ADVANCED FOUNDATION CONSTRUCTION SYSTEMS CORPORATION, PETITIONER, VS. NEW WORLD PROPERTIES AND VENTURES, INC., RESPONDENT.

G.R. NO. 143154. June 21, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us are two consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals which affirmed with modification the Decision[2] of the Construction Industry Arbitration Commission (CIAC) awarding Advanced Foundation Construction Systems Corporation's (AFCSC) claim against New World Properties and Ventures, Inc. (New World) in the total amount of P10,700,384.00 with interest, as well as the Resolution dated 3 May 2000 denying both parties' Motion for Partial Reconsideration.

Sometime in November 1996, New World conducted a bidding for the construction of 69 bored piles which would form the foundation of the 36-storey World Trade Exchange Building it planned to erect on a parcel of land it owned in Binondo, Manila.

After inspecting the site and conducting soil investigation, the bidding participants submitted their respective bids. On 18 November 1996, New World notified AFCSC of the acceptance of its bid to construct the 69 bored piles for the lump sum of Thirty-six Million Pesos (P36,000,000.00).

On 20 November 1996, New World issued to AFCSC the Notice to Proceed Work wherein AFCSC was instructed to commence work on 27 November 1996 and complete the same by 24 February 1997. Under said notice, it was stated that in case of delay in the completion of the project, AFCSC would pay New World liquidated damages in the amount of P36,000.00 per calendar day of delay.

After the issuance of the Notice to Proceed, but before the signing of the contract, AFCSC, on 21 November 1996, proposed an amendment to the contract conditions, to wit:

> 1.6 Excluded in the contractor scope of work shall be as follows:
>
> 1.6.2. Removal of Underground Obstruction: - The contractor shall execute probing of underground obstruction on each pile position. Should the bored piling contractor encounter underground obstruction during drilling such as footings, tie beams, piles, and any other incidental impenetrable obstruction, the contractor shall be paid on the actual daywork expenses for equipment and manpower plus 25% overhead (sic).
>
> 1.6.3. Should the underground obstruction cannot be recover the contractor shall notify the owner in writing which in turn refer to the structural engineer for further instructions provided however that the contractor will not entail delay and stand by in the faithful execution of the work. Idle time shall be charge as per actual operating expenses of manpower and equipment subject to the evaluation of the owner's engineer representative (sic).

New World did not respond to said proposal but instead directed AFCSC to proceed with the construction. On 29 November 1996, both parties signed the contract for the construction of the 69 bored piles. AFCSC's proposal, however, was not incorporated in said contract.

During the subsistence of the contract, New World directed AFCSC to make the following changes and additional works: 1) the addition of one bored pile; 2) the increase in the pile depths from 55m. to 60m. with respect to 23 bored piles and from 55m. to 70m. with respect to 47 bored piles; 3) the increase in the diameter of six bored piles from 1.5m. to 1.8m.; and 4) the change in the compressive strength of concrete from 3,000 psi to 4,000 psi for all piles. Due to said changes in the scope of work, AFCSC informed New World in a letter dated 13 January 1997 that the original contract price of P36,000,000.00 would increase to P48,400,000.00.

Thereafter, sometime in August 1997, AFCSC billed New World the costs of the change orders in addition to the original contract price. Included in said billing is the cost of the removal of underground obstructions in the project site as well as the installation of sonic pipes to be used to conduct load tests on the bored piling works. AFCSC claimed that these works were not part of the original contract and should be treated as extra work. In a letter dated 9 September 1997, New World informed AFCSC of the former's rejection of the 21 November 1996 proposal of AFCSC regarding the exclusion of the removal of underground obstructions from the original scope of work and AFCSC's claim for compensation for alleged extra work. New World maintained that the alleged additional works were all part of the contract signed by both parties.

After removing the underground obstructions and incorporating the change in the scope of work, the construction of the bored piles were completed only on 27 November 1997, or more than eight months after the original date of 24 February 1997 contemplated in the contract.

