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SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 16, 2019** which reads as follows:*

“G.R. Nos. 231467-68 (NEW KANLAON CONSTRUCTION, INC., Petitioner, v. FIRST GLOBAL BYO CORPORATION, and FORT PALM SPRING CONDOMINIUM CORPORATION, Respondents.) -- In this appeal by *certiorari*,¹ the petitioner seeks to reverse and set aside the Decision² and Resolution³ of the Court of Appeals (CA) in CA-G.R. SP Nos. 125019 & 125026 promulgated on July 13, 2016 and March 27, 2017, respectively, which affirmed with modifications the Final Award⁴ of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 24-2011 promulgated on May 22, 2012.

The facts, as summarized by the CA, are as follows:

[Respondent] First Global BYO Corporation (FGBYOC) is engaged in the business of Build Your Own (BYO) and it offers itself to act as the Project Manager and Attorney-in-Fact of several investors for the construction of Fort Palm Spring (FPS) Condominium Project and these investors become the unit-owners themselves.

For the construction of the FPS Building, FGBYOC engaged the services of AMCON, a construction project manager, which was later substituted by First International Project Management Corporation in July 2009. In the early part of 2007, FGBYOC and AMCON negotiated with [petitioner] New Kanlaon Construction Inc. (NKCI) for NKCI to act as the general contractor. During negotiations, it was made clear that NKCI will

- over – fourteen (14) pages ...

¹ Rollo, pp. 38-72.

² Id. at 16-31; penned by Associate Eduardo B. Peralta, Jr with concurrence of Associate Justice Noel G. Tijam and Associate Justice Francisco P. Acosta.

³ Id. at 10-14; penned by Associate Eduardo B. Peralta, Jr with concurrence of Associate Justice Magdangal M. De Leon and Associate Justice Francisco P. Acosta.

⁴ Id. at 342-377.

be responsible for both: (1) structural and civil works; and (2) architectural works of the FPS Building. The target date of completion was November 30, 2008. In particular, the completion of the structural works was August 17, 2008 in order to finish the architectural works on November 30, 2008.

However, the parties could not execute one (1) contract for both works because of certain issues to be resolved on the architectural aspect of the contract. Thus, in order to take advantage of the dry season and to minimize the impact of the rainy season, the parties agreed to first execute the agreement on the structural and civil works.

Consequently, in a Notice of Award dated May 25, 2007, petitioner FGBYOC had accepted the lump sum proposal of NKCI for the Civil and Structural Works and General Requirements in the amount ₱233,548,156.76 based on the bid plans and specifications and details furnished to NKCI for the construction of the twenty-seven (27) storey FPS Building.

Pursuant to the Notice of Award, the parties executed the Owner-Contractor Agreement on June 15, 2007. It was stipulated on the Agreement that the civil and structural works will be completed within eighteen (18) months or specifically on December 12, 2008. However, NKCI has committed to finish the structure by completing the roof deck/machine room by August 17, 2008.

Subsequently, another notice of award was issued by FGBYOC as to the acceptance of NKCI's proposal for the architectural works in the amount of ₱95,976,771.08 followed by the execution of another Owner-Contractor Agreement on Architectural works, which stipulated that the architectural works will be completed within twelve (12) months or until November 20, 2008.

However, NKCI has requested for an extension of the date of completion and delivery date from November 30, 2008 to December 12, 2008 for NKCI's elbowroom and to avoid the provision on liquidated damages on account of delay. Thus, the completion date on both contracts was amended to reflect December 12, 2008 as countersigned by NKCI. Accordingly, the delay in any of the two (2) contracts will be considered as a delay on both and liquidated damages can be imposed on both works.

On December 12, 2008, NKCI failed to complete and deliver both structural and architectural works.

On July 6, 2009, the newly appointed construction project manager FIPMC conducted an inspection and assessment of the accomplishment of NKCI *vis-à-vis* its commitments. Thereafter,

FIPMC evaluated that the works were incomplete and some were even defective.

On even date, FGBYOC, through its then President Philip Cea, expressed dismay over the non-completion and gave NKCI until October 17, 2009 to complete the work. On the same date, NKCI's counsel demanded ₱44,844,228.61 as the supposed unpaid balance for both contracts. In a letter dated October 21, 2009, FGBYOC replied and reiterated the abandonment committed by NKCI.

Meanwhile, FGBYOC requested for the costing of expenses to be incurred to rectify the punch list, the full completion of the project and liability of NKCI under the contract. As such, FGBYOC's sent a letter on November 9, 2009 to NKCI demanding ₱20,446,218.99, which represented the remaining balance after applying the ten percent (10%) retention for the architectural works.

For failure of NKCI to comply with the demand, a Complaint was filed with the RTC of Taguig, which dismissed the case *via* a litigated motion and directed the parties to comply with the arbitration provision of the contracts.

On the other hand, NKCI claimed that the contract for structural works and architectural works have both been completed on November 30, 2008, for structural works, and on June 30, 2009, for architectural works. As agreed upon on both contracts, NKCI was entitled to receive payments for its services on structural works amounting to ₱233,548,156.76 and for architectural works to the extent of ₱95,976,771.08. However, due to some adjustments and deletions on architectural works, the amount therefor was reduced to ₱82,245,527.13

In the course of the construction, there were also change orders. For structural works, change orders amounted to ₱4,137,786.30 and for architectural works, change orders reached ₱558,399.60.

NKCI claimed that notwithstanding completion of both contracts, FGBYOC failed and refused payment of the total balance of ₱44,844,228.61 due to NKCI. FGBYOC certified the completeness of the structural works in February, 2009 when it submitted As-Built Plans to the Local Building Office of the City of Taguig, which recommended issuances of Certificates of Occupancy.

NKCI sent FGBYOC several letter for payment of the unpaid progress billings, but FGBYOC did not respond.

After an interlude, FGBYOC suddenly sent communications to NKCI about possible deductions. On November 18, 2009, Engr. Fernando Tan, Assistant Vice President

of NKCI, sent unpaid billings to Mr. Philip Cea, President of FGBYOC, and conveyed a rectification on the supposed abandonment of work. Another letter also ensued which conveyed to Mr. Cea NKCI's position on the supposed construction bond penalty. When NKCI asked FGBYOC to explain and support the claim for deductions, FGBYOC instead filed an action for Damages against NKCI with the RTC of Taguig. However, the case was later dismissed and the case was referred to the CIAC per the arbitration clause provided for in both contracts.⁵

CIAC Ruling

On May 22, 2012, the CIAC issued a Final Award,⁶ and found that the structural works were substantially completed by the contract date of December 12, 2008; that the liquidated damages will only apply for the architectural works;⁷ that the defective works that were structural and architectural had not been corrected and accepted thereby warranting the award of punch-list deductives;⁸ and that the project was not turned over nor accepted by the Owner.⁹ The dispositive portion of the Final Award reads:

Wherefore, award is hereby made as follows:

CLAIMANT

	Awarded (Pesos)
Balance on the Civil & Structural Works	26,499,949.70
Change Order on the Structural Works	957,880.26
Architectural Works Contract	16,987,562.26
Order on Architectural Works	398,836.39
Interest on the above claims	2,206,770.90
Exemplary Damages	0.00
Attorney's Fees	0.00
TOTAL	47,050,999.51

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⁵ *Rollo*, pp. 16-21.

⁶ *Supra* note 4.

⁷ *Rollo*, p. 370.

⁸ *Id.* at 373.

⁹ *Id.* at 374-375.

RESPONDENTS

Description	Awarded (Pesos)
Liquidated Damages	19,195,354.23
Work Deductives	20,324,551.90
Four (4) Counterweights	1,144,133.35
Value of Check No. 264	3,000,000.00
Construction Bond	443,000.00
Exemplary Damages	0.00
Attorney's Fees	0.00
TOTAL	44,107,039.48

NET AWARD TO THE CLAIMANT

Award to Claimant	47,050,999.41
Award to Respondent	44,107,039.48
<u>Net Award</u>	<u>2,943,960.03</u>

Respondents therefore is ordered to pay the amount of ₱2,943,960.03 within fifteen (15) days from the promulgation of this award. The award shall carry an interest of six percent (6%) per annum on any amount remaining until fully paid. When the award becomes final and executory, interest shall be at twelve percent (12%) per annum on the award or any balance remaining thereof.

SO ORDERED.¹⁰

Dissatisfied, both parties filed their respective petitions for review before the CA.¹¹

CA Ruling

On July 13, 2016, the CA rendered the now assailed Decision affirming the findings of the CIAC in Case No. 24-2011, with modifications on the penalty. The CA ruled that the parties entered into an Owner-Contractor Agreement for structural and architectural works with payment of liquidated damages in case of the delay of the construction project;¹² that a perusal of the records revealed that NKCI did not complete and deliver both the structural and architectural works on the agreed extended date of December 12, 2008;¹³ that although the project was not completed on time, the

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¹⁰ Id. at 376-377.

¹¹ Id. at 378-443.

¹² Id. at 24

¹³ Id. at 24-25.

project was not far from full accomplishment and as such, the amount of liquidated damages should be reduced from twenty percent (20%) to ten percent (10%);¹⁴ that the CIAC erred in ordering FGBYOC to pay NKCI interest for the balance of the unpaid billings when the former had established that it only engaged the services of another contractor to rectify NKCI's works and complete the project;¹⁵ that since NKCI had not completed the works in accordance with the agreement, its demand for the payment of the final balance was premature and consequently, FGBYOC cannot be said to have incurred delay in the final payment;¹⁶ and that the parties also stipulated that in the event FGBYOC engaged the services of another contractor to rectify the defect of failure/poor workmanship of NKCI, all expenses incurred shall be doubled and charged against the contractor's bond. The CA thus disposed:

WHEREFORE, the Final Award of CIAC dated April 26, 2012 in CIAC Case No. 24-2011 is **AFFIRMED** with **MODIFICATION** as follows:

AWARD TO NKCI

	Awarded (Pesos)
Balance on the Civil & Structural Works	26,499,949.70
Change Order on the Structural Works	957,880.26
Architectural Works Contract	16,987,562.26
Order on Architectural Works	398,836.39
Interest on the above claims	0.00
Exemplary Damages	0.00
Attorney's Fees	0.00
TOTAL	44,844,228.61

AWARD TO FGBYOC

Description	Awarded (Pesos)
Liquidated Damages for the Architectural Works	9,597,677.11
Liquidated Damages for the Structural Works	23,354,815.68
Work Deductives	40,749,103.80
Four (4) Counterweights	1,144,133.35
Value of Check No. 264	3,000,000.00
Construction Bond	443,000.00
Exemplary Damages	0.00
Attorney's Fees	0.00
TOTAL	78,288,729.94

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¹⁴ Id. at 27.

¹⁵ Id. at 27-28.

¹⁶ Id. at 28.

TOTAL AWARD TO FGBYOC

Award to FGBYOC	78,288,729.94
Award to NKCI	44,844,228.61
<u>Net Award</u>	<u>33,444,501.33</u>

NKCI therefore is ordered to pay the amount of ₱33,444,501.33 within fifteen (15) days from the finality of this award, with interest of six percent (6%) per annum on any amount remaining until fully paid.

SO ORDERED.¹⁷

The petitioner subsequently filed a Motion for Reconsideration¹⁸ on August 4, 2016 but the same was denied by the court a quo on March 27, 2017.¹⁹

Hence, this appeal.

Issues

The petitioner assigned the following grounds²⁰ for the allowance of its petition:

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING NKCI'S PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT, MODIFYING CIAC'S FINAL AWARD, AND IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION WHEN:

I

APPELLATE COURT MODIFIED CIAC'S FINAL AWARD DATED 26 APRIL 2012 CONTRARY TO THE ESTABLISHED FACTS OF THE CASE AND WITHOUT PROOF OF SERIOUS ERROR OR ARBITRARY ACTION BY THE CIAC BY AWARDED IN FAVOR OF FGBYO LIQUIDATED DAMAGES ON STRUCTURAL WORKS, BY DOUBLING VALUE OF DEDUCTIVES AND BY DISALLOWING AWARD OF INTEREST, AND THE APPELLATE COURT LIKEWISE CONTINUED TO AWARD LIQUIDATED DAMAGES ON ARCHITECTURAL WORKS AND OTHER RELATED CLAIMS WITHOUT BASIS IN FACT AND LAW.

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¹⁷ Id. at 29-31.

¹⁸ Id. at 140-155.

¹⁹ Supra note 3.

²⁰ *Rollo*, pp. 47-48.

A

NKCI IS NOT LIABLE TO PAY FGBYO LIQUIDATED DAMAGES FOR BOTH STRUCTURAL WORKS AND ARCHITECTURAL WORKS.

B

THERE IS NO BASIS FOR FURTHER DOUBLING DEDUCTIVES IN FAVOR OF FGBYO, AND NO BASIS FOR CIAC'S ALLOWANCE OF FGBYO'S CLAIM FOR DEDUCTIVES TO BEGIN WITH.

C

NKCI HAS A RIGHT TO CLAIM INTEREST ON ITS COLLECTIBLES AGAINST FGBYO.

II

IT AFFIRMED CIAC'S FINAL AWARD DATED 26 APRIL 2012, DEDUCTING CLAIMED OBLIGATION FROM A DIFFERENT PARTY WITHOUT ANY BASIS IN FACT AND LAW.

III

THERE IS NO BASIS FOR THE DEDUCTION OF THE ALLEGED THREE (3) MILLION PESOS OBLIGATION OF MR. ROLANDO EVANGELISTA FROM THE COLLECTIBLES OF NKCI.

Ruling

The petition is partly meritorious.

Factual findings by a quasi-judicial body like the CIAC, which has acquired expertise because its jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence.²¹ We recognize that certain cases require the expertise, specialized skills, and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved.²²

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²¹ *Werr Corp. International v. Highlands Prime, Inc.*, G.R. Nos. 187543 & 187580, February 8, 2017 citing *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. No. 143154, June 21, 2006, 491 SCRA 557, 575.

²² *Id.*

Although CIAC awards are appealable to the CA under Rule 43 of the Rules of Court, the CA does not have unbridled discretion in resolving the appeal. In the challenged decision, the CA substantially modified the CIAC Final Award, such that the petitioner became liable to pay the respondents. A review of the CA's decision, however, showed that it had misappreciated the evidence on record.

First, the CA erred in considering that there was only a single contract involved. This conclusion was based on the fact that the written instruments embodying the civil and structural works and the architectural works referred to a common completion date. It disregarded its own factual findings, which clearly show that there were two separate contracts involved.²³

There were separate negotiations, notices of awards, contract details, and written instruments for the civil and structural works and the architectural works. There was no reason to depart from the CIAC's finding that there were two contracts, each of which had specific amounts and provisions.²⁴

There being two separate contracts, the subject of each must be examined to determine whether the petitioner is liable for liquidated damages.

Second, the CA erred in disregarding the fact that the petitioner substantially completed the civil and structural works. We agree with the CIAC that both the civil and structural works and the architectural works were not completed. Nevertheless, We also agree with the CIAC on the probative value of the certificate of accomplishment for the project as of November 11, 2008, which certificate was provided by the project manager, Amcon & Company, Inc. In such certificate, it was plainly stated that the percentage of completion of civil and structural works was 99.254%, while that of architectural works was 62.598%.²⁵

In *Werr Corp. International v. Highlands Prime, Inc.*,²⁶ We held:

Deemed incorporated into every contract are the general provisions on obligations and interpretation of contracts found in the Civil Code. The Civil Code provides:

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²³ *Rollo*, pp. 125-127.

²⁴ *Id.* at 369.

²⁵ *Id.* at 370.

²⁶ *Supra.*

Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

In previous cases, we applied these provisions in construction agreements to determine whether the project owner is entitled to liquidated damages. We held that substantial completion of the project equates to achievement of 95% project completion which excuses the contractor from the payment of liquidated damages.

In *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, we applied Article 1234 of the Civil Code. In determining what is considered substantial compliance, we used the CIAP Document No. 102 as evidence of the construction industry practice that substantial compliance is equivalent to 95% accomplishment rate. In that case, the construction agreement requires the contractor "to pay the owner liquidated damages in the amount equivalent to one-fifth (1/5) of one (1) percent of the total Project cost for each calendar day of delay." We declared that the contractor cannot be liable for liquidated damages because it already accomplished 97.56% of the project. We reiterated this in *Transcept Construction and Management Professionals, Inc. v. Aguilar* where we ruled that since the contractor accomplished 98.16% of the project, the project owner is not entitled to the 10% liquidated damages.

Considering that the petitioner has completed 99.254% of the civil and structural works, it cannot be held liable for payment of liquidated damages on the contract amount pertaining to such works. However, We agree with the CIAC that the petitioner is liable for liquidated damages for the uncompleted architectural works.

Further, We are not convinced by the CA's justification in lowering the contractual provision on the amount of liquidated damages from 20%²⁷ to 10%. It reasoned that the petitioner's partial completion of the works justified the lowering of the amount. But there was no specific explanation on why it was lowered to 10%; a generic discussion of there being partially completed works does not suffice to consider the imposition of the contractual amount for liquidated damages as steep, unreasonable or iniquitous.

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²⁷ *Rollo*, p. 135. The contracts provided the computation for liquidated damages as follows: 1/10 of 1% per day, up to a maximum amount of 20% of the contract amount.

Thus, We find that the CIAC's award of ₱19,195,354.23, which is 20% of the amount of architectural works,²⁸ as liquidated damages is in order.

Third, the CA erred in doubling the amount of the work "deductives." This was purportedly due to a provision in the contract allowing FGBYO to double all expenses incurred due to defects, failures, or poor workmanship attributable to the petitioner.

This contractual provision, however, was never raised by the respondents in their answer with counterclaim filed before the CIAC. The applicability of the contractual provision did not become an issue in the course of the proceedings before the CIAC. The work "deductives" amounting to ₱24,605,680.45 claimed by respondents as counterclaim did not include any doubling of expense on account of the contractual provision.²⁹ In short, the respondents did not claim any amount based on the contractual provision supposedly allowing the doubling of expenses.

Moreover, the provision allowing the recovery of double the expenses had several conditions before the doubling of expenses was allowed. Since the provision was not raised and did not become an issue before the CIAC, its applicability to the respondents' claims and whether the provision's conditions were met were not passed upon. Its application on appeal therefore lacked factual basis. Its appreciation against the petitioner effectively denied due process to the petitioner.

Fourth, the CA erred in affirming the amount of ₱3,000,000 in favor of the respondents. The amount was supposedly the value of a check issued by Mr. Rolando A. Evangelista (Evangelista), who was the petitioner's vice-president, as payment for a unit in the project. The respondents alleged that Evangelista agreed to deduct the value of the check, which was dishonored, from the contract amount owed to the petitioner.³⁰

Clearly, it was Evangelista who owed the amount to FGBYO. It was his personal obligation and not the petitioner's. That he was an officer of the petitioner does not mean that the latter is responsible for the former's personal obligations. There was no sufficient basis or reason to pierce the petitioner's corporate veil.

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²⁸ Id. at 126. The amount of architectural works was ₱95,976,771.08.

²⁹ Id. at 250-251.

³⁰ Id. at 249.

There is likewise no evidence to show that the petitioner assumed Evangelista's obligation. The CIAC erred when it relied on the testimony of Engr. Tan, petitioner's witness, to support its finding that the amount was authorized to be deducted from the amount due to the petitioner. While Engr. Tan said that it is deductible, he also said that it was for the payment of a unit.³¹ Besides the fact that his authority to bind the petitioner was not established, his statement does not even definitively show that the petitioner assumed the obligation of Evangelista. Evangelista issued the dishonored check to cover his obligation to FGBYO. In the absence of proof that the petitioner agreed to assume Evangelista's obligations, the respondents cannot claim the amount from whatever is due to the petitioner.

On the interest due to the petitioner, We agree with the CA that the petitioner was not entitled to the payment of interest on the balance on its contract. As the petitioner did not fully complete the scope of works as specified in the contracts, it could not have demanded the full payment of the balance on the contract.

We also do not find merit in the petitioner's claim that the CIAC erred in its findings on the amounts for the work "deductives," the counterweights, the amount charged to the construction bond, the exemplary damages, and the attorney's fees. The CIAC has exhaustively reviewed these items to determine the amount due for each item. Besides the amount for work "deductives," which the CA erroneously doubled, the amounts for the other items were affirmed by the CA. We find no reason to depart from the findings of the CIAC as affirmed by the CA.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The July 13, 2016 Decision and the March 27, 2017 Resolution of the Court of Appeals in CA-G.R. SP. Nos. 125109 & 125026 are **REVERSED** and **SET ASIDE**. The Construction Industry Arbitration Commission's Final Award in CIAC Case No. 24-2011 is **AFFIRMED WITH MODIFICATIONS**. The CIAC Final Award shall read as follows:

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³¹ Id. at 373-374.

CLAIMANT

	Awarded (Pesos)
Balance on the Civil & Structural Works	26,499,949.70
Change Order on the Structural Works	957,880.26
Architectural Works Contract	16,987,562.26
Order on Architectural Works	398,836.39
Interest on the above claims	0.00
Exemplary Damages	0.00
Attorney's Fees	0.00
TOTAL	44,844,228.61

RESPONDENTS

Description	Awarded (Pesos)
Liquidated Damages	19,195,354.23
Work Deductives	20,324,551.90
Four (4) Counterweights	1,144,133.35
Value of Check No. 264	0.00
Construction Bond	443,000.00
Exemplary Damages	0.00
Attorney's Fees	0.00
TOTAL	41,107,039.48

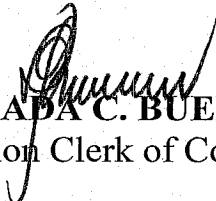
NET AWARD TO THE CLAIMANT

Award to Claimant	44,844,228.61
Award to Respondent	41,107,039.48
<u>Net Award</u>	<u>₱3,737,189.13</u>

Respondents are therefore ordered to pay the amount of **₱3,737,189.13** to the claimant. The award shall carry an interest of six percent (6%) per annum on any amount remaining until fully paid.

SO ORDERED.” *Perlas-Bernabe, J., on official business; Gesmundo, J., designated as Acting Working Chairperson per Special Order No. 2717 dated October 10, 2019; Zalameda, J., designated as Additional Member per Special Order No. 2712 dated September 27, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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