LVM CONSTRUCTION CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, ANDRES CHUA LAO, PETITIONER, VS. F.T. SANCHEZ/SOCOR/KIMWA (JOINT VENTURE), F.T. SANCHEZ CONSTRUCTION CORPORAT...

G.R. No. 181961. December 05, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

Filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure, the petition for review on certiorari at bench seeks the reversal of the 28 September 2007 Decision[1] rendered by the then Thirteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 94849,[2] the decretal portion of which states:

> WHEREFORE, premises considered, the assailed Decision dated April 26, 2006 of the Construction Industry Arbitration Commission in CIAC Case No. 25-2005 is hereby AFFIRMED.
>
> SO ORDERED.[3]

The Facts

Petitioner LVM Construction Corporation (LVM) is a duly licensed construction firm primarily engaged in the construction of roads and bridges for the Department of Public Works and Highways (DPWH). Awarded the construction of the Arterial Road Link Development Project in Southern Leyte (the Project), LVM sub-contracted approximately 30% of the contract amount with the Joint Venture composed of respondents F.T. Sanchez Corporation (FTSC), Socor Construction Corporation (SCC) and Kimwa Construction Development Corporation (KCDC). For the contract price of P90,061,917.25 which was later on reduced to P86,318,478.38,[4] the Joint Venture agreed to undertake construction of the portion of the Project starting from Sta. 154 + 210.20 to Sta. 160 + 480.00. With LVM as the Contractor and the Joint Venture as Sub-Contractor, the 27 November 1996 Sub-Contract Agreement[5] executed by the parties pertinently provided as follows:

> 3) That payment to the SUB-CONTRACTOR shall be on item of work accomplished in the sub-contracted portion of the project at awarded unit cost of the project less NINE PERCENT (9%). The SUB-CONTRACTOR shall issue a BIR registered receipt to the CONTRACTOR.
>
> 4) Ten percent (10%) retention to be deducted for every billing of sub-contractor as prescribed under the Tender Documents.
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> x x x x
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> 13) The payment to the SUB-CONTRACTOR shall be made within seven (7) days after the check issued by DPWH to CONTRACTOR has already been made good.[6]

For work rendered in the premises, there is no dispute regarding the fact that the Joint Venture sent LVM a total of 27 Billings. For Billing Nos. 1 to 26, LVM paid the Joint Venture the total sum of P80,414,697.12 and retained

the sum of P8,041,469.79 by way of the 10% retention stipulated in the Sub-Contract Agreement.[7] For Billing No. 27 in the sum of P5,903,780.96, on the other hand, LVM paid the Joint Venture the partial sum of P2,544,934.99 on 31 May 2001,[8] claiming that it had not yet been fully paid by the DPWH.[9] Having completed the sub-contracted works, the Joint Venture subsequently demanded from LVM the settlement of its unpaid claims as well as the release of money retained by the latter in accordance with the Sub-Contract Agreement. In a letter dated 16 May 2001, however, LVM apprised the Joint Venture of the fact that its auditors have belatedly discovered that no deductions for E-VAT had been made from its payments on Billing Nos. 1 to 26 and that it was, as a consequence, going to deduct the 8.5% payments for said tax from the amount still due in the premises.[10] In its 14 June 2001 Reply, the Joint Venture claimed that, having issued Official Receipts for every payment it received, it was liable to pay 10% VAT thereon and that LVM can, in turn, claim therefrom an equivalent input tax of 10%.[11]

With its claims still unpaid despite the lapse of more than four (4) years from the completion of the sub-contracted works, the Joint Venture, thru its Managing Director, Fortunato O. Sanchez, Jr., filed against LVM the 30 June 2005 complaint for sum of money and damages which was docketed before the Construction Industry Arbitration Commission (CIAC) as CIAC Case No. 25-2005.[12] Having submitted a Bill of Particulars in response to LVM's motion therefor,[13] the Joint Venture went on to file an Amended Complaint dated 23 December 2005 specifying its claims as follows: (a) P8,041,469.73 as retention monies for Billing Nos. 1 to 26; (b) P3,358,845.97 as unpaid balance on Billing No. 27; (c) P6,186,570.71 as interest on unpaid retention money computed at 12% per annum reckoned from 6 August 1999 up to 1 January 2006; and (d) P5,365,677.70 as interest at 12% per annum on delayed payment of monies collected from DPWH on Billing Nos. 1 to 26. In addition, the Joint Venture sought indemnity for attorney's fees equivalent to 10% of the amount collected and/or in a sum not less than P1,000,000.00.[14]

