



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,

G.R. No. 196723

Petitioner,

- versus -

SUMITOMO CORPORATION,  
Respondent.

X-----X

SUMITOMO CORPORATION,  
Petitioner,

G.R. No. 196728

Present:

- versus -

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,

CARPIO, J., Chairperson,  
PERALTA,\*  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Respondent.

Promulgated:

AUG 28 2013

X-----X

DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on *certiorari* which assail separate issuances of the Court of Appeals (CA) in relation to the partial and final awards rendered by the Construction Industry Arbitration Commission's (CIAC) Arbitral Tribunal (Arbitral Tribunal) in CIAC Case No. 28-2008.

In particular, the petition in G.R. No. 196723<sup>1</sup> filed by Asian Construction and Development Corporation (Asian Construction) seeks to annul and set aside the CA's Resolutions dated July 23, 2010<sup>2</sup> and April 18, 2011<sup>3</sup> in CA-G.R. SP No. 112127 which dismissed its appeal from the Arbitral Tribunal's Partial Award<sup>4</sup> dated December 15, 2009 (Partial Award) on the ground of forum shopping; while the petition in G.R. No. 196728<sup>5</sup> filed by Sumitomo Corporation (Sumitomo) seeks to annul and set aside the CA's Decision<sup>6</sup> dated January 26, 2011 and Resolution<sup>7</sup> dated April 29, 2011 in CA-G.R. SP No. 113828 which modified the Arbitral Tribunal's Final Award<sup>8</sup> dated March 17, 2010 (Final Award) by way of deleting the award of attorney's fees in Sumitomo's favor.

### The Facts

On March 15, 1996, Asian Construction entered into a Civil Work Agreement<sup>9</sup> (Agreement) with Sumitomo for the construction of a portion of the Light Rail Transit System along the Epifanio Delos Santos Avenue, specifically, from Shaw Boulevard, Mandaluyong City to Taft Avenue, Pasay City for a total cost of US\$19,982,000.00 (Project).<sup>10</sup> The said Agreement provides that the "validity, interpretation, enforceability, and performance of [the same] shall be governed by and construed in accordance with the law of the State of New York, U.S.A. [(New York State Law)], without regard to, or legal effect of, the conflicts of law provisions thereof"<sup>11</sup> and that any dispute, controversy or claim arising therefrom "shall be solely and finally settled by arbitration."<sup>12</sup>

In May 1996, Sumitomo paid Asian Construction the amount of US\$2,997,300.00 as advance payment to be recovered in accordance with the terms of the Agreement. Later, an additional advance payment of US\$1,998,200.00 was made in October 1997.<sup>13</sup> In all, Asian Construction

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<sup>1</sup> *Rollo* (G.R. No. 196723), pp. 3-140.

<sup>2</sup> *Id.* at 146-154. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Bienvenido L. Reyes (now Supreme Court Justice) and Priscilla J. Baltazar-Padilla, concurring.

<sup>3</sup> *Id.* at 156-157. Penned by Associate Justice Bienvenido L. Reyes (now Supreme Court Justice), with Associate Justices Romeo F. Barza and Priscilla J. Baltazar-Padilla, concurring.

<sup>4</sup> *Rollo* (G.R. No. 196723), pp. 1250-1266; *rollo* (G.R. No. 196728), pp. 111-127. Issued by Chairman Alfredo F. Tadiar and Members Jesse B. Grove and Salvador P. Castro, Jr.

<sup>5</sup> *Rollo* (G.R. No. 196728), pp. 49-77.

<sup>6</sup> *Id.* at 16-32. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante, concurring.

<sup>7</sup> *Id.* at 34-37.

<sup>8</sup> *Rollo* (G.R. No. 196723), pp. 1431-1448; *rollo* (G.R. No. 196728), pp. 128-145.

<sup>9</sup> *Rollo* (G.R. No. 196723), pp. 176-256.

<sup>10</sup> *Rollo* (G.R. No. 196723), p. 1250; *rollo* (G.R. No. 196728), p. 111. See Partial Award.

<sup>11</sup> *Rollo* (G.R. No. 196723), p. 250. See Article 29.1 of the Agreement.

<sup>12</sup> *Id.* at 254. See Article 29.14.1 of the Agreement.

<sup>13</sup> *Rollo* (G.R. No. 196723) p. 1222; *rollo* (G.R. No. 196728), p. 286. See Terms of Reference dated July 1, 2009 (TOR).

received from Sumitomo the amount of US\$9,731,606.62, inclusive of the advance payments (before withholding tax of US\$97,308.44).<sup>14</sup>

On September 1, 1998, Sumitomo informed Asian Construction that it was terminating the Agreement effective September 5, 1998 due to the following reasons: (a) Asian Construction's failure "to perform and complete the civil work for [Notice to Proceed] issued construction areas within the duration of the Time Schedule in [the] 'Contract Specification of Civil and Architectural Works (Station No. 8 to Station No. 13) x x x'"; (b) Asian Construction's failure to "provide adequate traffic management as required in the Scope of Works [pursuant to] subparagraph 5.2.4 of the Contract Specification of Civil and Architectural Work"; and (c) Asian Construction's failure to "[pay] the suppliers of certain materials and equipment used in the construction of the Project in violation of [p]aragraph 3.1.3[,] Article 3 of the Agreement."<sup>15</sup> In view of the foregoing, Sumitomo requested Asian Construction to "make the necessary arrangements for the proper turnover of the Project x x x."<sup>16</sup> Asian Construction, however, claimed that the accomplishments under Progress Billing No. (PB) 018<sup>17</sup> dated June 10, 1998 and PB 019<sup>18</sup> dated July 6, 1998, as well as other various claims, were still left unpaid.<sup>19</sup> Hence, on December 22, 1998, it sent Sumitomo a letter,<sup>20</sup> demanding payment of the total amount of US\$6,371,530.89. This was followed by several correspondences between the parties through 1999 to 2007 but no settlement was achieved.<sup>21</sup>

### **The Proceedings Before the Arbitral Tribunal**

On September 2, 2008, Asian Construction filed a complaint<sup>22</sup> with the CIAC, docketed as CIAC Case No. 28-2008, seeking payment for its alleged losses and reimbursements amounting to US\$9,501,413.13, plus attorney's fees in the amount of ₱2,000,000.00.<sup>23</sup> As a matter of course, an Arbitral Tribunal was constituted, with Alfredo F. Tadiar being designated as Chairman, and Salvador P. Castro and Jesse B. Grove as Members.<sup>24</sup>

For its part, Sumitomo filed a Motion to Dismiss,<sup>25</sup> questioning the CIAC's jurisdiction over the dispute on the ground that the arbitration should proceed in accordance with the Commercial Arbitration Rules of

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<sup>14</sup> Id.

<sup>15</sup> *Rollo* (G.R. No. 196723), p. 475.

<sup>16</sup> Id.

<sup>17</sup> Id. at 261.

<sup>18</sup> Id. at 361.

<sup>19</sup> Id. at 6-7.

<sup>20</sup> Id. at 476-478.

<sup>21</sup> Id. at 8-12.

<sup>22</sup> Id. at 545-550. See Request for Arbitration/Complaint.

<sup>23</sup> Id. at 549.

<sup>24</sup> Id. at 572. See Order dated March 30, 2009.

<sup>25</sup> Id. at 552-571. See Motion to Dismiss filed on October 21, 2008.

Japan.<sup>26</sup> However, the aforesaid motion was denied.<sup>27</sup> As such, Sumitomo filed an Answer,<sup>28</sup> reiterating the CIAC's alleged lack of jurisdiction and further asserting that the claim was already time-barred. It added that had Asian Construction discharged its obligations under the Agreement to itemize and justify its claims, the same could have been amicably settled years ago. In this respect, it made a counterclaim for the unutilized portion of the advance payments, attorney's fees and costs of litigation in the amount of at least ₱10,000,000.00.<sup>29</sup>

Subsequently, the parties signed a TOR,<sup>30</sup> stipulating the admitted facts and defining the issues to be determined in the arbitration proceedings.

On December 15, 2009, the Arbitral Tribunal rendered the Partial Award<sup>31</sup> which affirmed its jurisdiction over the dispute but held that the parties were bound by their Agreement that the substantive New York State Law shall apply in the resolution of the issues.<sup>32</sup> It proceeded to dismiss both the claims and counterclaims of the parties on the ground that these had already prescribed under New York State Law's six-year statute of limitations<sup>33</sup> and ruled that, in any case, were it to resolve the same on the merits, "it would not produce an affirmative recovery for the claimant."<sup>34</sup>

Aggrieved, Asian Construction filed before the CA, on January 5, 2010, a Rule 43 Petition for Review,<sup>35</sup> docketed as CA-G.R. SP No. 112127 (First CA Petition), seeking the reversal of the Partial Award.

Meanwhile, notwithstanding its dismissal of the claims and counterclaims, the Arbitral Tribunal further directed the parties to itemize their respective claims for costs and attorney's fees and to submit factual proof and legal bases for their entitlement thereto.<sup>36</sup> Pursuant to this directive, Sumitomo submitted evidence to prove the costs it had incurred and paid as a result of the arbitration proceedings.<sup>37</sup> Asian Construction, on the other hand, did not present any statement or document to substantiate its claims but, instead, submitted an Opposition<sup>38</sup> dated March 8, 2010 (opposition) to Sumitomo's claim for costs. The Arbitral Tribunal did not act upon the opposition because it was treated, in effect, as a motion for

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<sup>26</sup> Id. at 554.

<sup>27</sup> Id. at 584-588. See Order dated May 7, 2009. The Motion for Reconsideration of Sumitomo's Motion to Dismiss was also denied in an Order dated August 18, 2009 (see id. at 939-944).

<sup>28</sup> Id. at 589-597. See Answer *Ad Cautelam* dated June 8, 2009.

<sup>29</sup> Id. at 595-596.

<sup>30</sup> *Rollo* (G.R. No. 196723), pp. 1221-1228; *rollo* (G.R. No. 196728), pp. 285-292.

<sup>31</sup> *Rollo* (G.R. No. 196723), pp. 1250-1266; *rollo* (G.R. No. 196728), pp. 111-127.

<sup>32</sup> *Rollo* (G.R. No. 196723), pp. 1257-1261; *rollo* (G.R. No. 196728), pp. 118-122.

<sup>33</sup> *Rollo* (G.R. No. 196723), pp. 1261-1262; *rollo* (G.R. No. 196728), pp. 122-125.

<sup>34</sup> *Rollo* (G.R. No. 196723), p. 1264; *rollo* (G.R. No. 196728), p. 125.

<sup>35</sup> *Rollo* (G.R. No. 196723), pp. 1268-1379.

<sup>36</sup> *Rollo* (G.R. No. 196723), p. 1266; *rollo* (G.R. No. 196728), p. 127.

<sup>37</sup> *Rollo* (G.R. No. 196728), pp. 312-501. See Submission (Re. Costs) dated January 29, 2010.

<sup>38</sup> Id. at 502-517.

reconsideration which was prohibited under the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Revised Rules).<sup>39</sup>

On March 17, 2010, the Arbitral Tribunal rendered the Final Award<sup>40</sup> which granted Sumitomo's claim for attorney's fees in the amount of US\$200,000.00. It held that while the filing of the arbitration suit cannot be regarded as "clearly unfounded" because of the two progress billings that were left unpaid, Asian Construction's disregard of the Agreement to have the dispute resolved in accordance with New York State Law had forced Sumitomo to incur attorney's fees in order to defend its interest.<sup>41</sup> It further noted that if Asian Construction had accepted the settlement offered by Sumitomo, then, the arbitration proceedings would have even been aborted.<sup>42</sup> On the other hand, a similar claim for attorney's fees made by Asian Construction was denied by reason of the latter's failure to submit, as directed, proof of its entitlement thereto.<sup>43</sup> As to the matter of costs, the Arbitral Tribunal declared Sumitomo relieved from sharing *pro-rata* in the arbitration costs and, consequently, directed Asian Construction to shoulder the same costs in full and reimburse Sumitomo the amount of ₱849,532.45. However, it ordered Sumitomo to bear all the expenses related to the appointment of the foreign arbitrator considering that such service was secured upon its own initiative and without the participation and consent of Asian Construction.<sup>44</sup>

Dissatisfied with the Arbitral Tribunal's ruling, Asian Construction filed another Rule 43 Petition for Review<sup>45</sup> before the CA, on May 3, 2010, docketed as CA-G.R. SP No. 113828 (Second CA Petition), this time, to set aside the Final Award. In this light, it claimed gross negligence and partiality on the part of the Arbitral Tribunal and asserted, *inter alia*, that, apart from being a non-arbitrable issue, an award of attorney's fees would be premature since the prevailing party can only be determined when the case is decided with finality. Moreover, it maintained that both claims of Asian Construction and the counterclaims of Sumitomo had already been dismissed for being time-barred.<sup>46</sup>

### The CA Ruling

On July 23, 2010, the CA rendered a Resolution<sup>47</sup> (July 23, 2010 Resolution), dismissing Asian Construction's First CA Petition against the Partial Award on the ground of forum-shopping, after it was shown that: (a)

<sup>39</sup> *Rollo* (G.R. No. 196723), p. 1436; *rollo* (G.R. No. 196728), p. 133. See also Section 17.2 of the CIAC Revised Rules.

<sup>40</sup> *Rollo* (G.R. No. 196723), pp. 1431-1448; *rollo* (G.R. No. 196728), pp. 128-145.

<sup>41</sup> *Rollo* (G.R. No. 196723), pp. 1440 and 1444; *rollo* (G.R. No. 196728), pp. 137 and 141.

<sup>42</sup> *Rollo* (G.R. No. 196723), p. 1440; *rollo* (G.R. No. 196728), p. 137.

<sup>43</sup> *Rollo* (G.R. No. 196723), pp. 1439 and 1443; *rollo* (G.R. No. 196728), pp. 136 and 140.

<sup>44</sup> *Rollo* (G.R. No. 196723), pp. 1445-1446; *rollo* (G.R. No. 196728), pp. 142-143.

<sup>45</sup> *Rollo* (G.R. No. 196728), pp. 518-542.

<sup>46</sup> *Id.* at 537-540.

<sup>47</sup> *Rollo* (G.R. No. 196723), pp. 146-154.

the aforesaid petition was filed while the arbitration case was still pending final resolution before the Arbitral Tribunal; and (b) Asian Construction's opposition to Sumitomo's claim for costs filed before the Arbitral Tribunal had, in fact, effectively sought for the same relief and stated the same allegations as those in its First CA Petition. The CA also noted Asian Construction's premature resort to a petition for review because what was sought to be nullified was not a final award, but only a partial one. The CA eventually denied Asian Construction's motion for reconsideration in a Resolution<sup>48</sup> dated April 18, 2011. Hence, Asian Construction's petition before the Court, docketed as G.R. No. 196723.

Meanwhile, the CA gave due course to Asian Construction's Second CA Petition assailing the Final Award and rendered a Decision<sup>49</sup> on January 26, 2011, upholding the Arbitral Tribunal's ruling except the award of attorney's fees in favor of Sumitomo. The CA held that the fact that Asian Construction initiated an action or refused to compromise its claims cannot be considered unjustified or made in bad faith as to entitle Sumitomo to the aforesaid award. Consequently, Sumitomo moved for reconsideration,<sup>50</sup> asserting that Asian Construction's Second CA Petition should have instead been dismissed in its entirety considering their Agreement that the Arbitral Tribunal's decisions and awards would be final and non-appealable. However, in a Resolution<sup>51</sup> dated April 29, 2011, the CA denied the motion for reconsideration. Thus, Sumitomo's petition before the Court, docketed as G.R. No. 196728.

### **The Issues Before the Court**

The essential issues for the Court's resolution are as follows: (a) in G.R. No. 196723, whether or not the CA erred in dismissing Asian Construction's First CA Petition on the ground of forum shopping; and (b) in G.R. No. 196728, whether or not the CA erred in reviewing and modifying the Final Award which Sumitomo insists to be final and unappealable.

### **The Court's Ruling**

The petitions should be denied.

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<sup>48</sup> Id. at 156-157.

<sup>49</sup> *Rollo* (G.R. No. 196728) pp. 16-32.

<sup>50</sup> Id. at 570-603. Dated April 26, 2011.

<sup>51</sup> Id. at 34-37.

**A. Dismissal of Asian Construction's First CA Petition; forum shopping.**

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. More particularly, forum shopping can be committed in three ways, namely: (a) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (b) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (c) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).<sup>52</sup> Forum shopping is treated as an act of malpractice and, in this accord, constitutes a ground for the summary dismissal of the actions involved.<sup>53</sup> To be sure, the rule against forum shopping seeks to prevent the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.<sup>54</sup>

In this case, the Court finds that the CA committed no reversible error in dismissing Asian Construction's First CA Petition on the ground of forum shopping since the relief sought (*i.e.*, the reconsideration of the Partial Award) and the allegations stated therein are identical to its opposition to Sumitomo's claim for costs filed before the Arbitral Tribunal while CIAC Case No. 28-2008 was still pending. These circumstances clearly square with the first kind of forum shopping which thereby impels the dismissal of the First CA Petition on the ground of *litis pendentia*.

