shipping Lines, Inc. vs Court of Appeals, 243 SCRA 78 [1994]).

SO ORDERED."

THE FACTS

(As culled from the Records)

Petitioner Nayong Pilipino Foundation (NPF) is a government owned and controlled corporation created pursuant to Presidential Decree No. 37,[3] engaged in the promotion of Philippine culture and history.[4]

Respondent BSP & Company (BSPCI) on the other hand is a domestic corporation engaged in construction services.[5]

In 2007, NPF conducted a public bidding for the construction and development of the Bagong Nayong Pilipino Project (project) to be located at the Public Estate Authority Site of the Manila Bay Reclamation Area. BSPCI participated in the said bidding and won the same.[6]

On 4 December 2007, NPF awarded to BSPCI the construction and development of the said project for a total contract price of P23,567,157.09.[7]

On 30 September 2008, in view of the changes in the original design of the project's perimeter fence, the parties executed a Supplemental Agreement for Construction Services, increasing the project's total contract price of P23,567,157.09 to P138,059,698.29. Of the said total amount of P138,059,698.29, NPF was able to pay BSPCI a total sum of P123,681,817.29, leaving an unpaid balance of P14,377,881.00.[8]

On 29 July 2010, the Local Government of Parañaque City ordered[9] NPF to pay the project's Locational Clearance amounting to P1,489,204.00. However, NPF refused to pay the same, explaining that it is BSPCI's duty, as the contractor, to pay for the said clearance.

As BSPCI also declined to secure and pay the project's Locational Clearance, NPF refused to pay BSPCI the remaining balance (P14,377,881) of the contract price.[10]

On 16 July 2012, BSPCI filed a Complaint[11] with the CIAC for the collection of the amount of P14,377,881.00. Pending resolution of the case, NPF paid BSPCI the sum of P12,888,677.00, leaving an unpaid balance of P1,489,204.00, representing the cost of the project's Locational Clearance.[12]

During the Preliminary Conference on 18 December 2012, NPF and BSPCI formulated and signed the Terms of Reference[13] of the case, embodying, among others, their stipulation of facts.

On 28 January 2013, CIAC rendered the assailed Decision, holding NPF liable to pay BSPCI the remaining balance (P1,489,204.00) of the contract price on the ground that NPF admitted being liable thereof under the Terms of Reference.[14] Moreover, CIAC held that a Locational Clearance is “an imposition on the owner of the project or business.”[15] Hence, NPF is the one liable to pay the same.

Hence, this Petition for Review.

ISSUES

I

WHETHER OR NOT THE CIAC GRAVELY ERRED IN DECLARING THAT IT IS NOT BSPCI'S RESPONSIBILITY TO OBTAIN OR PAY THE COST OF LOCATIONAL/ZONING CLEARANCE FOR THE PROJECT.

II

WHETHER OR NOT THE CIAC GRAVELY ERRED IN DECLARING THAT THE LOCATIONAL/ZONING CLEARANCE FEES SHOULD BE INCLUDED AS A SEPARATE ITEM IN THE BILL OF QUANTITIES.

III

WHETHER OR NOT THE CIAC GRAVELY ERRED WHEN IT RULED THAT THE PHP1,489,204.00 THAT NPF REFUSED TO PAY TO BSPCI IS A FORM OF COUNTERCLAIM TO WHICH PAYMENT OF DOCKET FEE IS REQUIRED.

IV

WHETHER OR NOT THE CIAC GRAVELY ERRED WHEN IT RULED THAT NPF IS LIABLE TO PAY THE CIAC FEES OF PHP79,893.39.[16]

THIS COURT'S RULING

NPF imputes error on the part of the CIAC for holding it (NPF) liable, under the Terms of Reference, to pay BSPCI the remaining balance of the contract price amounting to P1,489,204.00. NPF explains that since BSPCI refused to secure and pay for the project's Locational Clearance, it (NPF) has the right to withhold payment of the amount of P1,489,204.00 from the total contract price of P138,059,698.29 to answer for the amount of the Locational Clearance.

The Petition fails.

Terms of Reference is a document which embodies the parties' stipulation as to the circumstances leading to the dispute.[17] It outlines the parties' respective admissions, positions, issues and claims and identifies the composition of the tribunal of arbitrators.[18] The Terms of Reference is formulated with the active participation of the parties and their respective counsels, and is required to be signed by them and by all the members of the Arbitral Tribunal.[19]

In holding NPF liable to pay BSPCI the remaining balance of the contract price of P1,489,204.00, the CIAC referred to the Terms of Reference, the pertinent portion of which reads:

II. ADMITTED FACTS

x x x

9. On 30 September 2008, the parties entered into a Supplemental Agreement for Construction Services wherein the previous agreed amount of P123,567,157.09 was increased to P138,059,698.29 x x x

x x x

12. The final and certified billing of the Claimant [BSPCI] amounted to P14,377,881.00, out of which the amount of P12,018,461.51 net of tax (i.e., P454,433.16 and P415,782.33 were paid[20] on 21 November 2012) thereby leaving a net amount of P1,489,204.00. (Emphasis Supplied)

A plain reading of the above-quoted provisions shows that NPF was bound, under the Supplemental Agreement for Construction Services, to pay BSPCI a contract price of P138,059,698.29. Nothing in the said Supplemental Agreement for Construction Services shows that the amount of P1,489,204.00 shall be withheld by NPF from the total contract price of P138,059,698.29 to answer for the amount of the Locational Clearance. As such, when the total amount of P138,059,698.29 was reduced to only P14,377,881.00, in view of the previous payments made by NPF to BSPCI, the latter is entitled to the whole remaining balance of P14,377,881.00. Considering that NPF only paid BSPCI the sum of P12,018,461.51, the latter is bound to recover from NPF the remaining difference of P1,489,204.00.

