

PABLO S. CRUZ, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.*G.R. No. 71557. November 29, 1988*

Ponente: PADILLA, J.

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In this petition for review on certiorari, petitioner seeks to annul and set aside Commission on Audit Decision No. 358,[1] dated 20 May 1985, which denied his request to include in the computation of additional architect's fees the cost of some equipments, specifically, "Items "F", "G" and "H" of Group I - Built-in equipment of Phase "C"" in the construction of the GSIS hospital building.

The controversy arose from the following antecedents:

On 27 September 1960, Pablo S. Cruz (herein petitioner), a duly licensed architect, entered into a "Contract of Services"[2] with the Government Service Insurance System (hereinafter, GSIS) for the Construction of the GSIS Hospital (also known as Hospital ng Bagong Lipunan). Under such contract, petitioner agreed to perform preliminary, contract documents and supervision services, for which GSIS agreed to pay "3.65% (3.50% for preliminary and contract documents services and .15% for supervision services) of Ten Million Pesos (P10,000,000.00)."[3] The contract further provided that should there be an increase or decrease in the cost of the construction the architect's fees would be adjusted accordingly.[4]

After the delivery of services has been commenced by petitioner, the total project cost was finally agreed upon by the parties and approved by GSIS at Fifteen Million Pesos (P15,000,000.00), allocated at Thirteen Million Pesos (P13,000,000.00) for building and Two Million Pesos (P2,000,000.00) for equipment. Based on such increased cost of construction, petitioner made a claim for the corresponding increase in his architect's fees. The amount of P232,091.96 was requested corresponding to all equipment Items in Group I of Phase "C", specifically Items "A" to "H". When the voucher for the claim of petitioner was presented to the office of the Auditor, GSIS, Manila, for pre-audit, the aforesaid amount was reduced to only P140,737.49 corresponding to the cost of Items "A" to "E" of Phase "C". The disapproved difference of P91,354.47 corresponds to the cost of Items "F", "G" and "H" of Phase "C". The disallowance was based on the ruling[5] of the Honorable, the Chairman of the Commission on Audit (hereinafter, COA or Commission) that, "xxxx the claim of Mr. Pablo Cruz for payment of additional architect's fees may be given due course provided however that the amounts under Items "F", "G" and "H" of the Group I - Built-in equipment covered by Phase "C" should be deducted from the total cost of equipment in the computation of the percentage fee xxxx."[6] The said decision of COA was based mainly on the principle that equipments are not part of construction materials and therefore cost of equipment is not considered part of construction cost.

Petitioner filed a motion to reconsider COA Decision No. 155. The motion was denied in COA Decision No. 358, dated 20 May 1985, subject of the present petition for review.

It is COA's position that cost of Item "F" (laundry equipment), Item "G" (x-ray equipment) and Item "H" (stills, sterilizers and special lighting equipment) is not part of the construction cost for purposes of computing architect's

fees, on the premise that their inclusion in the construction did not entail exercise of architect's skill or expertise and that these equipments are not really integral parts of the building. The Commission further states that architect's fees should be dependent on the nature of equipment installed and since Item "F", "G" and "H" are merely additional features, they should not be deemed part of the construction cost, following the dictum laid down in the U.S. case of *Alabama Great Southern Railroad Company v. Davenport and Co.*[7] that "equipment is distinct from and does not include construction."

Upon the other hand, petitioner insists that the items in controversy are integral parts of the hospital building. In his letter of 19 December 1983 to the GSIS he quotes a portion of the opinion of the Board of Examiners for Architects dated 2 October 1972 as follows:[8]

"NOT PART OF THE CONSTRUCTION

ITEM F - (LAUNDRY EQUIPMENT)

IF SOLD TO THE OWNER AS A PACKAGE TYPE WHEREIN THE ARCHITECT DOES NOT HAVE TO DETERMINE ITS CAPACITY, SIZE, ETC., THEN IT SHOULD NOT BE PART OF THE BUILDING

ITEM G - (X-RAY EQUIPMENT) SAME AS ITEM "F"

ITEM H - SAME AS ITEM "F"

In short, Items "F", "G" and "H" are, according to petitioner, considered not parts of the construction cost if they were sold to the owner as package type units, where the architect did not have to determine the capacity, size, etc. of the equipment in relation to plans and specifications prepared by him; otherwise, they should be considered part of the construction cost of the building for purposes of determining architect's fees. The petitioner argues in this connection, that the aforesaid items, not having been sold to the GSIS as package units but subjected to public bidding, in accordance with specifications determined by him (architect), should be considered part of the construction cost along with Items "A", "B", "C", "D" and "E" of Phase "C" of the Contract, which are specifically the following:

Item "A" - Emergency Power Plant

Item "B" - Signal and Communication Unit

Item "C" - Elevator and Dumb Waiters

Item "D" - Boilers

Item "E" - Pumps and Fire Fighting Equipments.[9]

Petitioner's contention in this regard is supported by the Chairman of the Board of Architecture in his clarificatory letter dated 8 November 1983.[10]

Furthermore, the petitioner points to the inapplicability of the Alabama case upon which the respondent Commission appears to have relied heavily in denying petitioner's claim. The cited case, according to petitioner, involved railroad construction costs merely as an incident in a situation where the defendant railroad company was sued for damages to plaintiff's storeroom caused by sparks emitting from defendant's locomotive engine. Judgment had been rendered for the railroad company, but plaintiff moved for new trial and this was affirmed on appeal.

The petitioner refers also to Republic Act No. 545, particularly Section 14, paragraph (c) which provides: "General Practice of Architecture - The practice of architecture is hereby defined to be the act of planning, architectural designing, specifying, supervising and direction to the erection xxx, which enter into the production of a complete building or structures performed thru the medium of unbiased preliminary studies of plans, consultations, specifications xxx contract documents xxx." The term "complete building" connotes, according to petitioner, the inclusion of equipments as integral parts of the building since, without such equipments, the building can not function in accordance with the purpose for which it was intended.

We rule for petitioner. The respondent Commission's argument that, while it may be assumed that cost of equipment forms part of construction cost, yet, such cost should not be considered in computing additional architect's fees, cannot be sustained.

To begin with, COA itself admitted that the computation of architect's fees is consequent or dependent upon the nature of some equipment, i.e., like those "of a fixed nature, more or less so that they are very necessary to put the building into operation" and that "these equipments (other than Items "F", "G" and "H") demanded the use of architect's technical skills xxx".[11] What respondent COA failed to recognize is the fact that Items "F", "G" and "H" fall also under this type of equipment to warrant their inclusion in the construction cost, and to form part of the basis for computing petitioner's professional fees.

In the case of Item "F" (laundry equipment), the architect had to estimate the linen loads in order to determine the number of units of laundry equipment required, their capacities, sizes and other characteristics, in relation to the fact that it is not unusual for a hospital to have laundry service. It is also inconceivable for the GSIS Hospital with a capacity of 800 beds to function as a Medical Center without x-ray equipments, stills, sterilizers and special lighting fixtures; their integration into the plans, as prepared by the architect, was necessary to put the building, into operation as a hospital building. Items "F", "G" and "H" which were subjected to public bidding were, as even the COA itself admitted in its earlier Decision No. 155, dated 6 January 1977,[12] in Group I - Built-in equipment covered by Phase "C". It would, therefore, be unfair and unreasonable to claim that said items are not an integral part of the hospital building.

Moreover, in determining the meaning of actual construction cost, distinction should be made between hospital and residential or office buildings. A hospital building requires specialized equipment and facilities for its occupancy and use because of its nature and purpose which are obviously different from those of a residence or office building. It is also because of these differences that the U.S. Public Health Service expressly recognizes initial equipment as part of the construction cost.[13] This like explains why the Alabama case dictum, previously referred to, is not relevant because, the statement that "equipment is different from construction", may refer particularly to a railroad construction.

In deciding this controversy, it is necessary that we refer to the written agreement between GSIS and petitioner. Unfortunately, in the "Contract of Services," the scope of "total construction cost" is not defined with precision

and so recourse may be had to the well-settled principle that, in the construction and interpretation of a contract, the intention of the parties must be sought. In the case at bar, of note is the fact that two (2) affidavits were executed, one by Mr. Archimedes Villanueva, former Chairman of the GSIS Hospital Committee[14] and the other by Mr. Mauro Almazar, former GSIS Hospital Committee member[15] show that the architect's fees that had been agreed upon and approved by the GSIS are based on total cost of construction which includes cost of fixed or built-in equipment. This leads to the conclusion that, when petitioner submitted the schedule of Group I - Built-in equipment,[16] the intention of the parties was to include such equipment and thus settle whatever ambiguity there may have been as to the scope of the professional services, subject to architect's fees. It is basic that when the provisions of a written contract are ambiguous and there is sufficient evidence showing the existence of other agreements collateral thereto, parol evidence is admissible to prove the real agreement of the parties.[17]

But, even assuming arguendo that the contract's ambiguity by reason of the vagueness of the term "total construction cost" is unremedied by any clear evidence of the intention of the contracting parties, we are still left with the option of applying the general usage of the phrase in question in the standard practice of the architectural profession. Again, the view of no-other than the Chairman of the Board of Architecture, earlier mentioned, lends support to the stand of the petitioner that cost of built-in equipment buildings designed by architects should be considered part of the construction for purposes of determining construction cost and, hence, architect's fees.

WHEREFORE, COA Decision No. 358, dated 20 May 1985, is SET ASIDE and the claim of petitioner in the total amount of P91,354.47 representing the balance of his architect's fees, for Items "F", "G" and "H", Phase "C", in the construction of the GSIS hospital, is given due course.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Signed by Chairman Francisco S. Tantuico, Jr. and Com-missioner Hermogenes P. Pobre, Annex "G", Petition, pp. 48-51, Rollo

[2] Annex "A", Petition, pp. 28-35, Rollo

[3] Annex "A", Petition, p. 32, Rollo (Article IV (3), p. 5, Contract of Services)

[4] Ibid.

[5] Decision No. 155, dated 6 January 1977, Annex "B", Petition, p. 36, Rollo

[6] Ibid.

[7] 70 S.R. 674, 675, 195 Ala 368

[8] Annex "D", Petition, p. 39, Rollo

[9] P. 4, Petitioner's Memorandum, p. 102, Rollo

[10] Annex "E", Petition, pp. 42-43, Rollo

[11] P. 89, Rollo (p. 4, Comment, January 12, 1988)

[12] Annex "B", Petition, p. 36, Rollo

[13] U.S. Hospital Survey and Construction Act, as amended, Section 53. 155

[14] Annex "J", Petition, p. 63, Rollo

[15] Annex "K", Petition, p. 64, Rollo

[16] Panel Report, Annex "Q", as cited in page 3, Opinion No. 260 of the Secretary of Justice dated 16 December 1976, Annex "H", Petition, p. 52, Rollo

[17] Coscolluela v. Valderama, L-13757, August 31, 1961, 2 SCRA 1095

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