MOVERTRADE CORPORATION, PETITIONER, VS. THE COMMISSION ON AUDIT AND THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, RESPONDENTS.

G.R. No. 204835. September 22, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[1]

This Petition for Certiorari[2] under Rule 65, in relation to Rule 64, of the Rules of Court assails the December 29, 2011 Decision[3] of respondent Commission on Audit (COA), which denied petitioner Movertrade Corporation's claim for payment for dredging works with side dumping of spoils in Pampanga Bay and the primary Pasac-Guagua-San Fernando Waterways in Pampanga amounting to P7,354,897.10. Likewise assailed is the November 5, 2012 Resolution[4] of respondent COA denying petitioner's Motion for Reconsideration.

Factual Antecedents

On February 7, 1996, petitioner and respondent Department of Public Works and Highways (DPWH) entered into a Contract Agreement[5] for dredging and other related works in Pampanga Bay and the primary Pasac-Guagua-San Fernando Waterways in Pampanga, which were affected by the Mt. Pinatubo eruptions and mudflows, in the total amount of P188,698,000.00, broken down as follows:

Particulars

Volume

Amount

Dredging Works

3.35 million cu. m.

P148,698,000.00

Distance Pumping

provisional sum

20,000,000.00

Spoil Site Development

provisional sum

20.000,000.00

Total

P188,698,000.00[6]

The Mount Pinatubo Emergency-Project Management Office of respondent DPWH, headed by Director Florante Soriquez (Director Soriquez), implemented and supervised the project.[7]

On August 13, 1997, due to the alleged absence of spoil sites, petitioner requested permission from Director Soriquez to allow it to undertake side dumping (dumping within the river) chargeable against the dredging works.[8]

On August 18, 1997, Director Soriquez issued a letter[9] denying the request. He reminded petitioner that side dumping was not allowed and that as per the report of Engr. Marcelino P. Bustos (Engr. Bustos), the Area Engineer of respondent DPWH, petitioner could still pump the dredge spoils to the following spoil sites: Pascual "A," Pascual "B," and the Regala fishpond.

On September 29, 1997, Engr. Bustos issued a letter[10] requiring petitioner to provide additional pipelines for distance pumping. Engr. Bustos also reiterated in his letter that "Pascual spoil site can still accommodate more materials" and that '[respondent DPWH] is not allowing or giving any instruction to use side dumping process for whatsoever reason."[11]

However, despite the denial and the prohibition issued by Director Soriquez and Engr. Bustos, petitioner continued to side dump.[12] Thus, on October 1, 1997, Director Soriquez issued another letter,[13] which reads:

> We were informed by our field personnel that in spite of the field memo dated 29 September 1997 x x x issued to your Engineer at the 28" [diameter] dredger and followed by a letter dated 30 September 1997 by Jose C. Gabriel, Engineer IV of this office, your 28" [diameter] dredger presently operating near the town proper of Sasmuan, is still dredging through side dumping.
>
> Please be informed that side dumping activities in the area is not allowed which this office has previously informed your end thru our letter of 18 August 1997. There is still an available spoil site where spoils could be dumped thru distance pumping and the other one is the Regala spoil site, which has to be developed as previously instructed based on our previous letters.[14]

Still, petitioner ignored the prohibition and continued to side dump.[15]

When the project was in its final phase of completion, petitioner, through its President, Mr. Wenceslao Zingapan, wrote a letter[16] dated October 15, 1997 to then DPWH Secretary Gregorio Vigilar (Secretary Vigilar) asking for payment for the dredging work it rendered. In the letter, petitioner explained that it was forced to side dump the dredge spoils along the project waterway for the following reasons:

> 1.0)
>
> The strong and heavy siltation if not avoided will ground our 28" Dredge and the grounding will render the equipment inutile for a considerable time beyond the contract despite the application of extraneous salvaging measures, and
>
> 2.0)
>
> Even if the extraordinary effort of the Project Implementing Office shall be factored in the provision and making available to us the needed spoil site, the Regala Property which was presented to us for development of a dike thereon, is a mere 2-hectare size and in our long experience in shallow river dredging, is uneconomical, unsafe and inoperable for utilization as an effective dumping site. If the development of the Regala property is pursued, the disproportionate heavy pressure pumping induced by our huge deep sea 28" Dredge will cause a

