

## SECOND DIVISION

[ G.R. No. 164517, June 30, 2008 ]

### **BF CORPORATION, PETITIONER, VS. MANILA INTERNATIONAL AIRPORT AUTHORITY, RESPONDENT.**

#### **D E C I S I O N**

#### **VELASCO JR., J.:**

In this petition for review under Rule 45, petitioner BF Corporation (BF) assails the Decision of the Court of Appeals (CA) that disallowed BF to re-implead the Manila International Airport Authority (MIAA) as a party-defendant in Civil Case No. 66060 entitled *BF Corporation v. Tokyu Construction Co., Ltd., Mitsubishi Corporation, A.M. Oreta & Co., Inc., and Manila International Airport Authority*.

Mitsubishi Corporation (Mitsubishi), Tokyu Construction Co., Ltd. (Tokyu), A.M. Oreta & Co., Inc. (Oreta), and BF formed themselves into the MTOB Consortium (Consortium) to participate in the bidding for the construction of the Ninoy Aquino International Airport Terminal II (NAIA II) Project. MIAA awarded the contract to the Consortium, recognizing that the Consortium was a distinct and separate entity from the four member corporations.

Unfortunately, the four members had serious business differences, including the division of the contract price, forcing BF to file on January 10, 1997, with the Regional Trial Court (RTC) in Pasig City, an action for Specific Performance, Rescission, and Damages with application for a Temporary Restraining Order (TRO), docketed as Civil Case No. 66060. BF alleged in its complaint that Tokyu and Mitsubishi invited BF to form a consortium for the NAIA II Project and after the members of the Consortium reached an agreement couched in general terms, for the purpose of prequalification bidding, Tokyu allegedly refused to execute a final consortium agreement; unreasonably demanded that BF reduce its asking prices for its assigned work; engaged the services of other subcontractors to do BF's portion of the project; and refused to remit to BF its 20% share of the down payment, thereby easing out BF in the project in breach of the Consortium agreement. BF prayed that Tokyu be enjoined from further (1) receiving any payment from MIAA for illegally executing BF's portion of the work in the project; (2) engaging the services of other subcontractors to do BF's portion of the project; (3) acting as lead partner of the Consortium; and (4) compelling BF to reduce its prices. BF also prayed that MIAA be enjoined from directly paying Tokyu the collectible compensation vis-à-vis Tokyu's illegal execution of BF's portion in the project.<sup>[1]</sup>

The RTC served a TRO on Tokyu, the lead partner of the Consortium. During the hearing on the preliminary injunction, MIAA stressed its position that it should not be dragged into the dispute since it was a consortium internal matter. Thereafter, in an amended complaint, BF dropped MIAA as a party-defendant.

When the RTC issued the Order dated January 21, 1997 extending the TRO, Tokyu filed with the CA a Petition for Certiorari and Prohibition with prayer for a writ of preliminary injunction docketed as **CA-G.R. SP No. 43133**. Tokyu contended that the order violated (1) Presidential Decree No. 1818 prohibiting any court in the Philippines from issuing any restraining order, preliminary injunction, or preliminary mandatory injunction on any case, dispute, or controversy involving an infrastructure project; and (2) Supreme Court Circular No. 68-94 disallowing issuance of TROs in cases involving government infrastructure projects to obviate complaints against indiscriminate issuance of TROs.

On May 15, 1997, the CA dismissed the petition and ordered the trial court to continue hearing the main case. With respect to MIAA's right to intervene, the CA stressed that MIAA was no longer a party-defendant since it had been dropped from the complaint by BF and, therefore, no relief may be had from MIAA. The CA explained that MIAA had nothing to do with whatever BF alleges were violations of the Consortium agreement by Tokyu because these were intra-consortium matters.

[2] The CA also said it was convinced that "MIAA had no actual, direct and immediate interest" in CA-G.R. SP No. 43133.

The CA denied the motion for reconsideration and the RTC proceeded with the case subsequently issuing the **Order dated July 8, 1997**, which ordered Tokyu to: (1) retrieve its deposit in Japan and make it available in the Philippines for the prompt execution of the project; (2) remit to BF its 20% share in the down payment and its share in the subsequent payments made by MIAA; and (3) allow BF to execute its portion of the work in the project by terminating the services of the subcontractors.

[3]

Tokyu filed before the CA a Petition for Certiorari with urgent prayer for a TRO and preliminary injunction docketed as CA-G.R. SP No. 44729. On October 20, 1997, the Special Seventh Division of the CA granted Tokyu's petition and annulled the RTC's Order dated July 8, 1997.

On November 26, 1999, when the project was nearing completion, BF filed a second amended complaint. In it, BF pleaded causes of action against Tokyu, Mitsubishi, and Oreta which have all submitted themselves to the jurisdiction of the court, and also MIAA who had possession of money to be paid to Tokyu. BF claimed it was entitled to a proportionate share of the money based on the Consortium agreement. Thus, BF asked that MIAA be re-impleaded as a party-defendant so it could obtain complete relief.[4]

In an **Order dated May 24, 2001**, the RTC directed that MIAA be re-impleaded as a party-defendant in Civil Case No. 66060. It said that BF's earlier move to drop MIAA as a party-defendant should not preclude it from re-impleading MIAA which still has the obligation to pay the remainder of the contract price. The dispositive portion of the order reads:

WHEREFORE, the order of this Court dated February 23, 2001 is hereby reconsidered insofar as it ordered the dismissal of this case as against MIAA which is hereby restored and re-impleaded as a party defendant.

SO ORDERED.

The motion for reconsideration was denied in an **Order dated September 13, 2001.**<sup>[5]</sup> MIAA appealed to the CA alleging grave abuse of discretion on the part of the RTC when it ordered MIAA to be re-impealed as a party-defendant. The petition was docketed as **CA-G.R. SP No. 67765.**

In a Decision dated January 9, 2004,<sup>[6]</sup> the CA granted MIAA's petition and annulled and set aside the May 24, 2001 and September 13, 2001 Orders in Civil Case No. 66060. The CA said that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the orders. According to the CA, MIAA's refusal to be a part of the internal squabble among members of the Consortium was not an "act or omission" that gave BF a cause of action. MIAA had not in any way violated any right of BF. The CA commented that an interference by MIAA in the Consortium quarrel could even expose MIAA to a suit by the other members of the Consortium. The CA stressed that MIAA had in fact earlier recognized the Consortium as a distinct and separate personality from its members. As far as MIAA was concerned, the CA concluded that BF was a stranger to the contract between MIAA and the Consortium, and if BF's interest was its right to a portion of the contract price, its proper recourse was to first secure an assignment of its proportionate rights from the Consortium.

The CA also pointed out that BF was estopped from treating MIAA as a necessary party, because when it dropped MIAA as a party in its amended complaint without stating why it did, BF implicitly admitted that MIAA was not a necessary party.

The CA also ruled that *res judicata* had set in when the CA denied a reconsideration of the Decision in CA-G.R. SP No. 43133 and said decision was not appealed. Recall that in the said decision, the CA Fourteenth Division stressed that MIAA was no longer a party-defendant since it had been dropped by BF and, therefore, no relief may be had from MIAA; that the case was not a matter *in rem* but can only give rise to a judgment *in personam*; that the CA was convinced MIAA had no actual, direct, and immediate interest in the dispute since the dispute was intra-corporate; and that MIAA had nothing to do with BF's complaint against Tokyu.<sup>[7]</sup> The CA added that since the issue with respect to MIAA was not appealed, the said decision had become final and another case on the same issue had been barred by *res judicata*.

The CA also noted that when MIAA was allowed to intervene in the aforementioned case, the RTC had acquired jurisdiction over MIAA; thus, there was identity of parties between CA-G.R. SP No. 43133 and CA-G.R. SP No. 67765. According to the CA, although the subject matter of CA-G.R. SP No. 43133 was the propriety of the grant of the TRO enjoining Tokyu from receiving any amount from MIAA and the subject matter in CA-G.R. SP No. 67765 was the propriety in including MIAA as a party-defendant in Civil Case No. 66060, both cases involved the issue of whether or not MIAA was a proper party-defendant in Civil Case No. 66060. Thus, the CA concluded that the elements of *res judicata* were present.

The motion for reconsideration was denied by the CA; hence, BF filed this petition raising the following as issues:

I.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BF HAS NO

CAUSE OF ACTION AGAINST MIAA AS, IN FACT, BF'S SECOND AMENDED COMPLAINT STATES A CAUSE OF ACTION AGAINST MIAA.

II.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BF IS ESTOPPED FROM IMPLEADING MIAA IN THE CASE.

III.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BF IS BARRED UNDER THE DOCTRINE OF RES JUDICATA FROM IMPLEADING MIAA IN THE MAIN CASE.

The appellate court had correctly granted the petition of MIAA.

In this petition before us, BF would have us believe that it dropped MIAA as a party-defendant in its first amended complaint because its cause of action against MIAA was not yet ripe.<sup>[8]</sup> It said that it re-impleaded MIAA in the second amended complaint because of the impending release of the final payment and the retention money to Tokyu. And if the project were completed and full payment were given to the Consortium, BF could no longer get its supposed share in the payments.

The ultimate facts, as alleged by BF, that are the bases of its cause of action against MIAA, are found on items 2.18 to 2.21 of BF's second amended complaint, as follows :

2.18 To protect its rights and interests, BF, through counsel, wrote MIAA calling its attention to the contract violations committed by TOKYU in bad faith, and requesting its intervention to see an early end to the dispute. More specifically, BF requested MIAA to:

1. Persuade TOKYU to remit to us our rightful 20% share in the downpayment of the Project;
2. Enjoin TOKYU's unauthorized and illegally hired subcontractors from executing BF's portion of the NAIA II project;
3. Directly remit to us our 20% share in the subsequent payments to be made under the construction contract; and
4. Should TOKYU stubbornly refuse to heed any of the above, expel TOKYU from the consortium and let BF, MITSUBISHI and ORETA take over the entire project.

x x x x

2.19 Later, BF, through counsel, wrote TOKYU revoking [its] authority as lead partner to represent BF in dealing with MIAA in connection with the execution of the Project x x x.

2.20 Despite the revocation made by BF and **its request for MIAA** to resolve the dispute, TOKYU continued to act as the lead partner and has in fact taken its role to the extreme by hiring other subcontractors to do BF's portion of the work. On