

EMPIRE EAST LAND HOLDINGS, INC., PETITIONER, VS. CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC., RESPONDENT.

G.R. No. 168074. September 26, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, of the Court of Appeals (CA) Decision[1] dated November 3, 2004 and its Resolution[2] dated May 10, 2005, in CA-G.R. SP No. 58980. The assailed decision modified the Decision[3] of the Construction Industry Arbitration Commission (CIAC) dated May 16, 2000 in CIAC No. 39-99.

The facts of the case, as found by the CIAC and affirmed by the CA, follow:

On February 12, 1997, petitioner Empire East Land Holdings, Inc. and respondent Capitol Industrial Corporation Groups, Inc. entered into a Construction Agreement[4] whereby the latter bound itself to undertake the complete supply and installation of "the building shell wet construction" of the former's building known as Gilmore Heights Phase I, located at Gilmore cor. Castilla St., San Juan, Metro Manila.[5] The pertinent portion of the aforesaid agreement is quoted hereunder for easy reference:

ARTICLE II - SCOPE OF WORK

2.1. The CONTRACTOR shall complete the civil/structural and masonry works of the building based on the works (sic) items covered by the CONTRACTOR's Proposal of Complete Supply and Installation of Building Shell Wet Construction Works as indicated in the plans and specifications at the Contract Price and within the Contract time herein stipulated and in accordance with the plans and specifications. The CONTRACTOR shall furnish and supply all necessary labor, equipment and tools, supervision and other facilities needed and shall perform everything necessary for the complete and successful masonry works of the building described hereof, provided that it pertains to or is part of the above mentioned work or items covered by the Contract documents.

2.2. The scope of works as stated hereunder but not limited to the following:

a) CONCRETE WORKS - foundation and footings, tie beams, walls, columns, beams, girders, slabs, stairs, stair slabs, cement floor topping, ramps, rubbed concrete.

b) MASONRY WORKS - interior and exterior walls including stiffeners, CHB laying, interior and exterior plastering, non-skid tile installation and scratch coating for tile installation.

c) FORMWORKS

d) OTHER CONCRETE WORKS - trenches, platform for transformers, ger sets and aircons

e) METAL WORKS - trench grating, I-beam separator, manhole cover, ladder rungs of tanks, stair railings and stair nosing

f) MISCELLANEOUS WORKS

- installation of Doors and Jambs (metal and wood)
- Lintel Beams/Stiffener Columns
- Installation of Hardwares and accessories
- Window and Door Openings

g) MISCELLANEOUS ITEMS - column guard, wheel guard, waterstop, vapor barrier, incidental embeds, floor hardener, dustproofer, sealant, soil treatment, elevator block-outs for call button, block-outs for electro-mechanical works and concrete landing sills.

h) ROOFING WORKS -Steel Trusses/Purlins, Rib Type pre-painted roofing sheets, Insulation

i) Garbage Chutes

2.3. The work of the CONTRACTOR shall include but not be limited to, preparing the bill of materials, canvassing of prices, requisition of materials for purchase by OWNER, following up of orders, checking the quality and quantity of the materials within the premises of the construction site and returning defective materials.[6]

Respondent further agreed that the construction work would be completed within 330 calendar days from "Day 1," upon the Construction Manager's confirmation.[7] Petitioner initially considered February 20, 1997 as "Day 1" of the project. However, when respondent entered the project site, it could not start work due to the on-going bulk excavation by another contractor. Respondent thus asked petitioner to move "Day 1" to a later date, when the bulk excavation contractor would have completely turned over the site.[8]

After a series of correspondence between petitioner and respondent, February 25, 1997 was proposed as "Day 1." Accordingly, respondent's completion date of the project was fixed on January 21, 1998.[9]

Prior to and during the construction period, changes in circumstances arose, prompting the parties to make adjustments in the initial terms of their contract. The following pertinent changes were mutually agreed upon by the parties:

First, as the bulk excavation contractor refused to return to the project site, petitioner directed respondent to continue the excavation work;[10]

Second, in addition to respondent's scope of work, it was made to perform side trimmings.

Third, petitioner directed respondent to reduce the monthly target accomplishment to P1 million worth of work and up to one (1) floor only.[11]

Fourth, the following were deleted from respondent's scope of work: a) Masonry works and all related items from 6th floor to roof deck; b) All exterior masonry works from 4th floor to roof deck; and c) Garbage chute.[12]

Fifth, as a consequence of the deletion of the above works, the contract price was reduced to P62,828,826.53.[13]

Sixth, the parties agreed: that the items of work or any part thereof not completed by the respondent as of February 28, 1999 should be deleted from its contract, except demobilization; the punch list items under respondent's scope of responsibility not yet made good/corrected as of the same period shall be done by others at a fixed cost to be agreed upon by all concerned; and respondent should be compensated for the cost of utilities it installed but were still needed by other contractors to complete their work.[14]

Lastly, they agreed that a joint quantification should be done to establish the bottom line figures as to what were to be deleted from the respondent's contract and the cost of completing the punch list items which were deductible from respondent's receivables.[15]

In view of the limitation on the target accomplishment to P1 million worth of work per month, respondent asked that the topping-off be moved to February 1999. Respondent likewise requested a price adjustment with respect to overhead and equipment expenses and legislated additional labor cost. These requests were not, however, acted upon by petitioner.[16]

After the completion of the side trimmings and excavation of the building's foundation, respondent demanded the payment of P2,248,507.70 and P1,805,225.90, respectively. Instead of paying the amount, petitioner agreed with the respondent on a negotiated amount of P900,000.00 for side trimmings.[17] However, respondent's claim for foundation excavation was not acted upon.[18] During the construction period, petitioner granted, on separate occasions, respondent's requests for payroll and material accommodations.[19]

On March 13, 1999, respondent submitted its final billing, amounting to P4,442,430.90 representing its work accomplishment and retention, less all deductions. On March 23, 1999, a punch list was drawn as a result of the joint inspection undertaken by the parties. Petitioner, on the other hand, refused to issue a certificate of completion. It, instead, sent a letter to respondent informing the latter that it was already in default.[20]

On September 14, 1999, respondent was constrained to file a Request for Adjudication[21] with the CIAC. Respondent specifically prayed, thus:

WHEREFORE, premises considered, the Claimant-Contractor prays that this Honorable Commission render judgment against Respondent-Owner EMPIRE EAST LAND HOLDINGS, INC., ordering said Respondents to pay the Claimant the amount of PhP22,770,976.66 plus costs of suit, broken down as follows:

- a. PhP4,442,430.90 as unpaid amount from the contract price;
- b. PhP3,153,733.60 as the amount remaining unpaid for additional works;
- c. PhP13,976,427.00 as overhead expenses; and
- d. PhP1,198,385.16 as additional costs due to wage escalation;

Other reliefs equitable under the premises are also prayed for.[22]

On May 16, 2000, the CIAC rendered a decision[23] in favor of the respondent, disposing, as follows:

WHEREFORE, judgment is hereby rendered and AWARD of monetary claims is hereby made as follows:

FOR THE CLAIMANT:

1. Retention Money
P4,502,886.64

Unpaid Billings (P1,607,627.65)

Retention Money (6,110,514.29)

2. Additional Work: Excavation for Foundations 1,805,225.90

3. Overhead Expenses
1,397,642.70

4. Labor Costs Escalation
308,226.57

Total due the Claimant P8,013,981.81

FOR THE RESPONDENT:

1. Punch List Items

P248,350.00

Total due the Respondent P248,350.00

All other claims and counterclaims are dismissed.

OFFSETTING the lesser amount due from Claimant with the bigger amount from the Respondent, EMPIRE EAST LAND HOLDINGS, INC. is hereby ordered to pay CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC. the net amount of SEVEN MILLION SEVEN HUNDRED SIXTY-FIVE THOUSAND SIX HUNDRED THIRTY-ONE AND 81/100 (P7,765,631.81) with 6% legal interest from the time the request for adjudication was filed with the CIAC on September 14, 1999 up to the time this Decision becomes final and executory.

Thereafter, interest at the rate of 12% per annum shall accrue on the final judgment until it is fully paid.

The arbitration fees and expenses shall be paid on a pro rata basis as initially shared by the parties.

SO ORDERED.[24]

As to petitioner's counterclaim, the CIAC denied those which referred to masonry and other works that it took over, considering that they were formally deleted from respondent's scope of work, which in turn caused the reduction of their total contract price.[25] Petitioner's claim for liquidated damages was likewise found unmeritorious because it allowed respondent to complete the works despite knowledge that the latter was already in default.[26] On the other hand, as the punch list was drawn after the joint inspection by the parties, CIAC found for the petitioner and thus awarded a total amount of P248,350.00[27]

Aggrieved, petitioner elevated the matter to the CA via a petition for review under Rule 43 of the Rules of Court. On November 3, 2004, the CA affirmed the CIAC's findings of fact and conclusions of law with a slight modification, and ruled:

WHEREFORE, the Decision, dated 16 May 2000, of the Construction Industry Arbitration Commission Arbitral Tribunal is hereby AFFIRMED WITH MODIFICATION in that CIAC's award on Labor Cost Escalation is hereby DELETED for lack of factual basis and, consequently, for lack of cause of action and CIAC's award on Additional Work for Foundation Excavation is hereby equitably REDUCED to P980,376.34. All other awards, as well as the rates of interest, are hereby AFFIRMED.

Accordingly, the total amount due to CICG is P6,880,905.68. While EELH is entitled P248,350.00. Offsetting the award of EELH from the amount due to CICG, EELH is hereby ORDERED to pay CICG the total amount of SIX MILLION SIX HUNDRED THIRTY-TWO THOUSAND FIVE HUNDRED FIFTY-FIVE PESOS (P6,632,555.00). No costs at this instance.

SO ORDERED.[28]

In deleting respondent's claim for labor cost escalation and reducing its claim for the cost of the excavation of foundation, the appellate court said that respondent failed to show that it in fact paid said wage increase pursuant to the New Wage Order,[29] while the reduction of the cost of foundation excavation was the result of the reduction of its cost per cubic meter.[30]

Hence, the present petition, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ORDERED THE RELEASE OF RETENTION MONEY IN FAVOR OF CICG.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED THE CLAIM OF CIG FOR THE EXCAVATION OF FOUNDATION.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AFFIRMED CIAC'S AWARD FOR THE PAYMENT OF ALLEGED OVERHEAD EXPENSES.

IV.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DENIED EMPIRE EAST'S CLAIM FOR MASONRY AND OTHER WORKS, LIQUIDATED DAMAGES, AND COST OF MONEY FOR PAYROLL ASSISTANCE AND MATERIALS ACCOMMODATION.[31]

The petition is partly meritorious.

On the Release of Retention Money

Petitioner contends that both the CIAC and the CA erred in ordering the release of the retention money despite respondent's failure to comply with the conditions for its release as set forth in the contract.

We find for the petitioner.

In the construction industry, the ten percent (10%) retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work - if any becomes necessary.[32]

The construction contract gave petitioner the right to retain 10% of each progress payment until completion and acceptance of all works.[33] Undoubtedly, as will be discussed hereunder, respondent complied fully with its obligations, save only those items of work which were mutually deleted by the parties from its scope of work. However, apart from the completion and acceptance of all works, the following requisites were set as pre-conditions for the release of the retention money:

a)

Contractor's Sworn Statement showing that all taxes due from the CONTRACTOR, and all obligations on materials used and labor employed in connection with this contract have been duly paid;

b)

Guarantee Bond to answer for faulty and/or defective materials or workmanship as stated in Article IX Section 9.3 of this Contract;

c)

Original and signed and sealed Three (3) sets of prints of "As Built" drawings.[34]

The CA affirmed the CIAC's decision to order the release of the retention money despite respondent's failure to establish the fulfillment of the aforementioned conditions, as both tribunals merely focused on the non-issuance of the certificate of completion, which, according to respondent, was a pre-requisite to the issuance of a guarantee bond. The CA concluded that the conditions were deemed fulfilled because the creditor voluntarily prevented their fulfillment.

To this, we cannot agree.

The record of the case is bereft of any evidence to show that conditions (a) and (c) were complied with. Petitioner categorically stated in all its pleadings that they were not. Surprisingly, respondent did not squarely argue this point. It relied solely on petitioner's failure to issue the certificate of completion, which prevented the acquisition of a guarantee bond and thus resulted in the non-release of the retention money. While it is true that respondent was entitled to a certificate of completion as the issuance thereof was just a ministerial duty of petitioner considering that the project had already been completed, the certificate was not the only condition for said release. It was simply a pre-requisite for the issuance of the guarantee bond. And there was no showing that the absence of the certificate of completion was the only reason why no guarantee bond was issued.

If we were to apply the civil law rule of constructive fulfillment - the condition shall be deemed fulfilled if the creditor voluntarily prevented its fulfillment - then the submission of a guarantee bond may be deemed to have been complied with. But we cannot apply the rule to conditions (a) and (c), which remain as unfulfilled conditions-precedent. Since no proof was adduced that these two conditions were complied with, petitioner's obligation to release the retention money had not, as yet, arisen. We would like to emphasize, though, that this is without prejudice to respondent's compliance with the unfulfilled conditions, after which, release of the retention money must, perforce, follow.

On Respondent's Right to Additional Overhead Costs

Respondent claimed P13,976,427.00 as additional overhead expenses brought about by the delay in the completion of the project due to petitioner's own acts. The CIAC, however, awarded only a nominal amount which is 10% of respondent's claim because of its failure to present supporting documents to prove such additional expenses. The arbitral tribunal observed that respondent only presented its own computation without any other document to substantiate its claim. The CA, in turn, affirmed the CIAC findings, ratiocinating that petitioner's failure to present countervailing evidence was an implied admission on its part that the computation made by respondent was correct.

We beg to differ.

It is undisputed that the only piece of evidence presented by respondent in support of its claim for additional overhead cost was its own computation of the said expenses. It failed to adduce actual receipts, invoices, contracts and similar documents. To be sure, respondent's claim for overhead cost may be classified as a claim for actual damages. Actual damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. They indicate such losses as are actually sustained and are susceptible of measurement. As such, they must be proven with a reasonable degree of certainty.[35]

This is not the first time that a contractor's claim for additional overhead costs was denied because of insufficiency or absence of evidence to support the same. In *Filipinas (Pre Fab Bldg.) Systems, Inc. v. MRT Development Corporation*, [36] we denied FSI's claim because only "summaries," and not actual receipts, were presented during the hearing. Similarly, in the instant case, respondent, by presenting only its own computation to substantiate its claim, is not entitled even to the reduced amount of P1,397,642.70 which is 10% of its original claim. Instead, we altogether deny its prayer for additional overhead costs.

On Respondent's Right to the Cost of Foundation Excavation

As to respondent's entitlement to the cost of excavation of foundation, we find no cogent reason to disturb the CIAC's conclusion, as modified by the CA.

Side trimmings and the excavation of foundation were not included in respondent's original scope of work. They were, however, undertaken by the respondent upon the directive of petitioner, due to the previous contractor's

refusal to resume its excavation work. These works, therefore, constitute an additional claim of respondent over and above the original contract price. A confirmation of these works had, in fact, been given by petitioner through Change Order Nos. 3[37] and 4[38] where it agreed to pay P250,000.00 and P650,000.00, respectively. This P900,000.00 negotiated amount referred specifically to side trimmings and hauling out of adobe soil. It is unfortunate, though, that the parties failed to arrive at a settlement as to respondent's claim for the cost of excavation of foundation.

The additional works having been undertaken by respondent, and the fact of non-payment thereof having been established, we find no reason to disturb the CIAC's conclusion that respondent is entitled to its claim for the cost of excavation of foundation. As to the propriety of the award, both the CIAC and the CA were in a better position to compute the same considering that said issue is factual in nature. Significantly, jurisprudence teaches that mathematical computations, as well as the propriety of arbitral awards, are factual determinations[39] which are better examined by the lower courts as trier of facts. Thus, we affirm the award of P980,376.34 for foundation excavation.

On Petitioner's Counterclaim for the Cost of Unfinished Works

During the construction period, the parties mutually agreed that some items of work be deleted from respondent's scope of work. Specifically, as claimed by respondent, the following were deleted: a) masonry works and all related items from the 6[th] floor to the roof deck; b) all exterior masonry works from the 4[th] floor to the roof deck; and c) the garbage chute. This deletion was, however, denied by petitioner. It, instead, claimed that the only modification it approved was the reduction by three floors of the total number of floors to be constructed by respondent.[40]

After a thorough review of the documents presented by both parties, both the CIAC and the CA concluded that the unfinished works, i.e., masonry works, were actually recognized and accepted by petitioner. It thus agreed to take over, through its new contractor, the balance of work. The only consequence of such acceptance was the deduction of the value of the unfinished works from the total contract price.[41] This was the reason why the contract price was reduced from P84 million to P62,828,826.53. The deletion was, likewise, confirmed by respondent in a letter dated August 21, 1998.[42]

Applying Article 1235[43] of the Civil Code, petitioner's act exempted respondent from liability for the unfinished works. A person entering into a contract has a right to insist on its performance in all particulars, according to its meaning and spirit. But if he chooses to waive any of the terms introduced for his own benefit, he may do so.[44] When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

In the instant case, petitioner was aware of the unfinished work of respondent; yet, it did not raise any objection or protest. It, instead, voluntarily hired another contractor to perform the unfinished work, and opted to reduce the contract price. By removing from the contract price the value of the works deleted, it is as if said items were not included in the original terms, in the first place. Thus, as correctly concluded by the CIAC, and as affirmed by the CA, petitioner is not entitled to reimbursement from respondent for the expenses it incurred to complete the unfinished works.

On Petitioner's Counterclaim for Liquidated Damages

In addition to its claim for the cost of masonry and other works, petitioner demanded the payment of liquidated damages on the ground that respondent was in default in the performance of its obligation.

Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed

upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, they are in the nature of penalties. They are attached to the obligation in order to ensure performance.[45] As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation.

Thus, the resolution of the issue of petitioner's entitlement to liquidated damages hinges on whether respondent was in default in the performance of its obligation.

The completion date of the construction project was initially fixed on January 21, 1998. However, due to causes beyond the control of respondent, the latter failed to perform its obligation as scheduled. The CIAC[46] and the CA enumerated the causes of the delay, viz., the delayed issuance of building permit;[47] additional work undertaken by respondent, i.e., bulk excavation and side trimmings;[48] delayed payment of progress billings;[49] delayed delivery of owner-supplied construction materials;[50] and limitation of monthly accomplishment.[51] All these causes of respondent's failure to complete the project on time were attributable to petitioner's fault.

Still, petitioner contends that even at the start and for the entire duration of the construction, respondent was guilty of delay due to insufficient manpower and lack of technical know-how.[52] Yet, petitioner allowed respondent to proceed with the project; thus, petitioner cannot now be permitted to raise anew respondent's alleged delay. More importantly, respondent is not guilty of breach of the obligation; hence, it cannot be held liable for liquidated damages.

On Petitioner's Counterclaim for the Cost of Payroll Assistance and Materials Accommodation

Finally, as to petitioner's counterclaim for payroll assistance and materials accommodation, we quote with approval the CA's observation in this wise:

[W]ith respect to EELH's [petitioner's] claim for payroll and material assistance, a perusal of CIAC's questioned Decision reveals that these were already taken into consideration and, were in fact, deducted from CIGC's [respondent's] retention money itemized as unpaid billings amounting to P1,607,627.65.

On page 9 of CIAC's Decision, the arbitral tribunal found that the total amount of payroll accommodation advanced by EELH [petitioner] for (sic) CIGC [respondent] is P10,044,966.16, while the material assistance advanced by EELH [petitioner] is P2,837,645.26. These amounts were added together with other items and were deducted from the reduced contract price. Hence, as can be gleaned from page 13 of the CIAC's Decision, EELH's [petitioner's] overpayment amounting to P1,607,627.65 already included EELH's [petitioner's] payroll accommodation and material accommodations.[53]

As can be gleaned from the appealed CA decision, the appellate court had reviewed the case based on the petition and annexes, and weighed them against the Comment of respondent and the decision of the arbitral tribunal to arrive at the conclusion that the latter decision was based on substantial evidence. In administrative or quasi-judicial bodies like the CIAC, a fact may be established if supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[54]

It is well established that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. It must be stressed that this Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective evidence of the parties.[55] To be sure, findings of fact of lower courts are deemed conclusive and binding upon the Supreme Court, save only in clear exceptional cases.[56]

In view of the foregoing, after deducting from the final contract price the retention money (that is yet to be released), the payments as well as the payroll and material accommodations made by the petitioner, there was an overpayment to respondent in the total amount of P1,607,627.65. From said amount shall be deducted

P980,376.34 due the respondent for the cost of foundation excavation. On the other hand, as held by the CIAC and affirmed by the CA, petitioner is entitled to its claim for punch list items amounting to P248,350.00.

Considering that the conditions set forth in the contract have not yet been complied with, the release of the retention money shall be held in abeyance. Thus, respondent is liable to petitioner for the payment of P875,601.31, which is the difference between the overpayment and the cost of foundation excavation, plus the cost of punch list items.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated November 3, 2004 and its Resolution dated May 10, 2005 in CA-G.R. SP No. 58980, are **MODIFIED** by deleting the award of additional overhead cost amounting to P1,397,642.70.

The petitioner is directed to issue to respondent the required certificate of completion in order to enable the latter to obtain the corresponding guarantee bond. In view of the non-fulfillment of the conditions-precedent, the release of the retention money is hereby held in abeyance. Thus, respondent is ordered to pay the petitioner P875,601.31 subject to the return of the amount when respondent shall have complied with the conditions aforesaid.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Velasco, Jr.,[*] JJ., concur.

* Additional member replacing Associate Justice Ruben T. Reyes per Raffle dated September 8, 2008.

[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Ruben T. Reyes (now a member of this Court) and Jose C. Reyes, Jr., concurring; rollo, pp. 66-94.

[2] Rollo, pp. 97-99.

[3] Id. at 797-817.

[4] Id. at 109-124.

[5] Id. at 109.

[6] Id. at 111.

[7] Id. at 68.

[8] Id.

[9] Id. at 69.

[10] Id. at 68-69.

[11] Id. at 70-71.

[12] Id. at 71-72.

[13] Id. at 809.

[14] Id. at 72-73.

[15] Id. at 73.

[16] Id. at 71.

[17] Id. at 810.

[18] Id. at 69-70.

[19] Id. at 809.

[20] Id. at 73-74.

[21] Id. at 101-108.

[22] Id. at 107.

[23] Id. at 797-817.

[24] Id. at 816-817.

[25] Id. at 814-815.

[26] Id. at 815-816.

[27] Id. at 815.

[28] Id. at 93.

[29] Id. at 85-90.

[30] Id. at 83.

[31] Id. at 990.

[32] H.L. Construction, Inc. v. Marina Properties Corporation, 466 Phil. 182, 199-200 (2004).

[33] Rollo, p. 112.

[34] Id. at 112, 114.

[35] Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation, G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609, 639-640.

[36] G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609.

[37] Rollo, p. 136.

[38] Id. at 137.

[39] Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corporation, G.R. Nos. 169408 & 170144, April 30, 2008.

[40] Rollo, p. 803.

[41] Id. at 156.

[42] Id. at 153.

[43] Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

[44] COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES BY ARTURO M. TOLENTINO, Volume Four, 1991 Ed., p. 278.

[45]H.L. Construction, Inc. v. Marina Properties Corporation, *supra* note 32, at 205.

[46] Rollo, pp. 811-814.

[47] It was legally impossible for respondent to commence the project on February 25, 1997 because the Building Permit was only issued on March 21, 1997.

[48] Petitioner directed the respondent to undertake side trimmings and excavation of foundation as the previous bulk excavation contractor refused to return to the project site. Such works were therefore undertaken in addition to respondent's initial scope of work.

[49]Petitioner's failure to settle on time respondent's progress billing contributed to respondent's delay in the performance of the obligation.

[50]Due to the delay in the delivery of owner-supplied materials, respondent underwent manpower rotation.

[51]Petitioner instructed respondent to limit its monthly accomplishment to P1 million worth of work and up to one (1) floor only.

[52] Rollo, p. 1016.

[53]Id. at 92-93.

[54] Megaworld Globus Asia, Inc. v. DSM Construction Development Corporation, 468 Phil. 305, 314 (2004).

[55] Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation, *supra* note 35, at 638-639; Security Bank and Trust Company v. Gan, G.R. No. 150464, June 27, 2006, 493 SCRA 239, 242.

[56]Poliand Industrial Limited v. National Development Company, G.R. No. 143866, August 22, 2005, 467 SCRA 500, 543.

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