Supreme Court E-Library

Given that there is no basis for the issuance of the writ of *amparo*, the interim reliefs sought for are also denied. Moreover, we see no need to address the other issues raised by Callo in this petition, specifically, the condition of the Immigration Detention Facility and the treatment of Parker in said detention center. A petition for the writ of *amparo* is not the proper action to resolve such issues.

WHEREFORE, the petition is hereby **DENIED.**

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Martires, and *Reyes, Jr., JJ.,* concur.

Sereno, C.J., on official leave.

Perlas-Bernabe, Tijam, and *Gesmundo, JJ.,* on official business.

THIRD DIVISION

[G.R. No. 196072. September 20, 2017]

STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED, *petitioner, vs.* **SULPICIO LINES, INC.,** *respondent.*

[G.R. No. 208603. September 20, 2017]

SULPICIO LINES, INC., *petitioner, vs.* **STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED,** *respondent.*

Supreme Court E-Library

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ISSUES RAISED IN THE PRESENT PETITION ARE QUESTIONS OF LAW PROPERLY COGNIZABLE IN A RULE 45 PETITION.—** A Rule 45 petition is the proper remedy to reverse a decision or resolution of the Court of Appeals even if the error assigned is grave abuse of discretion in the findings of fact or of law. "The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal." x x x In this case, what Steamship seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors pertain to Steamship's allegations of the Court of Appeals' failure to rule that a valid arbitration agreement existed between the parties and to refer the case to arbitration. It does not impute error with respect to the Court of Appeals' exercise of jurisdiction. As such, the Petition is simply a continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45. The basic issues raised in the Petition for Review are: (1) whether or not an arbitration agreement may be validly incorporated by reference to a contract; and (2) how the trial court should proceed to trial upon its finding "that only some and not all of the defendants are bound by an arbitration agreement[.]" These are questions of law properly cognizable in a Rule 45 petition.

2. **ID.; ID.; CERTIFICATION AND VERIFICATION AGAINST FORUM SHOPPING; REQUIREMENTS THEREOF, EXPLAINED.—** "A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his [or her] personal knowledge or based on authentic records." On the other hand, a certification against forum shopping is a petitioner's statement "under oath that he [or she] has not . . . commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions, or any other tribunal or agency[.]" In this certification, the petitioner must state the status of any other action or proceeding, if there is any, and undertakes to report to the courts and other tribunal within five (5) days from learning of any similar action or proceeding. x x x In case the petitioner

Supreme Court E-Library

is a private corporation, the verification and certification may be signed, for and on behalf of this corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents.

3. ID.; ID.; ID.; THE CERTIFICATION AND VERIFICATION AGAINST FORUM SHOPPING SIGNED BY STEAMSHIP'S COUNSEL SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF THE RULES OF COURT.— [T]his Court holds that there is substantial compliance with the rules on verification and certification against forum shopping. Steamship's subsequent submission of the Secretary's Certificates showing Davis' authority to execute the Power of Attorney in favor of Del Rosario & Del Rosario cured the defect in the verification and certification appended to the petition. Under the circumstances of this case, Steamship's counsel would be in the best position to determine the truthfulness of the allegations in the petition and certify on non-forum shopping considering that "it has handled the case for . . . Steamship since its inception." This Court also considers Steamship's allegations that the same Power of Attorney was used in its Answer Ad Cautelam filed on August 12, 2008 before the Regional Trial Court and in its Petition for Certiorari before the Court of Appeals on November 12, 2008. Significantly, Sulpicio never questioned the authority of Del Rosario & Del Rosario to represent Steamship in the proceedings before the lower courts.

4. ID.; ID.; ID.; RATIONALE BEHIND THE RULES ON FORUM-SHOPPING.— The rules on forum-shopping are "designed . . . to promote and facilitate the orderly administration of justice." They are not to be interpreted with "absolute literalness" as to subvert the procedural rules' ultimate objective of achieving substantial justice as expeditiously as possible. These goals would not be circumvented by this Court's recognition of the authorized counsel's signature in the verification and certification of non-forum shopping.

5. CIVIL LAW; CIVIL CODE; CONTRACTS; FREEDOM OF CONTRACT PRINCIPLE, EXPLAINED AND APPLIED; EVERY REASONABLE INTERPRETATION IS INDULGED TO GIVE EFFECT TO ARBITRATION

Supreme Court E-Library

AGREEMENTS.— It is the State's policy to promote party autonomy in the mode of resolving disputes. Under the freedom of contract principle, parties to a contract may stipulate on a particular method of settling any conflict between them. Arbitration and other alternative dispute resolution methods like mediation, negotiation, and conciliation are favored over court action. x x x Arbitration, as a mode of settling disputes, was already recognized in the Civil Code. In 1953, Republic Act No. 876 was passed, which reinforced domestic arbitration as a process of dispute resolution. Foreign arbitration was likewise recognized through the Philippines' adherence to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, otherwise known as the New York Convention. Republic Act No. 9285 sets the basic principles in the enforcement of foreign arbitral awards in the Philippines. Consistent with State policy, "arbitration agreements are liberally construed in favor of proceeding to arbitration." Every reasonable interpretation is indulged to give effect to arbitration agreements. Thus, courts must give effect to the arbitration clause as much as the terms of the agreement would allow. "Any doubt should be resolved in favor of arbitration."

6. **ID.; ID.; ID.; THE SUBJECT CONTRACT IS MORE THAN A CONTRACT OF INSURANCE BETWEEN A MARINE INSURER AND SHIPOWNER; SULPICIO'S ACCEPTANCE OF THE CERTIFICATE OF ENTRY AND ACCEPTANCE OPERATED AS AN ACCEPTANCE OF THE ENTIRE PROVISIONS OF THE CLUB RULES ALTHOUGH EMBODIED IN DIFFERENT WRITINGS.—** The contract between Sulpicio and Steamship is more than a contract of insurance between a marine insurer and a shipowner. By entering its vessels in Steamship, Sulpicio not only obtains insurance coverage for its vessels but also becomes a member of Steamship. A protection and indemnity club, like Steamship, is an association composed of shipowners generally formed for the specific purpose of providing insurance cover against third-party liabilities of its members. x x x The Certificate of Entry and Acceptance plainly provides that the Class I protection and indemnity coverage would be to the extent specified and in accordance with the Act, the By-Laws, and the Rules of the Club in force at the time of the coverage. The "Notes" in the bottom portion of the Certificate states that these Rules "are

Supreme Court E-Library

printed annually in book form" and disseminated to all members. M/V Princess of the World was insured from February 20, 2005 to February 20, 2006. Hence, the 2005/2006 Club Rules apply. x x x Sulpicio's acceptance of the Certificate of Entry and Acceptance manifests its acquiescence to all its provisions. There is no showing in the records or in Sulpicio's contentions that it objected to any of the terms in this Certificate. Its acceptance, likewise, operated as an acceptance of the entire provisions of the Club Rules. When a contract is embodied in two (2) or more writings, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.

7. ID.; ID.; ID.; ID.; ID.; THE ARBITRATION AGREEMENT AS CONTAINED IN THE CLUB RULES IS VALID AND BINDING UPON THE PARTIES ALTHOUGH IT IS EMBODIED IN ANOTHER DOCUMENT NOT SIGNED BY THE PARTIES; CASE AT BAR.— In this case, by its act of entering its fleet of vessels to Steamship and accepting without objection the Certificate of Entry and Acceptance covering its vessels, Sulpicio manifests its consent to be bound by the Club Rules. The contract between Sulpicio and Steamship gives rise to reciprocal rights and obligations. Steamship undertakes to provide protection and indemnity cover to Sulpicio's fleet. On the other hand, Sulpicio, as a member, agrees to observe Steamship's rules and regulations, including its provisions on arbitration.

