

FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER, VS. MANUEL N. DOMINGO, RESPONDENT.

G.R. No. 180765. February 27, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioner Fort Bonifacio Development Corporation, seeking to reverse and set aside the Decision dated 19 July 2007[1] and the Resolution dated 10 December 2007[2] of the Court of Appeals in CA-G.R. SP No. 97731. The appellate court, in its assailed Decision, affirmed the Order[3] of the Regional Trial Court (RTC) of Pasay City, Branch 109, in Civil Case No. 06-2000-CFM, denying the Motion to Dismiss of petitioner; and in its assailed Resolution, refused to reconsider its decision.

Petitioner, a domestic corporation duly organized under Philippine laws, is engaged in the real estate development business. Respondent is the assignee of L and M Maxco Specialist Engineering Construction (LMM Construction) of its receivables from petitioner.

On 5 July 2000, petitioner entered into a Trade Contract with LMM Construction for partial structural and architectural works on one of its projects, the Bonifacio Ridge Condominium. According to the said Contract, petitioner had the right to withhold the retention money equivalent to 5% of the contract price for a period of one year after the completion of the project. Retention money is a portion of the contract price, set aside by the project owner, from all approved billings and retained for a certain period to guarantee the performance by the contractor of all corrective works during the defect-liability period.[4]

Due to the defect and delay in the work of LMM Construction on the condominium project, petitioner unilaterally terminated the Trade Contract[5] and hired another contractor to finish the rest of the work left undone by LMM Construction. Despite the pre-termination of the Trade Contract, petitioner was liable to pay LMM Construction a fraction of the contract price in proportion to the works already performed by the latter.[6]

On 30 July 2004, petitioner received the first Notice of Garnishment against the receivables of LMM Construction issued by the Construction Industry Arbitration Commission (CIAC) in connection with CIAC Case No. 11-2002 filed by Asia-Con Builders against LMM Construction, wherein LMM Construction was adjudged liable to Asia-Con Builders for the amount of P5,990,927.77.

On 30 April 2005, petitioner received a letter dated 18 April 2005 from respondent inquiring on the retention money supposedly due to LMM Construction and informing petitioner that a portion of the amount receivable by LMM Construction therefrom was already assigned to him as evidenced by the Deed of Assignment executed by LMM Construction in respondent's favor on 28 February 2005. LMM Construction assigned its receivables from petitioner to respondent to settle the alleged unpaid obligation of LMM Construction to respondent amounting to P804,068.21.

Through its letter dated 11 October 2005, addressed to respondent, petitioner acknowledged that LMM Construction did have receivables still with petitioner, consisting of the retention money; but petitioner also advised respondent that the retention money was not yet due and demandable and may be ascertained only after the completion of the corrective works undertaken by the new contractor on the condominium project. Petitioner also notified respondent that part of the receivables was also being garnished by the other creditors of LMM Construction.

Unsatisfied with the reply of petitioner, respondent sent another letter dated 14 October 2005 asserting his ownership over a portion of the retention money assigned to him and maintaining that the amount thereof pertaining to him can no longer be garnished to satisfy the obligations of LMM Construction to other persons since it already ceased to be the property of LMM Construction by virtue of the Deed of Assignment. Attached to respondent's letter was the endorsement of LMM Construction dated 17 January 2005 approving respondent's claim upon petitioner in the amount of P804,068.21 chargeable against the retention money that may be received by LMM Construction from the petitioner.

Before respondent's claim could be fully addressed, petitioner, on 6 June 2005, received the second Notice of Garnishment against the receivables of LMM Construction, this time, issued by the National Labor Relations Commission (NLRC) to satisfy the liability of LMM Construction to Nicolas Consigna in NLRC Case No. 00-07-05483-2003.

On 13 July 2005, petitioner received an Order of Delivery of Money issued by the Office of the Clerk of Court and Ex-Officio Sheriff enforcing the first Notice of Garnishment and directing petitioner to deliver to Asia-Con Builders, through the Sheriff, the amount of P5,990,227.77 belonging to LMM Construction. In compliance with the said Order, petitioner was able to deliver to Asia-Con Builders on 22 July 2005 and on 11 August 2005 partial payments amounting to P1,170,601.81, covered by the appropriate Acknowledgement Receipts.

A third Notice of Garnishment against the receivables of LMM Construction, already accompanied by an Order of Delivery of Money, both issued by the RTC of Makati, Branch 133, was served upon petitioner on 26 January 2006. The Order enjoined petitioner to deliver the amount of P558,448.27 to the Sheriff to answer for the favorable judgment obtained by Concrete Masters, Inc. (Concrete Masters) against LMM Construction in Civil Case No. 05-164.