On this score, it is apt to point out that Asian Construction's argument that it merely complied with the directive of the Arbitral Tribunal cannot be given any credence since it (as well as Sumitomo) was only directed to submit evidence to prove the costs it had incurred and paid as a result of the arbitration proceedings. However, at variance with the tribunal's directive, Asian Construction, in its opposition to Sumitomo's claim for costs,

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<sup>52</sup> *Villanueva v. CA*, G.R. No. 163433, August 22, 2011, 655 SCRA 707, 718.

<sup>53</sup> *Chemphil Export and Import Corporation v. CA*, G.R. Nos. 112438-39 and 113394, December 12, 1995, 251 SCRA 257, 292; and *Ortigas & Company Limited Partnership v. Velasco*, G. R. Nos. 109645 and 112564, July 25, 1994, 234 SCRA 455, 500.

<sup>54</sup> *Top Rate Construction and General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003).

proceeded to seek the reversal of the Partial Award in the same manner as its First CA Petition. It cannot, therefore, be doubted that it treaded the course of forum shopping, warranting the dismissal of the aforesaid petition.

In any case, the Court observes that the First CA Petition remains dismissible since the CIAC Revised Rules provides for the resort to the remedy of a petition for review only against a final arbitral award,<sup>55</sup> and not a partial award, as in this case.

In fine, the Court upholds the CA's dismissal of Asian Construction's petition in CA-G.R. SP No. 112127 (First CA Petition) and based on this, denies its petition in G.R. No. 196723.

***B. Review and modification of the Final Award.***

Sumitomo Corporation faults the CA for reviewing and modifying a final and non-appealable arbitral award and insists that the Asian Construction's Second CA Petition should have been, instead, dismissed outright. It mainly argues that by entering into stipulations in the arbitration clause – which provides that “the order or award of the arbitrators will be the sole and exclusive remedy between the parties regarding any and all claims and counterclaims with respect to the matter of the arbitrated dispute”<sup>56</sup> and that “the order or award rendered in connection with an arbitration shall be final and binding upon the parties,”<sup>57</sup> Asian Construction effectively waived any and all appeals from the Arbitral Tribunal's decision or award.

Sumitomo's argument is untenable.

A brief exegesis on the development of the procedural rules governing CIAC cases clearly shows that a final award rendered by the Arbitral Tribunal is not absolutely insulated from judicial review.

To begin, Executive Order No. (EO) 1008,<sup>58</sup> which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, plainly states that the arbitral award “shall be final and inappealable except on questions of law which shall be appealable to the [Court].”<sup>59</sup> Later, however, the Court, in Revised Administrative Circular

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<sup>55</sup> See Section 18.2 of the CIAC Revised Rules.

<sup>56</sup> *Rollo* (G.R. No. 196723), pp. 254-255. See also Article 29.14.3 of the Agreement.

<sup>57</sup> *Id.* at 255.

<sup>58</sup> “CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES,” otherwise known as the “Construction Industry Arbitration Law.”

<sup>59</sup> Section 19 of EO 1008. See also *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, G.R. No. 187521, March 14, 2012, 668 SCRA 302, 315.



(RAC) No. 1-95,<sup>60</sup> modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on “questions of fact, law or mixed questions of fact and law.” This amendment was eventually transposed into the present CIAC Revised Rules which direct that “a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.”<sup>61</sup> Notably, the current provision is in harmony with the Court’s pronouncement that “despite statutory provisions making the decisions of certain administrative agencies ‘final,’ [the Court] still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law” and that, in particular, “voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review.”<sup>62</sup>

In this case, the Court finds that the CA correctly reviewed and modified the Arbitral Tribunal’s Final Award insofar as the award of attorney’s fees in favor of Sumitomo is concerned since the same arose from an erroneous interpretation of the law.

To elucidate, jurisprudence dictates that in the absence of a governing stipulation, attorney’s fees may be awarded only in case the plaintiff’s action or defendant’s stand is so untenable as to amount to gross and evident bad faith.<sup>63</sup> This is embodied in Article 2208 of the Civil Code which states:

Article 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

X X X X

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<sup>60</sup> RAC 1-95 dated May 16, 1995.

<sup>61</sup> See Section 18.2 of the CIAC Revised Rules.

