



Republic of the Philippines
Supreme Court
Manila

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Welford E. Lopez
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Division of the Court
Third Division
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THIRD DIVISION

**B.F. CORPORATION and
HONORIO PINEDA,**
Petitioners,

G.R. No. 192948

Present:

VELASCO, JR., J.,
Chairperson,
DEL CASTILLO,*
PEREZ,
REYES, and
JARDELEZA, JJ.

-versus-

FORM-EZE SYSTEMS, INC.,
Respondent.

Promulgated:

December 7, 2016

X-----

Welford E. Lopez

DECISION

PEREZ, J.:

This petition for review assails the 15 January 2010 Decision¹ and 13 July 2010 Resolution² of the Court of Appeals in CA-G.R. SP No. 102007 which affirmed the Final Award rendered by the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal on 7 December 2007.

FACTUAL ANTECEDENTS

Petitioner B.F. Corporation (BFC) is a corporation engaged in general engineering and civil works construction. Petitioner Honorio H. Pineda (Pineda) is the President of BFC. Respondent Form-Eze Systems Inc. (Form-Eze) is a corporation engaged in highway and street construction.

* Additional member per Raffle dated 5 December 2016.

¹ *Rollo*, Vol. I, pp. 131-151; Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Fernanda Lampas Peralta and Florito S. Macalino concurring.

² *Id.* at 153-157.

On 29 August 2006, SM Prime Holdings, Inc. awarded the contract for general construction of the SM City–Marikina mall (the Project) to BFC whereby the latter undertook to supply materials, labor, tools, equipment and supervision for the complete construction of the Project.³ In turn, BFC engaged Form-Eze for the lease of formwork system and related equipment for and needed by the Project. Accordingly,⁴ five (5) contracts and two (2) letter-agreements were executed by the BFC, represented by its President Pineda, and Form-Eze, represented by its President, James W. Franklin. These contracts and their salient provisions are provided in the following table:

CONTRACT NO. 1: Contract for the Lease of the Equipment for the Beam and Slab Hardware for the Formwork on SM Marikina Mall Project dated 20 December 2006⁴	
Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Furnish all hardware required in the formwork system for the poured in place beam and slab concrete decks excluding the scaffoldings and accessories required to support the system; and 2. Provide consumable beam ties and steel accessories needed to maintain the rigidity and alignment of the plywood formed surfaces.
Obligations of BFC	<ol style="list-style-type: none"> 1. Furnish all scaffoldings as required to support the system at no cost to Form-Eze; 2. Furnish all plywood and lumber as required in the formwork operation as no cost to Form-Eze; 3. Purchase materials for the formwork as requested by Form-Eze. The direct cost of materials shall be deducted from the contract and the balance paid to Form-Eze; and 4. Responsible for the freight of the equipment to and fro the Marikina jobsite and the Form-Eze warehouse in Cainta, Rizal.
Work Specifications	The amount of hardware to be furnished is sufficient to provide 7,000 contact square meters of formwork.
Contract Price	Total contract amount for the equipment: 126,000 contact square meters (equipment to be used) x P225.00/contact square meter (cost per use of the hardware for forming the elevated beam and slab) = P28,350,000.00.
Terms of Payment	<ol style="list-style-type: none"> 1. 15% down payment or P4,252,500.00 paid to Form-Eze on or before pick up of equipment; 2. When concrete is placed on the slab forms, the equipment rental per contact square meter is due and payable to Form-Eze and shall be paid on the first day of the following month; 3. All equipment purchased by BFC as requested by Form-Eze shall be prorated and deducted equally

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Id. at 1596-1600.

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Id. at 161.

	<p>in the first 4-month duration of the equipment lease; and</p> <p>4. Monthly progress payments for the equipment lease shall be made timely.</p>
<p>CONTRACT NO. 2: Contract for Stripping and Moving Form-Eze Systems Inc. Equipment from Location to Location on SM Marikina Mall Project dated 20 December 2006⁵</p>	
Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Furnish forklift for the movement of the deck forms and related hardware of the forming system from location to location; 2. Strip all formwork from under the poured concrete slab and beam deck. Move all equipment to the next location where it will be reset by BFC; and 3. Assist BFC in setting the deck forms to the proper grade and locations provided that BFC has laid out the grid lines as needed for placing the scaffoldings under the deck forms and provided the scaffoldings is readily available for placement under the deck forms.
Obligations of BFC	<ol style="list-style-type: none"> 1. Furnish additional hoisting; and 2. Provide all labor requested by Form-Eze and deducted from the contract at P60.00 per carpenter man-hour.
Contract Price	Total contract amount for moving equipment: 126,000 x P50.00/contact square meter (cost for stripping and movement of the equipment, excluding cost of resetting to grade, cleaning plywood surfaces and applying release agent) = P6,300,000.00.
Terms of Payment	<ol style="list-style-type: none"> 1. 15% down payment or P945,000.00 paid to Form-Eze on or before pick up of equipment; and 2. Monthly progress billing will coincide with the contact square meters formed with the Form-Eze equipment.
<p>CONTRACT NO. 3: Contract for Column Formwork on the SM Marikina Mall Project dated 20 December 2006⁶</p>	
Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Furnish sufficient number of built up column forms as required to complete 6 poured in place full height concrete columns per day provided the installation of the rebar and the placement of the concrete can maintain that schedule of performance; 2. Provide supervision for the column formwork operation; 3. Responsible for bracing the columns to maintain them plumb when poured; 4. Correct any defects in the poured column due to failure in the formwork. (Not responsible for air entrapment or aggregate separation caused by

⁵ Id. at 162.

⁶ Id. at 163.

	<p>improper placement or improper vibration of the concrete; and</p> <p>5. Furnish chamfer and form release agent</p>
Obligations of BFC	<ol style="list-style-type: none"> 1. Furnish all hoisting and moving of the columns; 2. Responsible for installation of the rebar and placement of the concrete; 3. Furnish labor as required by Form-Eze for forming columns and will deduct from Form-Eze P60.00 per man-hour for each carpenter for the column framework; and 4. Responsible for all column grid lay-out and establishing elevations on the columns
Terms of Payment	<ol style="list-style-type: none"> 1. Total Contract Amount: 9,100 contact square meters of formwork x P355.00/contact square meter = P3,230,500.00; 2. Downpayment of P484,575.00 (15%) on or before pick up of equipment; 3. BFC agrees to purchase all materials for the formwork as required by Form-Eze and the direct cost of those materials will be deducted from this contract and the balance paid to Form-Eze; and 4. When columns are poured and stripped, P355.00 per contact square meter is due and payable at that time. Progress payments will be made for the work completed in a particular month and paid on the first day of the following month. Any materials or equipment purchased by BFC at the request of Form-Eze shall be deducted from this contract and prorated equally over a 4-month period.
CONTRACT NO. 4: Contract for the Lease of the Heavy Duty Galvanized Scaffold Frames and Related Accessories on SM Marikina Mall Project dated 29 January 2007⁷	
Obligations of BFC	<ol style="list-style-type: none"> 1. Manufacture heavy duty galvanized scaffoldings and certain accessories for Form-Eze. The scaffoldings and accessories will be manufactured exactly as per the drawings and samples given to BFC by Form-Eze, provided the equipment produced is of excellent quality and to the exact specification specified by Form-Eze; 2. The agreement is for 1,500 pieces of heavy duty galvanized 6-ft frames and related accessories (3,000 pcs of 14-inch adjustable u-heads and 3,000 pcs heavy duty base plates); and 3. BFC will deduct P6,352,500.00 from Form-Eze equipment leased contract (all equipment must be in good condition and turned over to Form-Eze at the end of project). Form-Eze will own the equipment.
Obligations of Form-Eze	<ol style="list-style-type: none"> 1. Form-Eze will credit BFC with P4,235.00 per

