407 Phil. 445

SECOND DIVISION

[G.R. No. 129916, March 26, 2001]

MAGELLAN CAPITAL MANAGEMENT CORPORATION AND MAGELLAN CAPITAL HOLDINGS CORPORATION, PETITIONERS, VS. ROLANDO M. ZOSA AND HON. JOSE P. SOBERANO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 58 OF THE REGIONAL TRIAL COURT OF CEBU, 7TH JUDICIAL REGION, RESPONDENTS.

D E C I S I O N

BUENA, J.:

Under a management agreement entered into on March 18, 1994, Magellan Capital Holdings Corporation [MCHC] appointed Magellan Capital Management Corporation [MCMC] as manager for the operation of its business and affairs.[1] Pursuant thereto, on the same month, MCHC, MCMC, and private respondent Rolando M. Zosa entered into an "Employment Agreement" designating Zosa as President and Chief Executive Officer of MCHC.

Under the "Employment Agreement", the term of respondent Zosa's employment shall be co-terminous with the management agreement, or until March 1996,[2] unless sooner terminated pursuant to the provisions of the Employment Agreement.[3] The grounds for termination of employment are also provided in the Employment Agreement.

On May 10, 1995, the majority of MCHC's Board of Directors decided not to re-elect respondent Zosa as President and Chief Executive Officer of MCHC on account of loss of trust and confidence[4] arising from alleged violation of the resolution issued by MCHC's board of directors and of the non-competition clause of the Employment Agreement.[5] Nevertheless, respondent Zosa was elected to a new position as MCHC's Vice-Chairman/Chairman for New Ventures Development.[6]

On September 26, 1995, respondent Zosa communicated his resignation for good reason from the position of Vice-Chairman under paragraph 7 of the *Employment Agreement* on the ground that said position had less responsibility and scope than President and Chief Executive Officer. He demanded that he be given termination benefits as provided for in Section 8 (c) (i) (ii) and (iii) of the *Employment Agreement*.[7]

In a letter dated October 20, 1995, MCHC communicated its non-acceptance of respondent Zosa's resignation for good reason, but instead informed him that the *Employment Agreement* is terminated for cause, effective November 19, 1995, in accordance with Section 7 (a) (v) of the said agreement, on account of his breach of Section 12 thereof. Respondent Zosa was further advised that he shall have no

further rights under the said Agreement or any claims against the Manager or the Corporation except the right to receive within thirty (30) days from November 19, 1995, the amounts stated in Section 8 (a) (i) (ii) of the Agreement.[8]

Disagreeing with the position taken by petitioners, respondent Zosa invoked the Arbitration Clause of the *Employment Agreement*, to wit:

> "23. Arbitration. In the event that any dispute, controversy or claim arises out of or under any provisions of this Agreement, then the parties hereto agree to submit such dispute, controversy or claim to arbitration as set forth in this Section and the determination to be made in such arbitration shall be final and binding. Arbitration shall be effected by a panel of three arbitrators. The Manager, Employee and Corporation shall designate one (1) arbitrator who shall, in turn, nominate and elect who among them shall be the chairman of the committee. Any such arbitration, including the rendering of an arbitration award, shall take place in Metro Manila. The arbitrators shall interpret this Agreement in accordance with the substantive laws of the Republic of the Philippines. The arbitrators shall have no power to add to, subtract from or otherwise modify the terms of Agreement or to grant injunctive relief of any nature. Any judgment upon the award of the arbitrators may be entered in any court having jurisdiction thereof, with costs of the arbitration to be borne equally by the parties, except that each party shall pay the fees and expenses of its own counsel in the arbitration."

On November 10, 1995, respondent Zosa designated his brother, Atty. Francis Zosa, as his representative in the arbitration panel[9] while MCHC designated Atty. Inigo S. Fojas[10] and MCMC nominated Atty. Enrique I. Quiason[11] as their respective representatives in the arbitration panel. However, instead of submitting the dispute to arbitration, respondent Zosa, on April 17, 1996, filed an action for damages against petitioners before the Regional Trial Court of Cebu[12] to enforce his benefits under the *Employment Agreement*.

