

ROMLAGO, INC., PETITIONER. VS. SIEMENS BUILDING TECHNOLOGIES, INC., RESPONDENT.

G.R. No. 181969. October 02, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Romago, Inc. (ROMAGO) appeals by certiorari the October 19, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 99128 and the February 26, 2008 Resolution[2] denying its reconsideration.

On June 11, 1999, petitioner ROMAGO entered into a Consortium Agreement[3] with respondent Siemens Building Technologies, Inc. (SBTI). Under the agreement, ROMAGO undertook to jointly bid with SBTI for the Mechanical and Electrical Requirements of the Insular Life Corporate Center (the project) to be constructed at the Corporate City in Alabang. SBTI would provide and supply the equipment requirements and components of the project, while ROMAGO would supply and perform all the technical service requirements of the project.

However, Insular Life Assurance Company, Ltd. (Insular Life), the project owner, was not keen on dealing with a consortium of companies. Ultimately, only ROMAGO bid and was awarded the Sub-contract for the Building Services-Electrical Package of the project.

On December 3, 1999, ROMAGO entered into an Equipment Supply Sub-Contract Agreement (ESSA)[4] with SBTI. For the contract price of P100,000,000.00, SBTI undertook to deliver the needed electrical equipment for the project.

SBTI made deliveries, but ROMAGO failed to pay in full. As of March 2001, ROMAGO's unpaid billings amounted to P6,807,400.92. SBTI demanded payment, but the demand just fell on deaf ears, prompting SBTI to withhold further deliveries of equipment to the jobsite. Consequently, ROMAGO took over all the contractual activities of SBTI.

Later, however, SBTI resumed its deliveries under the ESSA. As of July 25, 2001, it had already delivered 99.81% of all the necessary equipment. ROMAGO, however, refused to pay for the deliveries which, by then, already amounted to P16,937,612.68, unless SBTI compensates ROMAGO for the total expenses it allegedly incurred in taking over SBTI's contractual obligations. Demands to pay were made but were not heeded.

Hence, on June 4, 2003, SBTI filed a Request for Arbitration[[5]] with the Philippine Dispute Resolution Center, Inc. (PDRCI), docketed as PDRCI Case No. 20-2003/SSP.

On July 16, 2003, ROMAGO, through its Vice-President for Operations, Ramon Lorenzo R. Arel, Sr., signed the Agreement to Submit Dispute to Arbitration.[6]

In its Answer[7] filed on May 4, 2004, ROMAGO admitted that the agreed contract price was P67,734,457.27, but averred that it made substantial payments. It further alleged that it had claims against SBTI, which should be deducted from the former's liability. Specifically, ROMAGO claimed the cost of installation of transformer and

temporary generator sets amounting to P184,208.15 and P5,040,408.44, respectively.'It added that it paid damages amounting to P3,627,226.37 to Insular Life and to some of its tenants when the generator sets supplied by SBTI malfunctioned on May 1, 2001. ROMAGO further claimed payments for the miscellaneous items amounting to P106,694.49, and for liquidated damages of P3,493,223.72 for SBTI's delay in the delivery of the equipment. According to ROMAGO, these items and the P300,000.00 cost of arbitration must be deducted from SBTI's claim, thus, leaving a balance of only P2,127,471.97.

The parties then signed the Terms of Reference (TOR)[8] and, later, the Amended Terms of Reference.[9]] Signatories to the TOR and Amended TOR were SBTI's counsel, Atty. Cada E. Santamaria-Sena of Siguion Reyna Montecillo & Ongsiako; ROMAGO's counsel, Atty. Melvin L. Villa of Villa Judan & Associates; and Ramon Lorenzo R. Arel, Sr., ROMAGO's authorized representative.

