BISELL CONSTRUCCIONES E INGENIERÍA, S.A. DE C.V. AND
MWS MANAGEMENT INC.
V.
PEMEX EXPLORATION AND PRODUCTION
FILE 75/2015
ORDINARY CIVIL TRIAL

[…]

Exceptions and Defenses

In addition to each and every one of the exceptions and defenses that arise from the answer to the facts of the lawsuit, I specify the following:

1. **EXCEPTION OF IMPROPERITY OF THE WAY.-** Based on the Considerations that are set forth below, it is evident that the way in which the plaintiff promotes, is totally inappropriate, in attention to the following factual and legal considerations:

CONSIDERATIONS.- The plaintiff party claims the following benefits

A) Payment of the amount of $13,736,540.15 USD plus VAT for agreed direct expenses

daily cost in the contract in litigation regarding the equipment that was available and optimally

conditions to execute the work orders from November 2013 to June 30, 201,

same that were not used by responsibility of PEMEX (sic)

B) The payment of the amount of $1,713,286.32 plus VAT for direct personnel expenses per month that were generated by loss of productivity during the period from November 2013 to June 3, 2014.

C) Payment of the amount of $2,418,761.64 USD plus VAT for work indirect corresponding to the amount not exercised for reasons attributable to the defendant

D) The payment of the amount of $2,576,286.28 USD plus VAT for the utility of the contra corresponding to the amount exercised for causes attributable to the defendant.

E) Payment of the amount of $146,335.08 USD plus VAT for the cost of Financing Work corresponding to the amount not exercised.

F) Payment of the amount of $237,062.06 USD plus VAT for Additional Charges corresponding to the amount not exercised due to causes attributable to the defendant. The same that they generate despite the loss of productivity.

G) The payment of legal interest of all the previous concepts for non-payment of the indicated amounts.

H) Payment of compensation for damages caused by PEP

I) Payment of moral damage

J) Payment of expenses and costs

K) The updating of all the concepts demanded until the moment in which the final judgment is made effective in favor of the plaintiffs.

BACKGROUND

By writing without number dated February 9, 2015, the one signed by the present plaintiffs, presented the Conciliation Procedure based on the provisions of article 35 second paragraph of the Petróleos Mexicanos Law (DOF November 28, 2008) in direct relation to the powers that the Law of Public Works and Related Services (DOF 28 MAY 2009) with the same, in its article 8, confers to that Secretary of the Public Function, in relation to the Federal Law of Rights in its article 191; on the recognition and payment of various benefits, of the work contract No. 424042803, entered into with PEMEX PRODUCTION AND EXPLORATION under the aforementioned Law of Petróleos Mexicanos (DOF November 28, 2008).

Likewise, through the Request Admission Agreement dated February 9, 2015, the Ministry of Public Administration, through the PEP Internal Control Body, within the PEP+ C-20151 file, agrees: "The conciliation request is admitted for processing presented by the legal representative of BISELL CONSTRUCCIONES E INGENIERíA, S.A. DE C.V., AND MWS MANAGEMENT INC, and begin the Conciliation Procedure in terms of the provisions of articles 15 of the Federal Administrative Procedure Law and 95 of the Public Works Law and Services Related to them.''

Therefore, it is ordered that PEP be transferred so that, within 10 days, it renders its detailed report on the facts and origin of the benefits requested by the plaintiffs today. By official letter without number signed by the Resident and Works Supervisor of contract 424042803, presented before the Secretary of the Public Function, Internal Control Body in PEP, on March 9, 2015, PEP issues its duly founded and reasoned response regarding to the request for recognition of payment of various concepts made by the contractor, in the sense of being ILLEGAL.

Likewise, in said letter, PEP states the following:

[…]

On March 9, 2015, the conciliation hearing of the PEP-1 C 5/2015 file was held, in which the present plaintiff did not appear and the result of the claims was made known carried out by the contractor, which are reiterated are ILLEGAL.