On July 3, 1996, petitioners filed a motion to dismiss[13] arguing that (1) the trial court has no jurisdiction over the instant case since respondent Zosa's claims should be resolved through arbitration pursuant to Section 23 of the *Employment Agreement* with petitioners; and (2) the venue is improperly laid since respondent Zosa, like the petitioners, is a resident of Pasig City and thus, the venue of this case, granting without admitting that the respondent has a cause of action against the petitioners cognizable by the RTC, should be limited only to RTC-Pasig City.[14]

Meanwhile, respondent Zosa filed an amended complaint dated July 5, 1996.

On **August 1, 1996,** the RTC Branch 58 of Cebu City issued an Order denying petitioners motion to dismiss upon the findings that (1) the validity and legality of the arbitration provision can only be determined after trial on the merits; and (2) the amount of damages claimed, which is over P100,000.00, falls within the jurisdiction of the RTC.[15] Petitioners filed a motion for reconsideration which was denied by the RTC in an order dated **September 5, 1996.**[16]

In the interim, on August 22, 1996, in compliance with the earlier order of the court

directing petitioners to file responsive pleading to the amended complaint, petitioners filed their Answer *Ad Cautelam* with counterclaim reiterating their position that the dispute should be settled through arbitration and the court had no jurisdiction over the nature of the action.[17]

On October 21, 1996, the trial court issued its pre-trial order declaring the pre-trial stage terminated and setting the case for hearing. The order states:

> "ISSUES:
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> "The Court will only resolve one issue in so far as this case is concerned, to wit:
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> "Whether or not the Arbitration Clause contained in Sec.23 of the Employment Agreement is void and of no effect: and, if it is void and of no effect, whether or not the plaintiff is entitled to damages in accordance with his complaint and the defendants in accordance with their counterclaim.
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> "It is understood, that in the event the arbitration clause is valid and binding between the parties, the parties shall submit their respective claim to the Arbitration Committee in accordance with the said arbitration clause, in which event, this case shall be deemed dismissed."[18]

On November 18, 1996, petitioners filed their Motion *Ad Cautelam* for the Correction, Addition and Clarification of the Pre-trial Order dated November 15 1996,[19] which was denied by the court in an order dated November 28, 1996.[20]

Thereafter, petitioners MCMC and MCHC filed a Motion *Ad Cautelam* for the parties to file their Memoranda to support their respective stand on the issue of the validity of the "arbitration clause" contained in the *Employment Agreement*. In an order dated **December 13, 1996,** the trial court denied the motion of petitioners MCMC and MCHC.

On January 17, 1997, petitioners MCMC and MCHC filed a petition for certiorari and prohibition under Rule 65 of the Rules of Court with the Court of Appeals, questioning the trial court orders dated August 1, 1996, September 5, 1996, and December 13, 1996.[21]

On March 21, 1997, the Court of Appeals rendered a decision, giving due course to the petition, the decretal portion of which reads:

> "WHEREFORE, the petition is GIVEN DUE COURSE. The respondent court is directed to resolve the issue on the validity or effectivity of the arbitration clause in the Employment Agreement, and to suspend further proceedings in the trial on the merits until the said issue is resolved. The questioned orders are set aside insofar as they contravene this Court's resolution of the issues raised as herein pronounced.
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> "The petitioner is required to remit to this Court the sum of P81.80 for cost within five (5) days from notice.

"SO ORDERED."[22]

Petitioners filed a motion for partial reconsideration of the CA decision praying (1) for the dismissal of the case in the trial court, on the ground of lack of jurisdiction, and (2) that the parties be directed to submit their dispute to arbitration in accordance with the *Employment Agreement* dated March 1994. The CA, in a resolution promulgated on June 20, 1997, denied the motion for partial reconsideration for lack of merit.

In compliance with the CA decision, the trial court, on July 18, 1997, rendered a decision declaring the "arbitration clause" in the *Employment Agreement* partially void and of no effect. The dispositive portion of the decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered partially declaring the arbitration clause of the Employment Agreement void and of no effect, only insofar as it concerns the composition of the panel of arbitrators, and directing the parties to proceed to arbitration in accordance with the Employment Agreement under the panel of three (3) arbitrators, one for the plaintiff, one for the defendants, and the third to be chosen by both the plaintiff and defendants. The other terms, conditions and stipulations in the arbitration clause remain in force and effect."[23]

In view of the trial court's decision, petitioners filed this petition for review on certiorari, under Rule 45 of the Rules of Court, assigning the following errors for the Court's resolution:

> "I. The trial court gravely erred when it ruled that the arbitration clause under the employment agreement is partially void and of no effect, considering that:
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> "A. The arbitration clause in the employment agreement dated March 1994 between respondent Zosa and defendants MCHC and MCMC is valid and binding upon the parties thereto.
> "B. In view of the fact that there are three parties to the employment agreement, it is but proper that each party be represented in the arbitration panel.
> "C. The trial court grievously erred in its conclusion that petitioners MCMC and MCHC represent the same interest.
> "D. Respondent Zosa is estopped from questioning the validity of the arbitration clause, including the right of petitioner MCMC to nominate its own arbitrator, which he himself has invoked.
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> "II. In any event, the trial court acted without jurisdiction in hearing the case below, considering that it has no jurisdiction over the nature of the action or suit since controversies in the election or appointment of officers or managers of a corporation, such as the action brought by respondent Zosa, fall within the original and exclusive jurisdiction of the Securities and Exchange Commission.

"III. Contrary to respondent Zosa's allegation, the issue of the trial court's jurisdiction over the case below has not yet been resolved with finality considering that petitioners have expressly reserved their right to raise said issue in the instant petition. Moreover, the principle of the law of the case is not applicable in the instant case.

"IV. Contrary to respondent Zosa's allegation, petitioners MCMC and MCHC are not guilty of forum shopping.

"V. Contrary to respondent Zosa's allegation, the instant petition for review involves only questions of law and not of fact."[24]

We rule against the petitioners.

It is error for the petitioners to claim that the case should fall under the jurisdiction of the Securities and Exchange Commission [SEC, for brevity]. The controversy does not in anyway involve the election/appointment of officers of petitioner MCHC, as claimed by petitioners in their assignment of errors. Respondent Zosa's amended complaint focuses heavily on the illegality of the *Employment Agreement's* "Arbitration Clause" initially invoked by him in seeking his termination benefits under Section 8 of the employment contract. And under Republic Act No. 876, otherwise known as the "Arbitration Law," it is the regional trial court which exercises jurisdiction over questions relating to arbitration. We thus advert to the following discussions made by the Court of Appeals, speaking thru Justice Minerva P. Gonzaga-Reyes,[25] in C.A.-G.R. S.P. No. 43059, *viz*:

"As regards the fourth assigned error, asserting that jurisdiction lies with the SEC, which is raised for the first time in this petition, suffice it to state that the Amended Complaint squarely put in issue the question whether the Arbitration Clause is valid and effective between the parties. Although the controversy which spawned the action concerns the validity of the termination of the service of a corporate officer, the issue on the validity and effectivity of the arbitration clause is determinable by the regular courts, and do not fall within the exclusive and original jurisdiction of the SEC.

"The determination and validity of the agreement is not a matter intrinsically connected with the regulation and internal affairs of corporations (see Pereyra vs. IAC, 181 SCRA 244; Sales vs. SEC, 169 SCRA 121); it is rather an ordinary case to be decided in accordance with the general laws, and do not require any particular expertise or training to interpret and apply (Viray vs. CA, 191 SCRA 308)."[26]

Furthermore, the decision of the Court of Appeals in CA-G.R. SP No. 43059 affirming the trial court's assumption of jurisdiction over the case has become the "law of the case" which now binds the petitioners. The "law of the case" doctrine has been defined as "a term applied to an established rule that when an appellate court passes on a question and remands the cause to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal."[27] To note, the CA's decision in CA-G.R. SP No. 43059 has already attained finality as evidenced by a Resolution of this Court ordering entry of judgment of said case, to wit: