

UNIWIDE SALES REALTY AND RESOURCES CORPORATION, PETITIONER, VS. TITAN-IKEDA CONSTRUCTION AND DEVELOPMENT CORPORATION, RESPONDENT

G.R. NO. 126619. December 20, 2006

Ponente: TINGA, J.

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TINGA, J.:

This Petition for Review on Certiorari under Rule 45 seeks the partial reversal of the 21 February 1996 Decision[1] of the Court of Appeals Fifteenth Division in CA-G.R. SP No. 37957 which modified the 17 April 1995 Decision[2] of the Construction Industry Arbitration Commission (CIAC).

The case originated from an action for a sum of money filed by Titan-Ikeda Construction and Development Corporation (Titan) against Uniwide Sales Realty and Resources Corporation (Uniwide) with the Regional Trial Court (RTC), Branch 119,[3] Pasay City arising from Uniwide's non-payment of certain claims billed by Titan after completion of three projects covered by agreements they entered into with each other. Upon Uniwide's motion to dismiss/suspend proceedings and Titan's open court manifestation agreeing to the suspension, Civil Case No. 98-0814 was suspended for it to undergo arbitration.[4] Titan's complaint was thus re-filed with the CIAC.[5] Before the CIAC, Uniwide filed an answer which was later amended and re-amended, denying the material allegations of the complaint, with counterclaims for refund of overpayments, actual and exemplary damages, and attorney's fees. The agreements between Titan and Uniwide are briefly described below.

PROJECT 1.[6]

The first agreement (Project 1) was a written "Construction Contract" entered into by Titan and Uniwide sometime in May 1991 whereby Titan undertook to construct Uniwide's Warehouse Club and Administration Building in Libis, Quezon City for a fee of P120,936,591.50, payable in monthly progress billings to be certified to by Uniwide's representative.[7] The parties stipulated that the building shall be completed not later than 30 November 1991. As found by the CIAC, the building was eventually finished on 15 February 1992[8] and turned over to Uniwide.

PROJECT 2.

Sometime in July 1992, Titan and Uniwide entered into the second agreement (Project 2) whereby the former agreed to construct an additional floor and to renovate the latter's warehouse located at the EDSA Central Market Area in Mandaluyong City. There was no written contract executed between the parties for this project. Construction was allegedly to be on the basis of drawings and specifications provided by Uniwide's structural engineers. The parties proceeded on the basis of a cost estimate of P21,301,075.77 inclusive of Titan's 20% mark-up. Titan conceded in its complaint to having received P15,000,000.00 of this amount. This project was completed in the latter part of October 1992 and turned over to Uniwide.

PROJECT 3.[9]

The parties executed the third agreement (Project 3) in May 1992. In a written "Construction Contract," Titan undertook to construct the Uniwide Sales Department Store Building in Kalookan City for the price of P118,000,000.00 payable in progress billings to be certified to by Uniwide's representative.[10] It was stipulated that the project shall be completed not later than 28 February 1993. The project was completed and turned over to Uniwide in June 1993.

Uniwide asserted in its petition that: (a) it overpaid Titan for unauthorized additional works in Project 1 and Project 3; (b) it is not liable to pay the Value-Added Tax (VAT) for Project 1; (c) it is entitled to liquidated damages for the delay incurred in constructing Project 1 and Project 3; and (d) it should not have been found liable for deficiencies in the defectively constructed Project 2.

An Arbitral Tribunal consisting of a chairman and two members was created in accordance with the CIAC Rules of Procedure Governing Construction Arbitration. It conducted a preliminary conference with the parties and thereafter issued a Terms of Reference (TOR) which was signed by the parties. The tribunal also conducted an ocular inspection, hearings, and received the evidence of the parties consisting of affidavits which were subject to cross-examination. On 17 April 1995, after the parties submitted their respective memoranda, the Arbitral Tribunal promulgated a Decision,[11] the decretal portion of which is as follows:

"WHEREFORE, judgment is hereby rendered as follows:

On Project 1 – Libis:

[Uniwide] is absolved of any liability for the claims made by [Titan] on this Project.

Project 2 – Edsa Central:

[Uniwide] is absolved of any liability for VAT payment on this project, the same being for the account of the [Titan]. On the other hand, [Titan] is absolved of any liability on the counterclaim for defective construction of this project.

