

SECOND DIVISION

[G.R. No. 170530, July 05, 2010]

SARGASSO CONSTRUCTION & DEVELOPMENT CORPORATION/PICK & SHOVEL, INC.,/ATLANTIC ERECTORS, INC. (JOINT VENTURE), PETITIONER, VS. PHILIPPINE PORTS AUTHORITY, RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 which seeks to annul and set aside the August 22, 2005 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63180 and its November 14, 2005 Resolution^[2] denying petitioner's motion for the reconsideration thereof. The questioned CA decision *reversed* the June 8, 1998 Decision^[3] of the Regional Trial Court of Manila, Branch 14, in Civil Case No. 97-83916, which granted petitioner's action for specific performance.

The factual and procedural antecedents have been succinctly recited in the subject Court of Appeals decision in this wise:^[4]

Plaintiff Sargasso Construction and Development Corporation, Pick and Shovel, Inc. and Atlantic Erectors, Inc., a joint venture, was awarded the construction of Pier 2 and the rock causeway (R.C. Pier 2) for the port of San Fernando, La Union, after a public bidding conducted by the defendant PPA. Implementation of the project commenced on August 14, 1990. The port construction was in pursuance of the development of the Northwest Luzon Growth Quadrangle. Adjacent to Pier 2 is an area of P4,280 square meters intended for the reclamation project as part of the overall port development plan.

In a letter dated October 1, 1992 of Mr. Melecio J. Go, Executive Director of the consortium, plaintiff offered to undertake the reclamation between the Timber Pier and Pier 2 of the Port of San Fernando, La Union, as an extra work to its existing construction of R.C. Pier 2 and Rock Causeway for a price of P36,294,857.03. Defendant replied thru its Assistant General Manager Teofilo H. Landicho who sent the following letter dated December 18, 1992:

"This is to acknowledge receipt of your letter dated 01 October 1992 offering to undertake the reclamation between the Timber Pier and Pier 2, at the Port of San Fernando, La Union as an extra work to your existing contract.

"Your proposal to undertake the project at a total cost of THIRTY SIX MILLION TWO HUNDRED NINETY FOUR THOUSAND EIGHT HUNDRED FIFTY SEVEN AND 03/100 PESOS (P36,294,857.03) is not acceptable to PPA. If you can reduce your offer to THIRTY MILLION SEVEN HUNDRED NINETY FOUR THOUSAND TWO HUNDRED THIRTY AND 89/100 (P30,794,230.89) **we may consider favorably award of the project in your favor, subject to the approval of higher authority.**

Please signify your agreement to the reduced amount of P30,794,230.89 by signing in the space provided below. (emphasis in the original)

On August 26, 1993, a Notice of Award signed by PPA General Manager Rogelio Dayan was sent to plaintiff for the phase I Reclamation Contract in the amount of P30,794,230.89 and instructing it to "enter into and execute the contract agreement with this Office" and to furnish the documents representing performance security and credit line. Defendant likewise stated [and] made it a condition that "fendering of Pier No. 2 Port of San Fernando, and the Port of Tabaco is completed before the approval of the contract for the reclamation project." Installation of the rubber dock fenders in the said ports was accomplished in the year 1994. PPA Management further set a condition [that] "the acceptance by the contractor that mobilization/demobilization cost shall not be included in the contract and that escalation shall be reckoned upon approval of the Supplemental Agreement." The award of the negotiated contract as additional or supplemental project in favor of plaintiff was intended "to save on the mobilization/demobilization costs and some items as provided for in the original contract." Hence, then General Manager Carlos L. Agustin presented for consideration by the PPA Board of Directors the contract proposal for the reclamation project.

