

FIRST UNITED CONSTRUCTION CORPORATION, PETITIONER, VS. MENANDRO G. VALDEZ AND RAMON E. ADEA, RESPONDENTS.

G.R. No. 154108. December 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In February 1998, the National Housing Authority (NHA), petitioner in G.R. No. 157505, contracted the First United Construction Corporation (FUCC), petitioner in G.R. No. 154105, for its Freedom Valley Resettlement Project (the Project) in Sitio Boso-Boso, Antipolo, Rizal.

Menandro G. Valdez (Valdez) and Ramon E. Adea (Adea) who are respondents in both petitions, Principal Engineers of the NHA, formed part of the NHA team tasked to oversee FUCC's contract works and provide guidance for the proper implementation of the Project.

The technical specifications of the Project called for the laying of a subbase course and base course on the roads before pouring concrete. FUCC instead substituted concrete treated base course (CTBC) for subbase course, despite repeated written reminders by respondents to follow the specifications of the Project.[1] And FUCC refused to have the necessary materials and field density tests conducted before pouring concrete on portions of the roads, and even poured concrete without proper approval, its attention having been called by respondents to its failure to comply with requirements notwithstanding.[2]

On December 11, 1998, FUCC submitted its Second Progress Billing, attaching thereto the Abstract of Accomplishment[3] for the Project from July 1, 1998 to November 30, 1998. It billed the NHA a total of P50,701,846.80 inclusive of P2,305,240 representing cost for subbase course on major roads, P129,800 representing cost for subbase course on minor roads, and an additional P376,040 representing cost for subbase course or a total cost of P2,811,080 for subbase course.[4]

In the meantime, the road leading to the Project collapsed after a typhoon. The collapse of the road was the subject of three articles by Art A. Borjal (Borjal) in The Philippine Star in which he wrote about the poor construction of the roads and the massive wastage of government funds on the Project.[5] The first of the three articles was published on December 27, 1998.

During a NHA-Contractor's meeting on January 12, 1999, respondent Valdez raised the non-compliance by FUCC with the approved plans and specifications of the Project, particularly the use of CTBC instead of subbase course. Mariano Raner (Raner), the Officer-in-Charge of the Project, explained that the technical practice is acceptable provided that the subgrade course has a sufficient California Bearing Ratio value to support the pavement and that CTBC is most advantageous during rainy season. It was resolved during the same meeting that before payment per road works would be considered, tests would be first conducted to find out if the constructed roads met the acceptable standard.[6]

Respondent Valdez later recommended to the Officer-in- Charge (OIC) of the Project that only P16,342,226.23 be

paid to FUCC based on the NHA's own Abstract of Physical Accomplishment, he explaining as follows:

Last 18 February 1999, the General Manager and the Manager, SLB visited the site and conducted a meeting. The General Manager instructed the NHA staff to process the billing of the Contractor within one week. One of the issues resolved at that meeting was the use of Official Receipt[s] as support for payment with regards to the furnishing of equipment and furniture, which unfortunately as of this date have not yet been submitted by the Contractor.

Pending the result of the tests conducted by JSR Geotechnical Services on the structural layer of the roads, the NHA engineers evaluated the request for payment, which was given to the Contractor last 24 January 1999. This was the basis for the meeting held on 25 February 1999 between the Contractor and the NHA technical staff, which you have presided. It was discuss[ed] then that a meeting with JSR be held since you informed us that they have completed the report on the test conducted.

During the meeting with JSR, Contractor, and the NHA technical staff held last 02 March 1999, the result of the tests were presented and validated our observation that the Contractor ha[s] indeed not laid sub-base coarse [sic] materials on the roads. In addition, all of the in-placed Field Density Tests for base coarse materials laid do not conform with the FDT as required by the approved specifications. Moreover, the thickness of some of the said base coarse materials does not conform with the required thickness based on the approved plans of 180mm. It was the opinion of the NHA technical staff at that time that additional tests be conducted on the roads with respect to the laid base course materials to have a conclusive report on its acceptability and conformity with the approved plans and specifications.

With these development[s], the NHA technical staff prepared the Abstract of Physical Accomplishment xxx from the period 01 July 1998 to 31 December 1998 in the total amount of P16,342,226.23, incorporating among others the agreement reached with the Contractor in the 25 February 1999 meeting, for your review and perusal. This, however, would still need the required Official Receipt (OR) of the Contractor with regards to the equipment and furniture.[7]

On March 29, 1999, FUCC, through its Executive Vice-President Ben S. Dumaliang (Dumaliang) and the Project Manager Samuel A. Aquino (Aquino), filed an administrative complaint against respondents before the Office of the Ombudsman for dishonesty, grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service.

FUCC alleged that respondents tried to extort money from it but failed, hence, they refused to act with dispatch on its Second Progress Billing and to officially document various variation orders despite instructions by their superiors.[8]

FUCC further alleged that respondents consistently arrived late at the Project site, used for personal purposes the service vehicles leased by it to NHA for the Project, and used the Project site as their private gun firing range.[9]

In their Joint-Counter Affidavit,[10] respondents alleged that FUCC filed the complaint to coerce them into recommending full payment of its Second Progress Billing amounting to P50,701,846.80 and force them to assist the NHA Management and FUCC in the cover-up on the investigations resulting from the allegations in Borjal's newspaper articles.

Respondents further alleged that the Project OIC Raner and the NHA General Manager Angelo F. Leynes (Leynes) pressured them to attribute the collapse of the road to natural causes and to justify payment on the works done outside of the specifications.[11]

At the preliminary conference held on August 8, 1999,[12] respondents manifested that they were foregoing the conduct of a formal hearing and were submitting the case for resolution on the basis of the available evidence on

record.[13]

By Order of August 30, 1999, the Ombudsman limited the issues of the case as follows:

- Whether respondents tried to extort money from the complainant;
- Whether respondents used for their personal use the vehicles leased to the NHA by FUCC; and
- Whether respondents unjustly failed to act on FUCC's requests.[14]

And it ordered the parties to submit their respective memoranda which they complied with.[15]

By Decision[16] of January 13, 2000 bearing his January 28, 2000 approval, the Ombudsman absolved respondents of negligence in acting on FUCC's Second Progress Billing,[17] but found them liable for extortion and using the vehicles leased to the NHA for personal use, and accordingly dismissed them from the service.[18]

Thus, the Ombudsman decision disposed:

WHEREFORE, PREMISES CONSIDERED, this Office hereby finds the respondents guilty of GRAVE MISCONDUCT punishable by DISMISSAL FROM THE SERVICE and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE which carries the penalty of SUSPENSION FROM WORK FOR SIX MONTHS WITHOUT PAY; the former offense carrying a heavier penalty, Respondents MENANDRO G. VALDEZ and RAMON G. ADEA, are both hereby meted the penalty of DISMISSAL FROM SERVICE. Further, the General Manager of the NHA is hereby ordered to implement the instant Decision in accordance with law and advice of action taken thereof be furnished this Office within ten (10) days from receipt hereof.

SO ORDERED.[19] (Emphasis in the original)

Respondents thereupon wrote a letter[20] to the NHA informing it that as they intended to file a Motion for Reconsideration of the decision of the Ombudsman pending its finality, they had the right to remain in office. Respondents' letter was served on the NHA on February 15, 2000 at about 4:00 PM.[21] The following day, respondents received a Memorandum of February 14, 2000 signed by Leynes informing them of their termination from employment,[22] drawing them to file before the Regional Trial Court (RTC) of Quezon City a complaint[23] against the NHA, its General Manager Leynes, and NHA Human Resource Department Manager Lorna M. Seraspe, for injunction with application and prayer for the issuance of preliminary prohibitory injunction and/or a temporary restraining order. Branch 99 of the Quezon City RTC issued a temporary restraining order and a preliminary prohibitory injunction,[24] prompting the NHA to file before the Court of Appeals a petition[25] against the RTC trial judge and herein respondents for certiorari and prohibition with prayer for the issuance of writ of preliminary injunction and temporary restraining order. The NHA petition was docketed as C.A. G.R. No. 57963.

Respondents did file a Motion for Reconsideration of the Ombudsman decision which was denied, hence, they challenged the decision via petition before the Court of Appeals which was docketed as C.A. G.R. No. 62534.

The Court of Appeals, in C.A. G.R. No. 62534, issued a temporary restraining order[26] enjoining the Ombudsman and the NHA from implementing the Ombudsman decision of January 13, 2001.

By Decision of February 28, 2002 rendered in C.A. G.R. No. 62534, the Court of Appeals, finding FUCC's administrative complaint to be bereft of substantial evidence,[27] reversed the Ombudsman's decision and accordingly dismissed the administrative cases against respondents. Thus, it disposed:

WHEREFORE, the instant petition is hereby GIVEN DUE COURSE and GRANTED. The Decision of 13 January 2000 of the Office of the Ombudsman, as well as its Orders dated 18 May 2000 and 27 December

2000 are hereby SET ASIDE and declared NULL AND VOID. The administrative case against petitioners is DISMISSED .

SO ORDERED.[28] (Emphasis and underscoring supplied)

FUCC's Motion for Reconsideration[29] was denied.[30]

In view of its decision in C.A. G.R. No. 62534, the Court of Appeals dismissed C.A. G.R. No. 57963 for having become moot and academic.[31]

FUCC appealed the appellate court's decision in C.A. G.R. No. 62534 via the first subject petition, for review,[32] docketed as G.R. No. 154108. FUCC faults the appellate court:

I

x x x IN HOLDING THAT THE OMBUDSMAN ALLEGEDLY RELIED SOLELY UPON "THE MERE AFFIDAVITS OF FUCC'S WITNESSES" WHICH ALLEGEDLY DO "NOT FALL UNDER THE REQUIRED SUBSTANTIAL EVIDENCE IN AN ADMINISTRATIVE PROCEEDINGS [SIC].

