



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST
OF LATTER DAY SAINTS,**
Petitioner,

G.R. No. 176439

- versus -

**BTL CONSTRUCTION
CORPORATION,**
Respondent.

X-----X

**BTL CONSTRUCTION
CORPORATION,**
Petitioner,

G.R. No. 176718

- versus -

**THE PRESIDENT OF THE
MANILA MISSION OF THE
CHURCH OF JESUS CHRIST
OF LATTER DAY SAINTS and
BPI-MS INSURANCE
CORPORATION,**
Respondents.

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

JAN 7 5 2014

Handwritten signature

X-----X

DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on *certiorari*¹ both assailing the Decision² dated August 15, 2006 and

¹ *Rollo* (G.R. No. 176439), pp. 10-A-41; *rollo* (G.R. No. 176718), pp. 12-61.

² *Rollo* (G.R. No. 176439), pp. 45-64; *rollo* (G.R. No. 176718), pp. 590-609. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Jose L. Sabio, Jr. and Sesinando E. Villon, concurring.

Handwritten mark

Resolution³ dated January 26, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 84068 which modified the Decision⁴ dated April 27, 2004 of the Construction Industry Arbitration Commission (CIAC), awarding the following amounts: (a) ₱1,248,179.87 as 10% retention money, and ₱1,612,017.74 as unpaid balance of the original contract price in favor of BTL Construction Corporation (BTL); and (b) ₱526,400.00 as cost overrun, ₱300,533.49 as overpayment for the works taken in the change orders subject of these cases, and ₱1,800,560.00 as liquidated damages in favor of the Church of Jesus Christ of Latter Day Saints⁵ (COJCOLDS).

The Facts

On January 10, 2000, COJCOLDS and BTL entered into a Construction Contract⁶ (Contract) for the latter's construction of the former's meetinghouse facility at Barangay Cabug, Medina, Misamis Oriental (Medina Project). The contract price was set at ₱12,680,000.00 (contract price), and the construction period from January 15 to September 15, 2000.⁷ However, due to bad weather conditions, power failures, and revisions in the construction plans (as per Change Order Nos. 1 to 12 agreed upon by the parties),⁸ among others, the completion date of the Medina Project was extended.

On May 18, 2001, BTL informed COJCOLDS that it suffered financial losses from another project (*i.e.*, the Pelaez Arcade II Project) and thereby requested that it be allowed to: (a) bill COJCOLDS based on 95% and 100% completion of the Medina Project; and (b) execute deeds of assignment in favor of its suppliers so that they may collect any eventual payments directly from COJCOLDS.⁹ COJCOLDS granted said request which BTL, in turn, acknowledged.¹⁰

On August 13, 2001, BTL ceased its operations in the Medina Project because of its lack of funds to advance the cost of labor necessary to complete the said project, as well as the supervening increase in the prices of materials and other items for construction.¹¹ Consequently, COJCOLDS terminated its Contract with BTL¹² on August 17, 2001 and, thereafter,

² *Rollo* (G.R. No. 176439), pp. 45-64; *rollo* (G.R. No. 176718), pp. 590-609. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Jose L. Sabio, Jr. and Sesinando E. Villon, concurring.

³ *Rollo* (G.R. No. 176439), pp. 66-68; *rollo* (G.R. No. 176718), pp. 698-700.

⁴ *Rollo* (G.R. No. 176718), pp. 317-344. Signed by Chairman Joven B. Joaquin and Members Salvador P. Castro, Jr. and Eliseo I. Evangelista.

⁵ Based on the records, the actual party is the Church of Latter Day Saints despite the cases' captions. (See *rollo* [G.R. No. 176439], p. 11; *rollo* [G.R. No. 176718], p. 12.)

⁶ *Rollo* (G.R. No. 176718), pp. 77-80.

⁷ *Rollo* (G.R. No. 176439), pp. 45-46; *rollo* (G.R. No. 176718), pp. 590-591.

⁸ *Rollo* (G.R. No. 176718), pp. 84-96 and 112-117.

⁹ *CA rollo*, pp. 259-G-260.

¹⁰ *Id.* at 261.

¹¹ *Id.* at 271.

