

**PUBLIC ESTATES AUTHORITY, PETITIONER, VS. ELPIDIO S. UY,
DOING BUSINESS UNDER THE NAME AND STYLE EDISON
DEVELOPMENT & CONSTRUCTION, AND THE COURT OF
APPEALS, RESPONDENTS.**

G.R. Nos. 147933-34. December 12, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review of the Joint Decision dated September 25, 2000[1] and the Joint Resolution dated April 25, 2001[2] of the Court of Appeals in the consolidated cases CA-G.R. SP Nos. 59308 and 59849.

Petitioner Public Estates Authority is the government agency tasked by the Bases Conversion Development Authority to develop the first-class memorial park known as the Heritage Park, located in Fort Bonifacio, Taguig, Metro Manila. On November 20, 1996, petitioner executed with respondent Elpidio S. Uy, doing business under the name and style Edison Development & Construction, a Landscaping and Construction Agreement, whereby respondent undertook to perform all landscaping works on the 105-hectare Heritage Park. The Agreement stipulated that the completion date for the landscaping job was within 450 days, commencing within 14 days after receipt by respondent from petitioner of a written notice to proceed. Due to delays, the contracted period was extended to 693 days. Among the causes of the delay was petitioner's inability to deliver to respondent 45 hectares of the property for landscaping, because of the existence of squatters and a public cemetery.

Respondent instituted with the Construction Industry Arbitration Commission an action, docketed as CIAC Case No. 02-2000, seeking to collect from petitioner damages arising from its delay in the delivery of the entire property for landscaping. Specifically, respondent alleged that he incurred additional rental costs for the equipment which were kept on stand-by and labor costs for the idle manpower. Likewise, the delay incurred by petitioner caused the topsoil at the original supplier to be depleted, which compelled respondent to obtain the topsoil from a farther source, thereby incurring added costs. He also claims that he had to mobilize water trucks for the plants and trees which have already been delivered at the site. Furthermore, it became necessary to construct a nursery shade to protect and preserve the young plants and trees prior to actual transplanting at the landscaped area.

On May 16, 2000, the CIAC rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the Claimant Contractor ELPIDIO S. UY and Award is hereby made on its monetary claim as follows:

Respondent PUBLIC ESTATES AUTHORITY is directed to pay the Claimant the following amounts:

P19,604,132.06 --- for the cost of idle time of equipment.

2,275,721.00 --- for the cost of idled manpower.

6,050,165.05 --- for the construction of the nursery shade net area.

605,016.50 --- for attorney's fees.

Interest on the amount of P6,050,165.05 as cost for the construction of the nursery shade net area shall be paid at the rate of 6% per annum from the date the Complaint was filed on 12 January 2000. Interest on the total amount of P21,879,853.06 for the cost of idled manpower and equipment shall be paid at the same rate of 6% per annum from the date this Decision is promulgated. After finality of this Decision, interest at the rate of 12% per annum shall be paid on the total of these 3 awards amounting to P27,930,018.11 until full payment of the awarded amount shall have been made, "this interim period being deemed to be at that time already a forbearance of credit" (Eastern Shipping Lines, Inc. v. Court of Appeals, et al., 243 SCRA 78 [1994]; Keng Hua Paper Products Co., Inc. v. Court of Appeals, 286 SCRA 257 [1998]; Crismina Garments, Inc. v. Court of Appeals, G.R. No. 128721, March 9, 1999).

SO ORDERED.[3]

Both petitioner and respondent filed petitions for review with the Court of Appeals. In CA-G.R. SP No. 59308, petitioner contested the monetary awards given by the CIAC. On the other hand, respondent filed CA-G.R. SP No. 59849, arguing that the CIAC erred in awarding a reduced amount for equipment stand-by costs and for denying his claims for additional costs for topsoil hauling and operating costs of water trucks.

The two petitions were consolidated. On September 25, 2000, the Court of Appeals rendered the now assailed Joint Decision, dismissing the petitions, to wit:

WHEREFORE, premises considered, the petitions in CA-G.R. SP No. 59308, entitled "Public Estates Authority v. Elpidio S. Uy, doing business under the name and style of Edison Development & Construction," and CA-G.R. SP No. 59849, "Elpidio S. Uy, doing business under the name and style of Edison Development & Construction v. Public Estates Authority," are both hereby DENIED DUE COURSE and accordingly, DISMISSED, for lack of merit.

Consequently, the Award/Decision issued by the Construction Industry Arbitration Commission on May 16, 2000 in CIAC Case No. 02-200, entitled "Elpidio S. Uy, doing business under the name and style of Edison Development & Construction v. Public Estates Authority," is hereby AFFIRMED in toto.

No pronouncement as to costs.

SO ORDERED.[4]

Both parties filed motions for reconsideration. Subsequently, petitioner filed with the Court of Appeals an Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, seeking to enjoin the CIAC from proceeding with CIAC Case No. 03-2001, which respondent has filed. Petitioner alleged that the said case involved claims by respondent arising from the same Landscaping and Construction Agreement, subject of the cases pending with the Court of Appeals.

On April 25, 2001, the Court of Appeals issued the assailed Joint Resolution, thus:

WHEREFORE, the present Motion/s for Reconsideration in CA-G.R. SP No. 59308 and CA-G.R. SP No. 59849 are hereby both DENIED, for lack of merit.

Accordingly, let an injunction issue permanently enjoining the Construction Industry Arbitration Commission from proceeding with CIAC Case No. 03-2001, entitled ELPIDIO S. UY, doing business under the name and style of EDISON DEVELOPMENT & CONSTRUCTION v. PUBLIC ESTATES AUTHORITY and/or HONORABLE CARLOS P. DOBLE.

SO ORDERED.[5]

Hence, this petition for review, raising the following arguments:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING DUE COURSE PETITIONER'S (SIC) PETITION FILED PURSUANT TO RULE 43 OF THE 1997 RULES OF CIVIL PROCEDURE APPEALING THE ADVERSE DECISION OF THE CIAC A QUO

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING THE HEREIN PETITIONER'S MOTION FOR RECONSIDERATION ON THE JOINT DECISION PROMULGATED ON SEPTEMBER 25, 2000.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT ALLOWING THE APPEAL ON THE MERITS TO BE THRESHED OUT PURSUANT TO EXISTING LAWS AND JURISPRUDENCE ALL IN INTEREST OF DUE PROCESS,.

IV

THE HONORABLE COURT OF APPEALS ERRED IN DENYING PETITIONER'S CLAIM FOR UNRECOUPED BALANCE IN THE 15% ADVANCE PAYMENT; UNRECOUPED BALANCE ON PRE-PAID MATERIALS, AND OVERPAYMENT BASED ON ACTUAL PAYMENT MADE AS AGAINST PHYSICAL ACCOMPLISHMENTS.

V

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE CIAC DECISION FINDING RESPONDENT ENTITLED TO ATTORNEY'S FEES IN THE AMOUNT OF P605,096.50 - WHICH IS 10% OF THE AMOUNT AWARDED FOR THE CLAIM OF NURSERY SHADE CONSTRUCTION WHILE DENYING PETITIONER'S COUNTERCLAIM FOR ATTORNEY'S FEES.

VI

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT PETITIONER'S OBLIGATION, IF ANY, HAS BEEN EFFECTIVELY EXTINGUISHED.

VII

THE HONORABLE COURT OF APPEALS ERRED IN NOT ORDERING THE RESPONDENT TO REIMBURSE THE PETITIONER THE AMOUNT OF P345,583.20 THE LATTER PAID TO THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION.[6]

After respondent filed its comment[7] on August 20, 2001, this Court issued a resolution dated September 3, 2001[8] requiring petitioner to file its reply within ten days from notice. Despite service of the resolution on petitioner and its counsel on October 1, 2001, no reply has been filed with this Court to date. Therefore, we dispense with the filing of petitioner's reply and decide this case based on the pleadings on record.

The petition is without merit.

Petitioner assails the dismissal of its petition by the Court of Appeals based on a technicality, i.e., the verification and certification of non-forum shopping was signed by its Officer-in-Charge, who did not appear to have been

authorized by petitioner to represent it in the case. Petitioner moreover argues that in an earlier resolution, the First Division of the Court of Appeals gave due course to its petition. Despite this, it was the Seventeenth Division of the Court of Appeals which rendered the Joint Decision dismissing its petition.

The contention is untenable. Petitioner, being a government owned and controlled corporation, can act only through its duly authorized representatives. In the case of *Premium Marble Resources, Inc. v. Court of Appeals*,^[9] which the Court of Appeals cited, we made it clear that in the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.^[10] Thus, we held in that case:

We agree with the finding of public respondent Court of Appeals, that "in the absence of any board resolution from its board of directors the [sic] authority to act for and in behalf of the corporation, the present action must necessarily fail. The power of the corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. Thus, the issue of authority and the invalidity of plaintiff-appellant's subscription which is still pending, is a matter that is also addressed, considering the premises, to the sound judgment of the Securities and Exchange Commission."^[11]

Therefore, the Court of Appeals did not err in finding that, in view of the absence of a board resolution authorizing petitioner's Officer-in-Charge to represent it in the petition, the verification and certification of non-forum shopping executed by said officer failed to satisfy the requirement of the Rules. In this connection, Rule 43, Section 7, of the 1997 Rules of Civil Procedure categorically provides:

Effect of failure to comply with requirements. --- The failure of the petition to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Anent petitioner's contention that its petition had already been given due course, it is well to note that under the Internal Rules of the Court of Appeals, each case is raffled to a Justice twice --- the first raffle for completion of records and the second raffle for study and report.^[12] Hence, there was nothing unusual in the fact that its petition was first raffled to the First Division of the Court of Appeals but was later decided by the Seventeenth Division thereof. Petitioner's imputations of irregularity have no basis whatsoever, and can only be viewed as a desperate attempt to muddle the issue by nit-picking on non-essential matters. Likewise, the giving of due course to a petition is not a guarantee that the same will be granted on its merits.

Significantly, the dismissal by the Court of Appeals of the petition was based not only on its fatal procedural defect, but also on its lack of substantive merit; specifically, its failure to show that the CIAC committed gross abuse of discretion, fraud or error of law, such as to warrant the reversal of its factual findings.

We have carefully gone over the decision of the CIAC in CIAC Case No. 02-2000, and we have found that it contains an exhaustive discussion of all claims and counterclaims of respondent and petitioner, respectively. More importantly, its findings are well supported by evidence which are properly referred to in the record. In all, we have found no ground to disturb the decision of the CIAC, especially since it possesses the required expertise in the field of construction arbitration. It is well settled that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.^[13]

Thus, we affirm the factual findings and conclusions of the CIAC as regards the arbitral awards to respondent. The records clearly show that these are amply supported by substantial evidence.

Coming now to petitioner's counterclaims, we find that the CIAC painstakingly sifted through the records to

discuss these, despite its initial observation that petitioner "absolutely omitted to make any arguments" to substantiate the same.[14] As far as the unrecouped balance on prepaid materials are concerned, the CIAC found:

The Arbitral Tribunal finds the evidence adduced by the Respondents (petitioner herein) sorely lacking to establish this counterclaim. The affidavit of Mr. Jaime Millan touched on this matter by merely stating this "additional claim a) Unrecouped balance on prepaid materials amounting to P45,372,589.85." No further elaboration was made of this bare statement. The affidavit of Mr. Roigelio A. Cantoria merely states that as Senior Accountant, it was he who prepared the computation for the recoupment of prepaid materials and advance payment marked as "Annex "B" of Respondent's Compliance/Submission dated 16 March 2000. Examination of that single page document shows that for the 2[nd] Billing, the amount of P32,695,138.86 was "75% Prepaid" for some unspecified "Materials on Hand." The rest of the other items were payments for "trees and shrubs, RCP, Baluster & Cons. Paver, and GFRC (Baluster)" in various amounts taken from other billings. The billings themselves have not been introduced in evidence. No testimonial evidence was also offered to explain how these computations were made, if only to explain the meaning of those terms above-quoted and why the recoupment of amounts of the various billings were generally much lower than the payment for materials. As stated at the outset of the discussion of these additional claims, "it is not the burden of this Tribunal to dig into the haystack to look for the proverbial needle to support these counterclaims." [15]

On the other hand, we find that the CIAC correctly deferred determination of the counterclaim for unrecouped balance on the advance payment. It explained that the amount of this claim is determined by deducting from respondent's progress billing a proportionate amount equal to the percentage of work accomplished. However, this could not be done since petitioner terminated the construction contract. At the time the CIAC rendered its decision, the issue of the validity of the termination was still pending determination by the Regional Trial Court of Parañaque. Thus, in view of the non-fulfillment of that "precondition to the grant" of petitioner's counterclaim, the CIAC deferred resolution of the same.[16] In the case at bar, petitioner still failed to show that its termination of the construction contract was upheld by the court as valid.

Anent petitioner's claim for attorney's fees, suffice it to state that it was represented by the Government Corporate Counsel in the proceedings before the CIAC. Attorney's fees are in the nature of actual damages, which must be duly proved.[17] Petitioner failed to show with convincing evidence that it incurred attorney's fees.

Petitioner further argues that its liability to respondent has been extinguished by novation when it assigned and turned over all its contracted works at the Heritage Park to the Heritage Park Management Corporation.[18] This, however, can not bind respondent, who was not a party to the assignment. Moreover, it has not been shown that respondent gave his consent to the turn-over. Article 1293 of the Civil Code expressly provides:

Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237. (emphasis ours)

Lastly, petitioner argues that respondent should reimburse to it all fees paid to the CIAC by reason of the case. To be sure, this contention is based on the premise that the suit filed by respondent was unwarranted and without legal and factual basis. But as shown in the CIAC decision, this was not so. In fact, respondent was adjudged entitled to the arbitral awards made by the CIAC. These awards have been sustained by the Court of Appeals, and now by this Court.

It appears that there is a pending motion to consolidate the instant petition with G.R. No. 147925-26, filed by respondent. Considering, however, that the instant petition has no merit, the motion for consolidation is rendered also without merit, as there will be no more petition to consolidate with the said case. Hence, the motion to consolidate filed in this case must be denied.

However, in order not to prejudice the deliberations of the Court's Second Division in G.R. No. 147925-26, it should be stated that the findings made in this case, especially as regards the correctness of the findings of the CIAC, are limited to the arbitral awards granted to respondent Elpidio S. Uy and to the denial of the counterclaims of petitioner Public Estates Authority. Our decision in this case does not affect the other claims of respondent Uy which were not granted by the CIAC in its questioned decision, the merits of which were not submitted to us for determination in the instant petition.

WHEREFORE, in view of the foregoing, the petition for review is DENIED. The Motion to Consolidate this petition with G.R. No. 147925-26 is also DENIED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Pardo, JJ., concur.
Puno, J., on official leave.

[1] Rollo, pp. 455-466; penned by Associate Justice Martin S. Villarama, Jr., concurred in by Associate Justices Romeo J. Callejo, Sr. and Juan Q. Enriquez, Jr.

[2] Ibid., pp. 468-471.

[3] Rollo, pp. 601-602.

[4] Op. cit., note 1, at pp. 465-466.

[5] Op. cit., note 2, at p. 471.

[6] Rollo, pp. 430-431.

[7] Ibid., pp. 788-860.

[8] Id., p. 1080.

[9] 264 SCRA 11 [1996].

[10] Ibid., at 18.

[11] Id., at 17.

[12] Internal Rules of the Court of Appeals, Rule 3, Section 5.

[13] Cagayan Robina Sugar Milling Co. v. Court of Appeals, G.R. No. 122451, October 12, 2000.

[14] Rollo, pp. 587-588.

[15] Ibid., pp. 589-590.

[16] Id., p. 593.

[17] Lacson v. Reyes, 182 SCRA 729, 737 [1990].

[18] Rollo, pp. 767-768.

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