



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

R.V. SANTOS COMPANY, INC.,
Petitioner,

G.R. Nos. 159561-62

Present:

SERENO, *CJ.*,
Chairperson,
CARPIO,*
LEONARDO-DE CASTRO,
VILLARAMA, JR., and
REYES, *JJ.*

- versus -

Promulgated:

BELLE CORPORATION,
Respondent.

03 OCT 2012

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DECISION

LEONARDO-DE CASTRO, J.:

For disposition of the Court is a Petition for Review on *Certiorari*, assailing the Court of Appeals' Decision¹ dated March 7, 2003 and Resolution² dated August 20, 2003 in the consolidated cases docketed as

* Per Special Order No. 1315 dated September 21, 2012.

¹ *Rollo*, Vol. II, pp. 629-634; penned by Associate Justice Bernardo P. Abesamis with Associate Justices Juan Q. Enriquez, Jr. and Edgardo F. Sundiam, concurring.

² *Id.* at 636

CA-G.R. SP Nos. 60217 and 60224. In its Decision dated March 7, 2003, the Court of Appeals affirmed the July 28, 2000 Decision³ in CIAC Case No. 45-99 of the Construction Industry Arbitration Commission (CIAC), which, among others, (a) ordered RV Santos Company, Inc. (RVSCI) to refund the amount of ₱4,940,108.58 to Belle Corporation (Belle), and (b) denied Belle's claim for liquidated damages and RVSCI's counterclaims for unpaid billings and attorney's fees. In the assailed August 20, 2003 Resolution, the Court of Appeals denied the parties' respective motions for reconsideration of its March 7, 2003 Decision.

The present controversy arose from a Request for Adjudication⁴ filed by Belle with the CIAC on November 3, 1999. According to the Complaint⁵ attached to said Request, Belle and RVSCI entered into a Construction Contract on July 14, 1997. As stipulated therein, RVSCI undertook to construct a detailed underground electrical network for Belle's Tagaytay Woodlands Condominium Project located in Tagaytay City⁶ with a project cost that shall not be more than Twenty-Two Million Pesos (₱22,000,000.00), inclusive of all taxes, government fees and the service fee under the Contract.⁷ Likewise under said contract, Belle advanced to RVSCI fifty percent (50%) of the contract price in the amount of Eleven Million Pesos (₱11,000,000.00)⁸ for which RVSCI issued to Belle an official receipt⁹ dated August 8, 1997.

Some time thereafter, RVSCI commenced work on the project. Under Article VII(A) of the Construction Contract, the project was supposed to be completed and ready for operation within 180 calendar days from receipt by

³ Id. at 638-651.

⁴ CIAC Records, Vol. 2, p. 1.

⁵ Id. at 2-114.

⁶ Id. at 12; Construction Contract, par. 1.

⁷ Id. at 17; Article IV, Sec. 4.2.

⁸ Id. at 21; Article VI, Sec. 6.2(a).

⁹ Id. at 33.

RVSCI of the notice to commence from Belle, provided that all civil related works necessary for the execution of the project works were in place. However, the project was allegedly not completed within the stipulated time frame.

On March 17, 1998, Belle’s Woodlands General Committee supposedly set April 21, 1998 as the target date for completion of the Log Home Units in Woodlands. In a Memorandum¹⁰ dated April 14, 1998, Belle purportedly informed RVSCI of the target date and urged the latter to complete the project on or before said deadline. Still the project was not completed on April 21, 1998.

Subsequently, in June 1998, Belle placed additional work orders with RVSCI, who in turn made the following cost estimates for the additional work:

Additional Order No. 1	₱3,854,400.00
Installation of 7 units of Load break switch, 102 units of kw-hrs. meters and fabrication of 21 sets of Bus ducts	
Additional Order No. 2	541,528.54
Supply and installation of one (1) unit MDP-DTIA	
Additional Order No. 3	158,612.00
Various work orders issued to [RVSCI]	-----
	₱4,554,540.54 ¹¹

Belle admittedly approved RVSCI’s cost estimates for Additional Order Nos. 1 and 2 but the former allegedly did not approve the cost estimate for Additional Order No. 3 which Belle estimated should only cost

¹⁰ Id. at 34.
¹¹ Id. at 4.

₱22,442.47. Nonetheless, RVSCI proceeded to implement Additional Order Nos. 1 and 3 while Belle itself accomplished Additional Order No. 2.

On August 10, 1998, RVSCI submitted its Progress Billing¹² to Belle, claiming 53.3% accomplishment of the project, including the work done for Additional Order No. 1, as set forth above. RVSCI claimed that the value of the work accomplished under the August 10, 1998 Progress Billing was ₱7,159,216.63 on the main project and ₱1,768,000.00 on the additional work order. After deducting 50% of the Progress Billing on the main project, the total amount billed by RVSCI was ₱5,347,608.03. Purportedly relying on RVSCI's representations, Belle's project engineer recommended approval of the Progress Billing.

Subsequently, however, Belle reputedly made its own assessment of the work accomplished by RVSCI and determined that it was only worth ₱4,676,724.64. Belle supposedly relayed its findings to RVSCI.¹³

On September 30, 1998, while negotiations were allegedly on-going between the parties regarding the payment of the Progress Billing, Belle claimed that RVSCI unceremoniously abandoned the project without prior notice and forced Belle to take over the construction work therein. Belle purportedly sent a Memorandum¹⁴ dated December 15, 1998 to RVSCI to convey its "extreme disappointment" over the latter's abandonment of the project.

¹² Id. at 35.

¹³ Id. at 5.

¹⁴ Id. at 36.

On January 11, 1999, the parties’ representatives met and during that meeting RVSCI allegedly advised Belle that it will not return to the site until the outstanding balance due to it is paid.¹⁵

Meanwhile, on January 22, 1999, Belle made an additional payment for electrical works to RVSCI in the amount of ₱476,503.30. This payment was evidenced by an official receipt¹⁶ issued by RVSCI. Belle likewise remitted the amount of ₱122,491.14 to the Bureau of Internal Revenue representing the withholding tax due from RVSCI.

In February 1999, Belle engaged the services of an assessor, R.A. Mojica and Partners (R.A. Mojica), to determine the value of the work done by RVSCI. After it conducted an electrical works audit, R.A. Mojica reported to Belle that the work accomplished by RVSCI on the main project only amounted to ₱4,868,443.59 and not ₱7,159,216.05 as billed by RVSCI.¹⁷

In Belle’s view, it had overpaid RVSCI, based on the following computation:

Downpayment	₱11,000,000.00
Withholding Tax Payable	122,491.14
Additional Payment for electrical works (Billing #01)	476,503.33

	₱11,598,994.44
LESS:	
Actual Value of Work Accomplished	4,868,443.59
Approved Change of Specifications and Additional Work Orders	1,790,442.70

NET DUE TO [BELLE]	₱ 4,940,108.15 ¹⁸

¹⁵ Id. at 6.
¹⁶ Id. at 38.
¹⁷ Id. at 7.
¹⁸ Id. at 8.

RVSCI allegedly refused to return the excess payment despite repeated demands. Thus, relying on the arbitration clause in the Construction Contract, Belle brought the matter before the CIAC and prayed that RVSCI be directed to (a) reimburse Belle the amount of ₱4,940,108.15, and (b) pay Belle the amount of ₱2,200,000.00 as liquidated damages.¹⁹

By way of defense, RVSCI claimed that its August 10, 1998 Progress Billing was a result of a “bilateral assessment” by the representatives of both parties and was, in fact, approved/recommended for payment by Belle’s representatives. RVSCI complained that Belle segregated the project into two phases (Phase 1 and Phase 2) with Phase 1 comprising the area already worked on by RVSCI and Phase 2 comprising the “unworked” area. It was Belle which advised RVSCI in a meeting on January 11, 1999 that the former was suspending Phase 2 of the project due to economic difficulties. RVSCI allegedly made several demands for payment of its Progress Billing but Belle ignored said demands. Thus, in view of Belle’s suspension of the work and the nonpayment of the progress billing, RVSCI was purportedly forced to stop work on the project, despite being fully prepared to comply with its obligations under the contract. RVSCI further asserted that it was not notified of, nor made privy to, the audit work conducted by R.A. Mojica and therefore RVSCI was not bound by such audit. Insisting on the accuracy of its Progress Billing, RVSCI interposed a counterclaim against Belle for the payment of the amount of ₱4,312,170.95, computed thus:

Progress Billing	₱ 7,159,216.05
Remaining MDPs for delivery Under original contract (11 sets @ ₱327,128.54)	₱ 3,598,413.94

¹⁹ Id. at 10-11.

Approved Change of Specifications and Additional Work Order/s (dated August 10, 1998 and September 30, 1998)	<u>₱ 4,554,540.95</u>
Total	₱ 15,312,170.95
Less: Advance Payment	<u>₱ 11,000,000.00</u>
Net Due to [RVSCI]	₱ 4,312,170.95 ²⁰

RVSCI prayed for the dismissal of the Complaint and for the CIAC to order Belle to pay the following amounts: (a) ₱4,312,170.95 as balance of RVSCI’s progress billing(s), (b) ₱500,000.00 as moral damages, and (c) ₱500,000.00 as attorney’s fees and costs of suit.²¹

At the preliminary conference, the parties agreed on the Terms of Reference for the arbitration of their respective claims. According to the Terms of Reference, the admitted facts and the issues to be resolved by the arbitration panel were as follows:

II. ADMITTED FACTS

The parties admit the following:

1. Their respective identity/juridical existence and circumstances.
2. The genuineness and due execution of the Contract (attached as Annex A of the Complaint) for the construction of a detailed underground electrical network for the Tagaytay Woodlands Condominium Project in Tagaytay City entered into by the parties on 14 July 1997 for a contract price of ₱22,000,000.00.
3. Article IV, Section 4.2 of the Construction Contract which provide (sic) that the “Contractor [RVSCI] guarantees and warrants that the total project cost shall not be more than ₱22,000,000.00, inclusive of all taxes and government fees and the service fee under the Contract.”
4. Sec. 6.2(a), Art. VI of the Construction Contract which provides that: “Owner [Belle] shall advance to Contractor an amount equivalent to

²⁰ Id. at 122-123.
²¹ Id. at 123.

50% of the Contract Price or the amount of ₱11,000,000.00, as down payment for the construction, upon execution of the Contract, receipt of which is hereby acknowledged by Contractor. Progress payments to be made by Owner to Contractor, proportionate to the percentage of accomplishment of the Project, shall be deducted from the balance of the Contract Price. The same proportion of the down payment shall also be deducted from billing progress payments.”

- 5. The payment made by Claimant to Respondent in the amount of ₱11,000,000.00 as acknowledged to have been received under Official Receipt No. 0706 issued by the latter on 8 August 1997 (attached as Annex B of the Complaint).
- 6. The following proposed cost estimate of the Respondent on Claimant’s additional work orders in June 1998:

Additional Order No. 1	Installation of 7 units of Load break switch, 102 units of kw-hrs. meters and fabrication of 21 sets of Bus ducts.	₱3,854,400.00
Additional Order No. 2	Supply and installation of one (1) unit MDP-DTIA	541,528.54
Additional Order No. 3	Various work orders issued to [RVSCI]	158,612.00
		<u>₱4,554,540.54</u>
- 7. Claimant approved Respondent’s proposed estimates on Additional Orders Nos. 1 and 2, but disputed the cost estimate of Additional Order No. 3. Thereafter, Respondent proceeded to implement additional Orders Nos. 1 and 3.
- 8. Progress Billing No. 1 (attached as Annex D of the Complaint) which Claimant received on 10 August 1998.
- 9. On 11 January 1999, the parties’ representatives met to discuss the reasons for Respondent’s failure/refusal to return to the Site. These representatives were Fernando R. Santico, Edgardo F. Villarino & Rudy P. Aninipot, for the Claimant, and Renato V. Santos & Joey C. Caldeo, for the Respondent.
- 10. Claimant made additional payment to Respondent for electrical works on 22 January 1999 amounting to ₱476,503.30 as per Official Receipt No. 0717 issued by Respondent (attached as Annex G of the Complaint).
- 11. Existence of Respondent’s letter to Claimant dated 4 May 1999 re: Underground Electrical Utilities (attached as Annex A of the Reply).

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IV. ISSUES TO BE DETERMINED

1. Is Claimant entitled to its claims for overpayment? If so, how much should be returned to the Claimant?
 - 1.1 How much was the work accomplished by Respondent in the project?
 - 1.2 Whether or not Respondent has manufactured/produced and/or installed 11 sets of Main Distribution Panels? If so, is Claimant liable and for how much should it be liable to pay Respondent for their cost/value?
 - 1.3 Whether or not Respondent is entitled to its claim for unpaid billings?
2. Is Claimant entitled to its claim for liquidated damages? If so, how much by way of liquidated damages should be awarded to it?
 - 2.1 Was Respondent justified in suspending its work?
 - 2.2 Is Respondent justified in declining to return to work?
3. Is Respondent entitled to its counterclaim for attorney's fees? If so, how much is Claimant liable to Respondent for such claim?²²

The Terms of Reference further indicated the parties' agreement that the presentation of their testimonial evidence shall be by way of affidavits of witnesses. Hearings were held on March 24 and 28, 2000. Thereafter, the parties submitted their draft Decisions to the arbitral tribunal.

In a Decision dated July 28, 2000, the CIAC found that, under the Construction Contract²³ and industry practice, Belle had the right to the true value of the work performed by RVSCI upon termination. Further, the CIAC ruled that according to the Uniform General Conditions of Contract for Private Construction (CIAP Document 102), approval of a progress

²² CIAC Records, Vol. 4, pp. 17-18.

²³ The CIAC cited Article XIII, Section 13.4 of the Contract which provides:

13.4 Valuation of the Work Performed

Upon termination of the Contract by OWNER under Article 13.1 above, OWNER in good faith shall determine the true value to OWNER, if any, of works actually completed by CONTRACTOR in accordance with the specifications of the Contract, and CONTRACTOR shall pay to OWNER, or OWNER shall pay to CONTRACTOR, as the case may be the difference between the value so determined and the aggregate amount paid to CONTRACTOR as at the time of termination, in either case within thirty (30) business days from date of such determination. (CIAC Records, Vol. 2, p. 30.)

billing is provisional²⁴ and is subject to final review and approval before acceptance of the completed work and prior to final payment.²⁵ Hence, Belle was within its rights to make a reevaluation of the work accomplishment of RVSCI. Finding that Engr. Raladin A. Mojica qualified as an expert witness, the CIAC gave weight to the results of the re-survey done by R.A. Mojica and held that Belle indeed made an overpayment to RVSCI. Since the date when RVSCI commenced work on the Project and the supposed completion date cannot be determined, the CIAC found no basis to award liquidated damages in favor of Belle. The arbitral tribunal likewise denied RVSCI's counterclaims. Thus, the dispositive portion of the CIAC Decision reads:

WHEREFORE, award is hereby made as follows:

1. Claimant's [Belle's] claim for refund of ₱4,940,108.58, representing overpayment to the Respondent is hereby granted. Respondent is, therefore, ordered to pay this amount to Claimant with interest at the rate of 6% per annum from the date of this Award.
2. Claimant's claim for liquidated damages and Respondent's counterclaims for an alleged balance due and unpaid on progress billings and for attorney's fees are denied.
3. Arbitration fees and expenses shall be shared by the parties pro rata on the basis of the amount of their claims and counterclaims.
4. The amount of ₱4,940,108.58 found in paragraph 1 of this Award to be due the Claimant plus interest at 6% per annum shall further earn interest at the rate of 12% per annum from the time this decision becomes final and executory and the total amount found to be due remains unpaid.²⁶

Both Belle and RVSCI filed petitions for review under Rule 43 of the Rules of Court to assail the foregoing CIAC Decision with the Court of Appeals, which were docketed as CA-G.R. SP No. 60217 and CA-G.R. SP No. 60224, respectively. Upon motion by the parties, the cases were

²⁴ CIAP Document No. 102, citing Articles 22.02 and 22.04.

²⁵ Id., citing Article 22.09.

²⁶ *Rollo*, Vol. II, p. 650.

consolidated and after due proceedings, the Court of Appeals issued a Decision dated March 7, 2003, dismissing the petitions and affirming the CIAC Decision. The separate motions for reconsideration of the parties were likewise denied by the Court of Appeals in a Resolution dated August 20, 2003.

RVSCI elevated the matter to this Court and questioned the Court of Appeals' March 7, 2003 Decision and August 20, 2003 Resolution through the present petition for review on *certiorari* under Rule 45. The grounds relied upon by RVSCI were:

- I. THE APPELLATE COURT GRAVELY ERRED IN RULING THAT THE SURVEYOR'S ELECTRICAL WORK AUDIT WAS COMPETENT AND MUST BE GIVEN WEIGHT.
- II. THE APPELLATE COURT GRAVELY ERRED IN RULING THAT BELLE MAY WITHDRAW ITS APPROVAL OF THE PROGRESS BILLING PURSUANT TO ARTICLES VI(2)(C) AND XIII(4) OF THE CONTRACT.
- III. THE APPELLATE COURT GRAVELY ERRED IN RULING THAT [RVSCI] IS NOT ENTITLED TO AN AWARD FOR DAMAGES.²⁷

Anent the first ground, RVSCI argued that R.A. Mojica's electrical work audit that was unilaterally commissioned by Belle was not binding on the former since (a) it was not authorized by the Contract and was done without the consent or participation of RVSCI; (b) assuming that the Contract allowed Belle to commission such audit, it was incomplete as it failed to cover the entire work performed by RVSCI as shown by its Progress Billing and Bill of Quantities, allegedly approved by Belle; and (c) the audit was tainted by obvious partiality since R.A. Mojica was a regular contractor of Belle and a competitor of RVSCI.

²⁷ *Rollo*, Vol. I, p. 24 and Vol. II, p. 1441.

With respect to the second ground, it is RVSCI's contention that Article VI, Section 6.2(c) of the Construction Contract merely differentiate acceptance by Belle of RVSCI's work accomplishment from time to time from Belle's final acceptance of work upon completion of the entire project. Also RVSCI claims that Article XIII, Section 13.4 only allows Belle to determine the true value of the works in cases of termination of the Contract upon occurrence of any of the events of default enumerated under Article XIII, Section 13.1 and said provision has no application in instances of justified suspension of works due to Belle's breach of the Contract. In any event, it is RVSCI's view that neither Article VI, Section 6.2(c) nor Article XIII, Section 13.4 allows Belle to withdraw its previous approval of RVSCI's Progress Billing, contrary to the rulings of both the CIAC and the Court of Appeals. Assuming without conceding that Article XIII, Section 13.4 of the Contract applies in this instance, RVSCI believes that the final determination of the value of the works should be made by (a) both parties or (b) an independent third party mutually commissioned by them.

As for the last ground, RVSCI asserts that the CIAC and the Court of Appeals erred in denying RVSCI's claim for damages in view of Belle's breach of the Contract by its unjustified refusal or failure to pay the Progress Billing.

On the other hand, Belle claims that the Petition should be dismissed for raising questions of fact, which are improper in a petition under Rule 45 of the Rules of Court, without showing that this case fell under the recognized exceptions under jurisprudence. On the merits of the Petition, Belle argued that it had the right to determine the true value of work done and nothing in the Contract limited that right. According to Belle, the CIAC and the Court of Appeals properly relied on Article VI, Section 6.2(c) and Article XIII, 13.4 of the Contract and on industry practice in upholding

Belle's right for a re-evaluation of RVSCI's actual work accomplishment. Thus, the CIAC and the appellate court allegedly were correct in giving weight to the electrical audit report made by R.A. Mojica. Belle further propounds that the lower tribunals correctly did not grant RVSCI any award for damages considering that RVSCI did not prove such damages as it had, in fact, been overpaid. As for RVSCI's claim for the value of materials and equipment purportedly left at the site, the same was not included in the Terms of Reference and RVSCI was not allowed by the CIAC to present evidence on the same. Thus, this matter cannot be raised for the first time on appeal.

After a thorough review of the issues raised by the parties, the Court finds no merit in the Petition.

On the procedural issue:

It must be stressed that in petitions for review under Rule 45 only questions of law may be raised, unless the petitioner shows that the case falls under the recognized exceptions. In *Makati Sports Club, Inc. v. Cheng*,²⁸ we explained, thus:

At the outset, we note that this recourse is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 1 of the Rule, **such a petition shall raise only questions of law** which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. **If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances**

²⁸

G.R. No. 178523, June 16, 2010, 621 SCRA 103.

and their relation to each other, then the issue is necessarily factual.²⁹
(Emphases supplied, citation omitted.)

In cases decided by the CIAC, the above rule finds even more stringent application. As we previously observed in one case:

Executive Order No. 1008, as amended, provides, in its Section 19, as follows:

“Sec. 19. *Finality of Awards.* — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.”

Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court - which is not a trier of facts - in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal’s findings of fact shall be final and [u]nappealable.

X X X X

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. **The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had “misapprehended the facts” and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as “legal questions.”** The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught

²⁹

Id. at 110-111.

the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.³⁰ (Emphasis supplied, citations omitted.)

In another case, we have also held that:

It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.

This rule, however, admits of certain exceptions. In *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, we said:

In *David v. Construction Industry and Arbitration Commission*, we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.³¹ (Citations omitted.)

³⁰ *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, December 13, 1993, 228 SCRA 397, 404-407.

³¹ *IBEX International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306, 314-315.

In the case at bar, petitioner indeed raises factual matters in the present controversy which this Court may not look into under a petition for review on *certiorari*. We likewise find that this case is not among the exceptions to this settled rule. Nevertheless, even if we were to excuse this procedural infirmity of the petition, we are still not inclined to reverse the lower tribunals' findings on the merits of the case.

On the substantive matters:

***Whether the third party audit report
commissioned by Belle is admissible and
may be given weight***

To recapitulate, petitioner assailed R.A. Mojica's audit report on the following grounds: (a) that there was no provision in the Construction Contract allowing Belle to unilaterally conduct an audit of petitioner's work; (b) assuming the Contract allows such an audit, it nonetheless failed to include all the work done by petitioner; and (c) it was tainted by bias and partiality since R.A. Mojica was a regular, long time contractor of Belle.

On this issue, we uphold the CIAC and the Court of Appeals in their allowance of the third party audit report done by R.A. Mojica.

First, while there was no provision in the Construction Contract expressly authorizing Belle to secure the services of a third party auditor to determine the value of the work accomplished by petitioner RVSCI, there is likewise no provision prohibiting the same. Certainly, RVSCI failed to point to any contractual stipulation preventing RVSCI to seek expert opinion regarding the value of RVSCI's accomplishment or the accuracy of the Progress Billing, whether prior or subsequent to the approval of such billing.

Second, the mere fact that the audit was unilateral, or was not participated in by petitioner, did not render the same objectionable. There is nothing in the Construction Contract which obligates Belle to inform RVSCI or to secure the latter's participation should the former decide to commission an audit of the work accomplished. On the contrary, in case of termination due to default of the contractor, Article XIII, Section 13.4 of the Construction Contract explicitly allows Belle to unilaterally evaluate the value of the work and the only condition is that it be done in good faith. Even assuming *arguendo* we accept RVSCI's contentions that it justifiably suspended work and that Article XIII, Section 13.4 merely covers instances of default and not situations of justified suspension of works, we see no reason why the procedure for cessation of work due to default cannot be applied to other instances of cessation of work, particularly in the absence of a contractual provision governing termination or suspension of works in situations not involving a default.

Verily, the fact that the parties agreed to a unilateral valuation of the work by the owner in the event of a termination of the contract due to default signifies that the parties, including RVSCI, did not find anything abhorrent in a one-sided valuation at the time of the execution of the contract. If RVSCI believed that this was unfair or that its participation should be required in a review or audit of its work, then it should not have acquiesced to such a provision in the first place and instead insisted on a stipulation prohibiting a unilateral audit of its work.

Third, bias on the part of a witness cannot be presumed. It is a basic rule that good faith is always presumed and bad faith must be proved.³² In a previous case, we have held that the witness' employment relationship with,

³² *Navida v. Dizon, Jr.*, G.R. Nos. 125078, 125598, 126654, 127856 and 128398, May 30, 2011, 649 SCRA 33, 83-84.

or financial dependence on, the party presenting his testimony would not be sufficient reason to discredit said witness and label his testimony as biased and unworthy of credence.³³ Analogously, that Belle and R.A. Mojica had a long standing business relationship does not necessarily mean that the latter's report was tainted with irregularity, especially in the absence of evidence that the audit report was indeed inaccurate or erroneous. It must be emphasized as well that RVSCI had ample opportunity to cross-examine Engr. Mojica with respect to the particulars of his company's audit report.

To be sure, RVSCI is not precluded from proffering evidence to rebut the findings of R.A. Mojica. However, RVSCI did not present or point to documents, invoices, and receipts to show that the amounts and quantities in the audit report were not correct, nor did RVSCI convincingly substantiate its assertion that it had completed work in other areas of the project that was not included in said report. RVSCI merely relied on its own Progress Billing as supposedly signed by Belle's representatives. However, it is that Progress Billing which was later questioned by Belle on the suspicion that the same was bloated and inaccurate. Thus, Belle had a third party conduct an audit of RVSCI's actual work accomplishment. As the CIAC noted, there was nothing to prevent RVSCI to secure the services of its own expert witness to contest the findings of R.A. Mojica and buttress the accuracy of its Progress Billing with supporting documents other than such billing but RVSCI did not.

Hence, we find no error on the part of the CIAC and the Court of Appeals in relying on the third party audit report and giving it due weight in the resolution of the present case.

³³ *Ong Eng Kiam v. Lucita G. Ong*, 535 Phil. 805, 817 (2006).

***Whether Belle's approval of the Progress
Billing is final and binding and may no
longer be withdrawn***

After careful consideration of the contentions of the parties, we agree with the CIAC's finding, as affirmed by the Court of Appeals, that the owner's approval of progress billing is merely provisional. This much can be gleaned from Article VI, Section 6.2(c) of the Construction Contract which states that "[t]he acceptance of work from time to time for the purpose of making progress payment shall not be considered as final acceptance of the work under the Contract." There can be no other interpretation of the said provision but that progress billings are but preliminary estimates of the value of the periodic accomplishments of the contractor. Otherwise, there would be no need to include Article VI, Section 6.2(c) in the Contract since final acceptance of the contractor's work would come as a matter of course if progress billings were, as RVSCI contends, final and binding upon the owner. On the contrary, progress billings and final acceptance of the work were clearly still subject to review by the owner.

Moreover, we see no reason to disturb the CIAC ruling that the foregoing contractual provision is consistent with industry practice, as can be deduced from Articles 22.02, 22.04 and 22.09 of CIAP Document 102 which pertinently state:

22.02 REQUESTS FOR PAYMENT: The Contractor may submit periodically but not more than once each month a Request for Payment for work done. The Contractor shall furnish the Owner all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the Work. x x x.

x x x x

22.04 CONDITIONS RELATIVE TO PAYMENTS: The Owner shall estimate the value of work accomplished by the

Contractor using as basis the schedule stipulated in the Breakdown of Work and Corresponding Value. Such estimate of the Owner of the amount of work performed shall be taken as the basis for the compensation to be received by the Contractor. While such preliminary estimates of amount and quantity shall not be required to be made by strict measurement or with exactness, they must be made as close as possible to the actual percentage of work accomplishment.

x x x x

22.09 ACCEPTANCE AND FINAL PAYMENT: Whenever the Contractor notifies the Owner that the Work under the Contract has been completely performed by the Contractor, the Owner shall proceed to verify the work, shall make the final estimates, certify to the completion of the work, and accept the same.

From the above-quoted provisions, it is readily apparent that, whether in the case of progress billings or of turn-over of completed work, the owner has the right to verify the contractor's actual work accomplishment prior to payment.

In all, we approve the CIAC's pronouncement that "[t]he owner is, therefore, not estopped [from questioning] a prior evaluation of the percentage of accomplishment of the contractor and to downgrade such accomplishment after re-evaluation. It is the right of every owner to re-evaluate or re-measure the work of its contractor during the progress of the work."³⁴

Whether Belle should be made liable to RVSCI for damages

Anent the third issue, it is apropos to state here that the rationale underlying the owner's right to seek an evaluation of the contractor's work

³⁴

Rollo, Vol. II, p. 644.

is the right to pay only the true value of the work as may be reasonably determined under the circumstances.

This is consistent with the law against unjust enrichment under Article 22 of the Civil Code which states that “[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.” Expounding on this provision in a recent case, we have held that “[t]he principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.”³⁵

In the case at bar, we uphold the CIAC’s factual finding that the value of the total work accomplished by RVSCI on the main project was ₱4,868,443.59 while the cost of the additional work amounted to ₱1,768,000.00 plus ₱22,442.27, for a total of ₱6,658,885.86. On the other hand, Belle had made payments in the total amount of ₱11,598,994.44.³⁶ It is thus undeniable that RVSCI had received payments from Belle in excess of the value of its work accomplishment. In light of this overpayment, it seems specious for RVSCI to claim that it has suffered damages from Belle’s refusal to pay its Progress Billing, which had been proven to be excessive and inaccurate. Bearing in mind the law and jurisprudence on unjust enrichment, we hold that RVSCI is indeed liable to return what it had received beyond the actual value of the work it had done for Belle.

On a related note, this Court cannot grant RVSCI’s claim for the value of materials and equipment allegedly left at the site. As observed by the

³⁵ *MIAA v. Avia Filipinas International, Inc.*, G.R. No. 180168, February 27, 2012.


³⁶ *Rollo*, Vol. II, p. 648.

CIAC, this particular claim was not included in the Terms of Reference and, hence, could not be litigated upon or proved during the CIAC proceedings.


In conclusion, the CIAC rightly dismissed RVSCI's counterclaims for lack of merit.

WHEREFORE, the instant petition for review is **DENIED**. The Decision dated March 7, 2003 and the Resolution dated August 20, 2003 of the Court of Appeals in CA-G.R. SP Nos. 60224 and 60217 are **AFFIRMED**.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

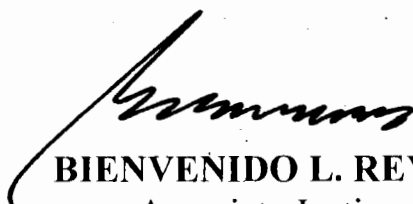

MARIA LOURDES P.A. SERENO
Chief Justice
Chairperson



ANTONIO T. CARPIO
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P.A. SERENO
Chief Justice