PDRCI
PHILIPPINE DISPUTE RESOLUTION CENTER, INC.

SECRETARIAT

3F, Commerce and Industry Plaza
1030 Campus Avenue cor. Park Avenue
McKinley Town Center, Fort Bonifacio
1634 Taguig City

Telefax: 822-4102
Email: secretariat@pdrci.org
Website: www.pdrci.org

THE PHILIPPINE
ADR REVIEW
Broadening its scope of arbitration advocacy

WWW.PDRCI.ORG AUGUST 2017

Supreme Court rules that arbitration clause in unsigned but performed contract is valid

By Grace Ann Lazaro

In a Decision issued on March 8, 2017 in G.R. No. 211504, *Federal Builders, Inc. v. Power Factors, Inc.*, the Third Division of the Philippine Supreme Court ruled that an agreement to submit a construction dispute to arbitration need not be contained in a signed and finalized construction contract; it is enough that the agreement be in writing.

Federal Builders Inc. ("Federal"), the respondent in an arbitration initiated by Power Factors, Inc. ("Power") before the Construction Industry Arbitration Commission (CIAC), sought to dismiss the claim because CIAC allegedly had no jurisdiction. Federal argued that the Contract of Service between it and Power, which contained an arbitration clause, was a mere draft that was never finalized and signed.

The arbitral tribunal denied Federal's motion to dismiss and proceeded with the arbitration without its participation. The tribunal then rendered a Final Award against Federal, which it appealed to the Court of Appeals (CA). The CA affirmed the Final Award with modification.

On further appeal, the Supreme Court rejected Federal's position. Citing the CIAC Revised Rules of Procedure Governing Construction Arbitration ("CIAC Rules"), the

Continued on page 4

WHAT'S INSIDE

Supreme Court limits permissible judicial review of arbitral awards

By Rita Marie L. Mesina-Alvaera

In *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation* (G.R. No. 204197, November 23, 2016), the Supreme Court, through its Second Division, substantially curtailed the limits of judicial review of arbitral awards.

Fruehauf Electronics Philippines Corporation (Fruehauf), claimant in the arbitration, sought to reverse the Court of Appeals' (CA) decision that set aside the arbitral award for unpaid rent and damages against the successor-in-interest of its lessee, Technology Electronics Assembly and Management Pacific Corporation (TEAM). Fruehauf argued, among others, that courts do not have the power to substitute their judgment for that of arbitrators. Meanwhile, TEAM contended that the CA correctly resolved the substantive issues of the case, as the arbitral tribunal's errors were sufficient grounds for the CA to modify and vacate the award.

In an opinion written by Brion, J., the Supreme Court held that arbitral tribunals are not quasi-judicial bodies whose decisions are reviewable under Rule 43 of the 1997 Rules of Civil Procedure (Rules). The Supreme Court also prescribed the correct procedural remedy against an unfavorable arbitral award and the proper mode of appeal against a decision of the Regional Trial Court (RTC) confirming, vacating, modifying, or correcting an arbitral award.

The Supreme Court revisited its rulings in *ABS-CBN Broadcasting Corporation v. World Interactive Network*

SUPREME COURT JUSTICE ARTURO D. BRION

Systems (WINS) Japan Co., Ltd. (G.R. No. 169332, February 11, 2008) and other cases and held that arbitral tribunals are not quasi-judicial agencies with administrative adjudicatory powers. Apart from being an obiter dictum, the ruling in *ABS-CBN* committed the fallacy of equivocation, equating "voluntary arbitrator" in labor disputes with "arbitrator/ arbitration tribunal" in commercial arbitration.

Moreover, Rule 43, Section 1 of the Rules enumerates the quasi-judicial agencies whose decisions are appealable to the CA. Treating arbitral tribunals as quasi-judicial bodies would place them in the same footing as the RTCs, effectively removing arbitral awards from the scope of the RTC's authority to confirm or to vacate them on the grounds provided by law, such as the validity of the arbitration agreement or the regularity of the proceedings.

Thus, the Supreme Court held that the only remedy against a final domestic arbitral award is to file a petition to vacate or to modify/correct the award under Rule 11.2 of the Special Alternative Dispute Resolution (ADR) Rules. Unless a ground to vacate has been established, the RTC must confirm the arbitral award as a matter of course.

As for the proper mode of appeal from an order confirming, vacating, correcting, or modifying an arbitral award, the Supreme Court ruled that the losing party may move for reconsideration and thereafter appeal the ruling via petition for review on *certiorari* under Rule 45 raising pure questions of law.

As there was no law granting judicial authority to review the merits of the award to Fruehauf, the Supreme Court refrained from passing upon the correctness of the arbitral tribunal's findings to avoid judicial legislation. In doing so, the Supreme Court upheld the autonomy of arbitral awards and deemed the arbitral tribunal's errors, if any, as simple errors of fact and/or law, which are not justiciable issues.

In his dissent, del Castillo, J. pointed out that *ABS-CBN* cannot be deemed as mere *obiter dictum*, and neither did the Supreme Court commit the fallacy of equivocation in that case. Since Rule 43 covers appeals from decisions of a voluntary arbitrator "authorized by law," this should well include persons who may enter into a compromise who submit their controversies to one or more arbitrators for decision under Article 2042 of the Civil Code.

Thus, any arbitrator appointed by parties by mutual agreement to settle their differences would have to be a voluntary arbitrator so authorized by law. In his view, such legal tenet should dispel any notion that commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers.

Moreover, while the autonomy of arbitration proceedings is recognized, the dissent emphasized that an arbitral tribunal's "imperfect execution of powers" and "excessive exercise of arbitral power" are valid grounds for vacating the arbitral award. In Fruehauf's case, the arbitral tribunal did not properly determine the amount due to the claimant since the tribunal was unsure if Fruehauf already collected the rent from TEAM's sub-lessee or returned them.

Fruehauf clarified that resort to courts from arbitral awards should be made in accord with the principle upheld in *RCBC Capital Corporation v. Banco de Oro Unibank, Inc.* (G.R. Nos. 196171 & 199238, December 10, 2012) that arbitration is meant to be an end, not the beginning of litigation. Where applicable, the remedies available to contest an arbitral award exist only under limited circumstances, precisely to respect the parties' consensual selection of an expeditious mode of resolving their respective claims.

About the Author

Atty. Rita Marie L. Mesina-Alvaera is a litigation associate at Castillo Laman Tan Pantaleon & San Jose, with key focus on commercial disputes, intellectual property, tax litigation, and arbitration. She finished law in 2009 at the Ateneo de Manila University, where she was a silver medalist for best thesis and a member of the board of editors of the Ateneo Law Journal. Before rejoining the firm in 2013, she was a legal staff consultant at the Office of the General Counsel of the Asian Development Bank.

MEMBER SPOTLIGHT

Atty. Marissa Macaraig-Guillen is currently the Assistant Solicitor General (ASG) heading the Serafin Hilado Division of the Office of the Solicitor General (OSG).

She leads the group of OSG lawyers representing the Department of Social Welfare and Development and Office of the Ombudsman and regularly represents other government offices, such as the Department of Energy, Armed Forces of the Philippines and the Department of Labor and Employment.

ASG Guillen teaches at Lyceum College of Law and the University of the Philippines College of Law (Bonifacio Global City Campus) and lectures in the Philippine Judicial Academy and Mandatory Continuing Legal Education on topics relating to family law, alternative dispute resolution, pre-trial and civil procedure, legal writing and oral advocacy.

Prior to joining the OSG, she served the judiciary for 13 years as a presiding judge in the Regional Trial Courts in the cities of Butuan (1996 to 2000), Mandaluyong (2005-2006) and Makati (2000-2004; 2006-2009). She received the Chief Justice Jose Abad Santos Award for Judicial Excellence in 2005 and the Best Pre-Trial Judge for Second-Level Courts Award for Judicial Excellence in 2004.

ASG Guillen finished law at the University of the Philippines in 1983. She is a member of the Society of Judicial Excellence, the Philippine Bar Association, Professionals for Autism Foundation, and One Child Care Center.

Supreme Court rules that arbitration clause in unsigned but performed contract is valid

(Continued from page 1)

Supreme Court held that all that was required for CIAC to acquire jurisdiction was for the parties to a construction contract to agree to submit their disputes to arbitration. Under the CIAC Rules, this agreement need not be signed or be formally agreed upon, as it could be in the form of other written communication such as an exchange of letters or electronic mail.

The Supreme Court explained that this liberality in the form of the arbitration agreement conforms to the intent of Executive Order No. 1008 (1985), the law creating the CIAC, which is to achieve the speedy and efficient resolution of disputes and to alleviate court dockets.

The Supreme Court further noted that: (a) under the Civil Code, a contract need not be in writing in order to be obligatory and effective, unless the law specifically required it; (b) Federal did not sign the Contract of Service because it rejected the provision relating to down payment, but it did not challenge the arbitration clause in the draft until the dispute arose; and (c) Federal asserted the same contract to support its claim against Power. Thus, it was inconsistent for Federal to rely on the draft when it was beneficial to it and then to reject the draft's efficacy and existence to relieve itself of the unfavorable award.

ROBERTO N. DIO
Editor

SHIRLEY ALINEA
DONEMARK CALIMON
Contributors

GRACE ANN C. LAZARO
LEONID C. NOLASCO
RICKY A. SABORNAY
CHET J. TAN
Staff Writers