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Id. at 164.

	frame and related accessories; and 2. Form-Eze will accept all frames in good condition up to a maximum of 1,500 frames and related accessories.
Agreement is contingent upon parties entering into an exclusive licensing agreement with BFC for the manufacture of Form-Eze equipment.	
CONTRACT NO. 5: Contract for the Purchase and Lease of the Heavy Duty Galvanized X-Bracing on SM Marikina Mall Project dated 29 January 2007⁸	
Obligations of BFC	Manufacture heavy duty galvanized x-bracing.
Obligations of Form-Eze	Credit BFC with P400.00 per x-brace. If the x-bracing is not manufactured exactly as specified by Form-Eze, credit is P300.00 per x-brace.
Agreement is contingent upon parties entering into an exclusive licensing agreement for the manufacturing of Form-Eze equipment.	
MEMORANDUM OF AGREEMENT dated 5 January 2007⁹	
BFC will manufacture Form-Eze equipment and will sell exclusively to Form-Eze.	
LETTER-AGREEMENT dated 5 January 2007¹⁰	
Changes to Contract No. 4	
<ol style="list-style-type: none"> 1. The 18-inch adjustable u-head will be changed to a 14-inch adjustable u-head. 2. The threading of the heavy duty screw will be accomplished in segments and then machined. 3. Form-Eze will send to the jobsite all 18-inch and 24-inch adjustable u-heads available in its current stock in order to start forming the project while BFC is fabricating the 14-inch adjustable u-heads. When the 3,000 pieces 14-inch u-heads are completed and are on the jobsite, Form-Eze will take back the 18-inch and 24-inch adjustable u-heads that were temporarily in use at the jobsite. 4. The creditable amount for the purchase of the 6-foot heavy duty galvanized scaffolding and related accessories is changed to P4,235.00 per 6-foot heavy duty galvanized frames, adjustable u-heads and heavy duty base plate. 	

On 30 March 2007, Form-Eze filed a Request for Arbitration¹¹ before the CIAC. In its Complaint, Form-Eze alleged that BFC has an unpaid obligation amounting to ₱9,189,024.58; that BFC wanted to re-negotiate the equipment leases; and that it was not complying with the contractual and supplemental agreements in effect. Form-Eze prayed for the following relief:

1. [For BFC] to pay the current monthly equipment rentals;

⁸ Id. at 165.

⁹ Id. at 166.

¹⁰ Id. at 167.

¹¹ Id. at 158.

2. Provisions made to guarantee the earned monthly equipment leased amounts are paid timely;
3. To legislate provisions to ensure the lease contracts are not breached during the construction of the SM Marikina Mall;
4. Provisions made to guarantee the performance of [BFC] for the manufacturing of the shoring equipment purchased by Form-Eze from BFC;
5. Provisions made to guarantee the return of all Form-Eze equipment when the concrete structure is completed and all lost and damaged equipment has been paid for by [BFC]; and
6. All cost related to Arbitration.¹²

In its Amended Answer with Counterclaim, BFC sought for reformation of Contract #1 to incorporate a provision that BFC shall deduct from said billing the cost of labor supplied by it for the fabrication and assembly of the forming system and for the stripping, cleaning, resetting thereof at the rate of ₱60.00 per man-hour. BFC also demanded the refund of ₱5,773,440.00 as expenses for the manufacture of additional hardware to complete the 7,000 square meters of formwork required in Contract #1. BFC explained that Form-Eze had only furnished 4,682.4 square meters of formwork.¹³

The CIAC appointed a 3-member Arbitral Tribunal (CIAC Arbitral Tribunal), composed of Atty. Custodio O. Parlade, Atty. Alfredo F. Tadiar and Engineer Romeo C. David, to adjudicate Form-Eze's claims.

Under the Terms of Reference, the parties made the following admissions:

1. The existence of five contracts, a memorandum of agreement and a supplemental contract.
2. BFC renegotiated Contract #1 but it did not result in a separate written contract.
3. Under Contract #1, BFC is willing and ready to pay Form-Eze the amount of ₱3,515,003.59, which amount shall be deducted from the amount of the latter's claim.
4. Under Contract #2, BFC is willing and ready to pay Form-Eze the amount of ₱675,788.97, which amount shall be deducted from the amount of the latter's claim.

¹² Id. at 160.

¹³ Id. at 195-196.



5. BFC admits that it has the obligation to return to Form-Eze equipment furnished them under Contracts #1, 2, and 3, and all heavy duty galvanized scaffold frames and related accessories, heavy duty galvanized x-bracing and adjustable U-heads and base plates fabricated and manufactured by BFC under Contracts #4, 5 and letters dated 5 January 2007.¹⁴

The claims¹⁵ of the parties are summarized, as follow:

FORM-EZE'S CLAIMS	As of 7/19/2007	From 7/20/2007 to end of contract based on agreed minimum contact sq.m. of 126,000
Arrears on Contract No. 1	₱26,310,476.29 - 3,515,003.59 <hr/> 22,795,472.70	₱11,489,523.71
Arrears on Contract No. 2	4,771,723.63 -675,788.97 <hr/> 4,095,934.66	1,528,276.37
Arrears on Contract No. 3	2,099,825.00	1,130,675.00
Arrears on Letter dated 1/5/07	740,600.00	483,000.00
	₱29,731,832.36	₱14,631,475.08
Attorney's Fees		300,000.00
TOTAL SUM IN DISPUTE		₱44,663,307.44

BFC's COUNTERCLAIM	
Cost of labor, helmet & expenses for x-bracing for the assembly of the form system under Contract #1	P 812,791.09
Cost of stripping, petroleum, oil, & helmet under Contract #2	1,391,086.02
Attorney's Fees	300,000.00
Total Counterclaims	P2,503,877.11
TOTAL SUM IN DISPUTE	P46,867,184.55

The total arbitration fees amounted to ₱616,393.73.

CIAC Arbitral Tribunal was tasked to resolve the following issues, to wit:

1. Is Claimant entitled to its total claim of ₱34,284,996.41 representing the alleged arrear on equipment rental under Contract #1?

¹⁴ Id. at 250-251.

¹⁵ Id. at 253-254.

2. Is Claimant entitled to its claim of ₱5,624,211.03 representing the alleged arrears under Contract #2?
3. Is Claimant entitled to its claim of ₱3,230,500.00 representing the alleged arrears under Contract #3?
4. Is Claimant entitled to its claim of ₱1,374,408.00 representing the rental fees under Letter dated 5 January 2007?
5. Is Claimant entitled to its claim for the reformation of the subject Contracts to include the following:
 - a. Contract #1 – Provisions to guarantee the earned monthly equipment leased amounts are paid timely;
 - b. Contract #1 – Provision to ensure that the lease contracts are not breached during the construction of the SM Marikina Mall;
 - c. Contracts #4 and 5 – Provision to guarantee the performance of [BFC] for the manufacturing of the shoring equipment purchased by Form-Eze from BF Corp.;
 - d. Contracts #1, 2, 3, 4 and 5 – Provision for [BFC] to pay for the lost and damaged equipment furnished them by the [Form-Eze]; and
 - e. Contract #1 – Provision in the Contract to include the ₱75 per contact sq.m. for labor guarantee.
6. Is [BFC] #1 entitled to the reformation of Contract #1 to include a provision that [BFC] #1 shall deduct from [Form-Eze's] billing the cost of labor, helmet and expenses for x-bracing supplied by it for the assembly of the form system amounting to ₱812,791.09 , to deduct from the billing under Contract #2 the cost of labor for the stripping thereof, the costs of petroleum, oil and lubricant and helmet of the said laborers up to the end of the contract in the sum of ₱1,391,086.02 and from the billing under Contract #3, the cost of labor for the installation and forming of the built up column forms from June 19, 2007 up to the end of the project in the sum of ₱273,240.00?¹⁶
7. Is it proper to include Mr. Honorio Pineda as Respondent No. 2?
8. Does the Arbitral Tribunal have the jurisdiction to award claims that accrued after the filing of the Request for Arbitration or does the Claimant have a cause of action for claims that accrued during the same period?
9. Who between the parties is entitled to attorney's fees?
10. Who between the parties should bear the arbitration costs?¹⁷

¹⁶ The CIAC Arbitral Tribunal corrected Issue No. 6 in the TOR upon BFC's motion.
¹⁷ *Rollo*, Vol. 1, pp. 252-253.

FINAL AWARD BY CIAC

On 7 December 2007, the CIAC Arbitral Tribunal rendered a Final Award in favor of Form-Eze. The dispositive portion reads:

WHEREFORE, award is hereby made in favor of Claimant and against [BFC], ordering the latter to pay the former the following amounts:

a) On Contracts No. 1	P28,350,000.00
Less: Payments already made	7,700,000.00
	<hr/>
TOTAL	P20,650,000.00
b) On Contract No. 2	P 6,300,000.00
Less: Payments already made	990,000.00
Less: Cost of labor	60,000.00
	<hr/>
TOTAL	P 5,250,000.00
c) On Contract No. 3	P 2,153,166.67
Less: cost of labor	96,915.00
	<hr/>
TOTAL	P2,056,751.67

On Letter Agreement of January 5, 2008 to December 8, 2007

P560,000.00

IN SUM THE FOLLOWING AWARDS ARE MADE:

Contract No. 1	P 20,650,000.00
Contract No. 2	5,250,000.00
Contract No. 3	2,056,751.67
Letter Agreement of January 5, 2007	560,000.00

GRAND TOTAL

P 28,517,251.67

The Tribunal further awards in favor of [Form-Eze] and against [BFC] and [Pineda] who are ordered, jointly and severally to pay [Form-Eze] P300,00.00 as attorney's fees, and to indemnify [Form-Eze's] cost of arbitration paid to CIAC.

The Tribunal likewise disposes of the remaining issues as follows:

- a) The claims under Issues No. 5 and 6 for reformation of Contracts No 1, 2, 3, 4 and 5 are denied for lack of merit.
- b) The inclusion of Mr. Honorio Pineda in the Complaint as additional respondent is proper.
- c) The Tribunal has jurisdiction over the claims of [Form-Eze] and finds that the Complaint states a cause of action as to claims that accrued after the filing of the Complaint.
- d) All other claims and counterclaims submitted pursuant to the definition of issues in the Terms of Reference, not otherwise disposed of or resolved above, are dismissed for lack of merit. All claims and counterclaims peripherally discussed in these proceedings which are outside the scope of the definition of issues in the Terms of Reference are likewise outside the scope of this Final Award.
- e) The net award in favor of [Form-Eze] amounting to P28,517,251.67 shall earn interest at the rate of 6% per annum fro the date of this Final Award, and 12% from the date the Final Award becomes final and executory until the same is fully paid.¹⁸

BFC filed a Motion for Correction of the Final Award. Form-Eze asserted that the calculations made on the total quantity of deckforms supplied to be used under Contract No. 1 is erroneous because the quantity of the accessories that were delivered together with the loose truss chords and assembled trusses that were backloaded were ignored in the computation. BFC explained that the hardware supplied must be assembled first into deckforms since what is actually rented under Contract No. 1 are the deckforms, and not the hardware, thus:

Evidently, in the computation thereof, the total quantity of the accessories that were delivered together with the said loose truss chords and assembled trusses, both of which are shown in the same delivery receipts, and the total length of the loose truss chords and assembled trusses that were backloaded, were not considered and totally ignored.

¹⁸ Id. at 2157-2159.



Needless to state, these accessories, such as joist and beam hanger, just like the chords and the trusses, are component and indispensable parts of a deckform without which it can not be completely assembled to be used for the purpose intended. In the case of a deckform 44 ft. in length, it will need, for it to be completely assembled, 34 pieces of joists and 68 pieces of beam hangers, as shown in the herewith attached Annex "A" hereof.

Therefore, to form 87 completely assembled deckforms of 44 ft. in length out of/from the delivered chords and trusses, it will require 2,958 pieces of joist and 5,916 pieces of beam hangers.

However, as show in Exhibits "C-9(5)", "C-9(11)", "C-9(15)", "C-9(18)", "C-9(21)", "C-9(25)", "C-9(27)", "C-9(30)", and "C-9(31)", only 2,512 pieces of joists and in Exhibits "C-9(8)", "C-9(15)", "C-9(16)", "C-9(18)", "C-9(21)", "C-9(27)", "C-9(32)", "C-9(34)", "C-9(35)", "C-9(37)", "C-9(38)", "C-9(41)", "C-9(35)", "C-9(38)", "C-9(40)", and "C-9(41)", only 3,626 pieces of beam hangers, the very documents on which this Commission/Tribunal anchored its finding now sought to be corrected, were actually delivered by the Claimant.

Accordingly, 87 deckforms of 44 ft. in length can not be completely assembled from the delivered chords and trusses because the quantity of the delivered accessories is insufficient for the purpose. To be precise, only 53 deckforms of 44 ft. in length can be completely assembled out of the total length of the chords and trusses with the use of 1,802 pieces of joists and 3,604 pieces of beam hangers (with an excess of 22 pieces of beam hangers, 710 pieces of joists and 2,720 ft of chords and trusses) which are sufficient to provide only 4,441.73 contact sq.m. of formworks.

To therefore conclude that 87 deckforms of 44 ft. in length can be completely assembled with the use of/out of 2,512 pieces of joists and 3,626 pieces of beam hangers, is an evident miscalculation.

x x x x

In as much as only 3,626 pieces of beam hangers were actually delivered, which, when used with the delivered quantity of joists and length of the delivered chords and trusses in completely assembling 53 deckforms of 44 ft. in length, is sufficient to provide only 4,441.73 contact sq.m. of formworks, the minimum rental amount stipulated under Contract No. 1 should correspondingly be reduced to only Php17,989,006.50, less payment of Php 7,700,000.00=Php 10,829,006.50 as the net amount of rent due the Claimant thereunder, as shown in the herewith attached Annex "B" hereof.

On the same ground, the minimum contact amount stipulated under Contract No. 2 should also be proportionately reduced to Php 3,997,557.00, less payment of Php 990,000.00 + cost of labor of Php

60,000.00 = Php 2,947,557.00 as the net amount due the Claimant thereunder.¹⁹

The CIAC Arbitral Tribunal denied the motion prompting BFC to file a petition for review before the Court of Appeals.

While the case was pending before the Court of Appeals, Form-Eze filed a Motion with Leave to Direct BFC to return pieces of equipment on 14 July 2009.

On 15 January 2010, the Court of Appeals dismissed the petition for lack of merit. The Court of Appeals heavily relied on factual findings of the CIAC Arbitral Tribunal.

THE PETITION

BFC filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution dated 13 July 2010. Hence, the present petition. BFC, in its Memorandum, raised the following issues for our resolution:

I.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC's ruling that BFC is liable to pay rent to the [Form-Eze] under Contract Nos. 1, 2, and 3 even for portions where the latter's supplied formwork system were not used.

II.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC's conclusion that [Form-Eze] was able to supply BFC with such quantity of deckforms sufficient to provide the stipulated 7,000 contact square meter of formworks as to entitle said [Form-Eze] to the stipulated minimum contract rental price of Php28,350,000.00 under Contract No. 1 and consequently to Php6,300,000.00 under Contract No. 2, when, based on the quantity of the delivered accessories, which are component parts of deckform system, but which the CIAC totally ignored, [Form-Eze] can only provide 4,441.73 contact square meters of formworks that will entitle it to only Php17,989,006.05 and Php3,997,557.00, respectively thereunder.

¹⁹ *Rollo*, Vol. II, pp. 2179-2181.

III.

Whether or not the Court of Appeals committed reversible error in affirming the CIAC's ruling that [Form-Eze] is entitled to two-thirds of the stipulated minimum contract amount of Php3,230,500.00 or Php2,153,666.67 under Contract No. 3, considering that CIAC did not state the factual and legal basis of said ruling and despite its contrary factual finding that [Form-Eze] failed to supply the minimum required columnforms.

IV.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC's ruling against the reformation of Contract No. 1 to include a provision that BFC shall furnish the labor needed by [Form-Eze] in assembling the deckforms and that it shall deduct therefrom the agreed cost of labor at Php60.00 per man hour, since it has been the true intention and real agreement of the parties thereto.

V.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC when it did not deduct the following costs incurred by BFC from the minimum contract amounts due:

- (1) under Contract No. 1 for the cost of labor in assembling the deckforms, the cost of helmets of said laborers, and the expenses for x-bracing supplied by BFC for the assembly of said forms in the total amount of Php812,791.09;
- (2) under Contract No. 2 for the cost of labor in the stripping of said deckforms, the cost of petroleum, oil and lubricant and helmet up to the end of the contract in the sum total of Php1,391,086.02; and
- (3) under Contract No. 3 for the cost of labor in installing and forming the built up columnforms from 25 June 2007 up to the end of the contract in the sum total of Php273,240.00, when BFC is legally entitled thereto.

VI.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC in ordering BFC to pay rental fees under letter dated 5 January 2007, covering the period from 25 June 2007 to 17 December 2007 in the sum total of Php560,000.00 at Php96,000.00 a month, when the acquisition cost of the pieces of u-heads and plates referred to therein is allegedly only Php96,000.00, and there is evidence presented to show that these items were purchased at Php96,000.00 and there is no evidence to show the prevailing rate of rent for the same items.

VII.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC in ruling that Respondent Pineda can be held as co-

respondent (in the arbitration case) when he is not a party to the contracts and agreements involved in this case, as well as the arbitration agreement, and he did not voluntarily submit himself to arbitration in this case.

VIII.

Whether or not the Court of Appeals committed a reversible error when it ruled that the attorney's fees and cost of arbitration shall be for the account of Petitioners, considering that [Form-Eze] failed to supply the minimum required equipment under the contracts and when the root cause of the dispute is the imprecision of the language and the incompleteness of the contracts and agreements, which were prepared by the Respondents.²⁰

BFC prays for a modification of the Final Award to read:

a.	On Contract No. 1		Php17,989,006.50
	Less:		
	Payments already made	Php 7,700,000.00	
	Payment made on Billing No. 1	487,828.05	
	Cost of labor in assembling Deckforms, expenses for x- Bracings and cost of helmet	812,791.90	9,000,619.95
	SUBTOTAL		Php 8,988,386.55
b.	On Contract No. 2		Php 3,997,557.50
	Less:		
	Payments already made	Php 990,000.00	
	Costs of labor in stripping And moving of the same Deckforms, petroleum, oil And lubricant and helmet	1,304,036.82	Php 2,294,036.82
	SUBTOTAL		Php 1,702,520.68
c.	On Contract No. 3		Php 538,417.87
	Less:		
	Cost of labor in the instal- Lation and removal of the Columnforms		96,915.00
	SUBTOTAL		Php 441,502.87
d.	On Letter Agreement dated 5 January 2007		Php 70,000.00
e.	The award of attorney's fees be deleted; and		

²⁰

Id. at 3368-3370.