8. ID.; ID.; ID.; ID.; ID.; SULPICIO IS ESTOPPED FROM DENYING KNOWLEDGE OF THE PROVISION ON ARBITRATION.— The agreement to submit all disputes to arbitration is a long standing provision in the Club Rules. It was incumbent upon Sulpicio to familiarize itself with the Club Rules, under the presumption that a person takes due care of its concerns. Being a member of Steamship for 20 years, it has been bound by its Rules and has been expected to abide by them in good faith. x x x Sulpicio is estopped from denying knowledge of the Rulebook by its own acts and representations, as evidenced by its various letters to Steamship, showing its familiarity with the Rulebook and its provisions. "In estoppel, a person, who by his [or her] deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby

causes loss or injury to another." It further bars a party from denying or disproving a fact, which has become settled by its acts.

9. ID.; REPUBLIC ACT NO. (RA) 9285 OR THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (ADR LAW); MANDATES THAT THE DISPUTE SHALL BE REFERRED TO ARBITRATION; THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION TO REFER THE CASE TO ARBITRATION.— This Court finds that the Regional Trial Court acted in excess of its jurisdiction. Where a motion is filed in court for the referral of a dispute to arbitration, Section 24 of Republic Act No. 9285 ordains that the dispute shall be referred "to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed." Thus, the Regional Trial Court went beyond its authority of determining only the issue of whether or not there was a valid arbitration agreement between the parties when it denied Steamship's Motion to Dismiss and/or to Refer Case to Arbitration solely on the ground that it would not be the most prudent action under the circumstances of the case. The Regional Trial Court went against the express mandate of Republic Act No. 9285. Consequently, the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court in denying referral to arbitration.

10. ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT, NOT A CASE OF; STEAMSHIP'S INITIATION OF ARBITRATION PROCEEDINGS EVEN BEFORE THE TRIAL COURT HAD RULED ON THE MOTION TO DISMISS AND SUSPEND PROCEEDINGS DOES NOT CONSTITUTE CONTUMACIOUS CONDUCT THAT COULD WARRANT THE COURT'S EXERCISE OF CONTEMPT POWER.— Steamship's commencement of arbitration even before the Regional Trial Court had ruled on its motion to dismiss and suspend proceedings does not constitute an "improper conduct" that "impede[s], obstruct[s] or degrade[s] the administration of justice." x x x The court's contempt power should be exercised with restraint and for a preservative, and not a vindictive, purpose. "Only in cases of clear and contumacious refusal to obey should the power be exercised." x x x This Court finds no clear and contumacious conduct on

Supreme Court E-Library

the part of Steamship. It does not appear that Steamship was motivated by bad faith in initiating the arbitration proceedings. Rather, its act of commencing arbitration in London is but a bona fide attempt to preserve and enforce its rights under the Club Rules. There was no legal impediment at the time Steamship initiated London arbitration proceedings. Steamship commenced arbitration on July 31, 2007 even before the Regional Trial Court denied its Motion to Dismiss and/or Refer Case to Arbitration on July 11, 2008. There was no order from the Regional Trial Court enjoining Steamship from initiating arbitration proceedings in London. Besides, the 2009 Special ADR Rules specifically provided that arbitration proceedings may be commenced or continued and an award may be made, while the motion for the stay of civil action and for referral to arbitration is pending resolution by the court.

11. ID.; ID.; ID.; PETITION FOR INDIRECT CONTEMPT IS NOT THE PROPER REMEDY TO DETERMINE THE CLAIM FOR DAMAGES.— [T]his Court finds Sulpicio's claim for damages to be improperly raised. It should be addressed in an ordinary civil action. Its petition for indirect contempt is not the proper action to determine the validity of the set-off and to make a factual determination relating to the propriety of ordering restitution.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for Steamship Mutual.

Astorga & Repol Law Office for Seaboard-Eastern Insurance Co., Inc.

Medialdea Bello & Guevarra for Pioneer Insurance and Surety Corporation.

Roland B. Inting for Sulpicio Lines, Inc.

D E C I S I O N

LEONEN, *J.*:

An insured member may be compelled to arbitration pursuant to the Rules of the Protection and Indemnity Club, which were

Supreme Court E-Library

incorporated in the insurance policy by reference. Where there are multiple parties, the court must refer to arbitration the parties covered by the agreement while proceeding with the civil action against those who were not bound by the arbitration agreement.

G.R. No. 196072 is a Petition for Review[1] seeking to set aside the November 26, 2010 Decision[2] and March 10, 2011 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 106103.

G.R. No. 208603 is a Petition for Indirect Contempt[4] filed by Sulpicio Lines, Inc. (Sulpicio) against Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship). It prays, among others, that Steamship be (a) declared guilty of indirect contempt; (b) imposed a fine of ₱30,000.00; and (c) ordered to restitute to Sulpicio the amount of US$69,570.99 or its equivalent in Philippine currency plus interest, computed from December 3, 2012 until fully restituted.[5]

Steamship was a Bermuda-based Protection and Indemnity Club, managed outside London, England.[6] It insures its members-shipowners against "third party risks and liabilities" for claims arising from (a) death or injury to passengers; (b) loss or damage to cargoes; and (c) loss or damage from collisions.[7]

Sulpicio insured its fleet of inter-island vessels with Steamship for Protection & Indemnity risks through local insurance agents, Pioneer Insurance and Surety Corporation (Pioneer Insurance)

---

[1] *Rollo* (G.R. No. 196072), pp. 35–90.

[2] *Id*. at 93–108. The Decision was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 111–112. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Sixth Division, Court of Appeals, Manila.

[4] *Rollo* (G.R. No. 208603), pp. 3–12.

[5] *Id*. at 9.

[6] *Rollo* (G.R. No. 196072), pp. 93–94.

[7] *Id*. at 117.

Supreme Court E-Library

or Seaboard-Eastern Insurance Co., Inc. (Seaboard-Eastern).[8] One (1) of these vessels was the M/V Princess of the World, evidenced by a Certificate of Entry and Acceptance issued by Steamship, which provided:

CERTIFICATE OF ENTRY AND ACCEPTANCE

by the Club of your proposal for entering the ship(s) specified below, and of the tonnage set out against each, in:

Class 1 PROTECTION AND INDEMNITY
of the Club from
Noon 20th February 2005 to Noon 20th February 2006

---

or until sold, lost, withdrawn or the entry is terminated in accordance with the rules, to the extent specified and in accordance with the Act, By(e)-Laws and the Rules from time to time in force and the special terms specified overleaf.

Your name has been entered in the Register of Members of the Club as a Member.

FOR ACCOUNT OF Sulpicio Lines Inc., 1st Floor, Reclamation Area, P.O. Box No. 137 Cebu City, Philippines			CERTIFICATE NUMBER 155,534	
NAME OF SHIP	BUILT	ENTERED GROSS TONNAGE	CLASS	PORT OF REGISTRY
"PRINCESS OF THE OCEAN"	1975	Cebu City	B.V.	6,150

[8] *Id.*

Supreme Court E-Library

"PRINCESS OF THE UNIVERSE"	1983	Cebu City	B.V.	13,526
"PRINCESS OF THE CARIBBEAN"	1979	Cebu City	B.V.	3,768
"PRINCESS OF THE WORLD"	1972	Cebu City	B.V.	9,627
"PRINCESS OF THE STARS"	1984 (Rebuilt 1990)	Cebu City	X.X.	19,329
. . .	. . .			. . .

NOTES

1. REFERENCE IS REQUESTED TO THE RULES AS TO THE CIRCUMSTANCES OF ENTRY BEING CANCELLED AND AS TO THE CIRCUMSTANCES OF AN ALTERATION IN THE RULES OR BY(E)-LAWS.

2. THE RULES ARE PRINTED ANNUALLY IN BOOK FORM, INCORPORATING ALL PREVIOUS ALTERATIONS AND A COPY IS SENT TO EACH MEMBER. ALTERATIONS CAN BE MADE BY ORDINARY RESOLUTION FOLLOWING A GENERAL MEETING NOTIFIED TO ALL MEMBERS.[9]

On July 7, 2005, M/V Princess of the World was gutted by fire while on voyage from Iloilo to Zamboanga City, resulting in total loss of its cargoes. The fire incident was found by the Department of Interior and Local Government to be "accidental" in nature.[10]

Sulpicio claimed indemnity from Steamship under the Protection & Indemnity insurance policy. Steamship denied the claim and subsequently rescinded the insurance coverage of Sulpicio's other vessels on the ground that "Sulpicio was

---

[9] *Id*. at 130.

