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SPECIAL SECOND DIVISION

[G.R. NO. 161957, January 22, 2007]

JORGE GONZALES AND PANEL OF ARBITRATORS, PETITIONERS, VS. CLIMAX MINING LTD., CLIMAX-ARIMCO MINING CORP., AND AUSTRALASIAN PHILIPPINES MINING INC., RESPONDENTS.

[G.R. NO. 167994]

JORGE GONZALES, PETITIONER, VS. HON. OSCAR B. PIMENTEL, IN HIS CAPACITY AS PRESIDING JUDGE OF BR. 148 OF THE REGIONAL TRIAL COURT OF MAKATI CITY, AND CLIMAX-ARIMCO MINING CORPORATION, RESPONDENTS.

R E S O L U T I O N

TINGA, J.:

This is a consolidation of two petitions rooted in the same disputed Addendum Contract entered into by the parties. In G.R. No. 161957, the Court in its Decision of 28 February 2005[1] denied the Rule 45 petition of petitioner Jorge Gonzales (Gonzales). It held that the DENR Panel of Arbitrators had no jurisdiction over the complaint for the annulment of the Addendum Contract on grounds of fraud and violation of the Constitution and that the action should have been brought before the regular courts as it involved judicial issues. Both parties filed separate motions for reconsideration. Gonzales avers in his Motion for Reconsideration[2] that the Court erred in holding that the DENR Panel of Arbitrators was bereft of jurisdiction, reiterating its argument that the case involves a mining dispute that properly falls within the ambit of the Panel's authority. Gonzales adds that the Court failed to rule on other issues he raised relating to the sufficiency of his complaint before the DENR Panel of Arbitrators and the timeliness of its filing.

Respondents Climax Mining Ltd., et al., (respondents) filed their Motion for Partial Reconsideration and/or Clarification[3] seeking reconsideration of that part of the Decision holding that the case should not be brought for arbitration under Republic Act (R.A.) No. 876, also known as the Arbitration Law.[4] Respondents, citing American jurisprudence[5] and the UNCITRAL Model Law,[6] argue that the arbitration clause in the Addendum Contract should be treated as an agreement independent of the other terms of the contract, and that a claimed rescission of the main contract does not avoid the duty to arbitrate. Respondents add that Gonzales's argument relating to the alleged invalidity of the Addendum Contract still has to be proven and adjudicated on in a proper proceeding; that is, an action separate from the motion to compel arbitration. Pending judgment in such separate action, the Addendum Contract remains valid and binding and so does the arbitration clause therein. Respondents add that the holding in the Decision that "the case should not be brought under the ambit of the Arbitration Law" appears to

be premised on Gonzales's having "impugn[ed] the existence or validity" of the addendum contract. If so, it supposedly conveys the idea that Gonzales's unilateral repudiation of the contract or mere allegation of its invalidity is all it takes to avoid arbitration. Hence, respondents submit that the court's holding that "the case should not be brought under the ambit of the Arbitration Law" be understood or clarified as operative only where the challenge to the arbitration agreement has been sustained by final judgment.

Both parties were required to file their respective comments to the other party's motion for reconsideration/clarification.[7] Respondents filed their Comment on 17 August 2005,[8] while Gonzales filed his only on 25 July 2006.[9]

On the other hand, G.R. No. 167994 is a Rule 65 petition filed on 6 May 2005, or while the motions for reconsideration in G.R. No. 161957[10] were pending, wherein Gonzales challenged the orders of the Regional Trial Court (RTC) requiring him to proceed with the arbitration proceedings as sought by Climax-Arimco Mining Corporation (Climax-Arimco).

On 5 June 2006, the two cases, G.R. Nos. 161957 and 167994, were consolidated upon the recommendation of the Assistant Division Clerk of Court since the cases are rooted in the same Addendum Contract.

