



Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO VELASCO
 Division Clerk of Court
 Third Division
 February 10, 2017

THIRD DIVISION

WERR CORPORATION G.R. No. 187543
INTERNATIONAL,

Petitioner,

- versus -

HIGHLANDS PRIME, INC.,
 Respondent.

x-----x

HIGHLANDS PRIME, INC., G.R. No. 187580

Petitioner,

Present:
 VELASCO, JR., J., *Chairperson*,
 BERSAMIN,
 REYES,
 JARDELEZA, and
 CAGUIOA, * JJ.

- versus -

WERR CORPORATION
INTERNATIONAL,

Respondent.

Promulgated:

February 8, 2017

x-----x

DECISION

JARDELEZA, J.:

These are consolidated petitions¹ seeking to nullify the Court of Appeals' (CA) February 9, 2009 Decision² and April 16, 2009 Resolution³ in CA-G.R. SP No. 105013. The CA modified the August 11, 2008

* Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.
¹ Petition for Review on *Certiorari* filed by Werr Corporation International, *rollo* (G.R. No. 187543), pp. 20-45; and Petition for Review on *Certiorari* filed by Highlands Prime, Inc., *rollo* (G.R. No. 187580), pp. 30-82. We resolved to consolidate these petitions in our Resolution dated July 15, 2009, *rollo* (G.R. No. 187543), pp. 69-70.
² *Rollo* (G.R. No. 187543), pp. 7-16; penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this court), and concurred in by Associate Justices Mario L. Guariña III and Ricardo R. Rosario.
³ *Id.* at 18.

Decision⁴ of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 09-2008, *viz.*:

WHEREFORE, premises considered, the instant petition for review is **PARTLY GRANTED**. The assailed Decision dated August 11, 2008 of the Construction Industry Arbitration Commission in CIAC Case No. 09-2008 is hereby **MODIFIED** as follows:

- 1) Respondent Werr Corporation International shall pay petitioner Highlands Prime, Inc. liquidated damages in the amount of P8,969,330.70;
- 2) Petitioner Highlands Prime, Inc. shall return to respondent Werr Corporation International the balance of its retention money in the amount of P10,955,899.80 with the right to offset the award for liquidated damages in the aforesaid amount of P8,969,330.70; and
- 3) The cost of arbitration shall be shared equally by the parties.

The rest of the decision stands.

SO ORDERED.⁵

Facts

Highlands Prime, Inc. (HPI) and Werr Corporation International (Werr) are domestic corporations engaged in property development and construction, respectively. For the construction of 54 residential units contained in three clusters of five-storey condominium structures, known as “The Horizon–Westridge Project,” in Tagaytay Midlands Complex, Talisay, Batangas, the project owner, HPI, issued a Notice of Award/Notice to Proceed⁶ to its chosen contractor, Werr, on July 22, 2005. Thereafter, the parties executed a General Building Agreement⁷ (Agreement) on November 17, 2005.⁸

Under the Agreement, Werr had the obligation to complete the project within 210 calendar days from receipt of the Notice of Award/Notice to Proceed on July 22, 2005, or until February 19, 2006.⁹ For the completion of the project, HPI undertook to pay Werr a lump sum contract price of ₱271,797,900.00 inclusive of applicable taxes, supply and transportation of materials, and labor.¹⁰ It was agreed that this contract price shall be subject to the following payment scheme: (1) HPI shall pay 20% of the contract price upon the execution of the agreement and the presentation of the

⁴ *Id.* at 56-68.

⁵ *Id.* at 15-16.

⁶ *Rollo* (G.R. No. 187580), pp. 165-166.

⁷ *Id.* at 113-164.

⁸ *Rollo* (G.R. No. 187543), p. 48.

⁹ *Id.*

¹⁰ *Rollo* (G.R. No. 187580), pp. 114-115.

necessary bonds and insurance required under the contract, and shall pay the balance on installments progress billing subject to recoupment of downpayment and retention money;¹¹ (2) HPI shall retain 10% of the contract price in the form of retention bond provided by Werr;¹² (3) HPI may deduct or set off any sum against monies due Werr, including expenses for the rectification of defects in the construction project;¹³ and (4) HPI has the right to liquidated damages in the event of delay in the construction of the project equivalent to 1/10 of 1% of the contract price for every day of delay.¹⁴