[10] *Id.* at 94.

Supreme Court E-Library

grossly negligent in conducting its business regarding safety, maintaining the seaworthiness of its vessels as well as proper training of its crew."[11]

On June 28, 2007, Sulpicio filed a Complaint[12] with the Regional Trial Court of Makati City against Steamship; one (1) of its directors, Gary Rynsard; and its local insurance agents Pioneer Insurance and Seaboard-Eastern for specific performance and damages. This Complaint was docketed as Civil Case No. 07-577, was amended on August 10, 2007,[13] and further amended on September 11, 2007.[14]

Steamship filed its Motion to Dismiss and/or to Refer Case to Arbitration[15] pursuant to Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law), and to Rule 47[16] of the 2005/2006 Club Rules, which supposedly

---

[11] *Id*.

[12] *Id*. at 116–128.

[13] *Id.* at 561–574.

[14] *Id*. at 95–97.

[15] *Id*. at 529–541.

[16] *Id*. at 542 and 1592. Rule 47 of the 2005/2006 Club Rules provides:

47 Dispute resolution, Adjudication

i. In the event of any difference or dispute whatsoever, between or affecting a Member and the Club and concerning the insurance afforded by the Club under these rules or any amounts due from the Club to the Member or the Member to the Club, such difference or dispute shall in the first instance be referred to adjudication by the Directors. That adjudication shall be on the basis of documents and written submissions alone. Notwithstanding the terms of this Rule **47i**, the Managers shall be entitled to refer any difference or dispute to arbitration in accordance with sub-paragraph **ii** below without prior adjudication by the Directors.

ii. If the Member does not accept the decision of the Directors, or if the Managers, in their absolute discretion, so decide, the difference or dispute shall be referred to the arbitration of three arbitrators, one to be appointed by each of the parties and the third by the two arbitrators so chosen, in London. The submission to arbitration and all the proceedings therein shall be subject to the provisions of the English

Supreme Court E-Library

provided for arbitration in London of disputes between Steamship and its members.[17] The other defendants filed separate motions to dismiss.[18]

Arbitration Act, 1996 and the schedules thereto or any statutory modifications or re-enactment thereof.

iii. No Member shall be entitled to maintain any action, suit or other legal proceedings against the Club upon any such difference or dispute unless and until the same has been submitted to the Directors and they shall have given their decision thereon, or shall have made default for three months in so doing; and, if such decision be not accepted by the Member or such default be made, unless and until the difference or dispute shall have been referred to arbitration in the manner provided in this Rule, and the Award shall have been published; and then only for such sum as the Award may direct to be paid by the Club. And the sole obligation of the Club to the Member under these Rules or otherwise howsoever in respect of any disputed claim made by the Member shall be to pay such sum as may be directed by such an Award.

iv. In any event no request for adjudication by the Member shall be made to the Directors in respect of any difference or dispute between, or matter affecting, the Member and the Club more than two years from the date when that dispute, difference or matter arose unless, prior to the expiry of this limitation period, the Managers have agreed in writing to extend the same.

v. Nothing in this Rule **47** including paragraph **i**, or in any other Rule or otherwise shall preclude the Club from taking any legal action of whatsoever nature in any jurisdiction at its absolute discretion in order to pursue or enforce any of its rights whatsoever and howsoever arising including but not limited to:

   a. Recovering sums it considers to be due from the Member to the Club;

   b. Obtaining security for such sums; and/or

   c. Enforcement of its rights of lien whether arising by law or under these rules.

vi. These rules and any contract of insurance between the Club and the Member shall be governed by and construed in accordance with English law. (Emphasis in the original)

[17] *Id*. at 97–98.

[18] *Id*. at 98.

Supreme Court E-Library

Branch 149, Regional Trial Court, Makati City denied the motions to dismiss. In its July 11, 2008 Order,[19] denying Steamship's motion and supplemental motion to dismiss and citing[20] *European Resources and Technologies, Inc. v. Ingenieuburo Birkhann + Nolte, Ingeniurgesellschaft Gmbh,*[21] the Regional Trial Court held that "arbitration [did] not appear to be the most prudent action, . . . considering that the other defendants . . . ha[d] already filed their [respective] [a]nswers."[22] Steamship filed its Motion for Reconsideration,[23] but it was likewise denied in the Order[24] dated September 24, 2008.

Steamship assailed the trial court orders before the Court of Appeals through a Rule 65 Petition, docketed as CA-G.R. SP No. 106103.[25] The Court of Appeals dismissed the petition in its November 26, 2010 Decision.[26] It found no grave abuse of discretion on the part of the trial court in denying Steamship's Motion to Dismiss and/or to Refer Case to Arbitration[27] or any convincing evidence to show that a valid arbitration agreement existed between the parties.[28] Steamship's Motion for Reconsideration of this Decision was likewise denied in the Resolution[29] dated March 10, 2011.

On April 29, 2011, Steamship filed before this Court this Petition for Review, docketed as **G.R. No. 196072.** In compliance

---

[19] *Id*. at 300–302. The Order was issued by Presiding Judge Cesar O. Untalan.

[20] *Id*. at 301.

[21] 479 Phil. 114 (2004) [Per *J*. Ynares-Santiago, First Division].

[22] *Rollo* (G.R. No. 196072), p. 99.

[23] *Id*. at 304–320.

[24] *Id*. at 303. The Order was issued by Presiding Judge Cesar O. Untalan.

[25] *Id*. at 93.

[26] *Id*. at 93–108.

[27] *Id*. at 107.

[28] *Id.* at 105.

[29] *Id*. at 111–112.

Supreme Court E-Library

with this Court's June 13, 2011 Resolution,[30] Sulpicio filed its Comment[31] on August 31, 2011 and Steamship filed its Reply[32] on October 20, 2011.

On September 6, 2013, Sulpicio filed with this Court a Petition for Indirect Contempt[33] under Rule 71 of the Rules of Court against Steamship. This Petition was docketed as **G.R. No. 208603**.

Sulpicio alleges that sometime in September 2012, it settled its judgment liability of ₱4,121,600.00 in Civil Case No. CEB-24783, entitled *Verna Unabia v. Sulpicio Lines, Inc*.[34] However, the actual amount reimbursed by Steamship was not ₱4,121,600.00, equivalent to US$96,958.47, but only US$27,387.48.[35] Steamship deducted US$69,570.99, which allegedly represented Sulpicio's share in the arbitration costs for the arbitration in London of the dispute in Civil Case No. 07-577.[36]

Sulpicio accuses Steamship of indirect contempt for its "improper conduct tending directly, or indirectly, to impede, obstruct, or degrade the administration of justice"[37] consisting of the following acts:

(a) Without Sulpicio's knowledge or consent, Steamship initiated and "concluded" during the pendency of this case an alleged "arbitration proceeding" in London for the "Arbitrator" there to "resolve" the very dispute involved in this case;

(b) Without Sulpicio's knowledge or consent, Steamship proclaimed itself the "victor" entitled to arbitration costs from Sulpicio;

---

[30] *Id*. at 2161.

[31] *Id*. at 2169–2198.

[32] *Id*. at 2212–2233.

[33] *Rollo* (G.R. No. 208603), pp. 3–12.

[34] *Id*. at 6.

[35] *Id*.

[36] *Id.* at 6–7.

[37] *Id*. at 4.

Supreme Court E-Library

(c) Without Sulpicio's knowledge or consent, Steamship unceremoniously deducted from the refund due to Sulpicio in the separate "Unabia Case" the huge amount of **U.S.$69,570.99** despite the fact that: (a) Said "Unabia Case" is unrelated to the instant case; (b) The propriety of a London arbitration is still to be resolved in this case by this Honorable Court; (c) Steamship "enforced" by itself said "arbitration costs" against Sulpicio without the courtesy of even informing this Honorable Court about it[; and]

(d) Without Sulpicio's knowledge or consent, and more importantly, without the prior approval of this Honorable Court, Steamship initiated and "concluded" said London "arbitration" during the pendency of this G.R. No. 196072 and **before** this Honorable Court could render its ruling or decision.[38] (Emphasis in the original)

Steamship filed its Comment/Opposition[39] on January 30, 2014, to which Sulpicio filed its Reply[40] on July 2, 2014.

