Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RCBC CAPITAL CORPORATION,
Petitioner,

- versus -

BANCO DE ORO UNIBANK, INC.,
Respondent.

G.R. No. 196171

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BANCO DE ORO UNIBANK, INC.,
Petitioner,

- versus -

COURT OF APPEALS and RCBC CAPITAL CORPORATION,
Respondents.

G.R. No. 199238

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

DEC 10 2012

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DECISION

VILLARAMA, JR., *J.*:

Before the Court are two consolidated petitions separately filed by the parties in an arbitration case administered by the International Chamber of Commerce-International Court of Arbitration (ICC-ICA) pursuant to the arbitration clause in their contract.

The Case

In **G.R. No. 196171**, a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, RCBC Capital Corporation (RCBC) seeks to reverse the Court of Appeals (CA) Decision[1] dated December 23, 2010 in CA-G.R. SP No. 113525 which reversed and set aside the June 24, 2009 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 148 in SP Proc. Case No. M-6046.

In **G.R. No. 199238,**a petition for certiorari under Rule 65, Banco De Oro Unibank, Inc. (BDO)assails the Resolution[3] dated September 13, 2011 in CA-G.R. SP No. 120888 which denied BDO's application for the issuance of a stay order and/or temporary restraining order (TRO)/preliminary injunction against the implementation of the Writ of Execution[4] dated August 22, 2011 issued by the Makati City RTC, Branch 148 in SP Proc. Case No. M-6046.

Factual Antecedents

On May 24, 2000, RCBC entered into a Share Purchase Agreement[5] (SPA) with Equitable-PCI Bank, Inc. (EPCIB), George L. Go and the individual shareholders[6] of Bankard, Inc. (Bankard) for the sale to RCBC of 226,460,000 shares (Subject Shares) of Bankard, constituting 67% of the latter's capital stock. After completing payment of the contract price (₱1,786,769,400), the corresponding deeds of sale over the subject shares were executed in January 2001.

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1 *Rollo* (G.R. No. 196171), Vol. I, pp. 48-65. Penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

2 Id. at 974-988. Penned by Judge Oscar B.Pimentel.

3 *Rollo* (G.R. No. 199238), Vol. I, pp. 66-68. Penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) with Associate Justices Sesinando E. Villon and Elihu A. Ybañez concurring.

4 *Rollo* (G.R. No. 199238), Vol. II, pp. 1203-1206.

5 *Rollo* (G.R. No. 196171), Vol. I, pp. 71-106.

6 Id. at 174-175. The Listed Individual Shareholders at the time of the claim were: PCI Bank, Rogelio S. Chua, Ferdinand Martin G. Romualdez, Federico C. Pascual, Leopoldo S. Veroy, Wilfrido V. Vergara, Edilberto V. Javier, Anthony F. Conway, Rene J. Buenaventura, Patrick D. Go, Genevieve W.J. Go, Oscar P. Lopez-Dee, Romulad U. Dy Tang, Gloria L. Tan Climaco, Walter C. Wessmer, Antonio N. Cotoco, and various numbered EPCIB Trust Accounts.

The dispute between the parties arose sometime in May 2003 when RCBC informed EPCIB and the other selling shareholdersof an overpayment of the subject shares, claiming there was an overstatement of valuation of accounts amounting to ₱478 million and that the sellers violated their warrantyunder Section 5(g)of the SPA.[7]

As no settlement was reached, RCBC commenced arbitration proceedings with the ICC-ICA in accordance with Section 10 of the SPA which states:

> Section 10.**Arbitration**
>
> Should there be any dispute arising between the parties relating to this Agreement including the interpretation or performance hereof which cannot be resolved by agreement of the parties within fifteen (15) days after written notice by a party to another, such matter shall then be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in force as of the time of arbitration, by three arbitrators appointed in accordance with such rules. The venue of arbitration shall be in Makati City, Philippines and the arbitration proceedings shall be conducted in the English language. Substantive aspects of the dispute shall be settled by applying the laws of the Philippines. The decision of the arbitrators shall be final and binding upon the parties hereto and the expenses of arbitration (including without limitation the award of attorney's fees to the prevailing party) shall be paid as the arbitrators shall determine.[8]

In its Request for Arbitration[9] dated May 12, 2004, Claimant RCBC charged Bankard with deviating from and contravening generally accepted accounting principles and practices, due to which the financial statements of Bankard prior to the stock purchase were far from fair and accurate, and resulted in the overpayment of ₱556 million. For this violation of sellers'representations and warranties under the SPA, RCBC sought its rescission, as well as payment of actual damages in the amount of ₱573,132,110, legal interest on the purchase price until actual restitution, moral damages and litigation and attorney's fees, with alternative prayer for award of damages in the amount of at least ₱809,796,082 plus legal interest.

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7 Id. at 115-116.
8 Id. at 89.
9 Id. at 118-134.

In their Answer,[10] EPCIB, Go and the other selling individual shareholders (Respondents) denied RCBC's allegations contending that RCBC's claim is one for overpayment or price reduction under Section 5(h) of the SPA which is already time-barred, the remedy of rescission is unavailable, and even assuming that rescission is permitted by the SPA, RCBC failed to file its claim within a reasonable time. They further asserted that RCBC is not entitled to its alternative prayer for damages, being guilty of laches and failing to set out the details of the breach as required under Section 7 of the SPA. A counterclaim for litigation expenses and costs of arbitration in the amount of US$300,000, as well as moral and exemplary damages, was likewise raised by the Respondents.

RCBC submitted a Reply[11] to the aforesaid Answer.

Subsequently, the Arbitration Tribunal was constituted. Mr. Neil Kaplan was nominated by RCBC; Justice Santiago M. Kapunan (a retired Member of this Court) was nominated by the Respondents; and Sir Ian Barker was appointed by the ICC-ICA as Chairman.

On August 13, 2004, the ICC-ICA informed the parties that they are required to pay US$350,000 as advance on costs pursuant to Article 30 (3) of the ICC Rules of Arbitration (ICC Rules). RCBC paid its share of US$107,000, the balance remaining after deducting payments of US$2,500 and US$65,000 it made earlier. Respondents' share of the advance on costs was thus fixed at US$175,000.

Respondents filed an Application for Separate Advances on Costs[12]dated September 17, 2004 under Article 30(2) of the ICC Rules, praying that the ICC fix separate advances on the cost of the parties' respective claims and counterclaims, instead of directing them to share equally on the advance cost of Claimant's (RCBC) claim.Respondents deemed this advance cost allocation to be proper, pointing out that the total

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10 Id. at 248-267.
11 Id. at 284-305.
12 Id. at 163-167.

amount of RCBC's claim is substantially higher – more than 40 times –the total amount of their counterclaims, and that it would be unfair to require them to share in the costs of arbitrating what is essentially a price issue that is now time-barred under the SPA.

On September 20, 2004, the ICC-ICAinformed Respondents that their application for separate advances on costs was premature pending the execution of the Terms of Reference (TOR).[13] The TOR was settled by the parties and signed by the Chairman and Members of the Arbitral Tribunal by October 11, 2004. On December 3, 2004,[14] the ICC-ICA denied the application for separate advances on costs and invited anew the Respondents to pay its share in the advance on costs.However, despite reminders from the ICC-ICA, Respondents refused to pay their share in the advance cost fixed by the ICC-ICA. On December 16, 2004, the ICC-ICA informed the parties that if Respondents still failed to pay its share in the advance cost, it would apply Article 30(4) of the ICC Rules and request the Arbitration Tribunal to suspend its work and set a new time limit, and if such requested deposit remains unpaid at the expiry thereof, the counterclaims would be considered withdrawn.[15]

In a fax-letter dated January 4, 2005, the ICC-ICA invited RCBC to pay the said amount in substitution of Respondents.It also granted an extension until January 17, 2005 within which to pay the balance of the advance cost (US$175,000). RCBC replied that it was not willing to shoulder the share of Respondents in the advance on costs but nevertheless requested for a clarification as to the effect of such refusal to substitute for Respondents'share.[16]

On March 10, 2005, the ICC-ICA instructed the Arbitration Tribunal to suspend its work and granted the parties a final time-limit of 15 days to pay the balance of the advanceon costs, failing which the claims shall be

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13 Id. at 170-171.
14 CA *rollo* (CA-G.R. SP No. 113525), Vol. I, pp. 258-259.
15 Id. at 260-261.
16 *Rollo* (G.R. No. 196171), Vol. I, pp. 404-405.

considered withdrawn, without prejudice to their reintroduction at a later date in another proceeding. The parties were advised that if anyof them objects to the measure, it should make a request in writing within such period.[17] For the same reason of non-receipt of the balance of the advance cost, the ICC-ICA issued Procedural Order No. 3 for the adjournment of the substantive hearings and granting the Respondents a two-month extension within which to submit their brief of evidence and witnesses.

RCBC objected to the cancellation of hearings, pointing out that Respondents have been given ample time and opportunity to submit their brief of evidence and prepare for the hearings and that their request for postponement serves no other purpose but to delay the proceedings. It alleged that Respondents' unjustified refusal to pay their share in the advance on costs warrants a ruling that they have lost standing to participate in the proceedings. It thus prayed that Respondents be declared as in default, the substantive hearings be conducted as originally scheduled, and RCBC be allowed to submit rebuttal evidence and additional witness statements.[18]

On December 15, 2005, the ICC-ICA notified the parties of its decision to increase the advances on costs from US$350,000 to US$450,000 subject to later readjustments, and again invited the Respondents to pay the US$100,000 increment within 30 days from notice. Respondents, however, refused to pay the increment, insisting that RCBC should bear the cost of prosecuting its own claim and that compelling the Respondents to fund such prosecution is inequitable. Respondents reiterated that it was willing to pay the advance on costs for their counterclaim.[19]

On December 27, 2005, the ICC-ICA advised that it was not possible to fix separate advances on costs as explained in its December 3, 2004 letter, and again invited Respondents to pay their share in the advance on costs.

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17 Id. at 411-412.
18 Id. at 414-417.
19 Id. at 423-424, 433-434.

Respondents' response contained in the letter dated January 6, 2006 was still the same: it was willing to pay only the separate advance on costs of their counterclaim.[20] In view of Respondents' continuing refusal to pay its equal share in the advanceon costs and increment, RCBC wrote the ICC-ICA stating that the latter should compel the Respondents to pay as otherwise RCBC will be prejudiced and the inaction of the ICC-ICA and the Arbitration Tribunal will detract from the effectiveness of arbitration as a means of settling disputes. In accordance with Article 30(4) of the ICC Rules, RCBC reiterated its request to declare the Respondents as in default without any personality to participate in the proceedings not only with respect to their counterclaims but also to the claim of RCBC.[21]

> Chairman Ian Barker, in a letter dated January 25, 2006, stated in part:
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> x x x x
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> 2. **The Tribunal has no power under the ICC Rules to order the Respondents to pay the advance on costs sought by the ICC or to give the Claimant any relief against the Respondents' refusal to pay.** The ICC Rules differ from, for example, the Rules of the LCIA (Article 24.3) which enables a party paying the share of costs which the other party has refused to pay, to recover "*that amount as a debt immediately due from the defaulting party*."
>
> 3. The only sanction under the ICC Rules is contained within Article 30 (4). Where a request for an advance on costs has not been complied with, after consultation with the Tribunal, the Secretary-General may direct the Tribunal to suspend its work. After expiry of a time limit, all claims and counterclaims are then considered as withdrawn. This provision cannot assist a Claimant who is anxious to litigate its claim. Such a Claimant has to pay the sums requested (including the Respondents' share) if it wishes the arbitration to proceed.
>
> 4. **It may be possible for a Claimant in the course of the arbitral hearing (or whenever costs are being considered by the Tribunal) to make submissions based on the failure of the Respondents to pay their share of the costs advance.What relief, if any, would have to be then determined by the Tribunal after having heard submissions from the Respondents.**
>
> 5. I should be pleased if the Claimant will advise the Tribunal of its intention in relation to the costs advance. If the costs are not paid, the arbitration cannot proceed.[22] (Italics in the original; emphasis supplied)

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20 Id. at 429-434.
21 Id. at 436-439.
22 CA *rollo* (CA-G.R. SP No. 113525), Vol. I, p. 276.

RCBC paid the additional US$100,000 under the second assessment to avert suspension of the Arbitration Tribunal's proceedings.

Upon the commencement of the hearings, the Arbitration Tribunal decided that hearings will be initially confined to issues of liability (*liability phase*) while the substantial issues will be heard on a later date (*quantum phase*).

Meanwhile, EPCIB's corporate name was officially changed to Banco De Oro (BDO)-EPCIB after its merger with BDO was duly approved by the Securities and Exchange Commission. As such, BDO assumed all the obligations and liabilities of EPCIB under the SPA.

On September 27, 2007, the Arbitration Tribunal rendered a Partial Award[23] (First Partial Award) in ICC-ICA Case No. 13290/MS/JB/JEM,as follows:

> **15 AWARD AND DIRECTIONS**
>
> 15.1 The Tribunal makes the following declarations by way of Partial Award:
>
> (a) The Claimant's claim is not time-barred under the provisions of this SPA.
>
> (b) The Claimant is not estopped by its conduct or the equitable doctrine of laches from pursuing its claim.
>
> (c) As detailed in the Partial Award, the Claimant has established the following breaches by the Respondents of clause 5(g) of the SPA:
>
> i) the assets, revenue and net worth of Bankard were overstated by reason of its policy on and recognition of Late Payment Fees;
>
> ii) reported receivables were higher than their realisable values by reason of the 'bucketing' method, thus overstating Bankard's assets; and
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> iii) the relevant Bankard statements were inadequate and misleading in that their disclosures caused readers to be misinformed about Bankard's accounting policies on revenue and receivables.

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[23] Id. at 282-411.

> (d) Subject to proof of loss the Claimant is entitled to damages for the foregoing breaches.
>
> (e) The Claimant is not entitled to rescission of the SPA.
>
> (f) **All other issues, including any issue relating to costs, will be dealt with in a further or final award.**
>
> 15.2 A further Procedural Order will be necessary subsequent to the delivery of this Partial Award to deal with the determination of quantum and in particular, whether there should be an Expert appointed by the Tribunal under Article 20(4) of the ICC Rules to assist the Tribunal in this regard.
>
> 15.3 This Award is delivered by a majority of the Tribunal (Sir Ian Barker and Mr. Kaplan). Justice Kapunan is unable to agree with the majority's conclusion on the claim of estoppel brought by the Respondents.[24] (Emphasis supplied)

On October 26, 2007, RCBC filed with the Makati City RTC, Branch 148 (SP Proc. Case No. M-6046)amotion to confirm the First Partial Award, while Respondents filed a motion to vacate the same.

ICC-ICA by letter[25] dated October 12, 2007 increased the advance on costs from US$450,000 to US$580,000. Under this third assessment, RCBC paid US$130,000 as its share on the increment. Respondents declinedto pay its adjudged total share of US$290,000 on account of its filing in the RTC of a motion to vacate the First Partial Award.[26] The ICC-ICA then invited RCBC to substitute for Respondents in paying the balance of US$130,000 by December 21, 2007.[27] RCBC complied with the request,making its total payments in the amount of US$580,000.[28]

While RCBC paid Respondents' share in the increment (US$130,000), it reiterated its plea that Respondents be declared as in default and the counterclaimsdeemed as withdrawn.[29]

Chairman Barker's letter dated December 18, 2007 states in part:

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24 Id. at 409-410.
25 *Rollo* (G.R. No. 196171), Vol. I, pp. 563-566.
26 Id. at 572-573.
27 Id. at 577-578.
28 Id. at 590.
29 Id. at 586.

> 8. Contrary to the Complainant's view, the Tribunal has no jurisdiction to declare that the Respondents have no right to participate in the proceedings concerning the claim. Article 30(4) of the ICC Rules applies only to any counterclaim of the Respondents.
>
> 9. **The Tribunal interprets the Claimant's latest letter as an application by the Claimant to the Tribunal for the issue of a partial award against the Respondents in respect of their failure to pay their share of the ICC's requests for advance on costs**.
>
> 10. I should be grateful if the Claimant would confirm that this is the situation. If so, the Claimant should propose a timetable for which written submissions should be made by both parties. This is an application which can be considered by the Tribunal on written submissions.[30] (Emphasis supplied)

RCBC, in a letter dated December 26, 2007, confirmed the Arbitration Tribunal's interpretation that it was applying for a partial award against Respondents' failure to pay their share in the advance on costs.[31]

Meanwhile, on January 8, 2008, the Makati City RTC, Branch 148 issued an order in SP Proc. Case No. M-6046 confirming the First Partial Award and denying Respondents' separate motions to vacate and to suspend and inhibit Barker and Kaplan. Respondents' motion for reconsideration was likewise denied. Respondents directly filed with this Court a petition for review on certiorari under Rule 45, docketed as **G.R. No. 182248** and entitled *Equitable PCI Banking Corporation v. RCBC Capital Corporation*.[32]In our Decision dated December 18, 2008, we denied the petition and affirmed the RTC's ruling confirming the First Partial Award.

On January 18, 2008, the Arbitration Tribunal set a timetable for the filing of submission by the parties on whether it should issue a Second Partial Award in respect of the Respondents' refusal to pay an advance on costs to the ICC-ICA.

In compliance, RCBC filed on February 7, 2008an Application for Reimbursement of Advance on Costs Paid, praying for the issuance of a

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30 CA *rollo* (CA-G.R. SP No. 113525), Vol. I, p. 452.
31 Id., Vol. III, p. 1610.
32 G.R. No. 182248, December 18, 2008, 574 SCRA 858.

partial award directing the Respondents to reimburse its payment in the amount of US$290,000 representing Respondents' share in the Advance on Costs and to consider Respondents' counterclaim for actual damages in the amount of US$300,000, and moral and exemplary damages as withdrawn for their failure to pay their equal share in the advance on costs. RCBC invoked the plain terms of Article 30 (2) and (3) to stress the liability of Respondents to share equally in paying the advance on costs where the Arbitration Tribunal has fixed the same.[33]

Respondents, on the other hand, filed their Opposition[34] to the said application alleging that the Arbitration Tribunal has lost its objectivity in an unnecessary litigation over the payment of Respondents' share in the advance costs. They pointed out that RCBC's letter merely asked that Respondents be declared as in default for their failure to pay advance costs but the Arbitration Tribunal, while denying the request offered an alternative to RCBC: a Partial Award for Respondents' share in the advance costs even if it was clear from the language of RCBC's December 11, 2007 letter that it had no intention of litigating for the advance costs. Chairman Barker, after ruling earlier that it cannot grant RCBC's request to declare the Respondents as having no right to participate in the proceedings concerning the claim, interpreted RCBC's letter as an application for the Arbitration Tribunal to issue a partial award in respect of such refusal of Respondents to pay their share in the advance on costs, and subsequently directed the parties to make submissions on the matter.Aside from violating their right to due process and to be heard by an impartial tribunal, Respondents also argued that in issuing the award for advance cost, the ArbitrationTribunal decided an issue beyond the terms of the TOR.

Respondents also emphasized that the parties agreed on a two-part arbitration: the first part of the Tribunal's proceedings would determine Respondents' liability, if any, for alleged violation of Section 5(g) and (h) of the SPA; and the second part of the proceedings would determine the

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33 *Rollo* (G.R. No. 196171), Vol. I, pp. 606-612.
34 Id. at 614-624.

amounts owed by one party to another as a consequence of a finding of liability or lack thereof. An award for "reimbursement of advances for costs" clearly falls outside the scope of either proceedings. Neither can the Tribunal justify such proceedings under Article 23 of the ICC Rules (Conservatory and Interim Measures) because that provision does not contemplate an award for the reimbursement of advance on costs in arbitration cases. Respondents further asserted that since the advances on costs have been paid by the Claimant (RCBC), the main claim and counterclaim may both be heard by the Arbitration Tribunal.

In his letter dated March 13, 2008, Chairman Barker advised the parties, as follows:

> 1. The Tribunal acknowledges the Respondents' response to the Claimant's application for a Partial Award, based on the Respondents' failure to pay their share of the costs, as requested by the ICC.
>
> 2. **The Tribunal notes that neither party has referred to an article by Mat[t]hew Secomb on this very subject which appears in the ICC Bulletin Vol. 14 No.1 (Spring 2003)**. To assist both sides and to ensure that the Tribunal does not consider material on which the parties have not been given an opportunity to address, I **attach** a copy of this article, which also contains reference to other scholarly works on the subject.
>
> 3. The Tribunal will give each party seven days within which to submit further written comments as a consequence of being alerted to the above authorities.[35](Additional emphasis supplied)

The parties complied by submitting their respective comments.

RCBC refuted Respondents' allegation of partiality on the part of Chairman Barker and reiterated the prayer in its application for reimbursement of advance on costs paid to the ICC-ICA. RCBC contended *that based on Mr. Secomb's article*, whether the "contractual" or "provisional measures" approach is applied, the Arbitration Tribunal is vested with jurisdiction and authority to render an award with respect to said reimbursement of advance cost paid by the non-defaulting party.[36]

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35 Id. at 626.
36 Id. at 641-651.

Respondents, on the other hand, maintained that RCBC's application for reimbursement of advance cost has no basis under the ICC Rules. They contended that no manifest injustice can be inferred from an act of a party paying for the share of the defaulting party as this scenario is allowed by the ICC Rules. Neither can a partial award for advance cost be justified under the "contractual approach" since the matter of costs for arbitration is between the ICC and the parties, not the Arbitration Tribunal and the parties. An arbitration tribunal can issue decisions on costs only for those costs not fixed by the ICC.[37]

Respondents reiterated their position that Article 30(3) envisions a situation whereby a party would refuse to pay its share on the advance on costs and provides a remedy therefor – the other party "shall be free to pay the whole of the advance on costs." Such party's reimbursement for payments of the defaulting party's share depends on the final arbitral award where the party liable for costs would be determined. This is the only remedy provided by the ICC Rules.[38]

On May 28, 2008, the Arbitration Tribunal rendered the Second Partial Award,[39] as follows:

> 7 **AWARD**
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> 7.1 Having read and considered the submissions of both parties, the Tribunal AWARDS, DECLARES AND ORDERS as follows:
>
> (a) The Respondents are forthwith to pay to the Claimant the sum of US$290,000.
>
> (b) The Respondents' counterclaim is to be considered as withdrawn.
>
> (c) All other questions, including interest and costs, will be dealt with in a subsequent award.[40]

The above partial award was received by RCBC and Respondents on June 12, 2008.

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37 Id. at 661-664.
38 Id. at 665.
39 Id. at 672-687.
40 Id. at 686. Justice Santiago M. Kapunan signed the Second Partial Award with notation "subject to my previous opinion."

On July 11, 2008, EPCIB filed a Motion to Vacate Second Partial Award[41] in the Makati City RTC, Branch 148 (SP Proc. Case No. M-6046). On July 10, 2008, RCBC filed in the same court a Motion to Confirm Second Partial Award.[42]

EPCIB raised the following grounds for vacating the Second Partial Award: (a) the award is void *ab initio* having been rendered by the arbitrators who exceeded their power or acted without it; and (b) the award was procured by undue means or issued with evident partiality or attended by misbehavior on the part of the Tribunal which resulted in a material prejudice to the rights of the Respondents. EPCIB argued that there is no express agreement either in the SPA or the ICC Rules for such right of reimbursement. There is likewise no implied agreement because from the ICC Rules, the only inference is that the parties agreed to await the dispositions on costs liability in the Final Award, not before.

On the ruling of the Arbitration Tribunal that Respondents' application for costs are not counterclaims, EPCIB asserted that this is contrary to Philippine law as it is basic in our jurisdiction that counterclaims for litigation expenses, moral and exemplary damages are proper counterclaims, which rule should be recognized in view of Section 10 of the SPA which provides that "substantive aspects of the dispute shall be settled by applying the laws of the Philippines." Finally, EPCIB takes issue with Chairman Barker's interpretation of RCBC's December 11, 2007 letter as an application for a partial award for reimbursement of the substituted payments. Such conduct of Chairman Barker is prejudicial and proves his evident partiality in favor of RCBC.

RCBC filed its Opposition,[43] asserting that the Arbitration Tribunal had jurisdiction to consider Respondents' counterclaim as withdrawn, the same having been abandoned by not presenting any computation or

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41 Id. at 700-723.
42 Id. at 692-698.
43 Id. at 725-742.

substantiation by evidence, their only computation relates only to attorney's fees which are simply cost of litigation properly brought at the conclusion of the arbitration. It also pointed out that the Arbitration Tribunal was empowered by the parties' arbitral clause to determine the manner of payment of expenses of arbitration, and that the Second Partial Award was based on authorities and treatiseson the mandatory and contractual nature of the obligation to pay advances on costs.

In its Reply,[44] EPCIB contended that RCBC had the option to agree to its proposal for separate advances on costs but decided against it; RCBC's act of paying the balance of the advance cost in substitution of EPCIB was for the purpose of having EPCIB defaulted and the latter's counterclaim withdrawn. Having agreed to finance the arbitration until its completion, RCBC is not entitled to immediate reimbursement of the amount it paid in substitution of EPCIB under an interim award, as its right to a partial or total reimbursement will have to be determined under the final award. EPCIB asserted that the matter of reimbursement of advance cost paid cannot be said to have properly arisen during arbitration. EPCIB reiterated that Chairman Barker's interpretation of RCBC's December 11, 2007 letter as an application for interim award for reimbursement is tantamount to a promise that the award will be issued in due course.

After a further exchange of pleadings, and other motions seeking relief from the court in connection with the arbitration proceedings (quantum phase), the Makati City RTC, Branch 148 issued the Order[45]dated June 24, 2009 confirming the Second Partial Award and denying EPCIB's motion to vacate the same. Said court held that since the parties agreed to submit any dispute under the SPA to arbitration and to be bound by the ICC Rules, they are also bound to pay in equal shares the advance on costs as provided in Article 30 (2) and (3). It noted that RCBC was forced to pay the share of EPCIB in substitution of the latter to prevent a suspension of the arbitration proceedings, while EPCIB's non-payment seems more like a scheme to

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44 Id. at 744-760.
45 Id. at 974-988.

delay such proceedings. On the Arbitration Tribunal's ruling on EPCIB's counterclaim, no error was committed in considering it withdrawn for failure of EPCIB to quantify and substantiate it with supporting evidence. As to EPCIB's claim for attorney's fees, the RTC agreed that these should be brought only at the close of arbitration.

EPCIB moved to reconsider the June 24, 2009 Order and for the voluntary inhibition of the Presiding Judge (Judge Oscar B. Pimentel) on the ground that EPCIB's new counsel represented another client in another case before him in which said counsel assailed his conduct and had likewise sought his inhibition. Both motions were denied in the Joint Order[46] dated March 23, 2010.

On April 14, 2010, EPCIB filed in the CA a petition for review[47] with application for TRO and/or writ of preliminary injunction (CA-G.R. SP No. 113525) in accordance with Rule 19, Section 4 of the Special Rules of Court on Alternative Dispute Resolution[48] (Special ADR Rules). EPCIB assailed the Makati City RTC, Branch 148 in denying its motion to vacate the Second Partial Award despite (a) said award having been rendered in excess of jurisdiction or power, and contrary to public policy; (b) the fact that it was issued with evident partiality and serious misconduct; (c) the award deals with a dispute not contemplated within the terms of submission to arbitration or beyond the scope of such submission, which therefore ought to be vacated pursuant to Article 34 of the UNCITRAL Model Law; and (d) the Presiding Judge having exhibited bias and prejudice against BDO and its counsel as confirmed by his pronouncements in the Joint Order dated March 23, 2010 in which, instead of recusing himself, he imputed malice and unethical conduct in the entry of appearance of Belo Gozon Elma Asuncion and Lucila Law Offices in SP Proc. Case No. M-6046, which warrants his voluntary inhibition.

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46 Id. at 1097-1102.
47 Id. at 1104-1171.
48 A.M. No. 07-11-08-SC which took effect on October 30, 2009 following its publication in three (3) newspapers of general circulation.

Meanwhile, on June 16, 2010, the Arbitration Tribunal issued the Final Award,[49] as follows:

> **15 AWARD**
>
> 15.1 The Tribunal by a majority (Sir Ian Barker & Mr. Kaplan) awards, declares and adjudges as follows:
>
> (a) the Respondents are to pay damages to the Claimant for breach of the sale and purchase agreement for Bankard shares in the sum of ₱348,736,920.29.
>
> (b) The Respondents are to pay to the Claimant the sum of US$880,000 in respect of the costs of the arbitration as fixed by the ICC Court.
>
> (c) The Respondents are to pay to the Claimant the sum of US$582,936.56 for the fees and expenses of Mr. Best.
>
> (d) The Respondents are to pay to the Claimant their expenses of the arbitration as follows:
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> | | | |
> |---|---|---|
> | (i) | Experts' fees | ₱7,082,788.55 |
> | (ii) | Costs of without prejudice meeting | ₱22,571.45 |
> | (iii) | Costs of arbitration hearings | ₱553,420.66 |
> | (iv) | Costs of transcription service | ₱483,597.26 |
> | | Total | ₱8,144,377.62 |
>
> (e) The Respondents are to pay to the Claimant the sum of ₱7,000,000 for party-and-party legal costs.
>
> (f) The Counterclaims of the Respondents are all dismissed.
>
> (g) All claims of the Claimant are dismissed, other than those referred to above.
>
> 15.2 Justice Kapunan does not agree with the majority of the members of the Tribunal and has issued a dissenting opinion. He has refused to sign this Award.[50]

On July 1, 2010 BDO filed in the Makati City RTC a Petition to Vacate Final Award *Ad Cautelam*,[51] docketed as SP Proc. Case No. M-6995, which was raffled to Branch 65.

On July 28, 2010, RCBC filed with the Makati City RTC, Branch 148 (SP Proc. Case No. M-6046) a Motion to Confirm Final Award.[52] BDO

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49 *Rollo* (G.R. No. 199238), Vol. I, pp. 70-161.
50 Id. at 160.
51 Id. at 217-390.
52 *Rollo* (G.R. No. 199238), Vol. II, pp. 932-948.

filed its Opposition With Motion to Dismiss[53] on grounds that a Petition to Vacate Final Award *Ad Cautelam*had already been filed in SP Proc. Case No. M-6995. BDO also pointed out that RCBC did not file the required petition but instead filed a mere motion which did not go through the process of raffling to a proper branch of the RTC of Makati City and the payment of the required docket/filing fees.Even assuming that Branch 148 has jurisdiction over RCBC's motion to confirm final award, BDO asserted that RCBC had filed before the Arbitration Tribunal an Application for Correction and Interpretation of Award under Article 29 of the ICC Rules, which is irreconcilable with its Motion to Confirm Final Award before said court. Hence, the Motion to Confirm Award was filed precipitately.

On August 18, 2010, RCBC filed an Omnibus Motion in SP Proc. Case No. M-6995 (Branch 65) praying for the dismissal of BDO's Petition to Vacate Final Award or the transfer of the same to Branch 148 for consolidation with SP Proc. Case No. M-6046. RCBC contended that BDO's filing of its petition with another court is a blatant violation of the Special ADR Rules and is merely a subterfuge to commit forum-shopping. BDO filed its Opposition to the Omnibus Motion.[54]

On October 28, 2010, Branch 65 issued a Resolution[55]denying RCBC's omnibus motion and directing the service of the petition to RCBC for the latter's filing of a comment thereon. RCBC's motion for reconsideration was likewise denied in the said court's Order dated December 15, 2010. RCBC then filed its Opposition to the Petition to Vacate Final Award *Ad Cautelam.*

Meanwhile, on November 10, 2010, Branch 148 (SP Proc. Case No. M-6046) issued an Order[56]confirming the Final Award "subject to the correction/interpretation thereof by the Arbitral Tribunal pursuant to the ICC

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53 Id. at 949-974.
54 CA *rollo* (CA-G.R. SP No. 117451), Vol. IV, p. 1985, 1988.
55 Id. at 1985-1996.
56 *Rollo* (G.R. No. 199238), Vol. II, pp. 1075-1083.

Rules and the UNCITRAL Model Law," and denying BDO's Opposition with Motion to Dismiss.

On December 30, 2010, George L. Go, in his personal capacity and as attorney-in-fact of the other listed shareholders of Bankard, Inc. in the SPA (Individual Shareholders), filed a petition in the CA, CA-G.R. SP No. 117451, seeking to set aside the above-cited November 10, 2010 Order and to enjoin Branch 148 from further proceeding in SP Proc. Case No. M-6046. By Decision[57] dated June 15, 2011, the CA dismissed the said petition. Their motion for reconsideration of the said decision was likewise denied by the CA in its Resolution[58] dated December 14, 2011.

On December 23, 2010, the CA rendered its Decision in CA-G.R. SP No. 113525, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the following are hereby **REVERSED and SET ASIDE**:
>
> 1. the Order dated June 24, 2009 issued in SP Proc. Case No. M-6046 by the Regional Trial Court of Makati City, Branch 148, insofar as it denied the Motion to Vacate Second Partial Award dated July 8, 2008 and granted the Motion to Confirm Second Partial Award dated July 10, 2008;
>
> 2. the Joint Order dated March 23, 2010 issued in SP Proc. Case No. M-6046 by the Regional Trial Court of Makati City, Branch 148, insofar as it denied the Motion For Reconsideration dated July 28, 2009 relative to the motions concerning the Second Partial Award immediately mentioned above; and
>
> 3. the Second Partial Award dated May 28, 2008 issued in International Chamber of Commerce Court of Arbitration Reference No. 13290/MS/JB/JEM.
>
> SO ORDERED.[59]

RCBC filed a motion for reconsideration but the CA denied the same in its Resolution[60] dated March 16, 2011. On April 6, 2011, it filed a petition for review on certiorari in this Court (**G.R. No. 196171**).

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57 CA *rollo* (CA-G.R. SP No. 117451), Vol. V, pp. 2455-2476. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

58 Id. (no pagination).

59 *Rollo* (G.R. No. 196171), Vol. I, pp. 64-65.

60 Id. at 68-69.

On February 25, 2011, Branch 65 rendered a Decision[61] in SP Proc. Case No. M-6995, as follows:

> WHEREFORE, premises considered, the Final Award dated June 16, 2010 in ICC Ref. No. 13290/MS/JB/JEM is hereby VACATED with cost against the respondent.
>
> SO ORDERED.[62]

In SP Proc. Case No. M-6046, Branch 148 issued an Order[63] dated August 8, 2011 resolving the following motions: (1) Motion for Reconsideration filed by BDO, Go and Individual Shareholders of the November 10, 2010 Order confirming the Final Award; (2) RCBC's Omnibus Motion to expunge the motion for reconsideration filed by Go and Individual Shareholders, and for execution of the Final Award; (3) Motion for Execution filed by RCBC against BDO; (4) BDO's Motion for Leave to File Supplement to the Motion for Reconsideration; and (5) Motion for Inhibition filed by Go and Individual Shareholders. Said Order decreed:

> **WHEREFORE**, premises considered, it is hereby ORDERED, to wit:
>
> 1. Banco De Oro's Motion for Reconsideration, Motion for Leave to File Supplement to Motion for Reconsideration, and Motion to Inhibit are ***DENIED*** for lack of merit.
>
> 2. RCBC Capital's Motion to Expunge, Motion to Execute against Mr. George L. Go and the Bankard Shareholders, and the Motion to Execute against Banco De Oro are hereby ***GRANTED***.
>
> 3. The damages awarded to RCBC Capital Corporation in the amount of PhP348,736,920.29 is subject to an interest of 6% per annum reckoned from the date of RCBC Capital's extra-judicial demand or from May 5, 2003 until the confirmation of the Final Award. Likewise, this compounded amount is subject to 12% interest per annum from the date of the confirmation of the Final Award until its satisfaction. The costs of the arbitration amounting to US$880,000.00, the fees and expenses of Mr. Best amounting to US$582,936.56, the Claimant's expenses of the arbitration amounting to PhP8,144,377.62, and the party-and-party legal costs amounting to PhP7,000,000.00 all ruled in favor of RCBC Capital Corporation in the Final Award of the Arbitral Tribunal dated June 16, 2010 are subject to 12% legal interest per annum, also reckoned from the date of the confirmation of the Final Award until its satisfaction.

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61 *Rollo* (G.R. No. 199238), Vol. II, pp. 908-931.
62 Id. at 931.
63 Id. at 1174-1191.

> 4. Pursuant to Section 40 of R.A. No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 in relation to Rule 39 of the Rules of Court, since the Final Award have been confirmed, the same shall be enforced in the same manner as final and executory decisions of the Regional Trial Court, let a writ of execution be issued commanding the Sheriff to enforce this instant Order confirming this Court's Order dated November 10, 2010 that judicially confirmed the June 16, 2010 Final Award.
>
> SO ORDERED.[64]

Immediately thereafter, RCBC filed an Urgent Motion for Issuance of a Writ of Execution.[65] On August 22, 2011, after approving the execution bond, Branch 148 issued a Writ of Execution for the implementation of the said court's "Order dated August 8, 2011 confirming the November 10, 2010 Order that judicially confirmed the June 16, 2010 Final Award x x x."[66]

BDO then filed in the CA, a "Petition for Review (With Application for a Stay Order or Temporary Restraining Order and/or Writ of Preliminary Injunction," docketed as CA-G.R. SP No. 120888. BDO sought to reverse and set aside the Orders dated November 10, 2010 and August 8, 2011, and any writ of execution issued pursuant thereto, as well as the Final Award dated June 16, 2010 issued by the Arbitration Tribunal.

In its Urgent Omnibus Motion[67] to resolve the application for a stay order and/or TRO/writ of preliminary injunction, and to quash the Writ of Execution dated August 22, 2011 and lift the Notices of Garnishment dated August 22, 2011, BDO argued that the assailed orders of execution (Writ of Execution and Notice of Garnishment) were issued with indecent haste and despite the non-compliance with the procedures in Special ADR Rules of the November 10, 2010 Order confirming the Final Award. BDO was not given sufficient time to respond to the demand for payment or to elect the method of satisfaction of the judgment debt or the property to be levied upon. In any case, with the posting of a bond by BDO, Branch 148 has no jurisdiction to implement the appealed orders as it would pre-empt the CA from exercising

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64 Id. at 1191.
65 Id. at 1194-1201.
66 Id. at 1203-1206.
67 Id. at 1507-1540.

its review under Rule 19 of the Special ADR Rules after BDO had perfected its appeal.BDO stressed that the bond posted by RCBC was for a measly sum of ₱3,000,000.00 to cause execution pending appeal of a monetary award that may reach ₱631,429,345.29. RCBC also failed to adduce evidence of "good cause" or "good reason" to justify discretionary execution under Section 2(a), Rule 39 of the Rules of Court.

BDO further contended that the writ of execution should be quashed for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction as Branch 148 modified the Final Award at the time of execution by imposing the payment of interests though none was provided therein nor in the Order confirming the same.

During the pendency of CA-G.R. SP No. 120888, Branch 148 continued with execution proceedings and on motion by RCBC designated/deputized additional sheriffs to replace Sheriff Flora who was supposedly physically indisposed.[68] These court personnel went to the offices/branches of BDO attempting to serve notices of garnishment and to levy the furniture, fixtures and equipment.

On September 12, 2011, BDO filed a Very Urgent Motion to Lift Levy and For Leave to Post Counter-Bond[69] before Branch 148 praying for the lifting of the levy of BDO Private Bank, Inc. (BPBI) shares and the cancellation of the execution sale thereof scheduled on September 15, 2011, which was set for hearing on September 14, 2011. BDO claimed that the levy was invalid because it was served by the RTC Sheriffs not to the authorized representatives of BPBI, as provided under Section 9(b), Rule 39 in relation to Section 7, Rule 57 of the Rules of Court stating that a notice of levy on shares of stock must be served to the president or managing agent of the company which issued the shares. However, BDO was advised by court staff that Judge Sarabia was on leave and the case could not be set for hearing.

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68 Id. at 1586.
69 Id. at 1602-1618.

In its Opposition to BDO's application for injunctive relief, RCBC prayed for its outright denial as BDO's petition raises questions of fact and/or law which call for the CA to substitute its judgment with that of the Arbitration Tribunal, in patent violation of applicable rules of procedure governing domestic arbitration and beyond the appellate court's jurisdiction. RCBC asserted that BDO's application has become moot and academic as the writ of execution was already implemented and/or enforced. It also contended that BDO has no clear and unmistakable right to warrant injunctive relief because the issue of jurisdiction was already ruled upon in CA-G.R. SP No. 117451 which dismissed the petition filed by Go and the Individual Shareholders of Bankard questioning the authority of Branch 148 over RCBC's motion to confirm the Final Award despite the earlier filing by BDO in another branch of the RTC (Branch 65) of a petition to vacate the said award.

On September 13, 2011, BDO, to avert the sale of the BPBI shares scheduled on September 15, 2011 and prevent further disruption in the operations of BDO and BPBI, paid under protest by tendering a Manager's Check in the amount of ₱637,941,185.55, which was accepted by RCBC as full and complete satisfaction of the writ of execution. BDO manifested before Branch 148 that such payment was made without prejudice to its appeal before the CA.[70]

On even date, the CA denied BDO's application for a stay order and/or TRO/preliminary injunction for non-compliance with Rule 19.25 of the Special ADR Rules. The CA ruled that BDO failed to show the existence of a clear right to be protected and that the acts sought to be enjoined violated any right. Neither was BDO able to demonstrate that the injury to be suffered by it is irreparable or not susceptible to mathematical computation.

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[70] Id. at 1641-1649.

BDO did not file a motion for reconsideration and directly filed with this Court a petition for certiorari with urgent application for writ of preliminary mandatory injunction (**G.R. No. 199238**).

The Petitions

In G.R. No. 196171, RCBC set forth the following grounds for the reversal of the CA Decision dated December 23, 2010:

> I.
>
> THE COURT OF APPEALS ACTED CONTRARY TO LAW AND PRIOR RULINGS OF THIS HONORABLE COURT AND COMMITTED REVERSIBLE ERROR IN VACATING THE SECOND PARTIAL AWARD ON THE BASIS OF CHAIRMAN BARKER'S ALLEGED PARTIALITY, WHICH IT CLAIMS IS INDICATIVE OF BIAS CONSIDERING THAT THE ALLEGATIONS CONTAINED IN BDO/EPCIB'S PETITION FALL SHORT OF THE JURISPRUDENTIAL REQUIREMENT THAT THE SAME BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.
>
> II.
>
> THE COURT OF APPEALS ACTED CONTRARY TO LAW AND PRIOR RULINGS OF THIS HONORABLE COURT AND COMMITTED REVERSIBLE ERROR WHEN IT REVERSED THE ARBITRAL TRIBUNAL'S FINDINGS OF FACT AND LAW IN THE SECOND PARTIAL AWARD IN PATENT CONTRAVENTION OF THE SPECIAL ADR RULES WHICH EXPRESSLY PROHIBITS THE COURTS, IN AN APPLICATION TO VACATE AN ARBITRAL AWARD, FROM DISTURBING THE FINDINGS OF FACT AND/OR INTERPRE[TA]TION OF LAW OF THE ARBITRAL TRIBUNAL.[71]

BDO raises the following arguments in G.R. No. 199238:

> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN PERFUNCTORILY DENYING PETITIONER BDO'S APPLICATION FOR STAY ORDER, AND/OR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION DESPITE THE EXISTENCE AND CONCURRENCE OF ALL THE ELEMENTS FOR THE ISSUANCE OF SAID PROVISIONAL RELIEFS
>
> A. PETITIONER BDO HAS CLEAR AND UNMISTAKABLE RIGHTS TO BE PROTECTED BY THE ISSUANCE OF THE INJUNCTIVE RELIEF PRAYED FOR, WHICH, HOWEVER, WERE DISREGARDED BY PUBLIC RESPONDENT WHEN IT

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71 *Rollo* (G.R. No. 196171), Vol. I, p. 25.

DENIED PETITIONER BDO'S PRAYER FOR ISSUANCE OF A STAY ORDER AND/OR TRO

B. PETITIONER BDO'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW WAS GROSSLY VIOLATED BY THE RTC-MAKATI CITY BRANCH 148, THE DEPUTIZED SHERIFFS AND RESPONDENT RCBC CAPITAL, WHICH VIOLATION WAS AIDED BY PUBLIC RESPONDENT'S INACTION ON AND EVENTUAL DENIAL OF THE PRAYER FOR STAY ORDER AND/OR TRO

C. DUE TO THE ACTS AND ORDERS OF RTC BRANCH 148, PETITIONER BDO SUFFERED IRREPARABLE DAMAGE AND INJURY, AND THERE WAS DIRE AND URGENT NECESSITY FOR THE ISSUANCE OF THE INJUNCTIVE RELIEF PRAYED FOR WHICH PUBLIC RESPONDENT DENIED IN GRAVE ABUSE OF DISCRETION[72]

Essentially, the issues to be resolved are: (1) whether there is legal ground to vacate the Second Partial Award; and (2) whether BDO is entitled to injunctive relief in connection with the execution proceedings in SP Proc. Case No. M-6046.

In their TOR, the parties agreed on the governing law and rules as follows:

Laws to be Applied

13 The Tribunal shall determine the issues to be resolved in accordance with the laws of the Republic of the Philippines.

Procedure to be Applied

14 The proceedings before the Tribunal shall be governed by the ICC Rules of Arbitration (1 January 1998) and the law currently applicable to arbitration in the Republic of the Philippines.[73]

As stated in the Partial Award dated September 27, 2007, although the parties provided in Section 10 of the SPA that the arbitration shall be conducted under the ICC Rules, it was nevertheless arbitration under Philippine law since the parties are both residents of this country. The provisions of Republic Act No. 876[74] (RA 876),as amended by Republic Act

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72 *Rollo* (G.R. No. 199238), Vol. I, pp. 29-30.

73 CA *rollo*(CA-G.R. SP No. 113525), Vol. I, pp. 246-247.

74 AN ACT TO AUTHORIZE THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS, TO PROVIDE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES, AND FOR OTHER PURPOSES, otherwise known as "The Arbitration Law."

No. 9285[75] (RA 9285)principally applied in the arbitration between the herein parties.[76]

The pertinent provisions of R.A. 9285 provide:

> SEC. 40. ***Confirmation of Award***. – The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. 876.
>
> A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.
>
> The confirmation of a domestic award shall be made by the regional trial court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.
>
> x x x x
>
> SEC. 41. ***Vacation Award***. – A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

Rule 11.4 of the Special ADR Rules sets forth the grounds for vacating an arbitral award:

> **Rule 11.4.** *Grounds*.—(A) *To vacate an arbitral award.* - The arbitral award may be vacated on the following grounds:
>
> a. The arbitral award was procured through corruption, fraud or other undue means;
>
> b. **There was evident partiality or corruption in the arbitral tribunal or any of its members;**
>
> c. The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;
>
> d. One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; or
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> e. **The arbitral tribunal exceeded its powers**, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

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75 "Alternative Dispute Resolution Act of 2004," approved on April 2, 2004.

76 Sec. 32 of RA 9285 provides that "[d]omestic arbitration shall continue to be governed by Republic Act No. 876, x x x."

> The award may also be vacated on any or all of the following grounds:
>
> a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or
>
> b. A party to arbitration is a minor or a person judicially declared to be incompetent.
>
> x x x x
>
> In deciding the petition to vacate the arbitral award, the court shall disregard any other ground than those enumerated above. (Emphasis supplied)

Judicial Review

At the outset, it must be stated that a review brought to this Court under the Special ADR Rules is not a matter of right. Rule 19.36 of said Rules specified the conditions for the exercise of this Court's discretionary review of the CA's decision.

> **Rule 19.36.***Review discretionary*.—A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for **serious and compelling reasons resulting in grave prejudice to the aggrieved party**. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, **when the Court of Appeals**:
>
> a. **Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules** in arriving at its decision resulting in substantial prejudice to the aggrieved party;
>
> b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;
>
> c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and
>
> d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.
>
> The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. **The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.**

> A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition. (Emphasis supplied)

The applicable standard for judicial review of arbitral awards in this jurisdiction is set forth in Rule 19.10 which states:

> **Rule 19.10**. *Rule on judicial review on arbitration in the Philippines*.--As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a **clear showing** that the award suffers from **any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law** in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.
>
> x x x x
>
> The court shall not set aside or vacate the award of the arbitral tribunal merelyon the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

The above rule embodied the stricter standard in deciding appeals from arbitral awards established by jurisprudence. In the case of *Asset Privatization Trust v. Court of Appeals*,[77] this Court held:

> As a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts.Courts are without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators.They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators, since any other rule would make an award the commencement, not the end, of litigation.Errors of law and fact, or an erroneous decision of matters submitted to the judgment of the arbitrators, are insufficient to invalidate an award fairly and honestly made. Judicial review of an arbitration is, thus, more limited than judicial review of a trial.[78]

Accordingly, we examine the merits of the petition before us solely on the statutory ground raised for vacating the Second Partial Award: evident

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77 G.R. No. 121171, December 29, 1998, 300 SCRA 579.
78 Id. at 601-602.

partiality, pursuant to Section 24 (b) of the Arbitration Law (RA 876) and Rule 11.4 (b) of the Special ADR Rules.

Evident Partiality

Evident partiality is not defined in our arbitration laws. As one of the grounds for vacating an arbitral award under the Federal Arbitration Act (FAA) in the United States (US), the term "encompasses both an arbitrator's explicit bias toward one party and an arbitrator's inferred bias when an arbitrator fails to disclose relevant information to the parties."[79]

From a recent decision[80] of the Court of Appeals of Oregon, we quote a brief discussion of the common meaning of evident partiality:

> To determine the meaning of "evident partiality," we begin with the terms themselves. The common meaning of "partiality" is "the **inclination to favor one side**."*Webster's Third New Int'l Dictionary* 1646 (unabridged ed 2002); *see also id.* (defining "partial" as "inclined to favor one party in a cause or one side of a question more than the other: biased, predisposed" (formatting in original)). "Inclination," in turn, means "a particular disposition of mind or character : propensity, bent" or "a tendency to a particular aspect, state, character, or action."*Id.* at 1143 (formatting in original); *see also id.* (defining "inclined" as "having inclination, disposition, or tendency").
>
> The common meaning of "evident" is "capable of being perceived esp[ecially] by sight : distinctly visible : being in evidence : discernable[;] * * * clear to the understanding : obvious, manifest, apparent."*Id.* at 789 (formatting in original); *see also id.* (stating that synonyms of "evident" include "apparent, patent, manifest, plain, clear, distinct, obvious, [and] palpable" and that, **"[s]ince evident rather naturally suggests *evidence,* it may imply the existence of signs and indications that must lead to an identification or inference**" (formatting in original)). (Emphasis supplied)

Evident partiality in its common definition thus implies "the existence of *signs and indications* that must lead to an identification or inference" of partiality.[81] Despite the increasing adoption of arbitration in many jurisdictions, there seems to be no established standard for determining the

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79 Windsor, Kathryn A. (2012) "Defining Arbitrator Evident Partiality: The Catch-22 of Commercial Litigation Disputes," *Seton Hall Circuit Review*: Vol. 6: Iss. 1, Article 7. Available at http://erepository.law.shu.edu/circuit_review/vol6/iss1/7.

80 *Prime Properties, Inc. v. Leonard James Leahy*, 234 Ore. App. 439, 445.Argued and submitted on August 25, 2009.

81 Id.

existence of evident partiality. In the US, evident partiality "continues to be the subject of somewhat conflicting and inconsistent judicial interpretation when an arbitrator's failure to disclose prior dealings is at issue."[82]

The first case to delineate the standard of evident partiality in arbitration proceedings was *Commonwealth Coatings Corp. v. Continental Casualty Co., et al.*[83] decided by the US Supreme Court in 1968. The Court therein addressed the issue of whether the requirement of impartiality applies to an arbitration proceeding. The plurality opinion written by Justice Black laid down the rule that the arbitrators must disclose to the parties "any dealings that might create an impression of possible bias,"[84] and that underlying such standard is "the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias."[85]In a separate concurring opinion, Justice White joined by Justice Marshall, remarked that "[t]he Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges."[86] He opined that arbitrators should not automatically be disqualified from an arbitration proceeding because of a business relationship where both parties are aware of the relationship in advance, or where the parties are unaware of the circumstances but the relationship is trivial. However, in the event that the arbitrator has a "substantial interest" in the transaction at hand, such information must be disclosed.

Subsequent cases decided by the US Court of Appeals Circuit Courts adopted different approaches, given the imprecise standard of evident partiality in *Commonwealth Coatings*.

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82 New Developments on the Standard for Finding "Evident Partiality" by Howard S. Suskin and Suzanne J. Prysak, Jenner & Block LLP, *Bloomberg Law Reports,* Vol. 2, No. 7, August 2006. Accessed at http://www.jenner.com/library/publications/7677.

83 393 U.S. 145. Decided on November 18, 1968.

84 Id. at 149.

85 Id. at 150.

86 Id.

In *Morelite Construction Corp. v. New York District Council Carpenters Benefit Funds*,[87] the Second Circuit reversed the judgment of the district court and remanded with instructions to vacate the arbitrator's award, holding that the existence of a father-son relationship between the arbitrator and the president of appellee union provided strong evidence of partiality and was unfair to appellant construction contractor. After examining prior decisions in the Circuit, the court concluded that –

> x x x we cannot countenance the promulgation of a standard for partiality as insurmountable as "proof of actual bias" -- as the literal words of *Section 10* might suggest. Bias is always difficult, and indeed often impossible, to "prove." Unless an arbitrator publicly announces his partiality, or is overheard in a moment of private admission, it is difficult to imagine how "proof" would be obtained. Such a standard, we fear, occasionally would require that we enforce awards in situations that are clearly repugnant to our sense of fairness, yet do not yield "proof" of anything.
>
> If **the standard of "appearance of bias" is too low for the invocation of *Section 10,* and "proof of actual bias" too high**, with what are we left? Profoundly aware of the competing forces that have already been discussed, we hold that **"evident partiality" within the meaning of *9 U.S.C. § 10* will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration.**x x x[88](Emphasis supplied)

In *Apperson v. Fleet Carrier Corporation*,[89] the Sixth Circuit agreed with the *Morelite* court's analysis, and accordingly held that to invalidate an arbitration award on the grounds of bias, the challenging party must show that "a reasonable person would have to conclude that an arbitrator was partial" to the other party to the arbitration.

This "myriad of judicial interpretations and approaches to evident partiality" resulted in a lack of a uniform standard, leaving the courts "to examine evident partiality on a case-by-case basis."[90] The case at bar does not present a non-disclosure issue but conduct allegedly showing an arbitrator's partiality to one of the parties.

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87 748 F.2d 79. Decided on November 5, 1984.
88 Id. at 84.
89 879 F.2d 1344, 1358. Decided on July 13, 1989.
90 Windsor, Kathryn A., supra note 79 at 216.

EPCIB/BDO, in moving to vacate the Second Partial Award claimed that the Arbitration Tribunal exceeded its powers in deciding the issue of advance cost not contemplated in the TOR, and that Chairman Barker acted with evident partiality in making such award. The RTC held that BDO failed to substantiate these allegations. On appeal, the CA likewise found that the Arbitration Tribunal did not go beyond the submission of the parties because the phrasing of the scope of the agreed issues in the TOR ("[t]he issues to be determined by the Tribunal are those issues arising from the said Request for Arbitration, Answer and Reply and such other issues as may properly arise during the arbitration")is broad enough to accommodate a finding on the liability and the repercussions of BDO's failure to share in the advances on costs. Section 10 of the SPA also gave the Arbitration Tribunal authority to decide how the costs should be apportioned between them.

However, the CA found factual support in BDO's charge of partiality, thus:

> On the issue on evident partiality, the rationale in the American case of *Commonwealth Coatings Corp. v. Continental Cas. Co.* appears to be very prudent. In *Commonwealth,* the United States Supreme Court reasoned that courts "should…be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts, and are not subject to appellate review" in general. This taken into account**, the Court applies the standard demanded of the conduct of magistrates by analogy**. After all, the ICC Rules require that an arbitral tribunal should act fairly and impartially. Hence, **an arbitrator's conduct should be beyond reproach and suspicion. His acts should be free from the appearances of impropriety.**
>
> An examination of the circumstances claimed to be illustrative of Chairman Barker's partiality is indicative of bias. Although RCBC had repeatedly asked for reimbursement and the withdrawal of BDO's counterclaims prior to Chairman Barker's December 18, 2007 letter, it is baffling why **it is only in the said letter that RCBC's prayer was given a complexion of being an application for a partial award. To the Court, the said letter signaled a preconceived course of action that the relief prayed for by RCBC will be granted.**
>
> That there was an action to be taken beforehand is confirmed by Chairman Barker's furnishing the parties with a copy of the Secomb article. **This article ultimately favored RCBC by advancing its cause**. **Chairman Barker makes it appear that he intended good to be done in doing so but due process dictates the cold neutrality of impartiality.** This means that "it is not enough…[that] cases [be decided] without bias and favoritism. Nor is it sufficient that…prepossessions [be rid of].

> [A]ctuations should moreover inspire that belief." These put into the equation, the furnishing of the Secomb article further marred the trust reposed in Chairman Barker. The suspicion of his partiality on the subject matter deepened. Specifically, his act established that he had pre-formed opinions.
>
> Chairman Barker's providing of copies of the said text is easily interpretable that he had prejudged the matter before him. In any case, the Secomb article tackled bases upon which the Second Partial Award was founded. **The subject article reflected in advance the disposition of the ICC arbitral tribunal.** The award can definitely be viewed as an affirmation that the bases in the Secomb article were adopted earlier on. To the Court, actuations of arbitrators, like the language of judges, "must be guarded and measured lest the best of intentions be misconstrued."
>
> x x x x[91] (Emphasis supplied)

We affirm the foregoing findings and conclusion of the appellate court save for its reference to the *obiter* in *Commonwealth Coatings* that arbitrators are held to the same standard of conduct imposed on judges. Instead, the Court adopts the *reasonable impression of partiality* standard, which requires a showing that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration. Such interest or bias, moreover, "must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative."[92] When a claim of arbitrator's evident partiality is made, "the court must ascertain from such record as is available whether the arbitrators' conduct was so biased and prejudiced as to destroy fundamental fairness."[93]

Applying the foregoing standard, we agree with the CA in finding that Chairman Barker's act of furnishing the parties with copies of Matthew Secomb's article, considering the attendant circumstances,is indicative of partiality such that a reasonable man would have to conclude that he was favoring the Claimant, RCBC. Even before the issuance of the Second Partial Award for the reimbursement of advance costs paid by RCBC, Chairman Barker exhibited strong inclination to grant such relief to RCBC, notwithstanding his categorical ruling that the Arbitration Tribunal "has no power *under the ICC Rules* to order the Respondents to pay the advance on

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91 *Rollo* (G.R. No. 196171),Vol. I, pp. 61-62.

92 *Tamari v. Bache Halsey Stuart, Inc.*, 619 F.2d 1196, 1200 (7th Cir. 1980).

93 *Catz American Co., Inc. v. Pearl Grange Fruit Exchange Inc.*, 292 F.Supp. 549, 551-552 (S.D.N.Y. 1968).

costs sought by the ICC or to give the Claimantany relief against the Respondents' refusal to pay."[94]That Chairman Barker was predisposed to grant relief to RCBC was shown by his act of interpreting RCBC's letter, which merely reiterated its plea to declare the Respondents in default and consider all counterclaims withdrawn – as what the ICC Rules provide -- as an application to the Arbitration Tribunal to issue a partial award in respect of BDO's failure to share in the advance costs. It must be noted that RCBC in said letter did not contemplate the issuance of a partial order, despite Chairman Barker's previous letter which mentioned the possibility of granting relief upon the parties making submissions to the Arbitration Tribunal. Expectedly, in compliance with Chairman Barker's December 18, 2007 letter, RCBC formally applied for the issuance of a partial award ordering BDO to pay its share in the advance costs.

Mr. Secomb's article, *"Awards and Orders Dealing With the Advance on Costs in ICC Arbitration: Theoretical Questions and Practical Problems"*[95] specifically dealt with the situation when one of the parties to international commercial arbitration refuses to pay its share on the advance on costs. After a brief discussion of the provisions of ICC Rules dealing with advance on costs, which did not provide for issuance of a partial award to compel payment by the defaulting party, the author stated:

> 4. As we can see, the Rules have certain mechanisms to deal with defaulting parties. Occasionally, however, parties have sought to use other methods to tackle the problem of a party refusing to pay its part of the advance on costs. These have included seeking an order or award from the arbitral tribunal condemning the defaulting party to pay its share of the advance on costs. Such applications are the subject of this article.[96]

By furnishing the parties with a copy of this article, Chairman Barker practically armed RCBC with supporting legal arguments under the "contractual approach" discussed by Secomb. True enough, RCBC in its Application for Reimbursement of Advance Costs Paid utilized said

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94 *Rollo* (G.R. No. 196171), Vol. I, p. 442. Italics supplied.
95 Id. at 628-639.Published in the International Court of Arbitration Bulletin, Vol. 14/No. 1- Spring 2003.
96 Id. at 629.

approach as it singularly focused on Article 30(3)[97] of the ICC Rules and fiercely argued that BDO was contractually bound to share in the advance costs fixed by the ICC.[98] But whether under the "contractual approach" or "provisional approach" (an application must be treated as an interim measure of protection under Article 23 [1] rather than enforcement of a contractual obligation), both treated in the Secomb article, RCBC succeeded in availing of a remedy which was not expressly allowed by the Rules but in practice has been resorted to by parties in international commercial arbitration proceedings. It may also be mentioned that the author, Matthew Secomb, is a member of the ICC Secretariat and the "Counsel in charge of the file", as in fact he signed some early communications on behalf of the ICC Secretariat pertaining to the advance costs fixed by the ICC.[99] This bolstered the impression that Chairman Barker was predisposed to grant relief to RCBC by issuing a partial award.

Indeed, fairness dictates that Chairman Barker refrainfrom suggesting to or directing RCBC towards a course of action to advance the latter's cause, by providing it with legal arguments contained in an article written by a lawyer who serves at the ICC Secretariat and was involved or had participation -- insofar as the actions or recommendations of the ICC -- in the case. Though done purportedly to assist both parties, Chairman Barker's act clearly violated Article 15 of the ICC Rules declaring that "[i]n all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case." Having pre-judged the matter in dispute, Chairman Barker had lost his objectivity in the issuance of the Second Partial Award.

In fine, we hold that the CA did not err in concluding that the article ultimately favored RCBC as it reflected in advance the disposition of the

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97 (3) The advance on costs fixed by the Court shall be payable in equal shares by the Claimant and the Respondent**.** Any provisional advance paid on the basis of Article 30(1) will be considered as a partial payment thereof. However, any party shall be free to pay the whole of the advance on costs in respect of the principal claim or the counterclaim should the other party fail to pay its share. When the Court has set separate advances on costs in accordance with Article 30(2), each of the parties shall pay the advance on costs corresponding to its claims.

98 *Rollo* (G.R. No. 196171), Vol. I, pp. 632-633.

99 Id. at 136-137, 145-146.

Arbitral Tribunal, as well as "signalled a preconceived course of action that the relief prayed for by RCBC will be granted." This conclusion is further confirmed by the Arbitral Tribunal's pronouncements in its Second Partial Award which not only adopted the "contractual approach" but even cited Secomb's article along with other references, thus:

> 6.1 It appears to the Tribunal that the issue posed by this application is essentially a contractual one. x x x
>
> x x x x
>
> 6.5 Matthew Secomb, considered these points in the article in 14 ICC Bulletin No. 1 (2003) which was sent to the parties. At Para. 19, the learned author quoted from an ICC Tribunal (Case No. 11330) as follows:
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> *"The Arbitral Tribunal concludes that the partiesin arbitrations conducted under the ICC Rules have a mutually binding obligation to pay the advance on costs as determined by the ICC Court, based on Article 30-3 ICC Rules which – by reference – forms part of the parties' agreement to arbitration under such Rules."*[100]

The Court, however, must clarify that the merits of the parties' arguments as to the propriety of the issuance of the Second Partial Award are not in issue here. Courts are generally without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators. A contrary rule would make an arbitration award the commencement, not the end, of litigation.[101] It is the finding of evident partiality which constitutes legal ground for vacating the Second Partial Award and not the Arbitration Tribunal's application of the ICC Rules adopting the "contractual approach" tackled in Secomb's article.

Alternative dispute resolution methods or ADRs – like arbitration, mediation, negotiation and conciliation – are encouraged by this Court. By enabling parties to resolve their disputes amicably, they provide solutions that are less time-consuming, less tedious, less confrontational, and more

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[100] Id. at 683-684.

[101] *National Power Corporation v. Alonzo-Legasto,* G.R. No. 148318, November 22, 2004, 443 SCRA 342, 359.

productive of goodwill and lasting relationship.[102] Institutionalization of ADR was envisioned as "an important means to achieve speedy and *impartial* justice and declog court dockets."[103] The most important feature of arbitration, and indeed, the key to its success, is the public's confidence and trust in the integrity of the process.[104] For this reason, the law authorizes vacating an arbitral award when there is evident partiality in the arbitrators.

Injunction Against Execution Of Arbitral Award

Before an injunctive writ can be issued, it is essential that the following requisites are present: (1) there must be a right *inesse* or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. The *onus probandi* is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.[105]

Rule 19.22 of the Special ADR Rules states:

> **Rule 19.22.** *Effect of appeal*.—The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it may deem just.

We find no reversible error or grave abuse of discretion in the CA's denial of the application for stay order or TRO upon its finding that BDO failed to establish the existence of a clear legal right to enjoin execution of the Final Award confirmed by the Makati City RTC, Branch 148, pending resolution of its appeal.It would be premature to address on the merits the issues raised by BDO in the present petition considering that the CA still has

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102 *Insular Savings Bank v. Far East Bank and Trust Company*, G.R. No. 141818, June 22, 2006, 492 SCRA 145, 158, citing *LM Power Engineering Corp. v. Capitol Industrial Construction Groups, Inc*., 447 Phil. 705, 707 (2003).

103 Sec. 2, R.A. 9285.

104 Windsor, supra note 79 at 192.

105 *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, Ingeniurgesellschaft mbh*, G.R. No. 159586, July 26, 2004, 435 SCRA 246, 259, citing *Philippine Sinter Corporation v. Cagayan Electric Power and Light Co., Inc.*, G.R. No. 127371, April 25, 2002, 381 SCRA 582, 591 and *Gustilo v. Real, Sr*., A.M. No. MTJ-00-1250, February 28, 2001, 353 SCRA 1, 9.

to decide on the validity of said court's orders confirming the Final Award. But more important, since BDO had already paid ₱637,941,185.55 in manager's check, albeit under protest, and which payment was accepted by RCBC as full and complete satisfaction of the writ of execution, there is no more act to be enjoined.

Settled is the rule that injunctive reliefs are preservative remedies for the protection of substantive rights and interests. Injunction is not a cause of action in itself, but merely a provisional remedy, an adjunct to a main suit. When the act sought to be enjoined has become *fait accompli*, the prayer for provisional remedy should be denied.[106]

Thus, the Court ruled in *Go v. Looyuko*[107] that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so for the simple reason that nothing more can be done in reference thereto. A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.

WHEREFORE, premises considered, the petition in G.R. No. 199238 is **DENIED**. The Resolution dated September 13, 2011 of the Court of Appeals in CA-G.R. SP No. 120888 is **AFFIRMED**.

The petition in G.R. No. 196171 is **DENIED.** The Decision dated December 23, 2010 of the Court of Appeals in CA-G.R. SP No. 113525 is hereby **AFFIRMED**.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

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[106] *Bernardez v. Commission on Elections*, G.R No. 190382, March 9, 2010, 614 SCRA 810, 820, citing *Caneland Sugar Corporation v. Alon*, G.R. No. 142896, September 12, 2007, 533 SCRA 28, 37.

[107] G.R. Nos. 147923, 147962, 154035, October 26, 2007, 537 SCRA 445, 479, as cited in *Bernardez v. Commission on Elections*, id.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice