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SEPTEMBER 2017

Justice Brion urges PDRC to bring ADR to the people

By Francisco D. Pabilla, Jr.



Former Supreme Court Justice Arturo D. Brion, who penned a leading case on arbitration prior to his retirement last December 29, 2016, observed in his address at PDRC’s annual general membership meeting last July 25, 2017 that alternative dispute resolution (ADR), particularly arbitration, seemed not to have entered the consciousness of the Filipino public despite its institutionalization at the barangay level and in the courts.

He said that many appear blind to the advantages that arbitration offered in terms of the expeditious resolution of disputes in an autonomous, more private and graft-free environment and at a relatively lower cost compared to the normal court processes.

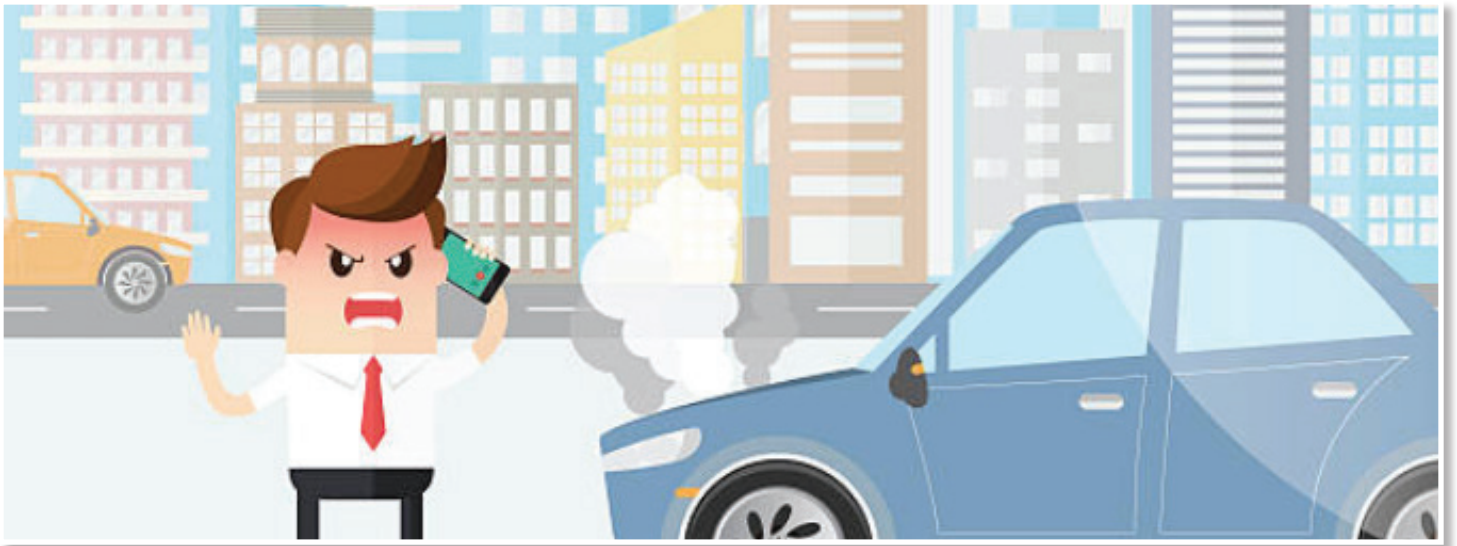
Justice Brion, who preferred to be called “Dean” because of his recent appointment as Dean of the College of Law, San Sebastian College - Recoletos de Manila, was shocked to know this because non-judicial modes of settling disputes offered a solution to the clogging of court dockets. He said that the clogging was not wholly attributable to the judiciary or their level of efficiency. He mentioned several external factors, mostly beyond the control of the court:

- Continuing growth of the Philippine population, which almost always leads to the increasing number of cases brought before the courts
- Increasing complexity of society, which impacts on the complexity and number of cases that the courts have to resolve
- Increasing number of laws being enacted by Congress
- The number of courts and judges had not kept up with the rate of growth of cases.

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PART ONE

Consumer Disputes: Non-Arbitrable Under Philippine Law?