In its Resolution[41] dated January 15, 2014, this Court resolved to consolidate G.R. Nos. 208603 and 196072.

The issues for this Court's resolution are:

First, whether or not the petition in G.R. No. 196072 is proper under the Rules of Court;

Second, whether or not there is a valid and binding arbitration agreement between Steamship Mutual Underwriting (Bermuda) Limited and Sulpicio Lines, Inc.;

Third, whether or not the Court of Appeals gravely erred in affirming the Regional Trial Court Order denying referral of Sulpicio Lines, Inc.'s complaint to arbitration in London in accordance with the 2005/2006 Club Rules; and

Finally, whether or not Steamship Mutual Underwriting (Bermuda) Limited is guilty of indirect contempt.

---

[38] *Id*. at 8.

[39] *Id.* at 42–61.

[40] *Id.* at 363–373.

[41] *Id*. at 186.

Supreme Court E-Library

This Court addresses first the procedural issue raised by Sulpicio.

I.A

Sulpicio contends that Steamship's Petition for Review should be dismissed outright on procedural grounds.[42]

First, this Petition, couched as a Rule 45 Petition, is actually a Rule 65 Petition because it contained arguments dealing with "grave abuse of discretion" allegedly committed by the Court of Appeals.[43]

Second, the Petition's Verification and Certification Against Forum Shopping is defective because it was signed and executed by Steamship's lawyer. Additionally, the Power of Attorney appended to the Petition did not indicate its signatory's name and authority.[44]

Third, the issue of whether or not Sulpicio has been furnished with the Club's Rulebook, which contained the arbitration clause, is factual and beyond the realm of a Rule 45 petition.[45]

In its Reply, Steamship avers that its counsel's law firm was duly authorized to sign its Verification and Certification against Forum Shopping. Moreover, Sulpicio never assailed this law firm's authority to represent Steamship before the Regional Trial Court, and therefore, is estopped to deny its authority before this Court.[46] Together with its Reply, Steamship submitted a copy of the Secretary's Certificate[47] to the July 24, 2007 Board of Directors' resolution authorizing Scott Davis (Davis) or his Assistant Secretaries to sign a Power of Attorney on behalf of

---

[42] *Rollo* (G.R. No. 196072), p. 2183.

[43] *Id*. at 2182–2183.

[44] *Id.* at 2169–2171.

[45] *Id*. at 2173.

[46] *Id.* at 2215–2216.

[47] *Id*. at 2234–2236.

Supreme Court E-Library

Steamship. It also appended a Secretary's Certificate[48] to the July 26, 2011 Board of Directors' resolution re-appointing Davis and John Charles Ross Collis[49] to their current positions as Secretary and Assistant Secretary, respectively.

Steamship further contends that the basic issues raised in the petition are questions of law that are cognizable by this Court.[50] It adds that a reversal of some factual findings is warranted because the Court of Appeals committed a grave abuse of discretion in concluding that Sulpicio was ignorant of the 2005/2006 Club Rules and its arbitration clause, when Steamship had presented ample evidence to establish otherwise.[51] Steamship submits that this Court may exercise its power of review to reverse errors committed by the lower courts including grave abuse of discretion of the Court of Appeals.[52]

This Court finds for Steamship.

The appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65.[53] Rule 45, Section 1 is clear that:

> Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

A Rule 45 petition is the proper remedy to reverse a decision or resolution of the Court of Appeals even if the error assigned

---

[48] *Id.* at 2237–2239.

[49] The Secretary's Certificate refers to "J.C.R. Collis" whose full name is found in *rollo* (G.R. No. 196072), p. 2242.

[50] *Rollo*, pp. 2218–2220.

[51] *Id*. at 2219.

[52] *Id.* at 2219–2220.

[53] *Office of the Ombudsman v. Court of Appeals*, 493 Phil. 63, 74 (2005) [Per *J*. Chico-Nazario, Second Division].

Supreme Court E-Library

is grave abuse of discretion in the findings of fact or of law. "The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal."[54]

Allegations in the petition of grave abuse of discretion on the part of the Court of Appeals do not *ipso facto* render the intended remedy that of *certiorari* under Rule 65 of the Rules of Court. In *Microsoft Corporation v. Best Deal Computer Center Corporation,*[55] this Court discussed the distinction between a Petition for Certiorari under Rule 65 and a Petition for Review on Certiorari under Rule 45:

> Significantly, even assuming that the orders were erroneous, such error would merely be deemed as an error of judgment that cannot be remedied by certiorari. As long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal. The distinction is clear: A petition for certiorari seeks to correct errors of jurisdiction while a petition for review seeks to correct errors of judgment committed by the court. Errors of judgment include errors of procedure or mistakes in the court's findings. Where a court has jurisdiction over the person and subject matter, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of such jurisdiction are merely errors of judgment. Certiorari under Rule 65 is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[56] (Citations omitted)

In this case, what Steamship seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors

---

[54] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission,* 716 Phil. 500, 513 (2013) [Per *J.* Leonardo-de Castro, First Division] citing *Bugarin v. Palisoc,* 513 Phil. 59 (2005) [Per *J.* Quisumbing, First Division]; *Mercado v. Court of Appeals,* 245 Phil. 49 (1988) [Per *J.* Narvasa, First Division].

[55] 438 Phil. 408 (2002) [Per *J.* Bellosillo, Second Division].

[56] *Id*. at 415.

Supreme Court E-Library

pertain to Steamship's allegations of the Court of Appeals' failure to rule that a valid arbitration agreement existed between the parties and to refer the case to arbitration. It does not impute any error with respect to the Court of Appeals' exercise of jurisdiction. As such, the Petition is simply a continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45.

The basic issues raised in the Petition for Review are: (1) whether or not an arbitration agreement may be validly incorporated by reference to a contract; and (2) how the trial court should proceed to trial upon its finding "that only some and not all of the defendants are bound by an arbitration agreement[.]"[57] These are questions of law properly cognizable in a Rule 45 petition.

In *BCDA v. DMCI Project Developers, Inc.*,[58] citing *Villamor v. Balmores*[59]:

> [T]here is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented.[60]

Sulpicio denies being bound by the arbitration clause in the Club Rules since neither the Certificate of Entry and Acceptance,

---

[57] *Rollo* (G.R. No. 196072), p. 2218.

[58] G.R. Nos. 173137 & 173170, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/173137.pdf> [Per *J.* Leonen, Second Division].

[59] G.R. No. 172843, September 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/172843.pdf> [Per *J.* Leonen, Second Division].

[60] *Id*. at 8.

Supreme Court E-Library

which covers M/V Princess of the World, mentioned this arbitration agreement, nor was it given a copy of the Club Rulebook.

In sustaining the denial of Steamship's Motion to Dismiss and/or to Refer Case to Arbitration, the Court of Appeals ruled:

> Unfortunately, the Court is not convinced that a valid and binding arbitration agreement exists between the Steamship and Sulpicio. And even assuming that there is such an agreement, it does not comply with Section 4 of the Arbitration Law which provides that "a contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy shall be in writing and subscribed by the party sought to be charged, or by his lawful agent."
>
> *As correctly pointed out by Sulpicio, there is no proof that it was served a copy of the Club Rules in question and that it signed therein.*[61] (Emphasis supplied)

A factual question on whether or not Sulpicio was given a copy of the Club Rulebook must be resolved because it has a bearing on the legal issue of whether or not a binding arbitration agreement existed between the parties. Factual review, nonetheless, may be justified: (1) when there is a grave abuse of discretion in the appreciation of facts;[62] (2) when the judgment of the Court of Appeals is premised on a misapprehension of facts;[63] and (3) when the Court of Appeals' findings of fact are premised on the absence of evidence but such findings are contradicted by the evidence on record.[64]

---

[61] *Rollo* (G.R. No. 196072), p. 105.

[62] *Microsoft Corp. v. Farajallah,* 742 Phil. 775, 785 (2014) [Per Acting *C.J.* Carpio, Second Division].

[63] *Chan v. Maceda,* 450 Phil. 416–431 (2003) [Per *J.* Sandoval-Gutierrez, Third Division]; *Verendia v. Court of Appeals,* 291 Phil. 439–448 (1993) [Per *J.* Melo, Third Division].