II

x x x IN MISAPPRECIATING CERTAIN FACTS INDUBITABLY ESTABLISHED BY THE EVIDENCE ON RECORD TO FAVOR RESPONDENTS.

III

x x x IN [TAKING] AS GOSPEL TRUTH RESPONDENTS' PATENT, VICIOUS AND MALICIOUS LIE THAT FUCC ALLEGEDLY FLAGRANTLY VIOLATED THE TERMS OF THE CONTRACT.[33] (Emphasis in the original)

The NHA appealed the dismissal of C.A. G.R. No. 57963 via petition for review,[34] G.R. No. 157505. NHA faults the appellate court

- x x x in denying due course and dismissing NHA petition for certiorari and prohibition for being moot and academic.

- x x x in not holding that the court a quo has no jurisdiction over the subject matter of the complaint of Private Respondents.[35]

By Resolution of July 16, 2003, the Court consolidated G.R. No. 157505 and G.R. No. 154108.[36]

In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint.[37] While rules of evidence prevailing in courts of law and equity shall not be controlling, this assurance of a desirable flexibility in administrative procedure does not go as far as to justify orders without basis in evidence having rational probative force.[38]

In the administrative case against respondents subject of G.R. No. 157505, the Ombudsman found them liable for extortion based on the affidavits of FUCC's witnesses,[39] holding that "cases of extortion virtually depend on the credibility of complainant's testimony because of [their] intrinsic nature where only the participants can testify to [their] occurrences." [40]

The records show that Valdez' recommendation to pay the FUCC only P16,342,226.23 came about in light of his finding that FUCC failed to lay subbase in accordance with the specifications of the Project.

FUCC itself admits not having laid subbase, even as it charged the NHA for the cost thereof despite its claim that it omitted the subbase "to save funds".[41] The FUCC claims that the NHA approved the substitution of CTBC

for conventional base course and subbase. However, FUCC showed no evidence of such approval other than its own letters to the NHA stating its intention to use CTBC instead of the conventional base course and subbase required by the contract.[42]

Respecting the charge that respondents used for personal purposes the vehicles leased by FUCC to the NHA, the same is unsupported by substantial evidence. Valdez's signature on the entries in the logbook reflecting the vehicles' trips[43] does not necessarily indicate that he and/or Adea took the trips. It could indicate that he was attesting to the authenticity of the trips. At any rate, FUCC did not refute the claim that there were instances when other NHA personnel used the vehicles.[44]

IN SUM, FUCC having failed to support its charges against respondents with substantial evidence, the Court of Appeals did not err in reversing the Ombudsman decision and accordingly dismissing the administrative complaint against respondents to thus render NHA's petition in G.R. No. 157505 moot and academic.

WHEREFORE, the petitions are DENIED.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Ombudsman records, pp. 70-82.

[2] Id. at 82-93.

[3] Id. at 49-62.

[4] Id. at 49-50, 61.

[5] Id. at 68.

[6] Id. at 14.

[7] Id. at 66-67.

[8] Id. at 8-10.

[9] Id. at 16-48, 357-364.

[10] Id. at 122-126.

[11] Id. at 123-124.

[12] Id. at 286.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Id. at 372-384.

[17] Id. at 380.

[18] Id. at 378-380, 381-382.

[19] Id. at 381-383.

[20] Vide CA rollo (CA G.R. No. 57963), p. 65.

[21] Id. at 66.

[22] Id. at 67; rollo (G.R. No. 157505), p. 177.

[23] CA rollo (CA-SP G.R. No. 57963), pp. 63-72.

[24] Id. at 30-31.

[25] Id. at 2-29.

[26] CA rollo (CA-SP G.R. No. 62534), pp.174-175.

[27] Decision penned by Court of Appeals Associate Justice Bernardo P. Abesamis, with the concurrences of Associate Justices Bienvenido L. Reyes and Perlita J. Tria Tirona. Id. at 562-579.

[28] Id. at 578-579.

[29] Id. at 604-613.

[30] Id. at 653.

[31] Decision of January 31, 2003, penned by Court of Appeals Associate Justice Edgardo P. Cruz, with the concurrence of Associate justices Salvador J. Valdez, Jr. and Mario L. Guariña III. CA rollo (C.A. G.R. No. 57963), pp. 230-235.

[32] Rollo (G.R. No. 154108), pp. 28-65.

[33] Rollo (G.R. No. 154108), pp. 50-51.

[34] Rollo (G.R. No. 157505), pp. 121-148.

[35] Id. at 130.

[36] Id. at 221.

[37] Vide Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 483.

[38] Vide Sps. Boyboy v. Atty. Yabut, Jr., 449 Phil. 664, 670 (2003).

[39] Vide Ombudsman records, pp. 378-379.

[40] Id. at 378.

[41] Id. at 106, 172.

[42] Id. at 171-174.

[43] Id. at 21-44.

[44] CA rollo (C.A. G.R. No. 62534), pp. 43-44. Vide Ombudsman records, pp. 280-281.

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