

..... THE PHILIPPINE ADR REVIEW

Broadening its scope of arbitration advocacy

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PDRCI hosts SIAC-SIMC talk on new AMA Protocol in Singapore

The Philippine Dispute Resolution Center, Inc. (PDRCI) recently hosted two resource speakers from Singapore International Arbitration Centre (SIAC) and Singapore International Mediation Centre (SIMC) who spoke on the new AMA Protocol in international arbitration and mediation.

The talk was co-hosted by the Intellectual Property Office on April 22, 2015 and held at the Intellectual Property Center World Finance Plaza in Taguig City.

SIAC Counsel Maricef Valderrama, who clerked for then Philippine Supreme Court Associate Justice Maria Lourdes Sereno, spoke on recent developments in international arbitration in Singapore. She reported that in 2014, SIAC consolidated its position as one of the world's leading arbitral centers with over 200 new cases filed last year. These claims arose from key sectors such commercial (27%), trade (25%), shipping/maritime (14%), corporate (13%), construction/engineering (12%), and others (9%). In 90% of the cases, the parties included a choice of law that gave rise to the dispute. The most popular of the governing laws are Singaporean (49%), English (25%), and Indian (4%) laws.

SIMC Deputy CEO Eunice Chua, a former Assistant Registrar and Justices' Law Clerk at the Supreme Court of Singapore, reported on the increasing global demand for mediation as a means for dispute resolution. She then introduced SIAC and SIMC's Arbitration-Mediation-Arbitration (AMA) service, which SIAC and SIMC envision to provide a "complete suite of dispute resolution offering to parties, especially those with cross-border disputes."

The AMA service is a process whereby a dispute is first referred to arbitration, which is then suspended while mediation is attempted. If the parties are able to settle their dispute through mediation, the settlement agreement may be recorded as a consent award. If the parties are unable to settle their dispute through mediation, they may continue with the arbitration proceedings. The mediation is done by a third-party neutral appointed by the parties or by SIMC.



*SIMC Deputy CEO
Eunice Chua*

WHAT'S INSIDE



Supreme Court: Only the parties to a construction contract may invoke CIAC jurisdiction

By: Ricky A. Sabornay

In *Stronghold Insurance Company, Inc. v. Spouses Stroem* (G.R. No. 204689, January 21, 2015), the Philippine Supreme Court held that the jurisdiction of the Construction Industry Arbitration Committee ("CIAC") may be invoked only by the parties to a construction contract containing an arbitration clause.

through Associate Justice Marvic V.F. Leonen once again reminds us The dispute involves an Owners-Contractor Agreement ("Agreement") for the construction of a two-storey house in Antipolo, Rizal between respondents owners Spouses Rune and Lea Stroem ("Spouses Stroem") and respondent contractor Asis-Leif & Company, Inc. ("Asis-Leif"). Pursuant to their Agreement, Asis-Leif posted a P4,500,000 performance bond from petitioner Stronghold Insurance Company, Inc. ("Stronghold"). Under the performance bond, Asis-Leif and Stronghold bound themselves jointly and severally to pay the Spouses Stroem if the construction of the house was not completed on time.

Asis-Leif failed to finish the project on time, prompting Spouses Stroem to rescind the Agreement and call on the performance bond by filing a complaint for breach of contract and for sum of money with a claim for damages against Asis-Leif and its surety Stronghold. Since the owner of Asis-Leif allegedly absconded and moved out of the country, only Stronghold was summoned in the civil case.

On July 13, 2010, the trial court ruled in favor of the Spouses Stroem and directed Stronghold to pay them P4,500,000, with 6% legal interest per annum from the time of their first demand. Both Stronghold and the Spouses Stroem appealed to the Court of Appeals. The Court of Appeals, however, affirmed the trial court's decision, except for the award of attorney's fees, which it increased to P50,000.

Stronghold appealed to the Supreme Court, arguing that the trial court did not acquire jurisdiction over the case in view of the arbitration clause in the Agreement between Asis-Leif and the Spouses Stroem. It argued that the stipulations in the Agreement are part and parcel of the conditions in the performance bond. Were it not for such stipulations, Stronghold argued, it would not have agreed to issue a bond to the Spouses Stroem. Finally, Stronghold argued that that its liability under the performance bond was limited only to additional costs to complete the project.

In their comment on Stronghold's petition, the Spouses Stroem argued that Stronghold was guilty of forum shopping when it filed its petition to the Supreme Court despite the Spouses Stroem's Motion for Partial Reconsideration with the Court of Appeals. Spouses Stroem also submitted that the Agreement was distinct from the performance bond and that Stronghold was not a party to the Agreement where the arbitration clause appeared. They submitted

that the arbitration clause in the Agreement was binding only on the parties, Asis-Leif and Spouses Stroem, but not Stronghold.