Due to the foregoing, it is presumed that the reason for the non-appearance of the plaintiff today at the hearing and conciliation, is due to the lack of personality on the part of the company MWS Management, INC.

Finally, it is evident that the 45-day term referred to in the Federal Administrative Procedure Law expired due to the lack of personality of the current plaintiff and in that order of ideas he comes before this H. Court to demand a civil proceeding, which It is notoriously inadmissible, since these are resolutions that are administrative acts issued unilaterally + by the interpretation of a public

works contract. In this order of ideas, it is necessary to start the considerations of fact and law, for which the way in which the plaintiff claims is not appropriate, the benefits to which she supposedly has the right to claim from PEP.

1. It is important to highlight that from the benefits claimed by the plaintiffs in this trial, it is clear that they are mostly concepts such as: DIRECT EXPENSES AND

INDIRECT, WORK FINANCING UTILITY, ADDITIONAL CHARGES, all these concepts cannot be requested by the contractor, based on the contract and its annexes, since the contract 424042803, was entered into under the PEMEX Law and the DAC's, legislation that does not provide for said concepts as the plaintiff intends to assert them, since these concepts can only be paid with the Work Orders requested and executed, and that the parties established it in the clauses of the contract and/or its annexes, therefore The parties must abide by the literality of the contract, PACTA SUNT SERVANDA, that is, what is expressly agreed in the contract that is the subject of the dispute, (what is agreed by the parties is law), we are faced with the literal interpretation of the contract, then, once the contractors, now actors, present the conciliation document dated February 9, 2015 (ANNEX) in which the contractor makes the formal claim for NON-RECOVERABLE, INDIRECT AND FINANCING EXPENSES, AND PAYMENT FOR THE USE OF 3 ADDITIONAL EQUIPMENT, and not during the execution of the contract, the request for the concepts mentioned above, PEP through its Detailed Report number PEP-I-C-5-2015 without date, received before the Internal Control Body of PEP on March 9, 2015, states the refusal of origin of the same Reports that were presented at the Conciliation Hearing on the 9th of March 2015, in the file PEP-C-5-2015, as it is not provided for in the law, nor agreed in the contract that is the subject of the dispute without the existence of work orders requested and executed, we are facing the general principle of law PACTA SUNT SERVANDA, by which the resolution (Detailed Report) issued by PEP, with the refusal of origin of the concepts claimed by the contractor, as benefits of the lawsuit filed by the plaintiff today, is a unilateral act issued by PEP, clearly called AN ADMINISTRATIVE ACT, which fits perfectly with the provisions of article 14 section VII of the Organic Law of Federal Court of Fiscal and Administrative Justice provides:

> ARTICLE 14.- "The Federal Court of Tax and Administrative Justice shall hear the lawsuits filed against the final resolutions, administrative acts and procedures indicated below:
>
> VII. Those that are dictated in administrative matters regarding the interpretation and compliance of contracts for public works, acquisitions, leases and services entered into by the agencies and entities of the Public Administration.

Since we have a resolution on an administrative act, dictated on the interpretation of the public works contract, entered into by PEP entity of the Federal Public Administration with the plaintiffs today, since said plaintiffs intend to collect items not individually agreed, that is, without work orders requested and executed, which judgment and interpretation of the clauses and annexes of the contract by PEP is not appropriate.

Obviously, it perfectly fits the hypothesis of the aforementioned legal precept.

[…]

Now, as for the settlement, which is the formal act by which the object works are received of a public works contract, verified by PEP the due conclusion, in accordance with the conditions established in the contract, settlement that was celebrated between the plaintiff and PEP on the 10th of February 2015, where the resident and construction supervisor on behalf of PEP appeared, as well as the Special Attorney of Bisell Construcciones e Ingeniería, S.A. de C.V. and the Attorney of MS Management, Inc., in which the parties literally established:

> "XII.- TERMS UNDER WHICH THE COMPLETION OF THE WORKS IS CARRIED OUT
>
> The contractor states in its official letter number Bisell-MWS-004-2015 to keep their rights to proceed as appropriate for the claim of expenses not recoverable, as well as waiting times and review of the percentage of indirect and financing. Likewise, PEMEX EXPLORATION AND PRODUCTION states that it does not accept what previously stated by the contractor."

