

THE PHILIPPINE ADR REVIEW

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BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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PDRCI to hold commercial mediation training

By: Oscar Carlo F. Cajucom



The Philippine Dispute Resolution Center, Inc. will hold a comprehensive five-day training for effective settlement of disputes through mediation early next year.

The commercial mediation and training workshop will be on January 23 to 24, 2014, January 30 to 31, 2014 and on February 6, 2015 at the AIM Conference Center in Makati City.

The workshop has six parts or modules. The first part will introduce participants to the process of mediation, its legal basis, as well as the mediator's role. The second module is a briefing on basic communication hurdles encountered during mediation and the effective means to address them. The third part will familiarize the participants with effective mediation tools and techniques.

For the fourth module, participants will be oriented on the PDRCI's Mediation Rules, ethical and procedural standards to be observed by commercial mediators, and the applicable fees for commercial mediation.

The facilitators will then discuss in de-

tail the mediation process and its stages. Case studies on mediation will also be used to apply the principles discussed. Finally, participants will have hands-on mediation experience through role-playing for a full appreciation of the mediation process.

The workshop will be facilitated by accredited mediators with extensive experience in local and foreign mediation.

Information on registration fees are available in the flier printed on page 4. Those interested must register not later than January 9, 2015. Registration forms may be requested from the PDRCI secretariat at secretariat@pdrci.org.

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Supreme Court allows corporate directors and officers to be named as respondents in arbitration

By Ricky A. Sabornay



In a decision promulgated on November 12, 2014, the Philippine Supreme Court, through Associate Justice Marvic M.V.F. Leonen, ruled that corporate directors and officers may be compelled to submit to arbitration of a dispute under a contract entered into by the corporation they represent if there are allegations of bad faith or malice in their acts in representing the corporation (*Gerardo Lanuza, Jr. et al. v. BF Corporation, et al.*, G.R. 174938).

The case arose from a collection suit filed with the Regional Trial Court by BF Corporation ("BF") against Shangri-la Properties, Inc. ("Shangri-la") and the members of its board of directors to recover P111 million of the construction cost of the Shangri-la shopping mall and multi-level parking building.

Pursuant to the arbitration clause in the construction contract between the parties, the dispute was eventually

submitted to arbitration by the Construction Industry Arbitration Commission (CIAC).

Gerardo Lanuza, Jr. and Antonio Olbes, both directors of Shangri-La, sought their exclusion from the arbitration for being non-parties to the contract but the trial court denied the same, ruling that Shangri-La's directors were interested parties who "must also be served with a demand for arbitration to give them the opportunity to ventilate their side of the controversy, safeguard their interest and (defend) their respective positions."

Lanuza and Olbes moved for reconsideration of the trial court's order but the court stood pat on its ruling, prompting the directors to elevate the matter to the Court of Appeals, who likewise ruled that Shangri-La's directors were necessary parties to the arbitration. Lanuza and Olbes then appealed to the Supreme Court on the argument that they were not person-

ally liable for corporate acts and obligations, the corporation being a separate entity. They further argued that as third parties to the contract between BF and Shangri-La, which contains the arbitration agreement, they were strangers to the agreement and could not be compelled to arbitrate.

BF responded that petitioners were not third parties to the agreement because they were sued as corporate representatives under Section 31 of the Corporation Code. Because petitioners were being made solidarily liable, they were necessary parties to the arbitration.

While the case was still pending with the Supreme Court, the tribunal ruled in favor of petitioners and denied BF's claims against them. In light of this ruling, BF moved to dismiss the petition, which mainly questioned the inclusion of petitioners in the arbitration, since there was no longer any need to resolve it. Instead of dismiss-

ing the case for mootness, however, the Supreme Court went on to resolve the Petition, supposedly, “so that principles may be established for the guidance of the bench, bar, and the public.”

The Supreme Court agreed with petitioners that their personalities as directors of Shangri-la were separate and distinct from the corporation and that arbitration promotes the parties’ autonomy in resolving their disputes. Nevertheless, it denied the petition, holding that “(w)hen there are allegations of bad faith or malice against corporate directors or representatives, it becomes the duty of courts or tribunals to determine if these persons and corporation should be treated as one.”

The determination of whether the circumstances exist to warrant the courts or tribunals to disregard the distinction between the corporation and the persons representing it, according to the Supreme Court, “must be made by one tribunal or court in a proceeding participated in by all parties involved, including current representatives of the corporation, and those persons impliedly the same as the corporation” to avoid multiplicity of suits, duplicitous procedure, and unnecessary delay. The Supreme Court concluded that “(i)t is because the personalities of petitioners and the corporation may later be found to be indistinct that we rule that petitioners may be compelled to submit to arbitration.”

The decision has been criticized for violating the principle of party autonomy and rendering arbitration litigious.

It is a cardinal rule that only parties to an arbitration agreement may be compelled to submit to arbitration,

the only exception being that provided for in Article 1311 of the Civil Code, which states that “contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.”

BF CORPORATION


Other recognized exceptions in other jurisdictions include the “group of companies doctrine” (Dow Chemical Group v. Isover- Saint- Gobain, ICC Case No. 4131, 1982), “alter ego doctrine” (MAG Portfolio Consultant GMBH v. Merlin Biomed Group LLC, 268 F. 3d 58, 2001), “equitable estoppel doctrine” [R. J. Griffin & Co. v. Beach Club II Homeowners Association, 384 F. 3d 157 (4th Cir. 2004)], among others.

As explained by the Philippine Supreme Court in *Heirs of Salas, Jr. v. Laperal Realty Corporation*, G.R. No. 135362, December 13, 1999, involving respondents who are not signatories to the arbitration agreement, “(a) submission to arbitration is a contract. As such, the Agreement, containing the stipulation on arbitration, binds the parties thereto, as well as their assigns and heirs. But only they.” Consistent with this principle, the Supreme Court in *Heirs of Salas* ruled that third persons who are not signatories to an arbitration agreement cannot be bound by such an agreement.

There is a concern whether *Lanuza* results in a binding precedent since it is a decision made by a division of the Supreme Court that effectively overturns *Heirs of Salas*. Under Article VIII, Section 4(3) of the Constitu-

tion, no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

For another, the dispute involves construction arbitration, which is governed by a special law, Executive Order 1008 (1985). Some commentators view the *Lanuza* opinion as either a non-binding *obiter dictum* or as a *pro hac vice* judgment that does not apply as a precedent.

In any case, *Lanuza* appears to echo the Supreme Court’s lack of familiarity with arbitration as a private, non-litigious dispute-resolution process. By allowing non-parties to be named as respondents, the Supreme Court has thrown the Philippines back into the Stone Age of arbitration. The decision unduly burdens corporations, both foreign and domestic, with the risk of having their directors and officers dragged into arbitration if they choose the Philippines as a venue in their arbitration agreement. 

About the Author



Atty. Sabornay is a litigation associate at Castillo Laman Tan Pantaleon & San Jose. His practice focuses on arbitration, commercial and construction litigation, real estate, labor and criminal law. He graduated from the University of the Philippines College of Law in 2012, where he received the Dean’s Medal for academic excellence. He was an editor of the Philippine Law Journal from 2009 to 2011 and the U.P. Law team captain for the 2010 Asia Cup Moot Court in Tokyo, Japan and 2011 International Environmental Law Moot Court in Maryland, USA.

MEMBER SPOTLIGHT

Atty. Roy Enrico C. Santos




Atty. Roy Enrico C. Santos is a founding partner of the law firm of Puyat Jacinto & Santos, where his areas of practice include energy law, mining law, labor law, litigation, and arbitration.

He obtained his undergraduate degree from the University of the East in 1988 and his law degree from University of the Philippines, Diliman campus in 1995.

He was admitted to the Philippine Bar in 1996. After law school, he joined Quisumbing Torres & Evangelista as an associate.

Atty. Santos advises several power generation companies on their operations, development, and applications for the approval of power sales contracts with the Philippine Energy Regulatory Commission.

He has acted as a lead counsel in approximately 500 cases filed in various courts nationwide for the collection of approximately US\$156 million in non-performing loans by a special-purpose company created under the Special Purpose Asset Vehicle Act. He likewise advised the Republic of the Philippines in an arbitration before the International Centre for Settlement of Investment Disputes (ICSID).

Since 2007, Atty. Santos has been an adjunct professor at the University of the East. 



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