

NATIONAL POWER CORPORATION, PETITIONER, VS. PREMIER SHIPPING LINES, INC., RESPONDENT.

G.R. No. 179103. September 17, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us are Petitions for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure filed by Premier Shipping Lines, Inc. (Premier) and National Power Corporation (NAPOCOR) assailing the Decision[1] of the Court of Appeals[2] dated 19 July 2007 in CA-G.R. CV No. 73650 which set aside the Decision[3] of the Regional Trial Court (RTC) of Cebu City, Branch 11. Premier filed a Motion for Reconsideration which the Court of Appeals denied in a Resolution[4] dated 12 September 2007.

The factual antecedents of this case are as follows:

NAPOCOR is a public corporation duly organized and existing under and by virtue of Republic Act No. 6395, as amended, while Premier is a private corporation engaged in the domestic transport of cargo duly registered and existing under and by virtue of the laws of the Republic of the Philippines.

On 18 June 1996, NAPOCOR conducted a public bidding to procure the services of a contractor that would haul/deliver nine hundred twenty-four (924) wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes. In a pre-bidding conference, the participants, one of which was Premier, were informed that, if awarded the job, it would provide labor, materials, tools and equipment to carry out the job; that the delivery of the wood poles would be on a door-to-door basis; that the wood poles were already segregated according to size in the port of origin; and, that the bid price was a lot price.

Premier won the public bidding with a bid of P2,398,000.00. A Notice of Award[5] dated 25 June 1996 signed by Salvador D. Faelnar, OIC - RAFS[6] was issued to Premier under Job Order No. ADM-TWSS-96-03-28. On 2 August 1996, NAPOCOR and Premier entered into a contract[7] for the said service. Thereafter, a Notice to Proceed[8] dated 5 August 1996 signed by Jose C. Troyo, Group Manager-RAFS, was issued to Premier, advising the latter to commence the work to provide labor, materials, tools and equipment, including payments of all taxes, fees, insurance and freight, thru government and private agencies.

On 13 August 1996, Premier received a fax message[9] from NAPOCOR's Island Grid Project Office in Quezon City requesting some revision of the delivery point due to a change in priority of construction. One of the requested changes was the delivery of wood poles from Bacolod City to San Jose, Mindoro instead of Bacolod City to Calapan, Mindoro. On account thereof, in a letter[10] dated 15 August 1996 signed by Benson E. Go, General Manager/President of Premier, Premier asked for the time suspension of the contract. It informed NAPOCOR that such a revision would entail additional expenses, since the number of ports would increase from four to five, together with the number of days of usage of the vessel. The change would mean additional 70 nautical miles in distance and ten hours of travel time.

In a meeting on 19 August 1996, NAPOCOR agreed to pay Premier P65,000.00, representing costs of fuel oil and lube oil, for the change of delivery point from Calapan, Mindoro to San Jose, Mindoro. In a letter[11] dated 20 August 1996 of Jose C. Troyo to Mr. Benson E. Go regarding the amount agreed upon during the aforesaid meeting, the latter gave his conforme by affixing his signature thereto. The changes in the quantities of the wood poles and their delivery locations were contained in a letter dated 20 August 1996 of J.D. de Mesa, Project Manager, Island Grid Project.[12] A Supplemental Contract[13] involving the aforesaid agreement was entered into by NAPOCOR and Premier on 10 June 1997. Said Supplemental Contract was incorporated into and made part of the original contract.

After threshing out with NAPOCOR the changes in quantity and delivery locations, Premier sent its motor vessel, M/V Arthur II, to Bacolod City in order to load thereon the wood poles for delivery to the different points of destination. The vessel arrived in Bacolod City on 31 August 1996, and Premier's personnel began loading the wood poles on 3 September 1996. As testified to by Mr. Go, they were surprised to discover that some of the poles at the stockyard at Mansilingan, Bacolod City were already rotten and about to break. This gave them a problem, for it would cause considerable delay in the loading of the poles to the vessel. Without such rotten poles, three to five poles could be lifted at a time and it would take from five to eight days to finish the loading of all the poles; however, with some rotten poles, they could not lift three to five poles at a time. They had to segregate one by one the serviceable poles from the unserviceable ones. This segregation, according to Mr. Go, was not part of the original and supplemental contracts between NAPOCOR and Premier. They, nevertheless, performed the segregation per instruction given by defendant, acting through its Island Grid Project Manager. A certification to this effect was issued by J. D. de Mesa.[14] After segregating the serviceable from the unserviceable wood poles, Premier loaded to its vessels 879 out of the 924 poles, the difference being the unserviceable ones. Premier took eighteen (18) days to load the poles, allegedly resulting in Premier's incurring an additional cost in the sum of P 964,900.00, broken down as follows[15]:

1.

1 Prime mover w/ trailer @ P1,200.00/hr. x 10 days

=

P 96,000.00

2.

1 Trailer @ P750.00/hr. x 10 days

=

60,000.00

3.

1 Crane @ P1,500.00/hr. x 10 days

=

120,000.00

4.

1 Crane Operator @ P150.00/day x 10 days

=

1,500.00

5.

1 Driver (Prime Mover) @ P150.00/day x 10 days

=

1,500.00

6.

1 Auto Mechanic @ P150.00/day x 10 days

=

1,500.00

7.

23 Laborers @ P120.00/day x 10 days

=

27,600.00

8.

1 Supervisor @ P250.00/day x 10 days

=

2,500.00

9.

Meals for 27 persons @ P90.00/day/person x 10 days

=

24,300.00

10.

Vessel @ P90,000.00/day x 7 days

=

630,000.00

P 964,900.00

Upon delivering the wood poles at the port of San Jose, Mindoro, Premier claimed that it incurred an additional cost amounting to P243,777.26, because the distance from the pier to the stockyard where the poles were delivered was 17 kilometers, which was nine kilometers more than the distance as stipulated in the contract. The situation was compounded by the fact that the stockyard was not cleared, and that it was Premier that did the job of clearing the area. It took two days to clear the area. The clearing job was confirmed by a certification dated 2 October 1996 issued by A.C. Villanueva, Property Officer A, Island Grid Project.[16] A Certification[17] dated 14 January 1997 was also issued by A.C. Villanueva stating that Premier rendered overtime service for three days

in connection with the hauling of the wood poles from the Mansilingan Stockyard at Bacolod City.

In a letter[18] dated 30 January 1997 sent to NAPOCOR, Premier asked for the settlement of an additional billing amounting to P1,208,677.26 [(P964,900.00 - segregation of serviceable from unserviceable poles at the Mansilingan Stockyard) + (P243,777.26 - additional distance of 9 kilometers from the pier to the stockyard in San Jose, Mindoro)] representing additional costs incurred in the hauling and delivery of the wood poles.

NAPOCOR did not pay the additional billing. As a consequence, Premier, through its counsel, sent a demand letter to NAPOCOR on 2 October 1997.[19] With NAPOCOR's refusal to pay, Premier was constrained to file the instant case for collection of sum of money, with damages and attorney's fees, before the RTC of Cebu City.

In its complaint, Premier asked that, after trial on the merits, NAPOCOR be ordered to pay the following: (a) P1,208,677.26 - representing the unpaid bill for additional service; (b) P23,000.00 - amount withheld on the contract since only 879 out of 924 poles were delivered; (c) P50,000.00 as attorney's fees; (d) P10,000.00 - litigation expenses; (e) interest from the time of the demand; and (f) costs of suit.[20] The case was raffled to Branch 11 and docketed as Civil Case No. CEB-24636.

NAPOCOR filed its Answer,[21] arguing that the additional service allegedly costing P1,208,677.26, was actually contained in the contract, while the withholding of P23,000.00 was justified because only 879 out of the 924 poles were delivered. It asked that the complaint be dismissed, and, in its counterclaim, it asked that Premier be ordered to pay exemplary damages in the amount of P500,000.00, P300,000.00 as attorney's fees, and P150,000.00 as expenses of litigation. Premier filed its Reply.[22]

Pre-trial was conducted on 8 November 2000 with the parties manifesting that there was no possibility of amicable settlement. The parties did not stipulate any other facts, except that Premier's admission that the segregation work was included in the scope of works that the contractor was bound to perform, with the qualification that the definite number of wood poles segregated was only 879 and not 924. The parties agreed that the issues to be tried and resolved were: (1) whether or not the plaintiff had valid causes of action against the defendant for the sum of money and damages; (2) whether or not the withholding of the P23,000.00 of the lot price was valid or legal; and (3) whether or not the plaintiff was liable to the defendant for the latter's counterclaim.[23]

Mr. Benson Go,[24] General Manager/President of Premier, and Mr. Gerardo Cabatingan,[25] Assistant Field Supervisor of Premier, testified for the plaintiff.

Mr. Go testified that Premier had been performing hauling jobs for NAPOCOR for the last fifteen years. He was a signatory to the contract between NAPOCOR and Premier for the hauling and delivery of nine hundred twenty-four (924) of NAPOCOR's wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes. He explained that the segregation for which Premier was claiming P964,900.00 was for the segregation of the serviceable wood poles from the unserviceable ones at the port of origin at the Mansilingan Stockyard in Bacolod City, and not at the port of delivery in San Jose, Mindoro. He further testified that Premier incurred additional cost in San Jose, Mindoro because the distance from the pier to the stockyard was 17 kilometers as against the 8 kilometers contained in the contract. He added that the stockyard in San Jose, Mindoro was not ready to receive the wood poles, and that they conducted the cleaning of the area where the poles were to be delivered. He said Premier was not in direct control of the delivery, and the delay was due to the fault of NAPOCOR.

Mr. Cabatingan testified that he discovered that some poles were already rotten and about to break up. When he informed NAPOCOR's representative of this, the latter told him that only serviceable poles should be loaded into the vessel, and that they should segregate the serviceable poles from the unserviceable ones. They sorted the poles

one by one, and it took them 18 days to finish the loading instead of the targeted 5 to 8 days. Another delay was caused in the delivery of the poles to San Jose, Mindoro, because the distance from the pier to the stockyard was 17 to 18 kilometers, and not 8 kilometers as contained in the contract. Thereafter, they had to clear the area because the stockyard was not ready to receive the poles. This resulted in another two-day delay in the delivery of the poles.

For the defendant, Mr. Salvador Faelnar,[26] Regional Administration Manager of the Finance Group of NAPOCOR, and Atty. Marianito de los Santos,[27] Regional Legal Counsel of NAPOCOR Visayas, took the witness stand.

Mr. Faelnar testified that the segregation job adverted to in Article II(4) of the contract included the segregation at the point of origin of the poles to be hauled and delivered. He was not aware that Premier performed a segregation job at the port of origin in Bacolod City. It was his belief that the P65,000.00 stipulated in the Supplemental Contract[28] covered all costs arising from the change of location of the delivery point of the poles hauled from Bacolod City to San Jose, Mindoro.

Atty. De los Santos disclosed that he came across the contract involved in this case and the claim of Premier for P1,208,677.26 for incremental costs in the implementation of the contract. He was aware of Mr. J.D. de Mesa's query to the General Counsel of NAPOCOR on whether Premier's claim should be paid. The General Counsel, he said, answered the query in the negative.[29] He added that he was aware of the letter[30] of Jose C. Troyo dated 29 May 1997 sent to Mr. Go of Premier, where Mr. Troyo denied the claims of Mr. Go. Atty. De los Santos declared that Premier's claims were without legal basis.

In its Decision dated 29 November 2001, the trial court ruled in favor of Premier, disposing of the case as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court in this case ordering the defendant to pay to the plaintiff the sum of P1,208,677.26 representing unpaid bill for additional works performed by it and the sum of P23,150.25 representing the amount deducted or withheld from the contract price due to the plaintiff, together with interests thereon at the rate of 6% per annum to be computed from the date of filing of the complaint in this case until the full payment of said sums before finality of judgment. Thereafter, i[f] the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied (pursuant to the ruling laid down in *Eastern Shipping Lines, Inc. vs. Court of Appeals*, 234 SCRA 88)

The Court also hereby orders the defendant to pay to the plaintiff the sums of P10,000.00 as attorney's fees and P4,000.00 as expenses of litigation.

No pronouncement is hereby made as to cost of this suit.[31]

The trial court found NAPOCOR liable to pay for the costs of the segregation of the unserviceable poles from the serviceable ones at the Mansilingan Stockyard in Bacolod City (port of origin); for the clearing of the stockyard in San Jose, Mindoro; and for the extended time to effect the delivery of about 435 wood poles from the pier in San Jose, Mindoro to the stockyard in Pulang Lupa Diesel Power Plant caused by the longer distance of 17 kilometers as compared with eight kilometers, which was stipulated in the contract. It likewise ruled that the P23,051.25, withheld or deducted by NAPOCOR from the contract price, should be given to Premier because the contract price was a lot price. It explained:

In the first place, the segregation of poles at the point of origin does not appear to be included in, or covered by, the contract entered into and executed by and between the parties on August 2, 1996. What is included in the said contract is segregation of "delivered items at the designated stockyards." So, what is stipulated in the contract is segregation of delivered poles at the delivery points or points of destination. The said provision in

the contract clearly does not cover segregation of poles to be delivered from the hauling point or point of origin. Indeed, there is a world of difference between poles to be delivered and poles already delivered. Since the plaintiff was made by the defendant to perform segregation of serviceable poles from the unserviceable ones at the point of hauling or origin, the defendant must pay the plaintiff for the performance of said job or services. The plaintiff is entitled to compensation because of *facio ut des* which, i[f] translated into English, means "I do that you may give" (Perez vs. Pomar, 2 Phil. 682). In other words, the defendant is contractually liable to pay the plaintiff for such segregation job the total cost of which is P964,900.00, and the defendant significantly has not bothered to contest or question the computation of such cost.

x x x x

However, even if it be granted *arguendo* that the plaintiff was not asked by the defendant to do the segregation works at Mansilingan, Bacolod City, still the defendant must compensate the plaintiff for such works for its benefit because of the principle that no one must be unjustly enriched or benefited at the expense of another (Article 2142 of the New Civil Code of the Philippines).

In the second place, it appears also that the clearing job performed by the plaintiff in the stockyard of the defendant in the latter's Pulang-Lupa Diesel Power Plant in Mindoro and the extended time to effect the delivery of 435 poles from the pier in San Jose, Mindoro to its stockyard there are not covered by the contract executed by and between the plaintiff and the defendant on August 2, 1996, as supplemented by an agreement signed by them on June 10, 1997 (Exhibit 2). A reading of said contract will bear this out. It is not true that the sum of P65,000.00 as agreed upon by the defendant on August 19, 1996 to be paid additionally to the plaintiff for the change of delivery point in Mindoro took care of all cost incurred by the said change-order. The sum of P65,000.00 only represented the costs of additional fuel oil and lube oil. This fact is unmistakably borne by the defendant's communication to the plaintiff dated August 20, 1996 (Exhibit F) and the supplemental Agreement signed by the parties on June 10, 1997 (Exhibit 2). Of course, the defendant cannot deny that it asked the plaintiff to perform the revised hauling and delivery jobs in San Jose, Mindoro. The defendant really asked the plaintiff to perform the said revised hauling and delivery jobs, as can be gleaned from the defendant's communications to the plaintiff dated August 13, 1996 (Exhibit D) and August 20, 1996 (Exhibit G) and the certifications issued by Mr. De Mesa, the Island Grid Project Manager of the defendant, and Mr. Villanueva, the Island Grid Project Property Officer of the defendant, on November 7, 1996 (Exhibit H) and October 2, 1996 (Exhibit J). So, the defendant is contractually liable to pay to the plaintiff for performing the revised hauling and delivery jobs in San Jose, Mindoro which entailed an additional cost of P243,777.26. The revision of delivery point asked by the defendant for the delivery of poles in Mindoro partakes of a change-order in contract's parlance. As the defendant did not bother to contest the computation of said additional cost, the Court considers the said computation of cost as accurate.

Thirdly and lastly, the defendant has no legal basis to deduct or withhold the sum of P23,150.25 from the contract price of P2,398,000.00. As it may be significantly noted, the contract price of P2,398,000.00 is a lot price as stated very clearly and categorically in the Notice of Award (Exhibit A) and Notice to Proceed (Exhibit C) issued by the defendant to the plaintiff and as testified to by Mr. Benson Go. A lot price is due to the plaintiff for as long as it has fully performed the works stipulated upon in the contract. This is regardless of the number of serviceable poles hauled and delivered by the plaintiff for the defendant. In other words, if the plaintiff was able to haul and deliver only 879 poles out of the 924 poles stocked in Mansilingan, Bacolod City, it still has to be paid the full contract price of P2,398,000.00. This is because it was not the fault of the plaintiff not to be able to haul and deliver the other 45 poles because it was told not to haul them for they were found to be unserviceable.[32]

On 11 December 2001, NAPOCOR filed a Notice of Appeal.[33] With the timely filing of the notice of appeal and the payment of appellate docket fees, the trial court ordered the transmittal of the records of the case to the Court of Appeals.[34] The appeal was docketed as CA-G.R. CV No. 73650.

On 19 July 2007, the Court of Appeals rendered its decision setting aside the decision of the trial court, its dispositive portion reading:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the challenged Decision of the Regional Trial Court of Cebu-Branch 11 in Civil Case No. CEB-24636 is hereby set aside. Plaintiff-appellee PREMIER's claim of P1,208,677.26 for the segregation job and the additional expenses it allegedly incurred is denied, but defendant-appellant NAPOCOR is hereby ordered to pay plaintiff-appellee PREMIER the sum of P23,150.25, representing the amount withheld or deducted by defendant-appellant NAPOCOR from the contract price, together with interests thereon at the rate of 6% per annum to be computed from the date of filing of the complaint until the full payment of said sums before finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time when the judgment becomes final and executory until fully satisfied.

The Court also hereby orders defendant-appellant NAPOCOR to pay plaintiff-appellee PREMIER the sums of P10,000.00 as attorney's fee and P4,000.00 as expenses of litigation.

No pronouncement as to costs.[35]

The Court of Appeals ruled that Premier was not entitled to an additional payment of P964,900.00 for the segregation job it undertook at the port of origin, because the contract entered into by the parties did not limit or define the designated stockyards of NAPOCOR where segregation work may be performed. The contract did not limit the performance of such job at the point of destination. Since the segregation was performed at a designated stockyard, it declared that said job was within the "Scope of Works" stipulated in No. 4, Article II of the contract. It likewise found Premier's allegation that the word "delivered items" in No. 4 of Article II limited the segregation work to be done at the stockyards where the wood poles were to be delivered, and not at the port of origin, to be without merit. It explained that the phrase "segregation of the delivered items at the designated stockyards" referred to the requirement that the wood poles, upon delivery, should already have been segregated, but it did not serve to limit the designated stockyards where the segregation job may be performed. It pronounced that Premier was also not entitled to an additional payment of P243,777.26 for the additional distance and time incurred due to the change of delivery points. It stressed that the contract between the parties was for the hauling of 924 wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes on a door-to-door basis. Since no particular point in any of the destination points was mentioned in the contract, the change in the delivery point (from Calapan, Mindoro to San Jose, Mindoro, which was still within Mindoro) did not require any additional payment therefor. It, however, conceded to Premier the additional charge amounting to P65,000.00 for fuel and lube oil for the change of delivery point, which the parties agreed upon. It added that Premier, which was given the chance to anticipate and to include any and all additional expenses for the change in the delivery point, could no longer quote some more expenses in addition to the P65,000.00 which it had submitted to NAPOCOR, and which the latter agreed to and accepted as additional expense. As to the P23,051.25 withheld by NAPOCOR from the contract price, the Court of Appeals agreed with the trial court that the same should be awarded to Premier despite the non-delivery of 45 unserviceable wood poles. The non-delivery thereof, it said, was not due to Premier's fault. The appellate court ruled that the contract price of P2,398,000.00 was a "lot price" which should be paid in full regardless of whether or not all the 924 wood poles were delivered. For its withholding of the P23,051.25, the award of attorney's fees and litigation expenses to Premier was justified.

On 7 August 2007, Premier filed a Motion for Reconsideration,[36] which the Court of Appeals denied in a Resolution dated 12 September 2007.[37]

Both NAPOCOR and Premier are before us via petitions for review on certiorari under Rule 45 of the Rules of Court. NAPOCOR's petition was docketed as G.R. No. 179103, while Premier's petition was docketed as G.R.

No. 180209. On 5 March 2008, G.R. No. 179103 was consolidated with G.R. No. 180209, because said cases involved the same set of facts, raised inter-related issues and assailed the same Court of Appeals decision.[38]

Premier raises the following issues:

A

THE HONORABLE COURT OF APPEALS IN OBVIOUS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION MISCONSTRUED THE SCOPE OF WORK AND THE SUPPLEMENTAL AGREEMENT DISREGARDING ADDITIONAL EXPENSE OF THE DELIVERY TO THE POINT OF THE AGREED DESTINATION.

B

THERE IS SERIOUS MISAPPREHENSION OF FACTS.

On the other hand, NAPOCOR raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING NPC TO PAY PREMIER THE SUM OF P23,150.25, REPRESENTING THE AMOUNT NPC DEDUCTED FROM THE CONTRACT PRICE FOR DELIVERY SHORTAGE.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S AND LITIGATION COSTS IN FAVOR OF PREMIER.

As required, NAPOCOR and Premier submitted their respective memoranda.[39]

In resolving the case on hand, we have to look at both the original and supplemental contracts entered into by the parties. The pertinent provisions of the original contract read:

ARTICLE II

SCOPE OF WORK AND CONTRACT DURATION

CONTRACTOR shall, in accordance with the provisions of this Contract and the Contract Documents, fully and faithfully furnish all vessels/cargo trucks, equipment and other incidentals necessary for the effective transfer/hauling of Nine Hundred Twenty-Four (924) Woodpoles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes on a Door to Door Basis. The works and services to be performed by the CONTRACTOR shall essentially consist of but not limited to the following features:

- To haul and deliver wood poles from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes;
- To secure all necessary permits and necessary documents related to the execution of the project, including permits from DENR, CENRO for transporting the materials from Bacolod to Masbate, Mindoro, Marinduque and Catanduanes;
- To provide all necessary equipment for the hauling/loading/shipment such as: Mobile crane, high bed trailer, 10 wheeler truck, including labor, related expenses to be incurred, etc.
- To provide labor and all necessary equipment for the proper segregation of the delivered items at the designated stockyards, including all expenses to be incurred;
- To provide one (1) unit vessel with a minimum capacity of 1,800 gross tonnage and with necessary loading and unloading equipment, including all related and necessary expenses for port charges.[40]

The relevant provisions of the Supplemental Contract provide:

WHEREFORE, during the mobilization stage, it was learned that a major rerouting had been made on the proposed construction/installation of the Bansud-San Jose Line, that is, instead of Calapan, Mindoro, the new point of delivery is thereby changed to San Jose, Mindoro, as contained in the Letter of the Project Manager, Island Grid Project, Mr. J.D. Demesa, dated August 20, 1996, confirming the aforementioned developments;

WHEREAS, the said change in the delivery point, which CONTRACTOR agreed to undertake, caused additional expense on the part of the CONTRACTOR/HAULER, in terms of its fuel and lube oil consumption, thereby necessitating the execution of this Supplemental Agreement;

NOW, THEREFORE, in view of the foregoing premises and for and in consideration of the mutual covenants and stipulations hereinafter provided, CONTRACTOR hereto ha[s] agreed as follows:

1. For and in consideration of the additional expenses which CONTRACTOR had to bear for its fuel and lube oil consumption by reason of the change in the delivery point, CORPORATION shall pay an additional amount of PESOS: SIXTY FIVE THOUSAND (65,000.00), Philippine currency.

PROVIDED, that the terms and conditions of the original contract shall remain in full force and effect unless revised and/or amended by this supplemental contract and that this supplemental contract is hereby incorporated and made part of the original contract as though fully written out and set forth therein.[41]

Premiere argues that the Court of Appeals erred in disregarding the additional expenses the former was claiming for the delivery of the wood poles to the point of the agreed destination, because the latter misconstrued the scope of work in the original contract and in the supplemental agreement entered into by the parties. Premiere is asking for an additional P1,208,677.26 representing additional costs incurred in the hauling and delivery of the wood poles, broken down as follows: (a) P964,900.00 for the segregation of the serviceable from the unserviceable poles at the Mansilingan Stockyard; and (b) P243,777.26 for the additional distance of 9 kilometers from the pier to the stockyard at San Jose, Mindoro.

Premiere contends that it should be paid the P964,900.00 for the segregation job (segregation of the serviceable wood poles from the unserviceable ones) it performed at the point of origin (Bacolod), because such segregation work at the port of origin was not embodied or contained in their contract. It is its contention that any act of segregation should have only been done at the point of delivery. NAPOCOR disagrees with such contention arguing that said job was within the scope of work agreed upon, and that segregation may be performed at the port of origin, that port being one of NAPOCOR's designated stockyards.

We agree with the Court of Appeals.

Number 4, Article II (Scope of Work) of the contract provides that the contractor (Premier) shall provide labor and all necessary equipment for the proper segregation of the delivered items at the designated stockyards. This provision, according to Premier, shows that segregation could only be made at the port of destination and not at the port of origin. We do not subscribe to such explanation. There is nothing in said provision that limits or confines the segregation of the wood poles at the delivery points. What is clear from said provision is that the wood poles, when delivered at the points of destination, should have already been segregated as specified in the contract. Thus, it was up to the service provider/contractor to choose where it wanted to perform the segregation of the poles, whether it be at the port of origin or at the port of destination, as long as the wood poles were segregated when left at the delivery points. Neither does the phrase "delivered items" restrict where segregation may be performed. As explained above, the wood poles should be segregated upon delivery at the delivery points.

The Court of Appeals aptly explained the point in this wise:

The aforequoted contested clause in the contract does not limit or define the designated stockyards of NAPOCOR where segregation work may be performed. Nowhere does the contract limit the performance of such job at the points of destination. What is clear is that PREMIER was contracted for the hauling and/or delivery of NAPOCOR's wood poles, part of which shall include the segregation of said wood poles at the designated stockyards. The stockyard at Bacolod City is one of the designated stockyards of NAPOCOR. Therefore considering that the segregation was performed at a designated stockyard, such job was well within the "Scope of Works" stipulated in paragraph 4, Article II of the Contract.

There is no merit in PREMIER's argument that the word "delivered items" in paragraph 4 of the Contract limited the segregation work to be done at the stockyards where the items or wood poles are to be delivered, and not at the port of origin. At best, the phrase, "segregation of the delivered items at the designated stockyards" simply refers to the requirement that the wood poles, upon delivery, should already have been segregated, but it does not serve to limit the designated stockyards where segregation job may be performed. It must likewise be emphasized that Article II of the Contract provides that "The works and services to be performed by the contractor shall essentially consist of but not limited (sic) to the following features: x x x." Clearly, the contract itself does not limit the designated stockyards as well as the services to be rendered, for as long as it is incidental to the effective hauling and transfer of the poles.

The lower court, in its Decision, cited the case of *Perez v. Pomar*, 2 Phil. 682, which enunciates the principle of *facio ut des* ("I do that you may give"), and which incidentally touches on the proscription against unjust enrichment at the expense of another (Article 2142 of the New Civil Code of the Philippines). The said case, however, as well as the principles alluded to therein, find application only in situations where there is no contract expressly entered into by the parties. In the instant case however, there is a contract which governs the rights and obligations of the parties; thus, the aforecited equitable principles of *facio ut des* and *solutio indebiti* are not applicable.

Furthermore, the contract cannot be unilaterally modified by any of the parties to it, without the express agreement of the other party. The instruction, if any, of the NAPOCOR's Property Officer cannot, in any way, amend or supplement the original contract. Assuming arguendo that the segregation done at the port of origin is not part of the contract, the same to be compensable should have been the subject of a supplemental contract akin to the Supplemental Agreement entered into by the parties in relation to the change of destination.

PREMIER's claim is not covered by Change Order or Supplemental Agreement to the contract. It is noteworthy that in paragraph 2.5 of its Complaint, PREMIER alleged that on September 4, 1996, it wrote NAPOCOR a letter informing the latter that "the poles subject of the contract are soft and of poor quality." Thus, prior to the execution of the Supplemental Contract on June 10, 1997 involving a change in destination, PREMIER was well aware of the rotten wooden poles which purportedly caused delay in the hauling of the poles. It could have, thus, asked for the incorporation in the Supplemental Contract of any additional cost appertaining to the delay which the segregation of the rotten poles allegedly caused, which action, however, PREMIER was not minded to do. PREMIER therefore is now barred from claiming any other additional compensation. In the same way that PREMIER claims an additional payment for the segregation work done in Bacolod City based on the argument that such was not covered by the contract, the same line of reasoning may well be applied to defeat its claim.[42]

We rule that the segregation of the serviceable poles from the unserviceable ones in whatever port it may be undertaken, whether it was in the port of origin or in the port of destination, was within the coverage of the original contract. The contract plainly obligated Premier to transfer or haul the 924 wood poles on a door-to-door basis. It is to be noted that the wood poles to be hauled or delivered were already segregated according to size at the port or stockyard of origin. In performing its task to deliver or transfer said wood poles, it was Premier's duty to do so without causing damage to the same. It knew fully well that damage to the cargo, total or partial, would constitute breach of the contract and would subject it to liability. It therefore follows that Premier should be

careful in the hauling of the wood poles. Thus, only by segregating the serviceable poles from the unserviceable ones could it do its job properly.

Premier's schedule for the hauling of the wood poles from the Mansilingan Stockyard was eight days. This period was extended to 18 days, because it had to be careful since not all the logs were serviceable. The expenses (P964,900.00) allegedly incurred during those additional ten days are what Premier is billing NAPOCOR for. Is it proper to bill NAPOCOR for these additional days? No, it is not. The fact that Premier needed to separate the serviceable poles from the unserviceable ones was part of the scope of its work, which was to deliver the poles on a door-to-door basis. It cannot charge extra for what is within the parameters set forth in the contract. If Premier did not perform the segregation and lifted three to five poles at a time as it had planned, damage to the poles would have unavoidably happened. This, it did not want to happen. As an entity dealing with NAPOCOR for the past fifteen years, the schedule and the costing it had prepared should have anticipated situations that would alter its timetable and go beyond its estimated expenses, as in this case. It did not. When the hauling from the Mansilingan Stockyard went beyond its timetable, Premier wanted to charge NAPOCOR for the excess days. This cannot be. Furthermore, following the reasoning of Premier that NAPOCOR should be charged for the additional ten days because the latter overshot its schedule, what should happen in the event the hauling did not consume the eight days allotted for the task? Should NAPOCOR get a price cut?

The supposed instruction of the NAPOCOR official to segregate the serviceable poles from the unserviceable ones and the certification^[43] issued to this effect, as well as the certification^[44] stating that Premier rendered overtime service for thirty-six (36) hours, will not entitle it to be paid the additional P964,900.00. As already explained, the segregation it undertook was part of the contract. As to the alleged overtime service of three days, the same has no basis. Since the contract was for forty days, it cannot therefore charge any service done within the contract period. If there was any delay in the performance of its obligation, it would be the contractor that should be held liable therefor.

For the additional distance of nine kilometers from the pier to the stockyard in San Jose, Mindoro where the wood poles were delivered, Premier is asking for an additional P243,777.26 because the distance as allegedly stipulated in the contract was only for eight and not for 17 kilometers. This amount is on top of the P65,000.00, which Premier asked as payment for its fuel and lube oil consumption by reason of the change in the delivery point (Calapan, Mindoro to San Jose, Mindoro), as contained in the supplemental contract^[45] and letter dated 20 August 1996 of Jose C. Troyo addressed to Benson E. Go. NAPOCOR opposes this, arguing that the P65,000.00 to which Mr. Go agreed covered all expenses for the change in the delivery point.

We agree with NAPOCOR that the P65,000.00 covered all the expenses for the change of one of the delivery points. After going over the original and supplemental contracts, we do not find any provision providing for the exact distances between the point of origin and any of the points of delivery or destination. This being the case, Premier should have done its job by determining for itself the distance involved by reason of the change in delivery point. This, it did not do. It was only when it was already in the process of delivering the wood poles in San Jose, Mindoro that Premier discovered that the distance from the pier to the stockyard was farther. Despite having the opportunity to include all expenses that it may incur due to the change of stockyard, it did not act like an entity that had been in the business of hauling cargo for a long time. The fault lies in Premier due to its failure to inspect and check out the complete route to be taken in the delivery of the wood poles to the stockyard in San Jose, Mindoro, prior to agreeing to the amount of P65,000.00. As the Court of Appeals explained, it would be unfair for NAPOCOR if Premier would quote some more expenses that could have been anticipated when it made the valuation for the change of one of the delivery points, for it was given all the chances to do so.

It is basic that a contract is the law between the parties, and the stipulations therein -- provided that they are not

contrary to law, morals, good customs, public order or public policy -- shall be binding as between the parties.[46] In contractual relations, the law allows the parties much leeway and considers their agreement to be the law between them. This is because "courts cannot follow one every step of his life and extricate him from bad bargains x x x relieve him from one-sided contracts, or annul the effects of foolish acts." [47] The Courts are obliged to give effect to the agreement and enforce the contract to the letter. In the case at bar, the parties entered into a contract for the hauling and delivery of wood poles. By reason of a change in one of the delivery points, they executed a supplemental contract that embodied said change. The terms and conditions were clear. In both contracts, the parties voluntarily and freely affixed their signatures thereto without objection. Thus, the terms contained therein are the law between them.

As the Court sees it, Premier failed to anticipate all expenses that may be incurred in the hauling and the delivery of the wood poles. The bid Premier submitted was sufficient for it to be declared the winner. However, when it incurred expenses it failed to foresee, Premier began charging NAPOCOR for the additional expenses that were part and parcel of the service it contracted to provide. The contract it entered into turned out to be a disastrous deal or an unwise investment. This Court will not allow Premier to recover from NAPOCOR the expenses Premier sustained for an undertaking it was bound to perform. There is no one to blame but Premier for plunging into an undertaking without fully studying it in its entirety. Concomitantly, there can be no unjust enrichment on the part of NAPOCOR, because the services rendered in its favor are included in the contract it entered into with Premier.

On its part, NAPOCOR contends that it was justified in deducting the amount of P23,150.25 from the contract price, representing liquidated damages brought about by Premier's failure to complete its work when it failed to deliver 45 wood poles. Being justified to withhold said amount, NAPOCOR contends it should be awarded attorney's fees and litigation costs, and not Premier, for the former was compelled to litigate and incur expenses to protect its interest against the latter's unfounded claim.

There is no dispute that the undertaking in the amount of P2,398,000.00 was a lot price.[48] We agree with both lower courts that, regardless of the number of wood poles hauled and delivered, Premier shall be paid the whole amount. Moreover, it is not the fault of Premier that not all the wood poles were delivered. As testified to by Mr. Gerardo Cabatingan, Assistant Field Supervisor of Premier, the NAPOCOR personnel at the stockyard of origin wanted only the serviceable poles to be loaded into the truck for hauling and delivery to the ports of destination.[49] Thus, the non-delivery of the 45 wood poles, which was upon orders of the personnel of NAPOCOR, cannot be considered a breach of contract for which Premier can be held liable.

Having been unjustifiably deprived of the amount of P23,150.25 of the contract price, Premier is entitled to attorney's fees and costs of litigation. We find the amounts of P10,000.00 and P4,000.00, awarded by the lower courts as attorney's fees and costs of litigation, respectively, to be reasonable under the premises, and the interests thereon, proper.

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals dated 19 July 2007 in CA-G.R. CV No. 73650 is hereby AFFIRMED in toto.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Agustin S. Dizon, concurring; CA rollo, pp. 106-119.

- [2] Cebu City.
- [3] Records, pp. 159-166.
- [4] CA rollo, pp.127-128.
- [5] Records, p. 97.
- [6] Officer-In-Charge - Regional Administrative & Financial Services.
- [7] Exh. B; Records, pp. 7-11. Contract to Provide Labor, Materials, Tools and Equipment Including Payments of All Taxes Fees, Insurance and Freight Thru Government and Private Agencies for the Hauling Delivery of 924 Woodpoles From Bacolod to Masbate, Mindoro, Marinduque and Catanduanes on a Door to Door Basis.
- [8] Records, p. 98.
- [9] Id. at 12.
- [10] Id. at 13.
- [11] Id. at 14.
- [12] Id. at 15-16.
- [13] Id. at 131-133.
- [14] Id. at 100.
- [15] Id. at 103-105.
- [16] Id. at 102.
- [17] Id. at 101.
- [18] Id. at 103-105.
- [19] Id. at 106-107.
- [20] Id. at 1-5.
- [21] Id. at 30-35.
- [22] Id. at 36.
- [23] Id. at 72.
- [24] TSN, 17 January 2001, 1 February 2001.
- [25] TSN, 22 February 2001.
- [26] TSN, 18 April 2001.
- [27] TSN, 24 May 2001.
- [28] Records, pp. 156-158.
- [29] Id. at 134-136.
- [30] Id. at 137-138.

[31] Id. at 166.

[32] Id. at 165-166.

[33] Id. at 168.

[34] Id. at 170.

[35] CA rollo, pp. 118-119.

[36] Id. at 121-125.

[37] Id. at 127-128.

[38] Rollo (G.R. No. 179103), p. 76.

[39] Id. at 99-121, 122-128.

[40] Records, pp. 8-9.

[41] Id. at 132.

[42] CA rollo, pp. 111-113.

[43] Records, p. 100.

[44] Id. at 101.

[45] Id. at 131-133.

[46] Meralco Industrial Engineering Services Corporation v. National Labor Relations Commission, G.R. No. 145402, 14 March 2008, 548 SCRA 315, 334.

[47] Vda. de Jayme v. Court of Appeals, 439 Phil. 192, 209 (2002).

[48] Records, pp. 97-98.

[49] TSN, 22 February 2001, p. 7.

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