

F. F. MAÑACOP CONSTRUCTION CO., INC., PETITIONER, VS. COURT OF APPEALS AND THE MANILA INTERNATIONAL AIRPORT AUTHORITY, RESPONDENTS.

G.R. No. 122196. January 15, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

The undisputed facts are as follows:

"Sometime in September, 1995, petitioner started with the construction of a perimeter fence along the MIA road from Asia Overseas, Inc. up to Airscope Development Corporation for and in consideration of the quoted price of P307,440.00. Because of the urgency of building the said fence which was to prevent would be squatters from entering the area, petitioner proceeded with the fence construction even if the Notice to Proceed was not yet signed by the general manager[1] of private respondent[2] but already initialed by its Asst. Project Manager.[3] After the February, 1986 revolution, however, the new general manager[4] of private respondent stopped the construction of the said fence. By that time 95% was finished which was worth P282,068.00 as computed by petitioner. Petitioner made repeated demands for the payment of what it has completed but private respondent ignored said demands. After two years of making demands for payment which, as aforesaid, were simply ignored by private respondent, petitioner decided to bring the matter to court and thus incurred attorney's fees in the process.

"In court, the issues were limited to whether or not petitioner had done works for the private respondent and whether or not the same was authorized.

"In order to prove that petitioner rendered services to private respondent, petitioner presented Engr. Angelito Gonzales who testified that indeed fence was constructed for private respondent in accordance with plans therefor (Exh. "C") and pictures had been taken of the fence (Exhs. "N" to "N-3") and the certification of the supplier as to the materials used by petitioner in constructing the fence and the price thereof.

"Private respondent presented no evidence whatever (sic) despite the chances[5] given to it by the trial court, one of which evidence would have consisted of a testimony from the COA[6] on what should be the expenses involved in the construction of said fence.

"After the repeated failure of private respondent to present its evidence, the trial court rendered a decision wherein it is found that for the services rendered by the petitioner it should be paid P238,501.48 based upon a quantum meruit since there is an absence of a written contract between the parties. Said amount is the latest evaluation of the work done which evaluation was made by private respondent itself. Likewise, the trial court ordered private respondent to pay petitioner attorney's fees since there is reason to believe that private respondent acted in bad faith in refusing to comply with the repeated demands of petitioner for payment for two long years.

"On appeal to the respondent court, the private respondent assigned the error that the trial court should have referred the computation of what should be paid to petitioner to the COA pursuant to what was done in the case

of *Eslao v. Commission on Audit*, 195 SCRA 730. The petitioner refuted this assigned error by pointing out that it is not one of the issues raised before the trial court.

"In its decision dated September 8, 1995, the Court of Appeals agreed that petitioner rendered services to private respondent for which it should be paid but set aside the entire decision of the trial court directing the latter to refer the computation of what should be paid to petitioner to the COA as done in the case of *Eslao v. Commission on Audit*.

"A motion for reconsideration of the aforesaid decision proved futile."[7]

Petitioner comes to this Court via petition for review under Rule 45 arguing that the Court of Appeals (CA) erred in taking cognizance of the issue of referring the matter to the COA to determine the amount due to petitioner by relying on *Eslao v. COA* and *Royal Trust Co. vs. COA*[8], which issue was raised for the first time on appeal. The Court gave due course to the petition and required the parties to submit their respective memoranda. Petitioner complied while private respondent adopted its comment as memorandum.

Well-recognized jurisprudence precludes raising an issue only for the first time on appeal,[9] as it would be offensive to the basic rules of fair play and justice to allow private respondent to raise a question not ventilated before the court *a quo*. [10] There is no dispute that the issue of whether the matter should be referred to the COA was not raised in the lower court. Thus, technically, respondent court should not have taken cognizance of the same. However, considering that the issue of reference is a matter closely related to the determination of the question on how much is exactly due to petitioner, the court may consider the former issue for a just and complete resolution of the case.[11] Besides, the present case involves the disposition of public funds and calls for the performance of a constitutional duty of the COA which should not be defeated by mere technicalities of procedure.

Proceeding to the merits, it is not disputed that Petitioner is entitled to payment for the construction it made, which arose from a quasi-contractual relation created between the former and private respondent. But should petitioner be paid based on quantum meruit?

The issue was answered in the affirmative in the case of *Eslao*. We find no reason to depart from such ruling due to the following reasons: First, the instant quasi-contract is neither fraudulent nor *mala in se*. Second, the project was already covered by a specific appropriation.[12] Third, as in private contracts, the facts show that an implied obligation to pay would be imposed upon the government. Fourth, the property or benefit is not *ultra vires*, i.e. they can be the proper subject of an express contract and are within the contractual powers of the public body. Fifth, the case falls within the exemption from the mandatory procedure of public bidding which is dispensed with on the ground of public necessity,[13] or when time is of the essence,[14] and considering that the subject project was contiguous to an on going project[15] performed by petitioner and there is no proof of any unsatisfactory performance or negative slippage.[16] Sixth, the contractor substantially complied (95% complete) in good faith with its obligation and no intentional departure from the specifications were alleged. Seventh, petitioner's claim is clearly supported by equity. Private respondent is reaping benefits from the scallop fence and wire placed by petitioner. Eighth, there is no proof of any collusion among the parties involved. Finally, the payment is limited to the actual cost chargeable against funds authorized and certified for the purpose. All these circumstances, taken together, negate fraud and collusion.[17]

Citing the cases of *Eslao* and *Royal Trust*, the Solicitor General, on behalf of private respondent argues that the matter should be referred to the COA.

