Republic of the Philippines
COURT OF APPEALS
Manila

SEVENTH DIVISION

CARGILL PHILIPPINES, INC., *Petitioner,*	**CA-G.R. NO. SP NO. 50304**
	Members:
-versus-	Cosico, R. V.,*Chairman* **Sundiam, E. F**., *and* Dimaampao, J. B., **JJ**.
HON. LUCIA VIOLAGO ISNANI, in her capacity as Presiding Judge, Regional Trial Court of Makati, Branch 59 and **SAN FERNANDO REGALA TRADING INC**., *Respondents.*	Promulgated: July 31, 2006

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DECISION

SUNDIAM, J.:

Before Us is a petition for certiorari filed under Rule 65 of the revised Rules of Civil Procedure seeking to annul and set-aside the following Orders issued by Judge Lucia Violago Isnani of the Regional Trial Court of Makati City (Branch 59), rendered in connection with Civil Case No. 98-1376 for "Rescission of Contract with Damages" to wit:

1. The Order, dated September 17, 1998, the dispositive portion of which reads as follows:

> "Premises considered, defendant's "Motion To Dismiss/Suspend Proceedings And To Refer Controversy To Voluntary Arbitration" is hereby DENIED. Defendant is directed to file its answer within ten (10) days from receipt of a copy of this order.
>
> SO ORDERED" *[Rollo, p.85].* and

2. The Order, dated November 25, 1998, denying the motion for reconsideration thereof, as follows:

> "Premises considered, the motion is hereby DENIED. Defendant is directed to comply with the order dated September 17, 1998.
>
> SO ORDERED" *[Rollo, p.102].*

The factual antecedents:

On June 18, 1998, private respondent San Fernando Regala Trading, Inc. (San Fernando, for brevity) filed a Complaint for Rescission of Contract with Damages against petitioner Cargill Philippines, Inc. (Cargill, for short) before the Regional Trial Court of Makati City (Branch 59). In its Complaint, San Fernando alleges that pursuant to a Contract, dated July 11, 1996 (Rollo, pp. 33-36), it agreed to purchase from Cargill 12,000 metric tons of Thailand origin cane blackstrap molasses at the price stipulated therein. According to the terms contained therein, delivery of the molasses was to be

effected in January/February 1997 and payment was to be made by means of an Irrevocable Letter of Credit payable at sight, to be opened by September 15, 1996.

San Fernando further alleged that, sometime prior to September 15, 1996, the parties had agreed that instead of January/February 1997, delivery would be made in April/May 1997 and that instead of by an irrevocable letter of credit payable at sight to be opened by September 15, 1996, payment would be made by an irrevocable letter of credit payable at sight to be opened upon defendant's advice (Rollo, pp. 27-28). For failure of Cargill, as seller, to comply with its obligations under the contract, San Fernando prayed for rescission and payment of damages.

Summons was then duly served upon petitioner Cargill. However, instead of filing an Answer, petitioner filed a "Motion to Dismiss/Suspend Proceedings and To Refer Controversy to Voluntary Arbitration," dated July 23, 1998 (Rollo, pp. 37-46). It argued that the alleged contract between the parties, dated July 11, 1996, was never consummated because private respondent San Fernando never returned the proposed agreement bearing its written acceptance or conformity nor did it open the Irrevocable Letter of Credit at sight. Moreover, Cargill contends that the contract contains an arbitration clause which provides that any dispute between the parties shall be settled by arbitration in the City of New York before the American Arbitration Association, to wit:

"ARBITRATION:

Any dispute which the Buyer and Seller may not be able to settle by mutual agreement shall be settled by arbitration in the City of New York before the American Arbitration Association. The Arbitration Award shall be final and binding on both parties" (Rollo, p. 36).

Citing the cases of Puromines vs. CA, 220 SCRA 281 and Bengson vs. Chan, 78 SCRA 113, Cargill maintains that San Fernando must first comply with the arbitration clause before going to court and that the public respondent must either dismiss the case or suspend the proceedings and direct the parties to proceed with arbitration, pursuant to Sections 6 and 7 of the Arbitration Law (R. A. No. 876).

In its Opposition, dated August 11, 1998, private respondent San Fernando contends that the Regional Trial Court cannot be deprived of jurisdiction over the action for rescission of contract by the aforecited arbitration clause, which is void and contrary to public policy, inasmuch as it provides that "the arbitration award shall be final and binding on both parties" thereby depriving the parties of access to the courts. In support of its position, San Fernando relies on the cases of Wahl, Jr. vs. Donaldson, Sims & Co., 2 Phil 301 (1903), Puentebella vs. Negros Coal Co., 50 Phil 69 (1927) and Manila Electric Co., vs. Pasay Transportation Co., 57 Phil 600 (1932) (Rollo, pp. 47-55).

On August 7, 1998, petitioner filed a Reply to the Opposition, maintaining that the decisions in the cases cited by the private respondent with respect to arbitration, were already inapplicable having been rendered prior to the effectivity of the New Civil Code in 1950 and the Arbitration Law (R. A. No. 876) in 1953. Cargill contends that both the Civil Code and the Arbitration Law now hold that stipulations providing for the finality of decisions arising out of arbitration agreements are valid and enforceable.

In its Rejoinder, dated August 24, 1998, private respondent argues that the arbitration clause relied upon by petitioner is invalid and unenforceable considering that the requirements imposed by the provisions of the Arbitration Law (R. A. No. 876) have not been complied with, in that arbitration proceedings must be conducted in the Philippines, arbitrators must be Philippine residents and that the award must be submitted to the Regional Trial Court which may confirm, vacate, modify or correct the same.

By way of Sur-Rejoinder, dated August 26, 1998, petitioner points out that R. A. No. 876 does not mandate that for an arbitration agreement to be valid, the same should provide that the arbitration proceedings be conducted in the Philippines under the control of the Regional Trial Court or that the arbitrators be residents of the Philippines or that the award be submitted to the courts for confirmation, etc.

On September 17, 1998, public respondent issued an Order

denying petitioner's Motion to Dismiss/Suspend Proceedings etc., on the ground that Section 7 of the Arbitration Law only provides for a stay of the action or proceeding on an issue arising out of an agreement providing for arbitration and does not provide for the sanction of dismissal (Rollo, p. 82). Neither did it find suspension of the proceedings in the instant action warranted under the applicable law. The trial court pointed out that the Arbitration Law contemplates arbitration proceedings conducted in the Philippines under the jurisdiction and control of the Regional Trial Court; before an arbitrator who resides in the country; and an award that is subject to court approval, disapproval or modification. The Court *a quo* ruled that the arbitration clause in question contravenes several provisions of the Arbitration Law inasmuch as it provides for arbitration in New York, a non-resident arbitrator and an award that shall be final and binding on both parties. Therefore, to apply Section 7 of the Arbitration Law to the agreement in question would result in the disregard of the pertinent sections of the Arbitration Law and render them useless and mere surplusages (Rollo, p. 83).

On October 9, 1998, petitioner moved for reconsideration of the said Order, dated September 17, 1998 arguing that, even if the Court *a quo* held that Section 7 of the Arbitration Law cannot apply to the arbitration clause subject of private respondent's motion to dismiss, the Complaint could still be dismissed on the grounds that San Fernando has no cause of action against the petitioner; that the alleged novated contract does not exist and that private respondent is

contractually bound to submit to arbitration instead of going to court. In its Order, dated November 25, 1998, the trial court denied petitioner's motion for reconsideration (Rollo, pp. 100-102).

Hence, the instant petition for certiorari interposed by the petitioner raising the sole issue that:

> **RESPONDENT JUDGE ACTED IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN REFUSING TO DISMISS OR AT LEAST SUSPEND THE PROCEEDINGS A QUO DESPITE THE FACT THAT THE PARTYS' AGREEMENT TO ARBITRATE HAD NOT BEEN COMPLIED WITH.**

In its Petition, Cargill argued that inasmuch as private respondent San Fernando freely and voluntarily entered into the agreement sued upon, it was contractually bound to submit to arbitration. Following the rulings of the Supreme Court in Associated Bank vs. Court of Appeals (233 SCRA 137) and Allied Banking Corporation vs. CA and Bank of the Philippine Islands, Inc. (G. R. No. 123871, August 31, 1998), the public respondent should have dismissed the complaint because it was patently premature for the court to assume jurisdiction over the case, or at the very least, suspended the proceedings pursuant to Section 7 of R. A. 876, and directed the parties to arbitrate. (Rollo, pp. 14-15). Petitioner, moreover, maintained that an arbitration clause requiring the parties to submit to arbitration was a condition precedent to court action and that there was no basis to the public respondent's conclusion that

arbitration proceedings must be conducted in the Philippines or the Arbitration Law would be inapplicable (Rollo, pp. 17-19).

In its Comment to the Petition, the private respondent, in substance, alleged that prior recourse to arbitration is not a condition precedent to the filing of an action. The Arbitration Law provides that failure to proceed to arbitration would only be a cause for suspension of proceedings but the court does not lose jurisdiction over the action. It argued that the public respondent did not err in holding that the arbitration clause in question contravenes the Arbitration Law because it provided for arbitration in New York and not in the Philippines under the jurisdiction and supervision of the Regional Trial Court (Rollo, pp. 118-123).

The petition is without merit. We shall elucidate.

It is beyond cavil that stipulations providing for arbitration in contractual obligations is both valid and constitutional. Arbitration, as an alternative mode of dispute resolution, has long been recognized and accepted in our jurisdiction and is expressly provided for in Chapter 2, Title XIV, Book IV of the Civil Code. Moreover, Republic Act No. 876 (the Arbitration Law) also expressly authorizes the arbitration of **domestic disputes**. RA 876 was subsequently enacted in order to supplement the provisions of the New Civil Code on

arbitration. In fact, even before the Arbitration Law's enactment on June 19, 1953, the Supreme Court had already countenanced the settlement of disputes by way of arbitration. Thus, unless the agreement is such that it absolutely closes the doors of the courts against the parties, which agreement would be void, the courts look with favor upon arbitration and will interfere with great reluctance to anticipate or nullify the action of the arbitrator (Del Monte Corp.-USA vs. Court of Appeals 351 SCRA 380, citing Puromines, Inc. vs. Court of Appeals, 220 SCRA 281). Thus, in BF Corporation vs. Court of Appeals, 288 SCRA 286, the Supreme Court affirmed the validity of arbitration in this wise:

> "Its potentials as one of the alternative dispute resolution methods that are now rightfully vaunted as "the wave of the future" in international relations, is recognized worldwide. To brush aside a contractual agreement calling for arbitration in case of disagreement between the parties would therefore be a step backward."

In her assailed Order, dated September 17, 1998, the public respondent refused to either dismiss or suspend the proceedings. The lower court ratiocinates that "the Arbitration Law contemplates arbitration proceedings conducted in the Philippines under the jurisdiction and control of the Regional Trial Court; before an arbitrator who resides in the country; and an award that is subject to court approval, disapproval or modification." According to the trial court, applying Section 7 of RA 876 to the agreement in question

"would result in the disregard of the afore-cited sections of the Arbitration Law and render them useless and mere surplusages" (Rollo, p. 83).

We find that it was manifest error for the Court *a quo* to hold that Section 7 was inapplicable to the arbitration clause herein simply because the latter allegedly failed to comply with the requirements prescribed by RA 876, particularly Sections 11, 12, 15, 22, 23, 24, 25 and 26. Such a ruling effectively invalidated not only the disputed arbitration clause but all other agreements which provide for foreign arbitration. We find nothing illegal or contrary to public policy in the herein arbitration clause that would render it null and void or ineffectual.

It must be stressed, however, that there is nothing under the pertinent provisions of the Civil Code on Arbitration or RA 876 that prohibits or precludes stipulations in contracts that provide for foreign arbitration, i. e. when the arbitration is to be conducted in a foreign jurisdiction or where the dispute requiring arbitration is to be resolved in accordance with foreign laws or conventions. Jurisprudence is replete with cases where the validity of foreign arbitration clauses has been upheld. Thus, in Del Monte Corporation-USA vs. Court of Appeals, supra, the Supreme Court found nothing irregular in the arbitration clause therein which provided, among others, that all disputes arising out of the Distributorship agreement shall be

resolved by arbitration in San Francisco, California, U. S. A., under the rules of the American Arbitration Association. In National Union Fire Insurance Company of Pittsburg vs. Stolt-Nielsen Philippines, Inc., 184 SCRA 688-689, where an arbitration clause was included in the Charter Party agreement, which provided as follows:

> "4. Arbitration. Any dispute arising from the making, performance or termination of this Charter Party shall be settled in New York, Owner and Charterer each appointing an arbitrator, who shall be a merchant, broker or individual experienced in the shipping business; the two thus chosen, if they cannot agree, shall nominate a third arbitrator who shall be an admiralty lawyer. Such arbitration shall be conducted in conformity with the provisions and procedure of the United States arbitration act, and a judgment of the court shall be entered upon any award made by said arbitrator. x x x x x x x x"

the Supreme Court ordered the suspension of proceedings in the civil case until after referral to arbitration in New York pursuant to the arbitration clause and pending return of the arbitration award and ruled that:

> "Foreign arbitration as a system of settling commercial disputes of an international character was likewise recognized when the Philippines adhered to the United Nations "Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958," under the 10 May 1965 Resolution No. 71 of the Philippine Senate, giving reciprocal recognition and allowing enforcement of international arbitration agreements between parties of different nationalities within a contracting state. Thus, it pertinently provides:
>
> "1. Each Contracting State shall recognize an agreement in

> writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
>
> "2. The term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
>
> "3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

Indeed, a perusal of the pertinent provisions of RA 876 will readily show that there is nothing explicitly stated in Sections 4, 11, 12, 15 and 22 that require arbitration proceedings to be conducted only in the Philippines in order to be valid, or that the arbitrators should be Philippine residents. They essentially require only that an arbitration agreement must be in writing; lay down the procedure the arbitrators must follow; and its denomination as a special proceeding. Neither is the arbitration clause in question rendered invalid just because it provides that the award shall be "final and binding on both parties." Such a stipulation is but in accord with Article 2044 of Civil Code which states that "any stipulation that the arbitrator's award shall be final, is valid, without prejudice to articles 2038, 2039 and 2040."

Notwithstanding our ruling on the validity and enforceability of the assailed arbitration clause providing for foreign arbitration, it is Our considered opinion that the case at bench still cannot be brought under the Arbitration Law for the purpose of suspending the proceedings before the trial court. We note that in its Motion to Dismiss/Suspend Proceedings etc., petitioner Cargill alleged, as one of the grounds thereof, that the alleged contract between the parties do not legally exist or is invalid. As posited by the petitioner, it is their contention that the said contract, bearing the arbitration clause, was never consummated by the parties (Rollo, p. 41). That being the case, it is but proper that such issue be first resolved by the court through an appropriate trial. The issue involves a question of fact that the trial court should first resolve.

Arbitration is not proper when one of the parties repudiates the existence or validity of the contract. Apropos is Gonzales vs. Climax Mining Ltd., 452 SCRA 625, where the Supreme Court held that:

> "The question of validity of the contract containing the agreement to submit to arbitration will affect the applicability of the arbitration clause itself. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions. x x x x x x x x x"

Consequently, the petitioner herein cannot claim that the

contract was never consummated and, at the same time, invokes the arbitration clause provided for under the contract which it alleges to be non-existent or invalid. Petitioner claims that private respondent's complaint lacks a cause of action due to the absence of any valid contract between the parties. Apparently, the arbitration clause is being invoked merely as a "fallback" position. The petitioner must first adduce evidence in support of its claim that there is no valid contract between them and should the Court *a quo* find the claim to be meritorious, the parties may then be spared the rigors and expenses that arbitration in a foreign land would surely entail.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The assailed Orders, dated September 17, 1998 and November 25, 1998, are hereby **AFFIRMED.**

SO ORDERED.

EDGARDO F. SUNDIAM
Associate Justice

WE CONCUR:

RODRIGO V. COSICO
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

RODRIGO V. COSICO
Associate Justice
Chairman, Seventh Division