351 Phil. 507

THIRD DIVISION

[G.R. No. 120105, March 27, 1998]

BF CORPORATION, PETITIONER, VS. COURT OF APPEALS, SHANGRI-LA PROPERTIES, COLAYCO, ALFREDO C. RAMOS, INC., RUFO B. MAXIMO G. LICAUCO III AND BENJAMIN C. RAMOS, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

The basic issue in this petition for review on *certiorari* is whether or not the contract for the construction of the EDSA Plaza between petitioner BF Corporation and respondent Shangri-la Properties, Inc. embodies an arbitration clause in case of disagreement between the parties in the implementation of contractual provisions.

Petitioner and respondent Shangri-la Properties, Inc. (SPI) entered into an agreement whereby the latter engaged the former to construct the main structure of the "EDSA Plaza Project," a shopping mall complex in the City of Mandaluyong.

The construction work was in progress when SPI decided to expand the project by engaging the services of petitioner again. Thus, the parties entered into an agreement for the main contract works after which construction work began.

However, petitioner incurred delay in the construction work that SPI considered as "serious and substantial."[1] On the other hand, according to petitioner, the construction works "progressed in faithful compliance with the First Agreement until a fire broke out on November 30, 1990 damaging Phase I" of the Project.[2] Hence, SPI proposed the re-negotiation of the agreement between them.

Consequently, on May 30, 1991, petitioner and SPI entered into a written agreement denominated as "Agreement for the Execution of Builder's Work for the EDSA Plaza Project." Said agreement would cover the construction work on said project as of May 1, 1991 until its eventual completion.

According to SPI, petitioner "failed to complete the construction works and abandoned the project."[3] This resulted in disagreements between the parties as regards their respective liabilities under the contract. On July 12, 1993, upon SPI's initiative, the parties' respective representatives met in conference but they failed to come to an agreement.[4]

Barely two days later or on July 14, 1993, petitioner filed with the Regional Trial Court of Pasig a complaint for collection of the balance due under the construction agreement. Named defendants therein were SPI and members of its board of directors namely, Alfredo C. Ramos, Rufo B. Colayco, Antonio B. Olbes, Gerardo O. Lanuza, Jr., Maximo G. Licauco III and Benjamin C. Ramos.

On August 3, 1993, SPI and its co-defendants filed a motion to suspend proceedings instead of filing an answer. The motion was anchored on defendants' allegation that the formal trade contract for the construction of the project provided for a clause requiring prior resort to arbitration before judicial intervention could be invoked in any dispute arising from the contract. The following day, SPI submitted a copy of the conditions of the contract containing the arbitration clause that it failed to append to its motion to suspend proceedings.

Petitioner opposed said motion claiming that there was no formal contract between the parties although they entered into an agreement defining their rights and obligations in undertaking the project. It emphasized that the agreement did not provide for arbitration and therefore the court could not be deprived of jurisdiction conferred by law by the mere allegation of the existence of an arbitration clause in the agreement between the parties.

In reply to said opposition, SPI insisted that there was such an arbitration clause in the existing contract between petitioner and SPI. It alleged that suspension of proceedings would not necessarily deprive the court of its jurisdiction over the case and that arbitration would expedite rather than delay the settlement of the parties' respective claims against each other.

In a rejoinder to SPI's reply, petitioner reiterated that there was no arbitration clause in the contract between the parties. It averred that granting that such a clause indeed formed part of the contract, suspension of the proceedings was no longer proper. It added that defendants should be declared in default for failure to file their answer within the reglementary period.

In its sur-rejoinder, SPI pointed out the significance of petitioner's admission of the due execution of the "Articles of Agreement." Thus, on page D/6 thereof, the signatures of Rufo B. Colayco, SPI president, and Bayani Fernando, president of petitioner appear, while page D/7 shows that the agreement is a public document duly notarized on November 15, 1991 by Notary Public Nilberto R. Briones as document No. 345, page 70, book No. LXX, Series of 1991 of his notarial register.[5]

Thereafter, upon a finding that an arbitration clause indeed exists, the lower court[6] denied the motion to suspend proceedings, thus:

> "It appears from the said document that in the letter-agreement dated May 30, 1991 (Annex C, Complaint), plaintiff BF and defendant Shangri-La Properties, Inc. agreed upon the terms and conditions of the Builders Work for the EDSA Plaza Project (Phases I, II and Carpark), subject to the execution by the parties of a formal trade contract. Defendants have submitted a copy of the alleged trade contract, which is entitled `Contract Documents For Builder's Work Trade Contractor' dated 01 May 1991, page 2 of which is entitled `Contents of Contract Documents' with a list of the documents therein contained, and Section A thereof consists of the abovementioned Letter-Agreement dated May 30, 1991. Section C of the said Contract Documents is entitled `Articles of Agreement and Conditions of Contract' which, per its Index, consists of Part A (Articles of Agreement) and B (Conditions of Contract). The said Articles of Agreement appears to have been duly signed by President Rufo B. Colayco of Shangri-La Properties, Inc. and President Bayani F. Fernando of BF and their witnesses, and was thereafter acknowledged before Notary Public Nilberto R. Briones of Makati, Metro Manila on November 15, 1991. The said Articles of Agreement also provides that the `Contract Documents' therein

listed `shall be deemed an integral part of this Agreement', and one of the said documents is the `Conditions of Contract' which contains the Arbitration Clause relied upon by the defendants in their Motion to Suspend Proceedings.

This Court notes, however, that the `Conditions of Contract' referred to, contains the following provisions:

`3. Contract Document.

Three copies of the Contract Documents referred to in the Articles of Agreement shall be signed by the parties to the contract and distributed to the Owner and the Contractor for their safe keeping.' (underscoring supplied)

And it is significant to note further that the said `Conditions of Contract' is not duly signed by the parties on any page thereof --- although it bears the initials of BF's representatives (Bayani F. Fernando and Reynaldo M. de la Cruz) without the initials thereon of any representative of Shangri-La Properties, Inc.

Considering the insistence of the plaintiff that the said Conditions of Contract was not duly executed or signed by the parties, and the failure of the defendants to submit any signed copy of the said document, this Court entertains serious doubt whether or not the arbitration clause found in the said Conditions of Contract is binding upon the parties to the Articles of Agreement." (Underscoring supplied.)

The lower court then ruled that, assuming that the arbitration clause was valid and binding, still, it was "too late in the day for defendants to invoke arbitration." It quoted the following provision of the arbitration clause:

"Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the contract and a copy filed with the Project Manager. The demand for arbitration shall be made within a reasonable time after the dispute has arisen and attempts to settle amicably have failed; in no case, however, shall the demand he made be later than the time of final payment except as otherwise expressly stipulated in the contract."

Against the above backdrop, the lower court found that per the May 30, 1991 agreement, the project was to be completed by October 31, 1991. Thereafter, the contractor would pay ₱80,000 for each day of delay counted from November 1, 1991 with "liquified (sic) damages up to a maximum of 5% of the total contract price."

The lower court also found that after the project was completed in accordance with the agreement that contained a provision on "progress payment billing," SPI "took possession and started operations thereof by opening the same to the public in November, 1991." SPI, having failed to pay for the works, petitioner billed SPI in the total amount of ₱110,883,101.52, contained in a demand letter sent by it to SPI on February 17, 1993. Instead of paying the amount demanded, SPI set up its own claim of ₱220,000,000.00 and scheduled a conference on that claim for July 12, 1993. The conference took place but it proved futile.

Upon the above facts, the lower court concluded:

"Considering the fact that under the supposed Arbitration Clause invoked by defendants, it is required that `Notice of the demand for arbitration of a dispute shall be filed in writing with the other party x x x x in no case x x x x later than the time of

> final payment x x x x" which apparently, had elapsed, not only because defendants had taken possession of the finished works and the plaintiff's billings for the payment thereof had remained pending since November, 1991 up to the filing of this case on July 14, 1993, but also for the reason that defendants have failed to file any written notice of any demand for arbitration during the said long period of one year and eight months, this Court finds that it cannot stay the proceedings in this case as required by Sec. 7 of Republic Act No. 876, because defendants are in default in proceeding with such arbitration."

The lower court denied SPI's motion for reconsideration for lack of merit and directed it and the other defendants to file their responsive pleading or answer within fifteen (15) days from notice.

