

FIRST DIVISION

[G.R. No. 193782, August 01, 2018]

**DALE STRICKLAND, PETITIONER, VS. ERNST & YOUNG LLP,
RESPONDENT.**

[G.R. No. 210695]

**DALE STRICKLAND, PETITIONER, VS. PUNONGBAYAN &
ARAUULLO, RESPONDENT.**

D E C I S I O N

JARDELEZA, J.:

These are consolidated petitions for review on *certiorari*^[1] under Rule 45 of the Rules of Court both filed by petitioner Dale Strickland (Strickland): (1) G.R. No. 193782 is against respondent Ernst & Young LLP (EYLLP) assailing the Decision^[2] dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 102805 which annulled and set aside the Orders^[3] of the Regional Trial Court, Branch 150, Makati City, ordered EYLLP to be dropped as defendant in Civil Case No. 05-692, and referred the dispute between Strickland and EYLLP to arbitration;^[4] and (2) G.R. No. 210695, which is against respondent Punongbayan & Araullo (PA), and assails the Decision^[5] dated August 5, 2013 of the CA in CA-G.R. SP No. 120897 which declared null and void the Orders^[6] of the RTC and directed it to suspend proceedings in the same Civil Case No. 05-692.^[7]

Civil Case No. 05-692 is a complaint^[8] filed by Strickland against, among others, respondents PA and EYLLP praying for collection of sum of money.

On March 26, 2002, National Home Mortgage Finance Corporation (NHMFC) and PA entered into a Financial Advisory Services Agreement (FASA) for the liquidation of the NHMFC's Unified Home Lending Program (UHLP). At the time of the engagement, PA was the Philippine member of respondent global company, EYLLP. In the March 26, 2002 letter^[9] of PA to NHMFC confirming their engagement as exclusive Financial Advisor for the UHLP Project, PA is designated as P&A/Ernst & Young.^[10]

During this period, Strickland was a partner of EYLLP seconded to respondent Ernst & Young Asia Pacific Financial Solutions (EYAPFS),^[11] who was listed in the FASA as member of the Engagement Team, in pertinent part:

Our Engagement Team is highly experienced and qualified in planning, managing and executing similar transactions. Our Team will be lead by cross-border professionals supplied by both Ernst & Young Asia Pacific

Financial Solutions LLC ("EY/APFS") and P&A[/]ERNST & YOUNG. P&A ERNST & YOUNG has assembled a group of Financial Consultants with the specific individual expertise to address the requirements for this engagement. The key members of the Team include:

Due Diligence & Transaction Support

Lead Due Diligence Partner - Dale Strickland, EY/APFS^[12]

Significantly, Strickland played a role in negotiating the FASA between PA and NHMFC. In a letter dated April 15, 2002, PA wrote Strickland to formalize the working relationship between PA/EYLLP and EY/APFS for the FASA with NHMFC:

Dear Dale,

Ernst & Young, as represented by Punongbayan & Araullo, the Ernst & Young member firm in the Philippines (P&A/ERNST & YOUNG) and Ernst & Young Asia Pacific Solutions LLC (EY/APFS) was chosen as the exclusive Financial Advisor for National Home Mortgage Finance Corporation (NHMFC) with respect to the liquidation of its Php40 Billion Unified Home Lending Program (UHLP) portfolio (or the "Transaction"). P&A/ERNST & YOUNG acted as the contracting party, on behalf of EY/APFS, and signed the contract with NHMFC to officially kick-off the engagement.

In line with this, we would like to underscore several issues, which would formalize the working relationship between P&A/ERNST & YOUNG and EY/APFS.

