

FIRST DIVISION

[G.R. No. 205915, November 10, 2015]

**ASSET POOL A (SPV-AMC), INC., PETITIONER, VS. CLARK
DEVELOPMENT CORPORATION, RESPONDENT.**

JUDGMENT [BASED ON COMPROMISE AGREEMENT]

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:

1. 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.
2. 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.

3. **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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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