NPF also imputes error on the part of the CIAC for holding it (NPC) responsible to secure and pay for the project's Locational Clearance. NPF contends that it is BSPCI's duty, as the contractor, to secure the said clearance.

The contention is misplaced.

A Locational Clearance is a document issued by the appropriate local government unit when the latter is satisfied that a certain property is suitable for the use where it will be devoted,[21] or when a certain project is suitable to be operated at a certain zone or location.[22]

In the case of Iloilo City Zoning Board of Adjustment and Appeals vs. Gegato-Abecia Funeral Homes,[23] the Supreme Court held that a Locational Clearance pertains to the use or operation of a funeral home, not to the construction of a funeral home's building.

In establishing that it is BSPCI's responsibility to obtain and pay for the project's Locational Clearance, NPF invokes Article XII of the Agreement for Construction Services,[24] to wit:

“All taxes, permits and fees which may be due to the local and/or National Government on account of performance and construction of the work [the project] stipulated herein and fees for testing and materials and samples shall be paid for, and obtained by the CONTRACTOR [BSPCI].”[25] (Emphasis Supplied)

As could be gleaned from the foregoing, the government permits and fees which BSPCI are bound to secure and pay are those which pertain to the performance and construction of the project. The subject Locational Clearance herein clearly does not fall within the ambit of this type of government permits and fees, as the said locational clearance relates not to the construction of the said project, but to the suitability of the project to be operated at the Public Estate Authority Site of the Manila Bay Reclamation Area. Considering as well that a Locational Clearance is generally imposed by the local government on the owner of a project or business,[26] as in this case, it is NPF's responsibility to secure and pay for the same.

Lastly, NPF argues that the CIAC erred in imposing CIAC docket fees against it (NPF). NPF asserts that it did not set up any counterclaim against BSPCI to which a docket fee is required.

The argument has no merit.

A counterclaim is any claim which a defending party may have against an opposing party.[27] As now used and understood, it includes set-off and equitable demands against the plaintiff which secures to the defendant full relief.[28]

Here, BSPCI claimed from NPF the payment of the remaining P1,489,204.00 balance of the contract price. NPF refused to pay the same, demanding in turn against BSPCI the payment of the project's Locational Clearance amounting also to P1,489,204.00. This clearly was not a mere defense on NPF's part but an actual attempt by NPF to set off and neutralize BSPCI's claim. Considering that a counterclaim includes set-off and equitable demands

by a defending party against a claimant, such as BSPCI herein, NPF's demand for the payment of the Locational Clearance was a counterclaim against BSPCI.

In relation to the foregoing, Section III(A) of the CIAC-approved Table of Administrative Charges requires litigants to pay the docket fees corresponding to their respective claims and counterclaims.[29] Since NPF set up against BSPCI by demanding payment of the Locational Clearance which was in fact a counterclaim, and not a mere defense, NPF should indeed pay for the corresponding CIAC docket fees for the said counterclaim as correctly ordered by the CIAC.

All told, We find that the CIAC acted in accordance with the law and settled jurisprudence in rendering the assailed Decision.

WHEREFORE, the Petition is DISMISSED. The Decision[30] dated 28 January 2013 of the Construction Industry Arbitration Commission, in CIAC Case No. 24-2012 STANDS.

SO ORDERED.

Veloso (Chairperson) and Antonio-Valenzuela, JJ., concur.

[1] Rollo, pp. 3-23.

[2] Rollo, pp. 26-37.

[3] Rollo, p. 36.

[4] See Admitted Fact No. 2 of the Terms of Reference, Rollo, p. 68.

[5] See Admitted Fact No. 1 of the Terms of Reference, Rollo, p. 68.

[6] See Admitted Fact Nos. 3, 4 & 5 of the Terms of Reference, Rollo, p. 68-69.

[7] See Agreement for Construction Services, dated 4 Decemebr 2007, Rollo pp. 38-56.

[8] See Admitted Fact No. 9 of the Terms of Reference, Rollo, p. 69.

[9] See Order of Payment, Rollo, p. 66.

[10] Rollo, p. 7.

[11] Rollo, pp. 363-370.

[12] See Admitted Fact No. 12 of the Terms of Reference, Rollo, p. 69.

[13] Functions like a Pre-Trial Order in Judicial Proceedings per CIAC Arbitral Tribunal, Rollo, pp. 67-73.

[14] Rollo, p. 30.

[15] Rollo, p. 34.

[16] Rollo, p. 9.

[17] See *Philrock, Inc. vs. CIAC, et. al.* G.R. Nos. 132848-49, June 26, 2001.

[18] See *Stronghold Insurance Company, Inc. vs. Tokyu Construction Compnay*, G.R. Nos. 158820-21 June 5, 2009.

[19] See *Uniwide Sales Realty and Resources Corporation vs. Titan-Ikeda Construction and Development Corporation*, G.R. NO. 126619, December 20, 2006.

[20] by NPF.

[21] See Art. 34, Rule 6 of the Rules and Regulations Implementing the Local Government Code of 1991; and, *Estate or Heirs of the Late Ex-Justice Jose B. L. Reyes, et. al. vs. City of Manila*, G.R. No. 132431, February 13, 2004.

[22] See *Austin Hardware Company vs. Court of Appeals*, 69 SCRA 564.

[23] G.R. No. 157118, December 08, 2003.

[24] Rollo, p. 45.

[25] Rollo, p. 53.

[26] See CIAC Decision, dated 28 January 2013.

[27] Section 6, Rule 6, Rules of Court.

[28] *Korea Exchange Bank vs. Hon. Rogelio c. Gonzales*, G.R. NOS. 142286-87, April 15, 2005.

[29] Rollo, p. 34.

[30] Rollo, pp. 26-37.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.