Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TONDO MEDICAL CENTER, represented by DR. MARIA ISABELITA M. ESTRELLA,
Petitioner,

- versus -

ROLANDO RANTE, doing business under the name and style of JADEROCK BUILDERS,
Respondent.

G.R. No. 230645

Present:

CARPIO, *J., Chairperson,*
PERLAS-BERNABE,
CAGUIOA,
REYES, J. JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

01 JUL 2019

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DECISION

REYES, J. JR., *J.*:

This resolves the Petition for Review on *Certiorari* filed pursuant to Rule 45 of the 1997 Rules of Court which seeks to nullify and set aside the October 20, 2016 Decision[1] and the March 16, 2017 Resolution[2] of the Court of Appeals (CA), affirming the June 20, 2016 Final Award of the Construction Industry Arbitration Commission (CIAC) denying petitioner's Motion for Reconsideration, in CA-G.R. SP No. 146476.

On August 27, 2013, petitioner Tondo Medical Center (TMC), through its then Medical Center Chief II, Dr. Victor J. Dela Cruz, entered into a Contract Agreement[3] with Jaderock Builders, represented by Rolando Rante (respondent), for the construction project (project) involving the renovation of its OB-Gyne wards, elevation of linen building, elevation of

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting, concurring; *rollo*, pp. 60-77.

[2] Id. at 79-84.

[3] Id. at 242-244.

hospital ground, elevation of dormitory and improvement of perimeter fence. The project was funded by the Department of Health (DOH) under the Health Facilities Enhancement Program.[4]

The contract provides that the construction should be completed within 240 days from September 4, 2013, with a proposed contract price of ₱11,799,602.83.[5] To secure the performance of the project, respondent posted a performance bond in the amount of ₱1,180,000.00.

TMC claims that respondent incurred delays in the project. This prompted the newly appointed officer-in-charge Dr. Cristina V. Acuesta (Dr. Acuesta) to write respondent a letter informing the latter of the delays and directed him to deploy sufficient work force to cover the delays incurred.

TMC requested respondent to prioritize the OB-Gyne ward. Respondent acceded and allegedly promised Dr. Acuesta that he will finish the OB-Gyne ward by December 2013. However, in December 2013, the OB-Gyne ward remained unfinished. On March 31, 2014, and May 27, 2014, Dr. Acuesta met with respondent and conveyed her observation on the slow pace of work and the lack of manpower. Due to these delays, Dr. Acuesta granted respondent an extension of up to June 27, 2014 to complete the project. Dr. Acuesta even issued a change order deleting the construction of the area for persons with disability (PWD) from respondent's scope of work just to meet his deadline.

On June 27, 2014, the project was still unfinished. TMC sent respondent another letter informing him that no further extensions would be given to him. Respondent took exception to the action undertaken by TMC. In reply, TMC informed respondent that there was nothing to terminate because the contract automatically ceased to exist after June 27, 2014.

Upon the assumption of Dr. Maria Isabelita M. Estrella (Dr. Estrella) as Medical Center Chief II of TMC, she conducted her own investigation and required Dr. Acuesta and Engr. Ramon T. Alfonso to submit verified reports about the project. The reports she received allegedly revealed that respondent had committed several violations that caused inordinate delays in completing the project. As a consequence, Dr. Estrella issued a Notice to Terminate and required respondent to submit his position paper.

Dr. Estrella created the Contract Termination Review Committee (CTRC) to assist her in the disposition of the case. On the basis of the recommendation made by the CTRC, Dr. Estrella rendered a decision dated November 14, 2014, the decretal portion of which reads as follows:

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4 Id. at 242.
5 Id.

> **WHEREFORE**, in view of the foregoing, the contract of Jaderock Builders with TMC for the renovation of its OB-Gyne wards, elevation of linen building, elevation of hospital ground, elevation of dormitory, and improvement of perimeter fence is hereby TERMINATED due to the said contractor's unjustified default. Upon termination thereof, a Blacklisting Order is likewise issued to disqualify Jaderock Builders from participating in the bidding of all government projects. Consequently, the performance security of Jaderock Builders is hereby declared forfeited.[6]

Respondent filed a Motion for Reconsideration but was denied in a Resolution[7] dated November 24, 2014.

