

HUTCHISON PORTS PHILIPPINES LIMITED, PETITIONER, VS. SUBIC BAY METROPOLITAN AUTHORITY, INTERNATIONAL CONTAINER TERMINAL SERVICES INC., ROYAL PORT SERVICES INC. AND THE EXECUTIVE...

G.R. No. 131367. August 31, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On February 12, 1996, the Subic Bay Metropolitan Authority (or SBMA) advertised in leading national daily newspapers and in one international publication,[1] an invitation offering to the private sector the opportunity to develop and operate a modern marine container terminal within the Subic Bay Freeport Zone. Out of seven bidders who responded to the published invitation, three were declared by the SBMA as qualified bidders after passing the pre-qualification evaluation conducted by the SBMA's Technical Evaluation Committee (or SBMA-TEC). These are: (1) International Container Terminal Services, Inc. (or ICTSI); (2) a consortium consisting of Royal Port Services, Inc. and HPC Hamburg Port Consulting GMBH (or RPSI); and (3) Hutchison Ports Philippines Limited (or HPPL), representing a consortium composed of HPPL, Guoco Holdings (Phils.), Inc. and Uicol Management Services, Inc. All three qualified bidders were required to submit their respective formal bid package on or before July 1, 1996 by the SBMA's Pre-qualification, Bids and Awards Committee (or SBMA-PBAC).

Thereafter, the services of three (3) international consultants[2] recommended by the World Bank for their expertise were hired by SBMA to evaluate the business plans submitted by each of the bidders, and to ensure that there would be a transparent and comprehensive review of the submitted bids. The SBMA also hired the firm of Davis, Langdon and Seah Philippines, Inc. to assist in the evaluation of the bids and in the negotiation process after the winning bidder is chosen. All the consultants, after such review and evaluation unanimously concluded that HPPL's Business Plan was "far superior to that of the two other bidders." [3]

However, even before the sealed envelopes containing the bidders' proposed royalty fees could be opened at the appointed time and place, RPSI formally protested that ICTSI is legally barred from operating a second port in the Philippines based on Executive Order No. 212 and Department of Transportation and Communication (DOTC) Order 95-863. RPSI thus requested that the financial bid of ICTSI should be set aside.[4]

Nevertheless, the opening of the sealed financial bids proceeded "under advisement" relative to the protest signified by RPSI. The financial bids, more particularly the proposed royalty fee of each bidder, was as follows:

ICTSI -----US\$57.80 TEU

HPPL -----US\$20.50 TEU

RPSI -----US\$15.08 TEU

The SBMA-PBAC decided to suspend the announcement of the winning bid, however, and instead gave ICTSI seven (7) days within which to respond to the letter-protest lodged by RPSI. The HPPL joined in RPSI's protest, stating that ICTSI should be disqualified because it was already operating the Manila International Container Port (or MICP), which would give rise to inevitable conflict of interest between the MICP and the Subic Bay Container Terminal facility.[5]

On August 15, 1996, the SBMA-PBAC issued a resolution rejecting the bid of ICTSI because "said bid does not comply with the requirements of the tender documents and the laws of the Philippines." The said resolution also declared that:

RESOLVED FURTHER, that the winning bid be awarded to HUTCHISON PORTS PHILIPPINES LIMITED (HPPL) and that negotiations commence immediately with HPPL (HUTCHISON) with a view to concluding an acceptable agreement within 45 days of this date failing which negotiations with RPSI (ROYAL) will commence with a view to concluding an acceptable agreement within 45 days thereafter failing which there will be declared a failure of bids.[6] (Underscoring supplied)

The following day, ICTSI filed a letter-appeal with SBMA's Board of Directors requesting the nullification and reversal of the above-quoted resolution rejecting ICTSI's bid while awarding the same to HPPL. But even before the SBMA Board could act on the appeal, ICTSI filed a similar appeal before the Office of the President.[7] On August 30, 1996, then Chief Presidential Legal Counsel (CPLC) Renato L. Cayetano submitted a memorandum to then President Fidel V. Ramos, containing the following recommendations:

We therefore suggest that the President direct SBMA Chairman Gordon to consider option number 4 – that is to re-evaluate the financial bids submitted by the parties, taking into consideration all the following factors:

1. Reinstate ICTSI's bid;
2. Disregard all arguments relating to "monopoly";
3. The re-evaluation must be limited to the parties' financial bids.

3.1 Considering that the parties' business have been accepted (passed), strictly follow the criteria for bid evaluation provided for in pars. (c) and (d), Part B (1) of the Tender Document.

