ROMAGO ELECTRIC CO., INC., PETITIONER, VS. HONORABLE COURT OF APPEALS, SOLEDAD C. CAC, JOEPHIL BIEN, RENATO CUNANAN AND DELFIN INCIONG, RESPONDENTS.

G.R. NO. 130721. May 26, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The Case

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the decision[1] of the Court of Appeals dated 31 July 1997 and its resolution dated 16 September 1997 in CA-G.R. CV No. 28608. The Court of Appeals affirmed the decision[2] dated 29 June 1990 of the Regional Trial Court (RTC), Branch 19, Cauayan, Isabela, in Civil Case No. 19-300 in favor of herein private respondents for collection of a sum of money with damages.

The Facts

In 1982, the National Power Corporation (NPC) entered into an agreement with ROMAGO ELECTRIC CO., INC. (ROMAGO), under Contract No. Sp80DLC-502, for the erection and installation of NPC's 69 KV 3-Phase Transmission Lines from Santiago-Jones, Jones-Saguday and Cauayan-Roxas, Isabela, for an agreed consideration of P2,657,856.40.

Subsequently, on 07 June 1982, ROMAGO subcontracted the project to BICC Construction, an unregistered loose partnership composed of Soledad Cac, Delfin Inciong, Joephil Bien and Renato Cunanan, for and in consideration of the sum of P1,614,387.99. Under the subcontract agreement, the following documents, collectively termed therein as "Contract Documents," were incorporated into and made part of the contract "as though fully written out and set forth herein," to wit:

> ARTICLE I
>
> DOCUMENTS COMPRISING THE CONTRACT
>
> The following documents are hereby incorporated and made part of this Contract as though fully written out and set forth herein insofar as they are not inconsistent with the terms thereof:
>
> - National Power Corporation's Specification No. Sp80DLc – 502
>
> - Any and all plans, drawings, and schedules prepared by National Power Corporation.
>
> - SUB-CONTRACTOR'S proposal dated March 8, 1982.
>
> The documents mentioned above shall collectively be referred to as "Contract Documents."[3]

Also in the aforementioned agreement, the subcontractor's obligations are defined in its Article II, to wit:

> SUB-CONTRACTOR shall, in accordance with the provisions of this Contract and Contract Documents, fully and faithfully furnish all labor, tools, equipment and necessary materials (except NPC supplied) and proceed to completely perform the Erection and Installation of the 69 KV, 3 Phases Transmission Lines (Schedule II) under the 7th Power Loan.
>
> SUB-CONTRACTOR shall commence the work starting March 23, 1982 and shall complete the same within two hundred forty (240) calendar days plus any extension of time duly granted by National Power Corporation under the provisions of the Contract Documents.
>
> Except as otherwise provided for herein, all provisions of the National Power Corporation's Specifications No. Sp80DLc-502, with reference to obligations, responsibilities of Contractor thereunder are hereby made applicable to the SUB-CONTRACTOR under this Contract.[4]

In the course of the construction, the NPC granted ROMAGO a Contract Price Adjustment (CPA) amounting to P250,778.65.

Under the provision governing the CPA, as embodied in GP-08[5] of the "Plans and Specifications":

> GP-08 CONTRACT PRICE ADJUSTMENT
>
> Adjustment of contract prices will be made should any or both of the following conditions occur as embodied in P.D. No. 454 as amended by PD No. 459.
>
> (a) If during the effectivity of the contract, the cost of labor, materials, equipment rentals and supplies for construction should increase or decrease due to the direct acts of the Philippine Government. The increase of prices of gasoline and other fuel oils, and of cement shall be considered as direct acts of the Philippine Government.
>
> (b) If during the effectivity of the contract, the costs of labor, equipment rentals, construction materials and supplies used in the project should cause the sum total of the prices of bid items to increase or decrease by more than five percent (5%) compared with the total contract price.
>
> The increased amount in the contract price shall be determined by application of appropriate official indices, complied and issued by the Central Bank of the Philippines.
>
> The additive or deductive adjustment shall be added or deducted from the unit prices every six (6) months beginning from the date of bidding.[6]

When the project was completed, there appeared to be an outstanding balance due to BICC Construction from ROMAGO, part of which was the former's share in the CPA amounting to 70% of the NPC-ROMAGO contract or P175,545.05.

