ELPIDIO S. UY, DOING BUSINESS UNDER THE NAME AND STYLE EDISON DEVELOPMENT & CONSTRUCTION, PETITIONER, VS. HONORABLE COURT OF APPEALS AND THE HERITAGE PARK MANAGEMENT CORPORATION...

G.R. NO. 157065. July 11, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a Petition for Review seeking to reverse and set aside the Decision[1] dated January 31, 2003 of the Court of Appeals in CA-G.R. SP. No. 69771.

The Heritage Memorial Park is a flagship project of the Bases Conversion Development Authority (BCDA) in Fort Bonifacio. To implement the project, the BCDA, on September 9, 1994, entered into an agreement denominated as the Pool Formation Trust Agreement[2] (PFTA) with the Philippine National Bank (PNB) and the Public Estates Authority (PEA). The BCDA was designated as the Project Owner; PEA, the Project Manager; and PNB as the Trustee.

As project owner, the BCDA was tasked to sell the Heritage Park Investment Certificates to the public and buyers become certificate holders. The certificate gives the PNB the absolute legal and beneficial title to Heritage Park in trust for the certificate holders. The PNB, as trustee, shall protect the values of the assets in the trust, receive and have custody over the proceeds from the sale of the certificates, administer the various funds, including disbursements for project costs and related expenses, turnover the Perpetual Care Fund to the Successor Trustee, turnover custody over documents pertaining to the Heritage Park and the residual funds to BCDA, and turnover all the documents and records to the Board of Trustees after completion of the project.[3]

PEA, as project manager, is tasked to implement and complete the various engineering works and improvements of Heritage Park.

On November 20, 1996, PEA and the petitioner, a single proprietorship doing business under the name and style of Edison Development and Construction, executed a Landscaping and Construction Agreement whereby the petitioner undertook to do all the landscaping, including the construction of a terrasoleum of the Heritage Park. The Heritage Park Executive Committee[4] approved the agreement on May 29, 1997.[5]

Pursuant to Section 11.01[6] of the PFTA, in April 1999, the certificate holders of the project organized themselves into a non-stock, non-profit corporation, the Heritage Park Management Corporation (HPMC), now the private respondent herein.

In October 1999, alleging delay in the construction of the projects and huge discrepancy between the Accomplishment Report and the actual physical accomplishment of petitioner's construction firm, the Heritage Park Executive Committee terminated the two construction contracts namely, the landscaping and nursery works, and the construction of the terrasoleum.

On March 17, 2000, pursuant to the terms of the PFTA, HPMC assumed all the functions, duties and responsibilities of the PEA, including those under an assailed contract.[7]

On May 31, 2001, petitioner filed a complaint[8] against the PEA before the Construction Industry Arbitration Commission (CIAC) where it sought to recover payment for its progress billings on the said projects.

On December 18, 2001, CIAC promulgated its decision, holding that:

> On the basis of the evidence presented and the findings, judgment is hereby rendered in favor of the Claimant Contractor ELPIDIO S. UY and Award is hereby made on its monetary claims as follows:
>
> P 2,354,607.40
>
> -
>
> Progress Billing No. 09
>
> 2,949,767.71
>
> -
>
> Progress Billing No.
>
> 8,197,396.65
>
> -
>
> Performed Work on Change Order No. 1
>
> 16,210,108.28
>
> -
>
> Equipment Stand-by Costs
>
> 6,421,398.50
>
> -
>
> Manpower Stand-by Costs
>
> 1,045,532.07
>
> -
>
> Escalation of Contract Price
>
> 2,211,148.26
>
> -
>
> Unpaid Balance on Materials on Site
>
> 489,535.02
>
> -
>
> Interest on Billing Nos. 9 and 10
>
> 3,987,949.39

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-

Attorney's Fees

445,665.15

-

Reimbursement of Arbitration fees

_____

[P 44,3131,108.43][9]

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Total Amount

Interest at the rate of 6% per annum on the total amount of P39,879,493.89 (Attorney's fees and reimbursement of arbitration fees exclude) shall be paid from the date this Decision is promulgated until finality of this Decision, after which interest at the rate of 12% per annum shall be paid on the total amount of P39,879,493.89 until full payment of the awarded amount shall have been made.

SO ORDERED.[10]

On March 14, 2002, an Alias Writ of Execution[11] was issued by CIAC and on the following day, a Notice of Garnishment was served on private respondent.

Private respondent HPMC then filed a petition for Injunction/Prohibition before the Court of Appeals on the ground that CIAC had no jurisdiction over the subject matter since HPMC was not impleaded as a party thereby depriving it of its right to be heard.[12] The appellate court ruled in favor of respondent, as follows

WHEREFORE, premises considered, the Petition is GRANTED and the assailed three (3) rulings of public respondent in CIAC 21-2001 are hereby declared VOID AB INITIO and produces no legal effect insofar as the HPMC's interests are concerned. No costs.

SO ORDERED.[13]

Petitioner before us ascribes the following as errors on the part of the appellate court:

I

THE COURT OF APPEALS COMMITTED GROSS REVERSIBLE ERROR AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT DECLARED VOID THE CIAC DECISION DATED 18 DECEMBER 2001, THE AMENDED WRIT OF EXECUTION DATED 25 MARCH 2002, AND THE AMENDED NOTICE OF GARNISHMENT DATED 27 MARCH 2002, ON THE SOLE GROSSLY ERRONEOUS BASIS THAT RESPONDENT HPMC IS ALLEGEDLY A REAL PARTY-IN-INTEREST AND AN INDISPENSABLE PARTY IN CIAC CASE NO. 21-2001 FOR WHICH REASON IT SHOULD ALLEGEDLY HAVE BEEN IMPLEADED IN SAID ARBITRATION CASE, CONSIDERING THAT:

- UNDER THE POOL FORMATION TRUST AGREEMENT (PFTA) WHICH PROVIDES FOR THE CREATION OF RESPONDENT HPMC, THE TRUSTEESHIP RIGHTS CONFERRED UPON IT INSOFAR AS THE HERITAGE FUNDS ARE CONCERNED WERE EXPRESSLY LIMITED BY THE PFTA ITSELF WHICH EARMARKED OR ALLOCATED SAID FUNDS TO ANSWER FOR LIABILITIES UNDER THE CONSTRUCTION AGREEMENTS ENTERED INTO BY THE PEA, THEREBY CONSTITUTING

RESPONDENT HPMC AS A MERE CUSTODIAN OR ESCROW AGENT OF SAID FUNDS; ACCORDINGLY, RESPONDENT HPMC IS NOT A REAL PARTY-IN-INTEREST OR INDISPENSABLE PARTY TO CIAC CASE NO. 21-2001.

- BY CLAIMING TO BE THE TRUSTEE OF THE CONSTRUCTION/DEVELOPMENT FUND, RESPONDENT HPMC IS ESTOPPED FROM ASSERTING ITS ALLEGED OWNERSHIP OF SAID FUND.

- THE CONSTRUCTION/DEVELOPMENT FUND WAS EXPRESSLY EARMARKED TO PAY FOR THE COSTS OF DEVELOPMENT OF THE HERITAGE PARK, INCLUDING ARBITRAL AWARDS; AND THUS, CIAC ACTED WITHIN ITS DISCRETION WHEN IT ISSUED A WRIT OF EXECUTION DIRECTED AGAINST THE SAID FUND.

II

THE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT RULED THAT RESPONDENT HPMC IS ALLEGEDLY A REAL PARTY-IN-INTEREST OR AN INDISPENSABLE PARTY CONSIDERING THAT THE HONORABLE COURT HAS ALREADY CONCLUSIVELY RULED THAT THERE WAS NO VALID NOVATION OF THE CONSTRUCTION AGREEMENTS BETWEEN PETITIONER UY AND PEA. IN FACT, THE COURT OF APPEALS ALREADY DISMISSED A SIMILAR PETITION FILED BY RESPONDENT HPMC INVOKING THE SAME GROUNDS AS IN ITS PETITION A QUO.

III

THE COURT OF APPEALS COMMITTED GROSS REVERSIBLE ERROR IN GRANTING THE EXTRAORDINARY REMEDIES OF PROHIBITION AND INJUNCTION TO ENJOIN THE EXECUTION OF THE AWARD IN CIAC CASE NO. 21-2001, CONSIDERING THAT:

- RESPONDENT HPMC DOES NOT HAVE ANY RIGHT, MUCH LESS A CLEAR AND UNMISTAKABLE RIGHT, WHICH WOULD ENTITLE IT TO THE EXTRAORDINARY REMEDIES OF PROHIBITION AND INJUNCTION.

