

FIRST DIVISION

[G.R. No. 215387, April 23, 2018]

**NORTHERN MINDANAO INDUSTRIAL PORT AND SERVICES
CORPORATION, PETITIONER, V. ILIGAN CEMENT CORPORATION,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

Assailed in this Petition for Review on *Certiorari*^[1] are the March 18, 2014 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 03789-MTN, which set aside the August 6, 2009 Order^[3] of the Regional Trial Court of Iligan City, Branch 3 (RTC) in Civil Case No. 7201, and the CA's October 17, 2014 Resolution^[4] denying herein petitioner's motion for reconsideration.

Factual Antecedents

As narrated by the CA, the facts are as follows:

xxx Iligan Cement Corporation (ICC) is a domestic corporation x x x engaged in the manufacturing and distribution of cement and other building materials.

x x x Northern Mindanao Industrial & Port Services Corporation (NOMIPSCO) is likewise a domestic corporation xxx involved, among others, in the *arrastre* or stevedoring business.

On 27 June 2007, ICC invited NOMIPSCO to a pre-bidding conference for a two-year cargo handling contract. Apart from NOMIPSCO, RC Barreto Enterprises, MN Seno Marketing, VIRLO Stevedoring and Oroport also joined the conference.

In the course of the conference, ICC, through Nestor Camus (Camus), required the participants to submit their respective technical proposals and commercial bids on or before 5 July 2007. xxx

NOMIPSCO thereafter submitted its proposal in which it offered the lowest bid of P1.788 per a [sic] 40 kilogram bag.

ICC awarded the cargo handling contract to Europort Logistics and Equipment Incorporated (Europort).

On 2 September 2008, NOMIPSCO filed a Complaint^[5] for Damages and Attorney's fees against ICC [alleging] that, as *per* information from an ICC employee, its bid folder was marked as "no bid submitted"[:] that Camus, upon inquiry, revealed that, the bid award was based on x x x the recommendation of the end-user; and x x x a new company policy x

x x to prioritize new contractors [which] were never made known to the bidders. x x x NOMIPSCO further claimed that ICC was guilty of bad faith when it still invited NOMIPSCO to join the pre-bidding conference despite prior knowledge of its status as an old contractor. NOMIPSCO, thus, contended that the acts of ICC amounted to an abuse of its rights or authority, the same acts that led NOMIPSCO to suffer great losses and unearned income.

On 9 October 2008, ICC filed an Answer with Compulsory Counterclaims^[6] wherein it x x x countered that NOMIPSCO had no cause of action since its complaint failed to state a cause of action. ICC stressed that for abuse of right to exist there must be: 1) an act which is legal; 2) but which is contrary to morals, good customs, public order, or public policy; and 3) it is done with intent to injure.' ICC argued that in the instant controversy the last two requisites were wanting. x x x

On 6 August 2009, the RTC rendered an Order denying ICC's affirmative and special defenses - complaint failed to state a cause of action and defective verification. The dispositive portion of the order reads -

WHEREFORE, premises considered, the prayer for the dismissal of the complaint as it states no cause of action is denied for lack of merit.

The acting clerk of Court is directed to set the case for pre-trial and referral of the case to the mediation center.

SO ORDERED.

On 29 September 2009, [ICC] filed a Motion for Reconsideration.^[7] In its Motion, [ICC] maintained that NOMIPSCO lacked a cause of action and that the Complaint 1) failed to state a cause of action; x x x

On 24 May 2010, the RTC issued an Order^[8] denying [ICC's] Motion for Reconsideration. x x x^[9]

Ruling of the Court of Appeals

Respondent ICC instituted an original Petition for *Certiorari*^[10] before the CA, docketed as CA-G.R. SP No. 03789-MIN, arguing that the RTC committed grave abuse of discretion in not dismissing Civil Case No. 7201 for failure to state a cause of action and Jack of cause of action.

On March 18, 2014, the CA rendered the assailed Decision, declaring as follows:

The petition is meritorious.

x x x x

Considering exclusively the allegations of the above Complaint, the Court finds that NOMIPSCO has no legal right to impute to ICC an abuse of its right or authority in the bidding selection or to impugn the validity of the cargo handling contract executed between the latter and Europort.

In its Complaint, NOMIPSCO mainly anchored its right to institute this action on the fact that it won the bidding had it not for the alleged abuse of rights of ICC. However, as correctly argued by ICC, 'NOMIPSCO's right as a bidder is only to be considered in the evaluation of the entity to handle the stevedoring requirements' and that it has no right to dictate as to whom the award should be granted. It bears stressing that an advertisement to possible bidders is simply an invitation to make proposals, and that an advertiser is not bound to accept the [lowest] bidder unless the contrary appears. Moreover, ICC has the unprecedented right to reject bids and it cannot be compelled by a party who called the bids to accept its proposal and execute a contract in its favor. Considering that NOMIPSCO was not selected as the winner and that ICC cannot be legally obliged to accept its bid, the former therefore has no legal right against the latter. Considering that the existence of a legal right is wanting, it is thus ineluctable that the 2 September 2008 Complaint failed to state a cause of action.

