

SECOND DIVISION

[G.R. No. 179537, October 23, 2009]

**PHILIPPINE ECONOMIC ZONE AUTHORITY, PETITIONER, VS.
EDISON (BATAAN) COGENERATION CORPORATION,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioner Philippine Economic Zone Authority (PEZA) and Edison (Bataan) Cogeneration Corporation (respondent) entered into a Power Supply and Purchase Agreement (PSPA or agreement) for a 10-year period effective October 25, 1997 whereby respondent undertook to construct, operate, and maintain a power plant which would sell, supply and deliver electricity to PEZA for resale to business locators in the Bataan Economic Processing Zone.

In the course of the discharge of its obligation, respondent requested from PEZA a tariff increase with a mechanism for adjustment of the cost of fuel and lubricating oil, which request it reiterated on March 5, 2004.

PEZA did not respond to both requests, however, drawing respondent to write PEZA on May 3, 2004. Citing a tariff increase which PEZA granted to the East Asia Utilities Corporation (EAUC), another supplier of electricity in the Mactan Economic Zone, respondent informed PEZA of a violation of its obligation under Clause 4.9 of the PSPA not to give preferential treatment to other power suppliers.

After the lapse of 90 days, respondent terminated the PSPA, invoking its right thereunder, and demanded P708,691,543.00 as pre-termination fee. PEZA disputed respondent's right to terminate the agreement and refused to pay the pre-termination fee, prompting respondent to request PEZA to submit the dispute to arbitration pursuant to the arbitration clause of the PSPA.

Petitioner refused to submit to arbitration, however, prompting respondent to file a Complaint^[1] against PEZA for specific performance before the Regional Trial Court (RTC) of Pasay, alleging that, *inter alia*:

x x x x

4. Under Clauses 14.1 and 14.2 of the Agreement, the dispute shall be resolved through arbitration before an Arbitration Committee composed of one representative of each party and a third member who shall be mutually acceptable to the parties: x x x

x x x

5. Conformably with the Agreement, plaintiff notified defendant in a letter dated September 6, 2004 requesting that the parties submit their dispute to arbitration. In a letter dated September 8, 2004, which defendant received on the same date, defendant unjustifiably refused to comply with the request for arbitration, in violation of its undertaking under the Agreement. Defendant likewise refused to nominate its representative to the Arbitration Committee as required by the Agreement.
6. Under Section 8 of Republic Act No. 876 (1953), otherwise known as the Arbitration Law, (a) if either party to the contract fails or refuses to name his arbitrator within 15 days after receipt of the demand for arbitration; or (b) if the arbitrators appointed by each party to the contract, or appointed by one party to the contract and by the proper court, shall fail to agree upon or to select the third arbitrator, then this Honorable Court shall appoint the arbitrator or arbitrators.^[2] (Emphasis and underscoring supplied)

Respondent accordingly prayed for judgment

x x x (a) designating (i) an arbitrator to represent defendant; and (ii) the third arbitrator who shall act as Chairman of the Arbitration Committee; and (b) referring the attached Request for Arbitration to the Arbitration Committee to commence the arbitration.^[3]

and for other just and equitable reliefs.

In its Answer,^[4] PEZA (hereafter petitioner):

1. ADMIT[TED] the allegations in paragraphs 1, 2, 3, 4, and 6 of the complaint, with the qualification that the alleged dispute subject of the plaintiff's Request for Arbitration dated October 20, 2004 **is not an arbitrable issue**, considering that the provision on pre-termination fee in the Power Sales and Purchase Agreement (PSPA), is gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy and therefore invalid and unenforceable.
2. ADMIT[TED] the allegation in paragraph 5 of the complaint with the qualification that the refusal of the defendant to arbitrate is justified considering that the **provision on the pre-termination fee** subject of the plaintiff's Request for Arbitration is **invalid and unenforceable**. Moreover, the pre-termination of the PSPA is whimsical, has no valid basis and in violation of the provisions thereof, constituting breach of contract on the part of the plaintiff.^[5] (Emphasis and underscoring supplied)

X x x x

Respondent thereafter filed a Reply and Motion to Render Judgment on the Pleadings,^[6] contending that since petitioner

x x x does not challenge the fact that (a) there is a dispute between the parties; (b) the dispute must be resolved through arbitration before a three-member arbitration committee; and (c) defendant refused to submit the dispute to arbitration by naming its representative in the arbitration committee,

judgment may be rendered directing the appointment of the two other members to complete the composition of the arbitration committee that will resolve the dispute of the parties.^[7]

By Order of April 5, 2005, Branch 118 of the Pasay City RTC granted respondent's Motion to Render Judgment on the Pleadings, disposing as follows:

WHEREFORE, all the foregoing considered, this Court hereby renders judgment in favor of the plaintiff and against the defendant. Pursuant to Section 8 of RA 876, also known as the Arbitration Law, and Power Sales and Purchase Agreement, this Court hereby appoints, subject to their agreement as arbitrators, retired Supreme Court Chief Justice Andres Narvasa, as chairman of the committee, and retired Supreme Court Justices Hugo Gutierrez, and Justice Jose Y. Feria, as defendant's and plaintiff's representative, respectively, to the arbitration committee. Accordingly, let the Request for Arbitration be immediately referred to the Arbitration Committee so that it can commence with the arbitration.

SO ORDERED.^[8] (Underscoring supplied)

On appeal,^[9] the Court of Appeals, by Decision of April 10, 2007, affirmed the RTC Order.^[10] Its Motion for Reconsideration^[11] having been denied,^[12] petitioner filed the present Petition for Review on Certiorari,^[13] faulting the appellate court

I

. . . WHEN IT DISMISSED PETITIONER'S APPEAL AND AFFIRMED THE 05 APRIL 2004 ORDER OF THE TRIAL COURT WHICH RENDERED JUDGMENT ON THE PLEADINGS, DESPITE THE FACT THAT PETITIONER'S ANSWER TENDERED AN ISSUE.

II

. . . WHEN IT AFFIRMED THE ORDER OF THE TRIAL COURT WHICH

REFERRED RESPONDENT'S REQUEST FOR ARBITRATION DESPITE THE FACT THAT THE ISSUE PRESENTED BY THE RESPONDENT IS NOT AN ARBITRABLE ISSUE.^[14] (Underscoring supplied)

The petition fails.

The dispute raised by respondent calls for a proceeding under Section 6 of Republic Act No. 876, "An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes" which reads:

SECTION 6. Hearing by court. -- A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

x x x x (Underscoring supplied)

R.A. No. 876 "explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration."^[15] Given petitioner's admission of the material allegations of respondent's complaint including the existence of a written agreement to resolve disputes through arbitration, the assailed appellate court's affirmance of the trial court's grant of respondent's Motion for Judgment on the Pleadings is in order.

Petitioner argues that it tendered an issue in its Answer as it disputed the legality of the pre-termination fee clause of the PSPA. Even assuming *arguendo* that the clause is illegal, it would not affect the agreement between petitioner and respondent to resolve their dispute by arbitration.

The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end.