

FLAVIO K. MACASAET & ASSOCIATES, INC., PETITIONER, VS. COMMISSION ON AUDIT AND PHILIPPINE TOURISM AUTHORITY, RESPONDENTS.

G.R. No. 83748. May 12, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Certiorari, pursuant to Section 7, Article IX of the 1987 Constitution,[1] petitioner, Flavio K. Macasaet & Associates, Inc., prays that the ruling of public respondent Commission on Audit (COA) denying its claim for completion of payment of professional fees be overturned.

The facts follow:

On 15 September 1977 respondent Philippine Tourism Authority (PTA) entered into a Contract for "Project Design and Management Services for the development of the proposed Zamboanga Golf and Country Club, Calarian, Zamboanga City" with petitioner company, but originally with Flavio K. Macasaet alone (hereinafter referred to simply as the "Contract").

Under the Contract, PTA obligated itself to pay petitioner a professional fee of seven (7%) of the actual construction cost, as follows:

"ARTICLE IV - PROFESSIONAL FEE

"In consideration for the professional services to be performed by Designer under Article I of this Agreement, the Authority shall pay seven percent (7%) of the actual construction cost."

In addition, a Schedule of Payments was provided for while the construction was in progress and up to its final completion, thus:

"ARTICLE V - SCHEDULE OF PAYMENTS

1. Upon the execution of the Agreement but not more than fifteen (15) days, a minimum payment equivalent to 10 percent of the professional fee as provided in Art. IV computed upon a reasonable estimated construction cost of the project.

"2. Upon the completion of the schematic design services, but not more than 15 days after the submission of the schematic design to the Authority, a sum equivalent to 15% of the professional fee as stated in Art. IV computed upon the reasonable estimated construction cost of the project.

"3. Upon completion of the design development services, but not more than 15 days after submission of the design development to the authority, a sum equivalent to 20% of the professional fee as stated in Art. IV, computed upon the reasonable estimated construction cost.

"4. Upon completion of the contract document services but not more than 15 days after submission of the

contract document to the Authority, a sum equivalent to 25% of the professional fee as stated in Art. IV, shall be paid computed on the same basis as above.

"5. Upon completion of the work and acceptance thereof by the Authority, the balance of the professional fee, computed on the final actual project cost shall be paid." (Underscoring supplied)

Pursuant to the foregoing Schedule, the PTA made periodic payments of the stipulated professional fees to petitioner. And, upon completion of the project, PTA paid petitioners what it perceived to be the balance of the latter's professional fees.

It turned out, however, that after the project was completed, PTA paid Supra Construction Company, the main contractor, the additional sum of P3,148,198.26 representing the escalation cost of the contract price due to the increase in the price of construction materials.

Upon learning of the price escalation, petitioner requested payment of P219,302.47 additional professional fee representing seven (7%) percent of P3,148,198.26.

On 3 July 1985 PTA denied payment on the ground that "the subject price escalation referred to increased cost of construction materials and did not entail additional work on the part of petitioner as to entitle it to additional compensation under Article VI of the Contract." [2]

Reconsiderations sought by the petitioner, up to respondent COA, were to no avail. The latter expressed the opinion that "to allow subject claim in the absence of a showing that extra or additional services had been rendered by claimant would certainly result in overpayment to him to the prejudice of the Government" (1st Indorsement, July 10, 1987, p. 3, Rollo, p.42).

Hence this Petition, to which we gave due course.

The basic issue for resolution is petitioner's entitlement to additional professional fees, which, in turn, hinges on whether or not the price escalation should be included in the "final actual project cost."

Public respondents, through the Solicitor General, maintain that petitioner had been paid its professional fee upon completion of the project and that its claim for additional payment is without any legal and factual basis for, after all, no additional architectural services were rendered other than the ones under the terms of the Contract.

On the other hand, petitioner anchors its claim to additional professional fees, not on any change in services rendered, but on Article IV, and paragraph 5 of Article V, of the Contract, *supra*.

The very terminologies used in the Contract call for affirmative relief in petitioner's favor.

Under Article IV of said Contract, petitioner was to be entitled to seven (7%) of the "actual construction cost." Under paragraphs 1, 2, 3, and 4, Article V, periodic payments were to be based on a "reasonable estimated construction cost." Ultimately, under paragraph 5, Article V, the balance of the professional fee was to be computed on the basis of "the final actual project cost."

The use of the terms "actual construction cost", gradating into "final actual project cost" is not without significance. The real intendment of the parties, as shown by paragraph 5, Article V, of their Contract was to base the ultimate balance of petitioner's professional fees not on "actual construction cost" alone but on the final actual project cost; not on "construction cost" alone but on "project cost." By so providing, the Contract allowed for flexibility based on actuality and as a matter of equity for the contracting parties. For evidently, the final actual project cost would not necessarily tally with the actual construction cost initially computed. The "final actual project cost" covers the totality of all costs as actually and finally determined, and logically includes the

escalation cost of the contract price.

It matters not that the price escalation awarded to the construction company did not entail additional work for petitioner. As a matter of fact, neither did it for the main contractor. The increased cost of materials was not the doing of either contracting party.

That an escalation clause was not specifically provided for in the Contract is of no moment either for it may be considered as already "built-in" and understood from the very terms "actual construction cost," and eventually "final actual project cost."

Article VI of the Contract, *supra* has no bearing on the present controversy either. It speaks of any major change in the planning and engineering aspects necessitating the award and payment of additional compensation. Admittedly, there was no additional work by petitioner, which required additional compensation. Rather, petitioner's claim is for payment of the balance of its professional fees based on the "final actual project cost" and not for additional compensation based on Article VI.

The terminologies in the contract being clear, leaving no doubt as to the intention of the contracting parties, their literal meaning control (Article 1370, Civil Code). The price escalation cost must be deemed included in the final actual project cost and petitioner held entitled to the payment of its additional professional fees. Obligations arising from contract have the force of law between the contracting parties and should be complied with in good faith (Article 1159, Civil Code).

WHEREFORE, the ruling of respondent Commission on Audit is hereby SET ASIDE and respondent Philippine Tourism Authority is hereby ordered to pay petitioner the additional amount of P219,302.47 to complete the payment of its professional fee under their Contract for Project Design and Management Services.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Section 7. x x x Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

[2] Article VI - CHANGE OF ORDERS

Should the Authority order any major change on the planning and engineering aspects after definite designs have been previously agreed upon and the computation, designing, and drafting works completed resulting in additional work, additional compensation shall be equitably paid for such additional work as mutually agreed upon by both parties.

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