- RESPONDENT HPMC MISERABLY FAILED TO ESTABLISH THAT IT WOULD SUFFER ANY INJURY, MUCH LESS GRAVE AND IRREPARABLE INJURY, AS A RESULT OF THE EXECUTION OF THE SAID AWARD.

- RESPONDENT HPMC'S SAID PETITION FOR INJUNCTION/PROHIBITION WAS FATALLY DEFECTIVE IN BOTH FORM AND SUBSTANCE; AND HENCE, SHOULD HAVE BEEN DISMISSED.

- RESPONDENT HPMC WAS CLEARLY GUILTY OF FORUM-SHOPPING WHEN IT FILED ITS PETITION FOR INJUNCTION/PROHIBITION WITH THE COURT OF APPEALS DURING THE PENDENCY OF A SIMILAR PETITION WITH THE HONORABLE COURT (G.R. NO. 148133).

IV

THE COURT OF APPEALS COMMITTED GROSS REVERSIBLE ERROR WHEN IT WENT BEYOND THE ISSUES OF THE CASE AND THE ALLEGATIONS IN RESPONDENT HPMC'S PETITION BY DECLARING THE CIAC DECISION DATED 18 DECEMBER 2001, THE AMENDED WRIT OF EXECUTION DATED 25 MARCH 2002, AND THE AMENDED NOTICE OF GARNISHMENT DATED 27 MARCH 2002 AS ALLEGEDLY VOID AB INITIO.[14]

Simply stated, the issues for our resolution are: (1) Is HPMC a real party-in-interest or an indispensable party? (2)

Does CIAC have jurisdiction over the dispute? and (3) Was the grant of the writs of injunction/prohibition proper?

Petitioner's contention is that private respondent HPMC is not a party-in-interest to the case since it is a mere trustee of the construction and development funds and would not be directly benefited or injured by the outcome of the case.

Private respondent contends that upon its incorporation and election of its Board of Trustees, it assumed ownership of the Heritage Park Project. Further, since it is a non-stock, non-profit corporation, with the certificate holders as its members, any claim against the PEA is in reality a claim against all the parties who pooled and contributed their resources for the project; hence, it is an indispensable party.[15]

An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity.[16]

Based on the Construction Agreement, PEA entered into it in its capacity as Project Manager, pursuant to the PFTA. According to the provisions of the PFTA,[17] upon the formation of the HPMC, the PEA would turn over to the HPMC all the contracts relating to the Heritage Park. At the time of the filing of the CIAC Case on May 31, 2001, PEA ceased to be the Project Manager of the Heritage Park Project, pursuant to Section 11 of the PFTA. Through a Deed of Assignment,[18] PEA assigned its interests in all the existing contracts it entered into as the Project Manager for Heritage Park to HPMC. As early as March 17, 2000, PEA officially turned over to HPMC all the documents and equipment in its possession related to the Heritage Park Project. Petitioner was duly informed of these incidents through a letter dated March 13, 2000.[19] Apparently, as of the date of the filing of the CIAC Case, PEA is no longer a party-in-interest. Instead, it is now private respondent HPMC, as the assignee, who stands to be benefited or injured by the judgment in the suit. In its absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete or equitable.[20] We thus reiterate that HPMC is an indispensable party.

Does CIAC have jurisdiction over the dispute? Section 4[21] of Executive Order No. 1008[22] is pertinent. It provides that the jurisdiction of the CIAC over the parties is dependent on the agreement and consent of the parties to the construction contract, to submit their dispute for arbitration. Absent such consent, the CIAC cannot validly proceed against a party for lack of jurisdiction.

In this instance, both parties agreed to submit the dispute for arbitration. However, the CIAC should have dismissed the same on the ground that the private respondent was not impleaded, it being an indispensable party to the case.

Indispensable parties must be joined either as plaintiffs or defendants.[23] Whenever it appears to the court in the course of a proceeding that an indispensable party has not been joined, it is the duty of the court to stop the trial and to order the inclusion of such party.[24] The absence of an indispensable party renders all subsequent actuations of the court null and void, for want of authority to act, not only as to the absent parties, but even as to those present.[25]

It has come to the Court's attention that from the inception of the case, PEA informed the CIAC that pursuant to the PFTA and the Deed of Assignment, all its rights and obligations under the contract have already been assigned to private respondent.[26]

The responsibility of impleading all the indispensable parties rests on the plaintiff. The defendant does not have

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the right to compel the plaintiff to prosecute the action against a party if he does not wish to do so, but the plaintiff will have to suffer the consequences of any error he might commit in exercising his option.[27]

As to the third issue -- on the propriety of the writs of injunction/prohibition -- the matter has been mooted by our disquisitions above, and the issue has become academic.

WHEREFORE, the petition is DENIED, without prejudice to the re-filing of the case against the proper party in interest.

Costs against petitioner.

SO ORDERED.

Carpio, (Chairman), Carpio-Morales, Tinga, and Velasco, Jr. JJ., concur.

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[1] Rollo, pp. 9-20. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Delilah Vidallon-Magtolis, and Regalado E. Maambong concurring.

[2] CIAC records, pp. 757-801.

[3] Id. at 769, Section 2.04 (b) of the PFTA.

[4] Id. at 784. The eight-man Heritage Park Executive Committee shall be composed of the BCDA Chairman, the PEA Chairman, one member each from the respective Boards of Directors of the BCDA, PEA, a nominee of the Trustee and the respective Chief Operating Officers of the BCDA and PEA; and the Government Corporate Counsel.

[5] See CA Decision, rollo, p. 12. See also "Whereas Clauses" of the Construction Agreement found in CIAC records, pp. 803-804.

[6] CIAC records, p. 794. Section 11.01. Organization of a non-stock, non-profit corporation. At any time within the three (3) year development period, but not later than sixty (60) days prior to the completion of the Project as estimated by the PEA/Works Engineer, BCDA shall organize or cause to be organized, under the laws of the Republic of the Philippines, a non-stock, non-profit corporation, with the Certificate holders as its members, whose voting rights correspond to the type of lot covered by their Certificates in accordance with Section 9.05 and Section 11.03 of this Agreement.

It is the full intent and understanding of BCDA, PEA, and the Trustee that the non-stock, non-profit corporation shall be organized and registered with the Securities and Exchange Commission. It shall have all the powers and obligations of a non-stock, non-profit corporation. Its Board of Trustees shall have all the rights, powers and duties under Section 11.06 of this Agreement.

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[7] Id. at 920.

[8] CIAC Case No. 21-2001, entitled Elpidio S. Uy, doing business under the name and style of Edison Development and Construction v. Public Estates Authority.

[9] Rollo, p. 199. Stated as 44,341,108.43 in the CIAC decision (discrepancy of P28,000.00).

[10] Id. at 198-199.

[11] CA rollo, pp. 31-32.

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[12] Id. at 5-10.

[13]Rollo, p. 20.

[14] Id. at 41-43.

[15] Id. at 774.

[16]Imson v. Court of Appeals, G.R. No. 106436, December 8, 1994, 239 SCRA 58, 65.

[17] CIAC records, p. 796. Section 11.07. Delivery of Documents and the Park. Upon the election of the Board of Trustees, the PNB shall turn over to the Board of Trustee all its functions and responsibilities, and all documents in its custody, including all Heritage Park Accounts, except the General Fund which will go to BCDA. Upon such turn over and upon complete and faithful performance by PNB and PEA of their respective obligations under this Agreement, the respective obligations of PNB and PEA under this Agreement shall be deemed terminated. PEA shall turn over to the Board of Trustees all the documents and equipment it has in its possession relating to the Project and the Park, including the computer hardware and software pertaining to the geographical information system of the Park.

[18] Id. at 924-926.

[19] Id. at 920.

[20]Imson v. Court of Appeals, supra.

[21] SECTION 4. Jurisdiction. – The CIAC 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 disputes 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.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

[22] CREATING AN ARBITRATION MACHINERY FOR THE PHILIPPINE CONSTRUCTION INDUSTRY (February 4, 1985).

[23] Rules of Court, Rule 3, Sec. 7. Compulsory joinder of indispensable parties. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[24] Lim Tanhu v. Ramolete, No. L-40098, August 29, 1975, 66 SCRA 425, 448.

[25] Id.

[26] CIAC records, p. 92.

[27] See Bank of America NT & SA v. Court of Appeals, G.R. No. 78017, June 8, 1990, 186 SCRA 417, 430.

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