What is evident is that PEP's immediate response to the contractor's statement is without a doubt a final resolution, derived from an administrative act that is a refusal of acceptance by PEP that the contractors reserve any right to claim non-recoverable expenses or waiting times, percentage of indirect and financing, in that order of ideas said administrative act that is a final resolution of refusal, is about the interpretation and fulfillment of the public works contract 424042803 entered into between PEP as an entity of the Federal Public Administration and the private plaintiffs today.

In that order of ideas and taking into account what is stated in considerations 1 and 2 of this section it is important to highlight the following: the action attempted by the plaintiff consists of the payment requirement of various concepts such as DIRECT AND INDIRECT EXPENSES, WORK FINANCING UTILITY, ADDITIONAL CHARGES, arising from the public works contract 42404 803 and annexes thereof concluded with PEP, benefits that derive from a final resolution issued in the first term in a generic way in the settlement to the PEP denying the origin of the plaintiff reserving the right to claim said benefits or concepts later and secondly specifically in the conciliation which took place on March 9, 2015, in which [their origin was denied, without the presence of the plaintiffs' representative for having allegedly falsified the document with which he accredited his identity at that time, which PEP certifies with document called annex 03 and annex 04 containing the power of attorney granted to ALAN CLAIBORNE by the company MWS Management Inc., and RAUL LOPEZ GALLEGOS, respectively, being clearly notorious that in the document named as ANNEX 03 it is identified that it is an original document by the apostille, seal and signature of the same, however in the document named as Annex 04 the alleged falsehood of the same is perceived, by the signature, the apostille number, these determinations being unilateral acts issued by PEP, which should have been challenged by the plaintiff through the nullity trial within 45 days following their issuance, the foregoing based on the article 5 of the Federal Law of Administrative Procedure and 13 section I of the Federal Law of Administrative Litigation Procedure, however, it is evident that due to the lack of personality of the legal representative of the plaintiffs, the term to do so elapsed and until it was obtained the legal title to correctly prove their personality, they intend to sue in civil proceedings, benefits whose nature is obviously of an administrative nature and of It should be ventilated before the Federal Court of Fiscal and Administrative Justice on Duty in the State of Veracruz, reiterating that the resolutions issued by PEP, both the refusal issued in the Settlement and in the conciliation, are final resolutions and consequently are a administrative act in which an interpretation was given to a public works contract and its annexes, making it evident that said

claims are contemplated in the cases provided for in article 14 section VII of the Organic Law of the Federal Court of Fiscal and Administrative Justice, to the origin of the Federal Administrative Litigation.

Due to the foregoing, it is evident that the route attempted by the plaintiff is more than inappropriate and lack of action and right against PEP, requesting in this act that her Honor declare the incompetence and the same is declined to the Federal Court of Fiscal and Administrative Justice, so that it is the one who settles the controversy raised by the acts against PEP.

2. **OBJECTION OF IMPROPERITY OF THE WAY-** By virtue of the settlement dated February 10, 2015, the amount that PEP owed at that time to the plaintiffs in this lawsuit is clearly established, which was for the amount:

VIII.2. CREDITS IN FAVOR OF THE CONTRACTOR.

To date, PEMEX EXPLORATION AND PRODUCTION acknowledges having an outstanding debt, stated in the Cost Adjustments section, for an amount of $433,124.00 USE.

