

F.F. CRUZ & CO., INC., PETITIONER, VS. HR CONSTRUCTION CORP., RESPONDENT.*G.R. No. 187521. March 14, 2012*

Ponente: REYES, J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner F.F. Cruz & Co., Inc. (FFCCI) assailing the Decision[1] dated February 6, 2009 and Resolution[2] dated April 13, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 91860.

The Antecedent Facts

Sometime in 2004, FFCCI entered into a contract with the Department of Public Works and Highways (DPWH) for the construction of the Magsaysay Viaduct, known as the Lower Agusan Development Project. On August 9, 2004, FFCCI, in turn, entered into a Subcontract Agreement[3] with HR Construction Corporation (HRCC) for the supply of materials, labor, equipment, tools and supervision for the construction of a portion of the said project called the East Bank Levee and Cut-Off Channel in accordance with the specifications of the main contract.

The subcontract price agreed upon by the parties amounted to P31,293,532.72. Pursuant to the Subcontract Agreement, HRCC would submit to FFCCI a monthly progress billing which the latter would then pay, subject to stipulated deductions, within 30 days from receipt thereof.

The parties agreed that the requests of HRCC for payment should include progress accomplishment of its completed works as approved by FFCCI. Additionally, they agreed to conduct a joint measurement of the completed works of HRCC together with the representative of DPWH and consultants to arrive at a common quantity.

Thereafter, HRCC commenced the construction of the works pursuant to the Subcontract Agreement.

On September 17, 2004, HRCC submitted to FFCCI its first progress billing in the amount of P2,029,081.59 covering the construction works it completed from August 16 to September 15, 2004.[4] However, FFCCI asserted that the DPWH was then able to evaluate the completed works of HRCC only until July 25, 2004. Thus, FFCCI only approved the gross amount of P423,502.88 for payment. Pursuant to the Subcontract Agreement, FFCCI deducted from the said gross amount P42,350.29 for retention and P7,700.05 for expanded withholding tax leaving a net payment in the amount of P373,452.54. This amount was paid by FFCCI to HRCC on December 3, 2004.[5]

FFCCI and the DPWH then jointly evaluated the completed works of HRCC for the period of July 26 to September 25, 2004. FFCCI claimed that the gross amount due for the completed works during the said period was P2,008,837.52. From the said gross amount due, FFCCI deducted therefrom P200,883.75 for retention and P36,524.07 for expanded withholding tax leaving amount of P1,771,429.45 as the approved net payment for the

said period. FFCCI paid this amount on December 21, 2004.[6]

On October 29, 2004, HRCC submitted to FFCCI its second progress billing in the amount of P1,587,760.23 covering its completed works from September 18 to 25, 2004.[7] FFCCI did not pay the amount stated in the second progress billing, claiming that it had already paid HRCC for the completed works for the period stated therein.

On even date, HRCC submitted its third progress billing in the amount of P2,569,543.57 for its completed works from September 26 to October 25, 2004.[8] FFCCI did not immediately pay the amount stated in the third progress billing, claiming that it still had to evaluate the works accomplished by HRCC.

On November 25, 2004, HRCC submitted to FFCCI its fourth progress billing in the amount of P1,527,112.95 for the works it had completed from October 26 to November 25, 2004.

Subsequently, FFCCI, after it had evaluated the completed works of HRCC from September 26 to November 25, 2004, approved the payment of the gross amount of P1,505,570.99 to HRCC. FFCCI deducted therefrom P150,557.10 for retention and P27,374.02 for expanded withholding tax leaving a net payment of P1,327,639.87, which amount was paid to HRCC on March 11, 2005.[9]

Meanwhile, HRCC sent FFCCI a letter[10] dated December 13, 2004 demanding the payment of its progress billings in the total amount of P7,340,046.09, plus interests, within three days from receipt thereof. Subsequently, HRCC completely halted the construction of the subcontracted project after taking its Christmas break on December 18, 2004.

On March 7, 2005, HRCC, pursuant to the arbitration clause in the Subcontract Agreement, filed with the Construction Industry Arbitration Commission (CIAC) a Complaint[11] against FFCCI praying for the payment of the following: (1) overdue obligation in the reduced amount of P4,096,656.53 as of December 15, 2004 plus legal interest; (2) P1,500,000.00 as attorney's fees; (3) P80,000.00 as acceptance fee and representation expenses; and (4) costs of litigation.

In its Answer,[12] FFCCI claimed that it no longer has any liability on the Subcontract Agreement as the three payments it made to HRCC, which amounted to P3,472,521.86, already represented the amount due to the latter in view of the works actually completed by HRCC as shown by the survey it conducted jointly with the DPWH. FFCCI further asserted that the delay in the payment processing was primarily attributable to HRCC inasmuch as it presented unverified work accomplishments contrary to the stipulation in the Subcontract Agreement regarding requests for payment.

Likewise, FFCCI maintained that HRCC failed to comply with the condition stated under the Subcontract Agreement for the payment of the latter's progress billings, i.e. joint measurement of the completed works, and, hence, it was justified in not paying the amount stated in HRCC's progress billings.

On June 16, 2005, an Arbitral Tribunal was created composed of Engineer Ricardo B. San Juan, Joven B. Joaquin and Attorney Alfredo F. Tadiar, with the latter being appointed as the Chairman.

In a Preliminary Conference held on July 5, 2005, the parties defined the issues to be resolved in the proceedings before the CIAC as follows:

- What is the correct amount of [HRCC's] unpaid progress billing?
- Did [HRCC] comply with the conditions set forth in subparagraph 4.3 of the Subcontract Agreement for the submission, evaluation/processing and release of payment of its progress billings?

- Did [HRCC] stop work on the project?

3.1 If so, is the work stoppage justified?

3.2 If so, what was the percentage and value of [HRCC's] work accomplishment at the time it stopped work on the project?

- Who between the parties should bear the cost of arbitration or in what proportion should it be shared by the parties?[13]

Likewise, during the said Preliminary Conference, HRCC further reduced the amount of overdue obligation it claimed from FFCCI to P2,768,916.66. During the course of the proceedings before the CIAC, HRCC further reduced the said amount to P2,635,397.77 – the exact difference between the total amount of HRCC's progress billings (P6,107,919.63) and FFCCI's total payments in favor of the latter (P3,472,521.86).

The CIAC Decision

On September 6, 2005, after due proceedings, the CIAC rendered a Decision[14] in favor of HRCC, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the Claimant HR CONSTRUCTION CORPORATION and AWARD made on its monetary claim against Respondent F.F. CRUZ & CO., INC., as follows:

[P]2,239,452.63

as the balance of its unpaid billings and

101,161.57

as reimbursement of the arbitration costs.

[P]2,340,614.20

Total due the Claimant

Interest on the foregoing amount [P]2,239,452.63 shall be paid at the rate of 6% per annum from the date of this Decision. After finality of this Decision, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made x x x.

SO ORDERED.[15]

The CIAC held that the payment method adopted by FFCCI is actually what is known as the "back-to-back payment scheme" which was not agreed upon under the Subcontract Agreement. As such, the CIAC ruled that FFCCI could not impose upon HRCC its valuation of the works completed by the latter. The CIAC gave credence to HRCC's valuation of its completed works as stated in its progress billings. Thus:

During the trial, [FFCCI's] Aganon admitted that [HRCC's] accomplishments are included in its own billings to the DPWH together with a substantial mark-up to cover overhead costs and profit. He further admitted that it is only when DPWH approves its (Respondent's) billings covering [HRCC's] scope of work and pays for them, that [FFCCI] will in turn pay [HRCC] for its billings on the sub-contracted works.

On clarificatory questioning by the Tribunal, [FFCCI] admitted that there is no "back-to-back" provision in the sub-contract as basis for this sequential payment arrangement and, therefore, [FFCCI's] imposition thereof by withholding payment to [HRCC] until it is first paid by the project owner on the Main Contract, clearly violates said sub-contract. It [is] this unauthorized implementation of a back-to-back payment scheme that is seen to be the reason for [FFCCI's] non-payment of the third progress billings.

