

SECOND DIVISION

[G.R. No. 232801, June 30, 2021]

PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO), PETITIONER, VS. DFNN, INC. (DFNNI), RESPONDENT.

LAZARO-JAVIER, J.:

The Cases

In **G.R. No. 232801**, the Philippine Charity Sweepstakes Office (PCSO) assails the following dispositions of the Court of Appeals in **CA-G.R. SP No. 145462** entitled *DFNN, Inc. v. Philippine Charity Sweepstakes Office (PCSO)*, Hon. Judge Rizalina T. Capco-Umali (in her capacity as Presiding Judge of Branch 212, Regional Trial Court of Mandaluyong City):

- a. **Decision**^[1] dated February 20, 2017 reversing the Order dated April 11, 2016 of the Regional Trial Court-Branch 212, Mandaluyong City (RTC-Mandaluyong) and ordering the consolidation of Civil Case No. MCI5-9557 with Special Proceedings No. M-7844 before the Regional Trial Court-Branch 66, Makati City (RTC-Makati); and
- b. **Resolution**^[2] dated July 10, 2017 denying the motion for reconsideration of PCSO.

On the other hand, in **G.R. No. 234193**, PCSO assails the dispositions of the Court of Appeals in **CA-G.R. SP No. 145983** entitled *Philippine Charity Sweepstakes Office (PCSO) v. DFNN, Inc., viz.:*

1. **Decision**^[3] dated November 17, 2016 affirming the Decision dated February 17, 2016 and Order dated May 18, 2016 of the RTC-Makati in Special Proceedings No. M-7844 which increased the award of damages decreed in the subject Arbitral Award in favor of DFNNI; and
2. **Resolution**^[4] dated August 31, 2017 denying the motion for reconsideration of PCSO.

Antecedents

On April 9, 2003, petitioner PCSO and respondent DFNNI^[5] entered into an Equipment Lease Agreement (ELA) for systems design and development and upgrade of a lotto betting platform *via* Personal Communication Devices (PCD)^[6]. Under the ELA, PCSO agreed to exclusively lease from DFNNI all hardware, software and technical skills to design and develop the application of PCD for the acceptance and processing of bets from PCD users in the Philippines. The ELA contained an arbitration clause mandating that any dispute or controversy shall be settled through arbitration.^[7]

On March 9, 2005, prior to the launch of the System, PCSO issued Board Resolution No. 080, series of 2005 unilaterally rescinding the ELA for DFNNI's supposed failure to comply with its obligations and commitment, including the implementation of the project within six (6) months from the execution of the contract, viz.:

"WHEREAS, DFN[N]I, in a letter to GM Rosario Uriarte, dated January 18, 2005, admitted and confirmed its failure to secure the conformity and cooperation of Smart and Globe and instead (sic) argued that "the signed contracts were the obligations of the PCSO[,]"(sic) despite the clear agreement between the parties that it should be DFN[N]I that should procure the conformity of the telecoms w[h]ile conceding that the final contract should be signed by PCSO[;]

WHEREAS, to date, only minor telecom players, namely, Sun Cellular and Nextel, has expressed their intention to cooperate in implementing the proposed project. Considering the limited number of subscribers of the Sun Cellular and Nextel, the text betting project is no longer feasible, as it will not generate the projected income, as proposed;

WHEREAS, PGMC, in its letter dated July 20,2004, from Mr. Kenny Low, Vice President for Operations, cited the potentially grave risks to the integrity of the PCSO online lottery central system due to the interconnection. Thus, PCSO and its lottery system runs a grave risk in incurring problems relating to technical glitches, validation and claiming of winnings due to the proposed interface of systems;

WHEREAS, in light of the foregoing, it appears that the System built by DFNN[I] cannot interface into the PGMC's system in a seamless manner, thereby putting grave risks in the PCSO's betting systems, which could generate controversies and negative publicity that will adversely affect the integrity of the lotto project as well as the established trust of the playing public in PCSO's lotto game;

WHEREFORE, for all the foregoing reasons, to wit: non-fulfillment of a suspensive condition relative to the interconnection cooperation with PGMC and ILTS as well as the non-conformity of Globe and/or Smart making the text betting project no longer feasible, doubts against the legality of the ELA as being contrary to laws, morals and public policy; lack of authority of DFN[N]I to engage in the proposed undertaking; absence of public bidding, as well as doubts arising from the unsigned Minutes of the Meetings where the authority to enter into the ELA was allegedly given, **RESOLVED, THAT THE BOARD NOW RESCIND, AS IT HEREBY RESCINDS, THE ELA DATED APRIL 9, 2003 BETWEEN THE PCSO AND DFN[N]I, COPY OF WHICH IS ATTACHED HERETO AND MADE AN INTEGRAL PART HEREOF;**"^[8] (Emphasis retained.)

By letter dated April 5, 2005, PCSO informed DFNNI of the rescission. On December 12, 2005, DFNNI replied, asking for a possible solution acceptable to all parties concerned.

On December 14, 2007, DFNNI wrote to PCSO requesting, this time, for voluntary

proceedings to resolve the issues which led to the cancellation of the ELA. PCSO denied the request.^[9] Thus, DFNNI subsequently filed a Request for Arbitration against PCSO where it claimed PhP1,913,948,850.00 as liquidated damages based on the estimated revenue of the project, inclusive of temperate damages, attorney's fees, and litigation costs.

Proceedings before the *Ad Hoc* Arbitration Panel

An *Ad Hoc* Arbitration Panel was consequently constituted, chaired by Atty. Victor N. Alimurung, with members Atty. Fulgencio S. Factoran, Jr. and Atty. Jose Tomas C. Syquia. During the arbitration proceedings,^[10] DFNNI claimed that PCSO had no legitimate ground to rescind the ELA. Since the rescission was void, the ELA should be reinstated and it (DFNNI) should be awarded temperate damages of P2,000,000.00 and attorney's fees of P1,000,000.00. Should reinstatement no longer be feasible, PCSO should pay P1,913,948,850.00 as liquidated damages.

PCSO countered that the rescission was valid because DFNNI failed to: (a) integrate its system with PCSO's existing lessors, Philippine Gaming Management Corporation (PGMC) and Pacific On-line System Corporation; (b) elicit the conformity and cooperation of Globe and Smart to implement PCD betting; and (c) deliver the system within six (6) months from execution of ELA.^[11]

In sum, the parties asked the Arbitration Panel to: (a) rule on the validity of the rescission of the ELA; and (b) should the rescission be found invalid, determine the award of damages due DFNNI, if any.^[12]

The Arbitral Award

By Arbitral Award dated May 21, 2015,^[13] the rescission was declared to be improper, and DFNNI, consequently entitled to liquidated damages of P27,000,000.00 and the return of its equipment, *viz.*:

Claimant DFNNI is entitled to Liquidated damages as provided in the ELA.

As the defaulting party, PCSO's liability for damages is governed by Section 13.2(i) of the ELA, which provides as follows:

- (i) PCSO, if it is the party in default, shall pay DFNNI liquidated damages in the amount (sic) equal to the market value of the System plus rental payments for the unexpired term of this Agreement as provided under Section 10.2 and 10.3 hereof, inclusive of a penalty charge of two percent (2%) per month on the amount due computed from the date of termination or cancellation of the Agreement to the actual date of payment. For the purposes of this provision, "market value" shall be stipulated at Twenty Seven Million Pesos (P27,000,000) less depreciation of twelve and one half percent (12.5%) per year beginning from execution of this Agreement. "Unexpired term of rental payments" shall be computed based on the lease charge of five percent (5%) of the total value of bets placed

through this System provided by DFNN[I] or the amount of Five Pesos (P5.00) per successful registrant under the System, whichever is higher, at the time such default shall have occurred multiplied by the remaining period of the term of this Agreement. PCSO shall also return the System to DFNN[I] in accordance with Section 9.2 hereof.

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In addition to liquidated damages, the parties likewise agreed that PCSO, if the defaulting party, shall pay DFNN[I] for rental for the unexpired term of the ELA.

The Arbitration Panel holds that the award of the stipulated liquidated damages as set forth in the ELA is just and reasonable. PCSO did not present any evidence to prove that the market value of the system as defined in the ELA is excessive, or is iniquitous or unconscionable.

The provision on depreciation cannot be considered (or deducted) since the ELA was terminated even before the System could be launched on a commercial basis. For the same reason, rental payments for the unexpired term of the rental payment cannot be granted since the said rental payments axe to be "computed based on the lease charge of five percent (5%) of the total value of bets placed through this system provided by DFNN[I] or the amount of Five pesos (5.00) per successful registrant under the system, whichever is higher, at the time such default shall have occurred multiplied by the remaining period of the term of this Agreement." Since the System was never commercially launched, any claim for the unexpired term of rental payments would be purely speculative.

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DFNN[I] did submit a feasibility study on projected lotto bettings using DFNN[I]'s System. Since there was no commercial launch of the System, however, there obviously were no successful registrants or total value of bets that could serve as a basis for computing the rental payments for the unexpired term of the ELA. Projections are plainly speculative and based on conjecture. Significantly, DFNN[I] did not present any witness to substantiate or validate its projections. Thus, in the absence of competent/reliable evidence, DFNN[I]'s claim for the rental payments on a System which was never commercially launched cannot be granted.

On the two percent interest, it is evident that the interest referred to unpaid lease rentals. As there are no lease rentals due, neither can there be any interest thereon.

WHEREFORE, ALL ABOVE PREMISES CONSIDERED, the Arbitration Panel rules that respondent Philippine Charity Sweepstakes Office improperly terminated its Equipment Lease Agreement with DFNN[I], Inc. Accordingly, PCSO is hereby ordered to pay DFNN[I], Inc. the amount of Twenty Seven Million Pesos (PhP27,000,000.00) as liquidated damages,

in accordance with the terms of the Equipment Lease Agreement."

SO ORDERED^[14]

Several cases had since ensued between the parties.

Judicial Proceedings

On June 25, 2015, **PCSO filed a *Petition for Confirmation***^[15] of the Arbitral Award before the **RTC-Mandaluyong** via **Civil Case No. MC159557**. A day after, **DFNNI filed a *Petition for Correction*** of the same Arbitral Award with the RTC-Makati, docketed as **Special Proceedings No. M- 7844**.^[16] Both petitions were found to be sufficient in form and substance.

Petition for Correction

Special Proceedings No. M-7844

CA-G.R. SPNos. 145983 and 150401

G.R. No. 234193

a. Special Proceedings No. M-7844

DFNNI alleged that there was evident miscalculation of the award of damages in the Arbitral Award. It was entitled to P310,095,149.70, taking into account the two percent (2%) penalty interest per month on the amount due in accordance with Par. 13.2(i) of the ELA. The Arbitration Panel also failed to award temperate damages and attorney's fees.^[17] In fine, DFNNI prayed for "correction" of the arbitral award to include the 2% interest, temperate damages and attorney's fees.

PCSO riposted that DFNNI is not entitled to penalty interest as the same only applies to rental payments. Since there is no rental payment involved here, Par. 13.2(i) of the ELA is inapplicable. As for DFNNI's claim for temperate damages and attorney's fees, the same cannot be granted for lack of basis.^[18]

As borne in its Decision^[19] **dated February 17, 2016, the RTC-Makati granted DFNNI's Petition for Correction**, increasing the award of liquidated damages to P310,095,149.70, plus six percent (6%) interest per annum from finality until fully paid:

WHEREFORE, premises considered, in accordance with the authority granted by Section 11.4(C) of the ADR Rules to this Court to correct arbitral awards, the award for liquidated damages in the Arbitral Award dated May 21, 2015[,] is hereby corrected to Php310,095,149.70, plus 6% interest from [date] of finality of this Decision until full satisfaction thereof.

It ruled that based on Par. 13.2(i) of the ELA, the 2% penalty charge per month is computed based on "the amount due" which refers to the "market value of System plus rental payments for the unexpired term of this Agreement, inclusive of a penalty charge of two percent (2%) per month on the amount due computed from the date of termination or cancellation of the Agreement to the actual date of