[Uniwide] is held liable for the unpaid balance in the amount of P6,301,075.77 which is ordered to be paid to the [Titan] with 12% interest per annum commencing from 19 December 1992 until the date of payment.

On Project 3 – Kalookan:

[Uniwide] is held liable for the unpaid balance in the amount of P5,158,364.63 which is ordered to be paid to the [Titan] with 12% interest per annum commencing from 08 September 1993 until the date of payment.

[Uniwide] is held liable to pay in full the VAT on this project, in such amount as may be computed by the Bureau of Internal Revenue to be paid directly thereto. The BIR is hereby notified that [Uniwide] Sales Realty and Resources Corporation has assumed responsibility and is held liable for VAT payment on this project. This accordingly exempts Claimant Titan-Ikeda Construction and Development Corporation from this obligation.

Let a copy of this Decision be furnished the Honorable Aurora P. Navarette Recina, Presiding Judge, Branch 119, Pasay City, in Civil Case No. 94-0814 entitled Titan-Ikeda Construction Development Corporation, Plaintiff – versus – Uniwide Sales Realty and Resources Corporation, Defendant, pending before said court for information and proper action.

SO ORDERED."[12]

Uniwide filed a motion for reconsideration of the 17 April 1995 decision which was denied by the CIAC in its Resolution dated 6 July 1995. Uniwide accordingly filed a petition for review with the Court of

Appeals,[13] which rendered the assailed decision on 21 February 1996. Uniwide's motion for reconsideration was likewise denied by the Court of Appeals in its assailed Resolution[14] dated 30 September 1996.

Hence, Uniwide comes to this Court via a petition for review under Rule 45. The issues submitted for resolution of this Court are as follows:[15] (1) Whether Uniwide is entitled to a return of the amount it allegedly paid by mistake to Titan for additional works done on Project 1; (2) Whether Uniwide is liable for the payment of the Value-Added Tax (VAT) on Project 1; (3) Whether Uniwide is entitled to liquidated damages for Projects 1 and 3; and (4) Whether Uniwide is liable for deficiencies in Project 2.

As a rule, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals.[16] In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.[17] This rule, however admits of certain exceptions.

In *David v. Construction Industry and Arbitration Commission*,[18] we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[19]

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion[20] resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators,[21] (2) when the findings of the Court of Appeals are contrary to those of the CIAC,[22] and (3) when a party is deprived of administrative due process.[23]

Thus, in *Hi-Precision Steel Center, Inc. v. Lim Kim Builders, Inc.*,[24] we refused to review the findings of fact of the CIAC for the reason that petitioner was requiring the Court to go over each individual claim and counterclaim submitted by the parties in the CIAC. A review of the CIAC's findings of fact would have had the effect of "setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution." Further, petitioner therein failed to show any serious error of law amounting to grave abuse of discretion resulting in lack of jurisdiction on the part of the Arbitral Tribunal, in either the methods employed or the results reached by the Arbitral Tribunal, in disposing of the detailed claims of the respective parties. In *Metro Construction, Inc. v. Chatham Properties, Inc.*,[25] we reviewed the findings of fact of the Court of Appeals because its findings on the issue of whether petitioner therein was in delay were contrary to the findings of the CIAC. Finally, in *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*,[26] we declined to depart from the findings of the Arbitral Tribunal considering that the computations, as well as the propriety of the awards, are unquestionably factual issues that have been discussed by the Arbitral Tribunal and affirmed by the Court of Appeals.

In the present case, only the first issue presented for resolution of this Court is a question of law while the rest are factual in nature. However, we do not hesitate to inquire into these factual issues for the reason that the CIAC and the Court of Appeals, in some matters, differed in their findings.

We now proceed to discuss the issues in seriatim.

Payment by Mistake for Project 1

The first issue refers to the P5,823,481.75 paid by Uniwide for additional works done on Project 1. Uniwide asserts that Titan was not entitled to be paid this amount because the additional works were without any written authorization.

It should be noted that the contracts do not contain stipulations on "additional works," Uniwide's liability for "additional works," and prior approval as a requirement before Titan could perform "additional works."

