

# FIRST DIVISION

[ G.R. Nos. 242904-05, February 10, 2021 ]

**DATEM INCORPORATED, PETITIONER, VS. ALPHALAND MAKATI PLACE, INC. AND/OR ALPHALAND SOUTHGATE TOWER, INC., RESPONDENTS.**

## DECISION

**ZALAMEDA, J.:**

Since the Construction Industry Arbitration Commission's (CIAC) jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract.<sup>[1]</sup>

### The Case

Before the Court is a Petition for Review on *certiorari*<sup>[2]</sup> filed by petitioner DATEM Incorporated (DATEM) assailing the Decision<sup>[3]</sup> dated 25 October 2018 of the Court of Appeals (CA) in CA-G.R. SP. Nos. 152827 and 155448, which annulled and set aside for lack of jurisdiction the Final Award<sup>[4]</sup> dated 05 April 2018 issued by an arbitral tribunal of the CIAC.

### Antecedents

The present controversy arose from the construction of Towers 1, 2, and 3 of Alphaland Makati Place, a condominium project located at Ayala Avenue Extension corner Malugay Street, Barangay Bel-Air, Makati City. Said project was a residential and commercial reinforced concrete structure consisting of: (i) a six (6)-level podium with a five (5)-level basement and (ii) three (3)-tower buildings. All three (3) towers were to be constructed on top of the podium while the external ground floor of the latter was to be extensively landscaped with swimming pools, water features, and hard and soft landscaping.<sup>[5]</sup>

In May 2014, respondents Alphaland Makati Place Incorporated and Alphaland Development Incorporated<sup>[6]</sup> (Alphaland, collectively) entered into a construction agreement with DATEM for the performance of civil, structural, and architectural works on Towers 1, 2, and 3 of Alphaland Makati Place. The total contract price of the construction works amounted to Php1,260,000,000.00.<sup>[7]</sup>

During the course of the construction works, DATEM submitted separate progress billings to Alphaland for Main Contract Works and Change Orders. Out of these billings, Alphaland has approved and paid the total gross amount of Php1,167,442,794.02 for the Main Works and Php230,201,525.49 for Change

Orders. An amount equivalent to **Php34,076,747.09**, however, remained unpaid to DATEM consisting of the following:[8]

<b>Billing Description</b>	<b><u>Amount</u></b>
<b><i>Original Contract</i></b>	<b><i>Php12,496,964.65</i></b>
Progress Billing No. 119	Php3,877,820.30
Progress Billing No. 120/Final Billing	Php8,619,144.35
<b><i>Change Orders</i></b>	<b><i>Php19,811,338.02</i></b>
Billed Change Orders Form with CO Form	Php9,048,787.42
Billed Change Orders Form w/out CO Form	Php7,470,750.86
Billed Unreconciled Change Orders	Php3,291,799.74
<b><i>Labor escalation 2<sup>nd</sup> Tranche</i></b>	<b><i>Php887,710.87</i></b>
Progress Billing No. 18	Php887,710.87
<b><i>Labor escalation WAO18</i></b>	<b><i>Php625,897.83</i></b>
Progress Billing No. 19	Php625,897.83
<b><i>Exterior wall and Vertical Fins</i></b>	<b><i>Php254,835.80</i></b>
Progress Billing No. 15	Php254,835.80
<b><i>TOTAL AMOUNT FOR UNCOLLECTED BILLINGS</i></b>	<b><i>Php34,076,747.09</i></b> [9]

The completion of construction works was delayed several times due to causes allegedly not attributable to DATEM, hence, the latter was constrained to submit to Alphaland nine (9) claims for time extensions. Through its construction manager, Jose Aliling Construction Management, Inc. (JACMI), Alphaland granted the first six (6) time extensions to DATEM until 30 September 2015. Pending evaluation of the last three (3) time extensions, JACMI's services were terminated and no substitute independent construction manager was appointed by Alphaland as replacement.[10]

On 06 September 2015, DATEM completed the construction works at Tower 1 and Tower 2, which Alphaland accepted and certified. Thereafter on 23 November 2015, Alphaland obtained a Certificate of Occupancy for the aforesaid buildings from the City of Makati. However, certain design issues affecting Tower 3 have not been resolved by Alphaland. Moreover, Alphaland deducted from DATEM's contract the balance of Tower 3 construction works in the total amount of Php72,396,659.29. By virtue of the deduction of the balance of Tower 3 works, DATEM claimed it completed the Project as of 30 September 2015.[11]

Despite completion of the Project, DATEM claimed that Alphaland refused to release its retention money for Original Works and Change Orders in the total amount of **Php121,930,996.35**, broken down as follows:[12]

<b>Retention</b>	<b><u>Amount</u></b>
Original Works	Php116,744,297.40
Change Orders	Php1,163,157.61

WAO 18	Php770,570.44
Labor Escalation 2nd Tranche	Php1,056,151.58
Exterior Walls and Vertical Fins	Php2,196,837.32
Total	<b>Php121,930,996.35<sup>[13]</sup></b>

On 27 January 2017, DATEM sent a letter to Alphaland informing the latter of its decision to terminate the balance of construction works to be performed on Tower 3 because Alphaland had dilly-dallied on the issues plaguing the aforesaid building for a considerable amount of time. DATEM thereafter demanded payment from Alphaland for the following unpaid claims stemming from the Project:<sup>[14]</sup>

Billings for work accomplishments	Php34,076,747.09
Release of balance of retention money	Php121,930,996.35
Extended preliminaries	Php153,109,616.92 <sup>[15]</sup>

Alphaland refused to settle the above-quoted claims of DATEM, hence, the latter was constrained to file a complaint before the CIAC on the basis of an arbitration clause in their Construction Agreement.<sup>[16]</sup>

In response to DATEM's complaint, Alphaland filed a motion to dismiss before the CIAC wherein they challenged the latter's jurisdiction on account of DATEM's alleged non-compliance with a condition precedent before submission of a dispute under the arbitration clause.<sup>[17]</sup> It was denied by the CIAC in an Omnibus Order dated 25 August 2017. Alphaland moved for reconsideration but the same was also denied by the CIAC.<sup>[18]</sup>

Aggrieved by the denial of its motion to dismiss, Alphaland filed a petition for *certiorari* before the CA. The aforesaid petition was docketed as CA-G.R. SP No. 152827.<sup>[19]</sup>

### **Arbitral Tribunal's Award**

Pending resolution of CA-G.R. SP No. 152827, the CIAC rendered its Final Award<sup>[20]</sup> dated 05 April 2018 in favor of DATEM. The dispositive portion provides:

WHEREFORE, judgement is hereby rendered in favor of Claimant Datem Incorporated and against Respondents Alphaland Makati Place, Inc. and Alphaland Southgate Tower, Inc. the total amount of **Php235,901,940.49**, broken down as follows:

<i>Description</i>	<i>Claimed Amount</i>	<i>Award</i>
Release of Retention	Php121,930,996.35	Php121,930,996.35
Money Progress Billings	[Php] 34,076,747.09	[Php] 29,6958,83.45 (sic)
Return of unjustified deductions	[Php] 1,131,687.66	[Php] 1,131,687.66
Extended Preliminaries	[Php]153,109,616.92	[Php] 99,384,144.21
Extended use of Formworks	[Php] 15,480,038.67	

(Less: undesignated Payment)	-	[Php]35,000,000.00)
Interest	[Php] 40,658,647.89	[Php] 12,122,802.52
Exemplary Damages	[Php] 1,000,000.00	[Php] 0.00
Attorney's fees	[Php] 15,000,000	[Php] 4,225,000.00
Cost of suit	[Php] 3,000,000.00	[Php] 2,411,426.30
TOTAL	Php385,387,734.58	Php235,901,940.49

Upon this Final Award becoming final, interest at 6% per annum shall be further paid on the outstanding amount until full payment thereof shall have been made, 'this interim period being deemed to be at that time already a forbearance of credit.'

SO ORDERED.<sup>[21]</sup>

Alphaland filed another petition before the CA to assail the Final Award. The subsequent petition was docketed as CA-G.R. SP No. 155448, and thereafter consolidated with the previous petition in CA-G.R. SP No. 152827.<sup>[22]</sup>

### CA Ruling

On 25 October 2018, the CA rendered its decision<sup>[23]</sup> annulling the CIAC's Final Award for lack of jurisdiction.<sup>[24]</sup> According to the CA, a condition precedent was imposed by the parties before either of them can submit any dispute for arbitration. However, this precondition was not fulfilled before DATEM instituted the arbitration case.<sup>[25]</sup> Consequently, the CA decreed CIAC had no jurisdiction to resolve the issues raised by DATEM.<sup>[26]</sup>

The dispositive portion CA decision provides:

**ACCORDINGLY**, the Petition for Certiorari in CA-G.R. SP No. 152827 is **GRANTED**. The *Omnibus Order* dated August 25, 2017 and Order dated September 18, 2017 of the Arbitral Tribunal of the Construction Industry Commission in, CIAC Case No. 21- 2017, are **SET ASIDE**. The CIAC is hereby declared to have no jurisdiction over CIAC Case No. 21-2017 and consequently, the *Final Award* rendered by its Arbitral Tribunal in the said case, dated April 5, 2018, is hereby **ANNULLED** and **SET ASIDE** for lack of jurisdiction. CIAC Case No. 21-2017 is hereby ordered **DISMISSED**.

**SO ORDERED.**<sup>[27]</sup>

Hence, DATEM filed the instant petition for review on *certiorari*.

### Issue

The primordial issue is whether or not the CA erred in finding that the CIAC lacked jurisdiction over the case. DATEM argued Executive Order No. (EO) 1008 vests CIAC with automatic jurisdiction when there is an arbitration clause, and non-compliance with a precondition cannot oust CIAC of its jurisdiction.<sup>[28]</sup>

### Ruling of the Court

We find merit in DATEM's petition.

### *Procedural matters*

Before delving into the main issue, the Court deems it necessary to address Alphaland's assertion that DATEM attached a defective verification to the petition. According to Alphaland, the verification was dated 28 November 2018. However, the petition itself was filed on 17 December 2018. Thus, Alphaland claims the petition is fatally defective because DATEM's representative cannot "validly certify the truth of a FUTURE event."<sup>[29]</sup>

Alphaland's contention is misplaced. It is settled that the verification of a pleading is only a formal, not a jurisdictional requirement intended to secure the assurance that the matters alleged in a pleading are true and correct.<sup>[30]</sup>

The Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
- 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. x x x<sup>[31]</sup>

The variance between the dates of the verification and the petition does not necessarily contradict the categorical declaration made by petitioners that they read and understood the contents of the pleading. A variance in their dates is a matter that may satisfactorily be explained. To demand the litigants to read the very same document that is to be filed in court is too rigorous a requirement since what the Rules require is for a party to read the contents of a pleading without any specific requirement on the form or manner in which the reading is to be done. What is important is that efforts were made to satisfy the objective of the Rule, that is, to ensure good faith and veracity in the allegations of a pleading.<sup>[32]</sup>

Here, the variance between the filing date of the petition and the date it was verified is not fatal to DATEM's case. In its reply,<sup>[33]</sup> DATEM satisfactorily explained the variance in dates and narrated that the petition was already prepared and verified as of 21 November 2018. However, DATEM's counsel was only able to secure the certified documents from the CA and CIAC thereafter. Moreover, the collation, scanning, and reproduction of all documentary requirements were later completed on 17 December 2018.<sup>[34]</sup> Clearly, even if the dates were different, DATEM substantially complied with the objective of the verification requirement.