Upon HPI's payment of the stipulated 20% downpayment in the amount of ₱54,359,580.00, Werr commenced with the construction of the project. The contract price was paid and the retention money was deducted, both in the progress billings. The project, however, was not completed on the initial completion date of February 19, 2006, which led HPI to grant several extensions and a final extension until October 15, 2006. On May 8, 2006, Werr sought the assistance of HPI to pay its obligations with its suppliers under a "Direct Payment Scheme" totaling ₱24,503,500.08, which the latter approved only up to the amount of ₱18,762,541.67. The amount is to be charged against the accumulated retention money. As of the last billing on October 25, 2006, HPI had already paid the amount of ₱232,940,265.85 corresponding to 93.18% accomplishment rate of the project and retained the amount of ₱25,738,258.01 as retention bond.¹⁵

The project was not completed on the last extension given. Thus, HPI terminated its contract with Werr on November 28, 2006, which the latter accepted on November 30, 2006.¹⁶ No progress billing was adduced for the period October 28, 2006 until the termination of the contract.¹⁷

On October 3, 2007, Werr demanded from HPI payment of the balance of the contract price as reflected in its financial status report which showed a conditional net payable amount of ₱36,078,652.90.¹⁸ On January 24, 2007, HPI informed Werr that based on their records, the amount due to the latter as of December 31, 2006 is ₱14,834,926.71.¹⁹ This amount was confirmed by Werr.²⁰ Not having received any payment, Werr filed a Complaint²¹ for arbitration against HPI before the CIAC to recover the ₱14,834,926.71 representing the balance of its retention money.

¹¹ *Id.*

¹² *Id.* at 141.

¹³ *Id.* at 145.

¹⁴ *Id.* at 151-152.

¹⁵ *Rollo* (G.R. No. 187543), p. 49.

¹⁶ *Id.* at 58; 106.


¹⁷ *Id.* at 64.

¹⁸ *Rollo* (G.R. No. 187580), p. 167.

¹⁹ *Id.* at 168.

²⁰ *Id.*

²¹ *Id.* at 104-107.



In its Answer,²² HPI countered that it does not owe Werr because the balance of the retention money answered for the payments made to suppliers and for the additional costs and expenses incurred after termination of the contract. From the retention money of ₱25,738,258.01, it deducted (1) ₱18,762,541.67 as payment to the suppliers under the Direct Payment Scheme, and (2) ₱7,548,729.15 as additional costs and expenses further broken down as follows: (a) ₱3,336,526.91 representing the unrecouped portion of the 20% downpayment; (b) ₱542,500.00 representing the remainder of Werr's unpaid advances; (c) ₱629,702.24 for the waterproofing works done by Dubbel Philippines; and (d) ₱3,040,000.00 for the rectification works performed by A.A. Manahan Construction after the termination of the contract. Deducting the foregoing from the accumulated retention money resulted in a deficiency of ₱573,012.81 in its favor.²³ By way of counterclaim, HPI prayed for the payment of liquidated damages in the amount of ₱11,959,107.60 for the 44-day delay in the completion of the project reckoned from October 15, 2006 up to the termination of the Agreement on November 28, 2006; for actual damages in the sum of ₱573,012.81; and for attorney's fees of ₱500,000.00 and litigation expenses of ₱100,000.00.²⁴

CIAC's Ruling

After due proceedings, the CIAC rendered its Decision²⁵ on August 11, 2008 where it granted Werr's claim for the balance of the retention money in the amount of ₱10,955,899.79 and arbitration costs. It also granted HPI's claim for liquidated damages in the amount of ₱2,535,059.01 equivalent to 9.327 days of delay,²⁶ but denied its counterclaim for damages, attorney's fees, and litigation expenses.

From the claims of HPI, the CIAC only deducted the amounts of (1) ₱10,903,331.30 representing the direct payments made from September 26,

²² *Id.* at 235-262.

²³ *Id.* at 245-247.

²⁴ *Id.* at 254-259.

²⁵ *Rollo* (G.R. No. 187543), pp. 56-68. The dispositive portion of which reads:

In view of all the foregoing, it is hereby ordered, that:

- a) Respondent shall pay Claimant the balance of the retention monies in the amount of **Php 10,995,889.79**;
- b) Claimant shall pay Respondent for Liquidated Damages in [the] amount of **Php 2,535,059.01** [.]

OFFSETTING the foregoing amounts, there remains the net amount of **Php 8,420,840.78** payable to Claimant by Respondent.

The claim by Respondent for Actual Damages, Attorney's Fees and Cost of Litigation, are hereby denied.

Consistent with our holding that, had Claimant prayed for Attorney's fees, the Tribunal would have given that award since it was compelled to litigate by Respondent's refusal to satisfy its plainly valid and just claims, it follows that Respondent be made to shoulder the entire arbitration costs. It is accordingly the **holding** of this Arbitral Tribunal that Respondent shall reimburse the amount paid for by Claimant as its initial share of the Arbitration Costs.

SO ORDERED. *Id.* at 67.

²⁶ *Id.* at 65.

2006 until December 31, 2006,²⁷ (2) ₱3,336,526.91 representing the unrecouped retention money, and (3) ₱542,500.00 representing the unpaid cash advances from the ₱25,738,258.01 retention money. It disallowed the direct payments charged by HPI in 2007 and 2008 for having been supplied after the termination of the project, for not corresponding to the list of suppliers submitted, and for HPI failing to show that Werr requested it to continue payments even after termination of the Agreement. It also disallowed the amount of ₱629,702.24 for the waterproofing works done by Dubbel Philippines for being works done after the termination of the contract. The ₱3,040,000.00 for the rectification works performed after the termination of the contract was also disallowed because while HPI presented its contract with A.A. Manahan Construction for rectification and completion works, it failed to present proof of how much was specifically paid for rectification works only, as well as the proof of its payment. Moreover, prior notice of such defective works was not shown to have been given to Werr as required under the Agreement, and even noted that HPI's project manager approved of the quality of the works up to almost 94%.²⁸

The CIAC further ruled that Werr incurred only 9.327 days of delay. Citing Article 1376²⁹ of the Civil Code and considering the failure of the Agreement to state otherwise, it applied the industry practice in the construction industry that liquidated damages do not accrue after achieving substantial compliance. It held that delay should be counted from October 27, 2006 until the projected date of substantial completion. Since the last admitted accomplishment is 93.18% on October 27, 2006, the period it will take Werr to perform the remaining 1.82% is the period of delay. Based on the past billings, since it took Werr 5.128 days³⁰ to achieve 1% accomplishment, it will therefore take it 9.327 days to achieve substantial completion. Thus, the CIAC concluded that the period of delay until substantial completion of the project is 9.327 days. The liquidated damages under the Agreement being 1/10 of 1% of the ₱271,797,900.00 or ₱271,797.90 per day of delay, Werr is liable for liquidated damages in the amount of ₱2,535,048.95.³¹

Since the liquidated damages did not exhaust the balance of the retention money, the CIAC likewise denied the claim for actual damages.³²

Thereafter, HPI filed its petition for review³³ under Rule 43 with the CA on August 28, 2008.

²⁷ The CIAC found this amount as admitted by Werr when it confirmed the amount of ₱14,834,926.71. This amount was arrived at by deducting ₱14,834,926.71 from the ₱25,738,258.01 retention money. *Id.* at 60.

²⁸ *Id.* at 61-63.

²⁹ Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

³⁰ The CIAC determined that the period from the date of the Notice of Award/Notice to Proceed (July 22, 2005) until October 27, 2006 is 478 calendar days. Dividing 478 days by 93.18% accomplishment rate, it concluded that it took Werr 5.128 days to achieve 1%. *Rollo* (G.R. No. 187543), p. 65.

³¹ *Id.* at 64-65.

³² *Id.* at 65-66.

CA's Ruling

The CA rendered the assailed decision, affirming the CIAC's findings on the allowable charges against the retention money, and on the attorney's fees and litigation expenses. It, however, disagreed with the CIAC decision as to the amount of liquidated damages and arbitration costs. According to the CA, delay should be computed from October 27, 2006 until termination of the contract on November 28, 2006, or 33 days, since the contract prevails over the industry practice. Thus, the total liquidated damages is ₱8,969,330.70. As to the arbitration costs, it ruled that it is more equitable that it be borne equally by the parties since the claims of both were considered and partially granted.³⁴

Hence, these consolidated petitions.

Arguments

Werr argues that the CA erred in modifying the CIAC decision on the amount of liquidated damages and arbitration costs. It insists that the appellate court disregarded Articles 1234, 1235, and 1376 of the Civil Code and the industry practice (as evidenced by Clause 52.1 of the Construction Industry Authority of the Philippines [CIAP] Document No. 101 or the "General Conditions of Contract for Government Construction" and Article 20.11 of CIAP Document No. 102 or the "Uniform General Conditions of Contract for Private Construction") when it did not apply the construction industry practice in computing liquidated damages only until substantial completion of the project, and not until the termination of the contract.³⁵ Werr further emphasizes that the CIAC, being an administrative agency, has expertise on the subject matter, and thus, its findings prevail over the appellate court's findings.³⁶

On the other hand, HPI argues that Werr was unjustly enriched when the CA disallowed HPI's recovery of the amounts it paid to suppliers. HPI claims that: (1) payments made to suppliers identified in the Direct Payment Scheme even after the termination of the contract should be charged against the balance of the retention money, the same having been made pursuant to Werr's express instructions; (2) the payments to Dubbel Philippines and the cost of the contract with A.A. Manahan Construction are chargeable to the retention money, pursuant to the terms of the Agreement; and (3) the expenses incurred in excess of the retention money should be paid by Werr as actual damages. These payments, while made after the termination of the contract, were for prior incurred obligations.³⁷ HPI also argues that it is not

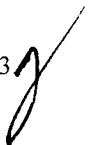
³³ *Rollo* (G.R. No. 187580), pp. 731-779.

³⁴ *Rollo* (G.R. No. 187543), p. 15.

³⁵ *Id.* at 37-42.

³⁶ *Id.* at 28-29.

³⁷ *Rollo* (G.R. No. 187580), pp. 60-73



liable for arbitration costs, and reiterates its claims for actual damages, and payment of attorney's fees and litigation expenses.³⁸

Issues

- I. Whether the payments made to suppliers and contractors after the termination of the contract are chargeable against the retention money.
- II. Whether the industry practice of computing liquidated damages only up to substantial completion of the project applies in the computation of liquidated damages. Consequently, whether delay should be computed until termination of the contract or until substantial completion of the project.
- III. Whether the cost of arbitration should be shouldered by both parties.
- IV. Whether HPI is entitled to attorney's fees and litigation expenses.

Our Ruling

We deny the consolidated petitions.

I. Charges against the Retention Money

Anent the first issue, we emphasize that what is before us is a petition for review under Rule 45 where only questions of law may be raised.³⁹ Factual issues, which involve a review of the probative value of the evidence presented, such as the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, may not be raised unless it is shown that the case falls under recognized exceptions.⁴⁰

In cases of arbitral awards rendered by the CIAC, adherence to this rule is all the more compelling.⁴¹ Executive Order No. 1008,⁴² which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, clearly provides that the arbitral award shall be binding upon the parties and that it shall be final and inappealable except

³⁸ *Id.* at 73-74.

³⁹ RULES OF COURT, Rule 45, Sec. 1.

⁴⁰ *R.V. Santos Company, Inc. v. Belle Corporation*, G.R. Nos. 159561-62, October 3, 2012, 682 SCRA 219, 233-236.

⁴¹ See *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, G.R. No. 187521, March 14, 2012, 668 SCRA 302, 315-317.

⁴² *Creating an Arbitration Machinery in the Construction Industry of the Philippines* (1985).

on questions of law which shall be appealable to the Supreme Court.⁴³ This rule on the finality of an arbitral award is anchored on the premise that an impartial body, freely chosen by the parties and to which they have confidence, has settled the dispute after due proceedings:

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is 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. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

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 the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.⁴⁴

⁴³ *Id.*, Sec. 19.

⁴⁴ *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, December 13, 1993, 228 SCRA 397, 405-407.

In this case, the issues of whether HPI was able to prove that payments made to suppliers and to third party contractors are prior incurred obligations that should be charged against the retention money, and whether HPI incurred expenses above the retention money that warrants actual damages, are issues of facts beyond the review of the Court under Rule 45.

Moreover, even if we consider such factual issues, we are bound by the findings of fact of the CIAC especially when affirmed by the CA.⁴⁵ Factual findings by a quasi-judicial body like the CIAC, which has acquired expertise because its jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence.⁴⁶ We recognize that certain cases require the expertise, specialized skills, and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved.⁴⁷

We nevertheless note that factual findings of the construction arbitrators are not beyond review, such as when the petitioner affirmatively proves the following: (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 10⁴⁸ of Republic Act No. 876⁴⁹ and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (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; (6) 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; (7) when the findings of the CA are contrary to those of the CIAC; or (8) when a party is deprived of administrative due process.⁵⁰ However, we do not find that HPI was able to show any of the exceptions that should warrant a review and reversal of the findings made by the CIAC and the CA.