- 1) P&A/ERNST & YOUNG will be the contracting party to the NHMFC engagement and will sub contract to EY/APFS key aspects of the engagement as well as source the technical expertise of EY/APFS staff, as outlined in the Technical Proposal submitted to the Pre-qualification, Bids and Awards Committee (PBAC).
- 2) EY/APFS will provide a list of its staff members with individual expertise, who will be seconded to P&A/ERNST & YOUNG, including Marisa Liu or other EY/APFS Managers such as Hye Soo Shim or Beaux Pontac.
- 3) P&A/ERNST & YOUNG will bill and receive payments directly from NHMFC and shall forward the balance due EY/APFS in U.S. Dollars at an exchange rate of 51 Philippine Pesos to One (1) U.S. Dollar.
- 4) Based on the initial Technical Proposal, Total Fees for this engagement will be U.S.\$2.25 Million broken into a Fixed Fee of U.S.\$1.5 Million for the Due Diligence portion and a Success Fee of U.S.\$750 Thousand. The Fixed Fee sharing will be U.S.\$690 Thousand for P&A/ERNST & YOUNG and U.S.\$810 Thousand for EY/APFS or 46% and 54%, respectively, in accordance with the terms of the initial Technical Proposal. However, we wish to point out that due to modifications made

on the Success Fee portion of the Technical Proposal, any fee above U.S. 2.25 Million shall be split equally (50%-50%) between P&A/ERNST & YOUNG and EY/APFS.

- 5) EY/APFS and P&A/ERNST & YOUNG will guarantee the success of this project.

Once again, we wish to express our appreciation for the opportunity you have accorded us to undertake this pursuit with you. We look forward to working with you in this engagement.

Thank you very much.^[13]

By June 6, 2002, EYLLP wrote PA of the termination of its membership in EYLLP.^[14] Despite the termination, the working relationship among the parties continued. In an assignment letter^[15] dated November 15, 2002, EYLLP confirmed Strickland's assignment to Manila as a partner and summarized the working arrangement, specifying the following provisions: (1) assignment and the terms; (2) compensation and benefits; (3) tax; (4) change of circumstances; (5) repatriation; and (6) acceptance.

In July 2004, the transactional relationship between the parties went awry. In an exchange of letters, notice was given to NHMFC of PA's intention to remove Strickland from the NHMFC Engagement Team as a result of Strickland's resignation from EYLLP and/or EYAPFS effective on July 2, 2004.^[16] Responding to NHMFC's concerns on the removal of Strickland from the UHLP Project and his replacement by Mark Grinis (Grinis), EYAPFS' Managing Director, EYLLP reiterated Grinis' qualifications and affirmed its team of professionals' dedication of "all the time necessary to close this transaction and to make NHMFC [their team's, headed by Grinis,] first priority."^[17]

Since NHMFC was intent on retaining Strickland's services despite his separation from EYLLP and/or EYAPFS, the parties entered into negotiations to define Strickland's possible continued participation in the UHLP Project. PA, NHMFC, and Strickland exchanged letters containing proposed amendments to cover the new engagement and Strickland's participation within the UHLP Project.^[18] No actual written and final agreement among the parties amending the original engagement letter of March 26, 2002 materialized.

On August 20, 2004, PA wrote a letter,^[19] signed by its President/Chairman & CEO, Benjamin R. Punongbayan, to NHMFC to initiate discussions on a "mutual voluntary termination of the NHMFC Agreement."^[20]

On November 18, 2003, PA and NHMFC executed an addendum to the March 26, 2002 original engagement letter covering additional terms of the financial advisory services.^[21]

Subsequently, conflict on Strickland's actual participation and concurrent designation on the project arose among PA, NHMFC, and Strickland as reflected in the proposed revisions to the "Draft Financial Advisory Services" initially prepared by PA.^[22]

The timeline of specific occurrences is contained in the letter^[23] of PA to NHMFC dated December 20, 2004:

[PA] subsequently met on September 6, 2004 with Mr. Angelico T. Salud, then president of NHMFC. In that meeting, Mr. Salud asked that P&A and EYAPFS continue with the project and remain as financial advisors to NHMFC. But he also proposed that NHMFC will hire Mr. Strickland for a nominal compensation from NHMFC so that Mr. Strickland can continue to participate in the project and work together with us. Right after that meeting, P&A and EYAPFS x x x decided to accept its proposal in order to finally resolve this pending matter. However, before anything can be finalized, a change in the management of NHMFC occurred. We sought to meet with the new president, Mr. Celso delos Angeles, and were able to meet with him on October 20, 2004. In that meeting, it was confirmed by both parties that NHMFC will hire Mr. Strickland and this engagement will be the basis for moving forward. We then proceeded to conclude with Mr. Strickland the discussion about his compensation which was proposed to come out of the success fee for the engagement. We also drew up the draft agreement that was submitted on November 19, 2004 to both NHMFC and Mr. Strickland for their review.^[24]

