683 Phil. 276

SECOND DIVISION

[G.R. No. 185582, February 29, 2012]

TUNA PROCESSING, INC., PETITIONER, VS. PHILIPPINE KINGFORD, INC., RESPONDENT.

D E C I S I O N

PEREZ, J.:

Can a foreign corporation not licensed to do business in the Philippines, but which collects royalties from entities in the Philippines, sue here to enforce a foreign arbitral award?

In this *Petition for Review on Certiorari under Rule 45,*[1] petitioner Tuna Processing, Inc. (TPI), a foreign corporation not licensed to do business in the Philippines, prays that the Resolution[2] dated 21 November 2008 of the Regional Trial Court (RTC) of Makati City be declared void and the case be remanded to the RTC for further proceedings. In the assailed Resolution, the RTC dismissed petitioner's *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award*[3] against respondent Philippine Kingford, Inc. (Kingford), a corporation duly organized and existing under the laws of the Philippines,[4] on the ground that petitioner lacked legal capacity to sue.[5]

The Antecedents

On 14 January 2003, Kanemitsu Yamaoka (hereinafter referred to as the "licensor"), co-patentee of U.S. Patent No. 5,484,619, Philippine Letters Patent No. 31138, and Indonesian Patent No. ID0003911 (collectively referred to as the "Yamaoka Patent"), [6] and five (5) Philippine tuna processors, namely, Angel Seafood Corporation, East Asia Fish Co., Inc., Mommy Gina Tuna Resources, Santa Cruz Seafoods, Inc., and respondent Kingford (collectively referred to as the "sponsors"/"licensees")[7] entered into a Memorandum of Agreement (MOA),[8] pertinent provisions of which read:

> 1. **Background and objectives.** The Licensor, co-owner of U.S.Patent No. 5,484,619, Philippine Patent No. 31138, and Indonesian Patent No. ID0003911 xxx wishes to form an alliance with Sponsors for purposes of enforcing his three aforementioned patents, granting licenses under those patents, and collecting royalties.
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> The Sponsors wish to be licensed under the aforementioned patents in order to practice the processes claimed in those patents in the

United States, the Philippines, and Indonesia, enforce those patents and collect royalties in conjunction with Licensor.

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4. **Establishment of Tuna Processors, Inc**. The parties hereto agree to the establishment of Tuna Processors, Inc. ("TPI"), a corporation established in the State of California, in order to implement the objectives of this Agreement.

5. **Bank account.** TPI shall open and maintain bank accounts in the United States, which will be used exclusively to deposit funds that it will collect and to disburse cash it will be obligated to spend in connection with the implementation of this Agreement.

6. **Ownership of TPI.** TPI shall be owned by the Sponsors and Licensor. Licensor shall be assigned one share of TPI for the purpose of being elected as member of the board of directors. The remaining shares of TPI shall be held by the Sponsors according to their respective equity shares. [9]

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The parties likewise executed a Supplemental Memorandum of Agreement[10] dated 15 January 2003 and an Agreement to Amend Memorandum of Agreement[11] dated 14 July 2003.

Due to a series of events not mentioned in the petition, the licensees, including respondent Kingford, withdrew from petitioner TPI and correspondingly reneged on their obligations.[12] Petitioner submitted the dispute for arbitration before the International Centre for Dispute Resolution in the State of California, United States and won the case against respondent.[13] Pertinent portions of the award read:

13.1 Within thirty (30) days from the date of transmittal of this Award to the Parties, pursuant to the terms of this award, the total sum to be paid by RESPONDENT KINGFORD to CLAIMANT TPI, is the sum of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND EIGHT HUNDRED FORTY SIX DOLLARS AND TEN CENTS ($1,750,846.10).

(A) For breach of the MOA by not paying past due assessments, RESPONDENT KINGFORD shall pay CLAIMANT the total sum of TWO HUNDRED TWENTY NINE THOUSAND THREE HUNDRED AND FIFTY FIVE DOLLARS AND NINETY CENTS ($229,355.90) which is 20% of MOA assessments since September 1, 2005[;]

(B) For breach of the MOA in failing to cooperate with CLAIMANT TPI in fulfilling the objectives of the MOA, RESPONDENT KINGFORD shall pay CLAIMANT the total sum of TWO HUNDRED SEVENTY ONE THOUSAND

FOUR HUNDRED NINETY DOLLARS AND TWENTY CENTS ($271,490.20) [;][14] and

(C) For violation of THE LANHAM ACT and infringement of the YAMAOKA 619 PATENT, RESPONDENT KINGFORD shall pay CLAIMANT the total sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($1,250,000.00). xxx

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To enforce the award, petitioner TPI filed on 10 October 2007 a *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award* before the RTC of Makati City. The petition was raffled to Branch 150 presided by Judge Elmo M. Alameda.

At Branch 150, respondent Kingford filed a Motion to Dismiss.[16] After the court denied the motion for lack of merit,[17] respondent sought for the inhibition of Judge Alameda and moved for the reconsideration of the order denying the motion.[18] Judge Alameda inhibited himself notwithstanding "[t]he unfounded allegations and unsubstantiated assertions in the motion."[19] Judge Cedrick O. Ruiz of Branch 61, to which the case was re-raffled, in turn, granted respondent's Motion for Reconsideration and dismissed the petition on the ground that the petitioner lacked legal capacity to sue in the Philippines.[20]

Petitioner TPI now seeks to nullify, in this instant *Petition for Review on Certiorari under Rule 45, the order of the trial court dismissing its Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award.*

Issue

The core issue in this case is whether or not the court a quo was correct in so dismissing the petition on the ground of petitioner's lack of legal capacity to sue.

Our Ruling

The petition is impressed with merit.

The *Corporation Code of the Philippines* expressly provides:

Sec. 133. *Doing business without a license*. - No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

It is pursuant to the aforequoted provision that the court *a quo* dismissed the

petition. Thus:

> Herein plaintiff TPI's "Petition, etc." acknowledges that it "is a foreign corporation established in the State of California" and "was given the exclusive right to license or sublicense the Yamaoka Patent" and "was assigned the exclusive right to enforce the said patent and collect corresponding royalties" in the Philippines. TPI likewise admits that it does not have a license to do business in the Philippines.
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> There is no doubt, therefore, in the mind of this Court that TPI has been doing business in the Philippines, but sans a license to do so issued by the concerned government agency of the Republic of the Philippines, when it collected royalties from "five (5) Philippine tuna processors[,] namely[,] Angel Seafood Corporation, East Asia Fish Co., Inc., Mommy Gina Tuna Resources, Santa Cruz Seafoods, Inc. and respondent Philippine Kingford, Inc." This being the real situation, TPI cannot be permitted to maintain or intervene in any action, suit or proceedings in any court or administrative agency of the Philippines." A priori, the "Petition, etc." extant of the plaintiff TPI should be dismissed for it does not have the legal personality to sue in the Philippines.[21]

The petitioner counters, however, that it is entitled to seek for the recognition and enforcement of the subject foreign arbitral award in accordance with Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*),[22] the Convention on the Recognition and Enforcement of Foreign Arbitral Awards drafted during the United Nations Conference on International Commercial Arbitration in 1958 (*New York Convention*), and the UNCITRAL Model Law on International Commercial Arbitration (*Model Law*),[23] as none of these specifically requires that the party seeking for the enforcement should have legal capacity to sue. It anchors its argument on the following:

> In the present case, enforcement has been effectively refused on a ground not found in the [*Alternative Dispute Resolution Act of 2004*], New York Convention, or Model Law. It is for this reason that TPI has brought this matter before this most Honorable Court, as it [i]s imperative to clarify whether the Philippines' international obligations and State policy to strengthen arbitration as a means of dispute resolution may be defeated by misplaced technical considerations not found in the relevant laws.[24]
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> Simply put, how do we reconcile the provisions of the *Corporation Code of the Philippines* on one hand, and the *Alternative Dispute Resolution Act of 2004*, the New York Convention and the *Model Law* on the other?

In several cases, this Court had the occasion to discuss the nature and applicability of the *Corporation Code of the Philippines,* a general law, viz-a-viz other special laws. Thus, in *Koruga v. Arcenas,* Jr.,[25] this Court rejected the application of the

Corporation Code and applied the New Central Bank Act. It ratiocinated:

> Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that:
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> > "The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail – ***generalia specialibus non derogant***." (Emphasis supplied)[26]

Further, in the recent case of *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council,*[27] this Court held:

> Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant.*[28]

Following the same principle, the *Alternative Dispute Resolution Act of 2004 shall apply in this case as the Act, as its title* - An *Actto Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes* - would suggest, is a law especially enacted "to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes."[29] It specifically provides exclusive grounds available to the party opposing an application for recognition and enforcement of the arbitral award.[30]

Inasmuch as the *Alternative Dispute Resolution Act of 2004,* a municipal law, applies in the instant petition, we do not see the need to discuss compliance with international obligations under the *New York Convention* and the *Model Law.* After all, both already form part of the law.

In particular, the *Alternative Dispute Resolution Act of 2004* incorporated the *New York Convention* in the Act by specifically providing:

> SEC. 42. *Application of the New York Convention*. - The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.
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> SEC. 45. *Rejection of a Foreign Arbitral Award.* - A party to a foreign arbitration proceeding may oppose an application for recognition and