It is accordingly the holding of this Arbitral Tribunal that [FFCCI] is not justified in withholding payment of [HRCC's] third progress billing for this scheme that [HRCC] has not agreed to in the sub-contract agreement x x x.

x x x

The total retention money deducted by [FFCCI] from [HRCC's] three progress billings, amounts to [P]395,945.14 x x x. The retention money is part of [HRCC's] progress billings and must, therefore, be credited to this account. The two amounts (deductions and net payments) total [P]3,868,467.00 x x x. This represents the total gross payments that should be credited and deducted from the total gross billings to arrive at what has not been paid to the [HRCC]. This results in the amount of [P]2,239,452.63 ([P]6,107,919.63 - [P]3,868,467.00) as the correct balance of [HRCC's] unpaid billings.[16]

Further, the CIAC ruled that FFCCI had already waived its right under the Subcontract Agreement to require a joint measurement of HRCC's completed works as a condition precedent to the payment of the latter's progress billings. Hence:

[FFCCI] admits that in all three instances where it paid [HRCC] for its progress billings, it never required compliance with the aforequoted contractual provision of a prior joint quantification. Such repeated omission may reasonably be construed as a waiver by [FFCCI] of its contractual right to require compliance of said condition and it is now too late in the day to so impose it. Article 6 of the Civil Code expressly provides that "rights may be waived unless the waiver is contrary to law, public order, public policy, morals or good customs". The tribunal cannot see any such violation in this case.

x x x

[FFCCI's] omission to enforce the contractually required condition of payment, has led [HRCC] to believe it to be true that indeed [FFCCI] has waived the condition of joint quantification and, therefore, [FFCCI] may not be permitted to falsify such resulting position.[17]

Likewise, the CIAC held that FFCCI's non-payment of the progress billings submitted by HRCC gave the latter the right to rescind the Subcontract Agreement and, accordingly, HRCC's work stoppage was justified. It further opined that, in effect, FFCCI had ratified the right of HRCC to stop the construction works as it did not file any counterclaim against HRCC for liquidated damages arising therefrom.

FFCCI then filed a petition for review with CA assailing the foregoing disposition by the CIAC.

The CA Decision

On February 6, 2009, the CA rendered the herein assailed Decision[18] denying the petition for review filed by FFCCI. The CA agreed with the CIAC that FFCCI had waived its right under the Subcontract Agreement to require a joint quantification of HRCC's completed works.

The CA further held that the amount due to HRCC as claimed by FFCCI could not be given credence since the same was based on a survey of the completed works conducted without the participation of HRCC. Likewise, being the main contractor, it ruled that it was the responsibility of FFCCI to include HRCC in the joint measurement of the completed works. Furthermore, the CA held that HRCC was justified in stopping its construction works on the project as the failure of FFCCI to pay its progress billings gave the former the right to rescind the Subcontract Agreement.

FFCCI sought a reconsideration[19] of the said February 6, 2009 Decision but it was denied by the CA in its Resolution[20] dated April 13, 2009.

Issues

In the instant petition, FFCCI submits the following issues for this Court's resolution:

[I.]

x x x First, [d]oes the act of [FFCCI] in conducting a verification survey of [HRCC's] billings in the latter's presence amount to a waiver of the right of [FFCCI] to verify and approve said billings? What, if any, is the legal significance of said act?

[II.]

x x x Second, [d]oes the payment of [FFCCI] to [HRCC] based on the results of the above mentioned verification survey result in the former being obliged to accept whatever accomplishment was reported by the latter?

[III.]

x x x Third, [d]oes the mere comparison of the payments made by [FFCCI] with the contested progress billings of [HRCC] amount to an adjudication of the controversy between the parties?

[IV.]

x x x Fourth, [d]oes the failure of [FFCCI] to interpose a counterclaim against [HRCC] for liquidated damages due to the latter's work stoppage, amount to a ratification of such work stoppage?

[V.]

x x x Fifth, [d]id the [CA] disregard or overlook significant and material facts which would affect the result of the litigation?[21]

In sum, the crucial issues for this Court's resolution are: first, what is the effect of FFCCI's non-compliance with the stipulation in the Subcontract Agreement requiring a joint quantification of the works completed by HRCC on the payment of the progress billings submitted by the latter; and second, whether there was a valid rescission of the Subcontract Agreement by HRCC.

The Court's Ruling

The petition is not meritorious.

Procedural Issue:

Finality and Conclusiveness of the CIAC's Factual Findings

Before we delve into the substantial issues raised by FFCCI, we shall first address the procedural issue raised by HRCC. According to HRCC, the instant petition merely assails the factual findings of the CIAC as affirmed by the CA and, accordingly, not proper subjects of an appeal under Rule 45 of the Rules of Court. It likewise pointed out that factual findings of the CIAC, when affirmed by the CA, are final and conclusive upon this Court.

Generally, the arbitral award of CIAC is final and may not be appealed except on questions of law.

Executive Order (E.O.) No. 1008[22] vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. Under Section 19 of E.O. No. 1008, the arbitral award of CIAC "shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court." [23]

In *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, [24] we explained *raison d'être* for the rule on

finality of the CIAC's arbitral award in this wise:

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. x x x[25] (Citation omitted)

Thus, in cases assailing the arbitral award rendered by the CIAC, this Court may only pass upon questions of law. Factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. This rule, however, admits of certain exceptions.

In *Spouses David v. Construction Industry and Arbitration Commission*,[26] we laid down the instances when this Court may pass upon the factual findings of the CIAC, thus:

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. x x x[27] (Citation omitted)

Issues on the proper interpretation of the terms of the Subcontract Agreement involve questions of law.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[28]

On the surface, the instant petition appears to merely raise factual questions as it mainly puts in issue the appropriate amount that is due to HRCC. However, a more thorough analysis of the issues raised by FFCCI would show that it actually asserts questions of law.

FFCCI primarily seeks from this Court a determination of whether amount claimed by HRCC in its progress billing may be enforced against it in the absence of a joint measurement of the former's completed works. Otherwise stated, the main question advanced by FFCCI is this: in the absence of the joint measurement agreed upon in the Subcontract Agreement, how will the completed works of HRCC be verified and the amount due thereon be computed?

The determination of the foregoing question entails an interpretation of the terms of the Subcontract Agreement vis-à-vis the respective rights of the parties herein. On this point, it should be stressed that where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties, its interpretation necessarily involves a question of law.[29]

Moreover, we are not called upon to examine the probative value of the evidence presented before the CIAC. Rather, what is actually sought from this Court is an interpretation of the terms of the Subcontract Agreement as it relates to the dispute between the parties.

First Substantive Issue: Effect of Non-compliance with the Joint

Quantification Requirement on the Progress Billings of HRCC

Basically, the instant issue calls for a determination as to which of the parties' respective valuation of accomplished works should be given credence. FFCCI claims that its valuation should be upheld since the same was the result of a measurement of the completed works conducted by it and the DPWH. On the other hand, HRCC maintains that its valuation should be upheld on account of FFCCI's failure to observe the joint measurement requirement in ascertaining the extent of its completed works.

The terms of the Subcontract Agreement should prevail.

In resolving the dispute as to the proper valuation of the works accomplished by HRCC, the primordial consideration should be the terms of the Subcontract Agreement. It is basic that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[30]

In *Abad v. Goldloop Properties, Inc.*,[31] we stressed that:

A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[32] (Emphasis supplied and citation omitted)

Article 4 of the Subcontract Agreement, in part, contained the following stipulations:

ARTICLE 4

SUBCONTRACT PRICE

4.1

The total SUBCONTRACT Price shall be THIRTY ONE MILLION TWO HUNDRED NINETY THREE THOUSAND FIVE HUNDRED THIRTY TWO PESOS & 72/100 ONLY ([P]31,293,532.72) inclusive of Value Added Tax x x x.

x x x

4.3

Terms of Payment

FFCCI shall pay [HRCC] within thirty (30) days upon receipt of the [HRCC's] Monthly Progress Billings subject to deductions due to ten percent (10%) retention, and any other sums that may be due and recoverable by FFCCI from [HRCC] under this SUBCONTRACT. In all cases, however, two percent (2%) expanded withholding tax on the [HRCC's] income will be deducted from the monthly payments.

Requests for the payment by the [HRCC] shall include progress accomplishment of completed works (unit of work accomplished x unit cost) as approved by [FFCCI]. Cut-off date of monthly billings shall be every 25th of the month and joint measurement shall be conducted with the DPWH's representative, Consultants, FFCCI and [HRCC] to arrive at a common/agreed quantity.[33] (Emphasis supplied)

Pursuant to the terms of payment agreed upon by the parties, FFCCI obliged itself to pay the monthly progress billings of HRCC within 30 days from receipt of the same. Additionally, the monthly progress billings of HRCC should indicate the extent of the works completed by it, the same being essential to the valuation of the amount that FFCCI would pay to HRCC.

