

**THE INDUSTRIAL TECHNOLOGY DEVELOPMENT INSTITUTE REP. BY
DR. RUFINO C. LIRAG, JR., PETITIONER, VS. RUFINO M. VILLANUEVA,
DOING BUSINESS UNDER THE NAME AND STYLE OF R.M.
VILLANUEV...**

G.R. NO. 163359. March 06, 2007

Ponente: TINGA, J.

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TINGA, J.:

On June 25, 1992, R.M. Villanueva Construction (RMVC) and the Industrial Technology Development Institute (ITDI), a research and development institute of the Department of Science and Technology (DOST), entered into a contract for the construction and completion of Phase II of ITDI's Microbiology and Genetics Laboratory Building. The contract, signed by Rufino M.

Villanueva, for RMVC, and Dr. Rufino C. Lirag, Jr., representing ITDI, provided that the construction of the entire second floor of the said building should be finished within 180 days or on or before January 10, 1993 at a total contract price of P10,469,270.00.[1]

Work on the project promptly started the following month. As the work proceeded, however, RMVC began to fall behind schedule in completing the various phases of the project as provided by the approved performance schedule. This situation prompted ITDI to inform RMVC on November 20, 1992 that it was already 17.51% below the targeted accomplishments as of that date.[2] Another written warning was sent by ITDI to RMVC on December 8, 1992 calling its attention to the fact that it had already incurred a 27.39% negative work slippage based on the approved performance schedule.[3]

RMVC replied that the slippage in its work was caused by its discovery and correction of some structural defects in Phase I of the project referring to the existing foundation and basement of the building earlier constructed by the previous contractor.[4] RMVC requested a 45-day extension of the contract period and informed ITDI that it had incurred additional costs amounting to P1,982,190.00.

At the job construction site meeting on January 5, 1993, ITDI found that the alleged cause of the work delay could be imputed entirely to RMVC. Specifically, it was discovered that the additional works claimed to have been performed by RMVC: (1) were performed without the ITDI's previous approval; (2) were cited or mentioned by RMVC barely a month before the end of the contract time; and (3) should have been considered or factored-in by RMVC at the site inspection before it submitted its bid, all in violation of the Implementing Rules and Regulations of Presidential Decree No. 1594 (PD 1594). Accordingly, on January 12, 1993, ITDI served written notice on RMVC: (1) denying its request for extension of contract time; (2) terminating the contract; and (3) giving it three (3) days from notice to vacate the project site.[5]

On January 14, 1993, the DOST Infrastructure Committee made a final evaluation of RMVC's work and found that as of January 10, 1993, the latter had accomplished only 46.7139% of the project on the basis of the Project

Evaluation Review Technique/Critical Path Method (PERT/CPM). Pursuant to Section CI-1(8-4) of PD 1594, the DOST Infrastructure Committee required RMVC to pay ITDI the amount of P1,570,390.50 as liquidated damages.[6] A Summary of RMVC's Accountability was presented by ITDI showing that RMVC owed ITDI the amount of P2,642,082.88 after considering its collectibles, accomplishment, materials delivered at site, damages, and ITDI's progress and advance payments.[7]

On March 25, 1993, RMVC filed a complaint for sum of money and damages with the Regional Trial Court of Malabon City, Branch 73. After due proceedings, the trial court rendered judgment in favor of RMVC, ordering ITDI to pay RMVC the amount of P600,000.00 representing the total uncollected amount due it as of January 1993; P1,383,011.20 representing the cost of construction materials belonging to RMVC and appropriated by ITDI; moral damages in the amount of P500,000.00; attorney's fees of P50,000.00 plus P1,000.00 per court appearance; and costs of suit.[8]

Both parties appealed to the Court of Appeals. On January 19, 2004, the appellate court rendered the assailed Decision[9] affirming the decision of the trial court with modification, thus:

IN VIEW OF THE FOREGOING, the appealed decision is AFFIRMED, with the following modifications:

- 1) The actual damages is reduced to P263,366.86;
- 2) The awarded cost of construction materials is reduced to P713,992.00; while
- 3) The award of moral damages and attorney's fees are deleted.

No Cost.

SO ORDERED.[10]

ITDI's motion for reconsideration was denied in the Resolution[11] dated April 23, 2004.

In the present petition filed on behalf of ITDI by the Office of the Solicitor General, ITDI urges the Court to re-examine the appellate court's finding that RMVC has completed 51.48% of the project thereby entitling it to the corresponding actual damages. It claims that RMVC was actually able to complete only 46.71% of the project. Thus, ITDI owes it only P33,903.46 which is equivalent to the difference between P4,890,609.27 (representing 46.71% of the original contract cost of P10,469,270.00) and P4,856,705.81 (representing 46.39% of the original contract cost which had already been paid and received by RMVC).

ITDI also denies having appropriated for itself the construction materials amounting to P713,992.00 left by RMVC on the project site.[12]

RMVC, on the other hand, would have us sustain the appellate court's award of actual damages and cost of construction materials.[13]

The issue of whether ITDI is entitled to unilaterally cancel the contract has been correctly resolved in the affirmative by the Court of Appeals. Moreover, it is deemed settled, as RMVC did not appeal and in the present petition it has limited its Comment[14] and Memorandum[15] to the issue of its entitlement to actual damages.

The only issue left for resolution is whether RMVC indeed completed 51.48% of the project as it alleged in its Amended Complaint[16] to entitle it to the actual damages awarded by the Court of Appeals. This is a factual question which this Court, as a general rule, cannot pass upon, its jurisdiction in cases brought to it from the Court of Appeals by way of petition for review under Rule 45 being limited to reviewing or revising errors of law. However, there is in this case a clear conflict between the factual findings of the trial court and the appellate court

necessitating a review of this factual issue as an exception to the general rule.[17]

The trial court ruled that RMVC is entitled to actual damages amounting to P600,000.00 representing its total uncollected amount as of January 1993. It also found that ITDI appropriated for itself the construction materials amounting to P1,383,011.20 left by RMVC on the project site. In contrast, the Court of Appeals declared RMVC to have completed 51.48% of the project and therefore still entitled to an additional P263,366.86 corresponding to the difference between 51.48% of the total contract price and the amount already paid to it. Additionally, the appellate court reduced the awarded cost of construction materials to P713,992.00.

The appellate court's finding that RMVC was able to finish 51.48% of the project was based on RMVC's Amended Complaint and its own progress report.[18] It does not escape notice that this document was prepared wholly by RMVC and was not signed by ITDI's representative. It was, in fact, objected to by ITDI for being self-serving.[19]

RCVM's allegation that it continued construction and was able to finish 51.48% of the project as of January 1993 could not have been possible in light of Architect Rufino M. Villanueva's admission, presented as RCVM's rebuttal evidence, that the contract was

terminated in November 1992 and that he and his employees were driven away by ITDI's personnel in December of that year.[20] Offering Villanueva's direct written testimony in rebuttal, RCVM admitted that it was only able to complete 46.7139% of the project. It said:

7. That while plaintiff was able to accomplish only 46.7139% of the construction of the basis of PERT/CPM as of January 10, 1993 as per letter of Chairman Arbis {Exh. "10"}, the defendant committed a grave mistake by driving away the plaintiff and his workers from the construction site during the month of November 1992 when the contract has not expired; that the contract was supposed to terminate on January 10, 1993 but defendant unceremoniously terminated the same over and above plaintiff's objection; defendant, ITDI {DOST} is, therefore, liable for damages to the plaintiff; plaintiff did not violate any of the implementing rules of PD [No.] 1594.[21]

What does appear undisputed from the records is that the DOST Infrastructure Committee certified that as of December 23, 1992, 48.96% of the work has been substantially completed.[22] A final evaluation was conducted and, as indicated in the PERT/CPM as of January 10, 1993, RCVM was found to have accomplished only 46.7139% of the project. This was communicated to RCVM together with the assessment of liquidated damages in the letter dated March 26, 1993.[23]

In light of these findings, we hold that the appellate court erred in awarding actual damages to RMVC on the basis of a 51.48% rate of completion. The clear preponderance of evidence supports ITDI's contention that RMVC was only able to accomplish 46.7139% of the project and is only entitled to a proportionate amount in damages. Translated into figures, RMVC is entitled to P33,909.97 corresponding to the difference between P4,890,604.32, representing 46.7139% of the contract price of P10,469,270.00, and P4,856,694.35, representing 46.39% of the contract price which had already been paid to RMVC.

In concluding that ITDI is liable to pay P713,992.00 as cost of construction materials, the Court of Appeals referred to the same conclusion reached by the trial court in its decision based on an admission by ITDI that it appropriated these materials.[24] ITDI claims that this conclusion is without basis.

Our own review of the records reveals that ITDI failed to deny RMVC's allegation in par. 13 of its Amended Complaint that it appropriated the unused construction materials left at the site. RMVC alleged:

13. When plaintiff was forced to vacate the project site in January 1993, he has unused construction materials

therein, the value of which is P1,382,091.20 as shown in the inventory of materials, a copy of which is hereto attached as Annex "D" and that such materials are being appropriated by the defendant thus making him liable for the payment of such amount to the plaintiff;[25]

In its Answer, ITDI admitted the existence of the unused materials on the project site but denied that these materials have a value of P1,382,091.20.[26] Instead, it claimed that based on its own impartial canvass, the value of these materials is only P713,992.88.[27]

It is a familiar rule in this jurisdiction that material averments in the complaint, such as the allegation that ITDI appropriated the construction materials left by RMVC at the site, shall be deemed admitted when not specifically denied.[28] In this case, while it presented its own estimate of the value of the construction materials, nowhere in its Answer did ITDI deny having appropriated the same.

It is also significant that ITDI's witness, Engr. Arnaldo Reyes, testified that the value of the construction materials amounting to P713,992.88 was "duly deducted from plaintiff's indebtedness." [29] This indicates that ITDI indeed appropriated these materials. Otherwise, it would not have deducted their value from RMVC's accountability.

As a final note, we deem it best, in the interest of justice, not to award interest in the concept of actual damages on the total amount due to RMVC. This case was first filed in 1993. The parties have been locked in a long and protracted legal battle for 14 years due to no fault on the part of ITDI. To require it to pay interest on the amount due to RMVC from the time of the filing of the Amended Complaint would be unwarranted and unjust.[30] Thus, interest at the rate of twelve percent (12%) per annum on the award of actual damages in the amount of P33,909.97 and cost of construction materials in the amount of P713,992.00 should be imposed only upon the finality of the judgment of this Court.[31]

IN VIEW OF THE FOREGOING, the petition is PARTIALLY GRANTED. The Decision of the Court of Appeals dated January 19, 2004 is PARTIALLY REVERSED and SET ASIDE insofar as it awards to respondent actual damages in the amount of P236,366.86. Petitioner is instead ordered to pay respondent the reduced amount of P33,909.97 as actual damages and the amount of P713,992.00 as cost of construction materials. Legal interest at the rate of twelve percent

(12%) per annum shall be imposed on these amounts upon finality of this Decision until full payment thereof. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1] Records, pp. 7-10.

[2] Id. at 244.

[3] Id. at 246.

[4] Id. at 247-248.

[5] Id. at 14.

[6] Id. at 252.

[7] Id. at 253.

- [8] Id. at 372-378; Penned by Judge Benjamin M. Aquino, Jr..
- [9] Rollo, pp. 24-34; Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale.
- [10] Id. at 33-34.
- [11] Id. at 35.
- [12] Id. at 141-153; Memorandum dated September 20, 2006.
- [13] Id. at 132-140; Memorandum dated September 14, 2006.
- [14] Id. at 110-113.
- [15] Supra note 13.
- [16] Records, pp. 157-164.
- [17] Vazquez v. Ayala Corporation, G.R. No. 149734, November 19, 2004, 443 SCRA 281; Spouses Rosario v. Court of Appeals, 369 Phil. 729 (1999).
- [18] Records, pp. 169-171; Exhibit "B."
- [19] Id. at 221.
- [20] Id. at 304.
- [21] Rollo, pp. 57-58.
- [22] Records, p. 180; Exhibit "E."
- [23] Id. at 252.
- [24] Id. at 33. The Court of Appeals stated:
- There is also no clear evidence that the amount of the construction materials left at the site and appropriated by ITDI is P1,383,011.20. The latter, however, admitted that it appropriated P713,992.00 of the said materials (RTC Decision, p. 4; Records, p. 375). The awarded damages for construction materials arrogated by ITDI should therefore be reduced to the latter amount.
- [25] Id. at 160.
- [26] Id. at 47.
- [27] Id. at 52.
- [28] Rules of Court, Rule 8, Sec. 18; Vda. de Gabriel v. Court of Appeals, G.R. No. 103883, November 14, 1996, 264 SCRA 137; Yap v. NLRC, 343 Phil. 803 (1997).
- [29] Records, p. 233.
- [30] National Power Corporation v. National Merchandising Corporation, G.R. Nos. L-33819 and L-33897, October 23, 1982, 117 SCRA 789
- [31] Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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