After deliberation, the Supreme Court found Stronghold guilty of forum shopping, noting how it deliberately failed to disclose the Spouses Stroem’s Motion for Partial Reconsideration then pending with the Court of Appeals.

At this point, the Supreme Court could have dismissed Stronghold’s petition in accordance with Rule 42, Section 3 of the 1997 Revised Rules of Procedure, which mandates Stronghold to submit a certification of non-forum shopping and to promptly inform the Supreme Court about of similar actions or proceedings pending before other courts or tribunals. However, it went on to discuss the merits of Stronghold’s petition on whether or not the CIAC indeed has jurisdiction over the case.

In resolving the issue, the Supreme Court noted how Stronghold only raised the issue of lack of jurisdiction based on the arbitration clause for the first time only in its petition. The Supreme Court held that parties may not raise issues for the first time on appeal. However, jurisdiction can never be waived or acquired by estoppel.

Citing Executive Order No. 1008 (19__) or the Construction Industry and Arbitration Law and Section 35 of Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004, the Supreme Court ruled that as held in Heunghwa Industry Co., Ltd. v. DJ Builders Corporation, there were two acts that vested the CIAC with jurisdiction over a construction dispute: one, the presence of an arbitration clause in a construction contract; and two, the agreement of the parties to submit the dispute to the CIAC.

The Supreme Court ruled that there was no dispute that the Agreement between Asis-Leif and the Spouses Stroem was a construction contract, over which the CIAC had jurisdiction. The only issue is whether there was an agreement by the parties to submit the case to arbitration. It was the Spouses Stroem’s position that since Stronghold was not a party to the Agreement, it never gave its consent to arbitration.

Citing its ruling in Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc., 630 SCRA 368 (2010), the Supreme Court iterated that a performance bond is significantly and substantially connected to the construction contract, and, therefore, falls under the jurisdiction of the CIAC. Since the performance bond is a kind of suretyship agreement, it must be read in its entirety, together with the principal agreement

(‘complementary-contracts-construed-together’ doctrine). Applying this rationale in Prudential, the Supreme Court held that the surety in that case willingly acceded to the terms of the construction contract despite the silence of the performance bond as to arbitration.

The Supreme Court, however, held that Prudential cannot apply to the case of Stronghold. Unlike in Prudential where the construction contract expressly incorporated the performance bond into the contract, the Agreement in Stronghold case merely stated that a performance bond shall be issued in favor of the Spouses Stroem. The performance bond merely referenced the contract entered into by the Spouses Stroem and Asis-Leif without incorporating the performance bond into the Agreement.

The Supreme Court stressed that arbitration clause was found only in the Agreement and the only parties thereto were Asis-Leif and the Spouses Stroem. Thus, Stronghold, not being a party thereto, could not invoke the arbitration clause and consequently, cannot invoke the jurisdiction of the CIAC.

It also did not escape the Supreme Court’s attention that Stronghold’s invocation of the arbitration clause would delay the resolution of the dispute and defeat the purpose of arbitration in relation to the construction business. It held that “where a surety in a construction contact actively participates in a collection suit, it is estopped from raising jurisdiction later ... it cannot allow it to invoke the arbitration at this late stage of the proceedings since to do so would go against the law’s goal of prompt resolution of cases in the construction industry.”



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. Cristina Montes is an associate attorney in Parlade Hildawa Parlade and Panga where she practices construction arbitration, commercial arbitration, civil law (including family law, contracts, and torts, among others), intellectual property law, criminal law, and political law.

Atty. Montes studied Humanities, specializing in Philosophy, at the University of Asia and the Pacific, where she graduated *magna cum laude* and class salutatorian in 1997. She received her law degree in 2005 at the University of the Philippines, where she was awarded "Best Speaker/Debater" of the winning team in the Dean's Cup Debate Championship 2003.

She obtained her master's degree in 2012 at the Universidad de Navarra, Pamplona, Spain where she wrote her thesis "*La Responsabilidad del Gobierno en la Cancelación de Contratos de Inversiones Extranjeras*" (The Liability of the Government in the Cancellation of Foreign Investment Contracts). Her thesis touched on domestic civil law, international law, and foreign investment arbitration.

She clerked for Supreme Court Associate Justice Conchita Carpio-Morales and was a former legislative staff officer at the House of Representatives Committee on Economic Affairs. 



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PROGRAMME AT A GLANCE

12 May 2015

- ❖ ICCA Governing Board Meeting
- ❖ Judicial Forum
- ❖ ICCA Interest Group Meetings
- ❖ ICCA Task Force Meetings
- ❖ Summit Opening Reception

13 May 2015

- ❖ Summit Conference
- ❖ Summit Closing Reception

14 May 2015

- ❖ Young ICCA Forum

Supporting Organisations



Bridging Cultures, Connecting Futures

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