⁴⁵ *Ibex International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306, 314.


⁴⁶ *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. No. 143154, June 21, 2006, 491 SCRA 557, 575.

⁴⁷ *Id.*

⁴⁸ Stated as Section 9 in the cases cited in note 50.

⁴⁹ The Arbitration Law (1953).

⁵⁰ *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, December 20, 2006, 511 SCRA 335, 345-346, citing *David v. Construction Industry and Arbitration Commission*, G.R. No. 159795, July 30, 2004, 435 SCRA 654, 666; *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, G.R. No. 153310, March 2, 2004, 424 SCRA 179, 198; *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, December 13, 1993, 228 SCRA 397, 405-407; and *Metro Construction, Inc. v. Chatham Properties, Inc.*, G.R. No. 141897, September 24, 2001, 365 SCRA 697, 726.



Thus, we affirm the CIAC and CA's findings that direct payments charged by HPI in 2007 and 2008 were for materials supplied after the termination of the project and did not correspond to the list of suppliers submitted; that the waterproofing works done by Dubbel Philippines in the amount of ₱629,702.24 were for works done after the termination of the contract that were for the account of the new contractor; and that the rectification works performed after the termination of the contract worth ₱3,040,000.00 were not proven to have been paid, that it was for rectification works only, and that prior notice of such defective works as required under the Agreement was not proven. Accordingly, we affirm that the balance of the retention money is ₱10,955,899.79.

II. Delay in computing Liquidated Damages

On the other hand, the question on how liquidated damages should be computed based on the Agreement and prevailing jurisprudence is a question of law that we may review.

The pertinent provision on liquidated damages is found in clause 41.5 of the Agreement, *viz.*:

41.5. Considering the importance of the timely completion of the WORKS on the **OWNER'S** commitments to its clients, the **CONTRACTOR** agrees to pay the **OWNER** liquidated damages in the amount of 1/10th of 1% of the amount of the Contract price for every day of delay (inclusive of Sundays and holidays).⁵¹

Werr, as contractor, urges us to apply the construction industry practice that liquidated damages do not accrue after the date of substantial completion of the project, as evidenced in CIAP Document No. 102, which provides that:

20.11 SUBSTANTIAL COMPLETION AND ITS EFFECT:

A. [a] There is substantial completion when the Contractor completes 95% of the Work, provided that the remaining work and the performance of the work necessary to complete the Work shall not prevent the normal use of the completed portion.

x x x

D. [a] No liquidated damages for delay beyond the Completion Time shall accrue after the date of substantial completion of the Work.

⁵¹ Rollo (G.R. No. 187580), p. 152.

We reject this claim of Werr and find that while this industry practice may supplement the Agreement, Werr cannot benefit from it.

At the outset, we do not agree with the CA that industry practice be rejected because liquidated damages is provided in the Agreement, autonomy of contracts prevails, and industry practice is completely set aside. Contracting parties are free to stipulate as to the terms and conditions of the contract for as long as they are not contrary to law, morals, good customs, public order or public policy.⁵² Corollary to this rule is that laws are deemed written in every contract.⁵³

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

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

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

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

In *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*,⁵⁴ we applied Article 1234 of the Civil Code. In determining what is considered substantial compliance, we used the CIAP Document No. 102 as evidence of the construction industry practice that substantial compliance is equivalent to 95% accomplishment rate. In that case, the construction agreement requires the contractor “to pay the owner liquidated damages in the amount equivalent to one-fifth (1/5) of one (1) percent of the total Project cost for each calendar day of delay.”⁵⁵ We declared that the contractor cannot be liable for liquidated damages because it already accomplished 97.56% of the project.⁵⁶ We reiterated this in *Transcept Construction and Management Professionals, Inc. v. Aguilar*⁵⁷ where we ruled that since the contractor

⁵² CIVIL CODE, Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

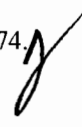
⁵³ See *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011, 659 SCRA 756.

⁵⁴ G.R. No. 154885, March 24, 2008, 549 SCRA 12.

⁵⁵ *Id.* at 17.

⁵⁶ *Id.* at 29-30.