Nonetheless, Uniwide cites Article (Art.) 1724 of the New Civil Code as basis for its claim that it is not liable to pay for "additional works" it did not authorize or agree upon in writing. The provision states:

Art. 1724. 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 landowner, 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:

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

The Court of Appeals did take note of this provision, but deemed it inapplicable to the case at bar because Uniwide had already paid, albeit with unwritten reservations, for the "additional works." The provision would have been operative had Uniwide refused to pay for the costs of the "additional works." Instead, the Court of Appeals applied Art. 1423[27] of the New Civil Code and characterized Uniwide's payment of the said amount as a voluntary fulfillment of a natural obligation. The situation was characterized as being akin to Uniwide being a debtor who paid a debt even while it knew that it was not legally compelled to do so. As such debtor, Uniwide could no longer demand the refund of the amount already paid.

Uniwide counters that Art. 1724 makes no distinction as to whether payment for the "additional works" had already been made. It claims that it had made the payments, subject to reservations, upon the false representation of Titan-Ikeda that the "additional works" were authorized in writing. Uniwide characterizes the payment as a "mistake," and not a "voluntary" fulfillment under Art. 1423 of the Civil Code. Hence, it urges the application, instead, of the principle of solutio indebiti under Arts. 2154[28] and 2156[29] of the Civil Code.

To be certain, this Court has not been wont to give an expansive construction of Art. 1724, denying, for example, claims that it applies to constructions made of ship vessels,[30] or that it can validly deny the claim for payment of professional fees to the architect.[31] The present situation though presents a thornier problem. Clearly, Art. 1724 denies, as a matter of right, payment to the contractor for additional works which were not authorized in writing by the proprietor, and the additional price of which was not determined in writing by the parties.

Yet the distinction pointed out by the Court of Appeals is material. The issue is no longer centered on the right of the contractor to demand payment for additional works undertaken because payment, whether mistaken or not, was already made by Uniwide. Thus, it would not anymore be incumbent on Titan to establish that it had the right to demand or receive such payment.

But, even if the Court accepts Art. 1724 as applicable in this case, such recognition does not ipso facto accord Uniwide the right to be reimbursed for payments already made, since Art. 1724 does not effect such right of reimbursement. It has to be understood that Art. 1724 does not preclude the payment to the contractor who performs additional works without any prior written authorization or agreement as to the price for such works if

the owner decides anyway to make such payment. What the provision does preclude is the right of the contractor to insist upon payment for unauthorized additional works.

Accordingly, Uniwide, as the owner who did pay the contractor for such additional works even if they had not been authorized in writing, has to establish its own right to reimbursement not under Art. 1724, but under a different provision of law. Uniwide's burden of establishing its legal right to reimbursement becomes even more crucial in the light of the general presumption contained in Section 3(f), Rule 131 of the Rules of Court that "money paid by one to another was due to the latter."

Uniwide undertakes such a task before this Court, citing the provisions on solutio indebiti under Arts. 2154 and 2156 of the Civil Code. However, it is not enough to prove that the payments made by Uniwide to Titan were "not due" because there was no prior authorization or agreement with respect to additional works. There is a further requirement that the payment by the debtor was made either through mistake or under a cloud of doubt. In short, for the provisions on solutio indebiti to apply, there has to be evidence establishing the frame of mind of the payor at the time the payment was made.[32]

The CIAC refused to acknowledge that the additional works on Project 1 were indeed unauthorized by Uniwide. Neither did the Court of Appeals arrive at a contrary determination. There would thus be some difficulty for this Court to agree with this most basic premise submitted by Uniwide that it did not authorize the additional works on Project 1 undertaken by Titan. Still, Uniwide does cite testimonial evidence from the record alluding to a concession by employees of Titan that these additional works on Project 1 were either authorized or documented.[33]

Yet even conceding that the additional works on Project 1 were not authorized or committed into writing, the undisputed fact remains that Uniwide paid for these additional works. Thus, to claim a refund of payments made under the principle of solutio indebiti, Uniwide must be able to establish that these payments were made through mistake. Again, this is a factual matter that would have acquired a mantle of invulnerability had it been determined by both the CIAC and the Court of Appeals. However, both bodies failed to arrive at such a conclusion. Moreover, Uniwide is unable to direct our attention to any pertinent part of the record that would indeed establish that the payments were made by reason of mistake.