We first tackle the more recent case which is G.R. No. 167994. It stemmed from the petition to compel arbitration filed by respondent Climax-Arimco before the RTC of Makati City on 31 March 2000 while the complaint for the nullification of the Addendum Contract was pending before the DENR Panel of Arbitrators. On 23 March 2000, Climax-Arimco had sent Gonzales a Demand for Arbitration pursuant to Clause 19.1[11] of the Addendum Contract and also in accordance with Sec. 5 of R.A. No. 876. The petition for arbitration was subsequently filed and Climax-Arimco sought an order to compel the parties to arbitrate pursuant to the said arbitration clause. The case, docketed as Civil Case No. 00-444, was initially raffled to Br. 132 of the RTC of Makati City, with Judge Herminio I. Benito as Presiding Judge. Respondent Climax-Arimco filed on 5 April 2000 a motion to set the application to compel arbitration for hearing.

On 14 April 2000, Gonzales filed a motion to dismiss which he however failed to set for hearing. On 15 May 2000, he filed an Answer with Counterclaim,[12] questioning the validity of the Addendum Contract containing the arbitration clause. Gonzales alleged that the Addendum Contract containing the arbitration clause is void in view of Climax-Arimco's acts of fraud, oppression and violation of the Constitution. Thus, the arbitration clause, Clause 19.1, contained in the Addendum Contract is also null and void *ab initio* and legally inexistent.

On 18 May 2000, the RTC issued an order declaring Gonzales's motion to dismiss moot and academic in view of the filing of his Answer with Counterclaim.[13]

On 31 May 2000, Gonzales asked the RTC to set the case for pre-trial.[14] This the RTC denied on 16 June 2000, holding that the petition for arbitration is a special proceeding that is summary in nature.[15] However, on 7 July 2000, the RTC granted Gonzales's motion for reconsideration of the 16 June 2000 Order and set the case

for pre-trial on 10 August 2000, it being of the view that Gonzales had raised in his answer the issue of the making of the arbitration agreement.[16]

Climax-Arimco then filed a motion to resolve its pending motion to compel arbitration. The RTC denied the same in its 24 July 2000 order.

On 28 July 2000, Climax-Arimco filed a Motion to Inhibit Judge Herminio I. Benito for "not possessing the cold neutrality of an impartial judge."[17] On 5 August 2000, Judge Benito issued an Order granting the Motion to Inhibit and ordered the re-raffling of the petition for arbitration.[18] The case was raffled to the *sala* of public respondent Judge Oscar B. Pimentel of Branch 148.

On 23 August 2000, Climax-Arimco filed a motion for reconsideration of the 24 July 2000 Order.[19] Climax-Arimco argued that R.A. No. 876 does not authorize a pre-trial or trial for a motion to compel arbitration but directs the court to hear the motion summarily and resolve it within ten days from hearing. Judge Pimentel granted the motion and directed the parties to arbitration. On 13 February 2001, Judge Pimentel issued the first assailed order requiring Gonzales to proceed with arbitration proceedings and appointing retired CA Justice Jorge Coquia as sole arbitrator.[20]

Gonzales moved for reconsideration on 20 March 2001 but this was denied in the Order dated 7 March 2005.[21]

Gonzales thus filed the Rule 65 petition assailing the Orders dated 13 February 2001 and 7 March 2005 of Judge Pimentel. Gonzales contends that public respondent Judge Pimentel acted with grave abuse of discretion in immediately ordering the parties to proceed with arbitration despite the proper, valid, and timely raised argument in his Answer with Counterclaim that the Addendum Contract, containing the arbitration clause, is null and void. Gonzales has also sought a temporary restraining order to prevent the enforcement of the assailed orders directing the parties to arbitrate, and to direct Judge Pimentel to hold a pre-trial conference and the necessary hearings on the determination of the nullity of the Addendum Contract.

In support of his argument, Gonzales invokes Sec. 6 of R.A. No. 876:

> Sec. 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.
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> The court shall decide all motions, petitions or applications filed under the provisions of this Act, within ten (10) days after such motions, petitions, or applications have been heard by it.

Gonzales also cites Sec. 24 of R.A. No. 9285 or the "Alternative Dispute Resolution Act of 2004:"

> Sec. 24. *Referral to Arbitration*.—A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

According to Gonzales, the above-quoted provisions of law outline the procedure to be followed in petitions to compel arbitration, which the RTC did not follow. Thus, referral of the parties to arbitration by Judge Pimentel despite the timely and properly raised issue of nullity of the Addendum Contract was misplaced and without legal basis. Both R.A. No. 876 and R.A. No. 9285 mandate that any issue as to the nullity, inoperativeness, or incapability of performance of the arbitration clause/agreement raised by one of the parties to the alleged arbitration agreement must be determined by the court prior to referring them to arbitration. They require that the trial court first determine or resolve the issue of nullity, and there is no other venue for this determination other than a pre-trial and hearing on the issue by the trial court which has jurisdiction over the case. Gonzales adds that the assailed 13 February 2001 Order also violated his right to procedural due process when the trial court erroneously ruled on the existence of the arbitration agreement despite the absence of a hearing for the presentation of evidence on the nullity of the Addendum Contract.

Respondent Climax-Arimco, on the other hand, assails the mode of review availed of by Gonzales. Climax-Arimco cites Sec. 29 of R.A. No. 876:

> Sec. 29. *Appeals*.—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 questions of law. The proceedings upon such an appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable.

Climax-Arimco mentions that the special civil action for certiorari employed by Gonzales is available only where there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law against the challenged orders or acts. Climax-Arimco then points out that R.A. No. 876 provides for an appeal from such orders, which, under the Rules of Court, must be filed within 15 days from notice of the final order or resolution appealed from or of the denial of the motion for reconsideration filed in due time. Gonzales has not denied that the relevant 15-day period for an appeal had elapsed long before he filed this petition for certiorari.

He cannot use the special civil action of certiorari as a remedy for a lost appeal.

Climax-Arimco adds that an application to compel arbitration under Sec. 6 of R.A. No. 876 confers on the trial court only a limited and special jurisdiction, i.e., a jurisdiction solely to determine (a) whether or not the parties have a written contract to arbitrate, and (b) if the defendant has failed to comply with that contract. Respondent cites *La Naval Drug Corporation v. Court of Appeals,*[22] which holds that in a proceeding to compel arbitration, "[t]he arbitration law explicitly confines the court's authority only to pass upon the issue of whether there is or there is no agreement in writing providing for arbitration," and "[i]n the affirmative, the statute ordains that the court shall issue an order 'summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.'"[23] Climax-Arimco argues that R.A. No. 876 gives no room for any other issue to be dealt with in such a proceeding, and that the court presented with an application to compel arbitration may order arbitration or dismiss the same, depending solely on its finding as to those two limited issues. If either of these matters is disputed, the court is required to conduct a summary hearing on it. Gonzales's proposition contradicts both the trial court's limited jurisdiction and the summary nature of the proceeding itself.

Climax-Arimco further notes that Gonzales's attack on or repudiation of the Addendum Contract also is not a ground to deny effect to the arbitration clause in the Contract. The arbitration agreement is separate and severable from the contract evidencing the parties' commercial or economic transaction, it stresses. Hence, the alleged defect or failure of the main contract is not a ground to deny enforcement of the parties' arbitration agreement. Even the party who has repudiated the main contract is not prevented from enforcing its arbitration provision. R.A. No. 876 itself treats the arbitration clause or agreement as a contract separate from the commercial, economic or other transaction to be arbitrated. The statute, in particular paragraph 1 of Sec. 2 thereof, considers the arbitration stipulation an independent contract in its own right whose enforcement may be prevented only on grounds which legally make the arbitration agreement itself revocable, thus:

> Sec. 2. *Persons and matters subject to arbitration.*—Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing, between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.
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The grounds Gonzales invokes for the revocation of the Addendum Contract—fraud and oppression in the execution thereof—are also not grounds for the revocation of the arbitration clause in the Contract, Climax-Arimco notes. Such grounds may only be raised by way of defense in the arbitration itself and cannot be used to frustrate or delay the conduct of arbitration proceedings. Instead, these should be raised in a separate action for rescission, it continues.

Climax-Arimco emphasizes that the summary proceeding to compel arbitration