

**VILLAMOR & VICTOLERO CONSTRUCTION CO., RHEENA
BERNADETTE C. VILLAMOR, AND, ERWIN V. VICTOLERO,
PETITIONERS, VS. HON. LOURDES J. ESPINOSA, FEDERICO Y.
ALIKPALA, RICARDO B. SAN JU...**

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

For consideration of this Court is a Petition for Certiorari and Prohibition[1] assailing the 21 March 2012[2] and the 23 April 2012[3] respective Orders of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 41-2011. In its first Order, the CIAC denied the Motion to Dismiss[4] filed by petitioners Villamor & Victolero Construction Co. (VVC), Rheena Bernadette C. Villamor, and Erwin V. Victolero and directed them to file their Answer to the Complaint (With Application for Interim Measures)[5] filed by private respondent Sogo Realty and Development Corporation (private respondent Sogo). On the other hand, in its second Order, the CIAC denied petitioners' Motion for Reconsideration[6] of its earlier Order.

The facts are as follows:

A Complaint (With Application for Interim Measures)[7] for breach of contract and damages was filed by private respondent Sogo alleging the following material allegations:

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9. On 1 December 2009, complainant, as owner and developer of the subdivision project known as “Ciudad Verde Homes – Phases 2 and 3,” located at Paradahan 1, Tanza, Cavite (herein referred to as the “Project”), entered into a Construction Agreement with the respondent partnership as contractor for the Project. xxx

10. The Construction Agreement pertinently provides that:

“ARTICLE II – SCOPE OF WORKS

Section 1. The CONTRACTOR shall undertake, accomplish and complete the entire works of the PROJECT subject of this contract within the contract time or period herein stipulated and strictly in accordance with the Contract Documents. For this purpose, the CONTRACTOR shall furnish and supply all necessary materials, x x x, labor, equipment, and tools and all other facilities and supervision needed for the PROJECT, and shall accordingly perform everything needed that they may be necessary or required for the completion of the works.

x x x x x x x x

ARTICLE IV – RIGHT OF RETENTION/GUARANTEE AFTER COMPLETION

Section 1. The CONTRACTOR shall guarantee all works for a period of one (1) year from the date of final acceptance. All defects within the guarantee period shall be replaced and made good by the CONTRACTOR at its own expense.

Section 2. If the CONTRACTOR fails to act within seven (7) calendar days upon receipt of the notice to

rectify the defects in materials and labor employed, the OWNER may, at its own discretion, have the work done by another and charge all expenditure to the CONTRACTOR.”

11. Among the scope of work covered by the agreement are the land development works (including road works and road preparation works), of the Project.

12. After the completion of the road works of the Project, but within one (1) year therefrom, the roads constructed by the respondent began to show ominous signs of defects in workmanship and deficiencies in the materials used therefor. Specifically, despite ordinary and expected use of the roads constructed by the respondent partnership, they began showing large cracks and are breaking apart, as shown by photographs hereto attached as Annexes “E” to “E-25.”

13. On various occasions, complainant has called the attention of the respondent partnership to the above-mentioned defects on the road works, the latest of which was through a letter dated 22 September 2011.

14. On 13 October 2011, the complainant and respondent partnership agreed in writing to conduct tests on the land development works of the Project to determine defects thereof, a copy of which writing is hereto attached as Annex “F.”

15. Pursuant to the agreement contained in the 13 October 2011 agreement, complainant conducted the tests. Respondents, however, for unknown reasons, did not appear during the testing. At any rate, the tests were conducted by the ASTEC Materials and Testing Corporation from 20 to 26 October 2011, and yielded results showing defects in the road works and the materials used therefor. xxx

16. In view thereof, complainant through counsel sent a demand letter to the respondent partnership dated 16 November 2011 directing it to “remove the defective structures and reconstruct them in accordance with the agreed plans and specifications starting within SEVEN (7) days from receipt hereof, and completing the rectification within THIRTY (30) days from receipt hereof.” xxx

17. Respondent partnership received a copy of the demand letter on 17 November 2011, and yet, to date, after more than seven (7) days from receipt of the demand letter, respondent has not taken any action in compliance therewith, thus showing refusal to comply therewith, to the damage and prejudice of the complainant. xxx[8]

Additionally indicated in the Complaint is the allegation of private respondent Sogo that the parties agreed to submit their issues to arbitration as evidenced by a handwritten and signed statement (arbitration note) in a letter dated 22 September 2011[9] which reads, to wit:

xxx

I agree to the proposal to submit to Arbitration, in case we do not agree to the report.

10/5/11 sgd. Lawrence Napoleon F. Villamor

xxx

According to private respondent Sogo, Lawrence Napoleon F. Villamor (Villamor), who signed the agreement to arbitrate for and in behalf of petitioner VVC, is its Estimation and Marketing Manager. It was pointed out that Villamor is also the one who signed the Construction Agreement[10] with private respondent Sogo. On the other hand, the 22 September 2011 letter wherein the arbitration note was indicated was also signed by Francisco M. Gutierrez (Gutierrez) as Vice President for Administration of private respondent Sogo.

Consequently, private respondent Sogo prayed that an order be issued by the CIAC granting the interim measure of preliminary attachment and examination of the land development works involved in the case. It further prayed that an arbitral award be made ordering the petitioners to pay actual damages, exemplary damages, attorney's fees, and costs of arbitration. Other reliefs just and equitable under the premises were likewise prayed for.

In response, the petitioners filed a Motion to Dismiss[11] the Complaint on the ground that the CIAC has no jurisdiction over the same. They averred that there is no arbitration agreement in the Construction Agreement signed by the parties. More so, it asseverated that it did not consent to the submission of the issues involved to arbitration. According to the petitioners, Villamor is not the one who made arbitration note in the 22 September 2011 letter. They argued further that Villamor was not authorized to enter into any arbitration agreement with private respondent Sogo. The fact that Villamor signed the Construction Agreement did not necessarily mean that he was likewise given the authority to enter to any arbitration agreement with private respondent Sogo in behalf of petitioner VVC.

In its 21 March 2012 Order, the CIAC denied petitioners' Motion to Dismiss finding that:

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During the case management conference held on March 21, 2012, both parties with their respective counsel appeared. Mr. Francisco Gutierrez stated that he wrote the words "I agree to the proposal to submit to arbitration in case we do not agree to the report" and he saw Engr. Napoleon Villamor sign under it. Respondent alleges that Mr. Villamor signed said letter only as having received it. Respondent admitted that Mr. Villamor is the husband of Ms. Rheena Bernadette C. Villamor, one of the named partners of Villamor and Victolero Construction Co.

It is safe to say that there is no reason for claimant to doubt the authority of Mr. Villamor as to being the authorized representative of respondent considering it has dealt with him from the inception of the contract. Also there has been no reason or explanation from respondent as to why Mr. Villamor's act of submitting the issues of the parties for arbitration is not being honored by respondent. The naked allegation that Mr. Villamor was not authorized to submit to arbitration after the filing of the request for arbitration before this Tribunal cannot therefore be given credence under the circumstances.

Accordingly, the respondent's motion to dismiss is hereby denied and it is hereby directed to file its Answer to the Complaint within a non-extendible period of 10 days from receipt hereof.

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Dissatisfied with the ruling of the CIAC, the petitioners moved for reconsideration[13] claiming; that Villamor did not consent to arbitration; that Villamor signed the 22 September 2011 letter only for the purpose of receiving it; that his signature was not even on the blank space provided by Gutierrez; that when he signed said letter, the arbitration note was not yet written by Gutierrez; that Gutierrez wrote said note only after Villamor already signed the letter and without the consent of the latter; that Villamor was asked by Gutierrez to sign on the blank space to show his conformity to submit to arbitration but the former did not accede; that the said conference meeting happened on 5 October 2011 in the parking lot of Mc Donald's, Macapagal Blvd., Parañaque City which lasted for about five minutes only; that there was actually no conference held during said meeting with respect to the alleged defects in the subject road works since Gutierrez was in a hurry as he had to catch a flight abroad; that because Gutierrez was in a hurry, he just asked Villamor to meet him and receive the letter (notice of contract termination) dated 22 September 2011.

In its 23 April 2012 Order,[14] the CIAC denied petitioners' motion reasoning that:

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A close examination of the placement of the signature of Mr. Villamor shows that it overlapped the word "report" which was written by Mr. Gutierrez and that indeed the signature of Mr. Villamor already appears in the lower margin of the paper.

If the arbitration note was written before Mr. Villamor signed the document then he could have placed his signature anywhere in the document which would not make his signature look so cramped in the lower

margin of the page. If the arbitration note was written after Mr. Villamor had affixed his signature in very cramped portion of the margin of the page what prevented Mr. Villamor from further writing on the document that he objected to said proposal.

Also, Mr. Villamor signed said document on October 5, 2011, what prevented him or the partnership from formally putting down their objection to said proposal prior to the filing of this case on December 15, 2011 or immediately after said meeting. At the time the 5 minute conference took place between Mr. Villamor and Mr. Gutierrez, Mr. Erwin Victolero during the case management conference mentioned he was inside the car waiting for Mr. Villamor. It is presumed that Mr. Villamor notified Mr. Victolero of what transpired during said meeting and yet despite the lapse of more than 2 months, Mr. Victolero, a named partner, failed to dispute the agreement entered into by his agent Mr. Villamor and neither did Mr. Villamor.

It has clearly been established that the arbitration note was written prior to the signature of Mr. Villamor and he was aware of what he agreed to. The fact that said agreement was not contested by Mr. Villamor or by the partnership prior to the filing of this case is very telling that it had no objection to it. If it did then it should have acted otherwise. There is no reason for Claimant to doubt or presume that Mr. Villamor had no authority to sign said agreement because he was the one who signed the construction agreement and he was the person who attended meetings on behalf of the partnership.

Also the belated submission of the affidavit of Mr. Villamor is suspect because he could have submitted this at the time of the filing of the motion to dismiss but failed to do so. What was his reason for not stating the actual facts that transpired on October 5, 2011 if indeed there is truth to his allegation that he did not agree to said arbitration note. Mr. Villamor's perceived hesitancy to outrightly (sic) declare what truly transpired last October 5, 2011 and his naked allegation that he was not authorized by the partnership show afterthought and clear loyalty to the partnership as an employee and as the spouse of one of the partners.

Accordingly, the respondent's motion for reconsideration is hereby denied, and it is hereby directed to file its Answer to the Complaint within an (sic) non-extendible period of 10 days from receipt hereof. Failure to do so will constrain the Tribunal to proceed to the preliminary conference on May 23, 2012 at 9:00 a.m. sans any answer from respondent.

Parties are directed to be armed with the pertinent authorities from their principals during said preliminary conference. No postponements shall be entertained.

xxx[15]

Aggrieved, the petitioners are now before this Court asserting that:

PUBLIC RESPONDENTS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) HAS JURISDICTION OVER CIAC CASE NO. 42-2011.[16]

The instant petition is meritorious.

The Revised Rules of Procedure Governing Construction Arbitration provides:

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SECTION 2.3 Condition for exercise of jurisdiction - For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.

2.3.1. Such arbitration agreement or subsequent submission must be alleged in the Complaint. Such submission may be an exchange of communication between the parties or some other form showing that the parties have agreed to submit their dispute to arbitration. Copies of such communication or other form shall be attached to the Complaint.

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2.3.3. Respondent's refusal to Answer the Complaint or the filing of a Motion to Dismiss for lack of jurisdiction shall be deemed a refusal to submit to arbitration. In either case, the Commission (CIAC) shall dismiss the Complaint without prejudice to its refiling upon a subsequent submission.

SECTION 2.4 Jurisdictional challenge – A motion to dismiss based on lack of jurisdiction shall be resolved by the appointed arbitral tribunal.

2.4.1. The Arbitral Tribunal shall have full authority to resolve all issues raised in the Motion to Dismiss for lack of jurisdiction on the grounds that the dispute is not a construction dispute, or that the Respondent was represented by one without capacity to enter into a binding arbitration agreement, or that said agreement or submission is not valid for some other reasons, or does not cover the particular dispute sought to be arbitrated, or other issues of interpretation or nonfulfillment of pre-conditions to arbitration that are raised therein.

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SECTION 4.1. Submission to CIAC jurisdiction - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.

4.1.1. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the Claimant may invoke the jurisdiction of CIAC.

4.1.2. An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration. It may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams, electronic mail or any other mode of communication.

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SECTION 4.3. When arbitration cannot proceed – Where the contract between the parties does not provide for arbitration and the parties cannot agree to submit the dispute(s) to arbitration, the arbitration cannot proceed and the Claimant/s shall be informed of that fact. xxx

In the instant case, the Construction Agreement[17] of the parties does not contain an arbitration clause. Nonetheless, it is submitted by private respondent Sogo that there was an agreement to arbitrate as evidenced by the arbitration note in the 22 September 2011 letter[18] which was signed by Villamor for and in behalf of the petitioners and by Gutierrez as its representative. By virtue of said arbitration note, the CIAC exercised jurisdiction over the Complaint filed by private respondent Sogo despite objection on the part of the petitioners.

Article 1818 of the Civil Code states, among others, that except when authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to submit a partnership claim or liability to arbitration.

The general rule is that powers not specifically delegated in a partnership agreement are presumed to be withheld.[19] The instances of acts which are generally outside the implied power of a partner are enumerated in

the third paragraph of Article 1818[20] which include the submission of a partnership claim or liability to arbitration. They constitute limitations to the authority granted to the partners to bind the partnership.[21]

It is worthy to emphasize that although Villamor is petitioner VVC's Marketing and Estimation Manager, it still remains that he is not a partner in said partnership. The fact that he is the husband of Rheena Bernadette C. Villamor, one of the partners, is of no moment as it does not give him the personality of a partner. Without necessarily being repetitive, in order to submit a partnership claim or liability to arbitration, a partner must be so authorized by the other partners. It is then with more reason that a person who is not a partner, such as Villamor, cannot simply be presumed to have been given the authority to enter into arbitration in behalf of the partnership.

More so, under Article 1878 of the Civil Code, a special power of attorney is necessary to compromise, to submit questions to arbitration, to renounce the right to appeal from judgment, to waive objections to the venue of an action or to abandon a prescription already acquired. Again, there was no showing in this case that Villamor was granted the power to represent the petitioners to arbitration.

According to the CIAC, "It is safe to say there is no reason for claimant to doubt the authority of Mr. Villamor as to being the authorized representative of respondent considering it has dealt with him from the inception of the contract." [22] This Court, however, disagrees.

Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal.[23] It must be stressed that under said doctrine, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.[24]

It cannot be denied that private respondent Sogo is a corporation. As such, it acts through its board of directors, officers, and agents. It is then safer to state that it is "conversant with business usages and the nature of the particular business" [25] it is engaged in. In dealing with a partnership, there can be no much difficulty on the part of the private respondent Sogo to determine, with ordinary care and prudence, whether Villamor was in fact clothed with authority to submit the issues at hand to arbitration before the CIAC. As it is, it cannot therefore be said that private respondent Sogo is justified to presume that Villamor has the authority to arbitrate with them as a representative of the petitioners.

As the petitioners were represented by one without capacity to enter into a binding arbitration [26] and in the absence of an arbitration clause in their Construction Agreement, the CIAC consequently has no jurisdiction over the issues brought before it by private respondent Sogo. Thus, for having been issued in the absence of jurisdiction, the 21 March 2012 and the 23 April 2012 respective Orders of the CIAC in CIAC Case No. 41-2011 should be nullified pursuant to Rule 65 of the Rules of Court.

WHEREFORE, premises considered, the instant petition is GRANTED. Accordingly, the 21 March 2012 and the 23 April 2012 respective Orders of the CIAC in CIAC Case No. 41-2011 are hereby declared NULL AND VOID.

SO ORDERED.

Pizarro, N.B., Chairperson, and [*]Galapate-Laguilles, Z.T., JJ., concur.

[*] Acting Junior Member, per Office Order No. 15-15-ABR, dated January 20, 2015

[1] Rollo, pp. 3-18

- [2] Rollo, pp. 19-21
- [3] Rollo, pp. 56-57
- [4] Rollo, pp. 22-24
- [5] Rollo, pp. 35-43
- [6] Rollo, pp. 29-32
- [7] Supra, note no. 5
- [8] Supra, note no. 5, pp. 37-39; citations omitted
- [9] Rollo, p. 44
- [10] Rollo, pp. 51-55
- [11] Supra, note no. 4
- [12] Supra, note no. 2, pp. 20-21
- [13] Supra, note no. 6
- [14] Supra, note no. 3
- [15] Supra, note no. 3, pp. 27-28
- [16] Supra, note no. 1, p. 8
- [17] Supra, note no. 10
- [18] Supra, note no. 9
- [19] Partnership, Agency, and Trusts (2002 Ed.), Hector S. De Leon and Hector M. De Leon, Jr., p. 192
- [20] Supra, note no. 19
- [21] Ibid
- [22] Supra, note no. 2, p. 20
- [23] Violeta Tudtud Banate, Mary Melgrid M. Cortel, Bonifacio Cortel, Rosendo Maglasang, and Patrocinia Monilar vs. Philippine Countryside Rural Bank (Liloan, Cebu), Inc. and Teofilo Soon, Jr., G.R. No. 163825, July 13, 2010
- [24] Professional Services, Inc. vs. The Court of Appeals and Natividad and Enrique Agana, G.R. No. 126297, February 11, 2008; Natividad (Substituted by her children Marcelino Agana III, Enrique Agana, Jr., Emma Agana Andaya, Jesus Agana, and Raymund Agana) and Enrique Agana vs The Court of Appeals and Juan Fuentes, G.R. No. 126467, February 11, 2008; Miguel Ampil vs. The Court of Appeals and Natividad Agana and Enrique Agana, G.R. No. 127590, February 11, 2008
- [25] Supra, note no. 24
- [26] Revised Rules of Procedure Governing Construction Arbitration, Rule 2, Section 2.4 (2.4.1)

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