After due proceedings, Arbitrator Beda Fajardo rendered a Decision on February 1, 2005,[10] disposing that:

Premises considered, this Arbitrator hereby resolves the various issues in this case as follows:

ISSUE NO. 1

[SBTI] is entitled to its claim for P16,937,612.68 against [ROMAGO] plus legal interest computed from the time that it made its extrajudicial demand on October 21, 2002 up to its filing of the Request for Arbitration.

ISSUE NO. 2

[SBTI] is entitled to recover attorney's fees from [ROMAGO] in the amount of P500,000.00.

ISSUE NO. 3

[SBTI] is entitled to recover its arbitration costs from [ROMAGO] in the sum of P916,300.04.

ISSUE NO. 4

[SBTI] is not liable to [ROMAGO's] counterclaim of P11,241,058.33.

WHEREFORE, judgment is hereby rendered in favor of Siemens Building [Technologies, Inc.] and against Romago, Inc., ordering the latter to pay the former the sum of SIXTEEN MILLION NINE HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED TWELVE PESOS AND SIXTY EIGHT CENTAVOS (P16,937,612.68), plus legal interest computed from the time that extrajudicial demand was made on October 21, 2002 up to the filing of the Request for Arbitration.

Romago, Inc. is also ordered to pay Siemens Building Technologies, [Inc.] the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) for attorney's fees and NINE HUNDRED SIXTEEN THOUSAND THREE HUNDRED AND 04/100 (P916,300.04) for the costs of arbitration.

SO ORDERED.[11]

SBTI, through counsel, was served a copy of the Arbitrator's decision via personal service on February 3, 2005. ROMAGO's counsel, Atty. Villa, was also served copies of the decision through private courier 2GO on February 3, 2005,[12] received on the same day; and through registered mail on February 7, 2005,[13] received on February 28, 2005.

Meanwhile, on February 16, 2005, SBTI filed a petition for confirmation of the Arbitrator's decision[14] with the Regional Trial Court (RTC) of Makati City, docketed as Special Proclamation No. M-6039.

On March 15, 2005, the RTC issued an Order[15] directing ROMAGO to file its answer to the petition within fifteen (15) days from receipt of the Order.

On March 30, 2005, ROMAGO, through its collaborating counsel, Atty. Jose A.V. Evangelista, filed an answer,[16] praying for the denial of the petition and for the setting aside of the Arbitrator's decision. ROMAGO argued that the Arbitrator displayed partiality in hearing the arbitration case and in rendering the decision. It pointed out that the Arbitrator considered SBTI's claims as gospel truth and granted the same in toto, but denied ROMAGO's counterclaims despite the preponderance of evidence in support of its claim. ROMAGO, thus, contended that SBTI could not ask for the confirmation and execution of the Arbitrator's decision.

After due proceedings, the RTC issued an Order, dated September 5, 2005, declaring the case submitted for decision. Subsequently, on October 10, 2005, Atty. Hernani Barrios entered his appearance as ROMAGO's new counsel,[17] after Atty. Evangelista withdrew his appearance.[18]

On June 22, 2006, the RTC issued an Order[19] granting SBTI's petition, viz.:

After a careful consideration of the parties' respective evidence, the Court resolves to GRANT the Petition.

The instant proceeding is simply a petition for the confirmation of the arbitral award rendered by the PDRCE and for the issuance of a writ for its execution, pursuant to section 23 of R.A. No. 876. Thus, the only relevant issues to be resolved are: (1) whether there has been an Arbitral Award rendered by PDRCI in favor of the petitioner; and (2) whether such award has attained finality in the absence of any motion to vacate the same.

There is no dispute with respect to the first issue as the existence of the Decision is admitted by the parties. The only point of contention now is the issue of whether or not the same Decision has attained finality and hence may now be confirmed for purposes of execution. It is clear to the Court that the answer to this core issue should be in the affirmative. [SBTI] has for its legal anchor Section 26 of the Arbitration Law, which states that, "a motion to vacate, modify or correct the award or decision must be made within 30 days after the award is filed or delivered."

