

## FIRST DIVISION

[ G.R. Nos. 197592 & 202623, November 27, 2013 ]

### THE PROVINCE OF AKLAN, PETITIONER, VS. JODY KING CONSTRUCTION AND DEVELOPMENT CORP., RESPONDENT.

#### D E C I S I O N

##### VILLARAMA, JR., J.:

These consolidated petitions for review on certiorari seek to reverse and set aside the following: (1) Decision<sup>[1]</sup> dated October 18, 2010 and Resolution<sup>[2]</sup> dated July 5, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 111754; and (2) Decision<sup>[3]</sup> dated August 31, 2011 and Resolution<sup>[4]</sup> dated June 27, 2012 in CA-G.R. SP No. 114073.

#### The Facts

On January 12, 1998, the Province of Aklan (petitioner) and Jody King Construction and Development Corp. (respondent) entered into a contract for the design and construction of the Caticlan Jetty Port and Terminal (Phase I) in Malay, Aklan. The total project cost is P38,900,000: P18,700,000 for the design and construction of passenger terminal, and P20,200,000 for the design and construction of the jetty port facility.<sup>[5]</sup> In the course of construction, petitioner issued variation/change orders for additional works. The scope of work under these change orders were agreed upon by petitioner and respondent.<sup>[6]</sup>

On January 5, 2001, petitioner entered into a negotiated contract with respondent for the construction of Passenger Terminal Building (Phase II) also at Caticlan Jetty Port in Malay, Aklan. The contract price for Phase II is P2,475,345.54.<sup>[7]</sup>

On October 22, 2001, respondent made a demand for the total amount of P22,419,112.96 covering the following items which petitioner allegedly failed to settle:

1. Unpaid accomplishments on additional works undertaken----- Php 12,396,143.09  
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2. Refund of taxes levied despite it not being covered by original contract----- Php 884,098.59  
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3. Price escalation (Consistent with Section 7.5, Original Contract)----- Php 1,291,714.98  
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4. Additional Labor Cost resulting [from] numerous change orders issued sporadically--	Php 3,303,486.60
5. Additional Overhead Cost resulting [from] numerous Orders issued sporadically-----	Php 1,101,162.60
6. Interest resulting [from] payment delays consistent with Section 7.3.b of the Original Contract-----	Php 3,442,507.50.
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On July 13, 2006, respondent sued petitioner in the Regional Trial Court (RTC) of Marikina City (Civil Case No. 06-1122-MK) to collect the aforesaid amounts.<sup>[9]</sup> On August 17, 2006, the trial court issued a writ of preliminary attachment.<sup>[10]</sup>

Petitioner denied any unpaid balance and interest due to respondent. It asserted that the sums being claimed by respondent were not indicated in Change Order No. 3 as approved by the Office of Provincial Governor. Also cited was respondent's June 10, 2003 letter absolving petitioner from liability for any cost in connection with the Caticlan Passenger Terminal Project.<sup>[11]</sup>

After trial, the trial court rendered its Decision<sup>[12]</sup> on August 14, 2009, the dispositive portion of which reads:

**WHEREFORE**, foregoing premises considered, judgment is hereby rendered in favor of plaintiff Jody King Construction And Development Corporation and against defendant Province of Aklan, as follows:

1. ordering the defendant to pay to the plaintiff the amount of Php7,396,143.09 representing the unpaid accomplishment on additional works undertaken by the plaintiff;
2. ordering the defendant to refund to the plaintiff the amount of Php884,098.59 representing additional 2% tax levied upon against the plaintiff;
3. ordering the defendant to pay to the plaintiff price escalation in the amount of Php1,291,714.98 pursuant to Section 7.5 of the original contract;
4. ordering the defendant to pay to the plaintiff the amount of Php3,303,486.60 representing additional labor cost resulting from change orders issued by the defendant;
5. ordering the defendant to pay to the plaintiff the sum of Php1,101,162.00 overhead cost resulting from change orders issued by the defendant;
6. ordering the defendant to pay the sum of Php3,442,507.50 representing interest resulting from payment delays up to October 15, 2001 pursuant to

Section 7.3.b of the original contract;

7. ordering the defendant to pay interest of 3% per month from unpaid claims as of October 16, 2001 to date of actual payment pursuant to Section 7.3.b[;]
8. ordering the [defendant] to pay to the plaintiff the sum of Php500,000.00 as moral damages;
9. ordering the defendant to pay to the plaintiff the sum of Php300,000.00 as exemplary damages;
10. ordering the defendant to pay the plaintiff the sum of Php200,000.00, as and for attorney's fees; and
11. ordering the defendant to pay the cost of suit.

**SO ORDERED.**<sup>[13]</sup>

Petitioner filed its motion for reconsideration<sup>[14]</sup> on October 9, 2009 stating that it received a copy of the decision on September 25, 2009. In its Order<sup>[15]</sup> dated October 27, 2009, the trial court denied the motion for reconsideration upon verification from the records that as shown by the return card, copy of the decision was actually received by both Assistant Provincial Prosecutor Ronaldo B. Ingente and Atty. Lee T. Manares on September 23, 2009. Since petitioner only had until October 8, 2009 within which to file a motion for reconsideration, its motion filed on October 9, 2009 was filed one day after the finality of the decision. The trial court further noted that there was a deliberate attempt on both Atty. Manares and Prosecutor Ingente to mislead the court and make it appear that their motion for reconsideration was filed on time.

Petitioner filed a Manifestation<sup>[16]</sup> reiterating the explanation set forth in its Rejoinder to respondent's comment/opposition and motion to dismiss that the wrong date of receipt of the decision stated in the motion for reconsideration was due to pure inadvertence attributable to the staff of petitioner's counsel. It stressed that there was no intention to mislead the trial court nor cause undue prejudice to the case, as in fact its counsel immediately corrected the error upon discovery by explaining the attendant circumstances in the Rejoinder dated October 29, 2009.

On November 24, 2009, the trial court issued a writ of execution ordering Sheriff IV Antonio E. Gamboa, Jr. to demand from petitioner the immediate payment of P67,027,378.34 and tender the same to the respondent. Consequently, Sheriff Gamboa served notices of garnishment on Land Bank of the Philippines, Philippine National Bank and Development Bank of the Philippines at their branches in Kalibo, Aklan for the satisfaction of the judgment debt from the funds deposited under the account of petitioner. Said banks, however, refused to give due course to the court order, citing the relevant provisions of statutes, circulars and jurisprudence on the determination of government monetary liabilities, their enforcement and satisfaction.<sup>[17]</sup>

Petitioner filed in the CA a petition for certiorari with application for temporary restraining order (TRO) and preliminary injunction assailing the Writ of Execution dated November 24, 2009, docketed as **CA-G.R. SP No. 111754**.

On December 7, 2009, the trial court denied petitioner's notice of appeal filed on December 1, 2009. Petitioner's motion for reconsideration of the December 7, 2009 Order was likewise denied.<sup>[18]</sup> On May 20, 2010, petitioner filed another petition for certiorari in the CA questioning the aforesaid orders denying due course to its notice of appeal, docketed as **CA-G.R. SP No. 114073**.

By Decision dated October 18, 2010, the CA's First Division dismissed the petition in CA-G.R. SP No. 111754 as it found no grave abuse of discretion in the lower court's issuance of the writ of execution. Petitioner filed a motion for reconsideration which was likewise denied by the CA. The CA stressed that even assuming as true the alleged errors committed by the trial court, these were insufficient for a ruling that grave abuse of discretion had been committed. On the matter of execution of the trial court's decision, the appellate court said that it was rendered moot by respondent's filing of a petition before the Commission on Audit (COA).

On August 31, 2011, the CA's Sixteenth Division rendered its Decision dismissing the petition in CA-G.R. SP No. 114073. The CA said that petitioner failed to provide valid justification for its failure to file a timely motion for reconsideration; counsel's explanation that he believed in good faith that the August 14, 2009 Decision of the trial court was received on September 25, 2009 because it was handed to him by his personnel only on that day is not a justifiable excuse that would warrant the relaxation of the rule on reglementary period of appeal. The CA also held that petitioner is estopped from invoking the doctrine of primary jurisdiction as it only raised the issue of COA's primary jurisdiction after its notice of appeal was denied and a writ of execution was issued against it.

### **The Cases**

In G.R. No. 197592, petitioner submits the following issues:

#### **I.**

WHETHER OR NOT THE DECISION DATED 14 AUGUST 2009 RENDERED BY THE REGIONAL TRIAL COURT, BRANCH 273, MARIKINA CITY AND THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 SHOULD BE RENDERED VOID FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

#### **II.**

WHETHER OR NOT THE REGIONAL TRIAL COURT, BRANCH 273, MARIKINA CITY GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RENDERING THE DECISION DATED 14 AUGUST 2009 AND ISSUING THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 EVEN IT FAILED TO DISPOSE ALL THE ISSUES OF THE CASE BY NOT RESOLVING PETITIONER'S "URGENT MOTION TO DISCHARGE EX-PARTE WRIT OF PRELIMINARY ATTACHMENT" DATED 31

AUGUST 2006.

### III.

WHETHER OR NOT THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 WHICH WAS HASTILY ISSUED IN VIOLATION OF SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 10-2000 SHOULD BE RENDERED VOID.

[19]

The petition in G.R. No. 202623 sets forth the following arguments:

Petitioner is not estopped in questioning the jurisdiction of the Regional Trial Court, Branch 273, Marikina City over the subject matter of the case.[20]

The petition for certiorari filed before the CA due to the RTC's denial of petitioner's Notice of Appeal was in accord with jurisprudence.[21]

#### **The Issues**

The controversy boils down to the following issues: (1) the applicability of the doctrine of primary jurisdiction to this case; and (2) the propriety of the issuance of the writ of execution.

#### **Our Ruling**

The petitions are meritorious.

***COA has primary jurisdiction over private respondent's money claims***

***Petitioner is not estopped from raising the issue of jurisdiction***

The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction.[22] It applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.[23]

The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[24]