On January 21, 2015, respondent filed an appeal with the DOH. The DOH, in a letter dated July 6, 2015, informed respondent that it could not rule on the appeal since it is Dr. Estrella who has direct supervision or administration over the implementation of the subject contract.

On August 28, 2015, respondent filed a Request for Arbitration with the CIAC for the resolution of his claim against TMC. Respondent's claims comprised of unpaid retention fee, return of performance cash bond, unpaid variation orders, damages arising from wrongful termination of the contract, damages arising from the blacklisting and attorney's fees.

On June 20, 2016, the CIAC through a three-member Arbitral Tribunal issued the Final Award[8] wherein it upheld the validity of TCM's termination of the contract, but ruled that respondent is still entitled to monetary claims representing a portion of the Retention Fee, the entire Performance Bond, a portion of the cost of Variation Orders Nos. 1 and 2, Compensatory Damages equivalent to the value of unreturned tools, Attorney's Fees, and half of the Arbitration Fees, totaling ₱2,840,323.95.

Aggrieved by the findings of the CIAC, TMC filed a petition for review with the CA. Respondent filed its comment on the petition.

On October 20, 2016, the CA rendered the assailed Decision denying TMC's Petition for Review and affirming the CIAC's Final Award. TMC filed a Motion for Reconsideration. However, pending resolution of the said Motion for Reconsideration before the CA, the CIAC and the respondent proceeded to execute and garnish TMC's public funds. TMC was constrained to file a petition for certiorari under Rule 65 of the Rules of Court with application for a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CA questioning the said post-award proceedings, docketed as CA-G.R. SP No. 149187. To date, this petition is still pending with the CA.

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6 Id. at 477.
7 Id. at 479.
8 Id. at 158-212.

In the assailed Resolution dated March 16, 2017, the CA denied TMC's Motion for Reconsideration. Hence, the instant petition anchored on the lone ground, that:

> THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CIAC'S MONETARY AWARDS TO RESPONDENT DESPITE ITS PARALLEL FINDING AND CONFIRMATION THAT THE TERMINATION OF THE SUBJECT CONTRACT BY THE PETITIONER WAS VALID AND JUSTIFIED.[9]

The issue, in other words, revolves on the propriety of CIAC's act of awarding the following monetary awards in favor of respondent despite the alleged finding of breach (on respondent's part) of the Contract Agreement, thus: (a) a portion of the retention fee amounting to ₱33,127.64; (b) the entire performance bond amounting to ₱1,180,000.00; (c) a portion of the cost of variation orders numbers 1 and 2 amounting to ₱1,152,795.26; (d) compensatory damages equivalent to the value of unreturned tools amounting to ₱96,606.00; (e) attorney's fees amounting to ₱220,000.00 and (f) 50% of the arbitration fees amounting to ₱159,795.04.

"Executive Order No. 1008 entitled, 'Construction Industry Arbitration Law' provided for an arbitration mechanism for the speedy resolution of construction disputes other than by court litigation."[10] Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, Executive Order No. 1008 created the CIAC and vests upon it original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by the parties involved in construction in the Philippines.[11]

The competence of the CIAC to handle construction disputes was expressly recognized by Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, specifically Section 59[12] of the said law and was formally incorporated into the general statutory framework on alternative

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9 Id. at 23.

10 *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578, 583 (2004).

11 *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corp.*, 604 Phil. 631, 646-647 (2009).

12 Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided, however,* ***That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto.*** The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: *Provided*, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. (Emphasis supplied).

dispute resolution through R.A. No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law),[13] specifically Chapter 6, Section 34[14] and 35.[15]

The CIAC has a two-pronged purpose: (a) to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts,[16] and, (b) to provide authoritative dispute resolution which emanates from its technical expertise.[17] As explained by the Court:

> x x x The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."[18] (Citation omitted)

Consistent with the foregoing purposes, the Courts accord CIAC's decision with great weight, respect and finality especially if it involves factual matters.[19]

Section 19 of Executive Order (E.O.) No. 1008, CREATING AN ARBITRATION MACHINERY FOR THE PHILIPPINE CONSTRUCTION INDUSTRY, approved on February 4, 1985, provides:

> 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.

It is clear from the foregoing 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 CIAC.[20] The Court explained the rationale for limiting appeal to legal questions in construction cases resolved through arbitration, thus:

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13 *CE Construction Corp. v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017, 836 SCRA 181, 211.

14 **Section 34.** ***Arbitration of Construction Disputes: Governing Law.*** – The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

15 **Section 35.** ***Coverage of the Law.*** – Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project. The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

16 *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361, 372 (1993).

17 Supra note 13, at 212.

18 Id. at 212-213.

19 Id. at 220-221.

20 Supra note 16.

> 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 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 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. x x x Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[21] (Citation omitted)

Despite the clarity of the wordings of E.O. No. 1008 on the finality of awards – which state that the arbitral awards shall be final and inappealable except on questions of law which shall be appealable to the Courts – the said provision has evolved, such that even questions of fact and mixed questions of fact and law can be subject to judicial review. As explained by the Court:

> x x x Later, however, the Court, in Revised Administrative Circular (RAC) No. 1-95, modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on "questions of fact, law or mixed questions of fact and law." This amendment was eventually transposed into the present CIAC Revised Rules which direct that "a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court." Notably, the current provision is in harmony with the Court's pronouncement that "despite statutory provisions making the decisions of certain administrative agencies 'final,' [the Court] still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law" and that, in particular, "voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review."[22]

Thus, questions on whether the CIAC arbitral tribunals conducted their affairs in a haphazard and immodest manner that the most basic integrity of the arbitral process was imperiled[23] are not insulated from judicial review. Thus:

> x x x We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award

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21 Id. at 373-374.

22 *Asian Construction and Development Corp. v. Sumitomo Corporation,* 716 Phil. 788, 802-803 (2013).

23 *CE Construction Corporation v. Araneta Center, Inc.*, supra note 13, at 222.

> was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or 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. x x x[24] (Citation omitted).

TMC failed to show that any of these exceptions exist in the instant case. Rather, TMC sought review of the CA's affirmance of the CIAC's Decision with respect to the monetary awards it granted in favor of the respondent despite the latter's alleged breach of contract. Thus, two issues need to be probed -- the issue of breach and, the issue on monetary awards.

There is no problem with the issue of breach as this is essentially a factual matter. Relying mainly on the findings and conclusion of the CIAC, the CA affirmed the ruling of the CIAC that respondent committed a breach of the "Contract Agreement." Hence, there was a justifiable ground for TMC to terminate the said contract. The CA ruled that by respondent's own admission, he only accomplished 74.27%[25] of the entire project which means that there was indeed a negative slippage of more than 10% in the completion of the work. This is clearly a ground for the termination of the contract pursuant to the provisions of paragraph III (A)(2) of the Guidelines on termination of Contracts under the Revised Implementing Rules and Regulations of Republic Act No. 9184. The CA also considered as ground to terminate the contract the failure of respondent to comply with the valid instructions of TMC resulting in the former's failure to complete the project, such as: (a) instruction to augment its workforce in order to expedite the project; (b) instruction to provide warning signs and barricades at the project sites; (c) to stockpile in proper places and removal from project site, of waste and excess materials; and (d) instruction to deploy the committed equipment, facilities, support staff and manpower in accordance with approved plans and specifications and contract provisions.