We note that Uniwide alleged in its petition that the CIAC award in favor of Titan in the amount P5,158,364.63 as the unpaid balance in Project 3 included claims for additional works of P1,087,214.18 for which no written authorization was presented. Unfortunately, this issue was not included in its memorandum as one of the issues submitted for the resolution of the Court.

Liability for the Value-Added Tax (VAT)

The second issue takes us into an inquiry on who, under the law, is liable for the payment of the VAT, in the absence of a written stipulation on the matter. Uniwide claims that the VAT was already included in the contract price for Project 1. Citing Secs. 99 and 102 of the National Internal Revenue Code, Uniwide asserts that VAT, being an indirect tax, may be shifted to the buyer by including it in the cash or selling price and it is entirely up to the buyer to agree or not to agree to absorb the VAT.[34] Thus, Uniwide concludes, if there is no provision in the contract as to who should pay the VAT, it is presumed that it would be the seller.[35]

The contract for Project 1 is silent on which party should shoulder the VAT while the contract for Project 3 contained a provision to the effect that Uniwide is the party responsible for the payment of the VAT.[36] Thus, when Uniwide paid the amount of P2,400,000.00 as billed by Titan for VAT, it assumed that it was the VAT for Project 3. However, the CIAC and the Court of Appeals found that the same was for Project 1.

We agree with the conclusions of both the CIAC and the Court of Appeals that the amount of P2,400,000.00 was paid by Uniwide as VAT for Project 1. This conclusion was drawn from an Order of Payment[37] dated 7 October 1992 wherein Titan billed Uniwide the amount of P2,400,000.00 as "Value Added Tax based on P60,000,000.00 Contract," computed on the basis of 4% of P60,000,000.00. Said document which was approved by the President of Uniwide expressly indicated that the project involved was the "UNIWIDE SALES WAREHOUSE CLUB & ADMIN BLDG." located at '90 E. RODRIGUEZ JR. AVE., LIBIS, Q.C." The reduced base for the computation of the tax, according to the Court of Appeals, was an indication that the parties agreed to pass the VAT for Project 1 to Uniwide but based on a lower contract price.

Indeed, the CIAC found as follows:

Without any documentary evidence than Exhibit "H" to show the extent of tax liability assumed by [Uniwide], the Tribunal holds that the parties is [sic] obliged to pay only a share of the VAT payment up to P60,000,000.00 out of the total contract price of P120,936,591.50. As explained by Jimmy Gow, VAT is paid on labor only for construction contracts since VAT had already been paid on the materials purchased. Since labor costs is [sic] proportionately placed at 60%-40% of the contract price, simplified accounting computes VAT at 4% of the contract price. Whatever is the balance for VAT that remains to be paid on Project 1 – Libis shall remain the obligation of [Titan]. (Emphasis supplied.)[38]

Liquidated Damages

On the third issue of liquidated damages, the CIAC rejected such claim while the Court of Appeals held that the matter should be left for determination in future proceedings where the issue has been made clear.

In rejecting Uniwide's claim for liquidated damages, the CIAC held that there is no legal basis for passing upon and resolving Uniwide's claim for the following reasons: (1) no claim for liquidated damages arising from the alleged delay was ever made by Uniwide at any time before the commencement of Titan's complaint; (2) the claim for liquidated damages was not included in the counterclaims stated in Uniwide's answer to Titan's complaint; (3) the claim was not formulated as an issue to be resolved by the CIAC in the TOR;[39] and (4) no attempt was made to modify the TOR to accommodate the same as an issue to be resolved.

Uniwide insists that the CIAC should have applied Section 5, Rule 10 of the Rules of Court.[40] On this matter, the Court of Appeals held that the CIAC is an arbitration body, which is not necessarily bound by the Rules of Court. Also, the Court of Appeals found that the issue has never been made concrete enough to make Titan and the CIAC aware that it will be an issue. In fact, Uniwide only introduced and quantified its claim for liquidated damages in its Memorandum submitted to the CIAC at the end of the arbitration proceeding. The Court of Appeals also noted that the only evidence on record to prove delay in the construction of Project 1 is the testimony of Titan's engineer regarding the date of completion of the project while the only evidence of delay in the construction of Project 3 is the affidavit of Uniwide's President.

According to Uniwide, the ruling of the Court of Appeals on the issue of liquidated damages goes against the established judicial policy that a court should always strive to settle in one proceeding the entire controversy leaving no root or branch to bear the seeds of future litigations.[41] Uniwide claims that the required evidence for an affirmative ruling on its claim is already on the record. It cites the pertinent provisions of the written contracts which contained deadlines for liquidated damages. Uniwide also noted that the evidence show that Project 1 was completed either on 15 February 1992, as found by the CIAC, or 12 March 1992, as shown by Titan's own evidence, while Project 3, according to Uniwide's President, was completed in June 1993. Furthermore, Uniwide asserts, the CIAC should have applied procedural rules such as Section 5, Rule 10 with more liberality because it was an administrative tribunal free from the rigid technicalities of regular courts.[42]

On this point, the CIAC held:

The Rule of Procedure Governing Construction Arbitration promulgated by the CIAC contains no provision on the application of the Rules of Court to arbitration proceedings, even in a suppletory capacity. Hypothetically admitting that there is such a provision, suppletory application is made only if it would not contravene a specific provision in the arbitration rules and the spirit thereof. The Tribunal holds that such importation of the Rules of Court provision on amendment to conform to evidence would contravene the spirit, if not the letter of the CIAC rules. This is for the reason that the formulation of the Terms of Reference is done with the active participation of the parties and their counsel themselves. The TOR is further required to be signed by all the parties, their respective counsel and all the members of the Arbitral Tribunal. Unless the issues thus carefully formulated in the Terms of Reference were expressly showed [sic] to be amended, issues outside thereof may not be resolved. As already noted in the Decision, "no attempt was ever made by the [Uniwide] to modify the TOR in order to accommodate the issues related to its belated counterclaim" on this issue. (Emphasis supplied.)

Arbitration has been defined as "an arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation."^[43] Voluntary arbitration, on the other hand, involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts.^[44] As an arbitration body, the CIAC can only resolve issues brought before it by the parties through the TOR which functions similarly as a pre-trial brief. Thus, if Uniwide's claim for liquidated damages was not raised as an issue in the TOR or in any modified or amended version of it, the CIAC cannot make a ruling on it. The Rules of Court cannot be used to contravene the spirit of the CIAC rules, whose policy and objective is to "provide a fair and expeditious settlement of construction disputes through a non-judicial process which ensures harmonious and friendly relations between or among the parties."^[45]

Further, a party may not be deprived of due process of law by an amendment of the complaint as provided in Section 5, Rule 10 of the Rules of Court. In this case, as noted by the Court of Appeals, Uniwide only introduced and quantified its claim for liquidated damages in its memorandum submitted to the CIAC at the end of the arbitration proceeding. Verily, Titan was not given a chance to present evidence to counter Uniwide's claim for liquidated damages.

Uniwide alludes to an alleged judicial admission made by Engr. Luzon Tablante wherein he stated that Project 1 was completed on 10 March 1992. It now claims that by virtue of Engr. Tablante's statement, Titan had admitted that it was in delay. We disagree. The testimony of Engr. Tablante was offered only to prove that Project 1 was indeed completed. It was not offered to prove the fact of delay. It must be remembered that the purpose for which evidence is offered must be specified because such evidence may be admissible for several purposes under the doctrine of multiple admissibility, or may be admissible for one purpose and not for another, otherwise the adverse party cannot interpose the proper objection. Evidence submitted for one purpose may not be considered for any other purpose.^[46] Furthermore, even assuming, for the sake of argument, that said testimony on the date of completion of Project 1 is admitted, the establishment of the mere fact of delay is not sufficient for the imposition of liquidated damages. It must further be shown that delay was attributable to the contractor if not otherwise justifiable. Contrarily, Uniwide's belated claim constitutes an admission that the delay was justified and implies a waiver of its right to such damages.

Project 2: "as-built" plans, overpricing, defective construction

To determine whether or not Uniwide is liable for the unpaid balance of P6,301,075.77 for Project 2, we need to resolve four sub-issues, namely: (1) whether or not it was necessary for Titan to submit "as-built" plans before it can be paid by Uniwide; (2) whether or not there was overpricing of the project; (3) whether or not the P15,000,000.00 paid by Uniwide to Titan for Project 2 constitutes full payment; and (4) whether or not Titan can be held liable for defective construction of Project 2.

The CIAC, as affirmed by the Court of Appeals, held Uniwide liable for deficiency relating to Project 2 in the amount of P6,301,075.77. It is nonetheless alleged by Uniwide that Titan failed to submit any "as-built" plans for Project 2, such plans allegedly serving as a condition precedent for payment. Uniwide further claims that Titan had substantially overcharged Uniwide for Project 2, there being uncontradicted expert testimony that the total cost of Project 2 did not exceed P7,812,123.60. Furthermore, Uniwide alleged that the works performed were structurally defective, as evidenced by the structural damage on four columns as observed on ocular inspection by the CIAC and confirmed by Titan's project manager.

On the necessity of submitting "as-built" plans, this Court rules that the submission of such plans is not a pre-requisite for Titan to be paid by Uniwide. The argument that said plans are required by Section 308 of Presidential Decree No. 1098 (National Building Code) and by Section 2.11 of its Implementing Rules before payment can be made is untenable. The purpose of the law is "to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control." The submission of these plans is necessary only in furtherance of the law's purpose by setting minimum standards and requirements to control the "location, site, design, quality of materials, construction, use, occupancy, and maintenance" of buildings constructed and not as a requirement for payment to the contractor.[47] The testimony of Engr. Tablante to the effect that the "as-built" plans are required before payment can be claimed by Titan is a mere legal conclusion which is not binding on this Court.

Uniwide claims that, according to one of its consultants, the true price for Project 2 is only P7,812,123.60. The CIAC and the Court of Appeals, however, found the testimony of this consultant suspect and ruled that the total contract price for Project 2 is P21,301,075.77. The CIAC held:

The Cost Estimate for Architectural and Site Development Works for the EDSA Central, Dau Branch Project (Exhibit "2-A" for [Uniwide] and made as a common exhibit by [Titan] who had it marked at [sic] its own Exhibit "U"), which was admittedly prepared by Fermindoza and Associates, [Uniwide]'s own architects, shows that the amount of P17,750,896.48 was arrived at. Together with the agreed upon mark-up of 20% on said amount, the total project cost was P21,301,075.77.

The Tribunal holds that the foregoing document is binding upon the [Uniwide], it being the mode agreed upon by which its liability for the project cost was to be determined.[48] (Emphasis supplied.)

Indeed, Uniwide is bound by the amount indicated in the above document. Claims of connivance or fraudulent conspiracy between Titan and Uniwide's representatives which, it is alleged, grossly exaggerated the price may properly be dismissed. As held by the CIAC:

The Tribunal holds that [Uniwide] has not introduced any evidence to sustain its charge of fraudulent conspiracy. As a matter of fact, [Uniwide]'s own principal witness, Jimmy Gow, admitted on cross-examination that he does not have any direct evidence to prove his charge of connivance or complicity between the [Titan] and his own representatives. He only made that conclusion by the process of his own "logical reasoning" arising from his consultation with other contractors who gave him a much lower estimate for the construction of the Dau Project. There is thus no reason to invalidate the binding character of Exhibit "2-A" which, it is significant to point out, is [Uniwide]'s own evidence.[49] (Emphasis supplied.)

Accordingly, deducting the P15,000,000.00 already paid by Uniwide from the total contract price of P21,301,075.77, the unpaid balance due for Project 2 is P6,301,075.77. This is the same amount reflected in the Order of Payment prepared by Uniwide's representative, Le Consultech, Inc. and signed by no less than four top officers and architects of Le Consultech, Inc. endorsing for payment by Uniwide to Titan the amount of P6,301,075.77.[50]

Uniwide asserts that Titan should not have been allowed to recover on Project 2 because the said project was defective and would require repairs in the amount of P800,000.00. It claims that the CIAC and the Court of Appeals should have applied *Nakpil and Sons v. Court of Appeals*[51] and Art. 1723 of the New Civil Code holding a contractor responsible for damages if the edifice constructed falls within fifteen years from completion on account of defects in the construction or the use of materials of inferior quality furnished by him or due to any violation of the terms of the contract.

On this matter, the CIAC conducted an ocular inspection of the premises on 30 January 1995. What transpired in the said ocular inspection is described thus:

On 30 January 1995, an ocular inspection was conducted by the Arbitral Tribunal as requested by [Uniwide]. Photographs were taken of the alleged construction defects, an actual ripping off of the plaster of a certain column to expose the alleged structural defect that is claimed to have resulted in its being "heavily damaged" was done, clarificatory questions were asked and manifestations on observations were made by the parties and their respective counsels. The entire proceedings were recorded on tape and subsequently transcribed. The photographs and transcript of the ocular inspection form part of the records and considered as evidence.[52]

And, according to these evidence, the CIAC concluded as follows:

It is likewise the holding of this Tribunal that [Uniwide]'s counterclaim of defective construction has not been sufficiently proven. The credibility of Engr. Cruz, [Uniwide]'s principal witness on this issue, has been severely impaired. During the ocular inspection of the premises, he gave such assurance of the soundness of his opinion as an expert that a certain column was heavily damaged judging from the external cracks that was readily apparent x x x

x x x x

On insistence of the Tribunal, the plaster was chipped off and revealed a structurally sound column x x x

Further, it turns out that what was being passed off as a defective construction by [Titan], was in fact an old column, as admitted by Mr. Gow himself x x x[53] (Emphasis supplied.)

Uniwide had the burden of proving that there was defective construction in Project 2 but it failed to discharge this burden. Even the credibility of its own witness was severely impaired. Further, it was found that the concrete slab placed by Titan was not attached to the old columns where cracks were discovered. The CIAC held that the post-tensioning of the new concrete slab could not have caused any of the defects manifested by the old columns. We are bound by this finding of fact by the CIAC.

It is worthy to stress our ruling in *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*[54] which was reiterated in *David v. Construction Industry and Arbitration Commission*,[55] that:

x x x Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other

area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution. (Emphasis supplied.)

WHEREFORE, premises considered, the petition is DENIED and the Decision of the Court of Appeals dated 21 February 1996 in CA-G.R. SP No. 37957 is hereby AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 10-33, 54-77 and 155-178. The dispositive portion of the said decision states:

"WHEREFORE, the judgment of the CIAC herein appealed from is hereby MODIFIED in the following respects:

a) The ruling holding petitioner liable directly to the BIR for the VAT on Project 3 and exempting respondent from the said obligation is hereby DELETED, and in lieu thereof, judgment is hereby rendered that the Value-Added Tax for Project 3, as determined by the BIR may be passed on to the petitioner, subject to such defenses as it may raise with regard to its computation;

b) The denial of petitioner's claims for liquidated damages is hereby made without prejudice;

c) The interest of 12% per annum attached to the unpaid balances for Projects 2 and 3 is hereby REDUCED to 6% per annum.

In all other aspects, the said judgment is hereby AFFIRMED.

SO ORDERED."

[2] Id. at 225-249.

[3] Id. at 293-307. Docketed as Civil Case No. 98-0814.

[4] Id. at 308; Under Executive Order No. 1008 (Construction Industry Arbitration Law).

[5] Docketed as CIAC Case No. 13-94.

[6] Rollo, pp. 261-267.

[7] Id. at 261-267.

[8] Uniwide claims that Titan allegedly admitted that the building was completed only on 12 March 1992, which date was reflected in Titan's Opposition to Partial Motion for Reconsideration dated 10 May 1996.

[9] Rollo, pp. 285-292.

[10] Id. at 286-292.

[11] Id. at 225-248.

[12] Id. at 246-247.

[13] Docketed as CA-G.R. SP No. 37857.

[14] Rollo, pp. 180-183.

[15] Id. at 344-373. See Petitioner's Memorandum.

[16] See *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, G.R. No. 153310, 2 March 2004, 424 SCRA 179, 197.

[17] See *David v. Construction Industry and Arbitration Commission*, G.R. No. 159795, 30 July 2004, 435 SCRA 654, 666.

[18] Id.

[19] Id.

[20] *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, supra note 15 at 198.