By Chet J. Tan

According to Prof. Ilias Bantekas, “[a]rbitrability is concerned with whether a particular type of dispute is amenable to settlement by arbitration, or if instead jurisdiction lies exclusively with the domestic courts or state organs.” These determinations, he wrote, “are usually made by reference to domestic statute law.” (I. Bantekas, “Foundations of Arbitrability in International Commercial Arbitration,” 27 *Australian Yearbook of International Law* 193)

In the Philippines, Republic Act No. 876 (1953), the Arbitration Law, generally provides that parties may submit to arbitration “any controversy existing between them at the time of the submission and that which may be subject of an action.” If they have a contract, then the parties thereto “may in such contract agree to settle by arbitration a controversy thereafter arising between them.” (Sec. 2)

Dean Custodio Parlade has opined in his treatise on the Alternative Dispute Resolution Act of 2004 that, generally, “[a]ny controversy, whether contractual or non-contractual, may be submitted to arbitration,” but recognizes that Philippine law requires certain disputes, including those under Republic

Act No. 7394 (1992), the Consumer Act of the Philippines, to be submitted to other methods of settlement [Parlade, *The Alternative Dispute Resolution Act of 2004 Annotated* 277-278 (2004)]. Thus, the question arises whether consumer disputes may be arbitrated under Philippine law.

Article 4 (n) of the Consumer Act defines a “consumer” as a natural person who is a purchaser, lessee, recipient or prospective purchaser, lessor or recipient of consumer products, services or credit. Under Article 159, a “consumer complaint” would be a grievance of any consumer lodged with the Department of Trade and Industry (DTI) through a petition or letter-complaint concerning any provisions of the Consumer Act or any rule or regulation promulgated under the authority of the DTI.

However, Article 162 has given rise to the impression that *consumer disputes* are non-arbitrable because it provides that Consumer Arbitration Officers (CAO) shall have “original and exclusive jurisdiction” to mediate, conciliate, hear and adjudicate all *consumer complaints*. It is therefore necessary to review what exactly falls within the jurisdiction

of these CAOs to determine whether they include all forms of consumer disputes.

DTI has issued Administrative Order No. 07-06, which provided the rules of procedure for (a) cases filed by consumers for violations of the Consumer Act; (b) cases filed by natural or juridical persons or by DTI offices or agencies for violations of "Trade and Industry Laws,"¹ which includes the Consumer Act;² and (c) cases filed by natural or juridical persons or by DTI offices or agencies for violations of R.A. 7581, also known as the Price Act and its implementing rules and regulations (IRR). For the purposes of this article, the "consumer disputes" to be discussed will be limited to the first two categories.³

Briefly, the procedure in AO 07-06 is triggered by the filing of the complaint. Once a case is assigned to an Adjudication Officer, she can make a preliminary determination if the case can be dismissed outright or if she may grant interim relief.

The parties then go through mediation, the failure of which leads to the preliminary conference, the submission of position papers and, if necessary, a summary hearing to resolve questions of fact, after which the case is submitted for decision.

On December 18, 2013, the DTI issued Administrative Order No. 2-13, providing a more streamlined summary procedure for consumer complaints under Article 159 of the Consumer Act, doing away with the preliminary determination of the Adjudication Officers and the preliminary conferences and hearings, and instead simply divides the proceedings between the mediation and the adjudication stages.⁴

Moreover, it expressly repealed, amended or modified only those provisions of previous rules, including AO 07-06, which were inconsistent with AO 2-13.⁵ Significantly, consumer disputes other than consumer complaints under the Consumer Act appear to still be governed by AO 07-06.

Thus, the jurisdiction of the CAO, not having been defined in AO 2-13, should still be governed by Art. 164 of the Consumer Act and Rule III, Section 5 of AO 07-06.

Said rule defines the functions of Adjudication Officers, who are divided into two categories: (a) CAOs, who have original and exclusive jurisdiction to adjudicate all cases filed by consumers under the Consumer Act; and (b) Hearing Officers (HERO), who have original and exclusive jurisdiction to adjudicate all cases filed by natural or juridical persons for violations of any Trade and Industry Law and all *motu proprio* cases filed under a formal charge by any office or agency of the DTI for violations of any Trade and Industry Law, or of the Consumer Act, or of the Price Act and its IRR.

To determine the extent of the jurisdiction of the different Adjudication Officers, it is useful to consider what ultimate relief they can grant.

The CAO has the power to (a) issue a Cease and Desist Order; (b) accept a voluntary assurance of compliance or discontinuance from the respondent; (c) order the restitution or rescission of the contract without damages; (d) order the seizure and condemnation of the consumer product/s found to be hazardous to health and safety; (e) impose an administrative fine; and (f) impose other penalties under the Consumer Act.⁶

Next issue: Monetary claims and those not involving violations of Trade and Industry Laws may be arbitrated.

About the Author

Atty. Chet J. Tan is a litigation partner of Castillo Laman Tan Pantaleon & San Jose, where he has practiced for the past 13 years. He is a trained arbitrator of the Philippine Dispute Resolution Center, Inc., and has experience in commercial, maritime and construction arbitration.



¹ AO 07-06, rule II, sec. 1 (j) defines a "Trade and Industry Law" as "any Act, Batas Pambansa, Presidential Decree, General Order, Letter of Instructions, Executive Order, and other similar issuances, as well as any and all amendments thereto, which regulates trade and industry activities, the violation of which subjects the offender to criminal or administrative penalties or civil liability, or does not subject the offender to any penalty, sanction, or liability at all, and which law or issuance is subject to the implementation, administration, execution or enforcement of the Department, such as those enumerated in Section 1 of Ministry Order No. 69, Series of 1983, as amended, and Department Administrative Order No. 3, Series of 1993."

² AO 07-06, rule II, sec. 1 (j), in relation to Department Administrative Order No. 3, Series of 1993.

³ The Price Act and its IRR are best reserved for study in relation to current competition and antitrust laws.

⁴ AO 2-13, rule II and III.

⁵ AO 02-13, rule VI, sec. 1.

⁶ AO 07-06, rule XIII, sec. 2 (a). This is based on Rep. Act No. 7394, art. 164.

MEMBER SPOTLIGHT




Atty. Rosario S. Bernaldo manages two law firms that she cofounded, Bernaldo, Directo & Po and R. S. Bernaldo & Associates.

She started her career in public accounting in 1972 as an auditor of SGV & Co. She then became the Assistant Vice President and Chief Legal Counsel of AB Capital and Investment Corporation from 1987 to 1988 and was the sole tax partner of Punongbayan & Araullo from 1988 to 1994.

Atty. Bernaldo teaches at Lyceum of the Philippines and University of the East Graduate School of Business. She previously taught at the Ateneo Law School (1994-2001) and Lyceum College of Law (2010-2013).

In 2003, she received the Most Outstanding CPA in Public Service award from the Philippine Institute of Certified Public Accountants. She attended numerous seminars and conferences, both local and international. She co-authored two treatises, *A Primer on the National Internal Revenue Code and National Internal Revenue Code of 1997 annotated*, and contributed various technical articles published in *The Accountant's Journal*.

Atty. Bernaldo studied law at the University of the East, *cum laude* and class valedictorian. She placed 13th in the Philippine Bar examinations in 1979. She received her Master in Business Administration degree from the University of the Philippines in 1978 and ranked first in her class. She was sixth in the CPA board licensure examinations in 1972.

She is a member of the Tax Management Association of the Philippines, Management Association of the Philippines, Financial Executives Institute of the Philippines, Corporate Governance Institute of the Philippines, Philippine Institute of CPAs, Association of CPAs in Public Practice, Makati Business Club, Philippine Chamber of Commerce and Industry, and Philippine Australia and New Zealand Chamber of Commerce. She is also the founder of Sigma Lambda Sorority in the University of the East. 

Justice Brion urges PDRC to bring ADR to the people


(Continued from page 1)

This state of things, according to Justice Brion, impact not only the speed of disposition of cases within the Judiciary but also the quality and tenor of the decisions as well.

He said that the case of *Fruehauf Electronics Philippines Corporation vs. Technology Electronic Assembly and Management Pacific Corporation*, which became a leading case on arbitration, was resolved only on November 23, 2016 after several years because of the lack of familiarity with voluntary arbitration. The members of the Supreme Court had to be convinced that arbitration is based on contract and that its award is final and cannot be reviewed on certiorari or grave abuse of discretion because the extraordinary writ is not available against a private tribunal. The courts come in only after a cross-over is made to the judicial realm based on the grounds provided by law.

The lesson Justice Brion wanted to impart from this experience was that courts have to be "very careful" in handling cases rooted in voluntary arbitration because a misstep could upset the system that proponents of ADR such as PDRC have painstakingly helped to build.

In expressing his concern, Dean Brion said that he has long wondered if the PDRC and other arbitration institutions exerted enough efforts to communicate the merits of arbitration to the members of the legal profession and to the general public. He asked if the ordinary litigant was aware of the possibilities of arbitration.

In closing, Dean Brion urged everyone to join him in his fervent wish that PDRC would not need to answer his question a year from now because it had succeeded in bringing ADR to the people. 

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