While there were indeed factual and legal bases for TMC to terminate the Contract Agreement, the CIAC did not say that TMC was entirely faultless. A cursory reading of CIAC's Final Award would reveal its findings of breach of contract on the part of TMC, thus:

(a) TMC is guilty of sectional delivery of the project area. From the five areas to be delivered, only two sites were turned over to respondent. CIAC ruled that it was deemed to have delayed the start of the construction and thus, respondent has the right to demand contract

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[24] *Spouses David v. Construction Industry and Arbitration Commission*, supra note 10, at 590-591.

[25] CIAC found that respondent only finished 65.48% completion of work which comprise of the ff : OB Gyne Ward-52.46%; improvement of the perimeter fence - 6.6% and the drainage portion - 6.42%, assuming that respondent was able to accomplish 100% of these 3 components of the project.

time extension. CIAC's finding of breach is anchored on the following General Conditions of Contract (GCC) of the "Contract Agreement:"

> 5.1 On the date specified in the SCC, the procuring Entity shall grant the contractor possession of so much of the site as may be required to enable it to proceed with the execution of the works; If the Contractor suffers delay or incurs cost from failure on the part of the Procuring Entity to give possession in accordance with the terms of this clause, the Procuring Entity's Representative shall give the contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by Procuring Entity.
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> 5.2 If possession of a portion is not given by the date stated in the SCC clause 5.1, the Procuring Entity will be deemed to have delayed the start of the relevant activities. The resulting adjustments in contract time to address such delay shall be in accordance with GCC Clause 47.[26]

GCC Clause 47 provides for the need of the contractor to send written notice to the procuring entity in order for the latter to investigate and determine the amount of time extension. Failure to do this shall constitute a waiver on the part of the contractor of any claim for an extension of time. While respondent failed to send a written notice to TMC, it is deemed to be a waiver of his right to claim an extension. Notwithstanding such waiver, CIAC ruled that it did not change the fact that TMC at the onset committed a breach by failure to deliver all project sites.

(b) TMC is guilty of inaction as to Variation Orders. The CIAC concluded that TMC was in bad faith, as it has the obligation to approve it within thirty (30) days. This obligation was expressly provided under GCC 43.5 (d) and (e) of the Contract Agreement, as follows:

> 43.5. (d) If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office of the procuring entity empowered to review and evaluate Change Orders or Extra Work Orders recommends approval thereof, Head of the procuring Entity or his duly authorized representative, believing the change Order or Extra Work Order to be in order, shall approve the same.
>
> 43.5 (e) The timeframe for the processing of Variation Orders from the preparation up to the approval by the Head of the Procuring Entity concerned shall not exceed thirty (30) calendar days.

As correctly found by the CIAC, while TMC did in fact not approve, neither did it deny or disapprove the proposal estimates for the additional works. If TMC had intended to disapprove the additional works, it should have made a timely disapproval of respondent's proposals. While the progress of the additional works was on-going, no one from TMC ever told respondent to stop working on it. The CIAC concludes that TMC was in bad faith when it

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[26] *Rollo*, p. 250.

required respondent to conduct additional works, giving a promise of payment, allow performance of the additional works and later on disavowing all these orders.

(c) TMC is guilty of failure to address the illegal settlers issue which hampers respondent's work progress. This again pertains to the obligation of TMC to deliver the site to respondent in order for the latter to perform his work free from obstructions. The CIAC ruled that while the ejectment of illegal settlers is the concern of the Local Government Unit, TMC should have referred the matter to the Barangay or if not, should have deleted the same in respondent's scope of work on the ground that performance of work had become impossible.

Owing to the CIAC's technical expertise on the matter, the CA cannot be faulted for deferring to CIAC's factual findings of mutual breach of contract committed by both parties. Then again, settled is the rule that the findings of fact of quasi-judicial bodies, which have acquired expertise on specific matters within their jurisdiction, are generally accorded respect and finality, especially when affirmed by the CA.[27] As such, in this case, we see no reason to deviate from the factual findings of the CIAC, which has acquired technical competence in resolving construction disputes.

As to the main issue of monetary awards, while the same at first blush appears to be a question of fact, determination of the propriety of monetary awards can likewise be reviewed by the Courts. The case of *Philrock, Inc. v Construction Industry Arbitration Commission,*[28] instructs:

> Petitioner assails the monetary awards given by the arbitral tribunal for alleged lack of basis in fact and in law. The [S]olicitor [G]eneral counters that the basis for petitioner's assigned errors with regard to the monetary awards is purely factual and beyond the review of this Court. Besides, Section 19, EO 1008, expressly provides that monetary awards by the CIAC are final and unappealable.
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> We disagree with the solicitor general. As pointed out earlier, factual findings of quasi-judicial bodies that have acquired expertise are generally accorded great respect and even finality, if they are supported by substantial evidence. The Court, however, has consistently held that despite statutory provisions making the decisions of certain administrative agencies "final," it still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law. Voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review.[29] (Citations omitted)

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[27] *Philippine Science High School-Cagayan Valley Campus v. Pirra Construction Enterprises*, 795 Phil. 268, 284 (2016).

[28] 412 Phil. 236 (2001).

[29] Id. at 248.

At any rate, in ruling on the monetary awards, two guiding principles steered the CIAC Arbitral Tribunal in going about its task. First, was the basic matter of fairness. Second, was effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation.[30] In keeping with these principles, CIAC opted to mitigate the damages of the parties and determine what is equitable under the circumstances. Just like Courts of law, CIAC may equitably mitigate the damages pursuant to the following provision of Article 2215 of the Civil Code, to wit:

> Art. 2215. In contracts, quasi-contracts, and quasi-delicts, the court ***may*** equitably mitigate the damages under circumstances other than the case referred to in the preceding article, as in the following instances: (Emphasis supplied)
>
> (1) That the plaintiff himself has contravened the terms of the contract.
>
> x x x x

The enumeration mentioned in Article 2215 is not exclusive for the law uses the phrase "as in the following instances." Hence, it can be applied to an analogous case where petitioner is equally guilty of breach just like in the instant case. Indeed, the foregoing provision does not take into account who the first infractor is.[31]

On this score, CIAC is justified in ordering the payment of monetary awards in favor of respondent just so to prevent unjust enrichment in light of the findings that both parties committed breach on their respective obligations under the contract. Thus, we will discuss only the gist of the monetary awards questioned by TMC.

As to Retention fees. "In the construction industry, the 10 percent 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."[32] It was likewise clear that under 42.3 of the parties' Construction Contract, the purpose of retaining 10% of every progress billing of the contractor is to hold the same as payment or security to cover uncorrected discovered defects and third party liabilities. Upon inspection, TMC discovered defects particularly the improperly installed tiles. It was established that the total amount retained by TMC (from the four billing progress) was ₱495,229.53 and the total cost of the defective tiling works amounts to ₱462,101.89. Thus, to prevent unjust enrichment to TMC, the CA is correct in upholding CIAC which deemed it proper to release the remaining balance of ₱33,127.64 (retention fee less the defective works) to respondent.

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30 *CE Construction Corporation v. Araneta Center, Inc.*, supra note 13, at 234.
31 *Ong v. Bogñalbal*, 533 Phil. 139, 164 (2006).
32 *H.L. Carlos Construction Inc. v. Marina Properties Corporation*, 466 Phil. 182, 199-200 (2004).

As to costs of the Variation Orders. It was established (and not disputed by TMC) that respondent had already completed 80% of the scope of work in the variation orders as contained in his proposal. Again, to prevent unjust enrichment, the CIAC correctly ordered TMC to pay the 80% of the completed additional works. Since the total costs of Variation Orders Nos. 1 and 2 amounts to ₱1,440,994.08, we agree with the CA to uphold the payment by TMC of the amount of ₱1,152,795.26 in favor of respondent representing the 80% of the total costs of the additional works covered by Variation Orders Nos. 1 and 2.

As to the Performance Cash Bond. It must be noted that the said bond amounting to ₱1,180,000.00 given by respondent to TMC is to guarantee the performance of its contractual obligations. As a cash bond, it can either be returned to respondent as owner thereof or be forfeited in favor of TMC in case respondent is in default in the performance of his obligation.[33] The CIAC ruled that the forfeiture of the said cash bond is not proper and, hence, it must be returned to respondent. In sustaining the CIAC, the CA ruled:

> x x x It is worthy to note, however, that the reason for the failure of respondent to complete the project was TMC's failure to deliver all five sites to respondent as agreed upon in the contract, it did not act on the proposed additional works and did not remove the shanties built by illegal settlers or at least remove the same from the scope of respondent's work.[34]

We sustain the rulings of both the CIAC and the CA as they are consistent with their factual findings that both parties were guilty of breach of their respective obligations in the contract.

However, as to the tools that were not allowed by TMC to be removed from the project site left by respondent (consisting of a welding machine and a jackhammer), we agree with the CIAC's findings that the same should be returned to the owners thereof or to the respondent, not as part of compensatory damage but as a necessary consequence of the termination of the parties' contract. Compensatory or actual damages, to be recoverable, must be duly proved with reasonable degree of certainty. In *Public Estates Authority v. Ganac Chu,*[35] the Court held:

> x x x A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof. The party alleging a fact has the burden of proving it and a mere allegation is not evidence.[36] (Citation omitted)

Since respondent failed to ascertain with reasonable degree of certainty the exact compensatory damage he sustained for the alleged wrongful termination of contract, it was erroneous for the CIAC to speculate

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33 *Rollo*, p. 251.
34 Id. at 73.
35 507 Phil. 472 (2005).
36 Id.at 483.

that the tools with the value of ₱96,606.00 was just enough as compensation for the termination of the contract.

As to the Costs of Arbitration. We agree with CIAC's ruling as affirmed by the CA that the costs of arbitration shall be shouldered by both parties. Based on the Final Award of the CIAC, the total cost of arbitration is ₱319,590.08. Consistent with the finding that both parties breached their contract, the costs of arbitration must be equally divided between TMC and respondent.[37] Consequently, each party must pay ½ of the costs amounting to ₱159,795.04.

We, however, take exception to the ruling that Attorney's fees must be paid by TMC to respondent. Again, on the ground that TMC and respondent committed a mutual breach of their contract, each must bear his own damage with respect to the payment of the professional fees of their respective lawyers.[38] "No damages shall be awarded to any party in accordance with the rule under Article 1192 of the Civil Code that in case of mutual breach and the first infractor of the contract cannot exactly be determined, each party shall bear his own damages."[39]

All the other rulings of the CIAC Arbitral Tribunal, particularly the denial of respondent's claim against TMC for the payment of the 4th billing as well as the denial of respondent's claimed compensatory damage for his blacklisting, were all factual matters which deserved our concurrence.

As held by the Court:

> We need only to emphasize in closing that arbitration proceedings are designed to level the playing field among the parties in pursuit of a mutually acceptable solution to their conflicting claims. Any arrangement or scheme that would give undue advantage to a party in the negotiating table is anathema to the very purpose of arbitration and should, therefore, be resisted.[40]

WHEREFORE, the Petition is **PARTLY GRANTED**. In view of the foregoing, the Decision dated October 20, 2016 and the Resolution dated March 16, 2017 of the Court of Appeals in CA-G.R. SP No. 146476 are **AFFIRMED with MODIFICATION** such that the award of attorney's fees is **DELETED.**

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

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37 *Engr. Cayetano-Abaño v. Colegio de San Juan de Letran - Calamba* , 690 Phil. 554, 619 (2012).
38 Id.
39 *Fong v. Dueñas,* 759 Phil. 373, 390 (2015).
40 *Magellan Capital Management Coporation v. Zosa,* 407 Phil. 445, 460 (2001).

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
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
Senior 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.

LUCAS P. BERSAMIN
Chief Justice