4. In the re-evaluation, the COA should actively participate to determine which of the financial bids is more advantageous.

5. In addition, all the parties should be given ample opportunity to elucidate or clarify the components/justification for their respective financial bids in order to ensure fair play and transparency in the proceedings.

6. The President's authority to review the final award shall remain."[8] (Underscoring supplied)

The recommendation of CPLC Cayetano was approved by President Ramos, and a copy of President Ramos' handwritten approval was sent to the SBMA Board of Directors. Accordingly, the SBMA Board, with the concurrence of representatives of the Commission on Audit, agreed to focus the reevaluation of the bids in accordance with the evaluation criteria and the detailed components contained in the Tender Document, including all relevant information gleaned from the bidding documents, as well as the reports of the three international experts and the consultancy firm hired by the SBMA.

On September 19, 1996, the SBMA Board issued a Resolution, declaring:

NOW, THEREFORE, IT IS HEREBY RESOLVED that the bid that conforms to the Invitation to Tender, that

has a realistic Business Plan offering the greatest financial return to SBMA, the best possible offer and the most advantageous to the government is that of HPPL and HPPL is accordingly selected as the winning bidder and is hereby awarded the concession for the operation and development of the Subic Bay Container Terminal.[9] (Underscoring supplied)

In a letter dated September 24, 1996, the SBMA Board of Directors submitted to the Office of the President the results of the re-evaluation of the bid proposals, to wit:

SBMA, through the unanimous vote of all the Board Members, excluding the Chairman of the Board who voluntarily inhibited himself from participating in the re-evaluation, selected the HPPL bid as the winning bid, being: the conforming bid with a realistic Business Plan offering the greatest financial return to the SBMA; the best possible offer in the market, and the most advantageous to the government in accordance with the Tender Document.[10]

Notwithstanding the SBMA Board's recommendations and action awarding the project to HPPL, then Executive Secretary Ruben Torres submitted a memorandum to the Office of the President recommending that another rebidding be conducted.[11] Consequently, the Office of the President issued a Memorandum directing the SBMA Board of Directors to refrain from signing the Concession Contract with HPPL and to conduct a rebidding of the project.[12]

In the meantime, the Resident Ombudsman for the DOTC filed a complaint against members of the SBMA-PBAC before the Office of the Ombudsman for alleged violation of Section 3(e) of Republic Act No. 3019 for awarding the contract to HPPL. On April 16, 1997, the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman issued a Resolution absolving the members of the SBMA-PBAC of any liability and dismissing the complaint against them, ruling thus:

After an assiduous study of the respective contentions of both parties, we are inclined to hold, as it is hereby held, that there is no proof on record pinpointing respondents to have acted in excess of their discretion when they awarded the bid to HPPL. Records revealed that respondents, in the exercise of their discretion in determining the financial packages offered by the applicants, were guided by the expert report of Davis, Langdon and Seah (DLS) that fairly evaluated which of the bidders tender the greatest financial return to the government. There is no showing that respondents had abused their prerogatives. As succinctly set forth in the DLS report it stated, among others, that, "in assessing the full financial return to SBMA offered by the bidders, it is necessary to consider the following critical matters:

1. Royalty fees
2. Volume of TEU's as affected by:
 - a. Tariff rates;
 - b. Marketing strategy;
 - c. Port facilities; and
 - d. Efficient reliable services.

With the preceding parameters for the evaluation of bidder's business plan, the respondents were fairly guided by, as they aligned their judgment in congruence with, the opinion of the panel of experts and the SBMA's Technical Evaluation Committee to the effect that HPPL's business is superior while that of ICTSI's appeared to be unrealistically high which may eventually hinder the competitiveness of the SBMA port with the rest of the world. Respondents averred that the panel of World Bank experts noted that ICTSI's high tariff rates at U.S. \$119.00 per TEU is already higher by 37% through HPPL, which could further increase by 20% in the first two (2) years and

by 5% hike thereafter. In short, high tariffs would discourage potential customers which may be translated into low cargo volume that will eventually reduce financial return to SBMA. Respondents asserted that HPPL's business plan offers the greatest financial return which could be equated that over the five years, HPPL offers 1.25 billion pesos while ICTSI offers P0.859 billion, and RPSI offers P.420 billion. Over the first ten years HPPL gives P2.430 billion, ICTSI tenders P2.197 billion and RPSI has P1.632 billion.

Viewed from this perspective alongside with the evidence on record, the undersigned panel does not find respondents to have exceeded their discretion in awarding the bid to HPPL. Consequently, it could not be said that respondents' act had placed the government at a grossly disadvantageous plight that could have jeopardized the interest of the Republic of the Philippines.[13]

On July 7, 1997, the HPPL, feeling aggrieved by the SBMA's failure and refusal to commence negotiations and to execute the Concession Agreement despite its earlier pronouncements that HPPL was the winning bidder, filed a complaint[14] against SBMA before the Regional Trial Court (RTC) of Olongapo City, Branch 75, for specific performance, mandatory injunction and damages. In due time, ICTSI, RPSI and the Office of the President filed separate Answers-in-Intervention[15] to the complaint opposing the reliefs sought by complainant HPPL.

Complainant HPPL alleged and argued therein that a binding and legally enforceable contract had been established between HPPL and defendant SBMA under Article 1305 of the Civil Code, considering that SBMA had repeatedly declared and confirmed that HPPL was the winning bidder. Having accepted HPPL's offer to operate and develop the proposed container terminal, defendant SBMA is duty-bound to comply with its obligation by commencing negotiations and drawing up a Concession Agreement with plaintiff HPPL. HPPL also pointed out that the bidding procedure followed by the SBMA faithfully complied with existing laws and rules established by SBMA itself; thus, when HPPL was declared the winning bidder it acquired the exclusive right to negotiate with the SBMA. Consequently, plaintiff HPPL posited that SBMA should be: (1) barred from conducting a re-bidding of the proposed project and/or performing any such acts relating thereto; and (2) prohibited from negotiating with any party other than plaintiff HPPL until negotiations between HPPL and SBMA have been concluded or in the event that no acceptable agreement could be arrived at. Plaintiff HPPL also alleged that SBMA's continued refusal to negotiate the Concession Contract is a substantial infringement of its proprietary rights, and caused damage and prejudice to plaintiff HPPL.

Hence, HPPL prayed that:

(1) Upon the filing of this complaint, hearings be scheduled to determine the propriety of plaintiff's mandatory injunction application which seeks to order defendant or any of its appropriate officers or committees to forthwith specify the date as well as to perform any and all such acts (e.g. laying the ground rules for discussion) for the commencement of negotiations with plaintiff with the view to signing at the earliest possible time a Concession Agreement for the development and operation of the Subic Bay Container Terminal.

(2) Thereafter, judgment be rendered in favor of plaintiff and against defendant:

2.1. Making permanent the preliminary mandatory injunction it had issued;

2.2. Ordering defendant to implement the Concession Agreement it had executed with plaintiff in respect of the development and operation of the proposed Subic Bay Container Terminal;

2.3. Ordering defendant to pay for the cost of plaintiff's attorney's fees in the amount of P500,000.00, or as otherwise proven during the trial.

Plaintiff prays for other equitable reliefs.[16]

During the pre-trial hearing, one of the issues raised and submitted for resolution was whether or not the Office of the President can set aside the award made by SBMA in favor of plaintiff HPPL and if so, can the Office of the President direct the SBMA to conduct a re-bidding of the proposed project.

While the case before the trial court was pending litigation, on August 4, 1997, the SBMA sent notices to plaintiff HPPL, ICTSI and RPSI requesting them to declare their interest in participating in a rebidding of the proposed project.[17] On October 20, 1997, plaintiff HPPL received a copy of the minutes of the pre-bid conference which stated that the winning bidder would be announced on December 5, 1997.[18] Then on November 4, 1997, plaintiff HPPL learned that the SBMA had accepted the bids of ICTSI and RPSI who were the only bidders who qualified.

In order to enjoin the rebidding while the case was still pending, plaintiff HPPL filed a motion for maintenance of the status quo[19] on October 28, 1997. The said motion was denied by the court a quo in an Order dated November 3, 1997, to wit:

Plaintiff maintains that by voluntarily participating in this proceedings, the defendant and the intervenors “have unqualifiedly agreed to submit the issue of the propriety, legality and validity of the Office of the President’s directive that the SBMA effect a rebidding” of its concession contract or the operation of the Subic Bay Container Terminal. As such, the status quo must be maintained in order not to thwart the court’s ability to resolve the issues presented. Further, the ethics of the profession require that counsel should discontinue any act which tends to render the issues academic.

The Opposition is anchored on lack of jurisdiction since the issuance of a cease-and-desist order would be tantamount to the issuance of a Temporary Restraining Order or a Writ of Injunction which this Court cannot do in light of the provision of Section 21 of R.A. 7227 which states:

Section 21. Injunction and Restraining Order. – The implementation of the projects for the conversion into alternative productive uses of the military reservations are urgent and necessary and shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

During the hearing on October 30, 1997, SBMA’s counsel revealed that there is no law or administrative rule or regulation which requires that a bidding be accomplished within a definite time frame.

Truly, the matter of the deferment of the re-bidding on November 4, 1997 rests on the sound discretion of the SBMA. For this Court to issue a cease-and-desist order would be tantamount to an issuance of a Temporary Restraining Order or a Writ of Preliminary Injunction. (*Prado v. Veridiano II*, G.R. No. 98118, December 6, 1991).

The Court notes that the Office of the President has not been heard fully on the issues. Moreover, one of the intervenors is of the view that the issue of jurisdiction must be resolved first, ahead of all the other issues.

WHEREFORE, and viewed from the foregoing considerations, plaintiff’s motion is DENIED.

SO ORDERED.[20] (Underscoring supplied)

Hence, this petition filed by petitioner (plaintiff below) HPPL against respondents SBMA, ICTSI, RPSI and the Executive Secretary seeking to obtain a prohibitory injunction. The grounds relied upon by petitioner HPPL to justify the filing of the instant petition are summed up as follows:

29. It is respectfully submitted that to allow or for this Honorable Court to otherwise refrain from restraining SBMA, during the pendency of this suit, from committing the aforementioned act(s) which will certainly occur on 5 December 1997 such action (or inaction) will work an injustice upon petitioner which has validly been

announced as the winning bidder for the operation of the Subic Bay Container Terminal.

30. To allow or for this Honorable Court to otherwise refrain from restraining SBMA, during the pendency of this suit, from committing the aforementioned threatened acts would be in violation of petitioner's rights in respect of the action it had filed before the RTC of Olongapo City in Civil Case No. 243-O-97, and could render any judgment which may be reached by said Court moot and ineffectual. As stated, the legal issues raised by the parties in that proceedings are of far reaching importance to the national pride and prestige, and they impact on the integrity of government agencies engaged in international bidding of privatization projects. Its resolution on the merits by the trial court below and, thereafter, any further action to be taken by the parties before the appellate courts will certainly benefit respondents and the entire Filipino people.[21]

WHEREFORE, petitioner HPPL sought relief praying that:

- a) Upon the filing of this petition, the same be given due course and a temporary restraining order and/or writ of preliminary injunction be issued ex parte, restraining SBMA or any of its committees, or other persons acting under its control or direction or upon its instruction, from declaring any winner on 5 December 1997 or at any other date thereafter, in connection with the rebidding for the privatization of the Subic Bay Container Terminal and/or for any, some or all of the respondents to perform any such act(s) in pursuance thereof, until further orders from this Honorable Court;
- b) After appropriate proceedings, judgment be rendered in favor of petitioner and against respondents --
 - (1) Ordering SBMA to desist from conducting any rebidding or in declaring the winner of any such rebidding in respect of the development and operation of the Subic Bay Container Terminal until the judgment which the RTC of Olongapo City may render in Civil Case No. 243-O-97 is resolved with finality;
 - (2) Declaring null and void any award which SBMA may announce or issue on 5 December 1997; and
 - (3) Ordering respondents to pay for the cost of suit.

Petitioner prays for other equitable reliefs.[22]

The instant petition seeks the issuance of an injunctive writ for the sole purpose of holding in abeyance the conduct by respondent SBMA of a rebidding of the proposed SBICT project until the case for specific performance is resolved by the trial court. In other words, petitioner HPPL prays that the status quo be preserved until the issues raised in the main case are litigated and finally determined. Petitioner was constrained to invoke this Court's exclusive jurisdiction and authority by virtue of the above-quoted Republic Act 7227, Section 21.

On December 3, 1997, this Court granted petitioner HPPL's application for a temporary restraining order "enjoining the respondent SBMA or any of its committees, or other persons acting under its control or direction or upon its instruction, from declaring any winner on December 5, 1997 or at any other date thereafter, in connection with the rebidding for the privatization of the Subic Bay Container Terminal and/or for any, some or all of the respondents to perform any such act or acts in pursuance thereof." [23]

There is no doubt that since this controversy arose, precious time has been lost and a vital infrastructure project has in essence been "mothballed" to the detriment of all parties involved, not the least of which is the Philippine Government, through its officials and agencies, who serve the interest of the nation. It is, therefore, imperative that the issues raised herein and in the court a quo be resolved without further delay so as not to exacerbate an already untenable situation.

At the outset, the application for the injunctive writ is only a provisional remedy, a mere adjunct to the main suit.[24] Thus, it is not uncommon that the issues in the main action are closely intertwined, if not identical, to the

allegations and counter allegations propounded by the opposing parties in support of their contrary positions concerning the propriety or impropriety of the injunctive writ. While it is not our intention to preempt the trial court's determination of the issues in the main action for specific performance, this Court has a bounden duty to perform; that is, to resolve the matters before this Court in a manner that gives essence to justice, equity and good conscience.

While our pronouncements are for the purpose only of determining whether or not the circumstances warrant the issuance of the writ of injunction, it is inevitable that it may have some impact on the main action pending before the trial court. Nevertheless, without delving into the merits of the main case, our findings herein shall be confined to the necessary issues attendant to the application for an injunctive writ.

For an injunctive writ to be issued, the following requisites must be proven:

First. That the petitioner/applicant must have a clear and unmistakable right.

Second. That there is a material and substantial invasion of such right.

Third. That there is an urgent and permanent necessity for the writ to prevent serious damage.[25]

To our mind, petitioner HPPL has not sufficiently shown that it has a clear and unmistakable right to be declared the winning bidder with finality, such that the SBMA can be compelled to negotiate a Concession Contract. Though the SBMA Board of Directors, by resolution, may have declared HPPL as the winning bidder, said award cannot be said to be final and unassailable. The SBMA Board of Directors and other officers are subject to the control and supervision of the Office of the President. All projects undertaken by SBMA require the approval of the President of the Philippines under Letter of Instruction No. 620, which places the SBMA under its ambit as an instrumentality, defined in Section 10 thereof as an "agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government owned and controlled corporations." [26] (Underscoring supplied)

As a chartered institution, the SBMA is always under the direct control of the Office of the President, particularly when contracts and/or projects undertaken by the SBMA entail substantial amounts of money. Specifically, Letter of Instruction No. 620 dated October 27, 1997 mandates that the approval of the President is required in all contracts of the national government offices, agencies and instrumentalities, including government-owned or controlled corporations involving two million pesos (P2,000,000.00) and above, awarded through public bidding or negotiation. The President may, within his authority, overturn or reverse any award made by the SBMA Board of Directors for justifiable reasons. It is well-established that the discretion to accept or reject any bid, or even recall the award thereof, is of such wide latitude that the courts will not generally interfere with the exercise thereof by the executive department, unless it is apparent that such exercise of discretion is used to shield unfairness or injustice. When the President issued the memorandum setting aside the award previously declared by the SBMA in favor of HPPL and directing that a rebidding be conducted, the same was, within the authority of the President and was a valid exercise of his prerogative. Consequently, petitioner HPPL acquired no clear and unmistakable right as the award announced by the SBMA prior to the President's revocation thereof was not final and binding.

There being no clear and unmistakable right on the part of petitioner HPPL, the rebidding of the proposed project can no longer be enjoined as there is no material and substantial invasion to speak of. Thus, there is no longer any urgent or permanent necessity for the writ to prevent any perceived serious damage. In fine, since the requisites for the issuance of the writ of injunction are not present in the instant case, petitioner's application must be denied

for lack of merit.[27]

Finally, we focus on the matter of whether or not petitioner HPPL has the legal capacity to even seek redress from this Court. Admittedly, petitioner HPPL is a foreign corporation, organized and existing under the laws of the British Virgin Islands. While the actual bidder was a consortium composed of petitioner, and two other corporations, namely, Guoco Holdings (Phils.) Inc. and Unicol Management Services, Inc., it is only petitioner HPPL that has brought the controversy before the Court, arguing that it is suing only on an isolated transaction to evade the legal requirement that foreign corporations must be licensed to do business in the Philippines to be able to file and prosecute an action before Philippines courts.

The maelstrom of this issue is whether participating in the bidding is a mere isolated transaction, or did it constitute “engaging in” or “transacting” business in the Philippines such that petitioner HPPL needed a license to do business in the Philippines before it could come to court.

There is no general rule or governing principle laid down as to what constitutes “doing” or “engaging in” or “transacting” business in the Philippines. Each case must be judged in the light of its peculiar circumstances.[28] Thus, it has often been held that a single act or transaction may be considered as “doing business” when a corporation performs acts for which it was created or exercises some of the functions for which it was organized. The amount or volume of the business is of no moment, for even a singular act cannot be merely incidental or casual if it indicates the foreign corporation’s intention to do business.[29]

Participating in the bidding process constitutes “doing business” because it shows the foreign corporation’s intention to engage in business here. The bidding for the concession contract is but an exercise of the corporation’s reason for creation or existence. Thus, it has been held that “a foreign company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required.” In this regard, it is the performance by a foreign corporation of the acts for which it was created, regardless of volume of business, that determines whether a foreign corporation needs a license or not.[30]

The primary purpose of the license requirement is to compel a foreign corporation desiring to do business within the Philippines to submit itself to the jurisdiction of the courts of the state and to enable the government to exercise jurisdiction over them for the regulation of their activities in this country.[31] If a foreign corporation operates a business in the Philippines without a license, and thus does not submit itself to Philippine laws, it is only just that said foreign corporation be not allowed to invoke them in our courts when the need arises. “While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases, as in the one at bar.”[32] The requirement of a license is not intended to put foreign corporations at a disadvantage, for the doctrine of lack of capacity to sue is based on considerations of sound public policy.[33] Accordingly, petitioner HPPL must be held to be incapacitated to bring this petition for injunction before this Court for it is a foreign corporation doing business in the Philippines without the requisite license.

WHEREFORE, in view of all the foregoing, the instant petition is hereby DISMISSED for lack of merit. Further, the temporary restraining order issued on December 3, 1997 is LIFTED and SET ASIDE. No costs.

SO ORDERED.

Puno, Kapunan, and Pardo, JJ., concur.

Davide, Jr., C.J., (Chairman), in the result.

[1] Annex “A”; Rollo, p. 16; February 12, 1996 issues of the Philippine Daily Inquirer, Business World, Lloyd’s List and 2 newspapers of local circulation in Olongapo City

[2] The consultants were:

(i) Mr. Gustave de Monie, former Operations and Commercial Manager, Noordnatie, Port of Antwerp, Belgium;

(ii) Mr. W. Don Welch, Executive Director and CEO, South Carolina State Ports Authority, USA;

(iii) Mr. Thong Yoy Chuan, General Manager for Operations, Container Terminal of Penang, Malaysia.

[3] Annexes “C”, “D”, “E”, “F”; Rollo, pp. 22-80.

[4] Annex “G”; Rollo, p. 82.

[5] Supra., Rollo, p. 82.

[6] Supra., Rollo, p. 84.

[7] Annex “A”; Rollo, pp. 230-232.

[8] Annex “B”; Rollo, pp. 233-236.

[9] Annex “J”; Rollo, pp. 89-90.

[10] Annex “17” of SBMA’s Answer to the Complaint.

[11] Annex “E”; Rollo, p. 240.

[12] Annex “D”; Rollo, p. 239; Memorandum dated January 2, 1997.

[13] Annex “2”; Rollo, pp. 304-312.

[14] Annex “M”; Rollo, pp. 93-100, Civil Case No. 243-0-97.

[15] Annex “P”; Rollo, pp. 113-121; Annex “13”; Rollo, pp. 427-433; Annex “14”; Rollo, pp. 435-438.

[16] Complaint, Rollo, p. 99.

[17] Annex “Q”; Rollo, p. 122.

[18] Annex “R”; Rollo, pp. 123-128.

[19] Annex “S”; Rollo, pp. 129-132.

[20] Annex “T”; Rollo, p. 133-134.

[21] Petition, Rollo, p. 10.

[22] Petition, Rollo, p. 11.

[23] Supreme Court Resolution, Rollo, p. 144.

[24] PAL, Inc. v. NLRC, 287 SCRA 672, 680 (1998).

[25] Versoza v. CA, 299 SCRA 100, 108 (1998); Arcega v. CA, 275 SCRA 176, 180 (1997); Teotico v. Agda, Sr., 197 SCRA 675, 696 (1991).

[26] Rollo, pp. 633-634.

[27] Inter-Asia Services Corp. (International) v. CA, 263 SCRA 408, 419 (1996).

[28] Mentholatum Co. v. Mangaliman, 72 Phil. 524, 528 (1941).

[29] Avon Insurance PLC v. CA, 273 SCRA 312, 321 (1997).

[30] Granger Associates v. Microwave Systems, Inc., 189 SCRA 631, 640 (1990).

[31] Eriks Pte., Ltd. v. CA, 267 SCRA 567, 580 (1997).

[32] Granger Associates v. Microwave Systems, Inc., supra., p. 642.

[33] National Sugar Trading Corp v. CA, 246 SCRA 465, 470 (1995).

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