¹² *Id.* at 274.

engaged the services of another contractor, Vigor Construction (Vigor), to complete the Medina Project.¹³

On November 12, 2003, BTL filed a complaint against COJCOLDS before the CIAC, claiming a total amount of ₱28,716,775.40 broken down as follows: (a) ₱12,464,005.11 as cost of labor, materials, equipment, overhead expenses, lost profits and interests; (b) ₱1,248,179.87 as the 10% retention money stipulated in the contract; (c) ₱373,838.42 as interest on said retention money; (d) ₱14,330,752.00 as actual damages;¹⁴ (e) ₱300,000.00 as attorney's fees; (f) moral and exemplary damages; and (g) costs of arbitration.¹⁵

For its part, COJCOLDS filed its answer with compulsory counterclaim, praying for the award of ₱4,134,693.49 which consists of: (a) ₱2,307,760.00 as liquidated damages in view of BTL's delay in completing the pending project; (b) ₱300,533.49 as reimbursement of the payments it directly made to BTL's suppliers as per the latter's request; (c) ₱526,400.00 as cost overrun; and (d) ₱1,000,000.00 as attorney's fees.¹⁶

During the preliminary conference held on February 10, 2004, the parties agreed to a Terms of Reference (TOR)¹⁷ which was later amended on March 4, 2004.¹⁸ Under the amended TOR, it was stipulated that the parties' relationship with respect to the Medina Project is governed by, among others, the Contract,¹⁹ and the General Conditions of the Contract²⁰ (General Conditions). They also stipulated that 98% of the said project had been completed.

The CIAC Ruling

In a Decision²¹ dated April 27, 2004, the CIAC found both parties' claims to be partly meritorious and thus ordered: (a) COJCOLDS to pay BTL the amount of ₱2,760,838.79 as the unpaid balance of the original contract price, plus the unpaid additional works, and ₱300,000.00 as attorney's fees; and (b) BTL to pay COJCOLDS the amount of ₱1,191,920.00 as liquidated damages, and ₱300,533.49 as reimbursement of the balance of the latter's direct payments to the former's suppliers.²²

¹³ *Rollo* (G.R. No. 176439), pp. 46-47.

¹⁴ ₱3,556,951.85 as cost of foreclosed properties; ₱163,382.41 as legal fees/litigation expenses; ₱1,066,697.32 as interests/charges paid to banks; ₱458,469.02 as interests paid to suppliers; and ₱9,085,251.40 as business losses.

¹⁵ *Rollo* (G.R. No. 176439), p. 47; see also *rollo* (G.R. No. 176718), p. 325.

¹⁶ *Rollo* (G.R. No. 176439), p. 47; see also *rollo* (G.R. No. 176718), pp. 325-326.

¹⁷ *Rollo* (G.R. No. 176718), pp. 215-222.

¹⁸ *Id.* at 266-274.

¹⁹ *Id.* at 77-80.

²⁰ *CA rollo*, pp. 107-140.

²¹ *Rollo* (G.R. No. 176718), pp. 317-344.

²² *Id.* at 343.

Based on the parties' stipulations, COJCOLDS was found liable only for 98% of the original contract price (*i.e.*, ₱12,680,000.00) in the amount of ₱12,426,400.00. Considering its previous payments in the total amount of ₱10,814,382.26, COJCOLDS was then ordered to pay BTL the unpaid balance of **₱1,612,017.74**, as well as the costs of the additional works made on the Medina Project, particularly, ₱804,460.89²³ for the concrete retaining wall, and ₱344,360.16 for the unpaid balances from the works done under Change Order Nos. 8 to 12.²⁴ On the other hand, BTL was ordered to pay COJCOLDS liquidated damages at the rate of ₱12,680.00 per day, or a total of ₱1,191,920.00, pursuant to Article 3(B) of the Contract as well as Article 29.04 of the General Conditions, due to the former's 94-day delay, notwithstanding several extensions (238 days in total).²⁵

Dissatisfied with the CIAC's ruling, COJCOLDS elevated the matter to the CA.²⁶

The CA Ruling

In a Decision²⁷ dated August 15, 2006, the CA modified the CIAC's ruling in that it ordered COJCOLDS not only to pay BTL the amount of ₱1,612,017.74 representing the unpaid portion of 98% of the contract price, but also to return to BTL the 10% retention money in the amount of ₱1,248,179.87, after deducting the cost overrun of ₱526,400.00 that BTL was held to shoulder as per Article 3(E) of the Contract²⁸ (under which COJCOLDS was allowed to engage the services of another contractor, *i.e.*, Vigor, to complete the Medina Project using the 10% retention amount).

Meanwhile, the CA ordered BTL to return to COJCOLDS the amount of ₱300,533.49 which was found to be an overpayment made by the latter pursuant to the change orders.²⁹

The CA also increased the award of liquidated damages in COJCOLDS's favor from ₱1,191,920.00 to ₱1,800,560.00 since BTL was actually in delay for 142 days (and not 94 days as found by the CIAC). The CA clarified that pursuant to Article 21.04(A) of the General Conditions as well as the practice in the construction industry, the architect's recommendation regarding the grant of extensions should be controlling and thus BTL was only given an extension of 190 days (and not 238 days as found by the CIAC).³⁰

²³ ₱804,460.00 in some parts of the record.

²⁴ *Rollo* (G.R. No. 176718), p. 340.

²⁵ *Id.* at 338-339.

²⁶ See COJCOLDS's Petition for Review dated June 4, 2004 in CA-G.R. SP No. 84068, *id.* at 350-390.

²⁷ *Rollo* (G.R. No. 176439), pp. 45-64; *rollo* (G.R. No. 176718), pp. 590-609.

²⁸ *Rollo* (G.R. No. 176439), p. 59; *rollo* (G.R. No. 176718), p. 604. See also Article 29.04 of the General Conditions, *CA rollo*, p. 133.

²⁹ *Rollo* (G.R. No. 176439), p. 63; *rollo* (G.R. No. 176718), p. 608.

³⁰ *Rollo* (G.R. No. 176439), pp. 55-56; *rollo* (G.R. No. 176718), pp. 600-601.

Further, the CA deleted the awards for the additional works (*i.e.*, ₱804,460.89 for the concrete retaining wall, and ₱344,360.16 for the unpaid balances from the works taken under Change Order Nos. 8 to 12) adjudged by the CIAC in favor of COJCOLDS because: (*a*) the retaining wall should be properly deemed as part of the original works, considering that it was not covered by any change order, unlike the other additional works performed on the Medina Project; and (*b*) there is no basis in saying that COJCOLDS failed to pay the balance for the works taken under Change Order Nos. 8 to 12, considering that COJCOLDS paid such balance directly to BTL's suppliers, pursuant to BTL's May 18, 2001 request to COJCOLDS.³¹

Finally, the CA deleted the award of attorney's fees in BTL's favor as COJCOLDS was not in bad faith in refusing to pay the former's claims.

Dissatisfied, both parties moved for reconsideration, which were, however, denied in a Resolution³² dated January 26, 2007, hence, these petitions.³³

The Issues Before the Court

The issues raised for the Court's resolution are as follows: (*a*) whether or not the 10% retention money that COJCOLDS was ordered to release in favor of BTL is separate and distinct from the unpaid balance of the contract price amounting to ₱1,612,017.74; (*b*) whether or not COJCOLDS is liable for the "additional works" performed by BTL, specifically the concrete retaining wall and the works taken under Change Order Nos. 8 to 12; (*c*) whether or not BTL incurred delay in its obligation to complete the Medina Project and thus, must pay COJCOLDS liquidated damages at the rate of ₱12,680.00 for every day of delay; (*d*) whether or not BTL is liable to pay COJCOLDS the value of cost overrun in the amount of ₱526,400.00; (*e*) whether or not BTL received overpayments in the change orders from COJCOLDS amounting to ₱300,533.49 and thus, should be held liable to return the same; and (*f*) whether or not the parties are liable to pay each other's attorney's fees, arbitration costs, and costs of suit.

The Court's Ruling

COJCOLDS's petition in G.R. No. 176439 is partly meritorious, while BTL's petition in G.R. No. 176718 is without merit. The Court shall resolve the above-mentioned issues in the order that they are mentioned.

³¹ See *CA rollo*, pp. 259–G-260.

³² *Rollo* (G.R. No. 176439), pp. 66-68; *Rollo* (G.R. No. 176718), pp. 698-700.

³³ *Rollo* (G.R. No. 176439), pp. 10–A-41; *Rollo* (G.R. No. 176718), pp. 12-61.

I. Liabilities of COJCOLDS to BTL.

a. The 10% Retention Money and the Unpaid Balance of the Contract Price.

In its petition, COJCOLDS concedes that it has yet to pay BTL the unpaid balance of the contract price amounting to ₱1,612,017.74 and that it has withheld the 10% retention money in the amount of ₱1,248,179.87 which should be returned to BTL. It, however, argues that the CA erred in ruling that the retention money should be paid **in addition** to the unpaid balance of the contract price. COJCOLDS contends that treating the retention money as a separate and distinct liability from the unpaid balance would unduly increase its total liability from the Medina Project (including the amount of ₱10,814,382.26 which it had already paid to BTL) from ₱12,426,400.00 to ₱13,674,579.87.³⁴

The Court agrees with COJCOLDS.

In *H.L. Carlos Construction, Inc. v. Marina Properties Corp.*,³⁵ the Court held that in the construction industry, the 10% retention money is **a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work** – if any – becomes necessary.³⁶

Articles 3(E) and 5 of the Contract and Article 22.14 of the General Conditions govern the application of the 10% retention money in these cases, *viz.*:

CONSTRUCTION CONTRACT

X X X X

ARTICLE 3. TIME AND COMPLETION AND SCHEDULE OF CONSTRUCTION

X X X X

E. The CONTRACTOR'S TEN (10) percent retention under Article V hereof shall be retained by the OWNER until all items on the Substantial Inspection are satisfactorily completed and accepted by the OWNER. If the CONTRACTOR shall refuse or fail to complete the Substantial Inspection punchlist, within the time fixed by a written notice, the OWNER shall then have the right to hire the services of another contractor to complete the same using the contractor's TEN (10) percent retention amount and the balance, if any, shall be returned to the CONTRACTOR.³⁷

³⁴ *Rollo* (G.R. No. 176439), pp. 20-26.

³⁵ 466 Phil. 182 (2004).

³⁶ *Id.* at 199-200.

³⁷ *CA rollo*, p. 289.

X X X X

ARTICLE 5. PAYMENTS

The OWNER shall make payment on account of this Contract based on the value of work accomplished less TEN (10) percent retention and Expanded Withholding Tax (One percent of the amount due), for the duration of the Contract. The percentage value of work to be paid is in order of 15%, 30%, 45%, 60%, 75%, 90% and 100% accomplishments.

X X X X

The full and final payment, together with the ten (10) percent retention shall be paid to the CONTRACTOR as provided for and upon compliance of all requisites under Article 22.11 of the General Conditions.³⁸

X X X X

GENERAL CONDITIONS OF THE CONTRACT

X X X X

22.14 RELEASE OF RETENTION

The amount retained by the owner under the provision of the Contract shall be released within three (3) months after the date of final payment.³⁹

X X X X

A reading of the foregoing contractual provisions would reveal that the nature of the 10% retention money under the parties' Contract is no different from the description laid down by jurisprudence – that it is **a portion of the contract price withheld from the contractor to function as a security** for any corrective work to be performed on the infrastructure covered by a construction contract. As such, the 10% retention money **should not be treated as a separate and distinct liability** of COJCOLDS to BTL as it merely forms part of the contract price. While COJCOLDS is bound to eventually return to BTL the amount of ₱1,248,179.87 as retention money, the said amount should be automatically deducted from BTL's outstanding billings. Ultimately, COJCOLDS's total liability to BTL should only be pegged at **₱1,612,017.74**, representing the unpaid balance of 98% of the contract price, **inclusive** of the 10% retention money.

b. Costs of Additional Works: Price of the Concrete Retaining Wall and the Works Under Change Order Nos. 8 to 12.

BTL claims that the construction of the concrete retaining wall was not part of the original plans of the Contract and that there was evident bad

³⁸ Id. at 290.

³⁹ Id. at 129.

faith on the part of COJCOLDS's architect when he inserted the plan on the concrete retaining wall sometime after the contract signing of the parties to make it appear as part of the original plans in order to cover up for his oversight.⁴⁰

BTL's claim is untenable.

Article 1724⁴¹ of the Civil Code governs the recovery of additional costs in contracts for a stipulated price (such as fixed lump-sum contracts), as well as the increase in price for any additional work due to a subsequent change in the original plans and specifications. Based on the same provision, such added costs can only be allowed upon the: (a) written authority from the developer or project owner ordering or allowing the written changes in work; **and** (b) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Case law instructs that compliance with these two (2) requisites is **a condition precedent for recovery**. The absence of one or the other condition thus bars the claim of additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-mentioned.⁴²

In these cases, records reveal that there is neither a written authorization nor agreement covering the additional price to be paid for the concrete retaining wall. This confirms the CA's finding that the construction of the perimeter wall of the Medina Project, which is included in the **original** plans and specifications for the same, **already subsumes** the construction of the concrete retaining wall.⁴³ Accordingly, COJCOLDS should not pay the amount of ₱804,460.89 claimed by BTL as additional cost for the same.

In similar regard, the COJCOLDS should not be held liable for the costs of the additional works taken under Change Order Nos. 8 to 12 amounting to ₱344,360.16 as claimed by BTL. As correctly observed by the CA, BTL had, in fact, requested COJCOLDS to make the payments therefor

⁴⁰ *Rollo* (G.R. No. 176718), p. 46.

⁴¹ Article 1724 of the Civil Code provides:

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand **an increase in the price on account of the higher cost of labor or materials**, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties. (Emphasis supplied)

⁴² See *Chung v. Ulanday Construction, Inc.*, G.R. No. 156038, October 11, 2010, 632 SCRA 485, 497-498, citing *Titan-Ikeda Construction & Dev't Corp. v. Primetown Properties Group, Inc.*, 568 Phil. 432, 453 (2008); *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643, 655 (2003).

⁴³ *Rollo* (G.R. No. 176439), pp. 56-57.

directly to its suppliers in view of its financial losses in another project.⁴⁴ Hence, considering that COJCOLDS's payment to BTL's suppliers **already covered** the costs of said additional works upon its own request and to its own credit,⁴⁵ BTL maintains no right to pursue such claim.

With BTL's claims for the costs of additional works herein denied, COJCOLDS's total liability to BTL thus stands in the amount of **₱1,612,017.74**, which represents the unpaid balance of 98% of the contract price, inclusive of the 10% retention money, as previously stated.

Having resolved the foregoing issues, the Court now proceeds to determine BTL's liabilities to COJCOLDS.

II. Liabilities of BTL to COJCOLDS.

a. Liquidated Damages Due to Delay.

BTL's liability to COJCOLDS for liquidated damages is a result of its delay in the performance of its obligations under the Contract. While the fact of BTL's delay has not been seriously disputed in these cases, the Court must, however, resolve the extent of such delay in view of the conflicting findings of the CIAC and the CA on the matter.

In these cases, records reveal that BTL sought for a 304-day extension of the original completion deadline of September 15, 2000, broken down as follows: (a) 184 days as per Change Order Nos. 1 to 6;⁴⁶ and (b) 120 days as per Change Order Nos. 8 to 12.⁴⁷ However, the architect only recommended that COJCOLDS should only grant BTL extensions of 160 days for the works to be done under Change Order Nos. 1 to 6 and 30 days for Change Order Nos. 8 to 12, or a total of 190 days. Since Article 21.04⁴⁸

⁴⁴ Id. at 59-60.

⁴⁵ *CA rollo*, pp. 150 and 178.

⁴⁶ *Rollo* (G.R. No. 176718), pp. 112-117.

⁴⁷ *CA rollo*, p. 366.