The above disquisitions render a discussion on the second issue of ICC unnecessary.

All told, this Court finds grave abuse of discretion on the part of the RTC in denying the dismissal of NOMIPSCO's complaint. x x x

WHEREFORE, the instant petition for *certiorari* is GRANTED.

Accordingly, the assailed Order dated 6 August 2009 of the Regional Trial Court, 12th Judicial Region, Branch 3, Iligan City, is hereby ordered SET ASIDE.

SO ORDERED.^[11] (Citations omitted)

Petitioner sought to reconsider but to no avail. Hence, the present Petition.

Meanwhile, the proceedings continued on to trial. Petitioner's key witnesses testified in court.

Issues

In an April 18, 2016 Resolution,^[12] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I. WHETHER X X X THE COURT OF APPEALS ERRED IN FINDING THAT RTC-03 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT (RTC-03) DENIED THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION OF ICC, BOTH RAISING THE ISSUE THAT NOMIPSCO HAS NO CAUSE OF ACTION AGAINST ICC.

1.1. WHETHER X X X THE ISSUE RAISED BY ICC TO SUPPORT THE DISMISSAL OF THE COMPLAINT INVOLVES EVIDENTIARY ISSUE THAT SHOULD BE VENTILATED DURING THE TRIAL OF THE CASE.

1.2. WHETHER X X X ICC WAIVED THE ISSUE ON CAUSE OF ACTION WHEN IT PARTICIPATED IN THE TRIAL.

2. WHETHER X X X AN ISSUE NOT PRESENTED BEFORE RTC-03 (IN RESOLVING THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION) BE BROUGHT BEFORE, AND CONSIDERED BY, THE COURT OF APPEALS IN RESOLVING THE ISSUE OF GRAVE ABUSE OF DISCRETION.^[13]

Petitioner's Arguments

In praying that the assailed CA dispositions be set aside and that Civil Case No. 7201 be instead reinstated, petitioner basically argues in its Petition and Reply^[14] that while respondent had the right to accept or reject bids for its project, it exercised said right in bad faith to petitioner's prejudice, in that the bidding process was a mere ruse for respondent to secure petitioner's lowest bid in order to use it as basis or leverage for setting its contract price with Europort; respondent had no intention to award the contract to the bid participants, but to Europort, and the bidding process was intended merely to elicit the lowest bid which respondent would use to set its contract price with Europort.

Petitioner argues that respondent's bad faith can be seen from the fact that respondent made it appear that petitioner did not submit its bid, the folder in which the commercial and technical bids were kept was stamped with "No Bid Submitted" as to petitioner; that Europort, which eventually won the project, was not a participant in the bidding process; that respondent awarded the project on the basis of criteria, parameters, and policies that were not disclosed to petitioner prior to the bidding; and that Europort had no corporate and legal personality when it executed the cargo handling contract with respondent.

Petitioner further contends that under Article 19 of the Civil Code^[15] which enunciates the principle of abuse of rights, when a right is exercised in a manner that disregards legal norms and standards, thus resulting in damage to another, a legal wrong is committed for which the guilty party may be held accountable; that respondent abused its rights and thus violated Article 19 and other laws; that petitioner thus has a cause of action against respondent; and that the issue of bad faith as a component of petitioner's cause of action requires proof and thus may only be resolved after trial on the merits.

Respondent's Arguments

Respondent, on the other hand, counters in its Comment^[16] that petitioner remains without cause of action, which makes its case dismissible; that petitioner's claim that respondent made it appear that the former did not submit a bid is pure hearsay and speculation as no documentary or testimonial evidence was attached to the complaint/pleadings, nor was any submitted in court, to prove this allegation; that for the same foregoing reasons, petitioner's claim that the bid was grounded on policies that were not disclosed to the bidders has no basis; that even if preference is given to new contractors as a matter of policy, this does not constitute an abuse of respondent's right since "preference" does not mean exclusion of other contractors; that petitioner's argument that Europort was not a corporate entity at the time and that respondent used the bidding for the sole purpose of obtaining the optimum contract price are unfounded and have no legal basis; that petitioner has no right to dictate who should be the winning bidder for respondent's cargo handling contract, since advertisements for bidders are simply invitations to make proposals, and an advertiser is not bound to accept the highest or lowest bidder