The parties further agreed that the extent of HRCC's completed works that would be indicated in the monthly progress billings should be determined through a joint measurement conducted by FFCCI and HRCC together with the representative of DPWH and the consultants.

It is the responsibility of FFCCI to call for the joint measurement of HRCC's completed works.

It bears stressing that the joint measurement contemplated under the Subcontract Agreement should be conducted by the parties herein together with the representative of the DPWH and the consultants. Indubitably, FFCCI, being the main contractor of DPWH, has the responsibility to request the representative of DPWH to conduct the said joint measurement.

On this score, the testimony of Engineer Antonio M. Aganon, Jr., project manager of FFCCI, during the reception of evidence before the CIAC is telling, thus:

MR. J. B. JOAQUIN:

Engr. Aganon, earlier there was a stipulation that in all the four billings, there never was a joint quantification.

PROF. A. F. TADIAR:

He admitted that earlier. Pinabasa ko sa kanya.

ENGR. R. B. SAN JUAN:

The joint quantification was done only between them and DPWH.

x x x x

ENGR. AGANON:

Puwede ko po bang i-explain sandali lang po regarding lang po doon sa quantification na iyon? Basically po as main contractor of DPWH, we are the ones who [are] requesting for joint survey quantification with the owner, DPWH. Ngayon po, although wala sa papel na nag-witness and [HRCC] still the same po, nandoon din po sila

during that time, kaya lang ho . . .

MR. J. B. JOAQUIN:

Hindi pumirma?

ENGR. AGANON:

Hindi sila puwede pumirma kasi ho kami po ang contractor ng DPWH hindi sila.[34]

(Emphasis supplied)

FFCCI had waived its right to demand for a joint measurement of HRCC's completed works under the Subcontract Agreement.

The CIAC held that FFCCI, on account of its failure to demand the joint measurement of HRCC's completed works, had effectively waived its right to ask for the conduct of the same as a condition sine qua non to HRCC's submission of its monthly progress billings.

We agree.

In *People of the Philippines v. Donato*,[35] this Court explained the doctrine of waiver in this wise:

Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it."

As to what rights and privileges may be waived, the authority is settled:

x x x the doctrine of waiver extends to rights and privileges of any character, and, since the word 'waiver' covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, or guaranteed by constitution, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy; and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large. x x x[36] (Emphasis supplied and citations omitted)

Here, it is undisputed that the joint measurement of HRCC's completed works contemplated by the parties in the Subcontract Agreement never materialized. Indeed, HRCC, on separate occasions, submitted its monthly progress billings indicating the extent of the works it had completed sans prior joint measurement. Thus:

Progress Billing Period Covered Amount

1[st] Progress Billing dated September 17, 2004[37]

August 16 to September 15, 2004

P2,029,081.59

2[nd] Progress Billing dated October 29, 2004[38]

September 18 to 25, 2004

P1,587,760.23

3[rd] Progress Billing dated October 29, 2004[39]

September 26 to October 25, 2004

P2,569,543.57

4[th] Progress Billing dated November 25, 2004

October 26 to November 25, 2004

P1,527,112.95

FFCCI did not contest the said progress billings submitted by HRCC despite the lack of a joint measurement of the latter's completed works as required under the Subcontract Agreement. Instead, FFCCI proceeded to conduct its own verification of the works actually completed by HRCC and, on separate dates, made the following payments to HRCC:

Date of Payment Period Covered Amount

December 3, 2004[40]

April 2 to July 25, 2004

P373,452.24

December 21, 2004[41]

July 26 to September 25, 2004

P1,771,429.45

March 11, 2005[42]

September 26 to November 25, 2004

P1,327,639.87

FFCCI's voluntary payment in favor of HRCC, albeit in amounts substantially different from those claimed by the latter, is a glaring indication that it had effectively waived its right to demand for the joint measurement of the completed works. FFCCI's failure to demand a joint measurement of HRCC's completed works reasonably justified the inference that it had already relinquished its right to do so. Indeed, not once did FFCCI insist on the conduct of a joint measurement to verify the extent of HRCC's completed works despite its receipt of the four monthly progress billings submitted by the latter.

FFCCI is already barred from contesting HRCC's valuation of the completed works having waived its right to demand the joint measurement requirement.

In view of FFCCI's waiver of the joint measurement requirement, the CA, essentially echoing the CIAC's disposition, found that FFCCI is obliged to pay the amount claimed by HRCC in its monthly progress billings. The CA reasoned thus:

Verily, the joint measurement that [FFCCI] claims it conducted without the participation of [HRCC], to which [FFCCI] anchors its claim of full payment of its obligations to [HRCC], cannot be applied, nor imposed, on [HRCC]. In other words, [HRCC] cannot be made to accept a quantification of its works when the said quantification was made without its participation. As a consequence, [FFCCI's] claim of full payment cannot be upheld as this is a result of a quantification that was made contrary to the express provisions of the Subcontract Agreement.

The Court is aware that by ruling so, [FFCCI] would seem to be placed at a disadvantage because it would result in [FFCCI] having to pay exactly what [HRCC] was billing the former. If, on the other hand, the Court were to rule otherwise[,] then [HRCC] would be the one at a disadvantage because it would be made to accept payment that is less than what it was billing.

Circumstances considered, however, the Court deems it proper to rule in favor of [HRCC] because of the explicit provision of the Subcontract Agreement that requires the participation of the latter in the joint measurement. If the Court were to rule otherwise, then the Court would, in effect, be disregarding the explicit agreement of the parties in their contract.[43]

Essentially, the question that should be resolved is this: In view of FFCCI's waiver of its right to demand a joint measurement of HRCC's completed works, is FFCCI now barred from disputing the claim of HRCC in its monthly progress billings?

We rule in the affirmative.

As intimated earlier, the joint measurement requirement is a mechanism essentially granting FFCCI the opportunity to verify and, if necessary, contest HRCC's valuation of its completed works prior to the submission of the latter's monthly progress billings.

In the final analysis, the joint measurement requirement seeks to limit the dispute between the parties with regard to the valuation of HRCC's completed works. Accordingly, any issue which FFCCI may have with regard to HRCC's valuation of the works it had completed should be raised and resolved during the said joint measurement instead of raising the same after HRCC had submitted its monthly progress billings. Thus, having relinquished its right to ask for a joint measurement of HRCC's completed works, FFCCI had necessarily waived its right to dispute HRCC's valuation of the works it had accomplished.

Second Substantive Issue:

Validity of HRCC's Rescission of the Subcontract Agreement

Both the CA and the CIAC held that the work stoppage of HRCC was justified as the same is but an exercise of its right to rescind the Subcontract Agreement in view of FFCCI's failure to pay the former's monthly progress billings. Further, the CIAC stated that FFCCI could no longer assail the work stoppage of HRCC as it failed to file any counterclaim against HRCC pursuant to the terms of the Subcontract Agreement.

For its part, FFCCI asserted that the work stoppage of HRCC was not justified and, in any case, its failure to raise a counterclaim against HRCC for liquidated damages before the CIAC does not amount to a ratification of the latter's work stoppage.

The determination of the validity of HRCC's work stoppage depends on a determination of the following: first, whether HRCC has the right to extrajudicially rescind the Subcontract Agreement; and second, whether FFCCI is already barred from disputing the work stoppage of HRCC.

HRCC had waived its right to rescind the Subcontract Agreement.

The right of rescission is statutorily recognized in reciprocal obligations. Article 1191 of the Civil Code pertinently reads:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

The rescission referred to in this article, more appropriately referred to as resolution is on the breach of faith by the defendant which is violative of the reciprocity between the parties.[44] The right to rescind, however, may be waived, expressly or impliedly.[45]

While the right to rescind reciprocal obligations is implied, that is, that such right need not be expressly provided in the contract, nevertheless the contracting parties may waive the same.[46]

Contrary to the respective dispositions of the CIAC and the CA, we find that HRCC had no right to rescind the Subcontract Agreement in the guise of a work stoppage, the latter having waived such right. Apropos is Article 11.2 of the Subcontract Agreement, which reads:

11.2 Effects of Disputes and Continuing Obligations

Notwithstanding any dispute, controversy, differences or arbitration proceedings relating directly or indirectly to this SUBCONTRACT Agreement and without prejudice to the eventual outcome thereof, [HRCC] shall at all times proceed with the prompt performance of the Works in accordance with the directives of FFCCI and this SUBCONTRACT Agreement.[47] (Emphasis supplied)

Hence, in spite of the existence of dispute or controversy between the parties during the course of the Subcontract Agreement, HRCC had agreed to continue the performance of its obligations pursuant to the Subcontract Agreement. In view of the provision of the Subcontract Agreement quoted above, HRCC is deemed to have effectively waived its right to effect extrajudicial rescission of its contract with FFCCI. Accordingly, HRCC, in the guise of rescinding the Subcontract Agreement, was not justified in implementing a work stoppage.

The costs of arbitration should be shared by the parties equally.

Section 1, Rule 142 of the Rules of Court provides:

Section 1. Costs ordinarily follow results of suit. – Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law. (Emphasis supplied)

Although, generally, costs are adjudged against the losing party, courts nevertheless have discretion, for special reasons, to decree otherwise.

Here, considering that the work stoppage of HRCC is not justified, it is only fitting that both parties should share

in the burden of the cost of arbitration equally. HRCC had a valid reason to institute the complaint against FFCCI in view of the latter's failure to pay the full amount of its monthly progress billings. However, we disagree with the CIAC and the CA that only FFCCI should shoulder the arbitration costs. The arbitration costs should be shared equally by FFCCI and HRCC in view of the latter's unjustified work stoppage.

WHEREFORE, in consideration of the foregoing disquisitions, the Decision dated February 6, 2009 and Resolution dated April 13, 2009 of the Court of Appeals in CA-G.R. SP No. 91860 are hereby AFFIRMED with MODIFICATION that the arbitration costs shall be shared equally by the parties herein.

SO ORDERED.

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

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok, concurring; rollo, pp. 47-69.

[2] Id. at 78.

[3] Id. at 85-92.

[4] Id. at 93.

[5] Id. at 109.

[6] Id. at 111.

[7] Id. at 94.

[8] Id. at 95.

[9] Id. at 113.

[10] Id. at 96.

[11] Id. at 79-84.

[12] Id. at 97-105.

[13] Id. at 124.

[14] Id. at 116-135.

[15] Id. at 134.

[16] Id. at 127-128.

[17] Id. at 130-131.

[18] Supra note 1.

[19] Rollo, pp. 70-77.

[20] Supra note 2.

[21] Rollo, pp. 21-22.

[22] Creating an Arbitration Machinery in the Construction Industry of the Philippines, otherwise known as the

“Construction Industry Arbitration Law”.

[23] SC Circular No. 1-91 and Revised Administrative Circular No. 1-95 provides that appeal from the arbitral award of the CIAC must first be brought to the CA on questions of fact, law or mixed questions of fact and law.

[24] G.R. No. 110434, December 13, 1993, 228 SCRA 397.

[25] Id. at 405.

[26] 479 Phil. 578 (2004).

[27] Id. at 590-591.

[28] Vda. De Formoso v. Philippine National Bank, G.R. No. 154704, June 1, 2011.

[29] See Philippine National Construction Corporation v. Court of Appeals, G.R. No. 159417, January 25, 2007, 512 SCRA 684, 695.

[30] Civil Code of the Philippines, Article 1370.

[31] G.R. No. 168108, April 13, 2007, 521 SCRA 131.

[32] Id. at 144.

[33] Rollo, p. 87.

[34] Id. at 330-331.

[35] G.R. No. 79269, June 5, 1991, 198 SCRA 130.

[36] Id. at 154.

[37] Supra note 4.

[38] Supra note 7.

[39] Supra note 8.

[40] Supra note 5.

[41] Supra note 6.

[42] Supra note 9.

[43] Rollo, pp. 65-66.

[44] Pryce Corp. v. Phil. Amusement and Gaming Corp., 497 Phil. 490, 505 (2005), citing the Concurring Opinion of Mr. Justice J.B. L. Reyes in Universal Food Corp. v. CA, 144 Phil. 1, 21 (1970).

[45] Francisco v. DEAC Construction, Inc., G.R. No. 171312, February 4, 2008, 543 SCRA 644, 655.

[46] Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. IV (1991).

[47] Rollo, p. 91.

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