Such argument is without merit. Quantum meruit allows recovery of the reasonable value regardless of any agreement as to value. It entitles the party to "as much as he reasonably deserves,"[18] as distinguished from

quantum valebant or to "as much as what is reasonably worth."

Unliquidated claims present a justiciable question ripe for judicial determination which is beyond the powers of the COA to adjudicate.[19] Recovery based on quantum meruit is in the nature of such claim because its settlement requires the application of judgment and discretion and cannot be adjusted by simple arithmetical processes. In the cases of Eslao and Royal Trust, the Court found it necessary to refer to the COA the task of determining the total compensation due to the claimants considering that the matter on the exact amount was not at issue[20] and the determination thereof involves a review of the factual findings and evidence in support thereof. On the other hand, the lower court in this case, had already made a factual finding on the amount reasonably due to petitioner and scrutinized the evidence to sustain the claim. Besides, there is nothing in the cited cases which would imply that only the COA can determine the specific amount due to a contractor guided by the equitable principle of quantum meruit. As our courts are both courts of law and equity, they are not powerless to determine a factual matter in accordance with both standards.

With respect to the award of attorney's fees, the same is premised on the uncontroverted factual finding of the lower court, as affirmed by respondent appellate court, that private respondent acted in bad faith in refusing payment to petitioner. Such factual findings are not only accorded great weight, but finality as well, since they are supported by substantial evidence.[21] No reason appears in this case that would justify departure from the above doctrine.

WHEREFORE, the decision of the Court of Appeals is SET ASIDE and the decision of the Regional Trial Court dated May 4, 1992 is REINSTATED.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Luis Tabuena, (Rollo, p. 70).

[2] Renamed as the Ninoy Aquino International Airport (NAIA), (Rollo, p. 8).

[3] Elpidio L. Mendoza, (Rollo, p. 70).

[4] Luis Tabuena was replaced by Romeo Santos who was in turn replaced by Reli German, (Rollo, p. 9).

[5] The RTC gave private respondent at least (4) opportunities to present their evidence but the latter still failed to avail of such opportunities for undisclosed reasons.

[6] Commission on Audit.

[7] Rollo, pp. 127-129.

[8] G.R. No. 84202, November 23, 1988 (Resolution of the Court en banc, cited in Eslao vs. COA, 195 SCRA 730 (1991)).

[9] Manila Bay Club vs. CA, [resolution] 249 SCRA 303 (1995); Republic vs. NLRC, 314 Phil. 507 (1995).

[10] See Lopez Realty, Inc. vs. Fontecha, 247 SCRA 183 (1995); Manila Bay Club vs. CA, [Decision] 315 Phil. 805 (1995); C. Alcantara & Sons, Inc. vs. NLRC, 229 SCRA 109 (1994); Ravelo vs. CA, 207 SCRA 254 (1992); Anchuelo vs. IAC, 147 SCRA 434 (1987).

[11] Garrido v. CA, 236 SCRA 450 (1994).

[12] An amount of P313,325.28 was appropriated for the reinforcement of the fence. (Rollo, p. 45).

[13] Section 9, B.P. 132 (Public Works Appropriations Act) provides:

"Negotiated contracts — Pursuant to the general policy of undertaking projects by contract after public bidding, no project covered by appropriations in this act shall be prosecuted by negotiated contract except: x x x ; (b) in case of urgent necessity or emergency or danger to life and property; x x x : Provided, that no negative slippage exceeding ten per centum (10%) is incurred by the contractor in any of his on-going projects: Provided, further, That the additional work is within his contracting capabilities. x x x " (emphasis supplied).

[14]Section 4, P.D. 1594 as amended provides:

"Bidding. — Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provisions of laws and acts on the matter, subject to the approval of the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than P1 million, and the President of the Philippines, upon recommendation of the Minister, if the project cost is P1 million or more.

[15] Petitioner was under contract with private respondent and was actually fencing the MIAA Engineering compound at the time the latter asked the former to perform the project subject of this case. (Rollo, p. 44).

[16] IB 10.4.2, Implementing Rules and Regulations of P.D. 1594, as amended provides:

"1. Negotiated contract may be entered into only where any of the following conditions exist and the implementing office/agency/corporation is not capable of undertaking the project by administration:

xxx xxx xxx

c. Where the subject project is adjacent or contiguous to an ongoing project and it could be economically prosecuted by the same contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices and contract conditions, less mobilization cost, provided that he has no negative slippage and has demonstrated a satisfactory performance. (*italics ours*).

xxx xxx xxx."

[17] *Rivera v. Municipality of Malolos*, 102 Phil. 285, 291 (1957).

[18] *Caughlan v. International Longshoremen's and Warehousemen's Union*, 78 A.L. R. 2d 313; *Jackson v. City of Gastonia*, 100 S.E. 2d 241, 243; *Lockard v. City of Salem*, 43 S.E. 2d 239 244, 130 W. Va. 287; *Mead v. Ringling*, 64 N. W. 2d 222, 225; *American-Hawaiian Engineering and Construction Co. v. Butler*, 165 Cal. App. 497 cited in 17 Am Jur 2d Contracts, Sec. 583.

[19]See *Phil. Operations, Inc. v. Auditor-General*, 94 Phil. 868 (1954).

[20]The issue in the cited cases is whether the contractors were entitled to any payment.

[21] See *Far East Bank v. CA*, G.R. No. 123569, April 1, 1996; *Acevedo Optical v. CA*, 250 SCRA 409 (1995); *Salvador v. CA*, *supra*.; *Alforte v. Santos*, 313 Phil. 384 (1995); *Chua v. CA*, 312 Phil. 857 (1995); *Tay v. CA*, 312 Phil. 1128 (1995); *Meneses v. CA*, 246 SCRA 162.

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