Mrs. Soledad Cac, one of the owners of BICC Construction, wrote NPC to hold its payment to ROMAGO of the aforementioned CPA amounting to P250,778.65. Payment was nonetheless released to ROMAGO by virtue of a sworn affidavit executed by ROMAGO's Vice President for Finance Eduardo Cruz who certified that "there does not exist any lien or encumbrances against" the said NPC-ROMAGO contract.

It appears that on 04 October 1983, Mariano Cac, authorized representative and husband of Soledad Cac, one of the partners of BICC Construction, was paid the amount of P38,712.70 "in full payment of accounts including retention of various works at NPC-Isabela" under defendant's Cash Disbursement Voucher No. 23162 dated 03 October 1983.

When BICC's demands for payment were ignored by ROMAGO, the partners, thru Mrs. Soledad Cac as lone plaintiff, filed a complaint for collection of sum of money with damages.

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In its pre-trial order of 23 November 1988, the lower court summed up the issues agreed upon by the parties, as follows:

> 1. Whether or not plaintiffs, as sub-contractors of the projects mentioned in Exhibit C (i.e., NPC-ROMAGO contract)are entitled to the price cost adjustment under said contract obtained by the defendant from the NPC; and
>
> 2. Whether or not all obligations and/or indebtedness of the defendant to the plaintiffs were already paid and/or released upon the execution of Mariano Cac of the defendant's Exh. A" (sic; it should be Exh. 4).

On 29 June 1990, the trial court rendered its decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:
>
> - Declaring that the venue of this case could be before this Court at the option of the plaintiffs;
>
> - Declaring that all contract price adjustments (CPA) under contract No. Sp 80DLc-502-(b) of the NPC inured to the benefit of the plaintiffs and not to the defendant;
>
> - Ordering the defendant to pay the plaintiffs said CPA in the amount of P250,778.65 excluding therefrom any tax lawfully paid by the defendant to the Philippine Government supported by authentic official receipts;
>
> - Ordering the defendant to pay interest on said amount at the legal rate from August 12, 1983 until fully paid; and
>
> - Ordering the defendant to pay the plaintiffs the sum of P10,000.00 as attorney's fees.
>
> Costs further taxed against the defendant.[7]

From the foregoing decision, defendant Romago filed a notice of appeal[8] on 26 July 1990.

Thereafter, the Court of Appeals rendered the assailed decision[9] on 31 July 1997.

The Court of Appeals found the claim of private respondents to be meritorious. Consequently, the dispositive portion of the assailed decision of the appellate court pronounced that:

> WHEREFORE, with the modification that appellant is hereby ordered to pay the appellees the sum of P175,545.05 representing 70% of the total contract price adjustment of P250,778.65, with interest thereon at the legal rate from August 12, 1983 until fully paid but deducting therefrom any lawful tax appellant may have paid the government, the decision appealed from is hereby AFFIRMED in all other respects and the instant appeal DISMISSED.
>
> With costs against appellant.[10]

The Issues

Its motion to reconsider the said decision having been denied by the Court of Appeals in a Resolution dated 16 September 1997, petitioner Romago filed the instant petition for review predicated on the following issues:

> I.
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF THE SUB-CONTRACT IN RELATION TO NATIONAL POWER CORPORATION'S (NPC) "PLANS AND SPECIFICATION" . . . BY FINDING THAT THE CONTRACT PRICE ADJUSTMENT (CPA) OBTAINED BY PETITIONER INURES TO THE BENEFIT OF PRIVATE RESPONDENTS;
>
> II.