[64] *Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11–36 (2004) [Per *J.* Austria-Martinez, Second Division].

Supreme Court E-Library

Here, this Court finds grave abuse of discretion by the Court of Appeals in its appreciation of facts. As will be discussed later, the evidence on record shows that Sulpicio was furnished a copy of the Club Rulebook and was aware of its provisions. Other pieces of evidence were Sulpicio's letters[65] to Steamship and the affidavits of Director and Head of Underwriting of the Club and In-Charge of Far East membership including the Philippines, Jonathan Andrews;[66] Vice-President of Pioneer Insurance who was in charge of Sulpicio's account, Roderick Gil Narvacan;[67] and Manager of Seaboard-Eastern's Marine Department who was in charge of Sulpicio's account, Elmer Felipe.[68]

I.B

The Verification and Certification against Forum Shopping signed by Steamship's counsel substantially complied with the requirements of the Rules of Court.

Under Rule 45 of the Rules of Court, a petition for review must be verified[69] and must contain a sworn certification against forum shopping.[70]

"A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his [or her] personal knowledge or based on authentic records."[71]

On the other hand, a certification against forum shopping is a petitioner's statement "under oath that he [or she] has not . . . commenced any other action involving the same issues in

---

[65] *Rollo* (G.R. No. 196072), pp. 863–865; 923–932; 937–940.

[66] *Id*. at 797–807.

[67] *Id*. at 914–915.

[68] *Id*. at 933–935.

[69] RULES OF COURT, Rule 45, Sec. 1.

[70] RULES OF COURT, Rule 45, Sec. 4(e).

[71] RULES OF COURT, Rule 7, Sec. 4.

Supreme Court E-Library

the Supreme Court, the Court of Appeals or different divisions, or any other tribunal or agency[.]"[72] In this certification, the petitioner must state the status of any other action or proceeding, if there is any, and undertakes to report to the courts and other tribunal within five (5) days from learning of any similar action or proceeding.[73]

Failure to comply with the foregoing mandates constitutes a sufficient ground for the denial of the petition.[74]

In case the petitioner is a private corporation, the verification and certification may be signed, for and on behalf of this corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents.[75] The reason is that:

> A corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and, except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

---

[72] RULES OF COURT, Rule 42, Sec. 2.

[73] RULES OF COURT, Rule 42, Sec. 2.

[74] RULES OF COURT, Rule 45, Sec. 5.

[75] *BA Savings Bank v. Sia,* 391 Phil. 370, 377–378 (2000) [Per *J.* Panganiban, Third Division]; *Ty-de Zuzuarregui v. Villarosa,* 631 Phil. 375, 384 (2010) [Per *J.* Villarama, Jr., First Division].

Supreme Court E-Library

. . . . . .

For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein.[76]

In this case, Steamship's Petition's Verification and Certification against forum shopping was signed by its counsel. A Power of Attorney[77] dated August 1, 2007 was appended to the Petition, which purportedly authorized "Atty. Charles Jay D. Dela Cruz or any of the partners of Del Rosario & Del Rosario . . . to sign the verification or certification"[78] against forum shopping of petitions and appeals in appellate courts necessary in representing and defending Steamship. It was notarized, apostilled in accordance with the law of Bermuda and authenticated by the Philippine consulate in London, United Kingdom. However, a closer look into the Power of Attorney reveals that the signatory of the document was not identified. This was pointed out by Sulpicio in its Comment.[79]

Nonetheless, Steamship subsequently filed its Reply,[80] to which it attached two (2) Secretary's Certificates[81] signed by Davis containing excerpts of the July 24, 2007 and July 26, 2011 board resolutions showing Davis' authority to execute the Power of Attorney on its behalf, and Davis' reappointment as Corporate Secretary, respectively. The signature in the Power of Attorney was similar in form and appearance to Davis' signature in the Secretary's Certificates, which lends credence to Steamship's submission that the Power of Attorney was executed and signed by Davis.[82]

---

[76] *BA Savings Bank v. Sia,* 391 Phil. 370, 377–378 (2000) [Per *J.* Panganiban, Third Division].

[77] *Rollo* (G.R. No. 196072), pp. 83–87.

[78] *Id*. at 87.

[79] *Id*. at 2169–2170.

[80] *Id*. at 2212–2233.

[81] *Id*. at 2236 & 2239.

[82] *Id.* at 2215.

Supreme Court E-Library

The rule on verification of a pleading is a formal, not jurisdictional, requirement.[83] This Court has held that:

> Non-compliance with the verification requirement does not necessarily render the pleading fatally defective, and is substantially complied with when signed by one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true and correct.[84] (Citation omitted)

On the other hand, a certification not signed by a duly authorized person renders the petition subject to dismissal.[85] Moreover, the lack of or defect in the certification is not generally curable by its subsequent submission or correction.[86] However, there are cases where this Court exercised leniency due to the presence of special circumstances or compelling reasons, such as the *prima facie* merits of the petition.[87] In some cases, the subsequent submission of proof of authority of the party signing the certification on behalf of the corporation was considered as substantial compliance with the rules and the petition was given due course.[88]

---

[83] *Uy v. Land Bank of the Phils.,* 391 Phil. 303, 312 (2000) [Per *J.* Kapunan, First Division].

[84] *Spouses Lim v. Court of Appeals,* 702 Phil. 634, 642–643 (2013) [Per *J.* Brion, Second Division].

[85] *Gonzales v. Climax Mining Ltd.,* 492 Phil. 682, 691 (2005) [Per *J.* Tinga, Second Division]; *BPI Leasing Corporation v. Court of Appeals,* 461 Phil. 451, 457 (2003) [Per *J.* Azcuna, First Division].

[86] *Uy v. Court of Appeals,* 769 Phil. 705, 716–717 (2015) [Per *J.* Jardeleza, Third Division].

[87] *Id*. citing *Far Eastern Shipping Company v. Court of Appeals*, 357 Phil. 703 (1998) [Per *J.* Regalado, *En Banc*], *Sy Chin v. Court of Appeals*,399 Phil. 442 (2000) [Per *J.* Kapunan, First Division], *LDP Marketing, Inc. v. Monter,* 515 Phil. 768 (2006) [Per *J.* Carpio Morales, Third Division]; *Uy v. Land Bank of the Phils.,* 391 Phil. 303 (2000) [Per *J.* Kapunan, First Division].

[88] *Pascual and Santos, Inc. v. The Members of the Tramo Wakas Neighborhood Association, Inc.,* 485 Phil. 113, 122 (2004) [Per *J.* Carpio Morales, Third Division] citing *Novelty Philippines, Inc. v. Court of Appeals*,

Supreme Court E-Library

In *Shipside Incorporated v. Court of Appeals*,[89] this Court held:

> Moreover, in *Loyola*, *Roadway*, and *Uy*, the Court excused non-compliance with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight.[90]

Likewise, this Court holds that there is substantial compliance with the rules on verification and certification against forum shopping. Steamship's subsequent submission of the Secretary's Certificates showing Davis' authority to execute the Power of Attorney in favor of Del Rosario & Del Rosario cured the defect in the verification and certification appended to the petition. Under the circumstances of this case, Steamship's counsel would be in the best position to determine the truthfulness of the allegations in the petition and certify on non-forum shopping considering that "it has handled the case for . . . Steamship since its inception."[91] This Court also considers Steamship's allegations that the same Power of Attorney was used in its Answer Ad Cautelam filed on August 12, 2008 before the Regional Trial Court and in its Petition for Certiorari before the Court of Appeals on November 12, 2008. Significantly, Sulpicio never questioned the authority of Del Rosario & Del Rosario to represent Steamship in the proceedings before the lower courts.[92]

---

458 Phil. 36 (2003) [Per *J*. Panganiban, Third Division], *National Steel Corporation v. Court of Appeals,* 436 Phil. 656 (2002) [Per *J*. Austria-Martinez, First Division], *BA Savings Bank v. Sia,* 391 Phil. 370 (2000) [Per *J*. Panganiban, Third Division].