In its 21 October 2005 Answer with Compulsory Counterclaim, LVM maintained that it did not release the 10% retention for Billing Nos. 1 to 26 on the ground that it had yet to make the corresponding 8.5% deductions for E-VAT which the Joint Venture should have paid to the Bureau of Internal Revenue (BIR) and that there is, as a consequence, a need to offset the sums corresponding thereto from the retention money still in its possession. Moreover, LVM alleged that the Joint Venture's claims failed to take into consideration its own outstanding obligation in the total amount of P21,737,094.05, representing the liquidated damages it incurred as a consequence of its delays in the completion of the project. In addition to said liquidated damages, LVM prayed for the grant of its counterclaims for exemplary damages and attorney's fees.[15] In its 2 January 2006 supplemental answer, LVM likewise argued that the Joint Venture's prayer for imposition of 12% interest on the retention money and the balance of Billing No. 27 is bereft of factual and legal bases since no interest was stipulated in the parties' agreement and it was justified in refusing the release of said sums claimed.[16]

With the parties' assent to the 19 December 2005 Terms of Reference which identified, among other matters, the issues to be resolved in the case,[17] the CIAC proceeded to receive the parties' evidence in support of their respective causes. On 26 April 2006, the CIAC rendered its decision granting the Joint Venture's claims for the payment of the retention money for Billing Nos. 1 to 26 as well as the interest thereon and the unpaid balance billing from 6 August 1999 to 1 January 2006 in the aggregate sum of P11,307,646.68. Discounting the contractual and legal bases for LVM's claim that it had the right to offset its E-VAT payments from the retention money still in its possession, the CIAC ruled that the VAT deductions the DPWH made from its payments to LVM were for the whole project and already included all its supplies and subcontractors. Instead of withholding said retention money, LVM was determined to have - to its credit and for its use - the input VAT corresponding to the 10% equivalent VAT paid by the Joint Venture based on the BIR-registered official receipts it issued. Finding that the delays incurred by the Joint Venture were justified, the CIAC likewise denied LVM's counterclaim for

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liquidated damages for lack of contractual basis.[18]

Elevated by LVM to the CA through a petition for review filed pursuant to Rule 43 of the 1997 Rules of Civil Procedure,[19] the CIAC's decision was affirmed in toto in the herein assailed Decision dated 28 September 2007 rendered by said court's Thirteenth Division in CA-G.R. SP No. 94849.[20] In upholding the CIAC's rejection of LVM's insistence on the offsetting of E-VAT payments from the retention money, the CA ruled as follows:

> Clearly, there was no provision in the Sub-Contract Agreement that would hold Sanchez liable for EVAT on the amounts paid to it by LVM. As pointed out by the CIAC in its Award, `the contract documents provide only for the payment of the awarded cost of the project less 9%. Any other deduction must be clearly stated in the provisions of the contract or upon agreement of the parties. xxx The tribunal finds no provision that EVAT will be deducted from the sub-contractor. xxx If [the Joint Venture] should pay or share in the payment of the EVAT, it must be clearly defined in the sub-contract agreement.'
>
> Elucidating further, CIAC pointed out that Sanchez, under the contract was required to issue official receipts registered with the BIR for every payment LVM makes for the progress billings, which it did. For these official receipts issued by Sanchez to LVM, Sanchez already paid 10% VAT to the BIR, thus: `The VAT Law is very clear. Everyone must pay 10% VAT based on their issued official receipts. These receipts must be official receipts and registered with the BIR. Respondent (LVM) must pay its output Vat based on its receipts. Complainant (Sanchez) must also pay output VAT based on its receipts. The law however allow each entity to deduct the input VAT based on the official receipts issued to it. Clearly, therefore, respondent [LVM], has to its credit the 10% output VAT paid by claimant [Joint Venture] based on the official receipts issued to it. Respondent [LVM] can use this input VAT to offset any output VAT respondent [LVM] must pay for any of its other projects."[21]

LVM's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's 26 February 2008 Resolution,[22] hence, this Rule 45 petition for review on certiorari.

