EXCELLENT QUALITY APPAREL, INC., PETITIONER, VS. WIN MULTI RICH BUILDERS, INC., REPRESENTED BY ITS PRESIDENT, WILSON G. CHUA, RESPONDENT.

G.R. No. 175048. February 10, 2009

Ponente: TINGA, J.

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TINGA, J.:

Before us is a Rule 45 petition[1] seeking the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 84640. The Court of Appeals had annulled two orders[4] of the Regional Trial Court (RTC), Branch 32, of Manila in Civil Case No. 04-108940. This case involves a claim for a sum of money which arose from a construction dispute.

On 26 March 1996, petitioner Excellent Quality Apparel, Inc. (petitioner) then represented by Max L.F. Ying, Vice-President for Productions, and Alfiero R. Orden, Treasurer, entered into a contract[5] with Multi-Rich Builders (Multi-Rich) represented by Wilson G. Chua (Chua), its President and General Manager, for the construction of a garment factory within the Cavite Philippine Economic Zone Authority (CPEZ).[6] The duration of the project was for a maximum period of five (5) months or 150 consecutive calendar days. Included in the contract is an arbitration clause which is as follows:

> Article XIX : ARBITRATION CLAUSE
>
> Should there be any dispute, controversy or difference between the parties arising out of this Contract that may not be resolved by them to their mutual satisfaction, the matter shall be submitted to an Arbitration Committee of three (3) members; one (1) chosen by the OWNER; one (1) chosen by the CONTRACTOR; and the Chairman thereof to be chosen by two (2) members. The decision of the Arbitration Committee shall be final and binding on both the parties hereto. The Arbitration shall be governed by the Arbitration Law (R.A. [No.] 876). The cost of arbitration shall be borned [sic] jointly by both CONTRACTOR and OWNER on 50-50 basis.[7]

The construction of the factory building was completed on 27 November 1996.

Respondent Win Multi-Rich Builders, Inc. (Win) was incorporated with the Securities and Exchange Commission (SEC) on 20 February 1997[8] with Chua as its President and General Manager. On 26 January 2004, Win filed a complaint for a sum of money[9] against petitioner and Mr. Ying amounting to P8,634,448.20. It also prayed for the issuance of a writ of attachment claiming that Mr. Ying was about to abscond and that petitioner was about to close. Win obtained a surety bond[10] issued by Visayan Surety & Insurance Corporation. On 10 February 2004, the RTC issued the Writ of Attachment[11] against the properties of petitioner.

On 16 February 2004, Sheriff Salvador D. Dacumos of the RTC of Manila, Branch 32, went to the office of petitioner in CPEZ to serve the Writ of Attachment, Summons[12] and the Complaint. Petitioner issued Equitable PCIBank (PEZA Branch) Check No. 160149, dated 16 February 2004, in the amount of P8,634,448.20, to prevent the Sheriff from taking possession of its properties.[13] The check was made payable to the Office of the Clerk of

Court of the RTC of Manila as a guarantee for whatever liability there may be against petitioner.

Petitioner filed an Omnibus Motion[14] claiming that it was neither about to close. It also denied owing anything to Win, as it had already paid all its obligations to it. Lastly, it questioned the jurisdiction of the trial court from taking cognizance of the case. Petitioner pointed to the presence of the Arbitration Clause and it asserted that the case should be referred to the Construction Industry Arbitration Commission (CIAC) pursuant to Executive Order (E.O.) No. 1008.

In the hearing held on 10 February 2004, the counsel of Win moved that its name in the case be changed from "Win Multi-Rich Builders, Inc." to "Multi-Rich Builders, Inc." It was only then that petitioner apparently became aware of the variance in the name of the plaintiff. In the Reply[15] filed by petitioner, it moved to dismiss the case since Win was not the contractor and neither a party to the contract, thus it cannot institute the case. Petitioner obtained a Certificate of Non-Registration of Corporation/Partnership[16] from the SEC which certified that the latter did not have any records of a "Multi-Rich Builders, Inc." Moreover, Win in its Rejoinder[17] did not oppose the allegations in the Reply. Win admitted that it was only incorporated on 20 February 1997 while the construction contract was executed on 26 March 1996. Likewise, it admitted that at the time of execution of the contract, Multi-Rich was a registered sole proprietorship and was issued a business permit[18] by the Office of the Mayor of Manila.

In an Order[19] dated 12 April 2004, the RTC denied the motion and stated that the issues can be answered in a full-blown trial. Upon its denial, petitioner filed its Answer and prayed for the dismissal of the case.[20] Win filed a Motion[21] to deposit the garnished amount to the court to protect its legal rights. In a Manifestation,[22] petitioner vehemently opposed the deposit of the garnished amount. The RTC issued an Order[23] dated 20 April 2004, which granted the motion to deposit the garnished amount. On the same date, Win filed a motion[24] to release the garnished amount to it. Petitioner filed its opposition[25] to the motion claiming that the release of the money does not have legal and factual basis.

On 18 June 2004, petitioner filed a petition for review on certiorari[26] under Rule 65 before the Court of Appeals, which questioned the jurisdiction of the RTC and challenged the orders issued by the lower court with a prayer for the issuance of a temporary retraining order and a writ of preliminary injunction. Subsequently, petitioner filed a Supplemental Manifestation and Motion[27] and alleged that the money deposited with the RTC was turned over to Win. Win admitted that the garnished amount had already been released to it. On 14 March 2006, the Court of Appeals rendered its Decision[28] annulling the 12 April and 20 April 2004 orders of the RTC. It also ruled that the RTC had jurisdiction over the case since it is a suit for collection of sum of money. Petitioner filed a Motion for Reconsideration[29] which was subsequently denied in a resolution.[30]

Hence this petition.

Petitioner raised the following issues to wit: (1) does Win have a legal personality to institute the present case; (2) does the RTC have jurisdiction over the case notwithstanding the presence of the arbitration clause; and (3) was the issuance of the writ of attachment and the subsequent garnishment proper.

A suit may only be instituted by the real party in interest. Section 2, Rule 3 of the Rules of Court defines "parties in interest" in this manner:

> A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Is Win a real party in interest? We answer in the negative.

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Win admitted that the contract was executed between Multi-Rich and petitioner. It further admitted that Multi-Rich was a sole proprietorship with a business permit issued by the Office of the Mayor of Manila. A sole proprietorship is the oldest, simplest, and most prevalent form of business enterprise.[31] It is an unorganized business owned by one person. The sole proprietor is personally liable for all the debts and obligations of the business.[32] In the case of Mangila v. Court of Appeals,[33] we held that:

> x x x In fact, there is no law authorizing sole proprietorships to file a suit in court.
>
> A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.

The original petition was instituted by Win, which is a SEC-registered corporation. It filed a collection of sum of money suit which involved a construction contract entered into by petitioner and Multi-Rich, a sole proprietorship. The counsel of Win wanted to change the name of the plaintiff in the suit to Multi-Rich. The change cannot be countenanced. The plaintiff in the collection suit is a corporation. The name cannot be changed to that of a sole proprietorship. Again, a sole proprietorship is not vested with juridical personality to file or defend an action.[34]

Petitioner had continuously contested the legal personality of Win to institute the case. Win was given ample opportunity to adduce evidence to show that it had legal personality. It failed to do so. Corpus Juris Secundum, notes:

> x x x where an individual or sole trader organizes a corporation to take over his business and all his assets, and it becomes in effect merely an alter ego of the incorporator, the corporation, either on the grounds of implied assumption of the debts or on the grounds that the business is the same and is merely being conducted under a new guise, is liable for the incorporator's preexisting debts and liabilities. Clearly, where the corporation assumes or accepts the debt of its predecessor in business it is liable and if the transfer of assets is in fraud of creditors it will be liable to the extent of the assets transferred. The corporation is not liable on an implied assumption of debts from the receipt of assets where the incorporator retains sufficient assets to pay the indebtedness, or where none of his assets are transferred to the corporation, or where, although all the assets of the incorporator have been transferred, there is a change in the persons carrying on the business and the corporation is not merely an alter ego of the person to whose business it succeeded.[35]

In order for a corporation to be able to file suit and claim the receivables of its predecessor in business, in this case a sole proprietorship, it must show proof that the corporation had acquired the assets and liabilities of the sole proprietorship. Win could have easily presented or attached any document e.g., deed of assignment which will show whether the assets, liabilities and receivables of Multi-Rich were acquired by Win. Having been given the opportunity to rebut the allegations made by petitioner, Win failed to use that opportunity. Thus, we cannot presume that Multi-Rich is the predecessor-in-business of Win and hold that the latter has standing to institute the collection suit.

Assuming arguendo that Win has legal personality, the petition will still be granted.

Section 4 of E.O. No. 1008[36] provides for the jurisdiction of the Construction Industry Arbitration Commission, to wit:

> 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 time and delays; 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 from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

There is nothing in the law which limits the exercise of jurisdiction to complex or difficult cases. E.O. No. 1008 does not distinguish between claims involving payment of money or not.[37] The CIAC acquires jurisdiction over a construction contract by the mere fact that the parties agreed to submit to voluntary arbitration.[38] The law does not preclude parties from stipulating a preferred forum or arbitral body but they may not divest the CIAC of jurisdiction as provided by law.[39] Arbitration is an alternative method of dispute resolution which is highly encouraged.[40] The arbitration clause is a commitment on the part of the parties to submit to arbitration the disputes covered since that clause is binding, and they are expected to

abide by it in good faith.[41] Clearly, the RTC should not have taken cognizance of the collection suit. The presence of the arbitration clause vested jurisdiction to the CIAC over all construction disputes between Petitioner and Multi-Rich. The RTC does not have jurisdiction.[42]

Based on the foregoing, there is no need to discuss the propriety of the issuance of the writ of attachment. However, we cannot allow Win to retain the garnished amount which was turned over by the RTC. The RTC did not have jurisdiction to issue the questioned writ of attachment and to order the release of the garnished funds.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals is hereby MODIFIED. Civil Case No. 04-108940 is DISMISSED. Win Multi-Rich Builders, Inc. is ORDERED to return the garnished amount of EIGHT MILLION SIX HUNDRED THIRTY-FOUR THOUSAND FOUR HUNDRED FORTY-EIGHT PESOS AND FORTY CENTAVOS (P8,634,448.40), which was turned over by the Regional Trial Court, to petitioner with legal interest of 12 percent (12%) per annum upon finality of this Decision until payment.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Biron, JJ., concur.

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[1] Rollo, pp. 3-44.

[2]Dated 14 March 2006 and penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando, Chairperson, Former Sixteenth Division and Rosmari D. Carandang. Id. at 53-70.

[3]Dated 11 October 2006 and penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando, Chairperson, Former Sixteenth Division, and Rosmari D. Carandang. Id. at 49-51.

[4] Id. at 185-186, 230-232. Orders dated 12 April 2004 and 29 April 2004.

[5]Id. at 71-86.

[6]Id. at 71.

[7] Id. at 84.

[8]Id. at 175.

[9] Id. at 95-102.

[10]Id. at 103.

[11] Id. at 89-90.

[12]Id. at 94.

[13] Id. at 9-10.

[14] Dated 17 February 2004; id. at 132-141.

[15]Dated 11 March 2004; id. at 167-173.

[16] Id. at 174.

[17] Dated. 22 March 2004; id. at 176-180.

[18] Id. at 175.

[19]Id. at. 185-186.

[20]Dated 22 April 2004; id. at 187-198.

[21]Id. at 208-209.

[22] Id. at 211-212.

[23] Id. at 229-232.

[24] Id. at 233-235.

[25]Id. at 236-240.

[26] Dated 17 June 2004; id. at 254-294.

[27] Id. at 328-331.

[28] Supra note 2.

[29] Rollo, pp. 295-311.

[30] Supra note 3.

[31] Henn, Harry G. Cases and Materials on the Laws of Corporations American Casebook Series, West Publishing Co. St. Paul. © 1974, p. 67.

[32] Schneeman, Angela. The Law of Corporations and Other Business Organizations. 4[th] ed. ThomPson. © 2007, p. 26.

[33] 435 Phil. 870, 886 (2002).

[34] Berman Memorial Park, Inc. v. Cheng, G.R. No. 154630, 6 May 2005, 458 SCRA 112.

[35] 18 C.J.S. Corporation. §121, p. 522.

[36] Entitled Creating An Arbitration Machinery in the Construction Industry of the Philippines, approved on 4 February 1985.

[37] Parlade, Custodio, The Law and Practice of Conciliation and Arbitration of Construction Disputes, ©2001 p. 89.

[38] National Irrigation Authority v. Court of Appeals, 376 Phil. 362, 375 (1999).

[39] China Chang Jiang Energy Corporation v. Rosal Infrastructure Bulders, etc., G.R. No. 125706, Third Division Resolution dated 30 September 1996.

[40] Home Bankers Savings and Trust Company v. Court of Appeals, 376 Phil. 669 (1999).

[41] LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., 447 Phil. 705, 716 (2003).

[42] Apart from Sec. 4 of E.O. No. 1008, supra note 11, R.A. No. 9285, otherwise known as the "Alternative Disputes Resolution Act of 2004," provides:

> SEC. 39. Court to Dismiss Case Involving a Construction Dispute.--A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pretrial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

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