

SECOND DIVISION

[G.R. No. 174938, October 01, 2014]

**GERARDO LANUZA, JR. AND ANTONIO O. OLBES, PETITIONERS,
VS. BF CORPORATION, SHANGRI-LA PROPERTIES, INC.,
ALFREDO C. RAMOS, RUFO B. COLAYCO, MAXIMO G. LICAUCO
III, AND BENJAMIN C. RAMOS, RESPONDENTS.**

DECISION

LEONEN, J.:

Corporate representatives may be compelled to submit to arbitration proceedings pursuant to a contract entered into by the corporation they represent if there are allegations of bad faith or malice in their acts representing the corporation.

This is a Rule 45 petition, assailing the Court of Appeals' May 11, 2006 decision and October 5, 2006 resolution. The Court of Appeals affirmed the trial court's decision holding that petitioners, as directors, should submit themselves as parties to the arbitration proceedings between BF Corporation and Shangri-La Properties, Inc. (Shangri-La).

In 1993, BF Corporation filed a collection complaint with the Regional Trial Court against Shangri-La and the members of its board of directors: Alfredo C. Ramos, Rufo B. Colayco, Antonio O. Olbes, Gerardo Lanuza, Jr., Maximo G. Licauco III, and Benjamin C. Ramos.^[1]

BF Corporation alleged in its complaint that on December 11, 1989 and May 30, 1991, it entered into agreements with Shangri-La wherein it undertook to construct for Shangri-La a mall and a multilevel parking structure along EDSA.^[2]

Shangri-La had been consistent in paying BF Corporation in accordance with its progress billing statements.^[3] However, by October 1991, Shangri-La started defaulting in payment.^[4]

BF Corporation alleged that Shangri-La induced BF Corporation to continue with the construction of the buildings using its own funds and credit despite Shangri-La's default.^[5] According to BF Corporation, Shangri-La misrepresented that it had funds to pay for its obligations with BF Corporation, and the delay in payment was simply a matter of delayed processing of BF Corporation's progress billing statements.^[6]

BF Corporation eventually completed the construction of the buildings.^[7] Shangri-La allegedly took possession of the buildings while still owing BF Corporation an outstanding balance.^[8]

BF Corporation alleged that despite repeated demands, Shangri-La refused to pay

the balance owed to it.^[9] It also alleged that the Shangri-La's directors were in bad faith in directing Shangri-La's affairs. Therefore, they should be held jointly and severally liable with Shangri-La for its obligations as well as for the damages that BF Corporation incurred as a result of Shangri-La's default.^[10]

On August 3, 1993, Shangri-La, Alfredo C. Ramos, Rufo B. Colayco, Maximo G. Licauco III, and Benjamin C. Ramos filed a motion to suspend the proceedings in view of BF Corporation's failure to submit its dispute to arbitration, in accordance with the arbitration clause provided in its contract, quoted in the motion as follows:
^[11]

35. Arbitration

(1) Provided always that in case any dispute or difference shall arise between the Owner or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works as to the construction of this Contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this Contract to the discretion of the Project Manager or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in clause 30(5)(a) of these Conditions or the rights and liabilities of the parties under clauses 25, 26, 32 or 33 of these Conditions), the owner and the Contractor hereby agree to exert all efforts to settle their differences or dispute amicably. Failing these efforts then such dispute or difference shall be referred to arbitration in accordance with the rules and procedures of the Philippine Arbitration Law.

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(6) The award of such Arbitrators shall be final and binding on the parties. The decision of the Arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. . . .

^[12] (Underscoring in the original)

On August 19, 1993, BF Corporation opposed the motion to suspend proceedings.
^[13]

In the November 18, 1993 order, the Regional Trial Court denied the motion to suspend proceedings.^[14]

On December 8, 1993, petitioners filed an answer to BF Corporation's complaint, with compulsory counterclaim against BF Corporation and cross-claim against Shangri-La.^[15] They alleged that they had resigned as members of Shangri-La's board of directors as of July 15, 1991.^[16]

After the Regional Trial Court denied on February 11, 1994 the motion for reconsideration of its November 18, 1993 order, Shangri-La, Alfredo C. Ramos, Rufo

B. Colayco, Maximo G. Licauco III, and Benjamin Ramos filed a petition for certiorari with the Court of Appeals.^[17]

On April 28, 1995, the Court of Appeals granted the petition for certiorari and ordered the submission of the dispute to arbitration.^[18]

Aggrieved by the Court of Appeals' decision, BF Corporation filed a petition for review on certiorari with this court.^[19] On March 27, 1998, this court affirmed the Court of Appeals' decision, directing that the dispute be submitted for arbitration.^[20]

Another issue arose after BF Corporation had initiated arbitration proceedings. BF Corporation and Shangri-La failed to agree as to the law that should govern the arbitration proceedings.^[21] On October 27, 1998, the trial court issued the order directing the parties to conduct the proceedings in accordance with Republic Act No. 876.^[22]

Shangri-La filed an omnibus motion and BF Corporation an urgent motion for clarification, both seeking to clarify the term, "parties," and whether Shangri-La's directors should be included in the arbitration proceedings and served with separate demands for arbitration.^[23]

Petitioners filed their comment on Shangri-La's and BF Corporation's motions, praying that they be excluded from the arbitration proceedings for being non-parties to Shangri-La's and BF Corporation's agreement.^[24]

On July 28, 2003, the trial court issued the order directing service of demands for arbitration upon all defendants in BF Corporation's complaint.^[25] According to the trial court, Shangri-La's directors were interested parties who "must also be served with a demand for arbitration to give them the opportunity to ventilate their side of the controversy, safeguard their interest and fend off their respective positions."^[26] Petitioners' motion for reconsideration of this order was denied by the trial court on January 19, 2005.^[27]

Petitioners filed a petition for certiorari with the Court of Appeals, alleging grave abuse of discretion in the issuance of orders compelling them to submit to arbitration proceedings despite being third parties to the contract between Shangri-La and BF Corporation.^[28]

In its May 11, 2006 decision,^[29] the Court of Appeals dismissed petitioners' petition for certiorari. The Court of Appeals ruled that Shangri-La's directors were necessary parties in the arbitration proceedings.^[30] According to the Court of Appeals:

[They were] deemed not third-parties to the contract as they [were] sued for their acts in representation of the party to the contract pursuant to Art. 31 of the Corporation Code, and that as directors of the defendant corporation, [they], in accordance with Art. 1217 of the Civil Code, stand to be benefited or injured by the result of the arbitration proceedings,

hence, being necessary parties, they must be joined in order to have complete adjudication of the controversy. Consequently, if [they were] excluded as parties in the arbitration proceedings and an arbitral award is rendered, holding [Shangri-La] and its board of directors jointly and solidarity liable to private respondent BF Corporation, a problem will arise, i.e., whether petitioners will be bound by such arbitral award, and this will prevent complete determination of the issues and resolution of the controversy.^[31]

The Court of Appeals further ruled that "excluding petitioners in the arbitration proceedings . . . would be contrary to the policy against multiplicity of suits."^[32]

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is **DISMISSED**. The assailed orders dated July 28, 2003 and January 19, 2005 of public respondent RTC, Branch 157, Pasig City, in Civil Case No. 63400, are **AFFIRMED**.^[33]

The Court of Appeals denied petitioners' motion for reconsideration in the October 5, 2006 resolution.^[34]

On November 24, 2006, petitioners filed a petition for review of the May 11, 2006 Court of Appeals decision and the October 5, 2006 Court of Appeals resolution.^[35]

The issue in this case is whether petitioners should be made parties to the arbitration proceedings, pursuant to the arbitration clause provided in the contract between BF Corporation and Shangri-La.

Petitioners argue that they cannot be held personally liable for corporate acts or obligations.^[36] The corporation is a separate being, and nothing justifies BF Corporation's allegation that they are solidarity liable with Shangri-La.^[37] Neither did they bind themselves personally nor did they undertake to shoulder Shangri-La's obligations should it fail in its obligations.^[38] BF Corporation also failed to establish fraud or bad faith on their part.^[39]

Petitioners also argue that they are third parties to the contract between BF Corporation and Shangri-La.^[40] Provisions including arbitration stipulations should bind only the parties.^[41] Based on our arbitration laws, parties who are strangers to an agreement cannot be compelled to arbitrate.^[42]

Petitioners point out that our arbitration laws were enacted to promote the autonomy of parties in resolving their disputes.^[43] Compelling them to submit to arbitration is against this purpose and may be tantamount to stipulating for the parties.^[44]

Separate comments on the petition were filed by BF Corporation, and Maximo G. Licauco III, Alfredo C. Ramos and Benjamin C. Ramos.^[45]

Maximo G. Licauco III Alfredo C. Ramos, and Benjamin C. Ramos agreed with petitioners that Shangri-La's directors, being non-parties to the contract, should not be made personally liable for Shangri-La's acts.^[46] Since the contract was executed only by BF Corporation and Shangri-La, only they should be affected by the contract's stipulation.^[47] BF Corporation also failed to specifically allege the unlawful acts of the directors that should make them solidarity liable with Shangri-La for its obligations.^[48]

Meanwhile, in its comment, BF Corporation argued that the courts' ruling that the parties should undergo arbitration "clearly contemplated the inclusion of the directors of the corporation[.]"^[49]

BF Corporation also argued that while petitioners were not parties to the agreement, they were still impleaded under Section 31 of the Corporation Code.^[50] Section 31 makes directors solidarity liable for fraud, gross negligence, and bad faith.^[51] Petitioners are not really third parties to the agreement because they are being sued as Shangri-La's representatives, under Section 31 of the Corporation Code.^[52]

BF Corporation further argued that because petitioners were impleaded for their solidary liability, they are necessary parties to the arbitration proceedings.^[53] The full resolution of all disputes in the arbitration proceedings should also be done in the interest of justice.^[54]

In the manifestation dated September 6, 2007, petitioners informed the court that the Arbitral Tribunal had already promulgated its decision on July 31, 2007.^[55] The Arbitral Tribunal denied BF Corporation's claims against them.^[56] Petitioners stated that "[they] were included by the Arbitral Tribunal in the proceedings conducted . . . notwithstanding [their] continuing objection thereto. . . ."^[57] They also stated that "[their] unwilling participation in the arbitration case was done *ex abundante ad cautela*, as manifested therein on several occasions."^[58] Petitioners informed the court that they already manifested with the trial court that "any action taken on [the Arbitral Tribunal's decision] should be without prejudice to the resolution of [this] case."^[59]

Upon the court's order, petitioners and Shangri-La filed their respective memoranda. Petitioners and Maximo G. Licauco III, Alfredo C. Ramos, and Benjamin C. Ramos reiterated their arguments that they should not be held liable for Shangri-La's default and made parties to the arbitration proceedings because only BF Corporation and Shangri-La were parties to the contract.

In its memorandum, Shangri-La argued that petitioners were impleaded for their solidary liability under Section 31 of the Corporation Code. Shangri-La added that their exclusion from the arbitration proceedings will result in multiplicity of suits, which "is not favored in this jurisdiction."^[60] It pointed out that the case had already been mooted by the termination of the arbitration proceedings, which petitioners actively participated in.^[61] Moreover, BF Corporation assailed only the correctness of the Arbitral Tribunal's award and not the part absolving Shangri-La's