

DOMINADOR BORDA, PETITIONER AND APPELLANT, VS. ENRIQUE TABALON, RESPONDENT AND APPELLEE.

G.R. No. 13847. May 26, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal taken by petitioner Dominador Borda from a decision of the Court of First Instance of Capiz dismissing his petition, without costs.

The facts are correctly set forth in the brief for respondent Enrique Tabalon, from which we quote:

"Petitioner Dominador Borda, a, civil engineer, was awarded the contract for the construction of the Tumalalud-Burias Road in Capiz for the project price of P13,851.00. The contract (Exh. D, p. 22, rec.) was signed by him and the respondent Enrique A. Tabalon, highway district engineer of Capiz, in representation of the Commissioner of Public Highways. The first partial payment of P3,739.77 was made to the petitioner on March 9, 1951 (Exh. A, p. 17, rec.). The amount due the latter was P4,155.50 but 10% of this, or P415.51 was retained pursuant to Clauses 38 and 56 of the 'General Conditions' forming part of the Contract. Upon completion of the Work, the final payment of P7,510.61 was made to the petitioner under General Voucher, Exh. B, (p. 18, rec.) dated July 29, 1957. The balance still due the petitioner; as shown in Exhibit B was P9,425.70 but 10% of this amount, or P942.67, was retained; other deductions representing rentals for equipment, liquidated damages on account of delay, etc. were made, so that petitioner received only P7,510.61.

"On October 11, 1957, petitioner-appellant Dominador Borda, caused to be prepared a voucher Exhibit E (p. 19, rec.), for the collection of the sum of P1,358.10, representing the 10% retention of the contract price by the District Engineer's Office Contract (p. 6, t.s.n.). The respondent District Highway Engineer, Enrique Tabalon, refused to approve payment of the said voucher on the ground that Moises Fajardo had filed with his office a claim sworn to before him on August 20, 1957, for the sum of P2,117.39, allegedly representing the remaining unpaid amount which Fajardo had advanced to the petitioner-appellant for materials and labor used on the construction of the Tumalalud-Burias road project (Exhibit 1, p. 20, rec.; pp. 25-27, t.s.n.). As basis for his refusal, respondent-appellee invokes the fourth paragraph of Article 9.8 of the Standard Specifications for Highways and Bridges, marked Exhibit 2 (a booklet forming part of the contract), which reads as follows:

'In case, before any partial or final payment, the contractor cannot, or for any reason fails, to file such affidavit, or even if he files it, his affidavit is contradicted by sworn statements of claimants against him for unpaid accounts for wages, salaries, rents, materials, and taxes incurred in connection with his contract project, the Director may withhold an amount equivalent to the total of all such claims, from any and all payments due the said contractor from the Government, until such accounts are settled satisfactorily or their lack of merit established in a proper court action'.

"In view of respondent's refusal to approve payment of Exhibit A, petitioner filed the present action for mandamus in the Court of First Instance of Capiz in order to compel the said respondent to approve payment of the 10% retention from Exhibits A and B in the total sum of P1,385.10."

Appellant maintains that said Article 9.8 of the Standard Specifications for Highways and Bridges does not form part of his contract with the Government (Exhibit D). This contention is riot only groundless, but, also, contrary to the express provisions of his aforementioned contract, Exhibit D, Article I of which explicitly provides:

"That the advertisement, instructions to bidders, general conditions, Commonwealth Act No. 138, Republic Act No. 76 and Republic Act No. 602, Specifications, Proposed and Letter of Acceptance hereto attached, together with the plans relating thereto, the original thereof are on file in the Office of the Highway District Engineer at Roxas City are hereby made, and acknowledged by the parties hereto to be a part of this agreement."

It is next urged that the power of the Director of Public Works to withhold payment, under said Article 9.8 of the Standard Specifications for Highways and Bridges, exists only before the final payment, but not subsequently thereto; that final payment in the case at bar was made on July 29, 1957, when appellant received the sum of P7,510.61; and that, accordingly, when appellant Borda filed his claim for P2,117.39, on August 20, 1957, the Government had no longer the right to retain the sum of P1,385.10, withheld from him.

It should be noted that the aggregate cost of the construction work undertaken by appellant was P13,851, itemized as follows:

ITEM

Unit

Price

Aggregate

Price

105 Roadway & Drainage Excavation

Km. 43+800 to 44+070

P1.10

P2,750.00

Km. 44+135 to 44+600

1.10

1,870.00

107 Borrow Km. 44+890 to Km. 44+135

108 Selected Borrow

3.30

1,650.00

Km. 42 + 890 to Km. 44+000

118 Prep. of Previously Constructed Road

From Km. 42+890 to Km. 43+800

1.10

341.00

411 (a) Const. of Tp. Tb. Br. No. 42+700

3-spans at 6.00 M. (1st Gr. Lumber)

700.00

2,100.00

411(b) Const. of Tb.Tp.Br. No. 43+050

2-spans at 6.50 M. (1st. Gr. Lumber)

750.00

1,500.00

505 Reinforced Conc. Pipes

Km. 42+560 to Km. 44+120

(a) 0.60 M. Ø pipe per piece -64-pcs.

P40.00

P2,560.00

(b) 1.00 M. Ø pipe per piece -18-pcs.

60.00

1,080.00

TOTAL

P13,851.00"

Thus the cost price of each item would appear to be due upon the completion of the work corresponding to such item. However, only 90 per cent of said price was immediately collectible, for the balance of 10 per cent was to be withheld by the Government for a period, according to appellant's own belief, of sixty (60) days after the completion of the work covered by the contract. Thus, on March 9, 1951, appellant collected P3,739.77 for items aggregating P4,155.30, 10 per cent of which, or P415.53, was withheld as aforementioned. Likewise, on July 29, 1951, he received P7,510.61, for the remaining items specified above, amounting to the total sum of P9,425.70, after deducting P942.57, representing 10 per cent thereof, which was similarly withheld, plus P522.72 for rental

of equipment, and P325.00 as liquidated damages on account of delay. This payment of P7,510.61 has been described in the records as a "final payment" in the sense only that it is the compensation for the remaining items of the work undertaken by appellant, resulting in its completion. Actually, it is not a "final payment", in the common and ordinary meaning of the phrase, for there is still another payment he would be entitled to, in the absence of adverse claims for materials and/or labor furnished in the construction work which is the subject matter of his contract with the Government—namely, the payment of the aggregate amount thus withheld by the Government, or the sum of P1,358.10, which is covered by the voucher that respondent herein has refused to approve owing to the claim filed by Moises Fajardo on August 20, 1957—or within the 60-day period indicated above—for amounts allegedly advanced to appellant herein for materials used and labor furnished in connection with said construction work. The payment of said sum of P1,385.10, if made, would be the "final payment" contemplated in the aforesaid Article 9.8 of the Standard Specifications, forming part of appellant's contract. Hence, the Government is still entitled to withhold said payment.

The provisions of said Article clearly indicate that its purpose, is two-fold, namely: (1) to assure that all accounts for "wages, salaries, rents, materials and taxes incurred in connection with" the contract in question are settled before the cost of the construction is fully paid to the contractor; and (2) to protect the Government from any claim arising from such accounts of the contractor as may still be unpaid. This purpose would be defeated if the theory of appellant herein were adopted. The truth of this conclusion becomes more apparent when we bear in mind that, in the ordinary course of events, such claims for unpaid "wages, salaries, rents, materials and taxes" are more likely to be filed or made after the completion of the work, than prior thereto, for accounts are normally liquidated upon the conclusion of an undertaking, not while the same is in the process of execution.

Being in accordance with the facts and the law, the decision appealed from is hereby affirmed, therefore, with costs against petitioner-appellant Dominador Borda. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.
Reyes, J.B.L., and Endencia, JJ., took no part.

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