WHETHER OR NOT THE HONORABLE COURT ERRED WHEN IT APPLIED THE PRINCIPLE OF EQUITY TO JUSTIFY PAYMENT TO PRIVATE RESPONDENTS OF THE CONTRACT PRICE ADJUSTMENT (CPA) WHEN THE CLEAR TERMS OF THE SUBCONTRACT AND THE LAW PRECLUDES (SIC) SUCH APPLICATION;

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT INTERPRETED THAT THE PARTICULARS OF PETITIONER'S CASH DISBURSEMENT VOUCHER NO. 23162 WHICH STATES "FULL PAYMENT OF ACCOUNTS INCLUDING RETENTION FOR VARIOUS WORKS AT NPC-ISABELA AS ATTACHED PHP37,712.70" SIGNED BY PRIVATE RESPONDENT'S AUTHORIZED REPRESENTATIVE / AGENT ACKNOWLEDGING RECEIPT OF SAID AMOUNT DID NOT EXTINGUISH, RELIEVE, RELEASE ANY AND ALL CLAIMS INCLUDING CONTRACT PRICE ADJUSTMENT (CPA) WHICH PRIVATE RESPONDENTS MAY HAVE AGAINST PETITIONER ON THE SUBCONTRACT;

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT MARIANO CAC WAS NOT CLOTHED WITH AUTHORITY BY PRIVATE RESPONDENTS TO RENOUNCE OR WAIVE WHATEVER CLAIMS INCLUDING CPA THAT PRIVATE RESPONDENTS MAY HAVE AGAINST PETITIONER;

V.

WHETHER OR NOT, GRANTING GRATIS ARGUENDO THAT PRIVATE RESPONDENTS ARE ENTITLED TO SHARE IN THE CONTRACT PRICE ADJUSTMENT (CPA) GRANTED BY NPC TO PETITIONER THE HONORABLE COURT OF APPEALS ERRED IN AWARDING PHP175,545.05 THEREOF, TO PRIVATE RESPONDENTS SINCE IT HAS NO BASIS AND CONTRARY TO EVIDENCE OF PRIVATE RESPONDENTS WHICH ONLY CLAIM AN AMOUNT OF PHP134,755.10 MINUS WHATEVER LEGAL DEDUCTIONS, IF ANY.[11]

The Court's Ruling

The petition is not meritorious.

The first two issues can be stated in one concise statement, that is, whether or not the private respondents are entitled to the CPA accorded to the petitioner by NPC.

Petitioner posits that by virtue of its contract with NPC, it is exclusively entitled to the CPA and "no amount of strained interpretation could the CPA be deemed extended to private respondents."[12]

The petitioner contends that under its contract with the private respondents, only the provisions of the NPC-Romago Contract pertaining to Romago's "obligations and responsibilities"[13] thereunder were made applicable to the private respondents. "While it is true that National Power Corporation's Specification No. Sp80DLC-502 were among those Contract Documents forming part of the Subcontract. . ., it would be gross judicial error to read the grant of the CPA in the Subcontract. These Contract Documents were incorporated in the Subcontract for the purpose of binding private respondents in fulfilling the obligations and responsibilities of petitioner in the latter's contract with NPC. . . ."[14]

The petitioner further hypothesizes that "(h)ad the parties intended that private respondents shall be entitled to share in the CPA that may be granted by NPC to petitioner, the Subcontract could have expressly stipulated. But it did not. ... Moreover, in Art. I of the Subcontract, it provides that the Contract Documents incorporated shall only

be considered fully written insofar as they are not inconsistent with the terms thereof. NPC Contract No. Sp80DLC-502 being inconsistent to the unequivocal silence of the Subcontract with respect to the grant of CPA, private respondents are not entitled to grant of the CPA."[15]

For its part, however, the Court of Appeals ruled that the private respondents' claim under the CPA is meritorious.

The appellate court clarified that the provision of the CPA is not found in the NPC-Romago contract,[16] but in the NPC's "Plans and Specifications."[17] On the other hand, the "obligations and responsibilities" averred to by the petitioner "are, in appellant's own words, those flowing from "the provisions of the x x x contract entered into between NPC and ROMAGO..."' Thus, the phrase "obligations and responsibilities" should only qualify the main contract and not the other Contract Documents.