PA objected to Strickland's proposed amendments, specifically on the terms of compensation, which now contemplated PA's engagement of Strickland as subcontractor for the closing of the UHLP Project.^[25]

By May 23, 2005, counsel for Strickland wrote PA asking for "equitable compensation for professional services" rendered to NHMFC on the UHLP Project from the time of his separation from EYLLP and/or EYAPFS in July 2004 "up and through the recent Signing and Closing Ceremony held on 22 April 2004 and his continued provision of services as the final closing approaches."^[26]

On June 2, 2005, counsel for PA responded, categorically denying any contractual relationship with Strickland and his assertion that he effectively substituted EYLLP and/or EYAPFS for the portion of the work he carried out in the UHLP Project.^[27]

Succeeding events are fairly summarized by the CA in CA-G.R. SP No. 120897:

Thus, [Strickland] filed a Complaint, dated May 17, 2005, which included [EYAPFS], [PA] and NHMFC among the defendants, seeking the following reliefs:

"Based on the foregoing, [Strickland] respectfully prays for judgment directing defendants, either jointly or severally or solidarily, or one or some or all defendants as may be deemed appropriate after trial, to pay [Strickland] Eighteen Million Pesos (=P=18,000,000.00) as equitable compensation for services rendered or actual or nominal damages, moral damages, and attorney's fees as may be proved."

Subsequent to the complaint, [EYLLP and/or EYAPFS] filed a "Motion to Refer to Arbitration," dated February 27, 2006.

In the meantime, x x x Strickland filed an Amended Complaint, dated June 29, 2006, adding more causes of action and including Strickland's replacement Mark Grinis as a party-defendant while deleting several defendants but retaining [EYLLP and/or EYAPFS], NHMFC and [PA].

The trial court admitted the Amended Complaint in its Order, dated December 6, 2006. Subsequently, it also issued an Order, dated January 2, 2007, denying [EYAPFS'] Motion To Refer to Arbitration, thus:

"The dispute between the defendants and [Strickland] covers domestic arbitral proceedings and cannot be categorized as a commercial dispute of an international character since the dispute arose from their professional and service relationship and does not cover matters arising from a relationship of a commercial nature or commercial intercourse that would qualify as commercial. The agreement has also no reasonable relationship with one or more foreign states.

It appearing therefore that the arbitral clause in question is inoperative or incapable of being performed in this jurisdiction referral to arbitration in the United States pursuant to the arbitration clause is uncalled for.

Accordingly, the motion is denied.

SO ORDERED."

[EYLLP and/or EYAPFS] sought reconsideration of the aforementioned Order, which was also denied by the trial court, prompting it to file a Petition for Certiorari before this Court, docketed as CA-G.R. SP No. 102805. The same was resolved by the Seventh Division in a Decision, dated June 17, 2010, annulling the ruling of the trial court, viz:

*"**WHEREFORE**, premises considered, the Petition is **GRANTED**. The Orders dated January 2, 2007 and January 16, 2008, and any further orders or actions after the filing of this Petition taken against x x x Ernst & Young LLP, issued or made by the Hon. Elmo M. Alameda, Presiding Judge of the Regional Trial Court of Makati City, Branch 150, in Civil Case No. 05-692 are **ANNULLED** and **SET ASIDE**. Accordingly, [EYLLP] is ordered dropped from Civil Case No. 05-692 and the dispute between [EYLLP] and Dale Strickland is hereby referred to arbitration.*

SO ORDERED."

Pursuant to the said ruling, x x x [PA] filed a Motion to Suspend with Motion to Reset Pre-Trial Conference on the ground that any settlement during the arbitration between [EYLLP] and Strickland may cause prejudice to [PA] if the trial court proceedings are continued as Strickland's cause of action against [PA] was merely incidental to that against [EYLLP].