[89] 404 Phil. 981 (2001) [Per *J*. Melo, Third Division].

[90] *Id*. at 996.

[91] *Rollo* (G.R. No. 196072), p. 2215.

[92] *Id*. at 2216.

Supreme Court E-Library

The rules on forum-shopping are "designed . . . to promote and facilitate the orderly administration of justice." They are not to be interpreted with "absolute literalness" as to subvert the procedural rules' ultimate objective of achieving substantial justice as expeditiously as possible.[93] These goals would not be circumvented by this Court's recognition of the authorized counsel's signature in the verification and certification of non-forum shopping.

This Court now proceeds to the substantive issues of whether or not there was a valid arbitration agreement between the parties and whether or not referral to arbitration was imperative.

II

Steamship contends that the arbitration agreement set forth in its Club Rules, which in turn is incorporated by reference in the Certificate of Entry and Acceptance of M/V Princess of the World,[94] is valid and binding upon Sulpicio,[95] pursuant to this Court's ruling in *BF Corporation v. Court of Appeals*.[96]

Steamship further avers that the Court of Appeals' finding that there was no proof that Sulpicio was given a copy of the Club Rules was incorrect and contradicted by the evidence on record.[97] Steamship adds that by Sulpicio's own declarations in its letter-application[98] for membership of its vessels, Sulpicio acknowledged that it had received a copy of the Club Rules and that its membership in Steamship is subject to them.[99] It contends that Sulpicio was "provided with copies of the Club's

---

[93] *National Steel Corporation v. Court of Appeals,* 436 Phil. 656, 667 (2002) [Per *J*. Austria-Martinez, First Division].

[94] *Rollo* (G.R. No. 196072), pp. 51–54.

[95] *Id*. at 48–51.

[96] 351 Phil. 507 (1998) [Per *J*. Romero, Third Division].

[97] *Rollo* (G.R. No. 196072), pp. 67–68.

[98] *Id*. at 789–793.

[99] *Id*. at 54–55.

Supreme Court E-Library

Rule books on an annual basis by Pioneer Insurance and Seaboard-Eastern who acted as brokers [for Sulpicio's] entry."[100] Moreover, throughout Sulpicio's almost 20 years of membership,[101] it has been aware of, and relied upon, the terms of the Club Rules, as revealed in its various correspondences through its brokers with Steamship.[102] Thus, Sulpicio is estopped to deny that it was aware of, and agreed to be bound by, the Club Rules and their provisions.[103]

Steamship argues that a referral of the case to arbitration is imperative pursuant to the mandates of Republic Act No. 9285 or the ADR Law.[104] It adds that the trial court's reliance on the ruling in *European Resources and Technologies, Inc. v. Ingenieuburo Birkhann + Nolte, Ingeniurgesellschaft Gmbh*[105] was misplaced. That case was decided on the basis of Republic Act 876 or the Old Arbitration Law, which did not provide for instances where some of the multiple impleaded parties were not covered by an arbitration agreement.[106] It adds that now, Section 25 of the ADR Law specifically provides that "the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement."[107] Even from a procedural standpoint, Steamship contends that the claim against it may be separated from Pioneer Insurance and Seaboard-Eastern as these local insurance companies were impleaded as solidary obligors/debtors.[108]

---

[100] *Id*. at 59.

[101] *Id*. at 56.

[102] *Id*. at 59–60, 62–66.

[103] *Id*. at 56.

[104] *Id*. at 70–71.

[105] 479 Phil. 114 (2004) [Per *J*. Ynares-Santiago, First Division].

[106] *Rollo* (G.R. No. 196072), pp. 72–73.

[107] *Id*. at 74.

[108] *Id*. at 77–78.

Steamship further submits that "a Philippine court is an inconvenient forum to thresh out the issues involved in Sulpicio's claim."[109] First, Sulpicio's claim is governed by the English Law, as expressly stated in the 2005/2006 Club Rules.[110] Second, a Philippine court would be "an ineffective venue" to enforce any judgment that may be obtained against Steamship, a foreign corporation.[111] Thus, on the basis of the doctrine of *forum non conveniens* alone, Steamship contends that the claim against it should be referred to arbitration in London.[112]

Finally, Steamship holds that "Sulpicio should participate in the London Arbitration as [it] is already progressing . . . [i]nstead of wasting its time on prosecuting its claim before a Philippine court that is devoid of jurisdiction[.]"[113]

Sulpicio counters that the Court of Appeals was correct in ruling that there was no arbitration agreement between the parties.[114] The arbitration clause in the 2005/2006 Club Rules is not valid and binding for failure to comply with Section 4 of the ADR Law, which requires that an arbitration agreement be in writing and subscribed by the parties or their lawful agent.[115] Sulpicio adds that "[i]n *White Gold Marine Services, Inc. vs. Pioneer Insurance and Surety Corporation, . . .* Steamship did not invoke arbitration but filed suit before a Philippine court, which . . . proves that [the 2005/2006 Club Rules' arbitration clause] is neither mandatory nor binding" upon the parties.[116]

---

[109] *Id*. at 80.

[110] *Id*. at 78.

[111] *Id.* at 80.

[112] *Id*.

[113] *Id*. It appears that Steamship had already initiated arbitration proceedings in London per its letter dated July 31, 2007 to Sulpicio, which gave notice of its appointment of an arbitrator and for Sulpicio to appoint its own arbitrator. (*rollo*, pp. 432–433).

[114] *Id*. at 2184–2185.

[115] *Id*. at 2173–2176.

[116] *Id*. at 2185.

Supreme Court E-Library

Sulpicio further contends that the Certificate of Entry and Acceptance did not provide for arbitration as a mode of dispute resolution, that the rules referred to was not particularly identified or described, and that it never received a copy of the Club Rules.[117]

Assuming there was a valid arbitration agreement between them, Sulpicio submits that the trial court correctly relied on the ruling in *European Resources* in denying the referral of the case to arbitration.[118] Arbitration in London would not be the "most prudent action" because the arbitral decision will not be binding on Pioneer Insurance and Seaboard-Eastern and it would result in a "split jurisdiction."[119] Sulpicio further contends that the exception laid down in *European Resources* still applies because the ADR Law was already in effect when the case was decided by this Court.[120]

In its Reply, Steamship maintains that there is a valid arbitration clause between them and that Sulpicio was well aware of its Club Rules. It adds that Sulpicio is merely feigning ignorance of the Club Rules to escape the obligatory nature of the arbitration agreement. Steamship further reiterates that Section 25 of the ADR Law is plain and clear that when there are multiple parties in an action, the court must "refer to arbitration those parties bound by the arbitration agreement and let the action remain as to those who are not bound."[121] "Moreover, as the relationship between . . . Steamship and . . . Sulpicio are governed by English Law[,] it may be more prudent to refer the dispute to arbitration in London under the doctrine of *forum non conveniens*."[122]

---

[117] *Id.* at 2186.

[118] *Id*. at 2189.

[119] *Id*. at 2193.

[120] *Id*. at 2193–2194.

[121] *Id*. at 2227–2228.

[122] *Id*. at 2228.

Supreme Court E-Library

Finally, Steamship avers that under Rule 47 of the 2005/2006 Club Rules, it has "the right to pursue legal action against a [m]ember before any jurisdiction at its sole discretion."[123] Even if there is no such provision, Steamship contends that it may waive its rights to compel arbitration in individual cases.[124] It adds that the waiver of such right in *White Gold* has no effect to this case because Sulpicio is not a party in that case.[125]

II.A

It is the State's policy to promote party autonomy in the mode of resolving disputes.[126] Under the freedom of contract principle, parties to a contract may stipulate on a particular method of settling any conflict between them.[127] Arbitration and other alternative dispute resolution methods like mediation, negotiation, and conciliation are favored over court action. Republic Act No. 9285[128] expresses this policy:

> Section 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. *Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets.* As such, the State shall provide means for the

---

[123] *Id*. at 2229.

[124] *Id*. at 2230.

[125] *Id*. at 2230.

[126] *Bases Conversion Development Authority v. DMCI Project Developers, Inc.,* G.R. Nos. 173137 & 173170, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/173137.pdf> 9 [Per *J.* Leonen, Second Division].

