786 Phil. 292

FIRST DIVISION

[G.R. No. 160071, June 06, 2016]

ANDREW D. FYFE, RICHARD T. NUTTALL, AND RICHARD J. WALD, PETITIONERS, VS. PHILIPPINE AIRLINES, INC., RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

This case concerns the order issued by the Regional Trial Court granting the respondent's application to vacate the adverse arbitral award of the panel of arbitrators, and the propriety of the recourse from such order.

The Case

Under review are the resolutions promulgated in C.A.-G.R. No. 71224 entitled *Andrew D. Fyfe, Richard T. Nuttall and Richard J. Wald v. Philippine Airlines, Inc.* on May 30, 2003[1] and September 19, 2003,[2] whereby the Court of Appeals (CA) respectively granted the respondent's *Motion to Dismiss Appeal (without Prejudice to the Filing of Appellee's Brief)*, and denied the petitioners' Motion for Reconsideration.

Antecedents

In 1998, the respondent underwent rehabilitation proceedings in the Securities and Exchange Commission (SEC),[3] which issued an order dated July 1, 1998 decreeing, among others, the suspension of all claims for payment against the respondent.[4] To convince its creditors to approve the rehabilitation plan, the respondent decided to hire technical advisers with recognized experience in the airline industry. This led the respondent through its then Director Luis Juan K. Virata to consult with people in the industry, and in due course came to meet Peter W. Foster, formerly of Cathay Pacific Airlines.[5] Foster, along with Michael R. Scantlebury, negotiated with the respondent on the details of a proposed technical services agreement.[6] Foster and Scantlebury subsequently organized Regent Star Services Ltd. (Regent Star) under the laws of the British Virgin Islands.[7] On January 4, 1999, the respondent and Regent Star entered into a *Technical Services Agreement* (TSA) for the delivery of technical and advisory or management services to the respondent,[8] effective for five years, or from January 4, 1999 until December 31, 2003.[9] On the same date, the respondent, pursuant to Clause 6 of the TSA,[10] submitted a Side Letter," the relevant portions of which stated:

> For and in consideration of the services to be faithfully performed by Regent Star in accordance with the terms and conditions of the Agreement, the Company agrees to pay Regent Star as follows:

1.1 Upon execution of the Agreement, Four Million Seven Hundred Thousand US Dollars (US$4,700,000.00), representing advisory fees for two (2) years from the date of signature of the Agreement, with an additional amount of not exceeding One Million Three Hundred Thousand US Dollars (US$1,300,000.00) being due and demandable upon Regent Star's notice to the Company of its engagement of an individual to assume the position of CCA under the Agreement;

x x x x

In addition to the foregoing, the Company agrees as follows:

x x x x

In the event of a full or partial termination of the Agreement for whatever reason by either the Company or a Senior Technical Adviser/Regent Star prior to the end of the term of the Agreement, the following penalties are payable by the terminating party:

A. During the first 2 years

1. Senior Company Adviser (CCA) -	US$800,000.00
2. Senior Commercial Adviser (SCA) -	800,000.00
3. Senior Financial Adviser (FSA) -	700,000.00
4. Senior Ground Services and Training Adviser (SAG) -	500,000.00
5. Senior Engineering and Maintenance Adviser (SAM) -	500,000.00

x x x x

For the avoidance of doubt, it is understood and agreed that in the event that the terminating party is an individual Senior Technical Adviser the liability to pay such Termination Amount to the Company shall rest with that individual party, not with RSS. Similarly, if the terminating party is the Company, the liability to the aggrieved party shall be the individual Senior Technical Adviser, not to RSS.[12]

Regent Star, through Foster, conformed to the terms stated in the Side Letter.[13] The SEC approved the TSA on January 19, 1999.[14]

In addition to Foster and Scantlebury, Regent Star engaged the petitioners in respective capacities, specifically: Andrew D. Fyfe as Senior Ground Services and Training Adviser; Richard J. Wald as Senior Maintenance and Engineering Adviser; and Richard T. Nuttall as Senior Commercial Adviser. The petitioners commenced to render their services to the respondent, immediately after the TSA was executed.[15]

On July 26, 1999, the respondent dispatched a notice to Regent Star terminating the TSA on the ground of lack of confidence effective July 31, 1999.[16] In its notice, the respondent demanded the offsetting of the penalties due to the petitioners with the two-year advance advisory fees it had paid to Regent Star, thus:

> The side letter stipulates that "[i]n the event of a full or partial termination of the Agreement for whatever reason by either the Company or a Senior Technical Adviser/Regent Star prior to the end of the term of the Agreement, the following penalties are payable by the terminating party:"
>
> | | |
> |---|---|
> | During the first 2 years: | |
> | Senior Company-Adviser | US$800,000.00 |
> | Senior Commercial-Adviser | 800,000.00 |
> | Senior Financial-Adviser | 700,000.00 |
> | Senior Ground-Services and Training Adviser | 500.000.00 |
> | Senior Engineering-and Maintenance Adviser | 500,000.00 |
> | **TOTAL** | **US$3,300,000.00** |
>
> There is, therefore, due to RSS from PAL the amount of US$3,300,000.00 by way of stipulated penalties.
>
> However, RSS has been paid by PAL advance "advisory fee for two (2) years from date of signature of the Agreement" the amount of US$5,700,000. Since RSS has rendered advisory services from 4 January to 31 July 1999, or a period of seven months, it is entitled to retain only the advisory fees for seven months. This is computed as follows:
>
> $$\frac{\text{US\$5,700.000}}{\text{24 months}} \text{ - US\$237,500/month x7 = US\$1,662,500}$$
>
> The remaining balance of the advance advisory fee, which corresponds to the unserved period of 17 months, or US$4,037,500, should be refunded by RSS to PAL.
>
> Off-setting the amount of US$3,300,000 due from PAL to RSS against the amount of US$4,037,500 due from RSS to PAL, there remains a net balance of US$737,500 due and payable to PAL. Please settle this amount at your early convenience, but not later than August 15, 1999. [17]

On June 8, 1999, the petitioners, along with Scantlebury and Wald, wrote to the respondent, through its President and Chief Operating Officer, Avelino Zapanta, to seek clarification on the status of the TSA in view of the appointment of Foster, Scantleburry and Nuttall as members of the Permanent Rehabilitation Receiver (PRR) for the respondent.[18] A month later, Regent Star sent to the respondent another letter expressing disappointment over the respondent's ignoring the previous letter, and denying the respondent's claim for refund and set-off. Regent Star then proposed therein that the issue be submitted to arbitration in accordance with Clause 14[19] of the TSA.[20]

Thereafter, the petitioners initiated arbitration proceedings in the Philippine Dispute Resolution Center, Inc. (PDRCI) pursuant to the TSA.

Ruling of the PDRCI

After due proceedings, the PDRCI rendered its decision ordering the respondent to pay termination penalties,[21] *viz.*:

> On issue No. 1 we rule that the Complainants are entitled to their claim for termination penalties.
>
> When the PAL, terminated the Technical Services Agreement on July 26, 1999 which also resulted in the termination of the services of the senior technical advisers including those of the Complainants it admitted that the termination penalties in the amount of US$3,300,000.00 as provided in the Letter dated January 4, 1999 are payable to the Senior Technical Advisers by PAL. Xxx. PAL's admission of its liability to pay the termination penalties to the complainants was made also in its Answer. PAIAs counsel even stipulated during the hearing that the airline company admits that it is liable to pay Complainants the termination penalties.xxx.
>
> However, PAL argued that although it is liable to pay termination penalties the Complainants are not entitled to their respective claims because considering that PAL had paid RSS advance "advisory fees for two (2) years" in the total amount of US$5,700,000.00 and RSS had rendered advisory services for only seven (7) months from January 4, 1999 to July 31, 1999 that would entitle RSS to an (sic) advisory fees of only US$1,662,500.00 and therefore the unserved period of 17 months equivalent to US$4,037,500.00 should be refunded. And setting off the termination penalties of US$3,300,000.00 due RSS from PAL against the amount of US$4,037,500.00 still due PAL from RSS there would remain a net balance of US$737,500.00 still due PAL from RSS and/or the Senior Technical Advisers which the latter should pay pro-rata as follows: Peter W. Forster, the sum of US$178,475.00; Richard T. Nuttall, the sum of US$178,475.00; Michael R. Scantlebury; the sum of US$156,350.00, Andrew D. Fyfe, the sum of US$111,362.50; and Richard J. Wald the sum of US$111,362.50. RSS is a special company which the Senior Technical Advisers had utilized for the specific purpose of providing PAL with

technical advisory services they as a group had contracted under the Agreement. Hence when PAL signed the Agreement with RSS, it was for all intents and purposes an Agreement signed individually with the Senior Technical Advisers including the Complainants. The RSS and the five (5) Senior Technical Advisers should be treated as one and the same,

The Arbitration Tribunals is not convinced.

x x x x

PAL cannot refuse to pay Complainants their termination penalties by setting off against the unserved period of seventeen (17) months of their advance advisory fees as the Agreement and the Side Letter clearly do not allow refund. This Arbitration Tribunal cannot read into the contract, which is the law between the parties, what the contract docs not provide or what the parties did not intend. It is basic in contract interpretation that contracts that are not ambiguous are to be interpreted according to their literal meaning and **should not be interpreted beyond their obvious intendment**. x x x. The penalties work as security for the Complainants against the uncertainties of their work at PAL whose closure was a stark reality they were facing. (TSN Hearing on April 27, 2000, pp. 48-49) This would not result in unjust enrichment for the Complainants because the termination of the services was initiated by PAL itself without cause. In feet, PAL admitted that at the time their services were terminated the Complainants were performing well in their respective assigned works,[22] x x x.

PAL also presented hypothetical situations and certain computations that it claims would result to an "injustice" to PAL which would then "lose a very substantial amount of money" if the claimed refund is not allowed. PAL had chosen to prc-terminate the services of the complainants and must therefore pay the termination penalties provided in the Side Letter. If it finds itself losing "substantial" sums of money because of its contractual commitments, there is nothing this Arbitration Tribunal can do to remedy the situation. Jurisprudence teaches us that neither the law nor the courts will extricate a party from an unwise or undesirable contract that he or she entered into with all the required formalities and with full awareness of its consequences. (*Opulencia vs. Cowl of Appeals*, 293 SCRA 385 (1998)[23]

Decision of the RTC

Dissatisfied with the outcome, the respondent filed its Application to Vacate Arbitral Award in the Regional Trial Court, in Makati City (RTC), docketed as SP Proc. M-5147 and assigned to Branch 57,[24] arguing that the arbitration decision should be vacated in view of the July 1, 1998 order of the SEC placing the respondent under a state of suspension of payment pursuant to Section 6(c) of Presidential Decree No. 902-A, as amended by P.D. No. 1799.[25]

The petitioners countered with their Motion to Dismiss,[26] citing the following