



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE PROVINCE OF AKLAN,
Petitioner,

G.R. Nos. 197592 & 202623

Present:

LEONARDO-DE CASTRO,
Acting Chairperson,
PERALTA,*
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

**JODY KING CONSTRUCTION
AND DEVELOPMENT CORP.,**
Respondent.

Promulgated:

NOV 27 2013

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DECISION

VILLARAMA, JR., J.:

These consolidated petitions for review on certiorari seek to reverse and set aside the following: (1) Decision¹ dated October 18, 2010 and Resolution² dated July 5, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 111754; and (2) Decision³ dated August 31, 2011 and Resolution⁴ dated June 27, 2012 in CA-G.R. SP No. 114073.

The Facts

On January 12, 1998, the Province of Aklan (petitioner) and Jody King Construction and Development Corp. (respondent) entered into a contract for the design and construction of the Caticlan Jetty Port and Terminal (Phase I) in Malay, Aklan. The total project cost is ₱38,900,000: ₱18,700,000 for the design and construction of passenger terminal, and

* Designated additional member per Raffle dated November 13, 2013 vice Chief Justice Ma. Lourdes P. A. Sereno who recused herself from the cases in view of her inhibition in a related case.

¹ *Rollo* (G.R. No. 197592), pp. 289-298. Penned by Presiding Justice Andres B. Reyes, Jr. with Associate Justices Japar B. Dimaampao and Jane Aurora C. Lantion concurring.

² *Id.* at 343-348.

³ *Rollo* (G.R. No. 202623), pp. 183-200. Penned by Associate Justice Angelita A. Gacutan with Associate Justices Vicente S.E. Veloso and Francisco P. Acosta concurring.

⁴ *Id.* at 217-219.

₱20,200,000 for the design and construction of the jetty port facility.⁵ In the course of construction, petitioner issued variation/change orders for additional works. The scope of work under these change orders were agreed upon by petitioner and respondent.⁶

On January 5, 2001, petitioner entered into a negotiated contract with respondent for the construction of Passenger Terminal Building (Phase II) also at Caticlan Jetty Port in Malay, Aklan. The contract price for Phase II is ₱2,475,345.54.⁷

On October 22, 2001, respondent made a demand for the total amount of ₱22,419,112.96 covering the following items which petitioner allegedly failed to settle:

1. Unpaid accomplishments on additional works undertaken-----	Php 12,396,143.09
2. Refund of taxes levied despite it not being covered by original contract-----	Php 884,098.59
3. Price escalation (Consistent with Section 7.5, Original Contract)-----	Php 1,291,714.98
4. Additional Labor Cost resulting [from] numerous change orders issued sporadically--	Php 3,303,486.60
5. Additional Overhead Cost resulting [from] numerous Orders issued sporadically-----	Php 1,101,162.60
6. Interest resulting [from] payment delays consistent with Section 7.3.b of the Original Contract-----	Php 3,442,507.50. ⁸

On July 13, 2006, respondent sued petitioner in the Regional Trial Court (RTC) of Marikina City (Civil Case No. 06-1122-MK) to collect the aforesaid amounts.⁹ On August 17, 2006, the trial court issued a writ of preliminary attachment.¹⁰

Petitioner denied any unpaid balance and interest due to respondent. It asserted that the sums being claimed by respondent were not indicated in Change Order No. 3 as approved by the Office of Provincial Governor. Also cited was respondent's June 10, 2003 letter absolving petitioner from liability for any cost in connection with the Caticlan Passenger Terminal Project.¹¹

⁵ CA *rollo*, pp. 136-147.

⁶ *Rollo* (G.R. No. 197592), p. 58.

⁷ CA *rollo*, pp. 126-131.

⁸ Id. at 361-362.

⁹ Id. at 217-229.

¹⁰ *Rollo* (G.R. No. 197592), p. 56.

¹¹ Id. at 59-60.

After trial, the trial court rendered its Decision¹² on August 14, 2009, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of plaintiff Jody King Construction And Development Corporation and against defendant Province of Aklan, as follows:

1. ordering the defendant to pay to the plaintiff the amount of Php7,396,143.09 representing the unpaid accomplishment on additional works undertaken by the plaintiff;
2. ordering the defendant to refund to the plaintiff the amount of Php884,098.59 representing additional 2% tax levied upon against the plaintiff;
3. ordering the defendant to pay to the plaintiff price escalation in the amount of Php1,291,714.98 pursuant to Section 7.5 of the original contract;
4. ordering the defendant to pay to the plaintiff the amount of Php3,303,486.60 representing additional labor cost resulting from change orders issued by the defendant;
5. ordering the defendant to pay to the plaintiff the sum of Php1,101,162.00 overhead cost resulting from change orders issued by the defendant;
6. ordering the defendant to pay the sum of Php3,442,507.50 representing interest resulting from payment delays up to October 15, 2001 pursuant to Section 7.3.b of the original contract;
7. ordering the defendant to pay interest of 3% per month from unpaid claims as of October 16, 2001 to date of actual payment pursuant to Section 7.3.b[;]
8. ordering the [defendant] to pay to the plaintiff the sum of Php500,000.00 as moral damages;
9. ordering the defendant to pay to the plaintiff the sum of Php300,000.00 as exemplary damages;
10. ordering the defendant to pay the plaintiff the sum of Php200,000.00, as and for attorney's fees; and
11. ordering the defendant to pay the cost of suit.

SO ORDERED.¹³

Petitioner filed its motion for reconsideration¹⁴ on October 9, 2009 stating that it received a copy of the decision on September 25, 2009. In its

¹² Id. at 56-74. Penned by Judge Manuel S. Quimbo.

¹³ Id. at 73-74.

¹⁴ Id. at 75-103.

Order¹⁵ dated October 27, 2009, the trial court denied the motion for reconsideration upon verification from the records that as shown by the return card, copy of the decision was actually received by both Assistant Provincial Prosecutor Ronaldo B. Ingente and Atty. Lee T. Manares on September 23, 2009. Since petitioner only had until October 8, 2009 within which to file a motion for reconsideration, its motion filed on October 9, 2009 was filed one day after the finality of the decision. The trial court further noted that there was a deliberate attempt on both Atty. Manares and Prosecutor Ingente to mislead the court and make it appear that their motion for reconsideration was filed on time.

Petitioner filed a Manifestation¹⁶ reiterating the explanation set forth in its Rejoinder to respondent's comment/opposition and motion to dismiss that the wrong date of receipt of the decision stated in the motion for reconsideration was due to pure inadvertence attributable to the staff of petitioner's counsel. It stressed that there was no intention to mislead the trial court nor cause undue prejudice to the case, as in fact its counsel immediately corrected the error upon discovery by explaining the attendant circumstances in the Rejoinder dated October 29, 2009.

On November 24, 2009, the trial court issued a writ of execution ordering Sheriff IV Antonio E. Gamboa, Jr. to demand from petitioner the immediate payment of ₱67,027,378.34 and tender the same to the respondent. Consequently, Sheriff Gamboa served notices of garnishment on Land Bank of the Philippines, Philippine National Bank and Development Bank of the Philippines at their branches in Kalibo, Aklan for the satisfaction of the judgment debt from the funds deposited under the account of petitioner. Said banks, however, refused to give due course to the court order, citing the relevant provisions of statutes, circulars and jurisprudence on the determination of government monetary liabilities, their enforcement and satisfaction.¹⁷

Petitioner filed in the CA a petition for certiorari with application for temporary restraining order (TRO) and preliminary injunction assailing the Writ of Execution dated November 24, 2009, docketed as **CA-G.R. SP No. 111754**.

On December 7, 2009, the trial court denied petitioner's notice of appeal filed on December 1, 2009. Petitioner's motion for reconsideration of the December 7, 2009 Order was likewise denied.¹⁸ On May 20, 2010, petitioner filed another petition for certiorari in the CA questioning the aforesaid orders denying due course to its notice of appeal, docketed as **CA-G.R. SP No. 114073**.

¹⁵ Id. at 114-115.

¹⁶ CA *rollo*, pp. 100-103.

¹⁷ Id. at 120-121, 285-292.

¹⁸ *Rollo* (G.R. No. 197592), pp. 137-183, 197-199.

By Decision dated October 18, 2010, the CA's First Division dismissed the petition in CA-G.R. SP No. 111754 as it found no grave abuse of discretion in the lower court's issuance of the writ of execution. Petitioner filed a motion for reconsideration which was likewise denied by the CA. The CA stressed that even assuming as true the alleged errors committed by the trial court, these were insufficient for a ruling that grave abuse of discretion had been committed. On the matter of execution of the trial court's decision, the appellate court said that it was rendered moot by respondent's filing of a petition before the Commission on Audit (COA).

On August 31, 2011, the CA's Sixteenth Division rendered its Decision dismissing the petition in CA-G.R. SP No. 114073. The CA said that petitioner failed to provide valid justification for its failure to file a timely motion for reconsideration; counsel's explanation that he believed in good faith that the August 14, 2009 Decision of the trial court was received on September 25, 2009 because it was handed to him by his personnel only on that day is not a justifiable excuse that would warrant the relaxation of the rule on reglementary period of appeal. The CA also held that petitioner is estopped from invoking the doctrine of primary jurisdiction as it only raised the issue of COA's primary jurisdiction after its notice of appeal was denied and a writ of execution was issued against it.

The Cases

In G.R. No. 197592, petitioner submits the following issues:

I.

WHETHER OR NOT THE DECISION DATED 14 AUGUST 2009 RENDERED BY THE REGIONAL TRIAL COURT, BRANCH 273, MARIKINA CITY AND THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 SHOULD BE RENDERED VOID FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT, BRANCH 273, MARIKINA CITY GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RENDERING THE DECISION DATED 14 AUGUST 2009 AND ISSUING THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 EVEN IT FAILED TO DISPOSE ALL THE ISSUES OF THE CASE BY NOT RESOLVING PETITIONER'S "URGENT MOTION TO DISCHARGE EX-PARTE WRIT OF PRELIMINARY ATTACHMENT" DATED 31 AUGUST 2006.

III.

WHETHER OR NOT THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 WHICH WAS HASTILY ISSUED IN VIOLATION OF SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 10-2000 SHOULD BE RENDERED VOID.¹⁹

¹⁹ Id. at 484-485.

The petition in G.R. No. 202623 sets forth the following arguments:

Petitioner is not estopped in questioning the jurisdiction of the Regional Trial Court, Branch 273, Marikina City over the subject matter of the case.²⁰

The petition for certiorari filed before the CA due to the RTC's denial of petitioner's Notice of Appeal was in accord with jurisprudence.²¹

The Issues

The controversy boils down to the following issues: (1) the applicability of the doctrine of primary jurisdiction to this case; and (2) the propriety of the issuance of the writ of execution.

Our Ruling

The petitions are meritorious.

COA has primary jurisdiction over private respondent's money claims

Petitioner is not estopped from raising the issue of jurisdiction

The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction.²² It applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.²³

The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.²⁴

²⁰ *Rollo* (G.R. No. 202623), p. 16.

²¹ *Id.* at 21.

²² *Industrial Enterprises, Inc. v. Court of Appeals*, 263 Phil. 352, 358 (1990).

²³ *Id.*; *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, 527 Phil. 623, 626-627 (2006).

²⁴ *Fabia v. Court of Appeals*, 437 Phil. 389, 403 (2002).

As can be gleaned, respondent seeks to enforce a claim for sums of money allegedly owed by petitioner, a local government unit.

Under Commonwealth Act No. 327,²⁵ as amended by Section 26 of Presidential Decree No. 1445,²⁶ it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities.

Section 26. *General jurisdiction.* The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and **settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.** The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis supplied.)

Pursuant to its rule-making authority conferred by the 1987 Constitution²⁷ and existing laws, the COA promulgated the 2009 Revised Rules of Procedure of the Commission on Audit. Rule II, Section 1 specifically enumerated those matters falling under COA's exclusive jurisdiction, which include "[m]oney claims due from or owing to any government agency." Rule VIII, Section 1 further provides:

Section 1. *Original Jurisdiction* - The Commission Proper shall have original jurisdiction over: a) **money claim against the Government**; b) request for concurrence in the hiring of legal retainers by government agency; c) write off of unliquidated cash advances and dormant accounts receivable in amounts exceeding one million pesos (₱1,000,000.00); d) request for relief from accountability for loses due to acts of man, i.e. theft, robbery, arson, etc, in amounts in excess of Five Million pesos (P5,000,000.00).

In *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*,²⁸ we ruled that it is the COA and not the RTC which has primary jurisdiction to pass upon petitioner's money claim against respondent local government unit. Such jurisdiction may not be waived by the parties' failure to argue the issue nor active participation in the proceedings. Thus:

²⁵ AN ACT FIXING THE TIME WITHIN WHICH THE AUDITOR GENERAL SHALL RENDER HIS DECISIONS AND PRESCRIBING THE MANNER OF APPEAL THEREFROM.

²⁶ ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

²⁷ Sec. 6, Art. IX-A.

²⁸ Supra note 23.

This case is one over which the doctrine of primary jurisdiction clearly held sway for although petitioner's collection suit for ₱487,662.80 was within the jurisdiction of the RTC, the circumstances surrounding petitioner's claim brought it clearly within the ambit of the COA's jurisdiction.

First, petitioner was seeking the enforcement of a claim for a certain amount of money against a local government unit. This brought the case within the COA's domain to pass upon money claims against the government or any subdivision thereof under Section 26 of the Government Auditing Code of the Philippines:

The authority and powers of the Commission [on Audit] shall extend to and comprehend all matters relating to x x x the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities. x x x.

The scope of the COA's authority to take cognizance of claims is circumscribed, however, by an unbroken line of cases holding statutes of similar import to mean only *liquidated* claims, or those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers. Petitioner's claim was for a fixed amount and although respondent took issue with the accuracy of petitioner's summation of its accountabilities, the amount thereof was readily determinable from the receipts, invoices and other documents. Thus, the claim was well within the COA's jurisdiction under the Government Auditing Code of the Philippines.

Second, petitioner's money claim was founded on a series of purchases for the medical supplies of respondent's public hospitals. Both parties agreed that these transactions were governed by the Local Government Code provisions on supply and property management and their implementing rules and regulations promulgated by the COA pursuant to Section 383 of said Code. Petitioner's claim therefore involved compliance with applicable auditing laws and rules on procurement. Such matters are not within the usual area of knowledge, experience and expertise of most judges but within the special competence of COA auditors and accountants. Thus, it was but proper, out of fidelity to the doctrine of primary jurisdiction, for the RTC to dismiss petitioner's complaint.

Petitioner argues, however, that respondent could no longer question the RTC's jurisdiction over the matter after it had filed its answer and participated in the subsequent proceedings. To this, we need only state that **the court may raise the issue of primary jurisdiction *sua sponte* and its invocation cannot be waived by the failure of the parties to argue it as the doctrine exists for the proper distribution of power between judicial and administrative bodies and not for the convenience of the parties.**²⁹ (Emphasis supplied.)

Respondent's collection suit being directed against a local government unit, such money claim should have been first brought to the COA.³⁰ Hence, the RTC should have suspended the proceedings and refer the filing

²⁹ Id. at 627-629.

³⁰ See *Department of Agriculture v. NLRC*, G.R. No. 104269, November 11, 1993, 227 SCRA 693, 700-701.

of the claim before the COA. Moreover, petitioner is not estopped from raising the issue of jurisdiction even after the denial of its notice of appeal and before the CA.

There are established exceptions to the doctrine of primary jurisdiction, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings.³¹ However, none of the foregoing circumstances is applicable in the present case.

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.³² All the proceedings of the court in violation of the doctrine and all orders and decisions rendered thereby are null and void.³³

***Writ of Execution issued in violation
of COA's primary jurisdiction is void***

Since a judgment rendered by a body or tribunal that has no jurisdiction over the subject matter of the case is no judgment at all, it cannot be the source of any right or the creator of any obligation.³⁴ All acts pursuant to it and all claims emanating from it have no legal effect and the void judgment can never be final and any writ of execution based on it is likewise void.³⁵

Clearly, the CA erred in ruling that the RTC committed no grave abuse of discretion when it ordered the execution of its judgment against petitioner and garnishment of the latter's funds.

In its Supplement to the Motion for Reconsideration, petitioner argued

³¹ *Rep. of the Phils. v. Lacap*, 546 Phil. 87, 97-98 (2007), citing *Rocamora v. RTC-Cebu (Br. VIII)*, 249 Phil. 571, 579 (1988); *Hon. Carale v. Hon. Abarintos*, 336 Phil. 126, 137 (1997); and *Castro v. Sec. Gloria*, 415 Phil. 645, 651-652 (2001).

³² *Heirs of Tantoco, Sr. v. Court of Appeals*, 523 Phil. 257, 284 (2006), citing *First Lepanto Ceramics, Inc. v. Court of Appeals*, G.R. No. 117680, February 9, 1996, 253 SCRA 552, 558; *Machete v. Court of Appeals*, 320 Phil. 227, 235 (1995); and *Vidad v. RTC of Negros Oriental, Br. 42*, G.R. Nos. 98084, 98922 & 100300-03, October 18, 1993, 227 SCRA 271, 276.

³³ See *Agra v. Commission on Audit*, G.R. No. 167807, December 6, 2011, 661 SCRA 563, 582.

³⁴ *Ga, Jr. v. Tubungan*, G.R. No. 182185, September 18, 2009, 600 SCRA 739, 746.

³⁵ *Id.*

that it is the COA and not the RTC which has original jurisdiction over money claim against government agencies and subdivisions. The CA, in denying petitioner's motion for reconsideration, simply stated that the issue had become moot by respondent's filing of the proper petition with the COA. However, respondent's belated compliance with the formal requirements of presenting its money claim before the COA did not cure the serious errors committed by the RTC in implementing its void decision. The RTC's orders implementing its judgment rendered without jurisdiction must be set aside because a void judgment can never be validly executed.

Finally, the RTC should have exercised utmost caution, prudence and judiciousness in issuing the writ of execution and notices of garnishment against petitioner. The RTC had no authority to direct the immediate withdrawal of any portion of the garnished funds from petitioner's depository banks.³⁶ Such act violated the express directives of this Court under Administrative Circular No. 10-2000,³⁷ which was issued "precisely in order to prevent the circumvention of Presidential Decree No. 1445, as well as of the rules and procedures of the COA."³⁸

WHEREFORE, both petitions in G.R. Nos. 197592 and 202623 are **GRANTED**. The Decision dated October 18, 2010 and Resolution dated July 5, 2011 of the Court of Appeals in CA-GR. SP No. 111754, and Decision dated August 31, 2011 and Resolution dated June 27, 2012 in CA-GR. SP No. 114073 are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 14, 2009, Writ of Execution and subsequent issuances implementing the said decision of the Regional Trial Court of Marikina City in Civil Case No. 06-1122-MK are all **SET ASIDE**.

No pronouncement as to costs.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

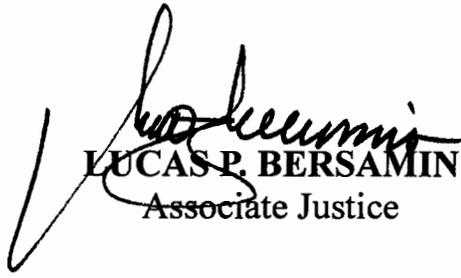
³⁶ See *University of the Philippines v. Hon. Agustin Dizon*, G.R. No. 171182, August 23, 2012, 679 SCRA 54, 80.

³⁷ EXERCISE OF UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN THE ISSUANCE OF WRITS OF EXECUTION TO SATISFY MONEY JUDGMENTS AGAINST GOVERNMENT AGENCIES AND LOCAL GOVERNMENT UNITS.

³⁸ *University of the Philippines v. Hon. Agustin Dizon*, supra note 36, at 81.



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest 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.



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Acting Chairperson's Attestation, 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