[127] *Chung Fu Industries (Philippines), Inc. v. Court of App*eals, 283 Phil. 474, 483 (1992) [Per *J.* Romero, Third Division] *citing* CIVIL CODE, Art. 1306.

[128] An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes, known as the Alternative Dispute Resolution Act of 2004.

Supreme Court E-Library

use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time. (Emphasis supplied)

Arbitration, as a mode of settling disputes, was already recognized in the Civil Code.[129] In 1953, Republic Act No. 876 was passed, which reinforced domestic arbitration as a process of dispute resolution. Foreign arbitration was likewise recognized through the Philippines' adherence to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, otherwise known as the New York Convention.[130] Republic Act No. 9285 sets the basic principles in the enforcement of foreign arbitral awards in the Philippines.[131]

Consistent with State policy, "arbitration agreements are liberally construed in favor of proceeding to arbitration."[132] Every reasonable interpretation is indulged to give effect to arbitration agreements. Thus, courts must give effect to the arbitration clause as much as the terms of the agreement would allow.[133] "Any doubt should be resolved in favor of arbitration."[134]

---

[129] CIVIL CODE, Title XIV, Chapter 2.

[130] See *National Union Fire Insurance Company of Pittsburg v. Stolt-Nielsen Philippines, Inc.*, 263 Phil. 634 (1990) [Per *J.* Melencio-Herrera, Second Division].

[131] Rep. Act No. 9285, Secs. 43 and 42, par. 1 and 2.

[132] *Bases Conversion Development Authority v. DMCI Project Developers, Inc.*, G.R. Nos. 173137 and 173170, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/173137.pdf> 9 [Per *J.* Leonen, Second Division].

[133] *Id*. at 10.

[134] *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.,* 447 Phil. 705, 714 (2003) [Per *J.* Panganiban, Third Division].

Supreme Court E-Library

II.B

Sulpicio contends that there was no valid arbitration agreement between them, and if there were, it was not aware of it.

This Court rules against Sulpicio's submission.

The contract between Sulpicio and Steamship is more than a contract of insurance between a marine insurer and a shipowner. By entering its vessels in Steamship, Sulpicio not only obtains insurance coverage for its vessels but also becomes a member of Steamship.

A protection and indemnity club, like Steamship, is an association composed of shipowners generally formed for the specific purpose of providing insurance cover against third-party liabilities of its members.[135] A protection and indemnity club is a mutual insurance association, described in *White Gold Marine Services, Inc. v. Pioneer Insurance and Surety Corp.*[136] as follows:

> [A] mutual insurance company is a cooperative enterprise where the members are both the insurer and insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion to their interest. Additionally, mutual insurance associations, or clubs, provide three types of coverage, namely, protection and indemnity, war risks, and defense costs.[137]

A shipowner wishing to enter its fleet of vessels to Steamship must fill in an application for entry form, which states:

> PLEASE ENTER IN THE ASSOCIATION, SUBJECT TO THE RULES, RECEIPT OF WHICH WE ACKNOWLEDGE, THE UNDERMENTIONED VESSEL(S).[138]

---

[135] *Hyopsung Maritime Co., Ltd. v. Court of Appeals*, 247-A Phil. 350, 351 (1988) [Per *J.* Sarmiento, Second Division].

[136] 502 Phil. 692 (2005) [Per *J.* Quisumbing, First Division].

[137] *Id*. at 699–700.

[138] *Rollo* (G.R. No. 196072), p. 809.

Supreme Court E-Library

The application form is signed by the shipowner or its authorized representative.

Steamship then issues a Certificate of Entry and Acceptance of the vessels, showing its acceptance of the entry. The Certificate of Entry and Acceptance for M/V Princess of the World states:

CERTIFICATE OF ENTRY AND ACCEPTANCE

by the Club of your proposal for entering the ship(s) specified below, and of the tonnage set out against each, in:

Class 1 PROTECTION AND INDEMNITY
of the Club from
Noon 20th February 2005 to Noon 20th February 2006

---

or until sold, lost, withdrawn or the entry is terminated in accordance with the rules, to the extent specified and in accordance with the Act, By(e)-Laws and the Rules from time to time in force and the special terms specified overleaf.

Your name has been entered in the Register of Members of the Club as a Member.

FOR ACCOUNT OF Sulpicio Lines Inc., 1st Floor, Reclamation Area, P.O. Box No. 137 Cebu City, Philippines			CERTIFICATE NUMBER 155,534	
NAME OF SHIP	BUILT	ENTERED GROSS TONNAGE	CLASS	PORT OF REGISTRY
"PRINCESS OF THE OCEAN"	1975	Cebu City	B.V.	6,150

Supreme Court E-Library

"PRINCESS OF THE UNIVERSE"	1983	Cebu City	B.V.	13,526
"PRINCESS OF THE CARIBBEAN"	1979	Cebu City	B.V.	3,768
"PRINCESS OF THE WORLD"	1972	Cebu City	B.V.	9,627
"PRINCESS OF THE STARS"	1984 (Rebuilt 1990)	Cebu City	X.X.	19,329
. . .	. . .			. . .

NOTES 1. REFERENCE IS REQUESTED TO THE RULES AS TO THE CIRCUMSTANCES OF ENTRY BEING CANCELLED AND AS TO THE CIRCUMSTANCES OF AN ALTERATION IN THE RULES OR BY(E)-LAWS.	2. THE RULES ARE PRINTED ANNUALLY IN BOOK FORM, INCORPORATING ALL PREVIOUS ALTERATIONS AND A COPY IS SENT TO EACH MEMBER. ALTERATIONS CAN BE MADE BY ORDINARY RESOLUTION FOLLOWING A GENERAL MEETING NOTIFIED TO ALL MEMBERS.[139]

Thus, a contract of insurance is perfected between the parties upon Steamship's issuance of the Certificate of Entry and Acceptance.

> [A] contract of insurance, like other contracts, must be assented to by both parties either in person or by their agents. So long as an application for insurance has not been either accepted or rejected, it is merely an offer or proposal to make a contract. The contract, to be binding from the date of application, must have been a completed contract, one that leaves nothing to be done, nothing to be completed, nothing to be passed upon, or determined, before it shall take effect.

---

[139] *Id*. at 130.

Supreme Court E-Library

There can be no contract of insurance unless the minds of the parties have met in agreement.[140]

Title VI, Section 49 of Presidential Decree No. 612[141] or the Insurance Code defines an insurance policy as "the written instrument in which a contract of insurance is set forth." Section 50 of this Code provides that the policy, which is required to be in printed form, "may contain blank spaces; and any word, phrase, clause, mark, sign, symbol, signature, number, or word necessary to complete the contract of insurance shall be written on the blank spaces." Any rider, clause, warranty, or endorsement attached and referred to in the policy by its descriptive title or name is considered part of this policy or contract of insurance and binds the insured.

Section 51 of the Insurance Code prescribes the information that must be stated in the policy, namely: the parties in the insurance contract, amount insured, premium, property or life insured, risks insured against, and period of insurance. However, there is nothing in the law that prohibits the parties from agreeing to other terms and conditions that would govern their relationship, in which case the general rules of the Civil Code regulating contracts will apply.[142]

The Certificate of Entry and Acceptance plainly provides that the Class 1 protection and indemnity coverage would be to the extent specified and in accordance with the Act, the By-Laws, and the Rules of the Club in force at the time of the coverage. The "Notes" in the bottom portion of the Certificate states that these Rules "are printed annually in book form" and disseminated to all members. M/V Princess of the World was insured from February 20, 2005 to February 20, 2006. Hence, the 2005/2006 Club Rules apply.

---

[140] *Perez v. Court of Appeals,* 380 Phil. 592, 600–601 (2000) [Per *J.* Ynares-Santiago, First Division].

[141] Several amendments to Presidential Decree No. 612 (1974) were consolidated and codified into a single Code by virtue of Presidential Decree No. 1460, to be known as the Insurance Code of 1978.

[142] CIVIL CODE, Art. 2011.

Supreme Court E-Library

Moreover, attached to the Certificate of Entry and Acceptance is a War Risk Extension clause and Bio-Chem clause, which refer to Rule 21 of the 2005/2006 Club Rules relating to war risk insurance.

