

NOEL R. IGNACIO, PLAINTIFF-APPELLEE, VS. MANILA KYOWA, INC., DEFENDANT-APPELLANT.

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS IS ON THE APPEAL filed by Manila Kyowa, Inc. (Manila Kyowa) from the Decision[1] dated July 30, 2009 issued by the Regional Trial Court, Branch 146, Makati City (RTC), in Civil Case No. 03-1071 for collection of sum of money with damages.

The ANTECEDENTS

Noel Ignacio (Ignacio) filed a Complaint[2] for sum of money with damages against Manila Kyowa alleging that: He is engaged in the business of communication networking and installation of cell sites/towers and satellite/cable communication equipment and doing business under the name and style “NRI Telecom Construction Network”. Sometime in the months of July to December 2001, Manila Kyowa contracted his services for various works, i.e. installation of towers, antennas and restoration works, specified in the work orders issued by Manila Kyowa, for an agreed total consideration of P3,070,000.00 excluding variation works. In the course of the engagement, variation works needed were also performed by Ignacio, billing Manila Kyowa for the said services. Despite completion of the works, Manila Kyowa failed to pay the balance of the agreed consideration and the variation works performed. Demand letters were sent to Manila Kyowa but to no avail. As of June 13, 2002, the unpaid obligation amounted to P856,363.25. Ignacio referred the matter to his counsel who sent a demand letter to Manila Kyowa on September 12, 2002, still, Manila Kyowa refused to pay. Ignacio prays that Manila Kyowa should be made to pay the following sums: (1) P856,363.25 plus interest, representing actual damages; (2) P300,000.00 as exemplary damages; (3) P100,000.00 plus P2,500.00 for every hearing, as and for attorney's fees; and (4) cost of suit.

Manila Kyowa filed its Answer[3] denying the averments in the Complaint and, by way of affirmative defense, that: The filing of the Complaint is premature since there is still an offer of reconciliation which remains unanswered by Ignacio; and, the Compliant states no cause of action since the avenue for compromise and settlement has not been exhausted.

Pre-Trial was conducted[4] and, thereafter, trial ensued.

Ignacio testified[5] basically reiterating the allegations in his Complaint. However, he failed to identify the original copies of the work orders since, according to him, these were in the possession of Manila Kyowa. They only received facsimile copies which they photocopied. He also explained how they arrived at the balance of P856,000.00, thus:

Contract Work
Order

Contract

Amount

Payment

Balance

ATO Cauayan

P1,575,000.00

P1,550,000.00

P25,000.00

ATO CDO

P575,000.00

P344,000.00

P231,000.00

ATO Tuguegarao

P500,000.00

P260,000.00

P240,000.00

Metro Center

P300,000.00

P180,000.00

P120,000.00

Additional

work –

Cauayan

P120,000.00

P105,000.00**P15,000.00**

Variation works
for ATO
Tuguegarao

P33,412.50**P0****P33,412.50**

Variation works
for ATO CDO

P185,550.75**P0****P185,550.75**

Manpower for
CAD Operator

P6,400.00**P6,400.00**

Total Balance

P856,363.25

For Manila Kyowa, Herminigildo Zuñiga, accountant, testified[6] that: Manila Kyowa entered into a Sub-contract Agreement (Agreement) with Ignacio, particularly for the ATO Cauayan Air Transportation. The Agreement was already implemented and payments were made to Ignacio. The amount claimed by Ignacio is incorrect since there were some payments which were not acknowledged and some variation orders which were not included in the Agreement. Payments which were not acknowledged by Ignacio can be proven by the check vouchers and acknowledgement receipts. Further, Ignacio charged them for labor which was not in the Agreement. The variation works are still subject for approval by management before Manila Kyowa pays. Whenever they have a dispute with other sub-contractors, they settle through arbitration under Article 18 of the Agreement.