The Issues

LVM urges the grant of its petition for review upon the following errors imputed against the CA, to wit:

> I
>
> CONTRARY TO THE FINDING OF THE COURT OF APPEALS, RESPONDENTS' LIABILITY TO PAY VALUE ADDED TAX NEED NOT BE STATED IN THE SUB-CONTRACT AGREEMENT DATED 27 NOVEMBER 1996 AS THE PROVISIONS OF REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES, FORM PART OF, AND ARE DEEMED INCORPORATED AND READ INTO SAID AGREEMENT.
>
> II
>
> THE COURT OF APPEALS ERRED WHEN IT RULED THAT RESPONDENTS ARE DEEMED TO HAVE ALREADY PAID VALUE ADDED TAX MERELY BECAUSE RESPONDENTS HAD ALLEGEDLY ISSUED RECEIPTS FOR SERVICES RENDERED.[23]

The Court's Ruling

The petition is bereft of merit.

For lack of any stipulation regarding the same in the parties' Sub-Contract Agreement, we find that the CA correctly brushed aside LVM's insistence on deducting its supposed E-VAT payments from the retention money demanded by the Joint Venture. Indeed, a contract constitutes the law between the parties who are, therefore, bound by its stipulations[24] which, when couched in clear and plain language, should be applied according to

their literal tenor.[25] That there was no agreement regarding the offsetting urged by LVM may likewise be readily gleaned from the parties' contemporaneous and subsequent acts which are given primordial consideration in determining their intention.[26] The record shows that, except for deducting sums corresponding to the 10% retention agreed upon, 9% as contingency on sub-contract, 1% withholding tax and such other itemized miscellaneous expenses, LVM settled the Joint Venture's Billing Nos. 1 to 26 without any mention of deductions for the E-VAT payments it claims to have advanced.[27] It was, in fact, only on 16 May 2001 that LVM's Managing Director, Andres C. Lao, apprised the Joint Venture in writing of its intention to deduct said payments,[28] to wit:

> If you would recall, during our last meeting with Deputy Project Manager of the DPWH-PJHL, Eng. Jimmy T. Chan, last March 2001 at the PJHL Office in Palo, Leyte, our company made a commitment to pay up to 99% accomplishment and release the retention money up to the 23[rd] partial billing after receipt by our company of the 27[th] partial billing from JBIC and GOP relative to the above mentioned project.
>
> Much as our company wants to comply with said commitment, our auditors recently discovered that all payments made by us to your Joint Venture, relative to the above mentioned project were made without the corresponding deduction of the E-VAT of 8.50% x 10/11, which your Joint Venture should have paid to the BIR. Records would show that from billing number 1 up to 26, no deductions for E-VAT were made. As a matter of fact, our company was the one who shouldered all payments due for the E-VAT which should have been deducted from the payments made by us to your Joint Venture. Copy of the payments made by our company to the BIR relative to the E-VAT is hereto attached as Annex "1" for your perusal and ready reference.
>
> This being the case and to offset the advances made by our company, we would like to inform you that our company would deduct the payments made for E-VAT to the amount due to your Joint Venture. Only by doing so, would our advances be settled and liquidated. We hope that our auditor and your auditor can discuss this matter to avoid any possible conflict regarding this matter.

From the foregoing letter, it is evident that LVM unilaterally broached its intention of deducting the subject E-VAT payments only on 15 May 2001 or long after the project's completion on 9 July 1999.[29] In the absence of any stipulation thereon, however, the CA correctly disallowed the offsetting of said sums from the retention money undoubtedly due the Joint Venture. Courts are obliged to give effect to the parties' agreement and enforce the contract to the letter.[30] The rule is settled that they have no authority to alter a contract by construction or to make a new contract for the parties; their duty is confined to the interpretation of the one which the parties have made for themselves, without regard to its wisdom or folly. Courts cannot supply material stipulations, read into the contract words it does not contain[31] or, for that matter, read into it any other intention that would contradict its plain import.[32] This is particularly true in this case where, in addition to the dearth of a meeting of minds between the parties, their contemporaneous and subsequent acts fail to yield any intention to offset the said E-VAT payments from the retention money still in LVM's possession.

In taking exception to the CA's affirmance of the CIAC's rejection of its position for lack of contractual basis, LVM argues that the Joint Venture's liability for E-VAT as an entity that renders services in the course of trade or business need not be stated in the Sub-Contract Agreement considering that it is an obligation imposed by law which forms part of, and is read into, every contract.[33] As correctly argued by the Joint Venture, however, there are two (2) contracts under the factual milieu of the case: the main contract DPWH entered into with LVM for the construction of the Arterial Road Link Development Project in Southern Leyte and the Sub-Contract Agreement the latter in turn concluded with the Joint Venture over 30% of said project's contract amount. As the entity which directly dealt with the government insofar as the main contract was concerned, LVM was itself required by law to pay the 8.5% VAT which was withheld by the DPWH in accordance with Republic Act No. 8424[34] or the Tax

Reform Act of 1997 as well as the National Internal Revenue Code of 1997 (NIRC). Section 114 (C) of said law provides as follows:

> "Section 114. Return and Payment of Value-Added Tax. -
>
> x x x x
>
> (C) Withholding of Creditable Value-added Tax. - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: Provided, however, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): Provided, further, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent."

For the Sub-Contract Agreement, on the other hand, respondent F. Sanchez Construction, acting on behalf of the Joint Venture, issued BIR-registered receipts for the sums paid by LVM for Billing Nos. 1 to 26, indicating the total amount paid by the latter, the retention fee deducted therefrom and the tax due thereon.[35] These were in consonance with paragraph 3 of the Sub-Contract Agreement which, after stating that LVM's payment shall "be on item of work accomplished in the sub-contracted portion of the project awarded unit cost of the project less NINE PERCENT (9%)," simply provided, that "(t)he SUB-CONTRACTOR shall issue a BIR registered receipt to the CONTRACTOR."[36] As the VAT-registered person, on the other hand, Fortunato T. Sanchez, Sr.[37] also filed the corresponding Monthly VAT Declarations[38] with the BIR which, by themselves, are evidence of the Joint Venture's VAT liability for LVM's payments on its billings. In fixing the base of the tax, the first paragraph A Section 108 of the NIRC provides that "(t)here shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties."

In the absence of any stipulation regarding the Joint Venture's sharing in the VAT deducted and withheld by the DPWH from its payment on the main contract, the CIAC and the CA correctly ruled that LVM has no basis in offsetting the amounts of said tax from the retention still in its possession. VAT is a uniform tax levied on every importation of goods, whether or not in the course of trade or business, or imposed on each sale, barter, exchange or lease of goods or properties or on each rendition of services in the course of trade or business.[39] It is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto.[40] As an indirect tax that may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services, VAT should be understood not in the context of the person or entity that is primarily, directly and legally liable for its payment, but in terms of its nature as a tax on consumption.[41]

Neither do we find merit in LVM's harping over the lack of showing in the record that the Joint Venture has actually paid its liability for VAT. For this purpose, LVM insists that the Official Receipts for its payments on the Joint Venture's billing were issued by respondent F. Sanchez Construction and that the Monthly VAT Declarations were, in fact, filed by Fortunato Sanchez, Sr. However, the evidence on record is to the effect that, failing to register with the Securities and Exchange Commission (SEC) and to obtain a Mayor's Permit and authorization from the BIR to print its official receipts, the Joint Venture apprised LVM of its intention to use

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respondent F. Sanchez Construction's BIR-registered receipts.[42] Aside from being indicative of its knowledge of the foregoing circumstances, LVM's previous unqualified acceptance of said official receipts should, clearly, bar the belated exceptions it now takes with respect thereto. A party, having performed affirmative acts upon which another person based his subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter.[43]

To recapitulate, LVM, as Contractor for the Project, was liable for the 8.5% VAT which was withheld by the DPWH from its payments, pursuant to Section 114 (C) of the NIRC. Absent any agreement to that effect, LVM cannot deduct the amounts thus withheld from the sums it still owed the Joint Venture which, as Sub-Contractor of 30% of the Project, had its own liability for 10% VAT insofar as the sums paid for the sub-contracted works were concerned. Although the burden to pay an indirect tax like VAT can, admittedly, be passed on to the purchaser of the goods or services, it bears emphasizing that the liability to pay the same remains with the manufacturer or seller like LVM and the Joint Venture. In the same manner that LVM is liable for the VAT due on the payments made by the DPWH pursuant to the contract on the Project, the Joint Venture is, consequently, liable for the VAT due on the payments made by LVM pursuant to the parties' Sub-Contract.

WHEREFORE, premises considered, the petition is DENIED for lack of merit and the CA's 28 September 2007 Decision is, accordingly, AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Brion, Sereno, and Reyes, JJ., concur.

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[1] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] Rollo, CA's 28 September 2007 Decision in CA-G.R. No. 94849, pp. 65-76.

[3] Id. at. 75.

[4] Id. at 204.

[5] Parties' 27 November 1996, id. at 88-96.

[6] Id. at 88-89.

[7] Table Showing Amounts Due and Retentions, id. at 117.

[8] Cash Voucher and Check issued by LVN, id. at 139.

[9] LVM Managing Director Andres C. Lao's 16 January 2006 Affidavit, id. at 212.

[10] LVM's 16 May 2001 Letter, id. at 113-114.

[11] Joint Venture's 14 June 2001 Letter, id. at 118-129.

[12] Joint Venture's 30 June 2005 Complaint, id. at 101-107.

[13] LVM's 28 September 2005 Motion for Bill of Particulars and the Joint Venture's Bill of Particulars, id. at 131-135; 136-137.

[14] Joint Venture's 23 December 2005 Amended Complaint, id. at 186-194.

[15] LVM's 21 October 2005 Answer with Compulsory Counterclaim, id. at 140-151.

[16] LVM's 2 January 2006 Supplemental Answer, id. at 196-202.

[17] Terms of Reference, 19 December 2005, id. at 203-208.

[18] CIAC's 26 April 2006 Decision, id. at 577-595.

[19] LVM's 1 3 June 2006 Petition for Review, id. at 596-634.

[20] CA's 28 September 2007 Decision, id. at 65-76.

[21] Id. at 72-73.

[22] CA's 26 February 2008 Resolution, id. at 78-80.

[23] Id. at 49.

[24] R&M General Merchandise, Inc. v. Court of Appeals, G.R. No. 144189, 5 October 419 Phil. 131, 142 (2001).

[25] Antipolo Properties, Inc. v. Nuyda, G.R. No. 171832, 12 October 2009, 603 SCRA 376, 381.

[26] Lorenzo Shipping Corporation v. BJ Marthel International, Inc., 485 Phil. 546, 557 (2004).

[27] Rollo, pp. 303-353.

[28] Id. at 113-114.

[29] Id. at 178.

[30] National Power Corporation v. Premier Shipping Lines, Inc., G.R. Nos. 179103, 180209, 17 September 2009, 600 SCRA 153, 176.

[31] Sps. Barrera v. Sps. Lorenzo, 438 Phil. 42, 49 (2002).

[32] German Marine Agencies, Inc. v. NLRC, 403 Phil. 572, 589 (2001).

[33] Rollo, pp. 49-52

[34] An Act Amending the National Internal Revenue Code, As Amended And For Other Purposes, dated 11 December 1997.

[35] Exhibits "V-4," "V-7," "V-10," "V-13," "V-16," "V-20," "V-21," "V-26," "V-28," "V-31," "V-32," "V-35," "V-37," "V-40," "V-43," "V-45," "V-48," "V-50," "V-53," "V-58," "V-61,"V-64," "V-66," "V-68," "V-71," "V-74," "V-77" and "V-80." Rollo, pp. 406; 409; 412; 415; 416; 421; 422; 427; 429; 432-433; 436; 438; 441; 444; 446; 449; 451; 455-457; 460; 468; 467; 469; 471; 474; 477; 480.

[36] Id. at 88.

[37] Id. at 363.

[38] Exhibits "V-3," "V-6," "V-9," "V-12," "V-15," "V-19," "V-25," "V-30," "V-34," "V-39," "V-42," "V-47," "V-52," "V-57," "V-60," "V-63," "V-70," "V-73," "V-76" and "V-79," id. at 405; 408; 411; 414; 417; 420; 426; 431; 435; 440; 443; 448; 453; 459; 462; 465; 470; 473; 479.

[39] Commissioner of Internal Revenue v. Seagate Technology (Phils.), 491 Phil. 317, 331-332 (2005).

[40] Commissioner of Internal Revenue v. Court of Appeals, 385 Phil. 875, 884 (2000).

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[41] Commissioner of Internal Revenue v. Seagate Technology (Philippines), supra at 332.

[42] Rollo, pp. 650-651.

[43] Mesina v. Garcia, G.R. No. 168035, 30 November, 2006, 509 SCRA 431, 440 citing Ducat v. Court of Appeals, 379 Phil. 753, 769 (2000).

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