

THIRD DIVISION

[G.R. No. 180245, July 04, 2012]

**PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC.,
PETITIONER, VS. TAKENAKA CORPORATION AND ASAHIKOSAN
CORPORATION, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision^[1] of the Court of Appeals (CA), dated July 27, 2007, and the CA Resolution^[2] dated October 23, 2007, denying herein petitioner's motion for partial reconsideration, be reversed and set aside.

The antecedent facts were accurately narrated in the CA Decision as follows.

In 1997, by way of a Concession Agreement, the Philippine Government awarded to petitioner the right to build and operate the NAIA International Passenger Terminal III ("NAIA IPT3"). Petitioner then contracted respondents Takenaka Corporation, and Asahikosan Corporation ("private respondents") to construct and equip NAIA IPT3.

Private respondents are both foreign corporations organized under the laws of Japan, but only respondent Takenaka Corporation is licensed to do business in the Philippines through its local branch office.

Claiming that petitioner made no further payments after May 2002 despite continued performance of their obligations, private respondents filed two collection suits before the High Court of Justice, Queen's Bench Division, Technology and Construction Court in London, England ("London Court"), docketed as Claim No. HT-04-248 and Claim No. HT-05-269. In both claims, respondent Takenaka Corporation was designated as the First Claimant and respondent Asahikosan Corporation, the Second Claimant.

Ruling in favor of private respondents, the London Court issued an *Order* dated February 18, 2005 in Claim No. HT-04-248 and an *Order* dated December 2, 2005 in Claim No. HT-05-269, directing that -

Claim No. HT-04-248

"1. Judgment be entered for the First Claimant in the sum of 6,602,971.00 United States dollars, together with interest in

the sum of 116,825,365.34 Philippine pesos up to and including 18 February 2005.

2. Judgment be entered for the Second Claimant in the sum of 8,224,236.00 United States dollars, together with interest in the sum of 2,947,564.87 United States dollars up to and including 18 February 2005, being a total of 11,171,800.87 United States dollars.

3. Save for the costs of and caused by the amendment of the particulars of claim, which will be the subject of a separate order, the Defendant to pay the First Claimant's and the Second Claimant's costs in the action, to be subject to detailed assessment if not agreed."

Claim No. HT-05-269

"1. Judgment be entered for the First Claimant in the sum of 21,688,012.18 United States dollars, together with interest in the sum of 6,052,805.83 United States dollars.

2. Judgment be entered for the Second Claimant in the sum of 30,319,248.36 United States dollars, together with interest in the sum of 5,442,628.26 United States dollars.

3. The Defendant to pay the Claimants' costs in the action, to be subject to detailed assessment if not agreed."

On March 1, 2006, private respondents filed a *Complaint*, docketed as Civil Case No. 06-171, before the Regional Trial Court of Makati City, Br. 58, to enforce the aforesaid *Orders* of the London Court.

Petitioner filed a Motion to Dismiss the Complaint on the grounds of: (a) defective verification and certification against forum shopping, because there was no board resolution showing that Mr. Takeshi Kurebayashi was authorized by private respondents to sign the verification and certification of non-forum shopping, and the special powers of attorney executed in favor of Mr. Kurebayashi by the Executive Vice-President and President of respondents Takenaka Corporation and Asahikosan Corporation, respectively, were not only insufficient but also improperly authenticated since the said officers never personally appeared before the notary public, and finally, Mr. Kurebayashi was not competent to guarantee that respondent Asahikosan Corporation has not engaged in forum shopping, not being an employee or member of the said corporation; (b) forum shopping, because the Complaint was allegedly private respondents' third attempt to file the same claim, the first attempt being private respondents' voluntary submission to the jurisdiction of the Pasay Court in Civil Case No. 04-0876, the expropriation case filed by the Republic of the Philippines against herein petitioner, where private respondents manifested that they are not objecting to the taking of the condemned property (NAIA IPT3), provided that they are justly compensated for their

claims as unpaid contractors, and the second attempt having been made before the Supreme Court in G.R. No. 166429 where private respondents moved for partial reconsideration (in intervention) of the Supreme Court's decision affirming, with modification, the Pasay Court's Order allowing the full release to herein petitioner of the funds deposited by the Republic of the Philippines for the expropriation of the NAIA IPT3; (c) payment, novation, abandonment or extinguishment of the claims, inasmuch as private respondents have allegedly entered into a contract with the Philippine government pursuant to which private respondents supposedly received payment of US\$10Million from the Philippine government, with the latter committing to deliver more; and (d) non-compliance with a condition precedent, because petitioner failed to resort to arbitration before the Construction Industry Arbitration Commission (CIAC) as allegedly provided by the terms of the parties' agreement.

During the hearing of the Motion to Dismiss on April 7, 2006, private respondents asked for time to file their Opposition. Private respondents subsequently filed their Opposition, which was followed by petitioner's Reply, private respondents' Rejoinder and petitioner's Sur-Rejoinder.

On May 9, 2006, petitioner filed a Motion to Set its Motion to Dismiss for hearing, to enable it to present evidence on the alleged payment, novation and extinguishment of its obligations to private respondents. Thereafter, petitioner filed a Request for Subpoena *Duces Tecum Ad Testificandum* to direct Mr. Takeshi Kurebayashi to appear and testify in court, and to bring the alleged General Framework Agreement ("GFA") between private respondents and the Philippine government as represented by the Manila International Airport Authority (MIAA). Petitioner likewise filed a Motion for Production and Inspection of Documents to require private respondents, or any of its officers and representatives, to produce and permit the inspection, copying and photographing of the GFA by petitioner.

Private respondents opposed the said Motions and Request, arguing that the Motion to Dismiss need not be heard anew because the ground sought to be proved, *i.e.*, payment, novation or extinguishment of obligation, was based on mere newspaper reports which are hearsay evidence. Private respondents also asserted that Mr. Kurebayashi may not be compelled to testify as an adverse party witness without first being served interrogatories. They further argued that discovery of documents may not be allowed until the answer is filed since the materiality of the document requested cannot be determined until the issues are joined. And assuming for the sake of argument that petitioner could prove the partial payment of US\$10Million, the payment would allegedly not extinguish petitioner's total obligation as to result in the dismissal of the action.

Petitioner thereafter filed with the trial court, and served upon the President of respondent Takenaka Corporation, Written Interrogatories which, among others, asked if Takenaka entered into a General Framework Agreement with the Philippine government, what its salient features are, and if any amount has been paid to Takenaka by the

Philippine government.

Private respondents moved to expunge the Written Interrogatories, arguing that written interrogatories cannot be served without leave of court before an Answer has been filed.

On June 26, 2006, petitioner filed a Motion for Leave to serve its Written Interrogatories on the President of respondent Takenaka Corporation. That same day, respondent judge issued the first assailed Omnibus Order denying petitioner's Motion to Dismiss, Motion to Set the Motion to Dismiss for hearing, Motion for Production and Inspection of Documents, and Written Interrogatories.

Respondent judge held that Mr. Takeshi Kurebayashi was duly authorized to represent both private respondents noting the Special Powers of Attorney attached to the Verification and Certification against Forum Shopping, which were executed by the representative directors of private respondents, and accompanied by Notarial Certificates executed in Tokyo by a Japanese Notary, giving authority to Mr. Kurebayashi to file the Complaint. Respondent judge observed that under Articles 261 and 78 of the Commercial Law of Japan, corporations may act through their representative directors, similar to the Executive Committee under Philippine Corporation Law. Respondent judge held that under the principle of *lex loci celebrationis*, the validity of the Special Powers of Attorney is determined by the law of the place where they were executed.

Respondent judge rejected petitioner's claim of forum shopping, holding that private respondents simply served notice on the Pasay Court and the Supreme Court about their being unpaid contractors. Respondent judge found that private respondents merely prayed that the said Courts hold in abeyance the release of the funds to petitioner until such time they can enforce the London Court Orders by virtue of a final judgment, which neither the Pasay court nor the Supreme Court may render because the case before them was one for expropriation.

Respondent judge likewise rejected petitioner's assertion that its obligation has been extinguished by payment or novation. According to respondent judge, petitioner's claim that private respondents had entered into a contract with the Philippine government was based on alleged newspaper articles which are inadmissible in evidence for being hearsay. If at all, said respondent judge, such claim should be raised as an affirmative defense in the Answer and substantiated in a full-blown trial. And assuming private respondents were indeed paid US\$10Million under the alleged contract with the Philippine government, the same is but a small portion of the total amount claimed which is around US\$198Million, excluding attorney's fees and costs of suit.

Anent private respondents' alleged failure to resort to arbitration, respondent judge held that "this ground, which actually assails the jurisdiction of the foreign court," is "a matter of affirmative or special defense" which should be threshed out in a trial.

Finally, respondent judge held that the Motion for Production and Inspection of Documents and the Written Interrogatories are modes of discovery that can only be availed of after the Answer has been filed, pursuant to A.M. No. 03-1-09-SC.

Dissatisfied with respondent judge's ruling, petitioner moved for reconsideration of the June 26, 2006 Omnibus Order.

Noting that petitioner "failed to attach a copy of the alleged General Framework (of) Agreement in its Motion for Reconsideration that will give flesh and blood to its bones of contentions that (private respondents') claim has already been paid, novated or extinguished," respondent judge issued his Order dated September 5, 2006, directing petitioner to submit the alleged GFA within 5 days from notice.

Accordingly, petitioner filed a Request for Subpoena Duces Tecum for Alfonso Cusi, General Manager or Records Custodian of MIAA, to bring the GFA, vouchers, receipts and other papers proving MIAA's alleged payments to respondent Takenaka Corporation.

On September 22, 2006, respondent judge granted petitioner's request and directed the issuance of the subpoena *duces tecum*.

On September 27, 2006, the MIAA, through the Office of the Solicitor General, filed a Motion to Quash the subpoena *duces tecum*, without serving a copy of their motion on the parties. The MIAA averred that the subpoena was oppressive and unreasonable for it allegedly violated Section 6, Rule 21, and petitioner allegedly failed to show the relevance of the documents sought to be produced. The MIAA added that "(t)he only objective that (petitioner) has in asking for the GFA is to use against the Government and shift its burden of paying its EPC contractors, Takenaka Corporation and Asahikosan Corporation for the unpaid services rendered before the government expropriated the NAIA Terminal III." The MIAA averred that "(petitioner) is venturing into a 'fishing expedition' to evade its obligations to Takenaka Corporation and Asahikosan Corporation, and shifting the burden to the Government."

On October 9, 2006, respondent judge issued the second assailed Order quashing the subpoena *duces tecum*, because the MIAA was not given ample opportunity to prepare for the submission of the requested document, and because petitioner had to show the relevancy of the said document in the light of MIAA's contention that petitioner is merely shifting the burden to pay its contractors for unpaid services rendered before the expropriation of the NAIA IPT3.

Consequently, petitioner moved for reconsideration of the October 9, 2006 Order.

On January 15, 2007, respondent judge issued the third assailed Omnibus Order, denying petitioner's motions for reconsideration of the assailed June 26, 2006 Omnibus Order, and October 9, 2006 Order. [3]