

R-II BUILDERS, INC., PETITIONER, VS. CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) AND MIVAN BUILDERS, INC., RESPONDENTS.

G.R. No. 152545. November 15, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

Submitted for resolution are these two (2) consolidated petitions for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following:

In G.R. No. 152545:

- Decision dated October 26, 2001,[1] of the Court of Appeals (CA) in CA G.R. SP No. 56142 which affirmed in toto the decision dated November 23, 1999 of CIAC Sole Arbitrator Alfredo F. Tadiar in CIAC Case No. 22-99; and

- Resolution dated March 6, 2002,[2] denying petitioner's motion for reconsideration; and

In G.R. No. 165687:

- Decision dated June 14, 2004,[3] in CA G.R. SP No. 68178 which annulled the Orders dated July 9, 2001 and October 15, 2001 of CIAC Sole Arbitrator Alfredo F. Tadiar and directed said public respondent to issue a writ of execution of the Decision dated November 23, 1999 in CIAC Case No. 22-99; and

- Resolution dated September 28, 2004,[4] denying petitioner's motion for reconsideration.

From the petitions, the comment thereon of private respondent, their respective annexes, and other pleadings filed by the parties, the Court gathers the following relevant facts:

On September 3, 1997, R-II Builders, Inc. (R-II, for brevity) and the Bases Conversion Development Authority (BCDA) entered into an agreement[5] (R-II – BCDA Agreement, hereinafter) for the construction, on a 7-hectare area in Fort Bonifacio, Taguig, Metro Manila, of the Philippine Army Officer's Quarters Project. In it, R-II agreed to undertake, for P788,973,413.00, inclusive of taxes and fees, among other conditions, the site planning and development of the property in question and the design/construction thereon of twenty-eight (28) 4-storey medium-rise buildings, in accordance with the detailed architectural and engineering plans and specifications as prepared by R-II and approved by BCDA. Appointed by BCDA as project construction manager was Techpil, Inc. (TECHPIL, for short).

Records show that even before the contract signing of the R-II-BCDA Agreement, steps were taken and negotiations already conducted towards a sub-contracting arrangement between R-II and Mivan Builders, Inc. (Mivan, for brevity). As a matter of fact, R-II appeared to have given Mivan advance copies of the drawing plans submitted to BCDA. Then, on August 25, 1997, R-II issued to Mivan the contract drawings and specifications upon which the latter would base its September 3, 1997 estimate and tender of the sub-contract price in the

amount of P459, 000,000.00. A "Notice to Proceed" dated September 6, 1997 addressed to Mivan followed, stipulating a 180-day completion period from September 8, 1997 or until March 6, 1998. Mivan forthwith mobilized and set up its labor camp at the job site. By September 26, 1997, its formworks had started to arrive in the port of Manila.

It would appear that what commended Mivan for the project sub-contract award was its advanced aluminum framework system. This method eliminated the use of hollow blocks in constructing the superstructures of buildings, and, instead, utilized pre-fabricated aluminum formworks into which concrete is poured covering at the same time, if appropriate, several floors to obtain the desired shape. Because the frameworks were so designed to allow multiple re-use, this innovative system translated into huge savings in terms of construction time and costs.[6]

On October 3, 1997, R-II and Mivan executed the formal sub-contract agreement (the R-II – Mivan Agreement, or sub-contract agreement, hereafter)[7] for the construction of the twenty (28) buildings contemplated in the R-II -BCDA Agreement. Under the terms of the sub-contract agreement, R-II agreed to pay Mivan a fixed lump sum total amount of P459,000,000.00 plus the applicable value added tax (VAT) based on contract drawings issued by R-II on August 25, 1997. Included in Mivan's scope of work were structural, electrical, and other finishing works necessary to complete the buildings in accordance with the plans and specifications prepared by R-II. As set forth in the sub-contract agreement, the construction project was divided into two (2) categories: (a) twenty (20) 4-storey buildings with four (4) apartments at 120 square meters each floor, referred to as "M120 Buildings"; and (b) eight (8) 4-storey buildings with two (2) apartments at 180 square meters each floor, referred to as "M180 Buildings".

Inter-alia, the R-II–Mivan Agreement contained provisions relating to escalation/adjustment of contract price and allowed variations/alterations orders, incorporating, by express reference thereto, the provisions of Presidential Decree (P.D.) No. 1594, entitled "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts".[8]

Notwithstanding what appeared to be a comprehensive sub-contracting arrangement, R-II would later further sub-contract part of the original subcontracted works, i.e., the supply and erection of formworks for the superstructure of buildings #16, 17 & 21, to Rigid Systems, Inc. (RSI, for brevity) and bring in additional workforce to the project site. As things turned out, however, RSI was not up to the task, which thus impelled Mivan to either rework RSI's defective accomplishments or complete the latter's unfinished sub-contracted works. Also, in the course of project implementation, R-II, addressing BCDA's request, asked the accommodative Mivan to fast-track the completion of five (5) buildings, albeit the November 1997 deadline therefor was later moved to January 1998. Needless to stress, the engagement of RSI and its inability to satisfactorily perform its part of the bargain, the employment of additional hired hands, the acceleration of the turn-over of structures and other deviations from the original plans/specifications distorted construction schedules and upped the original overall construction cost.

All told, Mivan was able to finish its sub-contracted undertakings, but forty-nine (49) days beyond the original completion date and only after incurring additional costs which it attributed to overhead costs and events causing disruptions/delays, such as but not limited to variations to the Contract Drawings and other change orders, the requirement for early completion of a number of buildings, the necessity to repair works carried out by others, and the introduction of other formwork systems into the construction of superstructures. Hence, it demanded additional and/or differential payments, itemized as follows:

Variation Claims P58,477,320.27

Escalation Claims 11,027,204.00

Disruption Claims + 48,273,305.22

Total P117,747,829.49

Add: 10% VAT + 11,774,782.95

GRAND TOTAL P129,522,612.44

R-II readily admitted liability for variation cost but only to the extent of P15,095,597.20, plus escalation cost in the amount of P 747,585.82. As it would later insist, the figure P15,095,597.20 was the amount arrived at after a joint quantification and costing of the As-Built Drawings and the Contract Drawings was made by the parties on December 2-4, 1998, upon BCDA's intercession, to resolve the issue of quantifying the variation or additional work done on the substructures and superstructures of the buildings.

As a measure to break the R-II- Mivan impasse, TECHPHIL, the BCDA project construction manager, came into the picture. In its report dated December 14, 1998[9] to BCDA, TECHPHIL, after evaluating the quantifying results based on Mivan's detailed computation, which in turn was based on the revised tender cost submitted on September 3, 1997, found the amount of P40,719,802.41 - out of Mivan's P58.477 Million variation claim – to be valid and legitimate. Accordingly, TECHPHIL recommended that R-II be made to pay the amount of P 40,719,802.41.

R-II proved, however, to be unyielding. This impelled Mivan to pursue its claims before the Construction Industry Arbitration Commission (CIAC) pursuant to par. 14. 1, Article XIV of the sub-contract agreement.[10] The case was docketed as CIAC Case No. 22-99.

On November 12, 1999, the CIAC-appointed Sole Arbitrator Alfredo F. Tadiar rendered a decision in CIAC Case No. 22-99, as follows:

A W A R D

WHEREFORE, Judgment is hereby rendered in favor of the claimant Contractor [Mivan] and Award is hereby made on its monetary claims as follows:

Respondent [R-II] is directed to pay the Claimant the following amounts:

P 39,000,000.00 for its variation claims.

3,198,170.00 for the increased costs of labor, materials and equipment arising from the accelerated schedule of turn-over of 5 buildings.

3,099,089.76 for reimbursement of the amount overcharged for the additional labor force supplied by the Respondent.

747,585.82 for escalation claims.

4,294,575.58

_____ for Value Added Tax (VAT) computed at 10% of the amounts awarded except that for reimbursement.

P 50,339,421.16 Total amount due to the Claimant.

Interest on the foregoing amount of P 46,044,845.58, excluding the Value Added Tax, shall be paid at the rate of 6% per annum from the date of this Decision. After finality of this Decision, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made, "this interim period being deemed to be at that time already a forbearance of credit" (Eastern Shipping Lines, Inc. v. Court of Appeals, et al, 243 SCRA 78 [1994]; Keng Hua Papers Products Co., Inc. v. Court of Appeals, 286 SCRA 257 [1998]; Crismina Garments, Inc. v. Court of Appeals, G.R. No. 128721, March 9, 1999).

SO ORDERED. (Words in bracket added.)

In time, R-II went to the Court of Appeals (CA) on a petition for review under Rule 43 of the Rules of Court, thereat docketed as CA G.R. No. SP No. 56142. Mivan also interposed a similar recourse only to withdraw the same later with the appellate court's approval.

On October 26, 2001, the Court of Appeals rendered a Decision[11] dispositively stating:

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED. The assailed decision is hereby AFFIRMED in toto and the application for injunctive relief denied.

SO ORDERED.

Dissatisfied with aforesaid ruling, coupled with the denial of its motion for reconsideration of the appellate court's Resolution[12] dated March 6, 2002, petitioner elevated the case to this Court in the present G.R. No. 152545, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR IN THE APPRECIATION OF THE FINDINGS OF THE RESPONDENT CIAC AS TO THE ALLEGED LIABILITY OF THE PETITIONER.

II

WHETHER OR NOT THE CLAIMS OF THE RESPONDENT MIVAN FOR INCREASED COSTS AND ADDITIONAL MONETARY CLAIMS ARE NOT BARRED UNDER THE CONSTRUCTION AGREEMENT BETWEEN THE PARTIES.

III

WHETHER OR NOT THE COURT OF APPEALS AND RESPONDENT CIAC ERRED IN AWARDING VALUE ADDED TAX IN FAVOR OF THE RESPONDENT MIVAN.

In the meantime, or before the Court of Appeals could resolve the petition in CA-G.R. SP No. 56142, Mivan moved for the execution of the aforesaid November 23, 1999 CIAC decision. Sole Arbitrator Tadiar, however, denied the motion to execute in separate Orders dated July 9, 2001 and October 15, 2001, prompting Mivan to challenge these denial orders before the Court of Appeals via a petition for certiorari and mandamus under Rule 65 of the Rules of Court, docketed therein as CA G.R. SP No. 68178. In its Decision[13] dated June 14, 2004, the Court of Appeals ruled:

WHEREFORE, the petition is granted. The Orders dated July 9, 2001 and October 15, 2001 of public respondent are annulled and public respondent is directed to issue a writ of execution of the Decision dated November 23, 1999 in CIAC Case No. 22-99.

SO ORDERED.

Following the appellate court's denial through Resolution[14] dated September 28, 2004, of its motion for

reconsideration, R-II came to this Court by way of a petition of review, herein docketed as G.R. No. 165687, which was eventually consolidated with G.R. No. 152545.

In the interim, however, Sole Arbitrator Tadiar had a change of heart and directed on August 23, 2004 the issuance of a writ of execution of his November 23, 1999 decision, conditioned upon Mivan's putting up a bond. Mivan posted the required bond on December 17, 2004. Sole Arbitrator Tadiar approved the bond on January 11, 2005 and forthwith ordered that the writ of execution issue.

Acting on R-II's motion, however, to hold in abeyance the implementation of the writ of execution, the CIAC Proper directed, per its Order of January 27, 2005,[15] the stay of the release of the writ upon R-II posting within ten (10) days of a counter-bond. R-II eventually submitted the requisite counter-bond.

The adverted developments that transpired before CIAC have effectively rendered the main issue tendered in G.R. No. 165687, i.e., whether or not an arbitral award of CIAC is immediately executory, moot and academic, meaning that the issue has ceased to present a justifiable controversy so that a determination thereof would be without practical value and use.[16] Mivan, in its comment dated March 21, 2005 in G.R. No. 165687, stated as much, noting that no writ of execution has been issued as of that date.

Indeed, the arrest of the execution of the November 23, 1999 CIAC decision which is what R-II veritably seeks in its petition in G.R. No. 165687 has already been granted. It is, therefore, futile to belabor the merits of said petition.

Hence, only the petition in G.R. No. 152545 is left for resolution, which petition, this Court finds to be without merit.

Petitioner first excepts to the Sole Arbitrator's award of variation claim in the amount of P39, 000, 000.00, which the Court of Appeals affirmed in CA G.R. SP No. 56142, on the following ratiocination:

MIVAN had painstakingly documented and presented in detail the cost of these variation. As summarized by MIVAN the structural variation costs amounted to P2,571,396.05, architectural variations, P35,669,323.86; and P20,212,688.05 for mechanical and electrical variations or a total amount of P58,453,947.96 excluding VAT.

A close examination of the TECHPHIL report reveals that the increase in cost as between As Built and Contract Quantities is P33, 454,717.53 for model M120 and P7, 625,084.88 for model M180. Adding the figures will give the result of P40,719,802.41.

In the matter of variation claims, there are four (4) amounts that figure prominently, to wit: a) P58,453,947.96 from MIVAN; b) P40,719,802.41, variation cost agreed upon by R-II and MIVAN according to TECPHIL report; and c) P15,095 (sic) offered by R-II; and d) the amount of P39,000,000.00 arrived at by the Arbitrator.

It is worthy to note that the sum total of the undisputed amount of P40,719,802.41 and the disputed sum of P18,874,502.97 which is the amount of P59,594,365.38 is very near MIVAN's variation claim of P58,453,947.96 with a difference of only P1,140, 457.42; whereas the amount of P39,000,000.00, awarded as variation claim in favor of MIVAN, is very near the undisputed amount of P40,719,802.41.

R-II would, however, contest the above findings. As it did below, it would now insist that, per its own quantifying computation, its liability should be limited to P15, 095, 597.20 only.

It is evident that the first issue raised by R-II relates to the factual determination of the Court of Appeals, confirmatory of that of the CIAC Sole Arbitrator, as to the extent of its added variation cost liability to Mivan.

The all too-familiar rule is that the Court will not, in a petition for review on certiorari, entertain matters factual in

nature, save for the most compelling and cogent reasons,[17] like when such factual findings were drawn from a vacuum or arbitrarily reached[18], or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd.[19] Ramos vs. Gatchalian Realty, Inc.[20] offers another formulation of the same rule, as follows:

xxx findings of facts of the Court of Appeals are binding on the Supreme Court and will not be overturned when supported by the evidence on record save in the known exceptions such as gross appreciation of the evidence or misapprehension of facts.

Nothing in the record indicates that any of the exceptions obtain. Petitioner's stated observation that "there is absolutely nothing in law and/or reason which could actually support the [Court of Appeals'] finding [justifying the P39 Million award]"[21] is self-serving, at best. For, the appellate court, in sustaining CIAC's award of variation claim in the amount of P39, 000,000.00, made specific reference to Mivan's offered evidence documenting in detail its variation claim. The same court, in arriving at the figure P39 Million, aptly took stock of R-II's almost matching variation claim against BCDA, and, with reason, correlating the P39, 000,000.00 arbitral award to satisfy Mivan's variation claim under the sub-contractor's agreement, to the variation claim sought by R-II against BCDA on the main construction agreement. Wrote the appellate court:

As pointed out in the assailed [CIAC] decision, the amount of P39, 000,000.00 forms part of R-II's variation claim against BCDA which is in the total amount of P55 Million. Of this amount, P39 Million was for variation claims pertaining to buildings constructed by MIVAN. Undoubtedly, the arbitrator's award of P39, 000,000.00 as variation claim due MIVAN is well within MIVAN's claim, the amount recommended by TECPHIL and the variation claims of R-II against BCDA. We find the award just and reasonable and supported by the facts and evidence on record.

R-II charged that its evaluation of MIVAN's variation claims was disregarded. On the contrary, it would appear that the P39, 000,000.00 was based on R-II's computation, it appearing that the amount is similar to R-II's variation claim against BCDA pertaining to the buildings constructed by MIVAN. [22]

As a necessary legal consequence to the above disposition, the assessment decreed in the CIAC ruling against R-II for interest at 6% per annum reckoned from the date of CIAC's decision and at 12% per annum upon its finality, has to be sustained. For, in the final analysis, R-II is deemed to have defaulted in its obligation to pay Mivan the amount representing the variation cost legally due it. As it were, R-II, while appearing to be willing to pay Mivan, by way of added variation cost, the amount of P15,095,597.20, did not actually make a valid tender and consignment of payment to release it from the effects of delay to the extent at least of such amount. The legal situation would of course have been different if Mivan can be considered in mora accipiendi, in which case R-II cannot be made liable for damages for perceived delay in the payment of such variation claim.

Anent the second issue, R-II states that, while the completion of the subcontracted project had been delayed, Mivan had failed, within the required period and in the manner agreed upon, to provide it (R-II) with the necessary advisory indicating therein the amount of the additional cost or the cost impact of such delay. For this reason, R-II contends that Mivan's variation claim should altogether be barred by force of the following sub-contractual provision:

7.4

In case the SUB- CONTRACTOR encounters any justifiable cause or reason for delay, the SUB-CONTRACTOR shall within five (5) days, after encountering such cause of delay submit to the CONTRACTOR in writing a written request for time extension indicating therein the cause(s) of the delay, requested contract time adjustment and/or cost impact. Failure by the SUB-CONTRACTOR to comply with

this requirement will be adequate reason for the CONTRACTOR not to grant time adjustment and/or cost impact.

Corollarily, R-II also assails the award to Mivan of other monetary claims, arguing that par. 4-2 of their agreement militates against such award, thus:

4.2

No claims for addition or deduction to the Contract Price herein stipulated by reason of extra [work] or alteration shall be valid unless ordered in writing by the CONTRACTOR. Adjustments of the Contract Price shall be made in accordance with the provision of PD 1594 relating to Extra Work Costing for extra work or alterations ordered in writing by the CONTRACTOR.

The Court does not agree. It may be that the stipulations immediately adverted to above have the force of law between the contracting parties. It is equally true, however, that a party's subsequent acts or conduct may be viewed as working to effectively modify his rights and obligations flowing from the contract or, in the concrete, as estopping that party from invoking such provision to resist the other party's claims that may be adverse thereto. Estoppel precludes one from denying or asserting, by his own deed or representation, anything contrary to that established as the truth in legal contemplation.[23]

By admitting its liability to Mivan to the extent of P15,095,597.20 and by its submission to the CIAC of Exhibit "6", which is a thick folder containing a compilation of its computation of valuation of the variation orders of Mivan, R-II is precluded, under the principle of estoppel, from invoking the aforequoted pars. 7.4 and 4.2 of the sub-contract agreement as tools to thereafter resist such variation claim altogether.

But may said provisions be invoked to defeat recovery of other monetary awards CIAC granted Mivan, namely: P3,198,170.00 for the increased costs of labor, materials and equipment arising from the accelerated schedule of turn-over of five (5) buildings; and P3,099,089.76 for reimbursement of the amount overcharged for the additional labor force supplied by R-II?

The stipulations embodied in pars. 7.4 and 4.2, supra, were clearly intended to cover contract price adjustments arising from extra work, alteration or variation orders. They do not cover and, ergo, cannot be made to apply to Mivan's other monetary claims arising from other causes, such as a modification of the stipulated compliance term or period. Extra works, alteration or variation orders involve a deviation from construction plans or specifications, unlike lengthening of the completion period or requiring additional manpower complement. It may be worthy to note that the cutting short of the period of compliance with respect to some of the units was upon R-II's behest, BCDA having required that five (5) buildings should be ready for occupancy on or before the second week of November to which Mivan conformed with[24]. There was, in effect, a binding modificatory novation of the contract.

The Sole Arbitrator's determination - and the premises holding it together - that the increased construction cost resulting from the accelerated turn-over of units must be for the account of R-II is not only legally tenable. Equitable considerations also support it. Wrote the Sole Arbitrator in his decision of November 23, 1999:

x x x. When the parties to the Sub-Contract, together with the Project Owner, agreed to modify said schedule insofar as the five buildings were concerned, they were surely aware that such acceleration necessarily entails increased costs, being all well-experienced in the construction industry. Since Respondent [R-II] was well aware of such cost entailment, it would be unfair for it to have kept quiet about the lack of explicit agreement on who should bear the increased costs and, lying in ambush, now claims that it has no obligation to pay the same. That would not be in keeping with the principles of fair dealing that should be the norm for all transactions. And surely, it would be unreasonable to infer that Claimant [Mivan] by its similar silence, had

also agreed to bear the increased cost for his sole account. That would result in unjust enrichment of the Respondent at the expense of the Claimant, an unjust result which the law (Article 2142, Civil Code) abhors. The more reasonable inference, therefore, is that the parties had impliedly agreed to charge said increased costs to the sub-contract in accordance with Clause 4.3 of their Sub-Contract that "Any value of change orders approved shall be considered as part of the Contract by invoiced separately as change orders." This is the holding of this Sole Arbitrator on this particular issue.[25] (Words in bracket added.)

As to the amount which CIAC adjudged R-II to be liable by reason of the added cost attendant to the accelerated completion schedule, the Court notes that R-II had not, either in its petition or memorandum, assailed the correctness of the said amount thus reached. This Court, therefore, finds no cogent reason to disturb the CIAC's factual conclusion on this matter:

Respondent has further not traversed Claimant's evidence and computations on the increased labor costs, materials costs and equipment costs arising from this accelerated completion and turn-over of five buildings. Instead, its discussion of this issue at pages 12-13 of Respondent's Draft Decision, confines itself to its legal defense that the order for acceleration came from BCDA and that the procedural requirement of a timely submission of cost impact has not been complied with. Both of these legal defenses have earlier been disposed of. It is accordingly the holding of this Sole Arbitrator that Respondent is liable on this claim in the amount of P3,198,170.00.[26]

Similarly, the Court finds no basis, and R-II has not offered a compelling reason, to reverse CIAC's ruling on the amount of P3,099,089.76 for reimbursement of the amount overcharged for the additional labor force supplied by R-II.

The third and final issue relates to the assessment of VAT. R-II insists that CIAC cannot rightfully hold it liable for this claim item, not being among the issues agreed upon by the parties during the preliminary arbitral conference held on August 17, 1999, and, accordingly, not included in the Terms of Reference[27] (TOR) signed by them.

The Court cannot accord cogency to R-II's posture.

For one, Mivan's claim[28] filed before the CIAC in the grand total amount of P129,522,612.44 already factored in the 10% VAT. The reality that the VAT component was not particularly included as one of the issues in the TOR does not necessarily constitute a waiver on the part of Mivan for such claim. It can be said with some measure of plausibility, in fact, that R-II is deemed to have recognized Mivan's right to the applicable 10% VAT when it raised no issue as to Mivan's entitlement thereto. And for another, the parties expressly stipulated under Article III, paragraph 3.1[29] of the sub-contract that the contract price quoted by Mivan is exclusive of VAT.

WHEREFORE, the petition in G.R. No. 152545 and G.R. No. 165687 are both DENIED, and the Decision of the Court of Appeals subject thereof, confirmatory of the Decision of the Construction Industry Arbitration Commission in CIAC Case No. 22-99, AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, and Carpio-Morales, JJ., concur.
Sandoval-Gutierrez, J., on official leave.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring; Rollo (G.R. No. 152545), pp. 33-43.

[2] Rollo (G.R. No. 152545), p. 45.

[3] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Josefina Guevara-Salonga and Juan Q. Enriquez, Jr., concurring; Rollo (G.R. No. 165687), pp. 7-18.

[4] Rollo (G.R. No. 165687), p. 21.

[5] Rollo (G.R. No. 152545), pp. 299-311.

[6] CA Decision, p. 2, See Note #1, *supra*.

[7] Rollo (G.R. No. 152545), pp. 312-329.

[8] Repealed by the Government Procurement Reform Act (RA No. 9184) which was approved on January 10, 2003.

[9] Annex "5" to Comment to Petition in G.R. No. 152545, Rollo, pp. 434 et seq.

[10] 14.1 Any dispute arising out of or in connection with this Contract or its performance including but not limited to its validity, construction, interpretation or enforcement shall, to the extent possible, be settled amicably by good faith negotiation between the parties. Any such dispute not settled by amicable agreement shall be finally determined by arbitration before the Construction Industry Arbitration Board applying the Construction Arbitration Law of the Philippines.

[11] See Note #1, *supra*.

[12] See Note #2, *supra*.

[13] See Note #3, *supra*.

[14] See Note #4, *supra*.

[15] Rollo (G.R. No. 165687); pp. 160-161.

[16] *PAL vs. Pascua*, 409 SCRA 195 [2003].

[17] *Republic vs. Court of Appeals*, 349 SCRA 451 [2001].

[18] *Sunshine Finance and Investment Corp. vs. IAC*, 203 SCRA 210 [1991].

[19] G.R. No. 158922, May 28, 2004.

[20] 154 SCRA 703 [1987].

[21] Petition, p. 11; Rollo, p. 19.

[22] At p. 39 of the Decision.

[23] *Bank of PI vs. Casa Montessori Internationale*, 430 SCRA 261, [2004].

[24] Rollo (G.R. No. 152545), pp. 261-262.

[25] *Ibid.*, pp. 262-263.

[26] *Ibid.*, p. 263.

[27] *Ibid.*, pp. 521-529.

[28] Ibid, p. 448.

[29] Ibid, p. 314.

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