[ROMAGO], does not dispute that it did not file any Motion to Vacate the Award made by the PDRCI Arbitrator. It insists however that it met the requirements for the timely filing of such Motion when it alleged the grounds for vacation in its Answer to the herein petition. This is faulty reasoning. As correctly argued by [SBTI], there is a difference between the act of setting forth an affirmative defense and filing a Motion to Vacate within the context of the law on Arbitration. The Arbitration Law requires the losing party to seek vacation of the award by filing a Motion for this purpose within a period of thirty (30) days from service of the Decision. For as a matter of consequence, failure to do so will amount to an unqualified acquiescence to the findings of the Arbitrator, and if he does not, then the award must be confirmed in accordance with section 23 of the law. The Arbitration Law provides that, where an award is vacated, the Court, in its discretion, may direct a new hearing either before the same arbitrator(s) or before a new arbitrator(s) to be chosen in the manner provided in the submission of the contract for the selection of the original arbitrator(s) and any provision limiting the time in which the arbitrator(s) may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. (Sec. 24 par. (d), R.A. 876).

"It is possible therefore, that when the prevailing party file[d] a petition to confirm a domestic arbitral award, the losing party responds with a counterclaim to have the award vacated. There is a time limit, however, to actions to vacate domestic arbitral awards. The party dissatisfied with the award must institute a suit to vacate the award within one (1) month from the time it is served upon him. If he fails to institute the suit to vacate the award within this period, the award becomes final and executory " x x x.

ROMAGO avers that it actually received its copy of the arbitral Decision on February 28, 2005. But a review of the records would show that it was furnished with a copy of the Arbitral Decision twice. One, by courier on

February 3, 2005, received on February 4, 2005 by certain Amie Arciaga, as evidenced by the courier's internet tracking services; and the second, by registered mail on February 28, 2005 under registry receipt no. 5653, issued by the Ayala post office. Thirty (30) days from February 4n 2005, is March 6, 2005. Hence, the filing of an Answer with Affirmative and special defenses to the Petition now pending before this Court on March 30, 2005 is way beyond that period prescribed by law hence rendering the subject arbitral Decision final and executory." [20]

The RTC disposed, thus:

WHEREFORE, PREMISES CONSIDERED, the Court resolves to CONFIRM the February I, 2005 Decision of the Philippine Dispute Resolution Center Inc. (PDRCI) docketed as PDRCI Case No. 20-2003/SSP. As the said Decision has already attained finality, and as prayed for, let a Writ of Execution be issued to enforce the same. Costs against [ROMAGO].

SO ORDERED. [21]

ROMAGO and Atty. Barrios were served copies of the RTC Order on July 3, 2006. [22]] Despite receipt of the Order, ROMAGO did not interpose an appeal.

On August 22, 2006, Atty. Barrios withdrew his appearance as counsel for ROMAGO. The Law Office of Mutia Trinidad Venadas & Verzosa thereafter entered its appearance as ROMAGO's new counsel, and filed a Petition for Relief from Judgment. [23] ROMAGO claimed that Atty. Barrios failed to interpose an appeal from the June 22, 2006 Order of the RTC, because he was then at his ancestral house in Cabanatuan City taking a three-week rest after being diagnosed with severe hypertension. Atty. Barrios became aware of the June 22, 2006 Order only on July 20, 2006, [24] upon his return to Manila. By then, the period to appeal had already lapsed. ROMAGO asserted that it should not be bound or prejudiced by the negligence of its previous counsel. It added that there exist sufficient grounds to deny SBTI's application for confirmation of decision. Thus, if given a chance to present its side in court, ROMAGO could prove its bona fide and meritorious claims against SBTI. ROMAGO, therefore, prayed for the setting aside of the Arbitrator's decision and of the June 22, 2006 Order. In the alternative, it prayed that it be allowed to file a Notice of Appeal.

SBTI opposed the petition, arguing that ROMAGO's failure to appeal was far from excusable, and prayed for its denial. It argued that to allow the petition to prosper would put a premium on the negligence of ROMAGO's former counsel and would encourage the non-termination of the case. SBTI added that ROMAGO could not invoke the alleged negligence of its counsel as a ground for the setting aside of the Arbitrator's decision, because the negligence took place only after the judgment was rendered. [25]

On December 12, 2006, the RTC denied ROMAGO's petition for

relief from judgment, holding that:

[T]he Supreme [C]ourt has repeatedly reminded lawyers to be circumspect in the handling of their affairs particularly when it comes to pleadings and documents that may spell the difference between the misery or success of their clients. Atty. Barrios, unfortunately, seemed to have failed to exercise that degree of diligence expected of him as [Romago's] counsel, and such failure cannot, by established jurisprudential standards, be described as "excusable." Consequently, such lack of diligence binds his client Romago, Inc., the petitioner herein.

WHEREFORE, the Petition for Relief from Judgment is DENIED for lack of merit. The Order dated 22 June 2006 confirming the 01 February Decision of the P[DR]CI and directing the issuance of a Writ of Execution stands.

SO ORDERED. [26]

ROMAGO filed a motion for reconsideration and to set the case for clarificatory hearing,[27] but the RTC denied the same on March 20, 2007.[28]

ROMAGO then filed a petition for certiorari with application for temporary restraining order (TRO) and writ of preliminary injunction[29] with the CA. It sought the annulment and reversal of the RTC Orders dated June 22, 2006, December 12 2006 and March 20, 2007; and the Arbitrator's decision on grounds of lack of jurisdiction and grave abuse of discretion. ROMAGO contended that the PDRCI and the RTC had no jurisdiction over the dispute. Its contract with SBTI, it continued, is a construction contract, cognizable by the Construction Industry Arbitration Commission (CIAC). It, therefore, asserted that the RTC abused its discretion in confirming the Arbitrator's decision.

On October 19, 2007, the CA rendered the now assailed Decision[30] dismissing the petition for certiorari. Rejecting ROMAGO's argument, it held that the contract between SBTI and ROMAGO is a supply contract, which may be taken cognizance of by the PDRCI. The CA further held that ROMAGO is already estopped from assailing the PDRCI's jurisdiction over the dispute, after actively participating in all its proceedings. The CA added that the Arbitrator's decision already attained finality; thus, the RTC committed no reversible error or grave abuse of discretion in confirming the decision. The CA also sustained the denial of ROMAGO's petition for relief from judgment. It applied the well-settled rule that the negligence of counsel binds the client, and further held that Atty. Barrios' negligence in checking his mails during his three-week rest could hardly be characterized as excusable. Finally, the CA found no grave abuse of discretion, bias or partiality on the part of the Arbitrator in rendering the decision.

The CA disposed, thus:

WHEREFORE, premises considered, the assailed orders dated June 22, 2006, December 12, 2006 and March 20, 2007, respectively, of the RTC, Branch 143, Makati City in Special Proceedings No. M-6039, and the decision dated February 1, 2005 in PDRCI Case No. 20-2003/SSP are hereby AFFIRMED.

SO ORDERED.[31]

ROMAGO's motion for reconsideration suffered the same fate, as the CA denied the same in its Resolution[32] dated February 26, 2008.

ROMAGO is now before us faulting the CA for dismissing its petition for certiorari. It also prayed for a TRO to enjoin the execution of the Arbitrator's decision. In its April 2, 2009 Resolution, this Court granted ROMAGO's prayer, and issued a TRO enjoining the execution of the Arbitrator's decision.

In the main, ROMAGO seeks the nullification of all the proceedings before the PDRCI, RTC and CA, and the setting aside of all the decisions and orders rendered against it on grounds of lack of jurisdiction, grave abuse of discretion and reversible error. Specifically, ROMAGO asserts that SBTI's claim arose from a construction contract. As such, it is a construction dispute that falls within the jurisdiction of the CIAC. It, thus, insists on a new trial before the CIAC.

The petition is devoid of merit.

Executive Order No. 1008 defines the jurisdiction of CIAC, viz.

SEC. 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 dispute 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 *Fort Bonifacio Development Corporation v. Manuel M. Domingo*,^[33] the word 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.

SBTI's scope of work under the ESSA^[34] was:

1.1 x x x to furnish all equipment in accordance with the equipment and delivery schedule x x x, to commence and complete the delivery of all equipment in accordance with the Equipment Supply Sub-contract and to delivery (sic) the equipment ready for installation (except for equipment to be supplied by others (sic) parties as specifically excluded herefrom by agreement of the parties hereto) x x x.

1.2 [to] supply and deliver the equipment in accordance with the Bill of Quantities and Cost Schedule (Attachment Nos. 1 & 2) and equipment delivery schedule (Attachment -3) to the jobsite/designated areas including unloading of equipment from the delivery truck.

1.03 [to] furnish all the necessary shopdrawings (sic) and installation drawings, product brochures/catalogs, spare parts as stipulated on (sic) the Original Bill of Quantities concerning NEES supply equipment.

1.04 [to] have a (sic) responsible representatives for the start up energization including testing and commissioning of NEES supply equipment.

By no stretch of the imagination can the ESSA be characterized as a construction contract. Crystal clear from the provisions of the ESSA is that SBTI's role was merely to supply the needed equipment for the Insular Life Corporate Center project. The ESSA is, therefore, a mere supply contract that does not fall within the original and exclusive jurisdiction of CIAC.

We also note that the Consortium Agreement^[35] between ROMAGO and SBTI contained an arbitration clause, wherein the parties agreed to submit any dispute between them for arbitration under the Philippine Chamber of Commerce and Industry (PCCI),^[36] such as the PDRCI. It is well settled that the arbitral clause in the agreement is a commitment by the parties to submit to arbitration the disputes covered therein. Because that clause is binding, they are expected to abide by it in good faith.^[37] The CA, therefore, correctly rejected ROMAGO's assertion that the PDRCI had no jurisdiction over the suit in the first instance.

Furthermore, the issue of jurisdiction was rendered moot by ROMAGO's active participation in the proceedings before the PDRCI and the RTC.

Records show that ROMAGO's Vice-President for Operations,

Ramon Lorenzo R. Arel, Sr., signed an Agreement to Submit Dispute to Arbitration before the PDRCI.^[38] ROMAGO also concluded and signed the TOR and the Amended TOR confirming its intention and agreement to submit the dispute to PDRCI. It actively participated in the discussion on the merits of the case, even going to the extent of seeking affirmative relief.

We are not unmindful of the settled doctrine that the issue of jurisdiction may be raised by any of the parties or

may be reckoned by the court at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.

However, this case falls within the exception. To repeat, ROMAGO actively participated in the proceedings before the PDRCI; even after an adverse judgment had been rendered by the Arbitrator, it did not assail the PDRCI's jurisdiction over the dispute. In fact, during the proceedings for the confirmation of the Arbitrator's award, ROMAGO's opposition zeroed in on the alleged bias and partiality of the Arbitrator in rendering the decision. Even in its petition for relief from judgment filed with the RTC, the PDRCI's alleged lack of jurisdiction was never raised as an issue. It was only in its petition for certiorari with the CA, and after a writ of execution had been issued, that ROMAGO raised the issue of lack of jurisdiction.

In *Tijam, et al. v. Sibonghanoy, et al.*[39] we held:

[A] party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A.L.R. 79). x x x the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the Court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated -obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court x x x [a]nd in *Littleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

We had emphasized in *Figueroa v. People*[40] and recently in *Apolonia Banayad Frianela v. Servillano Banayad, Jr.*[41] that estoppel by laches supervenes in exceptional cases similar to the factual milieu in *Tijam v. Sibonghanoy*. It is, therefore, too late in the day for ROMAGO to repudiate the jurisdiction of PDRCI over the dispute, and consequently, of the RTC to confirm the decision.

Finally, ROMAGO conceded and estopped itself from further questioning the jurisdiction of the PDRCI and the RTC when it filed a petition for relief from judgment. A petition for relief under Rule 38 of the Rules of Court is only available against a final and executory judgment. If ROMAGO indeed believed that the PDRCI had no jurisdiction over the suit in the first instance, then all the proceedings therein, including the decision, are null and void. Hence, it would not have filed a petition for relief from judgment. In so doing, ROMAGO recognized that the PDRCI had jurisdiction over the dispute.

Certainly, the Arbitrator's decision, which was confirmed by the RTC, had attained finality when ROMAGO failed to interpose an appeal to the CA. Hence, the decision may now be executed.

In a last ditch effort, ROMAGO attempted to avoid this final and executory judgment by filing a petition for relief from judgment with the RTC.

Unfortunately for ROMAGO, a petition for relief from judgment, being an equitable remedy, is allowed only in exceptional cases, as when there is no other available or adequate remedy. Under Rule 38[42] of the 1997 Rules of Civil Procedure, it may be availed of only after a judgment, final order or other proceedings were taken against petitioner in any court through fraud, accident, mistake, or excusable negligence.[43]

Thus, a party is not entitled to relief under Rule 38, Section 2, of the Rules of Court if he was not prevented from filing his notice of appeal by fraud, accident, mistake, or excusable negligence. Such relief will not be granted to a

party who seeks to be relieved from the effects of the judgment, when the loss of the remedy at law was due to his own negligence or to a mistaken mode of procedure for that matter; otherwise, the petition for relief will be tantamount to reviving the right of appeal, which has already been lost either due to inexcusable negligence or due to a mistake of procedure by counsel.[44]

ROMAGO ascribes its failure to appeal to the negligence of its previous counsel, Atty. Barrios. It claims that the receipt of the June 22, 2006 Order was not brought to Atty. Barrios' attention, because the latter was then at his ancestral house taking a three-week rest after being diagnosed with severe hypertension. According to ROMAGO, this is a clear case of excusable negligence on the part of its counsel, warranting a relief from judgment.

We are not convinced.

Records show that ROMAGO was also served a copy of the Order dated June 22, 2006 on July 3, 2006.[45] Yet, it did not bother to contact its counsel to inquire on the status of the case or the possibility of, or the need to, appeal. Clearly, ROMAGO's failure to appeal was not only due to its counsel's negligence, but also due to its own negligence.

Besides, we are not convinced by ROMAGO's claim that its counsel was suffering from high blood pressure at that time.

The affidavit[46] attached to ROMAGO's petition for relief from judgment left blank the names of the doctor and the hospital that Atty. Barrios consulted. Thus:

1. On 29 June 2006, I was at my ancestral home in Cabanatuan City. As my pulsating headaches, blurred or impaired vision, nausea and vomiting had become too unbearable, I consulted Dr. _____, the physician in charge in _____ Hospital, Cabanatuan City.[47]

The omission of these important details casts serious doubts on the credibility of the excuse proffered by ROMAGO and its counsel, and strengthens our belief that the said allegation was a mere afterthought, to cover up its and its own counsel's collective negligence.

It is settled that clients are bound by the mistakes, negligence and omission of their counsel.[48] While, exceptionally, the client may be excused from the failure of counsel,[49] the circumstances obtaining in the present case do not persuade this Court to take exception.

Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice. To reverse the CA Decision denying petitioner's petition for relief from judgment would put a premium on the negligence of petitioner's former counsel and encourage endless litigation. If the negligence of counsel is generally admitted as a justification for opening cases, there would never be an end to a suit so long as a new counsel can be employed who could allege and show that prior counsel had not been sufficiently diligent, experienced or learned.[50] We, therefore, write *finis* to this litigation

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 99128 are AFFIRMED. The temporary restraining order issued by this Court on April 2, 2008 is LIFTED.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[*]The present petition impleaded the Court of Appeals, Hon. Zenaida T. Galapate-Laguilles. Presiding Judge of Branch 143, Regional Trial Court of Makati City, and Beda G. Fajardo, Sole Arbitrator of the Philippine Dispute Resolution, Inc., as respondents. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead the lower courts and the judges thereof as petitioners or respondents. Hence, the deletion of the Court of Appeals, of Hon. Galapate-Laguilles and of Beda Fajardo from the title.

[1] Penned by Associate Justice Remedios A. Salazar-Femando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; rollo, pp. 113-130.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justice Lucas P. Bersamin (now a member of this Court) and Enrico A. Lanzanas, concurring; rollo, pp. 133-135.

[3] Annex "D," rollo, pp. 187-189.

[4] Annex "E," id. at 190-199.

[5] Annex "G," id. at 202-212.

[6] Annex "H," id. at 238.

[7] Annex "J," id. at pp. 240-245.

[8] Annex "K," id. at 247-251.

[9] Annex "L," id. at 252-257.

[10] Annex "S," id. at 370-395.

[11] Id. at 394-395.

[12] Id. at 686.

[13] Id. at 685.

[14] Annex "T," id. at 399-410.

[15] Annex "U," id. at 687.

[16] Annex "V," id. at 688-706.

[17] Records, p. 419.

[18] Id. at 414.

[19] Annex "Z," rollo, pp. 774-780.

[20] Id. at 778-779.

[21] Id. at 780.

[22] See records, p. 431-A.

[23] Annex "CC," rollo, p. 783.

[24] Annex "AA," id. at 781.

[25] Annex "DD" id. at 794-806.

[26] Annex "HH." id. at 828-830, 830.

[27] Annex "II," id. at 831-835.

[28] Annex "JJ," id. at 837-838.

[29] Annex "KK," id. at 839-882.

[30] Supra note 1.

[31] Id. at 129.

[32] Supra note 2.

[33] G.R. No. 180765, February 27, 2009.

[34] Annex "E," supra note 4, at 191.

[35] Annex "D," supra note 3.

[36] 6. ARBITRATION:

In case of dispute arising from this agreement or any other agreement between the parties herein and relative to the PROJECT, the parties herein agree to submit such dispute to Arbitration in MAKATI before a single arbitrator under the PCCI Conciliation and Arbitration Rules.

[37] Reyes v. Balde II, G.R. No. 168384, August 7, 2006, 498 SCRA 186.

[38] Annex "H," supra note .

[39] 131 Phil. 556, 564(1968).

[40] G.R. No. 147406, July 14, 2008, 558 SCRA 63. 81

[41] G.R. No. 169700, July 30, 2009.

[42] SEC. 2. Petition for relief from denial of appeal. —When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[43] Dela Cruz v. Andres, G.R. No. 161864. April 27, 2007, 522 SCRA 585.

[44] Fukuzumi v. Sanritsu Great International Corporation, G.R. No. 140630, August 12, 2004. 436 SCRA 228.

[45] See return card, records, p. 431 -A.

[46] Records, p. 445. 47

[47] Id.

[48] Insular Life Savings and Trust Company v. Runes, Jr., G.R. No. 152530, August 12. 2004, 436 SCRA317.

[49] (i) where reckless or gross negligence of counsel deprives the client of due process of law: (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require, such exceptions are unavailing in the instant case. See Azucena v. Foreign Manpower Services, G.R.

No. 147955, October 25, 2004, 441 SCRA 346, 356.

[50] Azucena v. Foreign Manpower Services, *supra*.

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