

SECOND DIVISION

[G.R. No. 175404, January 31, 2011]

**CARGILL PHILIPPINES, INC., PETITIONER, VS. SAN FERNANDO
REGALA TRADING, INC., RESPONDENT.**

DECISION

PERALTA, J.:

Before us is a petition for review on *certiorari* seeking to reverse and set aside the Decision^[1] dated July 31, 2006 and the Resolution^[2] dated November 13, 2006 of the Court of Appeals (CA) in CA G.R. SP No. 50304.

The factual antecedents are as follows:

On June 18, 1998, respondent San Fernando Regala Trading, Inc. filed with the Regional Trial Court (RTC) of Makati City a Complaint for Rescission of Contract with Damages^[3] against petitioner Cargill Philippines, Inc. In its Complaint, respondent alleged that it was engaged in buying and selling of molasses and petitioner was one of its various sources from whom it purchased molasses. Respondent alleged that it entered into a contract dated July 11, 1996 with petitioner, wherein it was agreed upon that respondent would purchase from petitioner 12,000 metric tons of Thailand origin cane blackstrap molasses at the price of US\$192 per metric ton; that the delivery of the molasses was to be made in January/February 1997 and payment was to be made by means of an Irrevocable Letter of Credit payable at sight, to be opened by September 15, 1996; that sometime prior to September 15, 1996, the parties agreed that instead of January/February 1997, the delivery would be made in April/May 1997 and that payment would be by an Irrevocable Letter of Credit payable at sight, to be opened upon petitioner's advice. Petitioner, as seller, failed to comply with its obligations under the contract, despite demands from respondent, thus, the latter prayed for rescission of the contract and payment of damages.

On July 24, 1998, petitioner filed a Motion to Dismiss/Suspend Proceedings and To Refer Controversy to Voluntary Arbitration,^[4] wherein it argued that the alleged contract between the parties, dated July 11, 1996, was never consummated because respondent never returned the proposed agreement bearing its written acceptance or conformity nor did respondent open the Irrevocable Letter of Credit at sight. Petitioner contended that the controversy between the parties was whether or not the alleged contract between the parties was legally in existence and the RTC was not the proper forum to ventilate such issue. It claimed that the contract contained an arbitration clause, to wit:

ARBITRATION

Any dispute which the Buyer and Seller may not be able to settle by

mutual agreement shall be settled by arbitration in the City of New York before the American Arbitration Association. The Arbitration Award shall be final and binding on both parties.^[5]

that respondent must first comply with the arbitration clause before resorting to court, thus, the RTC must either dismiss the case or suspend the proceedings and direct the parties to proceed with arbitration, pursuant to Sections ⁶[6] and ⁷[7] of Republic Act (R.A.) No. 876, or the Arbitration Law.

Respondent filed an Opposition, wherein it argued that the RTC has jurisdiction over the action for rescission of contract and could not be changed by the subject arbitration clause. It cited cases wherein arbitration clauses, such as the subject clause in the contract, had been struck down as void for being contrary to public policy since it provided that the arbitration award shall be final and binding on both parties, thus, ousting the courts of jurisdiction.

In its Reply, petitioner maintained that the cited decisions were already inapplicable, having been rendered prior to the effectivity of the New Civil Code in 1950 and the Arbitration Law in 1953.

In its Rejoinder, respondent argued that the arbitration clause relied upon by petitioner is invalid and unenforceable, considering that the requirements imposed by the provisions of the Arbitration Law had not been complied with.

By way of Sur-Rejoinder, petitioner contended that respondent had even clarified that the issue boiled down to whether the arbitration clause contained in the contract subject of the complaint is valid and enforceable; that the arbitration clause did not violate any of the cited provisions of the Arbitration Law.

On September 17, 1998, the RTC rendered an Order,^[8] the dispositive portion of which reads:

Premises considered, defendant's "Motion To Dismiss/Suspend Proceedings and To Refer Controversy To Voluntary Arbitration" is hereby DENIED. Defendant is directed to file its answer within ten (10) days from receipt of a copy of this order.^[9]

In denying the motion, the RTC found that there was no clear basis for petitioner's plea to dismiss the case, pursuant to Section 7 of the Arbitration Law. The RTC said that the provision directed the court concerned only to stay the action or proceeding brought upon an issue arising out of an agreement providing for the arbitration thereof, but did not impose the sanction of dismissal. However, the RTC did not find the suspension of the proceedings warranted, since the Arbitration Law contemplates an arbitration proceeding that must be conducted in the Philippines under the jurisdiction and control of the RTC; and before an arbitrator who resides in the country; and that the arbitral award is subject to court approval, disapproval and modification, and that there must be an appeal from the judgment of the RTC. The RTC found that the arbitration clause in question contravened these procedures, *i.e.*, the arbitration clause contemplated an arbitration proceeding in New York

before a non-resident arbitrator (American Arbitration Association); that the arbitral award shall be final and binding on both parties. The RTC said that to apply Section 7 of the Arbitration Law to such an agreement would result in disregarding the other sections of the same law and rendered them useless and mere surplusages.

Petitioner filed its Motion for Reconsideration, which the RTC denied in an Order^[10] dated November 25, 1998.

Petitioner filed a petition for *certiorari* with the CA raising the sole issue that the RTC acted in excess of jurisdiction or with grave abuse of discretion in refusing to dismiss or at least suspend the proceedings *a quo*, despite the fact that the party's agreement to arbitrate had not been complied with.

Respondent filed its Comment and Reply. The parties were then required to file their respective Memoranda.

On July 31, 2006, the CA rendered its assailed Decision denying the petition and affirming the RTC Orders.

In denying the petition, the CA found that stipulation providing for arbitration in contractual obligation is both valid and constitutional; that arbitration as an alternative mode of dispute resolution has long been accepted in our jurisdiction and expressly provided for in the Civil Code; that R.A. No. 876 (the Arbitration Law) also expressly authorized the arbitration of domestic disputes. The CA found error in the RTC's holding that Section 7 of R.A. No. 876 was inapplicable to arbitration clause simply because the clause failed to comply with the requirements prescribed by the law. The CA found that there was nothing in the Civil Code, or R.A. No. 876, that require that arbitration proceedings must be conducted only in the Philippines and the arbitrators should be Philippine residents. It also found that the RTC ruling effectively invalidated not only the disputed arbitration clause, but all other agreements which provide for foreign arbitration. The CA did not find illegal or against public policy the arbitration clause so as to render it null and void or ineffectual.

Notwithstanding such findings, the CA still held that the case cannot be brought under the Arbitration Law for the purpose of suspending the proceedings before the RTC, since in its Motion to Dismiss/Suspend proceedings, petitioner alleged, as one of the grounds thereof, that the subject contract between the parties did not exist or it was invalid; that the said contract bearing the arbitration clause was never consummated by the parties, thus, it was proper that such issue be first resolved by the court through an appropriate trial; that the issue involved a question of fact that the RTC should first resolve. Arbitration is not proper when one of the parties repudiated the existence or validity of the contract.

Petitioner's motion for reconsideration was denied in a Resolution dated November 13, 2006.

Hence, this petition.

Petitioner alleges that the CA committed an error of law in ruling that arbitration cannot proceed despite the fact that: (a) it had ruled, in its assailed decision, that the arbitration clause is valid, enforceable and binding on the parties; (b) the case

of *Gonzales v. Climax Mining Ltd.*^[11] is inapplicable here; (c) parties are generally allowed, under the Rules of Court, to adopt several defenses, alternatively or hypothetically, even if such defenses are inconsistent with each other; and (d) the complaint filed by respondent with the trial court is premature.

Petitioner alleges that the CA adopted inconsistent positions when it found the arbitration clause between the parties as valid and enforceable and yet in the same breath decreed that the arbitration cannot proceed because petitioner assailed the existence of the entire agreement containing the arbitration clause. Petitioner claims the inapplicability of the cited *Gonzales* case decided in 2005, because in the present case, it was respondent who had filed the complaint for rescission and damages with the RTC, which based its cause of action against petitioner on the alleged agreement dated July 11, 2006 between the parties; and that the same agreement contained the arbitration clause sought to be enforced by petitioner in this case. Thus, whether petitioner assails the genuineness and due execution of the agreement, the fact remains that the agreement sued upon provides for an arbitration clause; that respondent cannot use the provisions favorable to him and completely disregard those that are unfavorable, such as the arbitration clause.

Petitioner contends that as the defendant in the RTC, it presented two alternative defenses, *i.e.*, the parties had not entered into any agreement upon which respondent as plaintiff can sue upon; and, assuming that such agreement existed, there was an arbitration clause that should be enforced, thus, the dispute must first be submitted to arbitration before an action can be instituted in court. Petitioner argues that under Section 1(j) of Rule 16 of the Rules of Court, included as a ground to dismiss a complaint is when a condition precedent for filing the complaint has not been complied with; and that submission to arbitration when such has been agreed upon is one such condition precedent. Petitioner submits that the proceedings in the RTC must be dismissed, or at least suspended, and the parties be ordered to proceed with arbitration.

On March 12, 2007, petitioner filed a Manifestation^[12] saying that the CA's rationale in declining to order arbitration based on the 2005 *Gonzales* ruling had been modified upon a motion for reconsideration decided in 2007; that the CA decision lost its legal basis, because it had been ruled that the arbitration agreement can be implemented notwithstanding that one of the parties thereto repudiated the contract which contained such agreement based on the doctrine of separability.

In its Comment, respondent argues that *certiorari* under Rule 65 is not the remedy against an order denying a Motion to Dismiss/Suspend Proceedings and To Refer Controversy to Voluntary Arbitration. It claims that the Arbitration Law which petitioner invoked as basis for its Motion prescribed, under its Section 29, a remedy, *i.e.*, appeal by a petition for review on *certiorari* under Rule 45. Respondent contends that the *Gonzales* case, which was decided in 2007, is inapplicable in this case, especially as to the doctrine of separability enunciated therein. Respondent argues that even if the existence of the contract and the arbitration clause is conceded, the decisions of the RTC and the CA declining referral of the dispute between the parties to arbitration would still be correct. This is so because respondent's complaint filed in Civil Case No. 98-1376 presents the principal issue of whether under the facts alleged in the complaint, respondent is entitled to rescind its contract with petitioner and for the latter to pay damages; that such issue

constitutes a judicial question or one that requires the exercise of judicial function and cannot be the subject of arbitration.

Respondent contends that Section 8 of the Rules of Court, which allowed a defendant to adopt in the same action several defenses, alternatively or hypothetically, even if such defenses are inconsistent with each other refers to allegations in the pleadings, such as complaint, counterclaim, cross-claim, third-party complaint, answer, but not to a motion to dismiss. Finally, respondent claims that petitioner's argument is premised on the existence of a contract with respondent containing a provision for arbitration. However, its reliance on the contract, which it repudiates, is inappropriate.

In its Reply, petitioner insists that respondent filed an action for rescission and damages on the basis of the contract, thus, respondent admitted the existence of all the provisions contained thereunder, including the arbitration clause; that if respondent relies on said contract for its cause of action against petitioner, it must also consider itself bound by the rest of the terms and conditions contained thereunder notwithstanding that respondent may find some provisions to be adverse to its position; that respondent's citation of the *Gonzales* case, decided in 2005, to show that the validity of the contract cannot be the subject of the arbitration proceeding and that it is the RTC which has the jurisdiction to resolve the situation between the parties herein, is not correct since in the resolution of the Gonzales' motion for reconsideration in 2007, it had been ruled that an arbitration agreement is effective notwithstanding the fact that one of the parties thereto repudiated the main contract which contained it.

We first address the procedural issue raised by respondent that petitioner's petition for *certiorari* under Rule 65 filed in the CA against an RTC Order denying a Motion to Dismiss/Suspend Proceedings and to Refer Controversy to Voluntary Arbitration was a wrong remedy invoking Section 29 of R.A. No. 876, which provides:

Section 29.

x x x An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through *certiorari* proceedings, but such appeals shall be limited to question of law. x x x.

To support its argument, respondent cites the case of *Gonzales v. Climax Mining Ltd.* [13] (Gonzales case), wherein we ruled the impropriety of a petition for *certiorari* under Rule 65 as a mode of appeal from an RTC Order directing the parties to arbitration.

We find the cited case not in point.

In the *Gonzales* case, Climax-Arimco filed before the RTC of Makati a petition to compel arbitration under R.A. No. 876, pursuant to the arbitration clause found in the Addendum Contract it entered with Gonzales. Judge Oscar Pimentel of the RTC of Makati then directed the parties to arbitration proceedings. Gonzales filed a petition for *certiorari* with Us contending that Judge Pimentel acted with grave abuse of discretion in immediately ordering the parties to proceed with arbitration