

ASSET POOL A (SPV-AMC), INC., PETITIONER, VS. CLARK DEVELOPMENT CORPORATION, RESPONDENT.*G.R. No. 205915. November 10, 2015*

Ponente: BERSAMIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-205915/>**BERSAMIN, J.:**

The petitioner was the transferee and successor-in-interest of United Coconut Planters Bank (UCPB) and Metropolitan Bank and Trust Company (Metrobank) who were the secured creditors of Mondragon Leisure and Resorts Corporation (MLRC) for its working capital requirements in the development and operation of the Tourism Estate Phase I that eventually became known as the Mimosa Leisure Estate (MLE).

This case was the appeal of the petitioner of the adverse decision promulgated on September 4, 2012 in CA-G.R. SP No. 104129,[1] whereby the Court of Appeals (CA) dismissed its petition for certiorari assailing the June 24, 2008 order issued by the Regional Trial Court (RTC), Branch 62, in Angeles City, Pampanga in Civil Case No. 13926, an action for specific performance and damages brought by the petitioner to compel the respondent to include the claims of the secured creditors in the documents attendant to the bidding for the privatization of the MLE.[2] Also assailed through the petition for certiorari was the CA resolution promulgated on February 7, 2013,[3] whereby the CA denied its motion for reconsideration.

On August 19, 2015, and still during the pendency of this appeal, the respondent announced that the privatization of MLE would again be open for public bidding.[4] It issued the 2015 Terms of Reference (2015 TOR) setting the submission, opening and evaluation of bids on October 13, 2015. The schedule was later moved to October 27, 2015.[5]

Acting on the petitioner's Very Urgent Motion for Issuance of a Temporary Restraining [Order]/Status Quo Order,[6] the Court issued a temporary restraining order (TRO) on October 21, 2015 to enjoin the respondent, its agents and representatives from implementing the 2015 TOR, or from proceeding in any manner with the disposal of the MLE.[7]

On November 6, 2015, the parties submitted their Urgent Joint Motion to Render Judgment Based on a Compromise Agreement and Lift the Temporary Restraining Order dated October 21, 2015 for the purpose of terminating their pending disputes. They attached the compromise agreement and its annexes.

The compromise agreement is reproduced verbatim, to wit:

COMPROMISE AGREEMENT**THE PUBLIC IS INFORMED:**

This Agreement is made and entered into by:

CLARK DEVELOPMENT CORPORATION, a government-owned and controlled corporation duly organized and existing under the laws of the Republic of the Philippines, with postal office address at Bldg. 2122, E. Quirino St., Clark Freeport Zone, Philippines, herein represented by its President and Chief Executive Officer,

ARTHUR P. TUGADE, duly authorized for the purpose of this Agreement under Board Resolution No. RM-10-04, Series of 2015. hereinafter referred to as "CDC",

-and-

ASSET POOL "A" (SPV-AMC), INC., a corporation duly organized and existing under Philippine laws with principal office address at Unit 1406, 14/F Ayala Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City and office address at No. 502, PhilDAF Building, 407 Sen. Gil Puyat Avenue, Makati City 1200, herein represented by its Director, HERBERT YU, duly authorized for the purpose of this Agreement under Board Resolution dated November 5, 2015, hereinafter referred to as "APA".

Either CDC or APA is referred to as a "party", while both shall be referred to as the "parties".

ANTECEDENTS

x x x x

ACCORDINGLY, in view of the foregoing premises, and the covenants hereinafter provided, the parties hereby agree as follows:

- Upon approval of this Compromise Agreement by the Supreme Court, CDC to pay APA the sum of PhP277.413 Million in Manager's or Cashier's Check representing the secured creditor's 12.5% share in the gross gaming revenues of the Regency Casino for the period up to 30 June 2015 pursuant to Section 6 of the 20 February 2004 MOA.
- Upon signing of this Compromise Agreement, APA and CDC shall jointly file the URGENT JOINT MOTION TO RENDER JUDGMENT BASED ON A COMPROMISE AGREEMENT and LIFT THE TEMPORARY RESTRAINING ORDER DATED OCTOBER 21, 2015 before the Supreme Court in Asset Pool A [SPV-AMC], Inc. vs. Clark Development Corporation, G.R. No. 205915.
- APA and CDC, within seven (7) working days upon approval by the Supreme Court of this Compromise Agreement, shall file the appropriate pleading for the withdrawal and/or dismissal with prejudice of all cases stated in Appendix I of this Agreement. Should there be cases between APA and CDC that were not included and/or omitted in Appendix I due to the lack of knowledge of the parties or any reason at all, the said cases shall be deemed included and be deemed withdrawn and/or dismissed accordingly.
- As agreed and committed by APA, MLRC shall file the appropriate pleading for the withdrawal and/or dismissal with prejudice of all cases between MLRC and CDC listed in Appendix II of this Agreement. The pleadings embodying MLRC's agreement to the withdrawal and/or dismissal of the cases with prejudice shall be submitted by APA to CDC within 7 working days upon approval by the Supreme Court of this Compromise Agreement.
- Failure of APA to file or submit the necessary pleading/s under Sections 3 & 4 of this Agreement entitles CDC not to release the amount provided for under Section 7.1 of this Agreement until all the necessary pleadings for the withdrawal and/or dismissal of all cases listed in Appendices I and II are filed or submitted.
- The agreed revenue share from the Regency Casino operations will continue to accrue until successful privatization of the MLE. CDC shall pay APA its share in the Regency Casino annually until the date of signing of the Lease Agreement with the winning bidder. APA's entitlement to the revenue share from the Regency Casino shall cease in case of closure of said casino.
- In the event of successful privatization of the MLE:

7.1 The total amount of PhP765 Million to be sourced out from the proceeds of the privatization of the MLE shall be released by CDC to APA upon signing of the Lease Agreement with the winning bidder of the MLE and

payment of the consideration to CDC pursuant to Section 8 of the 20 February 2004 MOA. This provision shall likewise apply in case of successful privatization in the future.

7.2 Should the ongoing and future privatization fail, CDC does not have any obligation to release the amount of PhP765 Million to APA. It is the understanding by the parties that the payment by CDC to APA on this regard shall be sourced from the proceeds of the privatization paid to CDC by winning bidder.

- In consideration of the execution and approval by the Supreme Court of this Agreement, both parties further agree as follows:

8.1 All the derivative rights, privileges, interests and obligations of APA over the MLE or pertaining to the Secured Creditors are hereby waived, consolidated and assigned in favor of CDC.

8.2 The parties shall forever waive all other claims and counterclaims against each other, whether in the form of money claims, damages, attorney's fees and cost of suit, and agree not to file any case of any kind or nature whatsoever arising from the same facts, incident, claim, cause or causes of action.

8.3 The parties hereby accept this Agreement as the full and final settlement of all their claims, rights, and causes of action arising out of or in any way connected with the cases stated in Appendix I of this Agreement.

8.4 This Agreement shall not in any way be construed as an admission on the part of any party of any fault, negligence or liability of whatever kind and nature, in connection with all the cases included in this Agreement.

8.5 All parties shall bear their respective litigation expenses, attorney's fees and all other incidental expenses incurred in relation to or with respect to the cases stated in this Agreement.

8.6 The Parties acknowledge the full settlement of its mutual rights, obligations and claims against each other arising from the 20 February 2004 MOA such that the obligations arising therefrom are deemed fully performed with the execution and compliance by the parties of their respective obligations under this Agreement.

- Both parties confirm that they have read and understood the contents of this Agreement and that they voluntarily signed the same.

- This Agreement shall take effect upon approval by the Supreme Court in G.R. No. 205915.

SIGNED by the Parties this 06 November 2015 at Quezon City.

CLARK DEVELOPMENT CORPORATION

By:

(Signed)

ARTHUR P. TUGADE

President and Chief Executive Officer

ASSISTED BY:

OFFICE OF THE GOVERNMENT CORPORATE COUNSEL

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(Signed)

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MCLE Compliance V-0005463, 1/14/2015

ASSET POOL A SPV-AMC, INC.

By:

(Signed)

HERBERT YU

Director

ASSISTED BY:

THE LAW FIRM OF LUCENARIO DOMINGO ROMBAOA
& ASSOCIATES

By:

(Signed)

DARWIN F. CANO

Roll No. 59433

PTR No. 0560935/Jan. 05, 2015/Q.C.

IBP No. 0981309/Jan. 05, 2015/Q.C.

MCLE No. IV-0017317/April 17, 2013[8]

A compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid a litigation

or put an end to one already commenced.[9] According to Article 2029 of the Civil Code, the court shall endeavor to persuade the parties in a civil case to agree upon some fair compromise. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided such stipulations, clauses, terms and conditions are not contrary to law, morals, good customs, public order, or public policy.[10] Once the parties have entered into a compromise, their agreement has the effect and authority of res judicata, but there shall be no execution except in compliance with a judicial compromise.[11] Such means of dispute settlement is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.[12]

WHEREFORE, in light of the foregoing, the Court APPROVES the Compromise Agreement dated November 6, 2015; RENDERS judgment in accordance with its terms and stipulations; and ENJOINS the parties to comply with its terms and stipulations in utmost good faith.

The Court LIFTS and SETS ASIDE the temporary restraining order issued on October 21, 2015; and DISMISSES this appeal without pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Bersamin, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 12-33; penned by Associate Justice Agnes Reyes-Carpio, with Associate Justice Rosalinda Asuncion-Vicente (retired) and Associate Justice Priscilla J. Baltazar-Padilla concurring.

[2] Id. at 140-141.

[3] Id. at 35-36.

[4] Id. at 805.

[5] Id. at 788. 895.

[6] Id. at 787-804.

[7] Id. at 898-900.

[8] Id. at 905-920.

[9] Article 2028, Civil Code.

[10] Article 1306, Civil Code.

[11] Article 2037, Civil Code.

[12] Tankicing v. Alarm, G.R. No. 181675, June 22, 2009, 590 SCRA 480, 493.

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