

## EN BANC

[ G.R. No. 146478, July 30, 2004 ]

**PHILIPPINE PORTS AUTHORITY, PETITIONER, VS. SARGASSO CONSTRUCTION & DEVELOPMENT CORP., PICK & SHOVEL, INC., ATLANTIC ERECTORS, INC. (JOINT VENTURE), RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Resolution<sup>[1]</sup> of the Court of Appeals dismissing the appeal of the petitioner in CA-G.R. CV No. 63180 and its Resolution denying the motion for reconsideration thereon.

#### The Antecedents

The petitioner Philippine Ports Authority embarked on the development of the northwest Ground Quadrangle consisting of the construction of the rock causeway for the port of San Fernando, La Union and Pier 2. An important component of the project was the improvement of the San Fernando port, inclusive of the reclamation of 4,280 square meters adjacent to Pier 2.

The petitioner offered up for public bidding the construction of Pier 2 and the rock causeway for the port of San Fernando, La Union. The project was awarded to a consortium composed of Sargasso Construction and Development Corp., Pick & Shovel, Inc., and Atlantic Erectors, Inc., the respondents herein. The contractor commenced the project on August 14, 1990.<sup>[2]</sup>

Instead of awarding the reclamation project to a constructor after public bidding, the General Manager of the petitioner decided to negotiate with a contractor for a contract for the completion of the project. The award of the reclamation project was made subject to the following conditions: a) the completion of the installation of the rubber dock fender at Pier 2, San Fernando and the Tobacco port; b) that the mobilization/demobilization costs shall not be included in the contract; and, c) that escalation shall be reckoned from the approval of the supplemental agreement.

On October 1, 1992, the respondents offered to complete the project as extra work to its existing contract with the petitioner, for the total cost of P36,294,857.03.<sup>[3]</sup>

In a Letter dated December 18, 1992, the petitioner's Assistant General Manager for Engineering, Teofilo H. Landicho, informed the respondents that its proposal was not acceptable. However, he stated that if the price of the project would be lowered to P30,794,230.89, then the petitioner PPA may award the project to the respondents, subject to the approval of higher authority.<sup>[4]</sup> The respondents, through their Executive Director, agreed to reduce the price of the project.<sup>[5]</sup>

On August 26, 1993, the petitioner's General Manager Rogelio A. Dayan, issued a Notice of Award of the project to the respondents. The approval of the reclamation project was conditioned upon the completion of the fendering of Pier 2 of the San Fernando port and the port of Tobacco, and was contained in the notice of award.<sup>[6]</sup> The respondents agreed to this condition.<sup>[7]</sup> The petitioner instructed the consortium to prepare a supplemental agreement and, thereafter, to transmit the same, including the documents specified therein.

Upon the completion of the installation of the rubber dock fenders, General Manager Dayan presented the approval of the reclamation project and the award thereof to the respondents for P30,794.230.89, as well as the contract thereon. The presentation was made during a meeting of the Board of Directors on September 9, 1994. After due deliberation, the Board of Directors resolved to reject the contract and to direct the management to bid the project for lack of basis to award the contract through negotiation. The Board noted that:

...[T]he Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus, there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso.<sup>[8]</sup>

Upon being notified of the resolution of the Board of Directors, the respondents wrote the General Manager on September 19, 1994 requesting that its agreement be presented again to the Board of Directors for approval.<sup>[9]</sup> However, the petitioner did not advise the respondents as to the Board of Directors' action on its request for the reconsideration of the resolution.

On June 30, 1997, the respondents filed a Complaint with the Regional Trial Court of Manila, Branch 14, for specific performance against the petitioner, praying that the latter be ordered to execute a supplemental contract based on the August 26, 1993 Notice of Award for the project, and to pay actual and exemplary damages, attorney's fees and litigation expenses.

The petitioner, through the Office of the Government Corporate Counsel (OGCC), represented by the Government Corporate Counsel and Atty. Ramiro R. Madarang, its Assistant General Corporate Counsel, with collaboration from the Legal Services Department of the petitioner, through Atty. Francisquiel O. Mancile, filed its Answer with counterclaims. It alleged that (a) the complaint was premature, as the respondents' request for the reconsideration of the resolution had not yet been acted upon; and, (b) no contract on the project was perfected between it as the owner, and the respondents as the contractor, since the proposed supplemental agreement between the parties was rejected by the petitioner's Board of Directors, and which rejection was relayed to the respondent.

The petitioner, through its General Manager, executed a Special Power of Attorney appointing Atty. Ramiro R. Madarang and other lawyers of the OGCC, and Atty. Francisquiel O. Mancile and other lawyers of its Legal Services Department as its lawful attorneys at all stages of the proceedings in the present case.<sup>[10]</sup> Atty. Francisquiel Mancile appeared before the trial court as counsel of the petitioner. Atty. Mancile appeared for the petitioner during the trial except during the hearing of

October 21, 1997<sup>[11]</sup> when Atty. Ramiro R. Madarang of the OGCC appeared for the petitioner with Atty. Mancile.

After trial, the court rendered its Decision<sup>[12]</sup> in favor of the respondents, the dispositive portion of which reads as follows:

WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered ordering the defendant to execute a contract in favor of the plaintiff for the reclamation of the area between the Timber Pier and Pier 2 located at San Fernando Port, La Union, for the price of P30,794,230.89 and to pay the costs.

The counterclaim is hereby dismissed for lack of merit.

SO ORDERED.<sup>[13]</sup>

The petitioner was served with a copy of the trial court's decision. On July 3, 1998, the petitioner, through the Office of the Government Corporate Counsel, filed a Motion for Reconsideration thereof. On January 26, 1999, the trial court issued an Order denying the said motion.<sup>[14]</sup> On February 16, 1999, the petitioner was served a copy of the said order through its Legal Department. On February 26, 1999, the petitioner, through the Government Corporate Counsel, filed a Notice of Appeal of the decision and order of the trial court. Such notice of appeal was given due course.<sup>[15]</sup>

In its brief, the petitioner alleged that it received a copy of the appealed decision on June 22, 1998.<sup>[16]</sup> The petitioner also alleged that (a) it filed its motion for reconsideration of the trial court's decision on July 3, 1998, or eleven (11) days after the receipt of the decision; (b) it received the trial court's order denying its motion for reconsideration on February 16, 1999; and, (c) it filed its Notice of Appeal on February 26, 1999 or ten (10) days after the receipt of the order. The respondents filed a motion to dismiss the appeal, contending that the petitioner's notice of appeal was filed six (6) days after the period allowed therefor.

In its Opposition to the Motion to Dismiss Appeal,<sup>[17]</sup> the petitioner averred that the decision of the trial court was served on its Legal Services Department and not on the OGCC as its lead counsel. It averred that the OGCC merely used the copy served on the Legal Services Department as basis for the filing of the motion for reconsideration and the appeal. The petitioner argued that since the OGCC was not served with a copy of the trial court's decision, the period to perfect its appeal therefrom never commenced. It stressed further that the respondents' motion to dismiss was filed belatedly, since such motion to dismiss was not filed while the case was still in the Regional Trial Court.

The respondents, however, argued that they discovered the petitioner's belated filing of the notice of appeal only when the latter filed its appellant's brief with the Court of Appeals, and declared the following material dates: (a) when it received the decision of the trial court; (b) when it filed its motion for reconsideration; (c) when it received the order of the trial court denying its motion for reconsideration; and, (d) when it filed its notice of appeal. According to the respondents, such material dates were declared in the appellant's brief for the first time, and were not stated in

the petitioner's notice of appeal in the trial court.

Before the respondents' motion could be resolved, the latter filed their appellees' brief with the appellate court.

On June 27, 2000, the Court of Appeals issued a Resolution granting the respondents' Motion to Dismiss Appeal, declaring that the petitioner's appeal was filed six (6) days late.<sup>[18]</sup> The Court of Appeals cited the ruling of this Court in *Republic vs. Court of Appeals*,<sup>[19]</sup> and the admission by the petitioner in its brief that it received a copy of the decision of the trial court on June 22, 1998. The petitioner sought to have the said resolution reconsidered, but the same was denied by the appellate court in a Resolution dated December 12, 2000.<sup>[20]</sup>

### **The Present Petition**

The petitioner now comes to this Court and raise the following issues:

1. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN DENYING PETITIONER'S APPEAL AND CONSEQUENTLY DISMISSED THE SAME FOR BEING FILED OUT OF TIME, OVERLOOKING THE FACT THAT PETITIONER, THROUGH ITS LEAD COUNSEL OF RECORD, THE OGCC, WAS NOT VALIDLY SERVED WITH A COPY OF THE TRIAL COURT'S DECISION DATED JUNE 8, 1998, AND, THEREFORE, THE PERIOD TO PERFECT AN APPEAL DID NOT RUN.
2. WHETHER OR NOT THE INSTANT CASE IS WARRANTED SO THAT PETITIONER'S APPEAL WITH THE COURT OF APPEALS COULD BE REINSTATED AND PROCEED IN DUE COURSE IN ORDER NOT TO DEPRIVE PETITIONER OF ITS RIGHT TO PROSECUTE ITS CASE SO THAT THE COURT OF APPEALS WILL DECIDE ON THE MERITS AND NOT ON TECHNICALITY.

Anent the first assigned issue, the petitioner argues that while the trial court's decision and order were served on it through its Legal Services Department, such service was ineffectual since the OGCC is its statutory lead counsel. Hence, all copies of the trial court's orders, as well as its decision, should be served on the petitioner through the OGCC and not through the Legal Services Department. The petitioner asserts that since the OGCC was not served with a copy of the decision of the trial court, the period for it to appeal the decision had not commenced; as such, the appeal from the said decision was made within the reglementary period therefor.

### **The Ruling of the Court**

We rule against the petitioner.

The petitioner's contention that the OGCC was its lead counsel in the trial court is belied by the records. The records show that the petitioner was represented in the trial court by the OGCC in collaboration with its Legal Services Department, through Atty. Francisquiel O. Mancile. *The petitioner, through its General Manager, executed a Special Power of Attorney appointing the OGCC and its Legal Services Department, through any of their lawyers, as its counsel, not only during the pre-*

*trial but throughout the entire proceedings.*<sup>[21]</sup> Hence, the copies of the orders and decision of the trial court may be served on the petitioner, either through its Legal Services Department or through the OGCC, following Rule 13, Section 2 of the Revised Rules of Court, as amended. Indeed, in *Albano v. Court of Appeals*,<sup>[22]</sup> we held that:

With regard to their first assignment of error, petitioners are on extremely shaky grounds when they argue that counsel on record are entitled to separate notices of the court's decision. This argument is obviously inconsistent with Sec. 2, Rule 13 of the Rules of Court which explicitly provides that if a party has appeared by counsel, "service upon him shall be made upon his counsel or *one of them*" (italics supplied). Clearly, notice to any one of the several counsel on record is equivalent to notice to all and such notice starts the time running for appeal notwithstanding that the other counsel on record has not received a copy of the decision.<sup>[23]</sup>

It is true that, under Section 10, Chapter 3, Title III, Book IV of the Revised Administrative Code of 1987,<sup>[24]</sup> the OGCC shall act as the principal law office of all government-owned or controlled corporations and shall exercise control and supervision over all legal departments or divisions maintained separately; hence, is entitled to copies of all orders of the trial court and a copy of its decision. The records also show that the OGCC was not served with a copy of the decision of the trial court. However, the petitioner, through the OGCC, admitted in its Brief in the Court of Appeals that it was served, on June 22, 1998, with a copy of said decision of the trial court, thus:

This is an appeal from the decision rendered by the Regional Trial Court of Manila, Branch 14, on June 8, 1998, the dispositive portion of which states as follows:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering the defendant to execute a contract in favor of the plaintiff for the reclamation area between the Timber Pier and Pier 2 located at San Fernando Port, La Union for the price of ₱30,794,230.89 and to pay the costs.

"The counterclaim is hereby dismissed for lack of merit.

"SO ORDERED."

On June 22, 1998, defendant-appellant Philippine Ports Authority (PPA) received the above decision.

Defendant-appellant filed a Motion for Reconsideration of the decision on July 3, 1998. However, the same was denied for lack of merit in an Order dated January 26, 1999. Thereafter, defendant-appellant seasonably filed its Notice of Appeal.<sup>[25]</sup>

Based on the admission of the petitioner, it is evident that the copy of the trial court's decision which was intended for it and served on Atty. Mancile was