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Broadening its scope of arbitration advocacy

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Supreme Court rules that there is no arbitration agreement absent evidence of parties' clear intention

In *Hygienic Packaging Corporation v. Nutri-Asia, Inc., Doing Business under the Name and Style of UFC Philippines*, G.R. No. 219708, January 23, 2019, the Supreme Court, Third Division, ruled that there is no arbitration agreement when the evidence fails to show that the parties entered into a contract to submit future disputes to arbitration.

On July 22, 2009, Hygienic Packaging Corporation ("Hygienic") commenced suit to collect a sum of money against Nutri-Asia, Inc. ("Nutri-Asia"). The case was filed with the Regional Trial Court, Manila ("RTC") pursuant to a venue stipulation in the Sales Invoices issued by Hygienic and signed by Nutri-Asia.

In its Answer, Nutri-Asia argued that the case should be dismissed as Hygienic failed to first refer the matter to an Arbitration Committee, as provided under the Terms and Conditions of the Purchase Orders issued by Nutri-Asia and signed by Hygienic. Nutri-Asia later filed an Omnibus Motion, which the court denied, holding that the venue was properly laid and that the signatures of Nutri-Asia's representatives in the Sales Invoices indicated Nutri-Asia's concurrence that any dispute would be raised before the courts in Manila.

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WHAT'S INSIDE

PART I

Arbitral Awards and the Apostille Convention

By Jose Maria B. Buenagua

For Stephen Stern and Sloan Zarkin, legal practioners in New York, arbitration beats litigation.

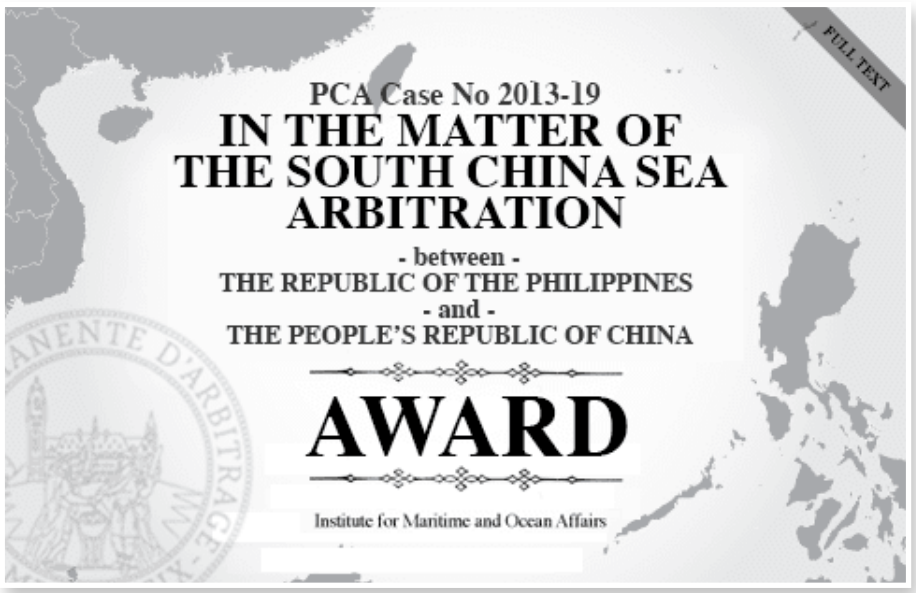
In their article "Why Arbitration Beats Litigation for Commercial Disputes," published in 2015 in GPSolo Vol. 32, No. 1 by the American Bar Association, Stern and Zarkin opine that "Business clients, as a general rule, are cost conscious. They need results quickly… The key is the control the client can exercise over the entire process." Arbitration, as the modern tool for peacemaking and negotiation, generally and efficiently satisfies just that.

While arbitration appears to be a new dispute resolution tool, its legislative history in the Philippines traces its roots as far back as 1953 with Republic Act No. 876 or The Arbitration Law.

New York Convention

A few years after, on June 10, 1958, Philippines became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards or simply, the New York Convention. It has been described as the most important and successful United Nations treaty in the area of international trade law.

Renaud Sorieul, the Secretary of United Nations Commission on International Trade Law (UNCITRAL) has called it "the cornerstone of the international arbitration system" [Herbert Smith Freehills, Inside Arbitration Vol. 6, (2018)]. Professor Gillian Triggs, a retired dean of Sydney Law School, calls the New York Convention as "the success story of public and private international law" (The Australia ADR Reporter, 2008).



According to Linda Silberman, a New York University Martin Lipton professor of law, "one can only marvel at the success of the New York Convention over its fifty-year span" (Linda Silverman, The New York Convention After Fifty Years: Some Reflections on the Role of National Law, Georgia Journal of International and Comparative Law, 2009).

Indeed, 61 years after the Philippines became a signatory to the New York Convention, much has changed. Today, there are 159 contracting parties to the New York Convention, a testament to its modern legal prowess.

Recognition and Enforcement

Under the New York Convention, arbitral awards issued in the Philippines in a domestic or international arbitration may be enforced abroad. Article I of the Convention states that it shall also "apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought." Arbitration, in this sense, applies not only to those made by arbitrators but also those made by permanent arbitral bodies to which the parties may have submitted their disputes.

As in domestic laws however, there are formal requirements under the Convention before an arbitral award may be enforced. Enforcement here may be made in the states of the contracting or even non-contracting parties of the Convention.

For the enforcement of the arbitral award in a contracting state of the Convention, Article III mandates that "each contracting state shall recognize arbitral awards as binding and enforce them in accordance with rules of procedure of the territory where the award is relied upon." It also mandates that no substantial or onerous conditions be imposed in the recognition and enforcement of the arbitral award.

In addition, Article IV of the Convention requires the following formal requirements for recognition and enforcement:

1. The duly authenticated original award or a duly certified copy thereof

2. The original agreement referred to in Article II or a duly certified copy thereof.

Finally, the Convention requires that the arbitral award be in the official language of the country where the award will be recognized and enforced. Should there be a need for a translation, the translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Reservations and Refusal to Enforce

An arbitral award may be refused recognition and enforcement only when it is part of the reservation of the contracting state or it is among the grounds mentioned in the Convention's Article VI.

A reservation on the Convention may be based on a Territorial Reservation, Commercial Reservation, or a Reciprocity Reservation. A *Territorial Reservation* limits the recognition and enforcement of the arbitral award to a member state. A *Commercial Reservation* allows a contracting state to apply the Convention only to those it considers as a "commercial" transaction. Lastly, Reciprocity Reservation is based on the reciprocal rights an enforcing state grants to other contracting state.

Next issue: Procedure for authentication of arbitral awards before and after the Apostille Convention

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MEMBER SPOTLIGHT

Dranyl Jared Amoroso is a senior associate in the Dispute Resolution Practice Group of the law firm of Quisumbing Torres, currently heading its Transportation and Logistics Industry Group Subsector.

He obtained both his Bachelor of Arts in Economics (2006) and Juris Doctor (2010) degrees from the Ateneo de Manila University. He was admitted to the Philippine Bar in 2011.

Atty. Amoroso is a member of the Chartered Institute of Arbitrators (CIArb), an accredited arbitrator and mediator of the Philippine Wholesale Electricity Spot Market (WESM), and is currently a Trustee and the Senior Vice President for Advocacies of the Philippine Institute of Arbitrators (PIArb). He recently passed the Accelerated Route to Fellowship Course of CIArb in Taipei, Taiwan in September 2018.

Atty. Amoroso has acted as counsel in various arbitrations and currently sits as an arbitrator in an ongoing energy-related dispute.

He has conducted several Mandatory Continuing Legal Education lectures on Commercial Arbitration and co-authored a book on the same subject.

He is an adjunct professor at the Far Eastern University Institute of Law and a supervising lawyer at the Ateneo Legal Services Center.

Supreme Court refers tort claims to arbitration and applies arbitration clause to a non-party

(Continued from page 1)

The Court of Appeals granted *certiorari* to Nutri-Asia, ruling that the venue stipulation in the Sales Invoice was not binding because the signature of Nutri-Asia's employee in the Sales Invoices was only for receipt of the goods. It also ruled that Hygienic was bound by the arbitration clause in the Purchase Orders because its representative acknowledged its conformity to the purchase orders and Hygienic "availed of the advantages and benefits of the Purchase Orders when it acted on them."

On appeal, the Supreme Court, through Leonen, J., ruled that neither party intended to be bound by a venue stipulation or arbitration clause. Under the Arbitration Law [Rep. Act No. 876 (1953)], a contract to arbitrate a future controversy or a submission to arbitrate an existing controversy must be in writing and subscribed by the party sought to be charged or by his lawful agent.

For there to be a contract, there must first be a meeting of the minds—particularly as to the intention to be bound by a venue stipulation or an arbitration clause. However, Nutri-Asia, in signing the Sales Invoices, merely acknowledged that it received the plastic containers in good condition. In like vein, Hygienic, in signing the Purchase Order, merely acknowledged the order in order to begin processing payment.

According to the Supreme Court, to extend the effect of either signature would be to stretch the intention of each signatory beyond his or her objective.

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