738 Phil. 773

THIRD DIVISION

[G.R. No. 197530, July 09, 2014]

ABOITIZ EQUITY VENTURES, INC., PETITIONER, VS. VICTOR S. CHIONGBIAN, BENJAMIN D. GOTHONG, AND CARLOS A. GOTHONG LINES, INC. (CAGLI), RESPONDENTS.

D E C I S I O N

LEONEN, J.:

This is a petition for review on certiorari with an application for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 45 of the Rules of Court. This petition prays that the assailed orders dated May 5, 2011[1] and June 24, 2011[2] of the Regional Trial Court, Cebu City, Branch 10 in Civil Case No. CEB-37004 be nullified and set aside and that judgment be rendered dismissing with prejudice the complaint[3] dated July 20, 2010 filed by respondents Carlos A. Gothong Lines, Inc. ("CAGLI") and Benjamin D. Gothong.

On January 8, 1996, Aboitiz Shipping Corporation ("ASC"), principally owned by the Aboitiz family, CAGLI, principally owned by the Gothong family, and William Lines, Inc. ("WLI"), principally owned by the Chiongbian family, entered into an agreement (the "Agreement"),[4] whereby ASC and CAGLI would transfer their shipping assets to WLI in exchange for WLI's shares of stock.[5] WLI, in turn, would run their merged shipping businesses and, henceforth, be known as WG&A, Inc. ("WG&A").[6]

Sec. 11.06 of the Agreement required all disputes arising out of or in connection with the Agreement to be settled by arbitration:

> 11.06 Arbitration
>
> > All disputes arising out of or in connection with this Agreement including any issue as to this Agreement's validity or enforceability, which cannot be settled amicably among the parties, shall be finally settled by arbitration in accordance with the Arbitration Law (Republic Act No. 876) by an arbitration tribunal composed of four (4) arbitrators. Each of the parties shall appoint one (1) arbitrator, the three (3) to appoint the fourth arbitrator who shall act as Chairman. Any award by the arbitration tribunal shall be final and binding upon the parties and shall be enforced by judgment of the Courts of Cebu or Metro Manila.[7]

Among the attachments to the Agreement was Annex SL-V.[8] This was a letter dated January 8, 1996, from WLI, through its President (herein respondent) Victor

S. Chiongbian addressed to CAGLI, through its Chief Executive Officer Bob D. Gothong and Executive Vice President for Engineering (herein respondent) Benjamin D. Gothong. On its second page, Annex SL-V bore the signatures of Bob D. Gothong and respondent Benjamin D. Gothong by way of a conforme on behalf of CAGLI.

Annex SL-V confirmed WLI's commitment to acquire certain inventories of CAGLI. These inventories would have a total aggregate value of, at most, P400 million, "as determined after a special examination of the [i]nventories."[9] Annex SL-V also specifically stated that such acquisition was "pursuant to the Agreement."[10]

The entirety of Annex SL-V's substantive portion reads:

> We refer to the Agreement dated January 8, 1996 (the "Agreement") among William Lines, Inc. ("Company C"), Aboitiz Shipping Corporation ("Company A") and Carlos A. Gothong Lines, Inc. ("Company B") regarding the transfer of various assets of Company A and Company B to Company C in exchange for shares of capital stock of Company C. Terms defined in the Agreement are used herein as therein defined.
>
> This will confirm our commitment to acquire certain spare parts and materials inventory (the "Inventories") of Company B pursuant to the Agreement.
>
> The total aggregate value of the Inventories to be acquired shall not exceed P400 Million as determined after a special examination of the Inventories as performed by SGV & Co. to be completed on or before the Closing Date under the agreed procedures determined by the parties.
>
> Subject to documentation acceptable to both parties, the Inventories to be acquired shall be determined not later than thirty (30) days after the Closing Date and the payments shall be made in equal quarterly instalments over a period of two years with the first payment due on March 31, 1996.[11]

Pursuant to Annex SL-V, inventories were transferred from CAGLI to WLI. These inventories were assessed to have a value of P514 million, which was later adjusted to P558.89 million.[12] Of the total amount of P558.89 million, "CAGLI was paid the amount of ?400 Million."[13] In addition to the payment of P400 million, petitioner Aboitiz Equity Ventures ("AEV") noted that WG&A shares with a book value of P38.5 million were transferred to CAGLI.[14]

As there was still a balance, in 2001, CAGLI sent WG&A (the renamed WLI) demand letters "for the return of or the payment for the excess [i]nventories."[15] AEV alleged that to satisfy CAGLI's demand, WLI/WG&A returned inventories amounting to P120.04 million.[16] As proof of this, AEV attached copies of delivery receipts signed by CAGLI's representatives as Annex "K" of the present petition.[17]

Sometime in 2002, the Chiongbian and Gothong families decided to leave the WG&A enterprise and sell their interest in WG&A to the Aboitiz family. As such, a share

purchase agreement[18] ("SPA") was entered into by petitioner AEV and the respective shareholders groups of the Chiongbians and Gothongs. In the SPA, AEV agreed to purchase the Chiongbian group's 40.61% share and the Gothong group's 20.66% share in WG&A's issued and outstanding stock.[19]

Section 6.5 of the SPA provided for arbitration as the mode of settling any dispute arising from the SPA. It reads:

> 6.5 Arbitration. Should there be any dispute arising between the parties relating to this Agreement including the interpretation or performance hereof which cannot be resolved by agreement of the parties within fifteen (15) days after written notice by a party to another, such matter shall then be finally settled by arbitration in Cebu City in accordance with the Philippine Arbitration Law. Substantive aspects of the dispute shall be settled by applying the laws of the Philippines. The decision of the arbitrators shall be final and binding upon the parties hereto and the expense of arbitration (including without limitation the award of attorney's fees to the prevailing party) shall be paid as the arbitrators shall determine.[20]

Section 6.8 of the SPA further provided that the Agreement (of January 8, 1996) shall be deemed terminated except its Annex SL-V. It reads:

> 6.8 Termination of Shareholders Agreement. The Buyer and the Sellers hereby agree that on Closing, the Agreement among Aboitiz Shipping Corporation, Carlos A. Gothong Lines, Inc. and William Lines, Inc. dated January 8, 1996, as the same has been amended from time to time (the "Shareholders' Agreement") shall all be considered terminated, except with respect to such rights and obligations that the parties to the Shareholders' Agreement have under a letter dated January 8, 1996 (otherwise known as "SL-V") from William Lines, Inc. to Carlos A. Gothong Lines, Inc. regarding certain spare parts and materials inventory, which rights and obligations shall survive through the date prescribed by the applicable statute of limitations.[21]

As part of the SPA, the parties entered into an Escrow Agreement[22] whereby ING Bank N.V.-Manila Branch was to take custody of the shares subject of the SPA.[23] Section 14.7 of the Escrow Agreement provided that all disputes arising from it shall be settled through arbitration:

> 14.7 All disputes, controversies or differences which may arise by and among the parties hereto out of, or in relation to, or in connection with this Agreement, or for the breach thereof shall be finally settled by arbitration in Cebu City in accordance with the Philippine Arbitration Law. The award rendered by the arbitrator(s) shall be final and binding upon the parties concerned. However, notwithstanding the foregoing provision, the parties reserve the right to seek redress before the regular court and

> avail of any provisional remedies in the event of any misconduct, negligence, fraud or tortuous acts which arise from any extra-contractual conduct that affects the ability of a party to comply with his obligations and responsibilities under this Agreement.[24]

As a result of the SPA, AEV became a stockholder of WG&A. Subsequently, WG&A was renamed Aboitiz Transport Shipping Corporation ("ATSC").[25]

Petitioner AEV alleged that in 2008, CAGLI resumed making demands despite having already received P120.04 million worth of excess inventories.[26] CAGLI initially made its demand to ATSC (the renamed WLI/WG&A) through a letter[27] dated February 14, 2008. As alleged by AEV, however, CAGLI subsequently resorted to a "shotgun approach"[28] and directed its subsequent demand letters to AEV[29] as well as to FCLC[30] (a company related to respondent Chiongbian).

AEV responded to CAGLI's demands through several letters.[31] In these letters, AEV rebuffed CAGLI's demands noting that: (1) CAGLI already received the excess inventories; (2) it was not a party to CAGLI's claim as it had a personality distinct from WLI/WG&A/ATSC; and (3) CAGLI's claim was already barred by prescription.

In a reply-letter[32] dated May 5, 2008, CAGLI claimed that it was unaware of the delivery to it of the excess inventories and asked for copies of the corresponding delivery receipts.[33] CAGLI threatened that unless it received proof of payment or return of excess inventories having been made on or before March 31, 1996, it would pursue arbitration.[34]

In letters written for AEV (the first dated October 16, 2008 by Aboitiz and Company, Inc.'s Associate General Counsel Maria Cristina G. Gabutina[35] and the second dated October 27, 2008 by SyCip Salazar Hernandez and Gatmaitan[36]), it was noted that the excess inventories were delivered to GT Ferry Warehouse.[37] Attached to these letters were a listing and/or samples[38] of the corresponding delivery receipts. In these letters it was also noted that the amount of excess inventories delivered (P120.04 million) was actually in excess of the value of the supposedly unreturned inventories (P119.89 million).[39] Thus, it was pointed out that it was CAGLI which was liable to return the difference between P120.04 million and P119.89 million.[40]

Its claims not having been satisfied, CAGLI filed on November 6, 2008 the first of two applications for arbitration ("first complaint")[41] against respondent Chiongbian, ATSC, ASC, and petitioner AEV, before the Cebu City Regional Trial Court, Branch 20. The first complaint was docketed as Civil Case No. CEB-34951.

In response, AEV filed a motion to dismiss[42] dated February 5, 2009. AEV argued that CAGLI failed to state a cause of action as there was no agreement to arbitrate between CAGLI and AEV.[43] Specifically, AEV pointed out that: (1) AEV was never a party to the January 8, 1996 Agreement or to its Annex SL-V;[44] (2) while AEV is a party to the SPA and Escrow Agreement, CAGLI's claim had no connection to either

agreement; (3) the unsigned and unexecuted SPA attached to the complaint cannot be a source of any right to arbitrate;[45] and (4) CAGLI did not say how WLI/WG&A/ATSC's obligation to return the excess inventories can be charged to AEV.

On December 4, 2009, the Cebu City Regional Trial Court, Branch 20 issued an order[46] dismissing the first complaint with respect to AEV. It sustained AEV's assertion that there was no agreement binding AEV and CAGLI to arbitrate CAGLI's claim.[47] Whether by motion for reconsideration, appeal or other means, CAGLI did not contest this dismissal.

On February 26, 2010, the Cebu City Regional Trial Court, Branch 20 issued an order[48] directing the parties remaining in the first complaint (after the discharge of AEV) to proceed with arbitration.

The February 26, 2010 order notwithstanding, CAGLI filed a notice of dismissal[49] dated July 8, 2010, withdrawing the first complaint. In an order[50] dated August 13, 2010, the Cebu City Regional Trial Court, Branch 20 allowed this withdrawal.

ATSC (the renamed WLI/WG&A) filed a motion for reconsideration[51] dated September 20, 2010 to the allowance of CAGLI's notice of dismissal. This motion was denied in an order[52] dated April 15, 2011.

On September 1, 2010, while the first complaint was still pending (n.b., it was only on April 15, 2011 that the Cebu City Regional Trial Court, Branch 20 denied ATSC's motion for reconsideration assailing the allowance of CAGLI's notice of disallowance), CAGLI, now joined by respondent Benjamin D. Gothong, filed a second application for arbitration ("second complaint")[53] before the Cebu City Regional Trial Court, Branch 10. The second complaint was docketed as Civil Case No. CEB-37004 and was also in view of the return of the same excess inventories subject of the first complaint.

On October 28, 2010, AEV filed a motion to dismiss[54] the second complaint on the following grounds:[55] (1) forum shopping; (2) failure to state a cause of action; (3) res judicata; and (4) litis pendentia.

In the first of the two (2) assailed orders dated May 5, 2011,[56] the Cebu City Regional Trial Court, Branch 10 denied AEV's motion to dismiss.

On the matter of litis pendentia, the Regional Trial Court, Branch 10 noted that the first complaint was dismissed with respect to AEV on December 4, 2009, while the second complaint was filed on September 1, 2010. As such, the first complaint was no longer pending at the time of the filing of the second complaint.[57] On the matter of res judicata, the trial court noted that the dismissal without prejudice of the first complaint "[left] the parties free to litigate the matter in a subsequent action, as though the dismiss[ed] action had not been commenced."[58] It added that since litis pendentia and res judicata did not exist, CAGLI could not be charged with forum shopping.[59] On the matter of an agreement to arbitrate, the Regional Trial Court, Branch 10 pointed to the SPA as "clearly express[ing] the intention of