

THIRD DIVISION

[G.R. NO. 144792, January 31, 2006]

**GAMMON PHILIPPINES, INC., PETITIONER, VS. METRO RAIL
TRANSIT DEVELOPMENT CORPORATION, RESPONDENT.**

D E C I S I O N

TINGA, J.:

The Construction Industry Arbitration Commission (CIAC) was created in recognition of the construction industry's contribution to national development goals. Realizing that delays in the resolution of construction industry disputes would also hold up the country's development, Executive Order No. 1008 (EO 1008) expressly mandates the CIAC to expeditiously settle construction industry disputes and, for this purpose, vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. Ironically, the instant challenge to the CIAC's jurisdiction has spawned the very delay which the law has envisioned to forestall.

Gammon Philippines, Inc. (Gammon) assails the *Decision*^[1] of the Court of Appeals in CA-G.R. SP. No. 54922 which ordered the CIAC to desist for lack of jurisdiction from hearing Gammon's claim for reimbursement against Metro Rail Transit Development Corporation (MRTDC) without prejudice to its right to file an appropriate action in the proper court.

The following are the antecedents:

In 1996, MRTDC was awarded a government contract by way of a Build Lease and Transfer Agreement to undertake the MRT 3 North Triangle Development Project (Project). Among the major components of the Project was the construction of a four (4)-level podium superstructure.

MRTDC, through its Project Manager, Parsons Inter Pro Joint Venture (Parsons), sent invitations to prospective bidders for the Project. Gammon submitted a bid to furnish all the materials, labor, tools, equipment, supervision, and other facilities to complete the works on the podium superstructure for the contract price of P1,401,672,095.00.

On August 27, 1997, Parsons issued a Letter of Award [also known as a Notice of Award (NOA)] and a Notice to Proceed (NTP) in favor of Gammon, notifying the latter of the award to it of the contract for the construction of the podium superstructure.

Shortly thereafter, MRTDC sent a letter to Gammon on September 12, 1997,

notifying the latter of the suspension of all the undertakings stipulated in the August 27, 1997 NOA/NTP ostensibly because of the currency crisis at that time.

According to Gammon, however, after the issuance of the August 27, 1997 NOA/NTP, it proceeded to de-water and clean up the Project site. On the other hand, MRTDC claims that before any construction activity could proceed, it formally served Gammon a notice confirming the "temporary suspension of all requirements under the terms of the contract until such time as clarification of scope has been received from the owner. The only exception to this suspension is the re-design of the projects floor slabs and the site de-watering and clean up."^[2]

As a result of its analysis of the impact of the currency crisis, MRTDC decided to downsize the podium structure to two (2) levels. Again, the parties are in disagreement whether bid proposals for the redesigned two-level podium were solicited. MRTDC claims that bidding took place, while Gammon insists that it merely submitted a proposal to undertake the redesigned Project and was issued a NOA/NTP on February 18, 1998. Gammon then submitted a proposal reducing the contract price from P1,401,672,095.00 to P1,062,988,607.00. This proposal was accepted by MRTDC for which it issued a NOA/NTP dated April 2, 1998.

On May 7, 1998, MRTDC rescinded the NOA/NTP dated April 2, 1998. In its place, MRTDC offered another NOA/NTP dated June 10, 1998 whose terms reduced the original construction period and increased the stipulated liquidated damages in case of delay. Gammon qualifiedly accepted the offer but manifested its willingness to consider revisions to the terms and conditions of the NOA/NTP.

On June 22, 1998, MRTDC notified Gammon that it was awarding the contract to Filipinas (Prefab Building) Systems, Inc. (Filsystems) since Gammon did not accept the terms and conditions of the June 10, 1998 NOA/NTP. Consequently, Gammon sought reimbursement of the direct and indirect costs it incurred in relation to the Project amounting to P118,391,218.43.

MRTDC signified its willingness to reimburse Gammon but rejected the latter's computation and instead offered a fixed cap of five percent (5%) of Gammon's total claims, or approximately P6,000,000.00 only.

Dissatisfied with this figure, Gammon filed its claim with the CIAC invoking the arbitration clause of the General Conditions of Contract (GCC) which provides that the arbitration of all disputes, claims or questions under the contract shall be in accordance with CIAC rules.

On July 26, 1999, the CIAC directed MRTDC "to file the required Answer and nominees for the Arbitral Tribunal on or before August 7, 1999, otherwise, the arbitration will proceed in accordance with the CIAC Rules."^[3] Instead of filing an Answer, however, MRTDC filed a Request for Production of Documents, claiming that its counsel did not find among the documents attached to the Notice of Claim "any contract duly signed by claimant and respondent, much less an arbitration agreement between them, on the basis of which, this Honorable Commission can properly assume jurisdiction over this case."^[4]

The CIAC issued another Order on August 4, 1999, directing Gammon "to file its

Comment (on the request)—and/or produce the duly signed copies of the contract and agreement, and furnish copies thereof to Respondent."^[5]

Gammon filed a Comment dated August 16, 1999, asking that MRTDC's request be denied on the grounds that: (1) the rules on discovery are not applicable to arbitration; (2) the request is premature because MRTDC has not filed its Answer; and (3) since MRTDC has its own records and files which are available to it, the request is not proper.^[6]

On August 18, 1999, the CIAC rendered its assailed Order,^[7] the dispositive portion of which states:

WHEREFORE, premises considered, the Commission's Order dated 4 August 1999 in so far (sic) as it directs Claimant to produce the duly signed contract and the agreement to arbitrate, is hereby SET ASIDE. Respondent is accordingly directed to submit within an INEXTENDIBLE period of ten (10) days from receipt hereof, its Answer and nominees for the Arbitral Tribunal. In default thereof, the Commission shall give due course to Claimant's Motion to constitute the Arbitral Tribunal in accordance with its Rules and shall direct the Arbitrators so appointed to proceed with the arbitration and render judgment as the evidence presented may warrant.

SO ORDERED.^[8]

The CIAC denied MRTDC's motion for reconsideration in its Order^[9] dated September 2, 1999. Consequently, MRTDC questioned its jurisdiction to arbitrate in a petition for certiorari filed with the Court of Appeals.

In its assailed Decision, the appellate court ruled that the CIAC is without jurisdiction over the case because Gammon failed to present any valid and subsisting contract upon which the claim for arbitration may be based. According to the appellate court, the NOA/NTP dated August 27, 1997, upon which Gammon brought the claim for arbitration, had been novated by the NOA/NTP dated April 2, 1998. In turn, the NOA/NTP dated April 2, 1998 had been extinguished before construction could commence. Further, the NOA/NTP dated June 10, 1999 was a mere counter-offer which was only qualifiedly accepted by Gammon. Hence, there is no perfected contract between the parties which may be made the basis for arbitration.

The Court of Appeals denied Gammon's Motion for Reconsideration^[10] in its Resolution^[11] dated August 31, 2000.

In its Memorandum^[12] dated May 29, 2001 filed before this Court, Gammon avers that the novation of the August 27, 1997 NOA/NTP cannot be used as basis for ruling that the CIAC has no jurisdiction over the dispute because novation was never raised as an issue by MRTDC, which did not even invoke novation as basis for assailing the orders of the CIAC. Further, Gammon maintains that the contract between the parties was not novated. This contract, designated as Contract No. 4.241.001, in fact, contemplates that changes could be made without novating or invalidating the contract. The redesign of the podium structure, with the

concomitant reduction in the contract price therefor, is allegedly a mere minor modification which does not render the old obligation entirely incompatible with the new one.

Even assuming that the contract between the parties had been extinguished by novation or rescission, Gammon asserts that the provision for arbitration in the contract survives and the CIAC's jurisdiction over the dispute remains unaffected.

Gammon also claims that MRTDC has no legal capacity to sue since it has not been incorporated under Philippine laws. Moreover, it allegedly cannot raise the issue that Gammon's claims for damages did not arise from a construction contract as this issue was neither raised before the CIAC nor before the Court of Appeals. Besides, Gammon does not claim damages incident to its participation in the bidding process but those incurred in the performance of the contract after the issuance of the NOA/NTP dated August 27, 1997.

For its part, MRTDC filed a Memorandum^[13] dated May 29, 2001, contending that while novation was not directly raised as an issue in its petition before the Court of Appeals, the latter could not have avoided applying the law on novation in resolving the correctness of the CIAC's position that its jurisdiction over Gammon's claim was supported by its examination of the various NOA's/NTP's issued by MRTDC.

MRTDC insists that the contract between the parties evidenced by the August 27, 1997 NOA/NTP was novated by the April 2, 1998 NOA/NTP because of the incompatibility between the two (2) contracts in terms of subject matter and price or consideration. In turn, the April 2, 1998 NOA/NTP was rescinded. On the other hand, the June 10, 1998 NOA/NTP did not materialize because MRTDC's offer was only qualifiedly accepted by Gammon.

MRTDC further asserts that the cancellation of the main construction contract necessarily resulted in the extinguishment of the arbitration clause, which is a mere adjunct of the main contract.

As regards its alleged lack of personality to sue, MRTDC counters that Gammon has already admitted MRTDC's legal personality in its pleadings. Gammon allegedly can no longer take a position contrary to or inconsistent with the allegations in its own pleading. Besides, the corporate personality of MRTDC can only be assailed in a direct action.

Finally, even admitting that the contract was not extinguished, MRTDC contends that Gammon's claims are not construction-related. Construction is defined as referring "to all on-site work on buildings or altering structures from land clearance through completion including excavation, erection and assembly and installation of components and equipment."^[14] Gammon's breakdown of its claims, consisting of mobilization and demobilization, engineering services, design work, site de-watering and clean-up, costs incurred as a direct result of suspension of work, lost profit and overhead expenses, cost of on-going discussions with owner, and attorney's fees, allegedly do not fall within the above-stated definition of construction as to be considered construction-related.

Although there is considerable disagreement concerning the foregoing facts,

specifically whether Gammon undertook certain works on the Project and whether a re-bidding for the downgraded podium structure was indeed conducted, the Court does not need to make its own factual findings before it can resolve the main question of whether the CIAC's jurisdiction was properly invoked. The resolution of this question necessarily involves a two-pronged analysis, *first*, of the requisites for invoking the jurisdiction of the CIAC, and *second*, of the scope of arbitrable issues covered by CIAC's jurisdiction.

EO 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. It defines the jurisdiction of the body thus:

SECTION 4. Jurisdiction.—The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

In this case, the parties submitted themselves to the jurisdiction of the CIAC by virtue of the arbitration clause in the GCC, which provides:

Art. 33.05 ARBITRATION: All disputes, claims or questions subject to arbitration under this Contract shall be settled in accordance with the provisions of this Article.

- a. Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the Contract, and a copy filed with the Project Management Team. The demand for arbitration shall be made within a reasonable time after the dispute has arisen; in no case however, shall the demand be made later than the time of final payment except as otherwise expressly stipulated in the Contract. Such arbitration shall be in accordance with the Construction Industry Arbitration Law of the Philippines and the Rules and Procedures Governing Construction Arbitration of the Construction Industry Arbitration Commission of the Philippines. Any arbitration proceedings shall take place in the Philippines.