Subsequently, during the early part of 1998, New World informed AFCSC of its intention to test the bored piles constructed on the project site to check their structural integrity. The tests to be conducted consisted of sonic logging test, dynamic pile test, and pile integrity test. Results of the testing showed that five piles were found defective, namely, Pile Nos. 9, 21, 25, 49, and 62. The high-strain dynamic test (PDA) done to Pile No. 21, which was the only pile subjected to said test in order to determine its load capacity, revealed that it had a load capacity of only 800 metric tons, far less than the required 1,200 metric tons.

When it came time to settle the accounts, the parties found that their respective records of accounts were at variance with each other. Thus, on 29 May 1998, AFCSC, represented by Engr. Joel S. Arceo, and New World, represented by Engr. Gaudencio Lambino, reconciled the amount due to AFCSC and arrived at the sum of P6,326,318.72 as the unpaid balance of the original contract price and P2,133,658.46 as the cost of the change orders after deducting the liquidated damages due to New World for the delay incurred by AFCSC.

New World, however, refused to pay its outstanding obligations to AFCSC due to the defective bored piles. On 2 June 1998, AFCSC made a final demand upon New World to pay the consolidated billing in the amount of P23,478,251.29 consisting of the reconciled amount of P8,515,396.63, and the cost of removing the underground obstructions, sonic pipe installation, build up of pile test cap, soil investigation and crane rental.

Upon New World's continuous refusal to pay its obligation, AFCSC filed a Request for Adjudication before the CIAC[3] on 2 July 1998. Among the issues submitted for resolution by the parties were whether or not the removal of underground obstructions, installation of sonic pipes, build up of pile test cap, soil investigation, and crane rental constitute additional works which will entitle AFCSC to its claim of additional pay; and whether or not AFCSC was in delay, thus making it liable for liquidated damages.

In the Decision dated 8 December 1998, the CIAC disposed of the controversy in this wise:

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> The bone of contention is whether or not the removal of underground obstruction is part of the scope of the work of the contractor as claimed by the respondents or is extra work as claimed by the contractor.
>
> x x x x
>
> It is clear to us that this controversy could have been avoided if the owner's designers had clearly stated the contractor's scope of work. The bid documents failed to give bidders of the lump-sum bids details of the underground obstruction or at least made provisions for the treatment of the parties' reciprocal obligations in the event such obstruction is encountered. Upon the other hand, the contractor, one which is experienced in foundation work, had been remiss in its obligation to obtain as much information as possible on the contingency that the unknown obstruction would impede its work and make it more costly, or at least provided a qualification in its bid so as to make clear its right to claim contract price and time adjustment caused by such obstruction. Assuming, therefore, that these omissions of both parties may be treated as acts in bad faith, we shall have to apply the rule that in such case, their rights and obligations shall be resolved as if both had acted in good faith up to the time of the bid.
>
> x x x x
>
> x x x We also reviewed the bid of the claimant as well as the bids of the other bidders made on a form supplied by New World. The items mentioned in the bid form indicated the general pay items of work of the contractor, but it does not mention anything about the removal of obstruction. Mr. Chika G. Go, however, argued that the item on removal of obstruction fell under the item "miscellaneous". [t.s.n., October 19,1998, pp. 56-57] We reject this argument as facetious. The removal of underground obstruction is a major item of work and cannot be understood as being subsumed under the general heading "miscellaneous".
>
> The removal of underground obstruction, in our view, is covered by the General Conditions of Contract which provide as follows:"Should the Contractor encounter subsurface or latent physical conditions differing materially from those indicated, or unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered... the Owner's Representative shall be promptly notified of such conditions before they are disturbed. The Owner's Representative shall thereupon promptly investigate the conditions at the site and if he finds that they do so materially differ and cause an increase or decrease in the cost, or the time required for performance of the Contract, an equitable adjustment will be made and the Contract modified in accordance with existing laws on the matter or as agreed upon the provided for [sic] under the Contract."
>
> x x x x

We have no hesitation, therefore, in holding that the removal of underground obstructions by the claimant falls under Clause 56.2 of the General Conditions which should therefore be treated as extra work.

On the additional sub-issues:

x x x x

In its Reply, claimant alleged in its paragraph 9 that:

> - Claimant did not 'cover up several bored piles before the same were tested' [par.4.14, Answer]. This is yet another of many reckless allegations that discredit the whole Answer. Claimant was not the contractor for the mat foundation (the flooring of the basement which is constructed on top of the bored piles) and accordingly, had nothing to do with 'cover[ing] up' the bored piles.
>
> 9.1. On the contrary, after completing the bored piles, claimant left their tops, sticking overground, together with extra rebars and extra lengths as allowance for dirty concrete, which were later cut off and discarded.
>
> - It was only after the bored piles were covered up by the mat foundation contractor that respondents informed

> claimant of the results of the pile testing - rendering it impossible for claimant to challenge definitively the results and, more importantly, to undertake remedial work on the five [5] piles alleged found defective."

We accept the foregoing assertions in pars. 9 and 9.1 of the claimant as being in accord with industry practice, and as being consistent with the facts.

The issue, therefore, boils down to whether or not the cost of testing shall be for the account of claimant or of New World.

At the outset, it must be stressed that Clause 38.4 of the General Conditions cover tests of contractor-supplied materials such as concrete, cement, or rebars, not finished products. In accordance with accepted industry practice, this provision, which is also a standard provision in construction contracts, is not interpreted to include tests on finished structural members. It does not cover, for example, tests on the reinforced concrete column of a building to see if it can carry 35 floors above or test a girder to check if it carry the designed seismic load.

The claim of the claimant is for the installation of sonic pipes amounting to P320,000.00; for built-up of pile test cap, to P104,002.33; for crane rental, P75,000.00 and for soil investigation, P60,000.00 should be for the account of New World. However, claimant agreed that it will absorb the cost of the soil investigation if the contract is awarded to it. Further, since the installation of sonic pipes was defective in 34 out of 69 piles, we reduce to a corresponding extent the claimant's claim for sonic pipe installation. x x x

We also find that claimant should be liable for part of the cost of the sonic pipes defectively installed by it. x x x

Issue No. 2 concerns liquidated damages. As formulated, the issue submitted for resolution is this: Whether or not claimant was in delay and, as such, whether it is liable to pay respondent liquidated damages. If it is found to be liable, how much liquidated damaged should be awarded to the respondent?

x x x x

Article 7.1 of the contract provides that: "7.1 The OWNER may, at any time, by a written order, make changes in the schedule and work required under this Agreement. If any such changes causes an increase or decrease in the work or the time required for performing the work, an equitable adjustment shall be made of the contract price and completion date upon mutual agreement of the parties reflecting such adjustments by way of a written variation order subject to the negotiation by both parties. [Underscoring supplied]

Clause 49.2.4 of the General Conditions provide that "The Contractor shall be entitled to claim an adjustment of his Contract Time where: [i] the amount of additional work under a Change Order, or [ii] special circumstances had occurred, so as to fairly entitle the Contractor to an extension of Contract Time."

In light of the facts, and in our discussion above of the changes made, it is clear that we have found that indeed there were circumstances fairly entitling the claimant to an extension of its contract period.

x x x x

We examined the numerous exhibits submitted by the claimant all mentioning directly or indirectly compensation to it for extra work performed. x x x In none of these exhibits did claimant request an extension of the contract period. Engr. Joel S. Arceo's comprehensive 12-page affidavit failed to mention any letter or request for the adjustment of the completion time due to extra works.

Claimant, in its memorandum, dismisses the request for time extension as a mere formality. [See claimant's Memorandum, p.12] We do not agree. The contract provides that the contractor shall pay liquidated damages for delay unless the period for completion of the work is extended by the owner. The procedure for requesting

extension of time and for the approval of the request by the owner is laid out. We have not been shown why these important provisions of the contract between the parties should be treated by us as a mere formality. [See Clauses 49.3.1 and 49.3.2 of the General Conditions] We accordingly hold that claimant is not entitled to extension of time for the extra works performed and is accordingly liable to the respondent for liquidated damages in accordance with the contract.

x x x x

We note, however, that the purpose of giving punctual notice of claim for time extension is to enable the owner immediately to "investigate the actual basis of the claim, decide whether or not to grant the request, and in case the request is granted, to fix the period of extension of Contract Time." In this case, the claimant submitted Exhs. "R" to "R-138" to show on a daily basis the removal of obstruction and each report is acknowledged received by the owner's representative. Thus, New World was not unaware of the difficulty attending the removal of obstruction. There is no showing of material prejudice caused to New World by the failure of claimant to give formal notice of its extension of time to request time extension. Incidentally, no evidence has been presented to show that the claimant lacked workers, materials and/or equipment as a result of which there was a slippage in the work. Liquidated damages are imposed as a penalty for delay. [See Article 1226, Civil Code] As such, a contract provision for the imposition of liquidated damages shall be strictly construed. According to Article 1229, Civil Code, "The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may be reduced by the courts if it is iniquitous or unconscionable." [See also Article 2227, Civil Code.]