⁵⁷ G.R. No. 177556, December 8, 2010, 637 SCRA 574.



accomplished 98.16% of the project, the project owner is not entitled to the 10% liquidated damages.⁵⁸

Considering the foregoing, it was error for the CA to immediately dismiss the application of industry practice on the sole ground that there is an existing agreement as to liquidated damages. As expressly stated under Articles 1234 and 1376, and in jurisprudence, the construction industry's prevailing practice may supplement any ambiguities or omissions in the stipulations of the contract.

Notably, CIAP Document No. 102, by itself, was intended to have suppletory effect on private construction contracts. This is evident in CIAP Board Resolution No. 1-98,⁵⁹ which states:

Sec. 9. Policy-Making Body. — The [CIAP], through the CIAP Executive Office and its various Implementing Agencies, shall continuously monitor and study the operations of the construction industry, both domestic and overseas operations, to identify its needs, problems and opportunities, in order to provide for the pertinent policies and/or executive action and/or legislative agenda necessary to implement plans, programs and measures required to support the sustainable development of the construction industry, such as but not limited to the following:

x x x

9.05 The promulgation and adoption of Standard Conditions of Contract for the public construction and private construction sector which shall have suppletory effect in cases where there is a conflict in the internal documents of a construction contract or in the absence of the general conditions of a construction agreement[.]

As the standard conditions for contract for private construction adopted and promulgated by the CIAP, CIAP Document No. 102 applies suppletorily to private construction contracts to remedy the conflict in the internal documents of, or to fill in the omissions in, the construction agreement.

In this case, clause 41.5 of the Agreement is undoubtedly a valid stipulation. However, while clause 41.5 requires payment of liquidated damages if there is delay, it is silent as to the period until when liquidated damages shall run. The Agreement does not state that liquidated damages is due until termination of the project; neither does it completely reject that it is only due until substantial completion of the project. This omission in the

⁵⁸ *Id.* at 581-582.

⁵⁹ Implementing Rules and Regulations of Presidential Decree No. 1746 titled "An Act Creating the Construction Industry Authority of the Philippines."

Agreement may be supplemented by the provisions of the Civil Code, industry practice, and the CIAP Document No. 102. Hence, the industry practice that substantial compliance excuses the contractor from payment of liquidated damages applies to the Agreement.

Nonetheless, we find that Werr cannot benefit from the effects of substantial compliance.

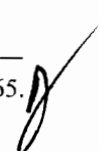
Paragraph A.[a.], Article 20.11 of CIAP Document No. 102 requires that the contractor *completes* 95% of the work for there to be substantial completion of the project. Also, in those cases where we applied the industry practice to supplement the contracts and excused payment from liquidated damages under Article 1234, the contractors there actually achieved 95% completion of the project. Neither the CIAC nor the courts assumed as to when substantial compliance will be achieved by the contractor, but the contractors offered substantial evidence that they actually achieved at least 95% completion of the project. Thus, the effects of substantial completion only operate to relieve the contractor from the burden of paying liquidated damages when it has, in reality, achieved substantial completion of the project.

While the case before us presents a different scenario, as the contractor here does not demand total release from payment of liquidated damages, we find that in order to benefit from the effects of the substantial completion of a project, the condition precedent must first be met—the contractor must successfully prove by substantial evidence that it *actually* achieved 95% completion rate of the project. As such, it is incumbent upon Werr to show that it had achieved an accomplishment rate of 95% before or at the time of the termination of the contract.

Here, there is no dispute that Werr failed to prove that it completed 95% of the project before or at the time of the termination of the contract. As found by CIAC, it failed to present evidence as to what accomplishment it achieved from the time of the last billing until the termination of the contract.⁶⁰ What was admitted as accomplishment at the last billing is 93.18%. For this reason, even if we adopt the rule that no liquidated damages shall run after the date of substantial completion of the project, Werr cannot claim benefit for it failed to meet the condition precedent, *i.e.*, the contractor has successfully proven that it actually achieved 95% completion rate.

More importantly, Werr failed to show that it is the construction industry's practice to project the date of substantial completion of a project, and to compute the period of delay based on the rate in past progress billings just as what the CIAC has done. Consequently, the CIAC erred when it assumed that Werr continued to perform works, and if it did, that it

⁶⁰ Rollo (G.R. No. 187543), p. 65.



performed them at the rate of accomplishment of the previous works in the absence of evidence.

That the effects of substantial completion will only apply when *actual* substantial completion is reached is apparent when we consider the reason behind the rules on substantial completion of the project found in Section 20.11[E] of the CIAP Document No. 102, *viz.*:

E. The purpose of this Article [ART. 20, WORK; 20.11: SUBSTANTIAL COMPLETION AND ITS EFFECT] is to ensure that the Contractor is paid for Work completed and for the Owner to retain such portion of the Contract Price which, together with the Performance Bond, is sufficient to complete the Work without additional cost to the Owner.

The rules are intended to balance the allocation and burden of costs between the contractor and the project owner so that the contractor still achieves a return for its completed work, and the project owner will not incur further costs. To compute the period of delay when substantial compliance is not yet achieved but merely on the assumption that it will eventually be achieved would result in an iniquitous situation where the project owner will bear the risks and additional costs for the period excused from liquidated damages.

From the foregoing, we affirm the CA's conclusion that the period of delay in computing liquidated damages should be reckoned from October 27, 2006 until the termination of the contract or for 33 days, and not only until the projected substantial completion date. Consistent with the CA's ruling that liquidated damages did not exceed the retention money, we therefore affirm that HPI did not suffer actual damages in the amount of ₱573,012.81.

III. Arbitration Costs, Attorney's Fees, and Litigation Costs

Courts are allowed to adjudge which party may bear the cost of the suit depending on the circumstances of the case.⁶¹ Considering the CA's findings that both parties were able to recover their claims, and neither was guilty of bad faith, we do not find that the CA erred in dividing the arbitration costs between the parties.

We also do not find the need to disturb the findings as to attorney's fees and expenses of litigation, both the CIAC and the CA having found that there is no basis for the award of attorney's fees and litigation expenses.⁶²

WHEREFORE, the petitions are **DENIED**. The Court of Appeals' February 9, 2009 Decision and April 16, 2009 Resolution are **AFFIRMED**.

⁶¹ RULES OF COURT, Rule 142, Sec. 1; See *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 165433, February 6, 2007, 514 SCRA 569, 574-575.

⁶² *Rollo* (G.R. No. 187543), pp. 15; 66-67

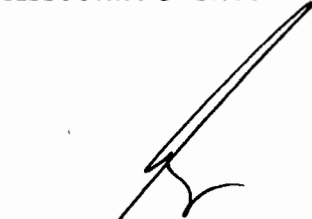
The net award in favor of Werr Corporation International shall earn interest at the rate of 6% *per annum* from date of demand on October 3, 2007 until finality of this Decision. Thereafter, the total amount shall earn interest from finality of this Decision until fully paid.

SO ORDERED.

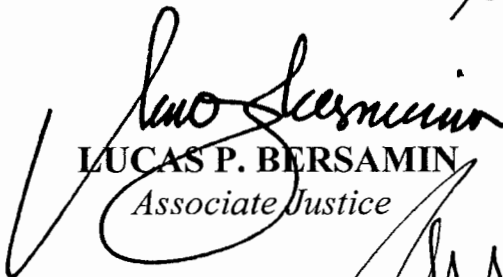


FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:



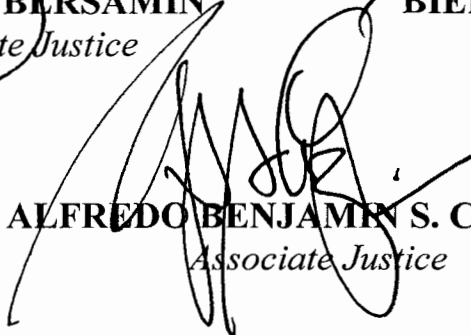
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



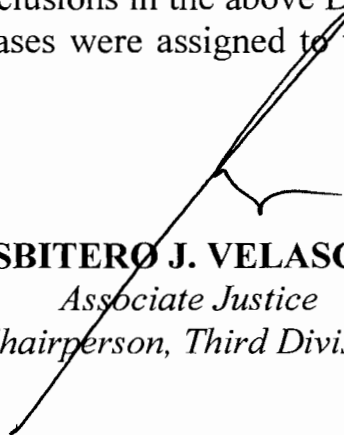
BIENVENIDO L. REYES
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

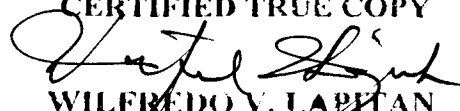
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPID
Division Clerk of Court
Third Division