<sup>62</sup> As held in *Philrock, Inc. v. CIAC*, G.R. No. 132848-49, June 26, 2001, 359 SCRA 632, 643-644:

Petitioner assails the monetary awards given by the arbitral tribunal for alleged lack of basis in fact and in law. The solicitor general counters that the basis for petitioner’s assigned errors with regard to the monetary awards is purely factual and beyond the review of this Court. Besides, Section 19, EO 1008, expressly provides that monetary awards by the CIAC are final and unappealable.

We disagree with the solicitor general. As pointed out earlier, factual findings of quasi-judicial bodies that have acquired expertise are generally accorded great respect and even finality, if they are supported by substantial evidence. **The Court, however, has consistently held that despite statutory provisions making the decisions of certain administrative agencies “final,” it still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law. Voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review.** (Emphasis supplied; citations omitted)

<sup>63</sup> *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, G.R. No. 126204, November 20, 2001, 369 SCRA 629, 648-649.

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's<sup>64</sup> plainly valid, just and demandable claim;

X X X X

In this case, the parties agreed that reasonable attorney's fees shall be paid by the defaulting party if it fails to perform any of its obligations under the Agreement or by the party not prevailing, if any dispute concerning the meaning and interpretation thereto arises.<sup>65</sup> However, since the parties' respective claims under the Agreement had already prescribed pursuant to New York State Law, considering as well that the dispute was not regarding the meaning or construction of any provision under the Agreement,<sup>66</sup> their stipulation on attorney's fees should remain inoperative. Therefore, discounting the application of the foregoing stipulation, the Court proceeds to examine the matter under the lens of bad faith pursuant to the above-discussed rules on attorney's fees.

After a careful scrutiny of the records, the Court observes that there was no gross and evident bad faith on the part of Asian Construction in filing its complaint against Sumitomo since it was merely seeking payment of its unpaid works done pursuant to the Agreement. Neither can its subsequent refusal to accept Sumitomo's offered compromise be classified as a badge of bad faith since it was within its right to either accept or reject the same owing to its contractual nature.<sup>67</sup> Verily, absent any other just or equitable reason to rule otherwise,<sup>68</sup> these incidents are clearly off-tangent with a finding of gross and evident bad faith which altogether negates Sumitomo's entitlement to attorney's fees.

Hence, finding the CA's review of the Final Award and its consequent deletion of the award of attorney's fees to be proper, the Court similarly denies Sumitomo's petition in G.R. No. 196728.

<sup>64</sup> Particularly, in the foregoing context, Sumitomo is treated as the plaintiff since it is the party who claims a legal right to attorney's fees. While it is Asian Construction which initiated the complaint before the Arbitral Tribunal, Sumitomo, in effect, interposed a counterclaim for the payment of attorney's fees.

In *Gan Hock v. CA*, G.R. No. 60848 May 20, 1991, 197 SCRA 223, 231; citing *Lee v. Romillo, Jr.*, 161 SCRA 589, 595, the Court clarified that a plaintiff is the party claiming to have legal right which the defendant has violated:

"x x x. A real party in interest-plaintiff is one who has a legal right while a real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal rights of the former."

Further, under Section 1, Rule 3 of the Rules of Court, the term plaintiff is defined as follows:

SEC. 1. *Who may be parties; plaintiff and defendant.* — x x x The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.) - party plaintiff. x x x.

<sup>65</sup> *Rollo* (G.R. No. 196723), p. 255. See also Article 29.15 of the Agreement.

<sup>66</sup> CIAC Case No. 28-2008 arose from Asian Construction's complaint seeking payment of its unpaid claims.


<sup>67</sup> Article 2028 of the Civil Code states:

Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

<sup>68</sup> See par. 11, Article 2208 of the Civil Code.


**WHEREFORE**, the petitions are **DENIED**. The Resolutions dated July 23, 2010 and April 18, 2011 of the Court of Appeals in CA-G.R. SP No. 112127, as well as its Decision dated January 26, 2011 and Resolution dated April 29, 2011 in CA-G.R. SP No. 113828 are hereby **AFFIRMED**.

**SO ORDERED.**

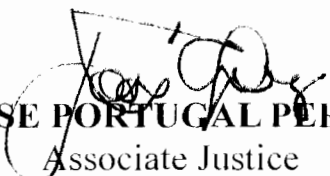
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

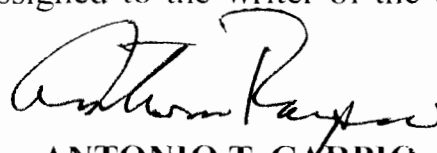
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice