

BEN A. SANTANDER, DOING BUSINESS UNDER THE NAME AND STYLE OF BEN A. SANTANDER CONSTRUCTION, PETITIONER, VS. THE COURT OF APPEALS, NINTH DIVISION AND GOVERNMENT SERVICE INSURANCE...

G.R. No. 90261. July 23, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

When is a contract, after a public bidding for a government construction project, deemed perfected? This is the issue raised in this case.

Sometime in 1972, the Government Service Insurance System (GSIS for short) advertised in a newspaper of general circulation a "Notice to Contractors" inviting sealed bids for the furnishing of all materials, labor, tools and equipment for the construction of the GSIS Central Luzon Regional Office building at Olivas Subdivision, San Fernando, Pampanga.[1] Ben A. Santander doing business under the name and style of "Ben A. Santander Construction" manifested his intention to participate in the public bidding. He paid P100.00 which was increased to P300.00 to secure the necessary bidding form, general conditions, proposal forms and specifications.[2]

In compliance with the pre-qualification requirements Santander submitted a certification from the Citizens Bank and Trust Company that he has secured and maintained a creditline in the amount of P200,000.00 and a cash deposit of P100,000.00.

In the bidding held on March 28, 1972, Santander submitted the GSIS proposal form offering a bid of P2,398,636.00 together with a cash bond in the amount of P120,000.00 which was 5% of his bid price.[3] The bid submitted by Santander was the lowest. Santander posted a performance bond of P750,000.00 on June 13, 1972.[4] Mr. Cris Ibañez, General Manager of Finance, in a memorandum dated June 22, 1972, recommended to the Board of Trustees of GSIS that the contract for the construction of the GSIS Central Luzon Regional Office Building be awarded to Santander and that an additional appropriation of P930,000.00 be authorized to augment the original appropriation of P1.6B, more or less. In a Resolution of the Board dated June 29, 1972, the above recommendation was approved.[5]

The GSIS then forwarded the matter to the Office of the Economic Coordinator (OEC) for approval. The latter, in its first and third indorsements dated September 17, 1972 and October 26, 1972, respectively, directed the GSIS to review the plans and specifications for the purpose of conducting a re-bidding.[6] Pursuant thereto, respondent GSIS, in its letter dated November 7, 1972 informed Santander of the directive of the Administrator of OEC to conduct a re-bidding and at the same time returned to Santander his cash deposit of P120,000.00.[7]

GSIS notified Santander through a letter that the re-bidding will be hold on December 27, 1972,[8] but the same was postponed to January 5, 1973.[9] The re-bidding was held and the GSIS awarded the project to Master Builder's Inc..

Disagreeing with this move, Santander filed an action for execution of contract with damages with a writ of preliminary injunction on January 8, 1973 in the then Court of First Instance of Manila. The prayer for a writ of preliminary injunction was denied by the lower court. However, after trial on the merits, a decision was rendered by the trial court on August 3, 1981, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court upon a judicious and fair assessment of the testimonial and documentary evidences submitted by the parties, is of the opinion and so holds that the defendant GSIS must pay the plaintiff the following:

- 1) The sum of P900,000.00 representing the unearned income of plaintiff's construction tools and equipment which were made on reserve for a period of nine (9) months;
- 2) The amount of P22,000.00 representing the premium on the surety bond of P750,000.00;
- 3) The amount of P10,800.00, representing the interest on cash bond of P120,000.00 for nine (9) months;
- 4) The amount of P500,000.00 representing moral damages the plaintiff had suffered by virtue of the acts of the defendant;
- 5) To pay the plaintiff the amount equivalent to 15% of the total amount adjudicated above in favor of the plaintiff for and as attorney's fees;
- 6) The counterclaim of the defendant is hereby dismissed as the defendant utterly failed to prove by competent evidence of the supposed damages that it had sustained; and
- 7) To pay the costs of suit."^[10]

Hence, the GSIS interposed an appeal to the Court of Appeals wherein in due course a decision was rendered on July 31, 1989 reversing and setting aside the decision of the trial court dated August 3, 1981, without costs.^[11] A motion for reconsideration thereof filed by Santander was denied in a resolution dated September 20, 1989.

Santander now files this petition for review of the aforestated decision of the Court of Appeals alleging the following assigned errors committed by the appellate court:

"1

RESPONDENT COURT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, REVERSIBLE ON APPEAL IN HOLDING THAT THERE WAS NO PERFECTED CONTRACT BETWEEN PETITIONER AND RESPONDENT GSIS.

RESPONDENT COURT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, REVERSIBLE ON APPEAL IN HOLDING THAT NOTICE OF ACCEPTANCE AND FORMAL EXECUTED CONTRACT ARE NECESSARY TO BIND RESPONDENT GSIS.

RESPONDENT COURT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION REVERSIBLE ON APPEAL IN HOLDING THAT THE AMOUNT OF P300.00 AS PRE-QUALIFICATION FEE, THE CASH BALANCE OF P100,000.00, THE CREDIT LINE OF P200,000.00, THE CASH BOND OF P120,000.00, THE PERFORMANCE BOND OF P750,000.00, AND THE AMOUNT EQUIVALENT RENTALS (SIC) FOR THE USE OF TOOLS AND EQUIPMENT WHICH WERE RESERVED FOR THE PROJECT, ARE ALL PARTS OF THE RISKS ASSUMED BY SANTANDER AS A BIDDER, AND WOULD LOSE THEM IN THE EVENT THAT HIS BID WOULD BE REJECTED AS HE WAS FULLY AWARE OF THIS CONTINGENCY."^[12]

The theory of the petitioner is that there was a perfected contract upon a meeting of the minds of the parties, this being a consensual contract. Petitioner alleges that in response to the advertisement for bidders he paid

P300.00[13] to obtain plans and specifications for the project; complied with the requirements as to his financial resources by maintaining a savings account with a balance of P110,000.00 and a current account with a balance of P100,000.00 with Citizens Bank and Trust Company (CBTC);[14] submitted a letter of the same Bank to the GSIS certifying that Santander has a credit line of P200,000.00 for the project;[15] and a cash bond in the amount of P120,000.00 representing 5% of the bid of P2,398,636.00 for the project;[16] that petitioner submitted the proposal form with a bid for P2,398,636.00 for the proposed construction of the GSIS Central Luzon Regional Office building;[17] that at the public bidding on March 28, 1972 the bid of the petitioner was found to be the lowest by the Awards Committee with Mr. Cris Ibañez as chairman; and that the cash bond in the amount of P120,000.00 was deposited by respondent GSIS in its account with the PNB together with the P300.00.

On the basis of the foregoing facts petitioner contends that the contract between him and respondent GSIS was deemed perfected and that the decision of the trial court should have been affirmed.

In the proposal form submitted by petitioner when he bid for the project, it specifically provides as follows:

"We (or I) will complete the work in strict accordance with the plans, specifications and related contract documents within two hundred ten (210) calendar days from date we (or I) received a copy of the duly executed contract.

x x x x x

We (or I) make this proposal with full knowledge of the kinds, quantity and quality of the articles and services required and if said Proposal is accepted, we (or I) will enter into a contract with the GSIS within ten (10) days after receiving notice of acceptance with the required securities for the faithful performance of the work."[18] (Underscoring supplied.)

From the foregoing, it is clearly spelled out that once a proposal or bid is accepted, the bidder must be sent a notice of acceptance and within ten (10) days thereafter from receipt of said notice from the respondent GSIS, he will enter into a contract with the GSIS. From the day the bidder received a copy of the duly certified contract he must complete the work in accordance with the plans and specifications and the related contract within 210 calendar days.

While it is true that petitioner appears to be the lowest bidder and was so declared by the respondent GSIS, the rules of the bidding as contained in the proposal form are clear. It is only upon receipt of notice of acceptance that the formal contract shall be executed between the lowest bidder and the respondent GSIS, and it is only then that the contract is deemed perfected. Although Board Resolution No. 596 dated June 29, 1972 was passed by the Board of Trustees of the GSIS approving the recommendation to award the bid to petitioner this was nevertheless not officially released and delivered to the petitioner.

A mere determination of a public official or bid to accept the proposal of a bidder does not constitute a contract. That decision should be communicated to the bidder.[19]

Moreover, the bid of the petitioner in this case could not be immediately accepted by respondent GSIS as his bid for P2,398,636.00 exceeded the approved appropriation for the project in the amount of P1,639,000.00 so that an additional appropriation of P930,000.00 was necessary. Even as such additional appropriation was approved by the Board of Trustees of respondent GSIS the same still had to be submitted to the OEC for approval. In fact said office disapproved the proposal and instructed the GSIS to review the plans and specification and to conduct a re-bidding. Respondent GSIS had no alternative but to inform petitioner of this turn of events and return to the petitioner his cash deposit of P120,000.00.

Respondent GSIS could not have accepted the bid of petitioner without the approval of the OEC. Thus, in the

notice to the contractors it is specifically stated:

"'The GSIS reserves the right to reject any and all bids, to waive informalities therein or to accept such bids as may be advantageous to the System.' (Underscoring supplied)"[20]

Consequently, since no notice of acceptance was given to the petitioner and no formal contract was executed, there was therefore no perfected contract. There was no meeting of the minds.

WHEREFORE, the judgment of the Court of Appeals appealed from is AFFIRMED in toto without pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits A and 1.

[2] Exhibits B and C.

[3] Exhibit 2-a.

[4] Exhibit O.

[5] Exhibit 4.

[6] Exhibits 5 and 6.

[7] Exhibit T.

[8] Exhibit 7.

[9] Exhibit A.

[10] Pages 110 to 111, Rollo.

[11] Justice Jaime M. Lantin was the ponente, concurred in by Justices Minerva G. Reyes and Justo P. Torres.

[12] Page 24, Rollo.

[13] Exhibits B and C.

[14] Exhibits E and F.

[15] Exhibit G.

[16] Exhibits X-1, I and I-1.

[17] Exhibit H.

[18] Page 150, Rollo.

[19] Jalandoni vs. NARRA, 108 Phil. 486 (1960).

[20] Page 152, Rollo.

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