Petitioner, in a letter dated 31 January 2006, categorically denied respondent's claim on the retention money, reasoning that after the completion of the rectification works on the condominium project and satisfaction of the various garnishment orders, there was no more left of the retention money of LMM Construction.

It would appear, however, that petitioner fully satisfied the first Notice of Garnishment in the amount of P5,110,833.44 only on 31 January 2006,[7] the very the same date that it expressly denied respondent's claim. Also, petitioner complied with the Notice of Garnishment and its accompanying Order of Delivery of Money in the amount of P558,448.27 on 8 February 2006, a week after its denial of respondent's claim.[8]

The foregoing events prompted respondent to file a Complaint for collection of sum of money, against both LMM Construction and petitioner, docketed as Civil Case No. 06-0200-CFM before the RTC of Pasay City, Branch 109.

Instead of filing an Answer, petitioner filed a Motion to Dismiss Civil Case No. 06-0200-CFM on the ground of lack of jurisdiction over the subject matter. Petitioner argued that since respondent merely stepped into the shoes of LMM Construction as its assignor, it was the CIAC and not the regular courts that had jurisdiction over the dispute as provided in the Trade Contract.

On 6 June 2006, the RTC issued an Order denying the Motion to Dismiss of petitioner, ruling that a full-blown

trial was necessary to determine which one between LMM Construction and petitioner should be made accountable for the sum due to respondent.

Petitioner sought remedy from the Court of Appeals by filing a Petition for Certiorari, docketed as CA-G.R. SP No. 97731, challenging the RTC Order dated 6 June 2006 for having been rendered by the trial court with grave abuse of discretion.

In its Decision promulgated on 19 July 2007, the Court of Appeals dismissed the Petition for Certiorari and affirmed the 6 June 2006 Order of the RTC denying the Motion to Dismiss of petitioner. The appellate court rejected the argument of petitioner that respondent, as the assignee of LMM Construction, was bound by the stipulation in the Trade Contract that disputes arising therefrom should be brought before the CIAC. The Court of Appeals declared that respondent was not privy, but a third party, to the Trade Contract; and money claims of third persons against the contractor, developer, or owner of the project are lodged in the regular courts and not in the CIAC.

Similarly ill-fated was petitioner's Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution dated 10 December 2007.

Petitioner now comes to this Court via this instant Petition for Review on Certiorari praying for the reversal of the 19 July 2007 Decision of the Court of Appeals and 6 June 2006 Order of the RTC and, ultimately, for the dismissal of Civil Case No. 06-0200-CFM pending before the RTC.

For the resolution of this Court is the sole issue of:

WHETHER OR NOT THE RTC HAS JURISDICTION OVER CIVIL CASE NO. 06-0200-CFM.

The jurisdiction of CIAC is defined under Executive Order No. 1008 as follows:

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.

In assailing the 19 July 2007 Decision of the Court of Appeals, petitioner invoked Article 1311 of the Civil Code on relativity of contracts. According to said provision, all contracts shall only take effect between the contracting parties, their assigns and heirs except when the rights and obligations arising from the contract are not transmissible. Petitioner argues that the appellate court, in recognizing the existence of the Deed of Assignment executed by LMM Construction -- in favor of respondent -- of its receivables under the Trade Contract, should have considered the concomitant result thereof, i.e., that respondent became a party to the Trade Contract and, therefore, bound by the arbitral clause therein.

Respondent counters that the CIAC is devoid of jurisdiction over money claims of third persons against the contractor, developer or owner of the project. The jurisdiction of the CIAC is limited to settling disputes arising

among contractors, developers and/or owners of construction projects. It does not include the determination of who among the many creditors of the contractor should enjoy preference in payment of its receivables from the developer/owner.

It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss; for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[9] Accordingly, the issues in the instant case can only be properly resolved by an examination and evaluation of respondent's allegations in his Complaint in Civil Case No. 06-0200-CFM.

The allegations in respondent's Complaint are clear and simple: That LMM Construction had an outstanding obligation to respondent in the amount of P804,068.21; that in payment of the said amount, LMM Construction assigned to respondent its receivables from petitioner, which assignment was properly made known to petitioner as early as 18 April 2005; that despite due notice of such assignment, petitioner still refused to deliver the amount assigned to respondent, giving preference, instead, to the garnishing creditors of LMM Construction; that at the time petitioner was notified of the assignment, only one notice of garnishment, the first Notice of Garnishment, was received by it; that had petitioner properly recognized respondent's right as an assignee of a portion of the receivables of LMM Construction, there could have been sufficient residual amounts to satisfy respondent's claim; and that, uncertain over which one between LMM Construction and petitioner he may resort to for payment, respondent named them both as defendants in Civil Case No. 06-0200-CFM. A scrupulous examination of the aforementioned allegations in respondent's Complaint unveils the fact that his cause of action springs not from a violation of the provisions of the Trade Contract, but from the non-payment of the monetary obligation of LMM Construction to him.

A cause of action is a party's act or omission that violates the rights of the other.[10] The right of the respondent that was violated, prompting him to initiate Civil Case No. 06-0200-CFM, was his right to receive payment for the financial obligation incurred by LMM Construction and to be preferred over the other creditors of LMM Construction, a right which pre-existed and, thus, was separate and distinct from the right to payment of LMM Construction under the Trade Contract.

Petitioner's unceasing reliance on Article 1311[11] of the Civil Code on relativity of contracts is unavailing. It is true that respondent, as the assignee of the receivables of LMM Construction from petitioner under the Trade Contract, merely stepped into the shoes of LMM Construction. However, it bears to emphasize that the right of LMM Construction to such receivables from petitioner under the Trade Contract is not even in dispute in Civil Case No. 06-0200-CFM. What respondent puts in issue before the RTC is the purportedly arbitrary exercise of discretion by the petitioner in giving preference to the claims of the other creditors of LMM Construction over the receivables of the latter.

It is encouraged that disputes arising from construction contracts be referred first to the CIAC for their arbitration and settlement, since such cases would often require expertise and technical knowledge in construction. Hence, some of the matters over which the CIAC may exercise jurisdiction, upon agreement of the parties to the construction contract, "include but [are] 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." [12] Although the jurisdiction of the CIAC is not limited to the afore-stated enumeration, other issues which it could take cognizance of must be of the same or a closely related kind or species applying the principle of ejusdem generis in statutory construction.

Respondent's claim is not even construction-related at all. Construction is defined as referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment. [13] Petitioner's insistence on the application of the arbitration clause of the Trade Contract to respondent is clearly anchored on an erroneous premise that respondent is seeking to enforce a right under the same. Again, the right to the receivables of LMM Construction from petitioner under the Trade Contract is not being impugned herein. In fact, petitioner readily conceded that LMM Construction still had receivables due from petitioner, and respondent did not even have to refer to a single provision in the Trade Contract to assert his claim. What respondent is demanding is that a portion of such receivables amounting to P804,068.21 should have been paid to him first before the other creditors of LMM Construction, which, clearly, does not require the CIAC's expertise and technical knowledge of construction.

The adjudication of Civil Case No. 06-0200-CFM necessarily involves the application of pertinent statutes and jurisprudence to matters such as obligations, contracts of assignment, and, if appropriate, even preference of credits, a task more suited for a trial court to carry out after a full-blown trial, than an arbitration body specifically devoted to construction contracts.

This Court recognizes the laudable objective of voluntary arbitration to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. It cannot, however, altogether surrender to arbitration those cases, such as the one at bar, the extant facts of which plainly call for the exercise of jurisdiction by the regular courts for their resolution.

WHEREFORE, premises considered, the instant Petition is DENIED. The Decision dated 19 July 2007 and the Resolution dated 10 December 2007 of the Court of Appeals in CA-G.R. SP No. 97731 are hereby AFFIRMED in toto. Costs against the petitioner.

SO ORDERED.

Quisumbing, Carpio, Nachura, and Peralta, JJ., concur.

* Per Special Order No. 564, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program.

** Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

[1] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Vicente Q. Roxas and Ramon A. Garcia, concurring. Rollo, pp. 104-114.

[2] Id. at 116.

[3] Penned by Judge Tingaraan U. Guling; rollo, pp. 234-235.

[4] *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, 468 Phil. 305, 321 (2004).

[5] It was not shown on the records when the Trade Contract was terminated.

[6] Records do not show the estimated amount of receivables of LMM Construction.

[7] Official Receipt Nos. 3292786-A, 3293457-A and 21270426; records, Vol. IV, pp. 95-97.

[8] Id. at 98.

[9] *Serdoncillo v. Benolirao*, 358 Phil. 83, 95 (1998).

[10] Revived Rules of Court, Rule 2.

[11] Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[12] Second paragraph, Section 4 of Executive Order No. 1008.

[13] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G.R. No. 144792, 31 January 2006, 481 SCRA 209, 218-219.

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