[21] *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, 13 December 1993, 228 SCRA 397, 405.

[22] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176 (2001).

[23] *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, supra.

[24] G.R. No. 110434, 13 December 1993, 228 SCRA 397.

[25] 418 Phil. 176 (2001).

[26] G.R. No. 153310, 2 March 2004, 424 SCRA 179 (2004).

[27] Art. 1423. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles.

[28] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[29] Art. 2156. If the payer was in doubt whether the debt was due, he may recover if he proves that it was not due.

[30] See *Royal Lines, Inc. v. Court of Appeals*, 227 Phil. 570 (1986)

[31] See *Arenas v. Court of Appeals*, G.R. No. 56524, 27 January 1989, 169 SCRA 558.

[32] Rollo, p. 232. On this score, the CIAC made two crucial conclusions:

The Tribunal finds that the evidence sufficiently establishes this issue in favor of the [Titan]. The fact that [Uniwide] had paid the claim for said additional works implies that the additional works were actually done

and that they had been duly authorized. Otherwise, Jimmy Gow would not have instructed his daughter-treasurer to make payments for them.

What [Uniwide] merely complains about is that there were no sufficient documents that had been attached by the [Titan] in support of its billings therefor. That claim of [Uniwide] has not been substantiated despite Cherrie Gow's undertaking to do so. But even hypothetically assuming that claim to be established, it would not help [Uniwide] any. The presumption is that payment is made for something that is due. Thus, [S]ection 3(f), Rule 131 of the Revised Rules of Evidence provides "that money paid by one to another was due to the latter."

If payment was made by mistake for an obligation not due, [Uniwide] has the burden of proving that claim in order to get a refund. This burden was not discharged by [Uniwide]. Sufficient documentation surely does not establish that payment was not due. All it establishes is carelessness on the part of [Uniwide]. Not having been contradicted and overcome[d] by any evidence adduced by [Uniwide], the presumption enjoyed by the [Titan] on this issue is satisfactory in accordance with the foregoing cited procedural rule. (Emphasis supplied.)

[33] See rollo, pp. 356, 360-361.

[34] Citing BIR Ruling No. 242, dated 6 June 1988.

[35] Citing BIR Ruling No. 131, dated 31 August 1994.

[36] See rollo, pp. 597-604. No. 2 of Article IV of the contract states that "It is agreed that the value-added-tax shall be for the OWNER's account." Uniwide is the OWNER referred by this stipulation.

[37] Id. at 440. This document is referred in the CIAC and CA decisions as Exhibit H.

[38] Id. at 237.

[39] The CIAC noted that the Terms of Reference (TOR) functions similarly as a pre-trial order in a judicial proceeding.

[40] RULES OF COURT, Rule 10, Section 5 states:

SEC. 5. Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[41] Citing *Gokongwei, Jr. v. Securities and Exchange Commission, et al.*, No. L- 45911, 11 April 1979, 89 SCRA 336, 360-361, *Galan Realty Co., Inc. v. Arranz, A.M.* No. MTJ-93-878, 27 October 1994, 237 SCRA 770, 776; and *Caltex Philippines, Inc. v. Intermediate Appellate Court*, G.R. No. 74730, 25 August 1989, 176 SCRA 741, 753.

[42] Citing *Bautista v. Secretary of Labor and Employment*, 196 SCRA 470, 475 and *Realty Exchange Venture Corporation v. Sendino*, G.R. No. 109703, 5 July 1994, 233 SCRA 665, 671. See also RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION.

[43] BLACK'S LAW DICTIONARY (6[th] Edition), p. 105.

[44] Supra note 23, at 405

[45] RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION, Art. 1, Sec. 1.

[46] REGALADO, REMEDIAL LAW COMPENDIUM (Vol. II), pp. 694-695.

[47] NATIONAL BUILDING CODE OF THE PHILIPPINES, Sec. 102.

[48] Rollo, p. 238.

[49] Id. at 239.

[50] Rollo, p. 443.

[51] G.R. No. L-47851, 3 October 1986, 144 SCRA 596.

[52] Id. at 226.

[53] Id. at 242.

[54] Supra note 23, at 405-406.

[55] Supra note 16, at 666-667.

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