

LANDOIL RESOURCES CORPORATION, PETITIONER, VS. AL RABIAH LIGHTING COMPANY, RESPONDENT.

G.R. No. 174720. September 07, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in the instant petition for review on certiorari filed by petitioner are the Decision[1] dated August 14, 2003 and the Resolution[2] dated August 29, 2006 of the Court of Appeals issued in CA-G.R. CV No. 52003.

The facts, as borne by the records, are as follows:

Respondent Al Rabiah Lighting Company (Al Rabiah) is a foreign corporation existing under the laws of Kuwait. Defendant Construction Consortium, Inc. (CCI) and petitioner Landoil Resources Corporation (Landoil) are both domestic corporations organized under the Philippines Laws.

On December 20, 1981, CCI and respondent Al Rabiah entered into a Sub-Contract Agreement[3] wherein respondent was assigned to carry out the electrical works of Kuwait Oil Company's New Industrial Training Centre project in Ahmadi, Kuwait in the total amount of Three Hundred Forty- Three Thousand Five Hundred Kuwaiti Dinar. Respondent started carrying out its work as agreed upon. Later, the project owner had withdrawn the principal contract which led to the termination of petitioner's and CCI's services.[4] Consequently, respondent's works were stopped before being completed.

On September 12, 1982, petitioner, through its Regional Managing Director for Operations Robert J. Brown, sent a letter[5] to respondent through Mr. Said Y. Al Imam, confirming that based on the July progress billing, petitioner owed respondent the sum of KD 21,930,317 which was already due and proposed the payment of 12% interest on the overdue account until payment has been made.

In a letter dated June 4, 1983, petitioner informed respondent that the Prime Contractor Al Fahd Company had already terminated its contract; that petitioner agreed to pay respondent 12% interest per year on the unpaid bills of completed works. The letter was signed by both Robert Brown and Gerald Love.[6]

On June 9, 1983, petitioner acknowledged its indebtedness to respondent in the amount of KD 91,580.059, plus general overtime pay of KD 8,126 and promised to pay it in installments.[7]

As petitioner failed to pay respondent any part of the amount due, together with the contractual interest of 12%, the latter referred their dispute to the Commercial Kully Court of Kuwait for arbitration as provided under the Sub-Contract Agreement. The parties were duly notified of the scheduled sessions of arbitration, but only respondent and its counsel appeared thereat.[8]

On April 14, 1984, the Arbitrator rendered its award as follows:

The court decides that Land Oil Resources Company (Construction Consortium Incorporation) is indebted to [Al] Rabiah Lighting Company by KD 108,368.860 and that it is compelled to pay this sum in settlement of

the account of the contract concluded between them on 20[th] December, 1981. The said sum includes also the contractual interest until the date of issue of this Award.[9]

Respondent then filed with the Regional Trial Court (RTC) of Makati, an action[10] for Enforcement of Foreign Judgment Plus Damages against defendant CCI and petitioner. The case was raffled off to Branch 64 and was docketed as Civil Case No. 11578.

In its Answer,[11] petitioner admitted the existence of the Sub-Contract Agreement, but claimed to have no knowledge as to its genuineness and due execution. By way of Special and Affirmative Defenses, petitioner argued among others that respondent had no cause of action; respondent's claims had been paid, set-off or extinguished; the Commercial Kully Court of Kuwait did not acquire jurisdiction over petitioner; and the arbitral award was contrary to public policy, hence, illegal. Petitioner also alleged that since it had not been paid by its principal contractor the value of the corresponding accomplishments done by respondent, respondent's cause of action had not yet accrued; and that the termination of the contract by the primary contractor occurred without the fault or negligence of petitioner and defendant CCI, nor were they responsible for force majeure under the contract.

On the other hand, defendant CCI, in its Answer,[12] specifically denied the Sub-Contract Agreement for lack of knowledge, claiming that it was not a party to the contract and that G.W. Love was not an employee nor authorized to act for and in behalf of CCI; and that the Commercial Kully Court of Kuwait did not acquire jurisdiction over it and the arbitral award was contrary to public policy.

After trial, the RTC rendered its Decision[13] dated July 31, 1995, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court finds the petition of plaintiff AL RABIAH Company to be well-taken, and judgment is hereby rendered finding defendants Landoil Resources Corporation and Construction Consortium solidarily liable to plaintiff Al Rabiah Lighting Company in the sum indicated in Arbitral Award with legal interest thereon from July 1984 (Certification of Non-occurrence of Appeal) until payment is made. Defendants are likewise ordered to pay to plaintiff the sum of P250,000.00 as attorney's fees and P100,000.00 as exemplary damages.

SO ORDERED.[14]

In resolving the main issue of whether the RTC can validly set aside the foreign arbitral award rendered against petitioner and defendant CCI on the bases of the defenses raised in the parties' respective Answers, the RTC ruled in the negative. The RTC found that petitioner and CCI were estopped from claiming that they were not parties to the Sub-Contract Agreement. Petitioner's Answer alleged that it admitted the existence of the sub-contract agreement, although claimed that "it has no knowledge as to its genuineness and due execution"; that such lack of knowledge was belied or negated by petitioner's own allegations in its Answer acknowledging indebtedness to respondent. The RTC found that petitioner's letter dated September 12, 1982 to respondent confirmed that it owed respondent the sum of KD 21,930,317 and anticipated that payment would be made in early October 1982, together with the other due accounts. This letter was submitted as respondent's Exhibit "C" and the RTC noted that this letter was among the documents submitted by respondent to the foreign arbitrator in support of its claim against petitioner and CCI.

The RTC said that while it appeared in the Sub-Contract Agreement that the contracting parties were CCI and respondent, however, in paragraph VIII thereof, petitioner Landoil appeared together with CCI as the First Party to whom notices shall be sent. The RTC then concluded that the inclusion of petitioner as first party to whom the notices shall be sent and the conduct exhibited by petitioner led to the inevitable conclusion that the two defendants, petitioner and CCI, were the parties with whom respondent entered into the sub-contract agreement;

and that this conclusion was even strengthened by the fact that as between the two defendants, petitioner and CCI, there existed a "pooling agreement" for undertaking projects abroad pursuant to Presidential Decree (PD) 929. Since petitioner and CCI were the parties with whom respondent contracted, they were bound by the terms of the agreement, including the referral of their dispute to arbitration in accordance with the Rules and Regulations of the State of Kuwait.

Dissatisfied, petitioner appealed the RTC Decision to the CA. After the submission of the parties' respective briefs, the case was submitted for resolution.

On August 14, 2003, the CA issued its assailed Decision which dismissed the appeal and affirmed the RTC decision.

The CA ruled, among others, that petitioner was already estopped from claiming that it was not a party to the Sub-Contract Agreement as the agreement itself mentioned petitioner Landoil as one of the contracting parties and that petitioner had made representations in the past, binding itself for the overdue accounts in favor of respondent.

Petitioner's motion for reconsideration was denied in a Resolution dated August 29, 2006.

Hence, this petition wherein petitioner raises the following issues:

- (a) whether a Philippine Court, in enforcing a foreign judgment that has become final and executory, has the jurisdiction to alter, amend or expand such final foreign judgment;
- (b) Whether a foreign judgment may be enforced against a party other than the party decreed and held liable therein; and
- (c) Whether Estoppel was properly appreciated in this case.[15]

Petitioner contends that as appearing in the dispositive portion of the foreign arbitral award, there is only one defendant adjudged liable to respondent, i.e., Land Oil Resources Company (Construction Consortium Incorporation); thus, the party against whom the Writ of Execution may be directed. Petitioner claims that it is not the same as Land Oil Resources Company (Construction Consortium Incorporation) as its Articles of Incorporation does not indicate any such appellation; that it was not a party to the proceedings before the foreign arbitrator as it is a different entity. Thus, enforcing an award against a non-party such as petitioner would be executing on properties owned by a third person other than the judgment debtor; and that to allow the same would amount to a deprivation of property without due process of law. Petitioner avers that the RTC and the CA erred and committed grave abuse of discretion in amending and modifying the foreign arbitral award so as to include petitioner which is a corporation different from the entity adjudged liable in the foreign arbitral award.

We are not convinced.

As correctly found by the CA, petitioner's argument that the party adjudged liable under the foreign arbitral award was a different entity from it was only raised for the first time in petitioner's motion for reconsideration filed with it; thus, could not be entertained. We quote with approval what the CA said when it denied petitioner's motion for reconsideration in this wise:

The defendant mainly argues that it was never a party to the subcontract agreement. We find its argument meritless, because it is now too late for the defendant to claim that the party adjudged liable under the foreign arbitral award was a different entity. Moreover, we note that this is the first time that the defendant raises such defense. It is settled in jurisprudence that an issue cannot be raised for the first time on appeal. With more reason should we disallow and disregard the issue if it is initially raised in a motion for reconsideration of the

decision of the appellate court.

From the outset of the case, the defendant's stance has always been to deny any participation in the sub-contract agreement between Construction Consortium Inc. and the plaintiff and, in the alternative, to bewail the failure of the arbitral award to spell out the factual distinctions between its liability and that of the Construction Consortium Inc. for they were separate and distinct entities. Thus, this is the first time that it asserts that it was not the defendant in the case before the Commercial Kully Court of the State of Kuwait. The defendant thus asserts the existence of a third corporation against whom the arbitral award was supposedly rendered, Landoil Resources Company (Construction Consortium Incorporated). Not only is the Court precluded from entertaining such first-time issue but we also frown upon the apparent self-contradiction. We note that the defendant had, in the course of this case, repeatedly affirmed that it was the same party as the defendant against whom the foreign judgment had been rendered. In its Answer to the Complaint, it stated that:

12. The award directs the Landoil to pay and makes Construction Consortium Incorporated liable. x x x

Likewise, in its appeal brief, it also acknowledged being the defendant against whom the arbitral award was being enforced, thuswise:

x x x the foreign judgment subject of the case before the court a quo is an arbitral award rendered by the Commercial Kully Court of the State of Kuwait on April 14, 1984, compelling defendant CCI and defendant appellant to pay the sum of KD 108,368.860 in settlement of the contract allegedly concluded between them and plaintiff-appellee, which included a 10% contractual interest until the time of said award.[16]

Indeed, petitioner had never claimed in the RTC that it was not the party referred to in the foreign arbitral award. On the contrary, petitioner's Answer with Counterclaim filed in the RTC even established its knowledge and participation in the Sub-Contract Agreement. Under the heading of Special and Affirmative Defenses, petitioner alleged, among others that:

6. plaintiff's claims have been paid, set-off, or extinguished.

x x x x

14. That under the Sub-Contract, Annex "A" of the complaint, it is provided as follows:

14.1 FIRST PARTY agrees to pay SECOND PARTY at monthly intervals based on actual monthly progress accomplishment, plus 50% on material on Site less 5% retention and less advance payments, to be paid within 15 days of FIRST PARTY'S receipt from Client subject to any changes imposed by the Client in approving the monthly Valuation Certificate. Details of any such modifications will be available to the Sub-Contractor insofar as they affect his previously agreed valuation amount.

Defendant has not been paid by its principal contractor the payment/value of the corresponding accomplishments done by plaintiff and that, therefore, plaintiff's cause of action against answering defendant has not accrued;

15. That in any event, the alleged claim was discharged on September 12, 1983 by assignment to plaintiff in the full amount of the true and actual measure and valuation calculated upon termination of the contract by the Primary Contractor;

16. In any event, the termination of the contract of the primary contractor occurred without the fault or negligence of the defendants; neither was it responsible for the force majeure under the terms of the contract."[17]

Moreover, in petitioner's Memorandum of Authorities on the Invalidity and Unenforceability of the Foreign Judgment[18] filed with the RTC, it again made admission that it was the party referred to in the foreign arbitral award, thus:

x x x x

Likewise, the foreign arbitral award rendered judgment against both defendants by placing the name of defendant LANDOIL RESOURCES COMPANY (sic corporation) and thereafter enclosed in parenthesis the name of the other defendant Construction Consortium, Inc. without however specifying the specific liabilities of either of the defendants. Being corporations, defendants have legal personalities separate and distinct from each other and as such must be taken distinctly and separately from one another x x x[19]

Section 4, Rule 129 of the Rules of Court provides:

Sec. 4. Judicial admissions. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding.[20] It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself[21] and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[22]

Finally, we find no reversible error committed by the CA in affirming the RTC decision finding petitioner estopped from denying its participation and liability under the Sub-Contract Agreement and the enforcement of the foreign arbitral award against it. We find apropos what the CA said in this wise:

Defendant-appellant cannot deny its participation in the Subcontract. The agreement itself mentioned Landoil as one of the contracting parties. Specifically, a perusal of the Subcontract Agreement reveals in Article 8, Section 1 thereof that:

8.1 All notices to a party hereto shall be sent as follows:

FIRST PARTY: LANDOIL RESOURCES CORPORATION
CONSTRUCTION CONSORTIUM INCORPORATED

P.O. Box 49393
Omariyah,
Kuwait

For the attention
of Or delivered
To: K.O.C. Project Manager
Project Office of Ahmadi

SECONDARY PARTY: AL RABIAH LIGHTING COMPANY W.L.I.

P.O. Box 22015
Sarat
Kuwait

For the attention
of Or delivered
To: Mr. Said Y. Al Imam

Further, it is of record that on September 12, 1982, Landoil, thru its Regional Marketing Director Robert J. Brown, wrote to plaintiff Al Rabiah confirming that Landoil owes Al Rabiah the sum of KD21,930.317 and that said sum was due on August 22, 1982. It was further acknowledged in said letter that inasmuch as the sum

cannot be paid immediately, an interest at the rate of 12% on the overdue amount shall be paid until the principal amount can be satisfied. Landoil signified that it expected to pay such amount by October 1982 together with other due accounts. This letter is part of the evidence on record and was not refuted by defendant-appellant Landoil.

The foregoing persuades this Court of Landoil's participation in the Subcontract Agreement. It is apparent that Landoil is named as a first party to the subject Agreement and it represented itself as an obligor in the September 12, 1982 letter acknowledging overdue accounts in favor of Al Rabiah.

Moreover, notwithstanding its denial, defendant-appellant did allege in Paragraph 14 of its Answer to the Complaint a quo that:

14. x x x x

Defendant had not been paid by its principal contractor the payment/value of the corresponding accomplishments done by plaintiff and that therefore, plaintiff's cause of action against answering defendant has not accrued. (RTC Records, p. 43)

Such statement impliedly admits defendant-appellant's liability under the Subcontract Agreement, but raises as a special defense that plaintiff-appellee's action is allegedly premature, as Landoil itself had not received any payment from its principal contractor.

Thus, Landoil's argument, that it is a distinct corporation from CCI and cannot be accountable for breaches made by such other corporation, must fail. We find that Landoil itself is a party to the Subcontract Agreement and has made representations in the past binding itself to Al Rabiah for overdue accounts in favor of the latter. Under the doctrine of estoppels, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereof. (*Ayala Corporation v. Ray Burton Development Corporation*, 294 SCRA 48).[23]

Petitioner is indeed barred from adopting an inconsistent position, attitude, or course of conduct that would cause loss or injury to respondent.[24]

WHEREFORE, the petition for review is DENIED. The Decision dated August 14, 2003 and the Resolution dated August 29, 2006 of the Court of Appeals are hereby AFFIRMED.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Abad, and Mendoza, JJ., concur.

[*] Designated additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1076-a dated September 6, 2011.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Eugenio S. Labitoria and Lucas P. Bersamin (now a member of this Court), concurring; rollo, pp. 27-35.

[2] Penned by Associate Justice Lucas P. Bersamin, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court), and Monina Arevalo-Zenarosa, concurring; id. at 46-49.

[3] Records, pp. 8-15.

[4] Id. at 16-22.

[5] Id. at 135.

[6] Id. at 20.

[7] Id. at 21.

[8] Id. at 19.

[9] Id. at 22.

[10] Id. at 1-5.

[11] Id. at 41-44.

[12] Id. at 45-49.

[13] Id. at 463-473; Per Judge Delia H. Panganiban.

[14] Id. at 473.

[15] Rollo, p. 15.

[16] Id. at 48-49.

[17] Records, pp. 41-43.

[18] Id. at 196-200.

[19] Id. at 200.

[20] See *Binarao v. Plus Builders, Inc.*, G.R. No. 154430, June 16, 2006, 491 SCRA 49, 54.

[21] Id. citing *Granada, et al. v. PNB*, G.R. No. L-20745, September 2, 1966, 18 SCRA 1.

[22] Id. citing *Yulionsiu v. PNB*, G.R. No. L-19227, February 17, 1968, 22 SCRA 585.

[23] Rollo, pp. 30-32.

[24] See *Caldo v. Caldo-Atienza*, G.R. No. 164453, March 28, 2006, 485 SCRA 504, 511, citing *Cruz v. Court of Appeals*, 354 Phil. 1036, 1054 (1998).

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