Instead of filing an answer to the complaint, SPI filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals. Said appellate court granted the petition, annulled and set aside the orders and stayed the proceedings in the lower court. In so ruling, the Court of Appeals held:

> "The reasons given by the respondent Court in denying petitioners' motion to suspend proceedings are untenable.
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> 1. The notarized copy of the articles of agreement attached as Annex A to petitioners' reply dated August 26, 1993, has been submitted by them to the respondent Court (Annex G, petition). It bears the signature of petitioner Rufo B. Colayco, president of petitioner Shangri-La Properties, Inc., and of Bayani Fernando, president of respondent Corporation (Annex G-1, petition). At page D/4 of said articles of agreement it is expressly provided that the conditions of contract are `deemed an integral part' thereof (page 188, rollo). And it is at pages D/42 to D/44 of the conditions of contract that the provisions for arbitration are found (Annexes G-3 to G-5, petition, pp. 227-229). Clause No. 35 on arbitration specifically provides:

Provided always that in case any dispute or difference shall arise between the Owner or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works as to the construction of this Contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or being left by this Contract to the discretion of the Project Manager or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in clause 30 (5) (a) of these Conditions or the rights and liabilities of the parties under clauses 25, 26, 32 or 33 of these Conditions), the Owner and the Contractor hereby agree to exert all efforts to settle their differences or dispute amicably. Failing these efforts then such dispute or difference shall be referred to Arbitration in accordance with the rules and procedures of the Philippine Arbitration Law.

> The fact that said conditions of contract containing the arbitration clause bear only the initials of respondent Corporation's representatives, Bayani Fernando and Reynaldo de la Cruz, without that of the representative of petitioner Shangri-La Properties, Inc. does not militate against its effectivity. Said petitioner having categorically admitted that the document, Annex A to its reply dated August 26, 1993 (Annex G, petition), is the agreement between the parties, the initial or signature of said petitioner's representative to signify conformity to arbitration is no longer necessary. The parties, therefore, should be allowed to submit their dispute to arbitration in accordance with their agreement.

> 2. The respondent Court held that petitioners `are in default in proceeding with such arbitration.' It took note of `the fact that under the supposed Arbitration Clause invoked by defendants, it is required that 'Notice of the demand for arbitration of a dispute shall be filed in writing with the other party x x x in no case x x x later than the time of final payment," which apparently, had elapsed, not only because defendants had taken possession of the finished works and the plaintiff's billings for the payment thereof had remained pending since November, 1991 up to the filing of this case on July 14, 1993, but also for the reason that defendants have failed to file any written notice of any demand for arbitration during the said long period of one year and eight months, x x x.'
>
> Respondent Court has overlooked the fact that under the arbitration clause –

Notice of the demand for arbitration dispute shall be filed in writing with the other party to the contract and a copy filed with the Project Manager. The demand for arbitration shall be made within a reasonable time after the dispute has arisen and attempts to settle amicably had failed; in no case, however, shall the demand be made later than the time of final payment except as otherwise expressly stipulated in the contract (underscoring supplied)

> quoted in its order (Annex A, petition). As the respondent Court there said, after the final demand to pay the amount of ₱110,883,101.52, instead of paying, petitioners set up its own claim against respondent Corporation in the amount of ₱220,000,000.00 and set a conference thereon on July 12, 1993. Said conference proved futile. The next day, July 14, 1993, respondent Corporation filed its complaint against petitioners. On August 13, 1993, petitioners wrote to respondent Corporation requesting arbitration. Under the circumstances, it cannot be said that petitioners' resort to arbitration was made beyond reasonable time. Neither can they be considered in default of their obligation to respondent Corporation."

Hence, this petition before this Court. Petitioner assigns the following errors:

> "A.
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> THE COURT OF APPEALS ERRED IN ISSUING THE EXTRAORDINARY WRIT OF *CERTIORARI* ALTHOUGH THE REMEDY OF APPEAL WAS AVAILABLE TO RESPONDENTS.
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> B.
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> THE COURT OF APPEALS ERRED IN FINDING GRAVE ABUSE OF DISCRETION IN THE FACTUAL FINDINGS OF THE TRIAL COURT THAT:
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> (i) THE PARTIES DID NOT ENTER INTO AN AGREEMENT TO ARBITRATE.
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> (ii) ASSUMING THAT THE PARTIES DID ENTER INTO THE AGREEMENT TO ARBITRATE, RESPONDENTS ARE ALREADY IN DEFAULT IN INVOKING THE AGREEMENT TO ARBITRATE."

On the first assigned error, petitioner contends that the Order of the lower court denying the motion to suspend proceedings "is a resolution of an incident on the merits." As such, upon the continuation of the proceedings, the lower court would appreciate the evidence adduced in their totality and thereafter render a decision on the merits that may or may not sustain the existence of an arbitration clause. A