The parties submitted their respective formal offer of exhibits, as follows:

Plaintiff's exhibits[7]

Exhibit

Description

“A” to “E”

Various work orders of Manila Kyowa to NRI Telecom and Construction Network

“F” and “G”

Billings for variation works performed

“H” and “H-1”

Billing for the supply of manpower dated December 5, 2001 with attached Daily Time Record of Manila Kyowa

“I”

Demand Letter dated September 11, 2002 addressed to Manila Kyowa

“J”

Billing Status as of June 13, 2002, detailing the claim in the amount of P856, 363.25

“K” to “Q”

Various demand letters sent and received by Manila Kyowa

Defendant's exhibits[8]

Exhibit

Description

“1”

Check Voucher No. CV 2362 A dated May 17, 2001 in the amount of P80,000.00

“2”

Check Voucher No. CV 2614 C dated July 12, 2001 in the amount of P35,000.00

“2-a”

Official Receipt No. 0022 dated July 12, 2001 in the amount of P35,000.00

“3”

Check Voucher No. CV 4628 dated June 27, 2002 in the amount of P50,000.00

“3-a”

Official Receipt No. 0094 dated June 28, 2002 in the amount of P49,090.91

“4”

Check Voucher No. CV 4711 dated July 31, 2002 in the amount of P30,000.00

“4-a”

Official Receipt No. 0097 in the amount of P30,000.00

“5”

Check Voucher No. CV 4857 dated September 13, 2002 in the amount of P30,000.00

“5-a”

Official Receipt No. 0098 dated September 16, 2002 in the amount of P29,454.55

“6”

Subcontract Agreement between Ignacio and Manila Kyowa

On July 30, 2009, the RTC rendered a Decision[9], the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff against the defendant, ordering the latter to pay the former the following:

- Six hundred thirty four thousand ninety pesos & 81/100 (P634,090.81) as actual damages representing the mitigated obligation of the defendant plus interest at the legal rate from the filing of the complaint until fully paid;
- Exemplary damages in the amount of fifty thousand (P50,000.00) pesos;
- One hundred thousand (P100,000.00) pesos for and as attorney's fees; and
- Cost of suit.

SO ORDERED.

Manila Kyowa filed a Motion for Reconsideration[10] but the same was denied in the Order[11] dated September 28, 2010 for lack of merit. Thus, this Appeal.

ASSIGNMENT OF ERRORS

Manila Kyowa assigned[12] the following errors:

I.

THE TRIAL COURT ERRED IN ACQUIRING JURISDICTION OVER THE PRESENT CASE IT BEING CLEARLY WITHIN THE JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) AS PROVIDED BY THE SUB-CONSTRUCTION AGREEMENT ENTERED INTO BETWEEN PLAINTIFF-APPELLEE AND DEFENDANT-APPELLANT.

II.

THE TRIAL COURT ERRED IN NOT TAKING INTO CONSIDERATION DEFENDANT-APPELLANT'S OBJECTIONS AND COMMENTS TO THE PLAINTIFF-APPELLEE'S EXHIBITS THESE BEING MERELY PHOTOCOPIES AND SELF-SERVING EVIDENCE OF THE PLAINTIFF-APPELLEE.

III.

THE TRIAL COURT ERRED IN AWARDING EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO PLAINTIFF-APPELLEE AS HE HAS FAILED TO (ACTUALLY) PROVE HIS ENTITLEMENT TO ACTUAL AND COMPENSATORY DAMAGES.

THE COURT'S RULING

The appeal is meritorious.

Article 18 of the Subcontract Agreement for ATO Cauayan NDB Tower Restoration Works / Sumicon Philippines Corp.¹³ states that:

Article 18. Settlement of Disputes

- If any dispute, controversy or difference of any kind whatsoever shall arise between the Contractor and the Subcontractor in connection with or arising out of this Subcontract or a breach thereof, at the written request of either party, the parties shall seek to resolve any such dispute, controversy or difference by amicable discussion.

- If the parties fail to solve such dispute, controversy or difference by, amicable discussion, within sixty (60) days then either party may give to the other party formal notice in writing that a dispute, controversy or difference exists, specifying its nature, the points in issue and its intention to refer the dispute to arbitration.

- If the parties fail to solve such dispute, controversy or difference by further discussions within a period of thirty (30) days from the date upon which such notice of dispute has been given, the dispute, controversy or difference shall be referred to and finally settled by arbitration in Manila, the Republic of the Philippines, under the Rules of Procedure Governing Construction Arbitration approved and promulgated by the Construction Industry Arbitration Commission (CIAC) by one arbitrator appointed under such rules. The award of the arbitrator(s) shall be final and binding on the parties.

In the instant case, the only affirmative defense raised by Manila Kyowa in its Answer is that the filing of the Complaint is premature since there is still an offer of reconciliation by Manila Kyowa which remains unanswered, and that there is no cause of action since the avenue for the compromise and settlement has not been exhausted. Manila Kyowa belatedly raised, during the trial, the provision in their Agreement requiring arbitration in case of disputes.

Under Section 1, Rule 9 of the 1997 Rules of Civil Procedure, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, said rule is not absolute as it provides for exceptions. The court can still dismiss the claim when it appears from the pleadings or the evidence on record that: (1) the court has no jurisdiction over the subject matter; (2) there is another action pending between the same parties for the same cause; or (3) the action is barred by a prior judgment or by statute of limitations.

Section 4 of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law, provides

that:

SECTION 4. Jurisdiction. — The CIAC (Construction Industry Arbitration Commission) shall have original and exclusive jurisdiction 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. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

xxx xxx xxx

It bears to emphasize that the mere existence of an arbitration clause in the construction contract is considered by law as an agreement of the parties to submit existing or future controversies between them to CIAC jurisdiction, without any qualification or condition precedent[14].

The jurisdiction of the CIAC is original and exclusive. It goes to the very subject matter of the case. It is not merely a condition precedent which can be deemed waived due to having been raised belatedly.

The general rule is that the jurisdiction of a court may be questioned at any stage of the proceedings. Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action[15]. The Agreement appears to be a standard contract between the sub-contractor, like Ignacio, and Manila Kyowa on construction works undertaken at the instance of Manila Kyowa, and arbitration is a standard provision in the sub-contract agreement, as evidenced by the testimony of Herminigildo Zuñiga, thus:

Q (Atty. Abrenica, counsel for Manila Kyowa):

Now, what is the nature of the business of Manila Kyowa?

A:

It is engaged in general construction.

Q:

Within where?

A:

Within the Philippines.

xxx xxx xxx

Q:

You mentioned that defendant is engaged in construction projects in the Philippines. So, can you name some of the construction projects?

A:

Some of the construction projects in the Philippines is the Air Transportation project, restoration of the tower.

Q:

Now, Mr. Witness, do you know the plaintiff Noel R. Ignacio?

A:

Yes, it (sic) is one of our sub-constructors.

xxx xxx xxx

Q:

Does defendant Manila Kyowa have any other sub- contractors?

A:

Yes, ma'am.

Q:

Do you know, if you know only, do you know how disputes are settled with your other sub-constructors?

A:

By arbitration, ma'am.

Q:

What is your basis for saying that it should be by arbitration?

A:

It is included in the sub-contract agreement.

Q:

How about this sub-contract agreement with the plaintiff, is there an arbitration agreement stipulated in the sub-contract agreement?

A:

Yes, ma'am.

Q: Can you identify which part of this sub-contract agreement you earlier identified?

A: Article [18].

ATTY. ABRENICA

Your Honor, may I request for marking, your Honor, as Exhibit “6-j-1”, Article 18 of the sub-contract agreement.

COURT

Mark it.

xxx xxx xxx[16] (Emphasis ours)

There being a showing that the RTC assumed jurisdiction, where it had none, the proceedings before the RTC are declared null and void. Consequently, the other errors/issues raised in this appeal, have become moot and academic, and the Court need not pass upon these matters[17].

WHEREFORE, the appeal is GRANTED. The Decision dated July 30, 2009, issued by the Regional Trial Court, Branch 146, Makati City, in Civil Case No. 03-1071, is SET ASIDE. The Complaint filed on September 11, 2003, before the Regional Trial Court is DISMISSED and REFERRED to the Construction Industry Arbitration Commission for further proceedings.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Dicdican, I.P., Chairperson, and Elibinias, M.P., JJ., concur.

[1] Records, pp. 202-205.

[2] Id., pp. 1-4.

[3] Id., pp. 24-27.

[4] See id., p. 76.

[5] TSN, June 9, 2005.

[6] TSN, October 22, 2007.

[7] Id., pp. 85-86.

[8] Id., pp. 316-320.

[9] Id., pp. 202-205.

[10] Id., pp. 206-217.

[11] Id., p. 252.

[12] Rollo, p. 45.

[13] Records, pp. 147-159.

[14] HUTAMA-RSEA Joint Operations, Inc. vs. Citra Metro Manila Tollways Corporation, GR No. 180640, April 24, 2009.

[15] Bernardo vs. Heirs of Villegas, GR No. 183357, March 15, 2010.

[16] TSN, October 22, 2007, pp. 4-5, 8-9.

[17] Ramonito Tantoy, Sr. vs. Hon. Zeus C. Abrogar, in his capacity as Presiding Judge of Branch 150 RTC-Makati City and Abner Dreu, G.R. No. 156128, May 9, 2005.

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