

SECOND DIVISION

[G.R. No. 143581, January 07, 2008]

KOREA TECHNOLOGIES CO., LTD., Petitioner, vs. HON. ALBERTO A. LERMA, in his capacity as Presiding Judge of Branch 256 of Regional Trial Court of Muntinlupa City, and PACIFIC GENERAL STEEL MANUFACTURING CORPORATION, Respondents.

DECISION

VELASCO JR., J.:

In our jurisdiction, the policy is to favor alternative methods of resolving disputes, particularly in civil and commercial disputes. Arbitration along with mediation, conciliation, and negotiation, being inexpensive, speedy and less hostile methods have long been favored by this Court. The petition before us puts at issue an arbitration clause in a contract mutually agreed upon by the parties stipulating that they would submit themselves to arbitration in a foreign country. Regrettably, instead of hastening the resolution of their dispute, the parties wittingly or unwittingly prolonged the controversy.

Petitioner Korea Technologies Co., Ltd. (KOGIES) is a Korean corporation which is engaged in the supply and installation of Liquefied Petroleum Gas (LPG) Cylinder manufacturing plants, while private respondent Pacific General Steel Manufacturing Corp. (PGSMC) is a domestic corporation.

On March 5, 1997, PGSMC and KOGIES executed a Contract^[1] whereby KOGIES would set up an LPG Cylinder Manufacturing Plant in Carmona, Cavite. The contract was executed in the Philippines. On April 7, 1997, the parties executed, in Korea, an Amendment for Contract No. KLP-970301 dated March 5, 1997^[2] amending the terms of payment. The contract and its amendment stipulated that KOGIES will ship the machinery and facilities necessary for manufacturing LPG cylinders for which PGSMC would pay USD 1,224,000. KOGIES would install and initiate the operation of the plant for which PGSMC bound itself to pay USD 306,000 upon the plant's production of the 11-kg. LPG cylinder samples. Thus, the total contract price amounted to USD 1,530,000.

On October 14, 1997, PGSMC entered into a Contract of Lease^[3] with Worth Properties, Inc. (Worth) for use of Worth's 5,079-square meter property with a 4,032-square meter warehouse building to house the LPG manufacturing plant. The monthly rental was PhP 322,560 commencing on January 1, 1998 with a 10% annual increment clause. Subsequently, the machineries, equipment, and facilities for the manufacture of LPG cylinders were shipped, delivered, and installed in the Carmona plant. PGSMC paid KOGIES USD 1,224,000.

However, gleaned from the Certificate^[4] executed by the parties on January 22, 1998, after the installation of the plant, the initial operation could not be conducted

as PGSMC encountered financial difficulties affecting the supply of materials, thus forcing the parties to agree that KOGIES would be deemed to have completely complied with the terms and conditions of the March 5, 1997 contract.

For the remaining balance of USD306,000 for the installation and initial operation of the plant, PGSMC issued two postdated checks: (1) BPI Check No. 0316412 dated January 30, 1998 for PhP 4,500,000; and (2) BPI Check No. 0316413 dated March 30, 1998 for PhP 4,500,000.^[5]

When KOGIES deposited the checks, these were dishonored for the reason "PAYMENT STOPPED." Thus, on May 8, 1998, KOGIES sent a demand letter^[6] to PGSMC threatening criminal action for violation of *Batas Pambansa Blg. 22* in case of nonpayment. On the same date, the wife of PGSMC's President faxed a letter dated May 7, 1998 to KOGIES' President who was then staying at a Makati City hotel. She complained that not only did KOGIES deliver a different brand of hydraulic press from that agreed upon but it had not delivered several equipment parts already paid for.

On May 14, 1998, PGSMC replied that the two checks it issued KOGIES were fully funded but the payments were stopped for reasons previously made known to KOGIES.^[7]

On June 1, 1998, PGSMC informed KOGIES that PGSMC was canceling their Contract dated March 5, 1997 on the ground that KOGIES had altered the quantity and lowered the quality of the machineries and equipment it delivered to PGSMC, and that PGSMC would dismantle and transfer the machineries, equipment, and facilities installed in the Carmona plant. Five days later, PGSMC filed before the Office of the Public Prosecutor an Affidavit-Complaint for *Estafa* docketed as I.S. No. 98-03813 against Mr. Dae Hyun Kang, President of KOGIES.

On June 15, 1998, KOGIES wrote PGSMC informing the latter that PGSMC could not unilaterally rescind their contract nor dismantle and transfer the machineries and equipment on mere imagined violations by KOGIES. It also insisted that their disputes should be settled by arbitration as agreed upon in Article 15, the arbitration clause of their contract.

On June 23, 1998, PGSMC again wrote KOGIES reiterating the contents of its June 1, 1998 letter threatening that the machineries, equipment, and facilities installed in the plant would be dismantled and transferred on July 4, 1998. Thus, on July 1, 1998, KOGIES instituted an Application for Arbitration before the Korean Commercial Arbitration Board (KCAB) in Seoul, Korea pursuant to Art. 15 of the Contract as amended.

On July 3, 1998, KOGIES filed a Complaint for Specific Performance, docketed as Civil Case No. 98-117^[8] against PGSMC before the Muntinlupa City Regional Trial Court (RTC). The RTC granted a temporary restraining order (TRO) on July 4, 1998, which was subsequently extended until July 22, 1998. In its complaint, KOGIES alleged that PGSMC had initially admitted that the checks that were stopped were not funded but later on claimed that it stopped payment of the checks for the reason that "their value was not received" as the former allegedly breached their contract by "altering the quantity and lowering the quality of the machinery and equipment"

installed in the plant and failed to make the plant operational although it earlier certified to the contrary as shown in a January 22, 1998 Certificate. Likewise, KOGIES averred that PGSMC violated Art. 15 of their Contract, as amended, by unilaterally rescinding the contract without resorting to arbitration. KOGIES also asked that PGSMC be restrained from dismantling and transferring the machinery and equipment installed in the plant which the latter threatened to do on July 4, 1998.

On July 9, 1998, PGSMC filed an opposition to the TRO arguing that KOGIES was not entitled to the TRO since Art. 15, the arbitration clause, was null and void for being against public policy as it ousts the local courts of jurisdiction over the instant controversy.

On July 17, 1998, PGSMC filed its Answer with Compulsory Counterclaim^[9] asserting that it had the full right to dismantle and transfer the machineries and equipment because it had paid for them in full as stipulated in the contract; that KOGIES was not entitled to the PhP 9,000,000 covered by the checks for failing to completely install and make the plant operational; and that KOGIES was liable for damages amounting to PhP 4,500,000 for altering the quantity and lowering the quality of the machineries and equipment. Moreover, PGSMC averred that it has already paid PhP 2,257,920 in rent (covering January to July 1998) to Worth and it was not willing to further shoulder the cost of renting the premises of the plant considering that the LPG cylinder manufacturing plant never became operational.

After the parties submitted their Memoranda, on July 23, 1998, the RTC issued an Order denying the application for a writ of preliminary injunction, reasoning that PGSMC had paid KOGIES USD 1,224,000, the value of the machineries and equipment as shown in the contract such that KOGIES no longer had proprietary rights over them. And finally, the RTC held that Art. 15 of the Contract as amended was invalid as it tended to oust the trial court or any other court jurisdiction over any dispute that may arise between the parties. KOGIES' prayer for an injunctive writ was denied.^[10] The dispositive portion of the Order stated:

WHEREFORE, in view of the foregoing consideration, this Court believes and so holds that no cogent reason exists for this Court to grant the writ of preliminary injunction to restrain and refrain defendant from dismantling the machineries and facilities at the lot and building of Worth Properties, Incorporated at Carmona, Cavite and transfer the same to another site: and therefore denies plaintiff's application for a writ of preliminary injunction.

On July 29, 1998, KOGIES filed its Reply to Answer and Answer to Counterclaim.^[11] KOGIES denied it had altered the quantity and lowered the quality of the machinery, equipment, and facilities it delivered to the plant. It claimed that it had performed all the undertakings under the contract and had already produced certified samples of LPG cylinders. It averred that whatever was unfinished was PGSMC's fault since it failed to procure raw materials due to lack of funds. KOGIES, relying on *Chung Fu Industries (Phils.), Inc. v. Court of Appeals*,^[12] insisted that the arbitration clause was without question valid.

After KOGIES filed a Supplemental Memorandum with Motion to Dismiss^[13]

answering PGSMC's memorandum of July 22, 1998 and seeking dismissal of PGSMC's counterclaims, KOGIES, on August 4, 1998, filed its Motion for Reconsideration^[14] of the July 23, 1998 Order denying its application for an injunctive writ claiming that the contract was not merely for machinery and facilities worth USD 1,224,000 but was for the sale of an "LPG manufacturing plant" consisting of "supply of all the machinery and facilities" and "transfer of technology" for a total contract price of USD 1,530,000 such that the dismantling and transfer of the machinery and facilities would result in the dismantling and transfer of the very plant itself to the great prejudice of KOGIES as the still unpaid owner/seller of the plant. Moreover, KOGIES points out that the arbitration clause under Art. 15 of the Contract as amended was a valid arbitration stipulation under Art. 2044 of the Civil Code and as held by this Court in *Chung Fu Industries (Phils.), Inc.*^[15]

In the meantime, PGSMC filed a Motion for Inspection of Things^[16] to determine whether there was indeed alteration of the quantity and lowering of quality of the machineries and equipment, and whether these were properly installed. KOGIES opposed the motion positing that the queries and issues raised in the motion for inspection fell under the coverage of the arbitration clause in their contract.

On September 21, 1998, the trial court issued an Order (1) granting PGSMC's motion for inspection; (2) denying KOGIES' motion for reconsideration of the July 23, 1998 RTC Order; and (3) denying KOGIES' motion to dismiss PGSMC's compulsory counterclaims as these counterclaims fell within the requisites of compulsory counterclaims.

On October 2, 1998, KOGIES filed an Urgent Motion for Reconsideration^[17] of the September 21, 1998 RTC Order granting inspection of the plant and denying dismissal of PGSMC's compulsory counterclaims.

Ten days after, on October 12, 1998, without waiting for the resolution of its October 2, 1998 urgent motion for reconsideration, KOGIES filed before the Court of Appeals (CA) a petition for certiorari^[18] docketed as CA-G.R. SP No. 49249, seeking annulment of the July 23, 1998 and September 21, 1998 RTC Orders and praying for the issuance of writs of prohibition, mandamus, and preliminary injunction to enjoin the RTC and PGSMC from inspecting, dismantling, and transferring the machineries and equipment in the Carmona plant, and to direct the RTC to enforce the specific agreement on arbitration to resolve the dispute.

In the meantime, on October 19, 1998, the RTC denied KOGIES' urgent motion for reconsideration and directed the Branch Sheriff to proceed with the inspection of the machineries and equipment in the plant on October 28, 1998.^[19]

Thereafter, KOGIES filed a Supplement to the Petition^[20] in CA-G.R. SP No. 49249 informing the CA about the October 19, 1998 RTC Order. It also reiterated its prayer for the issuance of the writs of prohibition, mandamus and preliminary injunction which was not acted upon by the CA. KOGIES asserted that the Branch Sheriff did not have the technical expertise to ascertain whether or not the machineries and equipment conformed to the specifications in the contract and were properly installed.

On November 11, 1998, the Branch Sheriff filed his Sheriff's Report^[21] finding that the enumerated machineries and equipment were not fully and properly installed.

**The Court of Appeals affirmed the trial court and declared
the arbitration clause against public policy**

On May 30, 2000, the CA rendered the assailed Decision^[22] affirming the RTC Orders and dismissing the petition for certiorari filed by KOGIES. The CA found that the RTC did not gravely abuse its discretion in issuing the assailed July 23, 1998 and September 21, 1998 Orders. Moreover, the CA reasoned that KOGIES' contention that the total contract price for USD 1,530,000 was for the whole plant and had not been fully paid was contrary to the finding of the RTC that PGSMC fully paid the price of USD 1,224,000, which was for all the machineries and equipment. According to the CA, this determination by the RTC was a factual finding beyond the ambit of a petition for certiorari.

On the issue of the validity of the arbitration clause, the CA agreed with the lower court that an arbitration clause which provided for a final determination of the legal rights of the parties to the contract by arbitration was against public policy.

On the issue of nonpayment of docket fees and non-attachment of a certificate of non-forum shopping by PGSMC, the CA held that the counterclaims of PGSMC were compulsory ones and payment of docket fees was not required since the Answer with counterclaim was not an initiatory pleading. For the same reason, the CA said a certificate of non-forum shopping was also not required.

Furthermore, the CA held that the petition for certiorari had been filed prematurely since KOGIES did not wait for the resolution of its urgent motion for reconsideration of the September 21, 1998 RTC Order which was the plain, speedy, and adequate remedy available. According to the CA, the RTC must be given the opportunity to correct any alleged error it has committed, and that since the assailed orders were interlocutory, these cannot be the subject of a petition for certiorari.

Hence, we have this Petition for Review on Certiorari under Rule 45.

The Issues

Petitioner posits that the appellate court committed the following errors:

- a. PRONOUNCING THE QUESTION OF OWNERSHIP OVER THE MACHINERY AND FACILITIES AS "A QUESTION OF FACT" "BEYOND THE AMBIT OF A PETITION FOR CERTIORARI" INTENDED ONLY FOR CORRECTION OF ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (SIC) EXCESS OF JURISDICTION, AND CONCLUDING THAT THE TRIAL COURT'S FINDING ON THE SAME QUESTION WAS IMPROPERLY RAISED IN THE PETITION BELOW;
- b. DECLARING AS NULL AND VOID THE ARBITRATION CLAUSE IN ARTICLE 15 OF THE CONTRACT BETWEEN THE PARTIES FOR BEING "CONTRARY TO PUBLIC POLICY" AND FOR OUSTING THE COURTS