⁴⁸ 21.04 EXTENSION OF TIME

The Contractor will be allowed an extension of time based on the following conditions:

- A. Should the Contractor be obstructed or delayed in the prosecution or completion of the work by the act, neglect, delay or default of the Owner or any other contractor employed by the Owner on the work; by strikes or lockouts; by an Act of God or Force Majeure as defined in Article 1.26; by delay authorized by the Architect pending arbitration; then the Contractor shall within fifteen (15) days from the occurrence of such delay file the necessary request for extension. The Architect may grant the request for extensions for such period of time as he considers reasonable.

However, no such extension of time shall be granted for any alleged failure of the Owner to furnish materials or information unless they be required in the proper prosecution of the work in the order prescribed by the Architect and unless the Contractor shall have made written request for them at least ten (10) days before they are actually needed.

x x x x

of the General Conditions **expressly recognizes that the architect's recommendations regarding extensions of time should be controlling**, the Court upholds the CA's finding that BTL was only granted a 190-day extension (from the original completion deadline) to finish the Medina Project, or until March 24, 2001. Despite such extension, BTL nevertheless failed to complete the same. In fact, as the parties themselves admitted, the Medina Project was only 98% complete when the Contract was terminated. Based on the foregoing, the Court thus finds that BTL's delay should be reckoned from March 25, 2001 (or the day after the above-stated 190-day extension) up until August 17, 2001 (or the day when the Contract was terminated), or a total of **146 days** (length of delay). Applying Article 3(B)⁴⁹ of the Contract and Article 29.04⁵⁰ of the General Conditions, BTL is therefore liable to pay COJCOLDS liquidated damages in the amount of ₱12,680.00 multiplied by the length of delay, resulting in a total of **₱1,851,280.00**.

-
- C. If the satisfactory fulfilment of the Contract shall require the performance of work in greater quantities than those set forth in the Contract, the time allowed for performance shall be increased in the same ratio that the total cost of work actually performed against the total cost in the Contract. However, if in the opinion of the Architect, the nature of the increased work is such that the new Contract Time as computed above is unreasonably short, the time allowance for any extension and increases shall be agreed upon in writing.

x x x x

- F. The contractor shall give written notice to the Architect at least ten (10) days prior to beginning, suspending (except in case of accident), or resuming the work to the end that the Architect may make the necessary preparations for inspection without delaying the work. All delays and losses resulting from failure of the Contractor to give such notice will be at the Contractor's risk; and all extra costs to the Owner of such delay (said cost to be determined by the Architect) shall be deducted from the Final Payment. (Id. at 124.)

⁴⁹ ARTICLE 3. TIME OF COMPLETION AND SCHEDULE OF CONSTRUCTION

x x x x

- B. It is understood that time is an essential feature of this contract and that upon failure of the CONTRACTOR to complete the work stipulated in this contract within the time provided, the CONTRACTOR shall pay the OWNER the sum of one-tenth (1/10th) of ONE (1) PERCENT of the Contract Price of PESOS: TWELVE THOUSAND SIX HUNDRED EIGHTY PESOS Php12,680.00 Philippines currency, (per diem) each day of delay in the completion of the contract, said payment to be made as liquidated damages, and not by way of penalty; and the OWNER may deduct from any sum due or to become due to the CONTRACTOR any sum accruing from liquidated damages as hereinafter stated, without the need of any court action. (Id. at 96.)

x x x x

⁵⁰ 29.04. OWNER'S RIGHT TO RECOVER LIQUIDATED DAMAGES

Neither the taking over by the Owner of the work for completion by administration nor the re-letting of the same to another contractor shall be construed as a waiver of the Owner's right to recover damages against the original Contractor and/or his sureties for the failure to complete the work as stipulated.

In such case, the full extent of the damages for which the Contractor and/or his sureties shall be liable shall be:

- A. The total daily liquidated damages up to and including the day immediately before the date the Owner effectively takes over the work.
- B. The excess cost incurred by the Owner in the completion of the project over the Contract Price. This excess includes cost of architectural, managerial and administrative services, supervision and inspection from the time the Owner effectively took over the work by administration or by re-letting same. (Id. at 133.)

b. Cost Overrun.

Due to BTL's delay which impelled COJCOLDS to terminate the Contract and subsequently hire the services of another contractor, *i.e.*, Vigor, to finish the Medina Project, the Court equally agrees with the CA's finding that COJCOLDS incurred a cost overrun of **₱526,400.00**. Conformably with Article 3(E)⁵¹ of the Contract and Article 29.04⁵² of the General Conditions, BTL should therefore reimburse COJCOLDS the said cost which the latter incurred essentially because of BTL's failure to complete the project as agreed upon.

c. Overpayments.

Based on the records, BTL charged COJCOLDS the amount of ₱1,014,469.79 for the modifications introduced to the Medina Project as indicated in Change Order Nos. 1 to 12.⁵³ In turn, COJCOLDS paid BTL the amount of ₱651,727.91⁵⁴ for the modifications covered by Change Order Nos. 1 to 7 and no longer paid for those covered by Change Order Nos. 8 to 12 because, as discussed earlier, COJCOLDS diverted such payments directly to BTL's suppliers upon its own request and to its own credit. Accordingly, COJCOLDS paid ₱663,275.37 to these suppliers, resulting in COJCOLDS actually paying a total of ₱1,315,003.28 for the works taken under Change Order Nos. 1 to 12.⁵⁵ This means that BTL was effectively overpaid the amount of **₱300,533.49**, and is therefore obliged to return the same to COJCOLDS pursuant to Article 2154 of the Civil Code which states that "[i]f something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

To recapitulate, the Court sustains the following liabilities of BTL to COJCOLDS: (a) ₱1,851,280.00 as liquidated damages; (b) ₱526,400.00 as cost overrun; and (c) ₱300,533.49 as overpayment under Change Order Nos. 1 to 12.

III. Mutual Liabilities: Attorney's Fees, Arbitration Costs, and Costs of Suit.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit.

⁵¹ Id. at 289.

⁵² Id. at 133.

⁵³ *Rollo* (G.R. No. 176718), pp. 84-94. See also *CA rollo*, pp. 150 and 178.

⁵⁴ Id.

⁵⁵ *CA rollo*, pp. 150 and 178.

The power of the court to award attorney's fees under Article 2208⁵⁶ of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still **attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.**⁵⁷

In these cases, the Court observes that neither party was shown to have acted in bad faith in pursuing their respective claims against each other. The existence of bad faith is negated by the fact that the CIAC, the CA, and the Court have all found the parties' original claims to be partially meritorious. Thus, absent no cogent reason to hold otherwise, the Court deems it inappropriate to award attorney's fees in favor of either party.

Finally, in view of their legitimate claims against each other, each party should bear its own arbitration costs and costs of suit.⁵⁸

WHEREFORE, the petition in G.R. No. 176439 is **PARTLY GRANTED**, while the petition in G.R. No. 176718 is **DENIED**. The Decision dated August 15, 2006 and Resolution dated January 26, 2007 of

⁵⁶ Article 2208 of the Civil Code provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

⁵⁷ *Development Bank of the Philippines v. Traverse Development Corporation*, G.R. No. 169293, October 5, 2011, 658 SCRA 614, 624, citing *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499, 529 (1999).

⁵⁸ Section 1, Rule 142 of the Rules of Court provides:

Section 1. *Cost ordinarily follow results of suit.* — Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.


the Court of Appeals (CA) in CA-G.R. SP No. 84068 are hereby **MODIFIED** as follows:

(a) COJCOLDS is **ORDERED** to pay BTL the amount of ₱1,612,017.74 representing the unpaid balance of 98% of the contract price, inclusive of the 10% retention money;

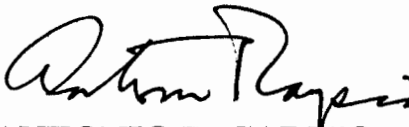
(b) BTL is **ORDERED** to pay COJCOLDS the amounts of ₱1,851,280.00 as liquidated damages, ₱526,400.00 as cost overrun, and ₱300,533.49 as reimbursement for the overpayment in the works taken under Change Order Nos. 1 to 12.

(c) Each party shall bear its own costs.

SO ORDERED.



ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

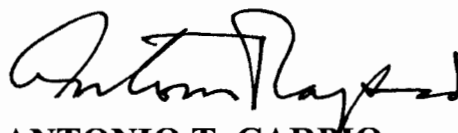

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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