At its meeting held on September 9, 1994, the Board decided not to approve the contract proposal, as reflected in the following excerpt of the minutes taken during said board meeting:

"After due deliberation, the Board advised Management **to bid the project since there is no strong legal basis for Management to award the supplemental contract through negotiation.** The Board noted that the Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso."^[5]

It appears that PPA did not formally advise the plaintiff of the Board's action on their contract proposal. As plaintiff learned that the Board was

not inclined to favor its Supplemental Agreement, Mr. Go wrote General Manager Agustin requesting that the same be presented again to the Board meeting for approval. However, no reply was received by plaintiff from the defendant.

On June 30, 1997, plaintiff filed a **complaint** for specific performance and damages before the Regional Trial Court of Manila alleging that defendant PPA's unjustified refusal to comply with its undertaking, unnecessarily leading to the delay in the implementation of the award under the August 26, 1993 Notice of Award, has put on hold plaintiff's men and resources earmarked for the project, aside from effectively tying its hands in undertaking other projects for fear that plaintiff's incapacity to undertake work might be spread thinly and it might not be able to function efficiently if the PPA project and other projects should require simultaneous attention. Plaintiff averred that it sought reconsideration of the August 9, 1996 letter of PPA informing it that it did not qualify to bid for the proposed extension of RC Pier No. 2, Port of San Fernando, La Union for not having IAC Registration and Classification and not complying with equipment requirement. In its letter dated September 19, 1996, plaintiff pointed out that the disqualification was clearly unjust and totally without basis considering that individual contractors of the joint venture have undertaken separately bigger projects, and have been such individual contractors for almost 16 years. It thus prayed that judgment be rendered by the court directing the defendant (a) to comply with its undertaking under the Notice of Award dated August 26, 1993; and (b) to pay plaintiff actual damages (P1,000,000.00), exemplary damages (P1,000,000.00), attorney's fees (P300,000.00) and expenses of litigation and costs (P50,000.00).

Defendant PPA thru the Office of the Government Corporate Counsel (OGCC) filed its **Answer** with Compulsory Counterclaim contending that the alleged Notice of Award has already been properly revoked when the Supplemental Agreement which should have implemented the award was denied approval by defendant's Board of Directors. As to plaintiff's pre-disqualification from participating in the bidding for the extension of R.C. Pier No. 2 Project at the Port of San Fernando, La Union, the same is based on factual determination by the defendant that plaintiff lacked IAC Registration and Classification and equipment for the said project as communicated in the August 9, 1996 letter. Defendant disclaimed any liability for whatever damages suffered by the plaintiff when it "jumped the gun" by committing its alleged resources for the reclamation project despite the fact that no Notice to Proceed was issued to plaintiff by the defendant. The cause of action insofar as the Extension of R.C. Pier No. 2 of the Port of San Fernando, La Union, is barred by the statute of limitation since plaintiff filed its request for reconsideration way beyond the seven (7) day-period allowed under IB 6-5 of the Implementing Rules and Regulations of P.D. 1594. Defendant clarified that the proposed Reclamation Project and Extension of R.C. Pier No. 2 San Fernando, La Union, are separate projects of PPA. The Board of Directors denied approval of the Supplemental Agreement on September 9, 1994 for lack of legal basis to award the supplemental contract through negotiation which was properly communicated to the plaintiff as shown

by its letter dated September 19, 1994 seeking reconsideration thereof. As advised by the Board, PPA Management began to make preparations for the public bidding for the proposed reclamation project. In the meantime, defendant decided to pursue the extension of R.C. Pier 2, San Fernando, La Union. xxx It [prayed that the complaint be dismissed]. (Emphasis supplied)

After trial, the lower court rendered a decision in favor of the plaintiff, the dispositive portion of which reads:

"WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered ordering the defendant to execute a contract in favor of the plaintiff for the reclamation of the area between the Timber Pier and Pier 2 located at San Fernando, La Union for the price of P30,794,230.89 and to pay the costs.

The counterclaim is dismissed for lack of merit.

SO ORDERED.^[6]

In addressing affirmatively the basic issue of whether there was a perfected contract between the parties for the reclamation project, the trial court ruled that the "higher authority x x adverted to does not necessarily mean the Board of Directors (*Board*). Under IRR, P.D. 1594 (1)B10.6, approval of award and contracts is vested on the head of the infrastructure department or its duly authorized representative. Under Sec. 9 (iii) of P.D. 857 which has amended P.D. 505 that created the PPA, one of the particular powers and duties of the General Manager and Assistant General Manager is to sign contracts."^[7] It went on to say that "in the case of the PPA, the power to enter into contracts is not only vested on the Board of Directors, but also to the manager" citing Section 9 (III) of P.D. No. 857.^[8]

The trial court added that the tenor of the Notice of Award implied that respondent's general manager had been empowered by its Board of Directors to bind respondent by contract. It noted that whereas the letter-reply contained the phrase "approval of the higher authority," the conspicuous absence of the same in the Notice of Award supported the finding that the general manager had been vested with authority to enter into the contract for and in behalf of respondent. To the trial court, the disapproval by the PPA Board of the supplementary contract for the reclamation on a ground other than the general manager's lack of authority was an explicit recognition that the latter was so authorized to enter into the purported contract.

Respondent moved for a reconsideration of the RTC decision but it was denied for lack of merit. Respondent then filed its Notice of Appeal. Subsequently, petitioner moved to dismiss the appeal on the ground that respondent failed to perfect its appeal seasonably. On June 27, 2000, the Court of Appeals issued a Resolution^[9] dismissing respondent's appeal for having been filed out time. Respondent's motion for reconsideration of said resolution was also denied.^[10]

Undaunted, respondent elevated its problem to this Court via a petition for review

on certiorari under Rule 45 assailing the denial of its appeal. On July 30, 2004, the Court rendered an *en banc* decision^[11] granting respondent's petition on a liberal interpretation of the rules of procedure, and ordering the CA to conduct further proceedings.

On August 22, 2005, the CA rendered the assailed decision reversing the trial court's decision and dismissing petitioner's complaint for specific performance and damages. Thus, the dispositive portion thereof reads:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated June 8, 1998 of the trial court in Civil Case No. 97-83916 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the complaint for specific performance and damages filed by Plaintiff Sargasso Construction and Development Corporation/Pick & Shovel, Inc./Atlantic Erectors, Inc., (Joint Venture) against the Philippine Ports Authority for lack of merit.

In setting aside the trial court's decision, the CA ruled that the law itself should serve as the basis of the general manager's authority to bind respondent corporation and, thus, the trial court erred in merely relying on the wordings of the Notice of Award and the Minutes of the Board meeting in determining the limits of his authority; that the power of the general manager "to sign contracts" is different from the Board's power "to make or enter (into) contracts"; and that, in the execution of contracts, the general manager only exercised a delegated power, in reference to which, evidence was wanting that the PPA Board delegated to its general manager the authority to enter into a supplementary contract for the reclamation project.

The CA also found the disapproval of the contract on a ground other than the general manager's lack of authority rather inconsequential because Executive Order 380^[12] expressly authorized the governing boards of government-owned or controlled corporations "to enter into negotiated infrastructure contracts involving... not more than fifty million (P50 million)." The CA further noted that the Notice of Award was only one of those documents that comprised the entire contract and, therefore, did not in itself evidence the perfection of a contract.

Hence, this petition.

The issue to be resolved in this case is whether or not a contract has been perfected between the parties which, in turn, depends on whether or not the general manager of PPA is vested with authority to enter into a contract for and on behalf of PPA.

The petition fails.

Petitioner contends that the existence of "Notice of Award of Contract and Contractor's Conforme thereto," resulting from its negotiation with respondent, proves that a contract has already been perfected, and that the other documents enumerated under the amended Rules and Regulations^[13] implementing P.D. 1594^[14] are mere physical representations of the parties' meeting of the minds; that the "Approval of Award by Approving Authority" is only a "supporting