

SUMMA KUMAGAI, INC. – KUMAGAI, GUMI CO., LTD. JOINT VENTURE, PETITIONER, VS. ROMAGO, INCORPORATED, RESPONDENT.

G.R. No. 177210. April 07, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review under Rule 45, seeking the reversal of (1) the Decision[1] dated 22 December 2006 of the Court of Appeals in CA-G.R. SP No. 89959, which modified the Decision dated 3 March 2005 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 28-2004; and (2) the Resolution[2] dated 20 March 2007 of the appellate court in the same case which denied the Motion for Reconsideration of petitioner Summa Kumagai, Inc. - Kumagai Gumi Co., Ltd. Joint Venture (SK-KG).

The facts of the case are as follows:

SK-KG engaged the services of respondent Romago, Incorporated (Romago), under a Sub-Contract Agreement, for electrical works needed in the construction of The New Medical City Superstructure Project, the original date of completion of which was set on 18 September 2003.

As the implementation of the contract progressed, SK-KG issued change orders through Project Management Instructions (PMI), Contractor's Instructions and oral instructions. Romago complied with the specified changes, although they were allegedly outside the scope of the Sub-Contract Agreement.

From the early part of the project, SK-KG incurred delays in its payment to Romago. SK-KG also incurred delays in the delivery of equipment to Romago, prompting the latter to do crash programs. The changes in the specified contracted works led to an extension of 101 days. These complications resulted in additional expenses on the part of Romago. Also according to Romago, it encountered so much difficulty resulting from an alleged extraction of arbitrary back charges and illegal deductions on the part of SK-KG.

Romago eventually completed the contracted works. SK-KG though refused to pay its obligations to Romago, and did not issue a certificate of completion for the works it subcontracted to Romago.

After efforts to reach an amicable settlement between SK-KG and Romago failed, Romago filed a complaint with the CIAC on 18 August 2004. The case was docketed as CIAC Case No. 28-2004. On 20 September 2004, SK-KG filed its Answer with Counterclaim. Romago did not file a Reply. After the issues were joined, an Arbitration Panel was constituted by the CIAC to hear the case.

During the hearings, Romago tried to present evidence to controvert the counterclaims of SK-KG. However, the Arbitration Panel did not allow Romago to do so on the ground that the failure of Romago to file a Reply to the Answer was deemed an admission of the counterclaims of SK-KG.

Romago filed a Motion to Submit Additional Evidence on 21 April 2005, but was denied by the Officer-in-Charge

of the CIAC. On 3 March 2005, the CIAC rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered and award made on the monetary claims of the parties as FOLLOWS:

A. In favor of the [herein respondent]-Sub Contractor ROMAGO, INC., against [herein petitioner] Main Contractor SUMMA KUMAGAI, INC., KUMAGAI GUMI CO., LTD. JOINT VENTURE:

P2,195,535.18 - as the admitted liability of the [SK-KG] to the [Romago] for the unpaid balance of the PMIs and the CIs.

P480,538.89 - for the total of Claim Items Nos. 186, 187 and 198 of the unreconciled items on this claim.

P296,039.37 - representing what [SK-KG] admittedly had mistakenly overcharged [Romago] for its electric power consumption interest at the rate of 6% per annum shall be computed from 29 October 2003 up to the date of payment.

P263,984.95 - for the installation of the ECB's. Interest at the rate of 6% per annum shall be computed from 06 September 2003 up to the date of payment.

P484,883.26 -

for the costs of power interconnection to the DDC. Interest at the rate of 6% per annum shall be computed from 14 July 2003 up to the date of payment.

P553,225.20 - for the installation of extension ring boxes to connect pipes and to complete the rough-in conduit works performed by the previous Electrical Sub-Contractor, Engineering Equipment Incorporated SKI-KG JV.

P3,568,077.03 - as reimbursement of [Romago's] bid amount based on the OLEX Brand of Fire Rated Cable.

P157,675.05 - as payment for rectification works due to spatial clashes in the second floor.

P7,999,958.13 - TOTAL DUE TO [Romago]

B. In favor of the [petitioner]-Main Contractor SUMMA KUMAGAI, INC., - KUMAGAI GUMI CO., LTD JOINT VENTURE and against the [respondent]-Sub Contractor ROMAGO, INC.

P5,351,057.36

-

on its counterclaim, for the unrecouped actual cost of Supplemental Manpower;

P5,575,310.03

-

on its counterclaim for the unrecouped actual cost of tools, materials and equipment.

P25,729,263.86

-

as the unrecouped balance of the cash advances given to the [Romago].

P1,131,244.29

-

as the deductions or backcharges admitted by the [respondent] to have been validly made.

P37,786,875.04

-

TOTAL DUE TO [SK-KG]

OFFSETTING the foregoing awards respectively made to the parties, there remains a balance of P29,786,916.912 in favor of [SK-KG].[3]

It is hereby DIRECTED that [SK-KG] shall release the sum of P7,375,400.39 being the balance of the Retention Sum after the warranty period on 10 June 2005.

Romago filed a Petition for Review with the Court of Appeals, which was docketed as CA-G.R. SP No. 89959. Meanwhile, SK-KG filed with the CIAC a Motion for Execution of the CIAC award. On 30 January 2006, CIAC granted the Motion. On 30 March 2006, CIAC issued a Writ of Execution.

On 12 May 2006, the Court of Appeals issued a Temporary Restraining Order enjoining the CIAC from implementing the appealed Decision.

After the Court of Appeals heard the oral arguments of the parties, it issued a Resolution dated 8 June 2006 requiring the CIAC to elevate the entire case records. In a Resolution dated 28 June 2006, the Court of Appeals resolved to issue a Writ of Preliminary Injunction. On 22 December 2006, the Court of Appeals rendered its assailed Decision, modifying the CIAC Decision, to wit:

WHEREFORE, the decision dated March 3, 2005 of the Construction Industry Arbitration Commission in CIAC Case No. 28-2004 is hereby MODIFIED. [Herein petitioner] Summa Kumagai, Inc. - Kumagai Gumi Co., Ltd., Inc. Joint Venture is hereby DIRECTED to pay Romago, Incorporated the following sums:

P6,103,531.94

-

representing the unpaid balance under the original contract;

P6,251,394.00

-

representing additional expenses incurred under Romago's crash program;

P6,739,737.72

-

representing additional manpower and materials under the Extended Preliminaries;

P2,682,394.41

-

for expenses in testing and commissioning electrical equipment;

P700,000.00

-

for improperly deducted savings from the use of local FABRIDUCT materials;

P914,365.72

-

representing price differential for Styline Model Hubbell devices;

P711,633.51

-

cost of supply and installation of extended bus bars;

P498,813.34

-

representing improper deduction for rental of temporary Alimak lifts;

P262,500.00

-

as compensation for As-built Drawings;

P787,172.62

-

representing material escalation;

P854,923.28

-

representing cost of ancilliary fittings for lighting fixtures;

P7,375,400.39

-

representing the balance of retention money due to Romago, Incorporated.

P33,881,866.93

=====

The other awards in favor of Romago, Incorporated in CIAC Decision dated March 3, 2005 in CIAC Case No. 28-2004, the aggregate amount of P7,999,958.13, are AFFIRMED. All awards in favor of [SK-KG] in the same case are hereby NULLIFIED and SET ASIDE.

Attorney's fees in an amount equivalent to five percent (5%) of all awards in favor of Romago, Incorporated are AWARDED to the [Romago].

The writ of preliminary injunction issued pursuant to the Resolution of this Court dated June 28, 2006 is made PERMANENT.

The Division Clerk of Court is hereby ORDERED to return to the Construction Industry Arbitration Commission the records of CIAC Case No. 28-2004 as soon as possible.[4]

On 18 January 2007, SK-KG filed a Motion for Reconsideration of the aforementioned Decision, but the Motion was denied by the Court of Appeals in a Resolution dated 20 March 2007. SK-KG received a copy of the said Court of Appeals Resolution on 30 March 2007.

On 13 April 2007, SK-KG filed a motion before this Court requesting a 30-day extension within which to file a Petition for Review on Certiorari. On 16 May 2007, SK-KG filed the instant Petition.

Initially, this Court denied the Petition of SK-KG in a Resolution dated 4 July 2007 for being tardy. The last day of the original period for filing the said Petition was on 14 April 2007, 15 days from 30 March 2007 when SK-KG received a copy of the Court of Appeals Resolution denying its Motion for Reconsideration. Counting from 14 April 2007, the 30-day extension period would have ended on 14 May 2007. Counsel for SK-KG sought reconsideration of the denial of the Petition by the Court, averring stress and fatigue, which resulted in his miscalculation of the reglementary period. Since 14 April 2007 fell on a Saturday, SK-KG had until 16 April 2007, Monday, to file its Petition under the original period. Counsel for SK-KG counted the 30-day extension period from 16 April 2007 which ended on 16 May 2007, when he did actually file the Petition on behalf of his client. In a Resolution dated 19 September 2007, the Court reinstated the Petition of SK-KG.

SK-KG submits the following issues for the consideration of this Court:

I

WHETHER OR NOT THE DUE PROCESS RIGHTS OF [ROMAGO] WERE VIOLATED BY CIAC THAT WOULD WARRANT THE REVERSAL BY THE COURT OF APPEALS OF THE MONETARY AWARDS OF CIAC RENDERED IN FAVOR OF [SK-KG].

II

WHETHER OR NOT THE COURT OF APPEALS CAN REVERSE A RULING BY THE CIAC A QUASI JUDICIAL BODY WITH SPECIALIZED SKILL OR EXPERTISE IN ADJUDICATING CONSTRUCTION RELATED DISPUTES BASED ON FINDINGS THAT ARE CONTRARY TO THE EVIDENCE ON RECORD, ADMISSIONS OF [ROMAGO], AND THE UNDISPUTED FACTS.

III

WHETHER OR NOT THE COURT OF APPEALS CAN RENDER MONETARY AWARDS BASED ON DOCUMENTS THAT WERE NOT PART OF THE EVIDENCE BEFORE THE CIAC AND WERE ONLY BELATEDLY SUBMITTED BY [ROMAGO] IN VIOLATION OF THE DUE PROCESS RIGHTS OF [SK-KG].

IV

WHETHER OR NOT THE COURT OF APPEALS CAN RENDER MONETARY AWARDS FOR RELIEF THAT WAS NOT PRAYED FOR OR RAISED AS AN ISSUE IN THE PETITION BY [ROMAGO], WAS NOT PART OF THE CLAIMS SOUGHT BY [ROMAGO] IN THE CIAC, AND WAS NOT EVEN ONE OF THE ISSUES DECIDED UPON IN THE CIAC THAT WAS THE SUBJECT OF THE APPEAL.

V

WHETHER OR NOT THE COURT OF APPEALS RENDERED MONETARY AWARDS BASED ON SPECULATION, SURMISE OR CONJECTURE, CONTRARY TO ADMISSIONS OF PARTY, BASED ON MANIFESTLY MISTAKEN AND THE EVIDENCE ON RECORD (sic), AND CONTRARY TO THE WELL ESTABLISHED LEGAL PRINCIPLES ON THE AWARD OF MORAL DAMAGES.[5]

Romago adds the following issues for our resolution:

- WHETHER THE FINALITY OF THE CA DECISION SHOULD BE IGNORED FOR THE ADMITTED ERROR OF COUNSEL IN COMPUTING THE REGLEMENTARY PERIOD DUE TO ALLEGED STRESS AND FATIGUE IN PREPARING THE INSTANT PETITION.

- WHETHER THE INSTANT PETITION HAS ENOUGH MERIT TO OVERLOOK THE FINALITY OF THE CA DECISION.[6]

Before proceeding to the merits of the present Petition, the Court shall first tackle the objection of Romago to the reinstatement of the Petition for Review of SK-KG. Romago argues that the excuses of stress and fatigue proffered by the counsel for SK-KG are too convenient to inspire belief. Romago invokes A.M. No. 00-02-14-SC which provides that any extension of time to file the required pleading should be counted from the expiration of the period, regardless of the fact that said due date is a Saturday, Sunday or legal holiday.

It is, however, too late for Romago to assail the Resolution dated 19 September 2007 of this Court reinstating the Petition for Review of SK-KG, having failed to file a Motion for Reconsideration of the said Resolution. Moreover, considering the enormous amounts involved in the case at bar, it is only proper for the Court to determine the case on the merits. Time and again, this Court has stressed that the primordial concern of rules of procedure is to secure substantial justice. Otherwise stated, they are but a means to an end. Hence, a rigid and technical enforcement of these rules which overrides the ends of justice shall not be countenanced. Substance cannot be subordinated to procedure when to do so would deprive a party of his day in court on the basis solely of a technicality.[7]

We shall now go into the merits of the present petition.

SK-KG insists that there was no violation of due process on the part of the CIAC in granting its counterclaims against Romago, arguing that due process in administrative hearings require only that the parties be given an opportunity to be heard.[8] SK-KG then proceeds to enumerate the opportunities granted to Romago in presenting its evidence, from the filing of the Complaint to the termination of the proceedings before the CIAC.

The Court does not agree.

The reason of the CIAC Panel of Arbitrators for disallowing the presentation of evidence by Romago against the counterclaims of SK-KG is evident in the following transcript of the proceedings:

ATTY. BAROQUE:

Your Honor, the point that I'm trying to make is that it was not allowed in the Terms of Reference, [it's] not one of the claims being made by the claimant and yet x x x.

PROF. A. F. TADIAR:

Which one?

ATTY. BAROQUE:

The unrecouped supplementary manpower cost x x x.

x x x x

PROF. A. F. TADIAR:

Unrecouped expenses.

ATTY. BAROQUE:

Your honor, the [Romago] has already listed specifically all the back charges that they are questioning in this case and the back charges for the manpower and the tools and the materials were never raised in the complaint and were never cited in the Terms of Reference. So my clarification is, are we allowing them to produce evidence with respect to the x x x? But these back charges in effect questioning the back charges when, in fact, they did not raise in their claim in the complaint and were not discussed during the Terms of Reference.

x x x x

ATTY. BAROQUE:

My clarification, your Honor, is can the [Romago] produce evidence with respect to claims that are not listed in their Complaint?

PROF. A. F. TADIAR:

He is refuting your entitlement to your counterclaim, not claim. This is a question in relation to refuting your counterclaim not establishing their claim.[9]

x x x x

ENGR. J.J. MARCIANO:

Is this still part of this P10,702,000.00?

ATTY. VILLA:

Yes, your Honor.

MR. ABALORA:

Yes, Your Honor.

ENGR. J. J. MARCIANO:

That they are backcharging you?

MR. ABALORA:

Yes, Your Honor.

x x x x

ATTY. BAROQUE:

But for clarification, your Honors, they already waived their rights with respect to backcharging of the supplemental manpower and materials. That's not listed in one of their claims so x x x.[10]

x x x x

PROF. A. F. TADIAR:

I agree with the observation of [SK-KG's] counsel as to why he cannot understand why we are dwelling so much on this particular issue when you are not making any claim as to the validity of [the] backcharging and the supplemental manpower? So let's move on to some other point?[11]

x x x x

ENGR. J. J. MARCIANO:

I have a fundamental question, Counselor. Since you appear to be disputing all these backcharges, why did you

not place this as [an] issue in your Complaint?

ATTY. M. L. VILLA:

Your Honor, again as we are saying, we are claiming only these amounts of money because these are the amounts that we feel [are] justly due [to] Romago [for the] works done.

PROF. A. F. TADIAR:

But are you not aware that if they win on their counterclaim, all your claims will be wiped out, is that not correct?

ATTY. M. L. VILLA:

Yes, Your Honor. But when we made the [Complaint], your Honor, we felt it was already jumping the [gun] that we will be defending [against] something [that] they're not claiming yet.

PROF. A. F. TADIAR:

Why did you not submit a Reply to the Answer? You know that you are entitled to make a Reply to the Answer, is it not correct?

ATTY. M. L. VILLA:

Yes, Your Honor.

PROF. A. F. TADIAR:

Earlier it is understandable [not] to mention that in your [Complaint], of course you cannot deny their countercharges because you don't know yet what is their counterclaim. But when you came to know when they filed their Answer that they contained counterclaims, why did you not make a Reply disputing all of their backcharges? That is the issue, ATTY. VILLA. Okay. Go ahead.[12]

The CIAC is completely mistaken in denying the attempt of Romago to present evidence against the counterclaims of the SK-KG on the ground that the failure of Romago to file a Reply to the Answer of SK-KG was deemed an admission of the counterclaims in said Answer.

There is no basis for such a conclusion.

Section 10, Rule 6 of the Rules of Court describes the effect of non-filing of a reply:

SEC. 10. Reply.--A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such new matters. If a party does not file such reply, all the new matters alleged in the answer are deemed controverted.

If the plaintiff wishes to interpose any claims arising out of the new matters so alleged such claims shall be set forth in an amended or supplemental complaint. (Emphasis supplied.)

It is true that the Rules of Procedure Governing Construction Arbitration (CIAC Rules) does not mention any suppletory application of the Rules of Court to CIAC proceedings. However, rules of procedure of courts are stricter than those of quasi-judicial bodies. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[13]

Hence, it is completely unreasonable for an administrative body such as CIAC to be even more severe than the courts when it comes to requiring the filing of a reply. It does well for the CIAC Arbitrators to remember that the CIAC Rules explicitly direct them to use every and all reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law and procedure, all in the interest of substantive due process.[14]

Accordingly, the Court of Appeals was correct in finding the judgment of the CIAC with respect to the counterclaims of SK-KG to have been rendered in disregard of the right of Romago to due process. Considering the amounts involved in the case at bar, the CIAC should have been more circumspect in its admission or rejection of evidence presented before it. CIAC should not have taken the evidence of SK-KG hook, line and sinker, and should have used all means to ascertain the facts in the interest of substantial justice.

This Court has held that where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.[15] In the case at bar, the Court is constrained to affirm the Decision of the Court of Appeals annulling the awards for the counterclaims of SK-KG granted by the CIAC for having been clearly rendered in disregard of the right of Romago to due process.

To the mind of this Court, however, and in the interest of substantial justice, SK-KG may still assert its claims against Romago, and Romago may still refute the same. Just as it is wrong to award the counterclaims of SK-KG without allowing Romago to submit contrary evidence, neither is it just to dismiss the counterclaims outright for the same reasons. Counsel for Romago himself has persistently argued that his client should have been allowed to present evidence on the counterclaims of SK-KG. And although counsel for SK-KG has actively argued that CIAC should not allow the presentation by Romago of evidence against the counterclaims of SK-KG, it is only to be expected of a counsel required by the Code of Professional Responsibility to represent his client with zeal.[16] Whether SK-KG should be awarded its counterclaims should depend on the merit thereof and the evidence of the parties.

The Court takes note that permissive counterclaims are considered as separate actions in themselves,[17] and may be severed from the action on the Complaint. In the case at bar, the counterclaims of SK-KG rest on different provisions of the contract, and relate to amounts/obligations separate and distinct from those being claimed by SK-KG in its Complaint. The evidence required for SK-KG to prove its claims is different from that needed to establish the demands of Romago in its Complaint; thus, the counterclaim of SK-KG is merely permissive[18] and, consequently, may be severed from the main action.

As to the judgment of the Court of Appeals increasing the award in favor of Romago, the Court affirms the same. SK-KG questions the power and authority of the Court of Appeals to reverse the ruling of CIAC, on the ground that CIAC is specialized body with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters. However, although CIAC findings are entitled to respect, the Court of Appeals is not always bound thereby. The Court of Appeals necessarily has the power to affirm, modify or reverse the findings of fact of the CIAC if the evidence so warrants; otherwise, appeals would be inutile. In *Metro Construction, Inc. v. Chatham Properties, Inc.*, [19] we held that review of the CIAC award may involve either questions of fact or of law, or of both fact and law.

WHEREFORE, the instant Petition for Review on Certiorari is DENIED. The Decision of the Court of Appeals dated 22 December 2006 in CA-G.R. SP No. 89959 and the Resolution dated 20 March 2007, which denied the Motion for Reconsideration, are hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio Morales[*], Nachura, and Peralta. JJ., concur.

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Portia Aliño Hormachuelos and Roberto A. Barrios, concurring. Rollo, Vol. I, pp. 11-40.

[2] Id. at 41-42.

[3] Id. at 384-386.

[4] Id. at 37-39.

[5] Id. at 3574-3577.

[6] Id. at 3499-3500.

[7] *City of Cebu v. Court of Appeals*, 327 Phil. 799, 809-810 (1996); *Alonso v. Villamor*, 16 Phil 315, 321-322 (1910).

[8] Rollo, p. 3578.

[9] TSN, 11 January 2005, pp. 15-17.

[10] Id. at 264-265.

[11] Id. at 286.

[12] Id. at 259-260.

[13] See *Samalio v. Court of Appeals*, G.R. No. 140079, 31 March 2005, 454 SCRA 462, 471.

[14] Section 3, Article I, CIAC Rules.

[15] *People v. Judge Bocar*, 222 Phil. 468, 471 (1985).

[16] Canon 19 of the Code of Professional Responsibility provides:

CANON 19. - A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

[17] *Zulueta v. Pan American World Airways, Inc.*, 151 Phil. 1, 32 (1973).

[18] See *Alday v. FGU Insurance Corporation*, 402 Phil. 962, 974 (2001).

[19] 418 Phil. 176, 204-205 (2001).

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