Which makes it clear that said settlement is an administrative act issued by PEP derived from the agreement of wills entered into between the parties, in which PEP interprets unilaterally and issues a final resolution, which the plaintiffs should have challenged in case of disagreement through the corresponding administrative litigation, a fact that did not happen and they were considered paid to full satisfaction, so that in case of disagreement today amount owed on that date by PEP to the plaintiffs, the way to make the claim It must be the Administrative Litigation route, reiterating that the settlement dated February 10, 2015, is an administrative act, translated into a final resolution in which the interpretation and qualification of the execution of the public works contract 424042803 is reflected in the that both parties acquired rights and obligations, and where PEP acts as an entity of the Federal Public Administration and the current actors act even in their individual character.

3. **EXCEPTION OF VALIDITY OF THE SETTLEMENT DATED FEBRUARY 10, 2015.-** By virtue of the settlement carried out in the public works contract 424042803, it was never contested by the plaintiffs and consequently said settlement was never declared void, therefore its content is fully valid and the parties, when signing it, signed an agreement of wills, which cannot be violated by themselves, according to the general principle of law PACTA SUNT SERVANDA, that is, "what is expressly agreed by the parties is law", therefore That said settlement in the event of an agreement should have been challenged through an annulment trial within the following 45 days after it was issued in accordance with article 13 section I of the Federal Law of Administrative Litigation Procedure. And for the same reason, it is fully valid, effective and legal, in accordance with the aforementioned articles 8 and 42 of the Federal Law of Administrative Procedure and Federal Law of the Administrative Litigation Procedure, respectively.

4. **LACK OF ACTION AND RIGHT.-** Which is made to consist of the fact that the plaintiff lacks action and the right to demand the benefits indicated in her initial claim document, in accordance with the stipulations agreed in the base contract of the action (424042803) and its annexes that are an integral part of it, by virtue of the fact that it was never agreed as an

obligation to exhaust the total amount of the contract, since it operated by work orders issued by PEP to the contractor, who had to execute them and PEP to pay them, for which PEP issued 443 service orders to the contractor for the execution of the contract based on the action, which were paid in accordance with the provisions of the contract and which were established and accepted by the parties in the settlement of 10 February 2015.

5. **LACK OF LACK OF ACTION, BURDEN OF PROOF BEFORE THE DEFENSE OF.-** If the defendant opposes the defense of lack of action, it corresponds to the actor to prove the facts generating his action and to the defendant the facts constituting his exceptions, regardless of whether or not the reasons for the defense in question have been stated in the response to the claim, given that it implies the denial of the facts that are invoked as generators of the action.

   […]

6. **EXCEPTION OF ACCESSORY.** The plaintiff claims in subsections G), H), 1) and J) of the chapter on benefits of the lawsuit that are legal interest, payment of damages, moral damages and expenses and costs, benefits that have the nature accessory to the main ones claimed in subparagraphs A), B), e), D), E) and F}; therefore, since the main ones are inadmissible, those claimed as ancillary must suffer the same fate, taking into account that Pemex Exploration and Production did not give reason for the processing of this lawsuit, the foregoing as indicated by the general principle of law ACCESSORIUM NON DUCIT, SED SEQUITUR SUUM PRINCIPALE.

7. **EXCEPTION OF LEGAL INTEREST PAYMENT AND FINANCIAL EXPENSES.-** By virtue of the fact that financial expenses are by definition all those expenses originated as a consequence of financing a company with external resources, in the financial expenses account, interest accounts of obligations stand out among others. and credits, interest on debts, interest for discounting bills, negative exchange differences and that the expenses generated by the losses in value of financial assets are also included in this section, that is, they are the expenses corresponding to the interests financial obligations, so legally, the plaintiff intends to collect interest on interest, that is, pure anatocism, which is prohibited in our legislation, so it is evident that the collection of the financial expense that intends to enforce, regardless of the legal causes exposed based on the public works contract 42404 2803 and its annexes.

8. **EXCEPTION OF PAYMENT OF MORAL DAMAGE**.- By virtue of the fact that, according to the definition of Moral damage, it is the deprivation of the increase in reputation, prestige or positive consideration that others have of a person, caused directly by an illegal act In other words, moral damage is that suffered by a person due to the loss of prestige caused by another without just cause. However, article 1916 of the Federal Civil Code regulates moral damage as follows:

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9. **EXCEPTION OF PACTA SUNT SERVANDA.-** By virtue of the fact that this principle has wide application in contractual matters, a figure before which gaps in the law can be clarified or even contradict the provisions of the norm, as long as they are not inalienable terms so that under interpretation criteria, the will or intention of the contracting parties must be valued and respected in everything that does not contravene the laws, as a supreme norm in hypothetical relations that does not fit in the case at hand, reason whereby, the party act a must comply with its obligations and not pretend to disregard the public works contract number 424042803, its agreements and annexes, in accordance with the provisions of the second part of article 17 6 of the Federal Civil Code.

10. **EXCEPTION OF CONTRADICTION OF BENEFITS FINANCIAL EXPENSES AND LEGAL INTEREST.-** Regardless of the fact that the plaintiff lacks action or right to claim one or the other, it should be noted that the claim for both benefits is not appropriate, since by law only one of them is appropriate, being optional for the plaintiffs. , choose which of the two concepts will claim the defendant, reiterating that both are not compatible to be claimed in the trial, which is why the dishonesty with which the plaintiff behaves is evident, when wanting to claim two concepts from PEP that by law they are incompatible, that when claiming one, you immediately find yourself unable to claim the other, disregarding all respective legal mandates.

11. **THE GENERIC DEFENSE OF SINE ACTIONE AGIS.~** This defense consists of the generic denial of the extremes of the actions exercised, having the effect of throwing the burden of proof on the plaintiff, as well as forcing his Honor, to informally examine - each and every one of the constituent elements of the attempted actions - in accordance with the following jurisprudential theses of obligatory observance for your Honor, in terms of the provisions of article 217 of the Law of Amparo, Regulatory of Articles 103 and 107 of the Political Constitution of the United Mexican States:

[…]

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12. **EXCEPTION DERIVED FROM THE PROVISIONS OF ARTICLE 1796 OF THE FEDERAL CIVIL CODE.** It is made to consist of the unavoidable fact that only the fulfillment or breach of a contract can be demanded by the party that has complied with it, in the specific case it is the plaintiff which does not give due interpretation to the clauses of the public works contract 424042803 entered into between the parties to this litigation, since it insists that PEP should have issued work orders until the total amount of the contract was exhausted, which is false, since in all In the clauses and annexes of the contract, a minimum or maximum amount of exercise of the amount of the contract was not established, therefore, PEP, only exercised the amount necessary to cover its operational needs, issuing 443 work orders to the current plaintiffs, who did not comply adequately, since they were repeatedly penalized, as stated in the settlement document dated February 10, 2015.

13. **EXCEPTIO NON ADIMPLETI CONTRACTUS OR EXCEPTION OF BREACHED CONTRACT DERIVED FROM ARTICLE 1949 OF THE FEDERAL CIVIL CODE IN ACCORDANCE WITH THE BREACHES OF THE PLAINTIFF PARTY THAT WERE SPECIFICATED IN THE ANSWER TO THE FACTS OF THE DEMAND.-** In attention to the execution of the work orders issued by PEP to the current plaintiffs, it can be seen from the settlement dated February 10, 2015, the non-compliance by the current plaintiffs, since there are exceeded operating times and/or delays in the start of operation such and as shown in the following table:

    • **VII SANCTIONS ATTRIBUTABLE TO THE CONTRACTOR:**
    $4 8,180.40 USD for operation time exceeded and/or delay in the start of operation correspondent to 86 interventions.

14. **EXCEPTION OF COMPLIANCE WITH THE FORTY-FIRST CLAUSE CALLED SUSTAINABLE DEVELOPMENT PROGRAM and ANNEX "DS" OF THE CONTRACT.-** The plaintiffs today failed to fully comply with their obligations under the clauses of the base contract of the action, especially in the forty-first relative clause to sustainable development, that is, the support to the community that is carried out by PEP and the contractors with a part of the amount

of the contract, to which the present plaintiffs were bound and accepted from the beginning of the contract, as well as they knew it From the bidding bases, the above is clearly reflected in the settlement document dated February 10, 2015 and is shown in the following table:

VII SANCTIONS ATTRIBUTABLE TO THE CONTRACTOR:
$428,180.40 USD for operation time exceeded and/or delay in the start of operation corresponding to 86 interventions.

$533,867.52 USE due to total omission to comply with the obligation established in Clause Forty-First.- Sustainable Development Program and Annex "DS" of the contract.

15. **EXCEPTION OF DEPRIVATION OF A PROPORTIONAL PART OF PROFIT.-** By virtue of the fact that PEP paid the plaintiffs in full for the work orders issued for their execution, which included the concept of profit, since it is evident that the profit It is the amount of money that is acquired for the execution of a work carried out, for which reason a utility charge cannot be claimed when no work was carried out, that is, no amount can be accrued when it did not exist in between a work carried out, for which reason the inadmissibility of the provision sought by the plaintiff is evident.

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16. **EXCEPTION FROM PAYMENT OF EXPENSES AND COSTS.-** Since it is an accessory benefit, it must follow the fate of the main thing and consequently the payment of expenses and costs is clearly inappropriate, coupled with the fact that PEP is being called to trial without foundation in fact or law and much less any legal logic and in the extreme improbable that PEP will not the sentence in this controversial matter is favourable; It must be clarified that PEP was not part of the agreement, of wills between the current plaintiffs and their lawyers.

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17. **ANATOCISM EXCEPTION.-** Since the plaintiff intends to charge PEP, assuming without conceding that she has the right or reason in her claims, a double interest charge, and we must not lose sight of the fact that the plaintiff today intentionally intends to charge financial expenses and legal interest, which in this case is the same concept, that is, financial expenses are by definition all those expenses originated as a consequence of financing a company with external resources, in the financial expenses account, among others the interest accounts of obligations and credits, the interest of debts; interest from discounting bills, negative exchange differences and that expenses generated by losses in value of financial assets are also included in this section, that is, they are expenses corresponding to interest on financial obligations, for which Legally, the plaintiff intends to charge interest on interest, that is, pure anatocism, which is prohibited in our legislation, so it is evident that

the collection of the financial expense that it intends to claim is inadmissible, regardless of the causes. exposed based on the public works contract 424042803 and its annexes.

18. **THE OBJECTION OF IMPROPERITY OF THE WAY.-** Given that this matter deals with the interpretation of a public works contract, which can only be carried out by the Federal Court of Fiscal and Administrative Justice, since in accordance with the Organic Law of the Federal Court of Fiscal and Administrative Justice article 14, section VII, the interpretation of contracts and compliance with them in terms of services entered into with dependencies and entities of the Federal Public Administration will be said Court who resolves the controversies that arise, such as the trial in which the action is taken, since the plaintiff is hurt by the alleged breach of PEP by not exercising full control of the contract during the execution of the public works contract 424042803, so it is evident that for the interpretation of the validity of the clauses and the plaintiff's claims can only be known by the Court that has jurisdiction for it and that is the Federal Court Tax and Administrative Justice.

    […]

    Therefore, we consider that the attempted CIVIL ORDINARY WAY, whose action is based on a contract whose legal nature is different from the civil one, is IMPROPER.

    It serves as support, by analogy, jurisprudence 1.100.C. J/2 {lüa.), issued by the Tenth Collegiate Court 1 in Civil Matters of the First Circuit, visible on page 1554, Book XI, August 2012, Volume 2, Tenth Period, of the Federal Judicial Weekly and its Gazette, of the following content:

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