- f. The award for cost of arbitration fees be deleted.²¹

THE COURT'S RULING

The Final Award of CIAC is subject to review by the Court of Appeals.

BFC first asserts that the Court of Appeals has the power and the duty to review the factual findings made by CIAC and that the Court of Appeals should not be bound by the factual findings of the construction arbitrators.

The case of *Asian Construction and Dev't. Corp. v. Sumimoto Corporation*²² summarized the development of the principle that the final award of CIAC may be still be subject to judicial review, thus:

To begin, Executive Order No. (EO) 1008, 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, plainly states that the arbitral award “shall be final and inappealable except on questions of law which shall be appealable to the Court.” 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.”²³

Factual findings of construction arbitrators may be reviewed by the Court in cases where: 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

²¹ *Rollo*, Vol. 1, pp. 123-124.

²² 716 Phil. 788 (2013).

²³ *Id.* at 802-803.

or more of the arbitrators were disqualified to act as such under Section nine of Republic Act (R.A.) 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; (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 Court of Appeals are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.²⁴

While this rule, which limits the scope of the review of CIAC findings, applies only to the Supreme Court, the Court of Appeals nonetheless is not precluded from reviewing findings of facts, it being a reviewer of facts. By conveniently adopting the CIAC's decision as its own and refusing to delve into its factual findings, the Court of Appeals had effectively turned a blind eye to the evidentiary facts which should have been the basis for an equitable and just award.

While factual findings are not within the purview of a petition for review before this Court, we take exception in this case on the ground of the appellate court's refusal to delve into the findings of facts of the CIAC Arbitral Tribunal.

Under Contract No. 1, Form-Eze was not able to supply BFC with deckforms sufficient to provide 7,000 contact square meter of formworks.

The CIAC Arbitral Tribunal conducted its own study and came up with the following findings:

²⁴ *Ibex International, Inc. v. Government Service and Insurance System*, 618 Phil. 304, 312-313 (2009) citing *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction and Dev't. Corp.*, 540 Phil. 350, 360-361 (2006).

The receipted hardware deliveries made by [Form-Eze] show that the total length of loose truss chords delivered was 11,912 lineal feet and the length of the truss chords from the assembled trusses delivered was 2,052 lineal feet or a total available length of trusses of 13,964 lineal feet. By an iterative process of selection and elimination, 175 units of 44' long trusses could be assembled, equivalent to 87 deckforms of 44 feet in length. The assembled 87- 44' deckforms can provide 7,268.58 square meters of contact area, broken down as follows:

	Contact Area (%)
Interior & Near Column Slabs =	4,156.89 sq.m. (57.19%)
Grid Beams (B-1) =	740.37 sq.m. (10.19%)
Interior Beams (B-2) =	1,663.20 sq.m. (22.88%)
Grid Girders (G-2) =	708.12 sq.m. (9.74%)
Total =	7,268.58 sq.m. (100%)

The resulting contact area of 7,628.58 sq.m. is 3.84% over the 7,000 sq.m. requirement of the contract. But the former figure includes the contact area of girders which according to [petitioners] should not be included. As shown in ANNEX "A", sheets 5 & 6 of 6, the contact area contributed by the girders is only 708.12 sq.m., and if this is deducted from the computed total contact area, the remaining available contact area would be 6,560.46 sq.m. or 93.72%. The fact, however, is that the non-inclusion of the contact area provided by the girders would be a violation of the letter-contract dated 8 February 2007, paragraph 9 of which provides that: "[Form-Eze] offered to install beam hangers and ledger angles in order to support the moment beam from from column to column and thereby save BFC considerable labor and eliminate the use of BFC's light duty scaffolding underneath and beam. By doing that it will also speed up the forming operation and save BFC labor. The only light duty scaffolding that BFC will be installing is that under the girder which supports tremendous loading during the stressing of the beams prior to it being stressed. By forming the girder in this manner, [Form-Eze] is not involved in the tripping or resetting of the girder formwork. However, [Form-Eze] is has purchased and furnished considerable forming hardware and consumables (tie rods, pvc sleeves, pvc cones, whaler clips and brackets and wing-nuts) which are being used on girders and the beams. [Form-Eze] will give the ownership of this equipment to BFC and BFC will buy all additional consumables and hardware (as needed) directly from Comer. In return, [Form-Eze] will include the contact square meters of formwork in the girders in its billing for both the equipment lease and for the moving contract." This letter-contract, Exhibit C-12, binds [BFC] to pay Claimant for the girder formworks contact area for both Contract No. 1 and Contract No. 2.

Petitioners argued that the formwork of the girder (or large beam) is independent of the deck form system and so should not be counted in favor of [Form-Eze]. The Tribunal does not agree. How could the girder formwork be considered independent from the deckform system when both sides of the girder formworks are held stiff together by "tie rods, pvc sleeves (to make the tie rods reusable), pvc cones, whaler clips and

brackets and wing-nuts” supplied by the [Form-Eze] and pressed between deckforms preparatory to concrete pouring? The girder cannot be considered structurally independent of the deck slabs because it is the requirement of design and the National Building Code and its reference code the American Concrete Institute Code (ACI Code) that the girders are to be poured monolithically with the slabs and beams up to $L/3$ or $1/3$ of the floor span (the point of inflection and location of the construction joint where the bending moment is the least or zero), as is clearly shown on the floor concrete pouring schedule plans.*

Conclusion of Tribunal

In view of the above, it is the finding of the Arbitral Tribunal that [Form-Eze] had been able to furnish the amount of hardware that was sufficient to provide 7,000 contact square meters of formwork, all in accordance to Contract No. 1. Thus, the remaining question to resolve is the area of the project covered by the formwork equipment in contact square meters.²⁵

BFC accuses the CIAC of coming up with its own biased computation of the contact area of the hardware supplied by Form-Eze under Contract No. 1. According to BFC, Form-Eze had furnished only 53 completely assembled deckforms of 44 ft. in length which correspond to only 4,441.73 contact square meters of formworks, while CIAC found that Form-Eze had delivered truss chords equivalent to 87 deckforms which can provide 7,268.58 contact square meters. BFC maintains that Contract No. 1 is clear that the object is the supply of the complete deckform system and not unassembled hardware such as loose truss chords. BFC adds that Form-Eze judicially admitted that it is only claiming equipment rentals for the areas that its equipment are being used. BFC reiterates that based on the provisions of Contract No. 1 on the contemporaneous and subsequent acts of the parties, as well as application of principles of contract interpretation, the inclusion of loose truss chords in the computation of the quantity of hardware supplied by Form-Eze is an erroneous interpretation by CIAC. BFC also claims that the CIAC wrongfully included the contact area of girders in the computation of the sufficiency of equipment supplied by Form-Eze. BFC contends that the girders are not part of the deckforms contemplated in Contract No. 1. BFC offers to compensate Form-Eze to the extent that its supplied deckforms were used under the principle of *quantum meruit*. BFC submits that 4,441.73 contact square meters or 63.45% of the 7,000 minimum contact area required under Contract No. 1 is a reasonable computation.

²⁵

Rollo, Vol. I, pp. 2137-2139.

We reverse the finding of the CIAC on this point as it is contrary to the evidence on record.

We agree with BFC that the CIAC should not have included the unassembled truss chords in theoretically forming deckforms. We subscribe to BFC's submission that the object of Contract No. 1 is the deckforms and not just the hardware that make up the formwork. Contract No. 1, in itself, is clear that "F-E has agreed to furnish all hardware required in the formwork system for the poured in place beam and slab concrete decks x x x." In fact, the equipment rental is only due and payable to Form-Eze when the concrete is placed on the slab forms, which provision is based on the premise that the hardware had already been assembled into deckforms ready for concrete pouring. Moreover, the Proposed SM Marikina Mall Project Elevated Beam and Slab Formwork dated 7 December 2006, which document has been admitted by the parties in the Term of Reference, provides that Form-Eze will furnish sufficient deckforms to produce ½ floor each month on the project.

BFC had also explained to our satisfaction that loose truss chords alone could not be assembled into deckforms, to wit:

To try to assemble truss chords alone into a deckform is like taking three two-foot round pegs, trying to stand them upright, then balancing twelve-inch round wooden slab on top, and expect it to be a stool capable of supporting a person. Joist, beam hangers and other component parts fix the truss chords into place for the structural integrity of a deckform. In the case of a deckform 44 ft. in length, it will need, for it to be completely assembled, 34 pieces of joists and 68 pieces of beam hangers as illustrated in the Petitioner's Motion for Correction of Final Award.

Thus, assembling 87 deckforms of 44 ft. in length would require 2,958 pieces of joist and 5,916 pieces of beam hangers to assemble such 87 44-foot deckforms. However, as show in the same documents that CIAC anchored its theoretical findings, only 2,512 pieces of joists and only 3,626 pieces of beam hangers were actually delivered by [Form-Eze].²⁶

BFC's computation of the total contact area covered by the deckforms furnished by Form-Eze is backed by delivery receipts of the joists and beam hangers while CIAC's computation is more theoretical than it is actual.

²⁶ See BFC's Memorandum, *rollo*, Vol. II, p. 3382.

The inclusion of the additional contact area of the grid girders in the calculation of the total contact area of the equipment supplied by Form-Eze under Contract No. 1, however, should be upheld. Paragraph 9 of the Letter dated 8 February 2007, which was also admitted by the parties, clearly provides:

[Form-Eze] offered to install beam hangers and ledger angles in order to support the moment beam from column to column and thereby save BFC considerable labor and eliminate the use of BFC's light duty scaffolding underneath that beam. By doing that it will also speed up the forming operation and save BFC labor. The only light duty scaffolding that BFC will be installing is under the girder which supports tremendous loading during the stressing for the beams prior to it being stressed. By forming the girder in this manner F-E is not involved in the stripping or re-setting of the girder formwork. However, [Form-Eze] has purchased and furnished considerable forming hardware and consumables (tie rods, pvc sleeves, pvc cones, whaler clips and brackets and wing-nuts) which are being used on the girders and the beams. [Form-Eze] will give ownership to this equipment to BFC and BFC will buy all additional consumables and hardware (as needed) directly from Comer. In return [Form-Eze] will include the contact square meters of formwork in the girders in its billing for both the equipment lease and for the moving contract.²⁷

BFC cannot claim that this provision does not refer to Contract No. 1. Said provision mentions beam hangers and ledger angles which are used to support the beams forming the deckform and to eliminate the use of light duty scaffolding on the part of BFC which it had initially obligated to provide under Contract No. 1. More pertinently, the inclusion of the contact square meters of formwork in the girders is a mere application of one of the provisions in Contract No. 1, *i.e.*, "BFC agrees to purchase materials for the formwork as requested by F-E and the direct cost of those materials will be deducted from this contract and the balance paid to [Form-Eze]." Form-Eze is giving ownership of the forming hardware and consumables which are used on the girders and beams to BFC. Instead of deducting the cost of these materials from the contract, Form-Eze will instead include the contact square meters of formwork in the girder in its billing for the lease of the deckforms.

As agreed upon by the parties, the 708.12 sq. m. contact area covered by the grid girders should be included in the billing. Taking into account this contact area corresponding the grid girders and the 4,441.73 contact square meter assembled deckforms, the total contact area is only 5,149.85, which still falls short of the 7,000 contact area requirement.

²⁷ Rollo, Vol. 1, p. 204.



To award the full contract price to Form-Eze in Contract No. 1 is tantamount to unjust enrichment. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.²⁸ By requiring BFC to pay the full contract price when it only supplied deckforms which covered only 5,149.85 contact square meters of formworks, the CIAC Arbitral Tribunal is essentially unjustly giving unwarranted benefit to Form-Eze by allowing it to earn more than it legally and contractually deserved. It is also worth mentioning that Form-Eze had in fact only been claiming for the contact area where its equipment was used.

Therefore, using the computation of BFC, the amount of contact square meters that the delivered hardware and deckforms can handle is:

$$\frac{126,000 \text{ sq. m.}}{7,000 \text{ sq. m.}} \times \frac{Y}{5,149.85 \text{ sq. m. deckforms delivered}} = 92,696.40 \text{ contact sq. m}$$

Contract No. 1 be reformed to include a labor guarantee provision.

An action for reform a contract is grounded on Article 1359 of the New Civil Code which provides:

ARTICLE 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

x x x x

Reformation is a remedy in equity, whereby a written instrument is made or construed so as to express or conform to the real intention of the parties, where some error or mistake has been committed. In granting reformation, the remedy in equity is not making a new contract for the parties, but establishing and perpetuating the real contract between the

²⁸ *Filinvest Land, Inc. v. Backy*, 697 Phil. 403, 412-413 (2012).

parties which, under the technical rules of law, could not be enforced but for such reformation.²⁹

In order that an action for reformation of instrument may prosper, the following requisites must concur: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.³⁰

In the instant case, the question to be resolved is whether the contract expressed their true intention; and, if not, whether it was due to mistake, fraud, inequitable conduct or accident. While intentions involve a state of mind which may sometimes be difficult to decipher, subsequent and contemporaneous acts of the parties as well as the evidentiary facts as proved and admitted can be reflective of one's intention.³¹

BFC relies on the Form-Eze Proposed SM Marikina Mall Project Elevated Beam and Slab Formwork dated 7 December 2006³² to support its contention that Contract No. 1 should have a provision on the cost of labor. Indeed, in the aforementioned proposal, BFC has agreed "to furnish the labor required for fabrication and assembly of the forming equipment" and that "BFC will deduct from the total contract amount ₱50.00 per man-hour each carpenter or laborer supplied to Form-Eze." Notably, Contracts No. 2 and 3 contain labor-guarantee provisions considering that BFC has committed to provide the necessary labor for both contracts.

As initially agreed upon, BFC hired workers for the assembly of the deckforms since Form-Eze only undertook to supervise the installation of the deckforms. This was evident during the cross-examination of Mr. Romano Clemente (Mr. Clemente) who admitted that no workers of Form-Eze were employed for the installation of the deckforms, thus:

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

Since it is the obligation of the Claimant to assemble the hardware into deckform, how many workers were employed for the purpose.

²⁹ *Multi-ventures Capital and Management Corp. v. Stalwart Management Services, Corp.*, 553 Phil. 385 391 (2007).

³⁰ Id.

³¹ Id.

³² *Rollo*, Vol. I, pp. 198-200.



MR. R.V. CLEMENTE (CLAIMANT):

We are only supplier sir. We supervise the guys in the jobsite for them to install all these deckforms.

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

Ano?

MR. R.V. CLEMENTE (CLAIMANT):

To install the guys in the jobsite like for example your laborers carpenters to install this deckforms. We just only supply one supervisor in the jobsite for him to supervise the installation of this form.

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

You mean BF Corporation has the expertise to assemble this.

MR. R.V. CLEMENTE (CLAIMANT):

No, we will supervise your guys for them to assemble this.

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

Do you know if BF has the expertise to assemble this?

MR. R.V. CLEMENTE (CLAIMANT):

That is why we were there in your jobsite. If they don't have really the expertise we are the one who supervise them to install the deckforms. Supervise them to install the deckforms

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

You mean no former workers of the Claimant were employed for the purpose.

MR. R.V. CLEMENTE (CLAIMANT):

No.³³

Obviously, BFC would want to be compensated for the labor it provided to Form-Eze as shown in Contracts No. 2 and 3.

As a matter of fact, Mr. James Franklin, the President of Form-Eze conceded that Contract No. 1 should be modified to include a labor-guarantee provision, to wit:

³³ Rollo, pp. 861-862; TSN, 13 August 2007.



- Q: Mr. Witness, respondent [BFC], in their counterclaims, would like this Commission to reform Contract No. 1 to include a provision that it should deduct from your billing the cost of labor, helmet and expense for x-bracing supplied by it for the assembly of the form system, what can you say?
- A: [BFC] is allowed to deduct the cost of the x-bracing purchase from Comer that was used in the FORM-EZE deck assemblies. [BFC] is allowed to deduct the cost of the assembly labor for the deck forms which is included in the Labor Guarantee. These deductions have been reflected in all our billings where the P75.00 Labor Guarantee has been applied. The cost of helmet is not included and should not be included. Contract No. 1 is only a lease contract but it was modified to include a Labor Guarantee. For the [BFC] to deduct from our billing the cost of labor, etc. which allegedly they supplied for the use of our said equipment for the assembly thereof is included in the Labor Guarantee. They should be allowed to do so in conformance with the Labor Guarantee but definitely the cost of helmet and their other claims of deductions would not have any basis at all since these have not been agreed upon both in the original contract and in the subsequent agreement as contain (sic) in the February 8, 2007 signed letter.³⁴

This admission by Form-Eze bolsters the conclusion that the parties intended to include a labor-guarantee provision in Contract No. 1. Both Contracts No. 2 and 3 set the labor rate at ₱60.00 per carpenter man-hour. BFC fixed the cost of labor at ₱453,294.50.

Considering that both parties admitted that there should be a labor-guarantee clause in Contract No. 1, it can be reasonably inferred that the failure to include said provision was due to mistake. A reformation is in order to include a cost of labor provision in Contract No. 1.

Expenses for x-bracing and the cost of labor should be deducted under Contracts No. 2 and 3.

Except for the expenses for x-bracing used in deck assemblies which had been admitted by Form-Eze President James Franklin, BFC is not entitled to be reimbursed for the cost of helmets, petroleum, and oil lubricants in the absence of any stipulations in the contracts. The cost of labor, on the other hand, should be deducted pursuant to the labor-guarantee provisions in Contracts No. 2 and 3.

³⁴

See Judicial Affidavit of Mr. James W. Franklin; *rollo*, pp. 287-288.

The cost for x-bracing amounts to ₱358,250.00 as evidenced by the receipt issued by Comer.³⁵

The costs of labor are as follow:

Contract No. 1 = ₱453,294.50
 Contract No. 2 = ₱1,373,634.60
 Contract No. 3 = ₱273,240.00

Obligation of BFC under Contract No. 1:

92,696.40 contact square meters x ₱225.00	=	₱20,856,690.00
Less: Amount paid		7,700,000.00
Payment for billing for Pour 1		487,828.05
Cost of labor		453,294.50
Cost of X-bracing		358,250.00
		<u>₱11,857,317.45</u>

The Memorandum of Agreement dated 5 January 2007 is an exclusive licensing agreement.

BFC avers that CIAC erred when it stated the BFC was given the exclusive license to manufacture Form-Eze's equipment consisting of scaffoldings and accessories and they became part of that provided by Form-Eze to BFC.

At the outset, we agree that the subsequent Memorandum of Agreement executed by the parties on 5 January 2007 is an exclusive licensing agreement. It was signed by both parties wherein BFC has agreed to sell the scaffolding frames and accessories it manufactured to Form-Eze at the end of the project. This Agreement was incorporated in Contract No. 4 wherein BFC will be allowed to deduct ₱6,352,500.00 from the equipment lease contract, which is presumably Contract No. 1. At this point, Contract No. 4 is deemed to have novated the obligation of BFC with respect to furnishing all scaffoldings. Contract No. 1 states that BFC shall furnish the scaffoldings at no cost to Form-Eze. On the other hand, Contract No. 4 requires BFC to sell the scaffoldings to Form-Eze at the end of the project and deduct the cost of the same from the contract price of Contract No. 1.

³⁵ *Rollo*, Vol. I, p. 482.

This setup cannot in any way be interpreted as part of the deckform supplied by Form-Eze. As pointed out by BFC, the scaffoldings and accessories were the responsibility of BFC under Contract No. 1. Thus, the manufactured hardware under Contract No. 4 could not have added to the deckform system because they are not the equipment of Form-Eze had obligated itself to supply under Contract No. 1.

Obligation of BFC under Contract No. 2

BFC maintains that since Form-Eze failed to meet the minimum conditions under Contract No. 1 where the minimum 126,000 contact square meters were not reached, then the forklifts under Contract No. 2 were also not used for a minimum of 126,000 contact square meters.

We agree. BFC is liable only to pay the amount proportionate to 92,696.40 contact square meters at ₱50.00 per contact square meter, the rental rate for the forklifts. Thus:

92,696.40 contact square meters x ₱50.00 =	₱ 4,634,820.00
Less: Payments made	990,000.00
Cost of Labor	1,286,377.50
SUBTOTAL	<u>₱ 2,358,442.50</u>

Obligation of BFC under Contract No. 3.

The CIAC had correctly noted the ambiguity in Contract No. 3, particularly the “sufficient number of column forms as required to complete six (6) poured in place columns per day.” For BFC, the sufficient number of column forms is 12 sets a day while Form-Eze considered its supply of six (6) full height built up column forms as sufficient. The CIAC found that Form-Eze failed to comply with the requirements under Contract No. 3, hence it merely awarded Form-Eze 2/3 of the minimum contract amount at ₱2,153,666.67.

We find that the CIAC’s award lacked bases. It gave credence to the methodology used by Form-Eze and noted that the latter had supplied six (6) full height built-up columforms, *albeit* insufficient. We hold the contrary. The methodology used by BFC, which involves “columnforms with window

openings and that from its installation, alignment, bracing, inspection, approval of alignment, verticality and rigidity of the erected columnforms, pouring, drying and removal of the forms, it will require twelve (12) column forms a day, should have been considered. The CIAC itself had already ruled that the ambiguity in Contract No. 3 should not favor Form-Eze, the party who prepared the contract. Thus, it is only logical that the methodology employed by BFC should be credited.

Using 12 column forms as the minimum requisite and Form-Eze having supplied only four (4) usable column forms, it can be established that the delivered column forms can only be used for 1/3 portion of the 9,100 contact square meters or 3,033.33 contact square meters. It was further proven by BFC that about 50% of the column form requirements of the project were already completed with the use of their own equipment. Thus, it is but equitable that the 3,033.33 contact square meters be further reduced by 50% or 1,516.67 contact square meters. BFC is then liable to pay ₱441,502.87 broken down as follows:

1,516.67 x P355.00	= P 538,417.85
Less: Cost of Labor	96,915.00
SUBTOTAL:	P 441,502.87

BFC is obliged to pay rental for u-heads under Letter-Agreement dated 5 January 2007.

Under the letter dated 8 February 2007, “BFC has completed fabrication on a sufficient quantity of u-heads with screw assemblies and heavy duty bases so that BFC can immediately start returning the 24 inch and 18 inch u-head assemblies (561 pcs) and heavy duty bases (483 pcs) which were on temporary loan to BFC by [Form-Eze] until BFC could manufacture their own equipment. The temporary loan was expected to be approximately [two] (2) weeks and the equipment was picked-up January 9th, 2007 and still in used today.”³⁶ It is understood that upon expiration of the two-week temporary loan and upon failure by BFC to return the equipment, it is then liable to pay for rent. We find that the monthly rental amount of ₱96,600.00 was substantiated by Form-Eze. 483 pieces of 24 inch and 18 inch galvanized adjustable heads and 483 pieces of galvanized heavy duty plates were indeed delivered to BFC as evidenced by the delivery receipts.³⁷ According to Mr. Clemente, Form-Eze’s Sales Engineer,

³⁶ Id. at 204.

³⁷ Id. at 324-325, 330 and 334.

the rental amount for adjustable u-heads are fixed at ₱160.00 per unit, while the galvanized heavy duty plates are at ₱40.00 per unit.³⁸ By agreeing to the terms of the 8 February 2007 Letter, BFC is deemed to have acquiesced to the rental fee in case it failed to return the u-heads and plates on time. Therefore, we affirm the CIAC's ruling that BFC is liable to pay rental of the equipment in the amount of ₱96,000.00 per month until the equipment leased is fully returned to Form-Eze.

BFC President should not be included as party to this case?

Section 4 of Executive Order No. 1008 vests jurisdiction on CIAC over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. Moreover, the party involved must agree to submit to voluntary arbitration. In other words, anyone who is not a party to the contract in his personal capacity is not subject to the jurisdiction of the CIAC. In this case, Pineda signed the challenged contracts in his capacity as President of BFC. There is no indication that he voluntarily submitted himself as a party to the arbitration case. In fact, he has been consistently contesting his inclusion as a respondent in the CIAC proceedings. CIAC however considered Pineda as a joint tortfeasor, thus justifying his joinder as a co-defendant.

We do not consider the imputed acts of Pineda as an indicia of bad faith to classify him as a joint tortfeasor. First, it was proven that Form-Eze is not entitled to all its monetary claims under the contract. Second, we have also subscribed to BFC's position that Contract No. 1 should have included a labor guarantee provision and that it was by mistake that said clause was excluded. Third, BFC's alleged refusal to return the u-head assemblies and heavy duty bases was meted with a heavy penalty in the form of a huge rental fee. BFC had, as a matter of fact, admitted to owing Form-Eze rental payment. Fourth, the claim of threat against Form-Eze's President is unsubstantiated and uncorroborated.

Attorney's Fees and Costs of Arbitration.

The controversy essentially boils down to the interpretation and factual application of the existing contracts. Neither party was able to prove

³⁸ Id. at 387. Judicial Affidavit of Mr. Clemente.



bad faith in their dealing with each other. Under Article 2208 of the Civil Code, attorney's fees may, among others, be recovered where defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. We observe that in filing the complaint against BFC, Form-Eze was merely seeking payment for its service under the contract. BFC had admitted to its obligation. The problem lies only on the amount to be paid. This is not tantamount to bad faith.

Finally, both parties should equally share the costs of arbitration since their prayers were only partially granted.³⁹

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated 15 January 2010 and Resolution dated 13 July 2010 are **MODIFIED**. Petitioner B.F. Corporation is ordered to pay respondent Form-Eze Systems Inc. the following amounts:

Under Contract No. 1:	₱11,857,317.45
Under Contract No. 2:	2,358,442.50
Under Contract No. 3:	441,502.87
Under Letter-Agreement dated 7 January 2007:	560,000.00

GRAND TOTAL:	₱15,217,262.82
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and 50% of the Cost of Arbitration.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

³⁹ *Filipinas (Pre-Fab Bldg.) System, Inc. v. MRT Dev't. Corp.*, 563 Phil. 184, 218 (2007).

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
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.

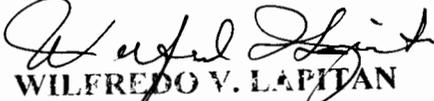


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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 case was 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
DEC 19 2016