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> dangerous spillage back to the middle of the waterway. The resultant volume equivalent to the containment capacity of the 2-hectare size Regala property will create a dike-like [blockade] transversal to the length of the waterway. Navigation and commerce along the waterway then will be put to standstill.[17]

On October 24, 1997, Director Soriquez issued a letter[18] informing petitioner of the denial of its request for payment. He said:

> Please be informed that side dumping of your [dredge] spoils between Sta. 15+000 to Sta. 14+000 was not allowed by this Office thru our letters of August 18, 1997 and October 1, 1997 to your end. The strong and heavy siltations you are mentioning at the vicinity of Sta. 14+000 (mouth of San Pedro Creek) was not too alarming, since the flow of the floodwaters and siltations coming from the confluence of Pasig-Potrero River is x x x going downstream through San Francisco River at Minalin, as a result of the heavy rains caused by typhoon Ibiang and not at Guagua River and San Pedro Creek. The siltations at the subject section were already there since the breaching of the transverse dike.
>
> Furthermore, with respect to spoil site availability, you have two (2) alternatives: a] Utilize Pascual "A" spoil site, thru distance pumping wherein the volume of 50,000 cu. m. of silt materials could still be accommodated, and b] Utilize Regala fishpond, even with only two (2) hectares in area, can contain at least 60,000 cu. m. of dredge spoils, the same area as the spoil site at Malusac portion (S3-1) that you have used previously using your 25" dia. Dredger.
>
> In view of the above, we cannot recommend any compensation for the volume of silt materials side dumped based on your letter of October 15,1997.[19]

When the project was completed, respondent DPWH paid petitioner the total amount of P180,029,910.15, covered by various disbursement vouchers.[20] The amount of P7,354,897.10, representing the 165,576.27 cubic meters dredging work rendered by petitioner, however, was not paid.[21]

On June 18, 1998, the Director III of the Legal Service of DPWH, Mr. Cesar D. Mejia, issued a Memorandum[22] to Director Soriquez expressing his position that petitioner should be paid for work accomplished as shown in the As-Built Plans and the Statement of Work Accomplished without the necessity of issuing a variation order.

On January 4, 2000, then DPWH Secretary Vigilar wrote a letter stating that the agency will no longer entertain any request for reconsideration on the subject matter.[23] Petitioner, however, continued to demand payment for the said dredging works.

On February 24, 2005, former DPWH Acting Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane Jr.) issued Department Order No. 51, creating an Ad Hoc Committee to further evaluate the payment claim of petitioner.[24]

On October 5, 2005, the Committee rendered a Resolution[25] recommending payment of the claim in the amount of P7,354,897.91 provided petitioner restores to its original grade elevation the section where dredge spoils were dumped. One of the members of the Committee, Regional Director Ramon P. Aquino (Regional Director Aquino), DPWH-Region III, San Fernando City, Pampanga, however, did not agree with the recommendation and maintained that petitioner is not entitled to payment for breach of contract.[26] And since Secretary Ebdane Jr. likewise did not agree with the Resolution, he resolved to return the same to the Committee for re-evaluation.[27]

On December 8, 2006, the DPWH Ad Hoc Committee rendered an amended Resolution,[28] to wit:

> WHEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED THAT PAYMENT FOR THE CLAIM OF MOVERTRADE CORPORATION FOR WORK PERFORMED UNDER THE DUTCH-FUNDED MT. PINATUBO AFFECTED WATERWAYS PROJECT SHALL BE GRANTED PROVIDED THAT THE IMPLEMENTING OFFICE SHALL DETERMINE THE AMOUNT OF PAYMENT DUE TO THE CONTRACTOR.[29]

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Regional Director Aquino and Secretary Ebdane Jr., however, did not sign amended Resolution as they did not agree with the recommendation.[30]

On July 14, 2009, petitioner offered a reduction of P300,000.00 on its claim if payment is made within a month.[31]

On January 22,2010, Assistant Secretary Dimas S. Soguilon, the Chairman of the Extraordinary Claims and Review Committee, DPWH, issued a Memorandum finding petitioner's claim for payment to be a money claim, which is under the jurisdiction of respondent COA.[32]

Accordingly, on February 19,2010, petitioner filed with respondent COA a money claim against respondent DPWH for payment of dredging works with side dumping of spoils in Pampanga Bay and the primary Pasac-Guagua-San Fernando Waterways in Pampanga amounting to P7,354,897.10.[33]

Ruling of the Commission on Audit

On December 29, 2011, respondent COA rendered Decision No. 2011-106 denying the money claim[34] of petitioner for lack of merit.[35] Respondent COA ruled that petitioner is not entitled to payment for the dredging works for breach of contract.[36] Paragraph 11 of the Contract Agreement prohibits side dumping as it specifically requires that dredge spoils should be dumped at pre-designated areas to prevent them from spilling back into the channel.[37] It also noted that petitioner's claim for payment was never approved by respondent DPWH as the Resolution and amended Resolution issued by the DPWH Ad Hoc Committee were not signed by Secretary Ebdane Jr.[38]

Aggrieved, petitioner moved for reconsideration[39] insisting that there was no breach of contract and that even if there was a breach, it is still entitled to payment under the principle of quantum meruit.

On November 5, 2012, respondent COA issued a Resolution denying the motion for reconsideration for lack of merit.[40] It stood pat on its finding that there was a breach of contract as the side dumping employed by petitioner was never authorized, verbally or in writing.[41] As to the principle of quantum meruit, respondent COA explained that the principle applies only when there is no written contract between the parties.[42] In this case, since there is a written contract entered into by the parties, the principle of quantum meruit cannot be applied.[43] Thus, petitioner should bear the loss for breaching the contract.[44]

Issue

Hence, petitioner filed the instant Petition raising the core issue of whether petitioner is entitled to the payment of P7,354,897.10 for dredging works.

Petitioner's Arguments

Petitioner ascribes grave abuse of discretion on the part of respondent COA in denying its money claim.[45] It insists that it did not violate paragraph 11 of the Contract Agreement and alleges it was respondent DPWH who failed to provide adequate spoil sites.[46] To substantiate its allegation, petitioner cites Director Soriquez's letter[47] dated June 6, 1997 addressed to the Executive Director of the Mt. Pinatubo Commission, where Director Soriquez mentioned that "[petitioner's] equipment can no longer continue the dredging works due to non-availability of spoil sites [as] the spoil sites being used in the area have already been utilized to full capacity."[48] This statement allegedly proves that respondent DPWH knew that there were no available spoil sites left, which justifies petitioner's non-compliance with paragraph 11 of the Contract Agreement.[49]

Petitioner likewise denies side dumping the dredge spoil and claims that what it did was actually "free dumping,"

wherein the spoils during dredging were exposed to strong current of the water and were carried away by it towards the mouth of Manila Bay.[50] Although it admits that it used the term "side dumping" in its letters, it claims that it was used to refer to a situation where the spoils are not being dumped at the spoil sites.[51] In any case, petitioner claims that despite the method of disposal used, the waterways remained navigable except for minimal siltation when the DPWH engineers inspected the subject waterways.[52] And since the dredging works benefited the public and the government, petitioner asserts that it is entitled to its money claim in the highest interest of justice and equity.[53]

Respondents' Arguments

Respondents, through the Office of the Solicitor General (OSG), contend that respondent COA committed no grave abuse of discretion in denying the money claim because petitioner in disposing the dredge spoils through side dumping violated paragraph 11 of the Contract Agreement.[54] They maintain that respondent DPWH provided adequate spoil sites and that assuming that these were insufficient, petitioner should have ceased dredging operation in the meantime instead of breaching the terms and conditions of the Contract Agreement.[55] Also, petitioner is not entitled to its money claim as "a breach of contract cannot be the source of rights or the basis of a cause of action."[56] Moreover, the dredging work did not benefit the government as side dumping, which entails dumping of dredge spoils back into the river, goes against the very purpose for which the dredging works were done.[57]

Our Ruling
The Petition must fail.

Paragraph 11 of the Contract Agreement reads:

> - The disposal of dredge spoils shall be made at pre-designated areas to be provided by the OWNER, including land access as appropriate, to the CONTRACTOR as follows:
>
> In case of cutter suction dredge or other similar type with pipeline discharge, the disposal area shall be within a maximum distance of 500 meters beyond which the CONTRACTOR shall be entitled to additional payment at [the] rate of P3.00 per cu. m. per 500 meters increment, but the total discharge distance shall not exceed 2,000 meters.
>
> The CONTRACTOR shall develop and maintain the disposal areas during use and, together with the OWNER'S representative shall monitor and evaluate their effectiveness, to ensure that discharges thereof, into the primary waterway, are minimized.[58]

Under the said provision, petitioner should dispose of the dredge spoils by dumping them at the pre-designated areas provided by respondent DPWH. Petitioner should also develop and maintain the designated disposal areas during use. Petitioner, however, failed to comply with the said provision as it opted to side dump 165,576.27 cubic meters of dredge spoils back to the river. To justify its action, petitioner claims that respondent DPWH failed to provide adequate spoil sites.

We do not agree.

It is evident from the records that respondent DPWH provided spoil sites to petitioner. Director Soriquez, in his letters dated August 18, 1997 and October 1, 1997, specifically mentioned Pascual "A," Pascual "B," and the Regala fishpond as designated spoil sites. Engr. Bustos, in his letter dated September 29, 1997, also reminded petitioner of the available spoil sites. These letters clearly show that contrary to the claim of petitioner, respondent DPWH complied with its obligation to provide spoil sites.

Petitioner, however, contends that these letters contradict Director Soriquez's earlier letter dated June 6, 1997

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addressed to the Executive Director of the; Mt. Pinatubo Commission. In the said letter, Director Soriquez was requesting the Mt. Pinatubo Commission to issue a certification to the OSG to confirm the availability of funds for the expropriation of certain properties as "the spoil sites being used have already been utilized to full capacity."[59]

At first glance, the letter dated June 6, 1997 issued by Director Soriquez seems to contradict his subsequent letters. But a careful review of the records leads us to believe otherwise. First of all, when Director Soriquez informed petitioner that there were still available spoil sites, he cited the report of Engr. Bustos as basis. Thus, it is possible that at the time Director Soriquez issued the lelter dated June 6, 1997, he was not aware that there were still available spoil sites in some other areas and that it was only after he received the report of Engr. Bustos that he became aware of the availability of said spoil sites. And considering that petitioner's request for side dumping was made on August 13, 1997 or more than two months after Director Soriquez wrote to Executive Director Fernando, it is also possible that during that span of time, respondent DPWH was able to look for other possible spoil sites. In fact, in the Memorandum dated December 17, 1999 addressed to then DPWH Secretary Vigilar, Director Soriquez explained that:

> A. The spoil sites referred to in the subject communications of the contractor with a total of 30.2 hectares, such as the 10 hectares of Mrs. Olivia Pascual, 7.7. hectares of P. Santos, et al., and the 12.5 hectares of F. Gutierrez, did not materialize due to funding constraint. However, a written instruction was issued to the contractor to utilize further the existing 5.0 hectares of Mrs. Olivia Pascual adjacent to the 10.0 hectares owned also by Mrs. Pascual, the 2 hectares owned by Mr. Regala and the Mangalindan/Manansala property with an area of 3 hectares. The combined total area of 10 hectares for the 3 spoil sites could accommodate 168,517 cu. m. The total side dumping volume is 165,000 cu. m. The contractor was given ample time to develop these spoil sites to contain the [dredge] volume but unfortunately they insisted on side dumping because they lack sufficient pipelines for distance pumping with an allocation of P20 Million in the Contract Agreement. Such provision was purposely provided in the contract in the event distance pumping would be required but the contractor never availed of this provision and undertook side dumping activities without first obtaining the approval of the DPWH.[60]

In view of the foregoing, we find petitioner's contention untenable as the letter dated June 6, 1997 does not necessarily contradict the subsequent letters issued by Director Soriquez.

Neither can petitioner justify the breach by merely alleging that the spoil sites provided by respondent DPWH were inadequate, uneconomical, unsafe, and inoperable.[61] To begin with, no evidence was presented to support these allegations. And even if true, petitioner failed to inform respondent DPWH of these problems. In fact, after receiving Director Soriquez's letter dated August 18, 1997 denying its request to side dump the dredge spoils, petitioner did not ask for a reconsideration nor did it issue any letter questioning the capacity of the designated spoil sites. Instead, it was only after the dredge spoils were side dumped or when petitioner was already following-up its claim for payment that it explained in writing its reasons for side dumping.[62]

Respondent DPWH, on the other hand, consistently prohibited side dumping as reiterated in the letters dated September 29, 1997 and October 1, 1997 issued by Engr. Bustos and Director Soriquez, respectively. However, notwithstanding the prohibition, petitioner continued with its side dumping activities without any explanation. Petitioner's blatant defiance of the prohibition on side dumping is a violation of the contract that should not be ignored just because petitioner was able to complete the project.

It is a basic principle in law that contracts have the force of law between the parties and should be complied with in good faith.[63] In this case, the contract specifically provides the manner of disposing dredge spoils. Thus, petitioner cannot unilaterally change the manner of disposal without first amending the contract or obtaining the

express consent or approval of respondent DPWH. Otherwise, petitioner would be guilty of breaching the contract. "[A] breach occurs where the contractor inexcusably fails to perform substantially in accordance with the terms of the contract."[64] Without a doubt, petitioner's failure to dump the dredge spoils at the designated spoil sites constitutes a breach.

As a last-ditch effort, petitioner for the first time claims that the dredge spoils were not side dumped but were "freely" dumped. Petitioner's attempt to split hairs between "side dumping" and "free dumping" is unavailing as both are not allowed under paragraph 11 of the Contract Agreement. It makes no difference whether petitioner performed side dumping or free dumping activities considering that in both instances, dredge spoils are not dumped at spoil sites. What is crucial is the admission of petitioner that it did not dump the dredge spoils at the designated spoil sites but dumped them back into the river.[65] The act of dumping dredge spoils back into the river clearly violates paragraph 11 of the Contract Agreement. And as aptly explained by respondent COA:

> Furthermore, in the engineering point of view, for purposes of improving the discharge capacity of the channel, dredging through side dumping is not a sound engineering practice. The purpose of pre-designated spoil sites is to provide containment of the [dredge] spoils to ensure that the same will not flow back into the channel, otherwise government funds would be wasted because of faulty dredging procedure. (Memorandum dated October 23, 2001 of OIC-Project Director Amando R. Ramirez, MPE-PMO, DPWH)(Emphasis supplied)[66]

Considering that the dredge spoils were dumped back into the river, we cannot be certain, as pointed out by the OSG, that the government benefited from petitioner's 165,576.27 cubic meters dredging work. And it would be unfair to allow petitioner to benefit from its breach. Besides, petitioner cannot claim that it was not duly compensated for the services it rendered as the amount of P7,354,897.10 is only a part of the P188,698,000.00 contract. In fact, petitioner admits that it was already paid the amount of P180,029,910.15.[67] Thus, we agree with respondent COA that petitioner is not entitled to its money claim for the 165,576.27 cubic meters dredging work as it was done in contravention of paragraph 11 of the Contract Agreement.

All told, we find no grave abuse of discretion on the part of respondent COA in denying petitioner's money claim as the evidence on record undoubtedly supports the factual findings of respondent COA. We need not belabor that in the absence of grave abuse of discretion, the decisions and resolutions of respondent COA are accorded not only with respect but also with finality, not only on the basis of the doctrine of separation of powers, but also of its presumed expertise in the laws it is entrusted to enforce.[68]

WHEREFORE, the Petition is hereby DISMISSED for lack of merit. The assailed December 29, 2011 Decision and the November 5, 2012 Resolution of respondent Commission on Audit are hereby AFFIRMED.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Bersamin, Villarama, Jr., Perez, and Leonen, JJ., concur.

Peralta, and Jardeleza, JJ., no part.

Brion, and Reyes, JJ., on leave.

Mendoza, and Perlas-Bernabe, JJ., on official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on September 22, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 22, 2015 at 3:22 p.m.

Very truly yours,

(SGD)
FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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[1] Civil Code, Art. 1159.

[2] Rollo, pp. 13-41.

[3] Id. at 55-61; penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[4] Id at 80-83.

[5] Id. at 84-92. Since time was of the essence, respondent DPWH requested authority from the President to undertake the dredging through negotiated contract using simplified bidding (Id. at 56).

[6] Id. at 55-56.

[7] Id. at 56.

[8] Id. at 56 and 95.

[9] Id. at 96.

[10] Id. at 97.

[11] Id.

[12] Id. at 56.

[13] Id. at 98.

[14] Id.

[15] Id. at 56.

[16] Id. at 99-100.

[17] Id. at 99.

[18] Id. at 101

[19] Id.

[20] Id. at 20.

[21] Id. at 21.

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[22] Id. at 151.

[23] Id. at 56.

[24] Id. at 152.

[25] Id. at 153-157.

[26] Id. at 57.

[27] Id.

[28] Id. at 165-170.

[29] Id. at 170.

[30] Id. at 57.

[31] Id.

[32] Id.

[33] Id. at 42-46.

[34] It is worthy to note that the project was commenced almost fifteen (15) years ago. For this reason, the funding for the project had been reverted to the National Treasury as stated by the Chief, Cash Division, DPWH-Office of the Secretary (OSEC), in a Certification dated August 8, 2010, that the outstanding balance for the project amounting to P9,380,197.69 under DPWH Account No. 2028-90025-3, as of December 29, 1999, had lapsed on the first working day of FY-2000. A subsequent Certification dated August 19, 2010 was issued by the Cashier, DPWH, OSEC, that the said account was already closed effective November 8,2002. Thus, contrary to the assertion of claimant, this petition falls under the concept of a money claim against the government (Id. at 59).

[35] Id. at 60.

[36] Id. at 59-60.

[37] Id.

[38] Id. at 59.

[39] Id. 62-79.

[40] Id. at 83.

[41] Id. at 82.

[42] Id.

[43] Id.

[44] Id.

[45] Id. at 30 and 284.

[46] Id. at 30 and 280-292.

[47] Id. at 93-94.

[46] Id. at 34 and 282.

[48] Id. at 30-35 and 284.

[49] Id. at 30-32 and 290.

[50] Id. at 32 and 291.

[51] Id. at 31-32 and 290.

[52] Id. at 36.

[54] Id. at 361-363.

[55] Id. at 363.

[56] Id. at 363-364; citing Twin Towers Condominium Corp. v. Court of Appeals, 446 Phil. 280, 308 (2003).

[57] Id. at 364-365.

[58] Id. at 88.

[59] Id. at 93.

[60] Id. at 81-82.

[61] Id. at 99.

[62] Id.

[63] Gonzales v. Phil. Commercial and International Bank, 659 Phil. 244, 261. (2011).

[64] J Plus Asia Development Corporation v. Utility Assurance Corporation, G.R. No. 199650, June 26, 2013, 700 SCRA 134, 156.

[65] Rollo, p. 32.

[66] Id. at 59-60.

[67] Id. at 20.

[68] Yap v. Commission on Audit, 633 Phil. 174, 195 (2010).

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