In view of the circumstances of the case, taking into account the fact that there was no material prejudice caused to New World by the failure of claimant to request extension of the completion time, applying Articles 1229 and 2227 of the Civil Code, we have decided to reduce the amount of liquidated damages to P1,000,000.00.

The most difficult issue submitted for resolution is a highly technical one, namely: "Did the result of the test piles accurately determine the capacity of the piles?"

x x x x

The test results were evaluated by Dr. Benjamin R. Buencuseso, Jr. who submitted his own report on June 5, 1998 [Exh. "K"] Dr. Buensuceso testified that he is a registered civil engineer from 1979; that he took his post-graduate studies in Bangkok where he earned a doctorate degree in geo-technical engineering; that he was associate professor in a university in Japan where he taught foundations; that from 1993 he taught on a full-time basis at the University of the Philippines; that he is also a consultant to various companies with particular emphasis on pile testing; and that he started dynamic pile testing since 1993 and he has been doing this type of consultancy since 1996 [t.s.n., October 19, 1998, p. 15] In his report [Exh. "K"], Dr. Buensuceso made the following conclusion: "In closing, my evaluation of the results of the various pile tests conducted at the World Trade Exchange Center Project shows that the defects found for all the test piles are not critical from a geotechnical engineering standpoint. Inasmuch as these defects do not result to a significant reduction in the skin resistance provided by the soils surrounding the predominantly frictional piles. However, the effects of the presence of a 2m layer of contaminated concrete cover in Pile Nos. 9, 25, 46 and 62, the structural capacity and behavior of the subject piles should be evaluated by the Structural Engineer."

x x x x

We find that only one pile test was done to assess both integrity and capacity. The other tests simply evaluated qualitatively pile integrity. [Exh. "K"] A pile capacity in this context is meant to carry vertical loads and is

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dependent on any of three factors, namely: integrity, skin friction and end-bearing.

A total of 34 piles were tested. A total of 35 tests were conducted. Pile No. 25 was tested twice, one by sonic logging and the second, for pile integrity. The pile integrity tests resulted in a finding that all piles, except Pile No. 9, were of acceptable integrity. Pile No. 9 was found to have defects in the lower portion of the pile shift. Pile No. 25 which was subjected to sonic logging and pile integrity tests, passed the integrity test but the result of the sonic test was inconclusive.

Engr. Rogelio Menguito gave his formula for computing the capacity of each pile. The formula he gave is the standard formula meant to determine the capacity of a reinforced concrete column with loads and reaction at each end and is not generally applicable to piles which are laterally supported throughout its length and with skin friction capabilities. The capacity of a pile, with length of 70 meters, and at the project site, the soil quality of which is described in three soil investigation reports, is normally determined by skin friction and point bearing which Engr. Menguito merely considered as factors of safety. As admitted by him during the hearing, he had no mathematical or technical basis for his conclusion, and that the bored poles could actually carry a load much heavier than 800 tons.

x x x x

We found support for this view from two recognized authorities. The first is Peck, Hanson and Thorburn's "Foundation Engineering", in which it was stated that "a point bearing pile is sometimes erroneously regarded as a structural member that transfers its load like a column from the top of the pile to the bottom where it is delivered to the underlying rock or soil." [At p. 182, a photocopy of this page is hereto attached as Annex "A"] The second are H.G. Poulos and E.H. Davis, who in their book, "Pile Foundation, Analysis and Design", set the general equation for the ultimate capacity of a pile. A photocopy of the page where the equation appeared is hereto attached as Annex "B"] It is clear from this equation that the ultimate capacity of a pile is dependent on skin friction and end-bearing and not a pile acting as a column. Other that a pile driven in water or on very soft soil, a pile is laterally supported on its entire length. Hence, it does not act as a reinforced concrete column subjects to buckling. Because of the above discussion, the Arbitral Panel is of the opinion that the test results were inconclusive and did not truly measure the capacity of the piles. Engr. Menguito's use of the result and his admission that all the values for pile capacities were simply based on assumptions without any or technical basis [t.s.n., pp. 113-116] seriously undermines the value of his recommendation to reduce the capacity of the piles and tends to give the impression that this was an accommodation to a client.

x x x x

AWARD

We find that:

[a] As admitted by New World, claimant is entitled to the balance of the contract price amounting to P6,326,318.72 and the cost of approved change orders amounting to P2,133,658.46 or the total amount of P8,459,977.17.

[b] Since the foregoing is a liquidated amount as due from June 2, 1998, we order New World to pay claimant the foregoing amount of P8,459,977.17 plus interest at 6% per annum from June 2, 1998. The amount which has accrued as interest from that date to December 2, 1998 is P253,799.32.

[c] Claimant is entitled to payment for and hereby order New World to pay claimant the cost of additional works consisting of the removal of underground obstructions and the conduct of various tests ordered by the latter

amounting to P8,366,336.55.

[d] Claimant is entitled to payment for the installation of 34 sonic pipes in the amount of P157,681.16.

The foregoing amount to a total of P17,237,794.20.

On the counterclaims, we find for New World and order claimant to pay it the following amounts:

[a] P190,141.30 representing the value of sonic pipes which were defectively installed by claimant;

[b] P1,000,000 as liquidated damages for delay; and

[c] P5,347,268.90 as the cost of the five [5] bored piles which were found defective, or the total amount of P6,537,410.20.

All other claims and counterclaims are dismissed.

After offsetting the amount due claimant from respondent and the amount due respondent from claimant, there is a balance of P10,700,384. which New World is hereby ordered to pay claimant. This amount shall earn interest at 6% per annum from the date of this award.

The arbitration fees and expenses have been paid initially on a pro rata basis. In light of the findings above, no change in the above sharing of expenses is warranted.[4] [Emphases ours]

Aggrieved by the Decision of the CIAC, New World filed a Petition for Review of the said decision before the Court of Appeals. On 31 January 2000, the appellate court rendered the assailed Decision. According to the Court of Appeals:

> But for one point, the appeal lacks merit.
>
> One. The pronouncements of CIAC on the question of whether the removal of underground obstructions was covered by the contract between the parties are evidently conclusions of law. This is so because the conclusions drawn by an adjudicatory body from a set of facts is a question of law. (Pilar Development Corporation v. IAC, 146 SCRA 215; Cunanan v. de Lazatin, 74 Phil. 719) Consequently, the window for review is fully open for this Court to examine the correctness of said conclusions.
>
> Try as it might, this Court cannot share the view of CIAC that respondent's November 21, 1996 proposals (Exhibit 7) to exclude the removal of underground obstructions from the scope of work in the contract (Exhibit A) and to treat them as extra work was impliedly admitted by petitioner. CIAC's conclusion contravenes No. 9 of the Terms of Reference (TOR) reproduced above which expressly states that such proposals were "refused" by respondent.
>
> Neither can this Court go along with CIAC in its determination that said proposals modified respondent's bid offer so that when the contract was signed without petitioner expressly rejecting the proposals, the same were deemed impliedly accepted. The reasoning is quite strained. The proposals were made on November 21, 1996 while the contract was signed on November 29, 1996. The contract was the documentation of the agreement between the parties arising from respondent's bid and petitioner's award (Exhibit 5). When the parties signed the contract which did not contain the proposals, what was logically implied was not the acceptance of the proposals but their rejection. The proposals were actually nothing more than counter offers which were not accepted and, therefore, did not ripen into a perfected agreement. (Art. 1319, Civil Code).
>
> But this Court fully agrees with CIAC that the removal of the underground obstructions was covered by Clause 56.2 of the General Conditions of the Contract.
>
> x x x x

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It is clear to this Court that petitioner did not agree with respondent's proposals but in order to address the latter's concern about underground obstructions, the parties adopted Clause 56.2. Therefore, the contractual rule governing underground obstructions was the above-quoted Clause 56.2.

But alas, respondent did not comply with said stipulation. Respondent did not formally notify the petitioner about the underground obstruction that it encountered, hence, the petitioner did not conduct its investigation to verify the existence and nature of the obstructions. The mechanism for a modification of the contract and an equitable adjustment of the contract price was not set in motion through the fault of respondent.

The vital question then is: For its fault in not complying with the steps provided for in the above-quoted stipulation, should respondent be left alone to shoulder the heavy cost of he removal of the obstruction?

x x x x

It is not disputed that the removal of the underground obstructions was a major work entailing additional expense and extra working time. The experts and CIAC agreed that such work was not covered by the scope of work in the contract. That determination is logical and correct. Petitioner's rejection of this holding and its insistence post factum that such major work was embraced in the scope of work in the contract puts to doubt its good faith and fairness. This stance may be perceived as taking advantage of the imprudence of respondent in not faithfully observing the requirements of Clause 56.2 above quoted.

To deny respondent any relief for the expenses it incurred and the extra time that it spent in removing the underground obstructions is to allow the petitioner to unjustly enrich itself at the expense of the respondent. That is anathema to the great principle of equity. When it becomes clear - as in this case - that the application to the law in sensu strictione would result in patently unjust juridical situation, a court of justice which is also a court of equity is called upon to exercise its equitas juridictio in order to refine the rough edges of the rules and avoid injustice. The Code Commission which drafted the Civil Code justifies a resort to equity stating beautifully that every good law draws its breath of life from morals, from those principles written with the words of fire in the conscience of man. Appropriately, these guides for human conduct should run as golden threads through society, to the end that law may approach its supreme ideal which is the sway and dominance of justice. (Report of the Code Commission, pp. 4041).

Inspired by such profound pronouncements, this Court, invoking its equity jurisdiction and in order to prevent unjust enrichment and manifest injustice, holds that respondent should be accorded a relief. But then respondent should not expect for a full recovery of its claim for it should realize that it had been contractually negligent not just once but several times. The cost of the removal of the underground obstructions was P8,025,836.37. This Court allows respondent a concessional award of one-half (1/2) of said amount which is P4,012,918.18.

x x x x

Petitioner protests CIAC's lowering of the amount of liquidated damages due it from P7.2 million to P1 million on the justification that petitioner did not suffer any material prejudice. This Court, rejects petitioner's protest. The reasons - not just CIAC's finding that petitioner did not suffer material damage - given by the CIAC for reducing the claimed liquidated damages are clear, logical and correct. The law gives a wide degree of discretion to trial courts and quasi-judicial bodies to determine the amount of damages recoverable as long as there is ample evidence to support the same. In the absence of a clear case of abuse of discretion, as in the present case, there is no reason for this Court to unsettle CIAC's determination of the proper and conscionable liquidated damages due the petitioner.

WHEREFORE, premises considered, this Court renders judgment MODIFYING the appealed Decision in this wise:

I. FOR PETITIONERThe respondent Advanced Foundation Construction Systems Corporation is hereby

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ordered to pay the petitioner New World Properties and Ventures, Inc. the following:

- Php190,141.30 representing the value of sonic pipes which were defectively installed by respondent;

- Php1,000,000.00 as liquidated damages for delay; and

- Php5,347,268.90 as cost of the five (5) bored piles which were found defective, or a total amount of P6,537,410.20.

II. FOR RESPONDENT:

The petitioner is hereby ordered to pay the respondent the following:

- Php8,459,977.17 as the sum of the balance on the contract price amounting to Php6,326,318.72 and cost of approved change orders amounting to Php2,133,658.46 plus six (6) percent interest per annum on said total amount (Php8,459,977.17) from June 2, 1998 until fully paid;

- Php4,353,418.37 as cost of additional works consisting of the removal of the underground obstructions and the cost of various tests; and

- Php157,681.16 as payment for the installation of 34 sonic pipes.

After compensating the obligations of the parties to each other, the balance shall earn six (6%) percent interest per annum from the date of this decision.[5]

The Motion for Partial Reconsideration of both parties having been denied, both New World and AFCSC filed their respective Petitions for Review before this Court.

The resolution of the instant case lies in the determination of two pivotal issues, namely: (1) Which between New World and AFCSC should shoulder the expenses incurred for the removal of the underground obstructions and the conduct of the pile tests; and (2) Whether or not AFCSC is liable for liquidated damages for its failure to complete the construction work by 24 February 1997.

At this point, We find it necessary to reiterate that our jurisprudence is replete with the rule that findings of fact of quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence.[6] This is because there are certain cases which require the expertise, specialized skills, and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved.[7]

In the case at bar, it would seem that the CIAC, in interpreting the contract covering the construction work in the light of the facts present in the case, was guided by the prevailing practices in the construction industry. The members of the three-man panel, all equipped with considerable knowledge and training in the field of engineering and significant experience in construction industry arbitration, reconciled the conflicting claims of both parties by applying industry accepted practice with respect to the treatment of removal of underground obstructions and the conduct of pile tests. According to the panel, the removal of underground obstruction is a 'major item of work and it cannot be understood as being subsumed under the general heading miscellaneous' and should therefore be treated as extra work. With respect to the pile tests, the CIAC stated that in accordance with accepted industry practice, the provisions in the contract only cover tests of contractor-supplied materials and not tests on finished products to see whether it can carry a certain load.

In light of the ratiocination of the CIAC that the removal of underground obstruction is a major item of work and cannot merely be contemplated as a miscellaneous item in a construction bid and must therefore be considered as extra work, We conclude that there was nothing in the bid nor in the contract explicitly discussing the obligations

of both parties in the event that the contractor will encounter underground obstructions in the project site and may be constrained to remove the same.

However, there is a provision in the contract that can be made applicable in the case of underground obstructions, which the CIAC and the Court of Appeals have correctly pointed out, to wit:

> 56.2. Should the Contractor encounter subsurface or latent physical conditions differing materially from those indicated, or unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work of character provided for in the Contract, the Owner's Representative shall be promptly notified of such conditions before they are disturbed. The Owner's Representative shall thereupon promptly investigate the conditions at the site and if he finds that they do so materially differ and cause an increase or decrease in the cost, or the time required for performance of the Contract, an equitable adjustment will be made and the Contract modified in accordance with existing laws on the matter or as agreed upon the provided for [sic] under the Contract.

The appellate court laid stress the fact that AFCSC failed to comply with the stipulations of the abovequoted provision. According to the Court of Appeals, in failing to formally notify New World regarding the underground obstructions that it has encountered, AFCSC failed to set in motion the mechanism for a modification of the contract and the equitable adjustment of the contract price. Thus, for such negligence, the appellate court reduced the original award of the CIAC to only one-half of the cost of the removal of the underground obstructions.

We do not agree. As explained by the appellate court itself, the experts and CIAC have agreed that the removal of the underground obstructions was not covered by the scope of work in the contract. It is not disputed though that the same was a major work entailing additional expenses and extra working time. Neither was it denied that such major work was indeed necessary for the successful completion of the project. Indeed, to deny AFCSC relief for the expenses it incurred in removing said obstructions would result in allowing New World to unjustly enrich itself at the expense of AFCSC. Equity necessarily dictates that New World be held liable for the expenses incurred for the extra work conducted for its sole benefit. Further, it cannot be said that New World was not made aware of the existence of the underground obstruction nor of the additional expense that would be necessary for its removal. As heretofore stated, AFCSC, on 21 November 1996, sent a proposal to New World regarding the additional expenses that would be incurred in the instance that the contractor shall encounter underground obstructions; however, New World never responded to said proposal until 9 September 1997, when it informed AFCSC of the rejection of said proposal or almost ten (10) months after said proposal was first offered, and after all the necessary extra work had been accomplished.

Article 22 of the Civil Code which embodies the maxim, Nemo ex alterius incommode debet lecupletari (no man ought to be made rich out of another's injury) states:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.[8]

The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as "basic principles to be observed for the rightful relationship between human beings and for the stability of the social order, x x x designed to indicate certain norms that spring from the fountain of good conscience, x x x guides human conduct [that] should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice.[9] Hence, to allow New World to acquire the finished project at a price far below its actual construction cost would undoubtedly constitute unjust enrichment for the bank to the prejudice of AFCSC. Such unjust enrichment, as previously discussed, is not allowed by law.[10]

AFCSC submitted proof before the CIAC of the additional cost of manpower and equipment usage for the removal of the underground obstructions and other supporting documents, the veracity of which was never questioned by New World. In fact, New World did not question the necessity of removing the underground obstructions nor the facts on the bases of which the claim for extra work due to underground obstructions were made. As found by the CIAC and affirmed by the Court of Appeals, the cost of the removal of the underground obstructions was P8,025,836.37. Beyond cavil, AFCSC is entitled to full payment of the expenses incurred for the removal of the underground obstructions.

As to the question of which between AFCSC and New World should shoulder the expenses for the pile tests, We uphold the ruling of the CIAC, affirmed by the Court of Appeals, that the pile tests conducted should be for the account of New World in accordance with the accepted practice in the construction industry. We see no reason to disregard the determination of the CIAC on this matter. This being in accordance with the established principle that determination of certain questions of fact falling within the peculiar technical expertise of an administrative agency, must be accorded great respect, if not finality by this Court. A long line of cases establish the basis rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[11] Therefore, AFCSC is entitled to the payment of the total amount of P336,683.48 consisting of P157,681.15 for sonic pipe installation; P104,002.33 for build up of pile test cap; and P75,000.00 for crane rental.

Finally, with respect to the issue of whether or not AFCSC is liable for liquidated damages for its failure to complete the construction work by the contract date of 24 February 1997, We agree with the findings of the CIAC that AFCSC never sent notice to New World regarding a request for extension of time to finish the work despite the existence of circumstances fairly entitling it to an extension of the contract period. Thus, AFCSC, must bear some consequences for the delay in the completion of the project and for disregarding the owner's right to determine the length of extension to be given to the contractor and to consequently adjust the period to finish the extra work.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated 31 January 2000, which modified the Decision dated 8 December 1998 of the Construction Industry Arbitration Commission, is hereby MODIFIED in that New World Properties and Ventures, Inc is hereby ordered to pay Advanced Foundation Construction Systems Corporation the following amounts:

- P8,025,836.37 as cost of additional work consisting of the removal of the underground obstructions;

- P336,683.48 as costs for the various test conducted consisting of P157,681.15 for sonic pipe installation; P104,002.33 for build up of pile test cap; and P75,000.00 for crane rental.

The remainder of the same Decision of the Court of Appeals are hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.
Panganiban, C.J., (Chairperson), no part. CIAC chairman was a former partner.

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[1] CA-G.R. SP No. 50045, dated 31 January 2000, penned by Associate Justice Hilarion L. Aquino with Associate Justices Buenaventura J. Guerrero and Elvi John S. Asuncion, concurring; Rollo of G.R. No. 143154, pp. 9-29; Rollo of G.R. No. 143177, pp. 87-107.

[2] CIAC Case No. 17-98 dated 8 December 1998, decided by a three-man panel composed of Custodio O.

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Parlade as chairman, with Felisberto G.L. Reyes and Guadalupe O. Mansueto as members. Rollo of G.R. No. 143154, pp. 80-107; Rollo of G.R. No. 143177, pp. 59-86.

[3] The Construction Industry Arbitration Commission (CIAC) was created under Executive Order No. 1008, which vested it with original and exclusive jurisdiction over disputes arising from, or connected with contracts entered into by parties involved in construction in the Philippines. Under Section 4 of E.O. No. 1008, the jurisdiction of the Commission may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

[4] CIAC Decision pp. 9-28; Rollo of G.R. No. 143154, pp. 88-107; Rollo of G.R. No. 143177, pp. 66-86.

[5] CA Decision, Rollo of G.R. No. 143154, pp. 19-28; Rollo of G.R. No. 143177, pp. 97-106.

[6] International Container Terminal Services, Inc. v. National Labor Relations Commission, 326 Phil. 134, 146 (1996).

[7] Industrial Enterprises, Inc. v. Court of Appeals, G.R. No. 88550, 18 April 1999, 184 SCRA 426, 431-432.

[8] Security Bank & Trust Company and Manahit v. Court of Appeals and Ferrer, 319 Phil. 312, 317 (1995).

[9] Id.

[10] Id. at 318.

[11] First Lepanto Ceramics, Inc. v. Court of Apepals, 323 Phil. 657, 664 (1996).

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