The records of the present case sustain the findings of the Court of Appeals. Thus, the petition must fail.

Contrary to the petitioner's asseverations that the CPA was not intended to be made applicable to the Romago-BICC subcontract, it must be remembered that the petitioner and the private respondents expressly agreed what documents were going to be incorporated in the principal subcontract. We agree with the appellate court that the qualifying phrase "obligations and responsibilities" contained in the Romago-BICC subcontract was applicable only to the NPC-Romago contract. What is more, the CPA is not found in the NPC-Romago contract,[18] but in the NPC's "Plans and Specifications"[19] which was expressly included as part of the "Contract Documents," to wit:

> ARTICLE I
>
> DOCUMENTS COMPRISING THE CONTRACT
>
> The following documents are hereby incorporated and made part of this Contract as though fully written out and set forth herein insofar as they are not inconsistent with the terms thereof:
>
> - National Power Corporation's Specification No. Sp80DLc – 502
>
> - Any and all plans, drawings, and schedules prepared by National Power Corporation.
>
> - SUB-CONTRACTOR'S proposal dated March 8, 1982.
>
> The documents mentioned above shall collectively be referred to as "Contract Documents."[20] [Emphasis supplied.]

As propitiously pointed out by the Court of Appeals, the NPC prepared a document entitled, "Plans and Specifications," paragraph GP-O8 of which deals with contract price adjustment:

> It must be stressed herein that among the documents which were incorporated into and made part of the ROMAGO-BICC contract (Exh. "D") "as though fully written out and set forth" therein are "[A]ny and all plans, drawings, and schedules prepared by the National Power Corporation." Relative thereto, appellant makes no denial of the fact that in connection with the project in question, there was prepared by the NPC a document entitled "Plans and Specifications" (Exhs. "E" to "E-5"), paragraph GP-O8 of which deals on contract price adjustment, thus:
> "GP-O8 CONTRACT PRICE ADJUSTMENT
>
> Adjustment of contract prices will be made should any or both of the following conditions occur as embodied in PD No. 454 as amended by PD No. 459:
>
> (a)
>
> If during the effectivity of the contract, the cost of labor, materials, equipment rentals and supplies for

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> construction should increase or decrease due to the direct acts of the Philippine Government. The increase of prices of gasoline and other fuel oils, and of cement shall be considered as direct acts of the Philippine Government.
>
> (b)
>
> If during the effectivity of the contract, the costs of labor, equipment rentals, construction materials and supplies used in the project should cause the sum total of the prices of bid items to increase or decrease by more than five percent (5%) compared with the total contract price." (Exh. "E-5-A).[21]

And assuming for the sake of argument that the qualifying phrase "obligations and responsibilities" applies to the other Contract Documents, upon closer inspection of the provisions granting the CPA, it is quite evident that said provision consequently requires an obligation or responsibility on the part of the petitioner that in the event of a decrease in the cost of labor, materials, equipment rentals and supplies for construction, etc., the reduction of the contract price will be for the account of the petitioner. The provision respecting the grant of CPA does not merely provide for the probability of receipt of additional payment, but it also involves an obligation on the part of the petitioner and the private respondents to return any excess payment received from the NPC in the event of any decrease in the cost of labor, materials, equipment rentals and supplies for the construction of said transmission lines.

The petitioner's view that the CPA provision is inconsistent with the tenor of the subcontract is indefensible. In contrast, the inverse is true. Contrary to the petitioner's assertions, there is nothing in the subcontract that supports the claimed inconsistency. Had the parties to the subcontract intended to restrict the application of the CPA provision, they would have particularly stated so. Alas, they only made a sweeping statement as to what documents were to be deemed read into the subcontract. To borrow the words of the petitioner, the unequivocal silence of the subcontract with respect to the non-applicability of the CPA necessitates the entitlement of the private respondents to said adjustment.

Finally, the petitioner relies heavily on the case of MC Engineering, Inc. v. Court of Appeals, et al.[22] In said case, we held that:

> In a subcontract transaction, the benefit of a main contractor is not unjust even if it does less work, and earns more profit, than the subcontractor. The subcontractor should be satisfied with its own profit, even though less than the main contractor's, because that is what it bargained for and contracted with the main contractor. Article 22 of the Civil Code is not intended to insure that every party to a commercial transaction receives a profit corresponding to its effort and contribution. If a subcontractor knowingly agrees to receive a profit less than its proportionate contribution, that is its own lookout. The fact that a subcontractor accepts less does not make it dumb for that may be the only way to beat its competitors. The winning subcontractor cannot be allowed to later on demand a higher price after bagging the contract and beating competitors who asked for higher prices. Even if the subcontractor incurs a loss because of its low price, it cannot invoke Article 22 of the Civil Code to save it from financial loss. Article 22 is not a safety net against bad or overly bold business decisions.[23]

Its reliance is misplaced. Upon a thorough review of the facts of the above-quoted case, it is quite evident that its particulars are not on all fours with the circumstances of the case at bar.

In the case of MC Engineering, Inc., MC Engineering, Inc. and Surigao Coconut Development Corporation entered into a contract for the restoration of the latter's building, land improvement, electrical and mechanical works which were damaged by a strong typhoon. The next day, MC Engineering, Inc. entered into a subcontract agreement with Gerent Builders. The subcontracted work covered only the restoration of the building and improvement portion of the original contract. Two months later, Surigao and MC Engineering, Inc., entered into

another agreement amending Section 7 of the original contract by increasing the price of the civil works, i.e., building and land improvement, to P854,851.51. When the subcontracted work was completed, subcontractor Gerent received the payment of the works done under the subcontract. Subsequently, however, Gerent claimed an additional P632,590.13 as its shares in the adjusted contract price pertaining to the civil works, alleging that the subcontract is subject to the re-adjustment provided for in Section 7, as amended, plus P166,252.00 for additional works outside the scope of the subcontract. MC Engineering, Inc. refused to pay Gerent, thus, the latter filed a complaint in court.

This Court ruled in favor of MC Engineering, Inc., as it found that the main contract between MC Engineering, Inc. and Surigao clearly provides that "as a condition precedent for any upward or downward adjustment in the contract price, there must first be a true valuation of the materials and labor costs to be determined through evaluation and inspection by representatives of petitioner and Sucodeco. A similar provision is found in the subcontract requiring, before any change in the subcontract price, for a true valuation to be determined by Sucodeco, petitioner and respondent Gerent. The records establish that respondent Gerent was responsible for making the estimates of the actual cost of the civil works which served as basis for the original price of the main contract."[24] The evidence adduced, however, revealed that the parties did not undertake any true valuation of the cost of civil works. We held:

> . . . The price increase could not have been based on a true valuation because no true valuation was ever made as required by the main contract and subcontract. There is no substantial evidence to support respondent Gerent's assertion that the price increase was based on a second estimate that Gerent allegedly supplied petitioner.[25]

In the case at bar, though, the provisions pertaining to the CPA are quite clear the adjustment in the contract price, i.e., increase or decrease, is dependent on the application of appropriate official indices, as compiled and issued by the Central Bank of the Philippines, and not on the acts of any of the parties to the contract or subcontract. In fact, there is no issue as to the occurrence of any of the scenarios envisioned under the provisions of GP-08 that necessitated the increase as stated in the contract as well as in the subcontract.

Anent the third and fourth assigned errors, the petitioner asserts that whatever claims the private respondents may have against it, including the CPA, has been extinguished when Mariano Cac received from the petitioner a check for P38,712.70 representing "full payment of accounts including retention for various works at NPC-Isabela... ." This is so due to the fact that said authorized representative or agent had the authority to bind the private respondents. By signing and receiving, he released the petitioner from whatever claims private respondents had against the former in connection with the subcontract, including the CPA.

Petitioner Romago's position is untenable.

The very same petition that the petitioner filed with the Court clearly negates its position. Said pleading expressly states that "...the CPA is not included in the computation." This is precisely because the petitioner believes that the private respondents are not entitled to the CPA, hence, "there is no basis for including it."

Said CPA not being part of the subcontract price of P1,614,387.99, the release mentioned in the cash voucher cannot, therefore, be construed as a release of the CPA. In fact, nowhere in the computation prepared by petitioner's finance manager, Narita Chalak, provides for the payment of the CPA, to wit:

RE: BICC CONSTRUCTION

Total Actual Billing of BICC to Romago -- ---

P1,355,713.22

Less:

(1) Withholding tax .0045% - P 6,100.70

(2) Total payments made - 1,143,387.76

(3) Material Accountability - 8,076.61

(4) NPC Material Acct.

Local -P14,631.75

Foreign - 64,373.79

Surcharge fee - 16,093.44 95,098.98

Penalty for 33 days 64,337.46

(P1,317,000.55)

Total Balance Due BICC including Retention -

P 38,712.71

==========

(Paid per CDV #23162) – 10-3-83.[26]

As to the final issue regarding the amount of CPA the private respondents are entitled to, we disagree with the petitioner that the private respondents are only entitled to the amount of P134,755.10 representing 70% of the CPA claimed by petitioner Romago from NPC less tax due thereon and P38,712.70, the amount received by BICC contained in Cash Disbursement Voucher No. 23162. The petitioner's computation is incorrect. As established above, the amount received by the private respondents under said voucher does not in any way represent a single centavo of the CPA. As evidenced again by the computation prepared by the petitioner's own finance manager, Ms. Narita Chalak, the P38,712.71 was arrived at as follows:

RE: BICC CONSTRUCTION

Total Actual Billing of BICC to Romago - - - -

P1,355,713.22

Less:

(1) Withholding tax .0045% - P 6,100.70

(2) Total payments made - 1,143,387.76

(3) Material Accountability - 8,076.61

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(4) NPC Material Acct.

Local

-P14,631.75

Foreign

- 64,373.79

Surcharge fee

- 16,093.44

95,098.98

Penalty for 33 days 64,337.46

(P1,317,000.55)

Total Balance Due BICC including Retention --

P 38,712.71

==========

(Paid per CDV #23162) – 10-3-83.[27]

As seen from the above-quoted computation, therefore, the sum of P38,712.71, representing the total balance due to BICC under its original contract with ROMAGO excluding the CPA, should not be deducted from P175,545.05, BICC's share of the CPA received by ROMAGO from NPC.

In fine, private respondents are entitled to the CPA as embodied in the subcontract. Basic is the rule that parties are bound by the terms of their contract which is the law between them.[28]

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The questioned Decision dated 31 July 1997, of the Court of Appeals and its Resolution dated 16 September 1997, in CA-G.R. CV No. 28608 are hereby AFFIRMED.

With costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Tinga, J., out of the country.

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[1] Penned by Court of Appeals Justice Cancio C. Garcia (now Supreme Court Associate Justice) with Justices Delilah Vidallon-Magtolis and Artemio Tuquero concurring; Rollo, p. 25.

[2] Rollo, p. 37.

[3] Rollo, p. 39.

[4] Rollo, pp.39-40.

[5] Exh. E-5-8.

[6] Rollo, p. 40.

[7] Rollo, pp. 43-44.

[8] Records, p. 138.

[9] Rollo, pp. 25-35.

[10] Rollo, p. 35.

[11] Rollo, pp. 78-79.

[12] Petition, Rollo, p. 14.

[13] Id.

[14] Id.

[15] Id., p. 15.

[16] Exh. "C."

[17] Exh. "E."

[18] Exh. "C."

[19] Exh. "E."

[20] Rollo, p. 39.

[21] Rollo, pp. 29-30.

[22] G.R. No. 104047, 03 April 2002, 380 SCRA 116.

[23] Id., pp. 138-139.

[24] Id., p. 139.

[25] Id., p. 140.

[26] Rollo, p. 33.

[27] Rollo, p. 33.

[28] RCBC v. Court of Appeals, 178 SCRA 739.

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