WAR RISK EXTENSION

Cover excluded under Rule 21 is hereby reinstated subject to the terms set out in this Certificate of Entry and any Endorsement thereto, and to the following conditions.

. . . . . .

At any time or times before, or at the commencement of, or during the currency of any Policy Year of the Club, the Directors may in their discretion determine that any ports, places, countries, zones or areas (whether of land or sea) be excluded from the insurance provided by this [Protection and Indemnity] war risks cover. Save as otherwise provided by the Directors, this [Protection and Indemnity] war risks cover shall cease in respect of such ports, places, countries, zones or areas at midnight on the seventh day following the issue to the Members of notice of such determination in accordance with the terms of the cover provided pursuant to Rule 21 of the Club's Rules . . .

. . . . . .

Notwithstanding any other term or condition of this insurance, the Directors may in their discretion cancel this special cover giving 7 days' notice to the Members (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation is issued by the Club and the Directors may at any time after the issue of notice of such cancellation resolve to reinstate special cover pursuant to the proviso to the terms of the cover issued pursuant to Rule 21 on such terms and conditions and subject to such limit as the Directors in their discretion may determine.

When either a Demise, Time, Voyage, Space or Slot Charterer and/or the Owner of the Entered Ship are separately insured for losses, liabilities, or the costs and expenses incidental thereto covered under Rule 21 of the Club and/or the equivalent Rule of any other Association which participates in the Pooling Agreement and General Excess Loss Reinsurance Contract, the aggregate of claims in respect of such losses, liabilities, or the costs and expenses incidental thereto

Supreme Court E-Library

covered under Rule 21 of the Club and/or the equivalent Rule of such other Association(s), shall be limited to the amount set out in the Certificate of Entry in respect of any one ship, any one incident or occurrence.[143]

Sulpicio's acceptance of the Certificate of Entry and Acceptance manifests its acquiescence to all its provisions. There is no showing in the records or in Sulpicio's contentions that it objected to any of the terms in this Certificate. Its acceptance, likewise, operated as an acceptance of the entire provisions of the Club Rules.

When a contract is embodied in two (2) or more writings, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.[144]

With the exception of the War Risk Extension clause, the Bio-chem clause, and a succinct statement of the limits of liability, warranties, exclusion, and deductibles, the Certificate of Entry and Acceptance does not contain the details of the insurance coverage. A person would have to refer to the Club Rules to have a complete understanding of the contract between the parties.

The Club Rules contain the terms and conditions of the relationship between the Steamship and its members including the scope, nature, and extent of insurance coverage of its members' vessels. The 2005/2006 Club Rules[145] of Class 1, which cover protection and indemnity risks provide, insofar as relevant:

3 Scope of Cover

i. The terms upon which a Member is entered in the Club are set out in the Rules and any Certificate of Entry for that Member.

---

[143] *Rollo* (G.R. No. 196072), p. 133.

[144] *Valdez v. Court of Appeals,* 482 Phil. 250, 271 (2004) [Per *J.* Callejo, Sr., Second Division].

[145] *Rollo*, pp. 813–855.

Supreme Court E-Library

ii. The risks against which a Member is insured by entry in the Club are set out in Rule 25 and are always subject to the conditions, exceptions, limitations and other terms set out in the remainder of these Rules and any Certificate of Entry for that Member.

. . . . . .

6 Entry

. . . . . .

iv. The provisions of this Rule apply throughout the period of entry of the Ship in the Club . . .

. . . . . .

8 Members

i. Every Owner who enters any ship in the Club shall (if not already a Member) be and become a Member of the Club as from the date of the commencement of such entry. Each Member is bound by the Act and By(e)-Laws of the Club and by these Rules.

. . . . . .

iv. All contracts of insurance with the Club shall be deemed to be subject to and incorporate all the provisions of these Rules except to the extent otherwise expressly agreed in writing with the Managers.

v. Each Member or other person whose application for insurance or reinsurance is accepted shall be deemed to have agreed both for itself and its successors and each of them that both it and they and each and all of them will be subject to and bound by and will perform their obligations under the Rules, Act and By(e)-Laws of the Club and any contract of insurance with the Club.

. . . . . .

45 Amendments to Rules

The Rules of this Class may be altered or added to by Ordinary Resolution passed at a separate meeting of the Members of this Class provided that no such alterations shall be effective unless and until the same shall be sanctioned by the Directors.[146]

[146] *Id*. at 828–854.

Supreme Court E-Library

The 2005/2006 Club Rules also provide the nature of Steamship's Protection and Indemnity cover and the terms on which it is provided. In particular, Rule 25(i) to (xxi) identify a member's liabilities, costs, and expenses covered by the insurance, Rules 18 to 24 set out the general exclusions and limitations, Rule 26 provides the requirements for classification and condition surveys, and Rule 28 addresses general terms and conditions for recovery of claims. The 2005/2006 Club Rules also contain provisions on double insurance (Rule 23), claims handling (Rules 30 and 31), cessation of membership (Rule 35), cessation of insurance of individual vessels (Rule 36), deduction and set-off (Rule 40), and assignment and subrogation (Rules 41 and 42).

The arbitration clause is found in Rule 47 of the 2005/2006 Club Rules:

47 Dispute resolution, Adjudication

i. in the event of any difference or dispute whatsoever, between or affecting a Member and the Club and concerning the insurance afforded by the Club under these rules or any amounts due from the Club to the Member or the Member to the Club, such difference or dispute shall in the first instance be referred to adjudication by the Directors. That adjudication shall be on the basis of documents and written submissions alone. Notwithstanding the terms of this Rule **47i,** the Managers shall be entitled to refer any difference or dispute to arbitration in accordance with sub-paragraph **ii** below without prior adjudication by the Directors.

ii. If the Member does not accept the decision of the Directors, or if the Managers, in their absolute discretion, so decide, the difference or dispute shall be referred to the arbitration of three arbitrators, one to be appointed by each of the parties and the third by the two arbitrators so chosen, in London. The submission to arbitration and all the proceedings therein shall be subject to the provisions of the English Arbitration Act, 1996 and the schedules thereto or any statutory modifications or re-enactment thereof.

iii. No Member shall be entitled to maintain any action, suit or other legal proceedings against the Club upon any such

Supreme Court E-Library

difference or dispute unless and until the same has been submitted to the Directors and they shall have given their decision thereon, or shall have made default for three months in so doing; and, if such decision be not accepted by the Member or such default be made, unless and until the difference or dispute shall have been referred to arbitration in the manner provided in this Rule, and the Award shall have been published; and then only for such sum as the Award may direct to be paid by the Club. And the sole obligation of the Club to the Member under these Rules or otherwise howsoever in respect of any disputed claim made by the Member shall be to pay such sum as may be directed by such an Award.

iv. In any event no request for adjudication by the Member shall be made to the Directors in respect of any difference or dispute between, or matter affecting, the Member and the Club more than two years from the date when that dispute, difference or matter arose unless, prior to the expiry of this limitation period, the Managers have agreed in writing to extend the same.

v. Nothing in this Rule **47** including paragraph **i**, or in any other Rule or otherwise shall preclude the Club from taking any legal action of whatsoever nature in any jurisdiction at its absolute discretion in order to pursue or enforce any of its rights whatsoever and howsoever arising including but not limited to: -

a. Recovering sums it considers to be due from the Member to the Club;
b. Obtaining security for such sums; and/or
c. Enforcement of its right of lien whether arising by law or under these rules.

vi. These rules and any contract of insurance between the Club and the Member shall be governed by and construed in accordance with English law.[147] (Emphasis in the original)

Under Rule 47, any dispute concerning the insurance afforded by Steamship must first be brought by a claiming member to

---

[147] *Id*. at 855 and 1592.

Supreme Court E-Library

the Directors for adjudication. If this member disagrees with the decision of the Director, the dispute must be referred to arbitration in London. Despite the member's disagreement, the Managers of Steamship may refer the dispute to arbitration without adjudication of the Directors. This procedure must be complied with before the member can pursue legal proceedings against Steamship.

There is no ambiguity in the terms and clauses of the Certificate of Entry Acceptance. Contrary to the ruling of the Court of Appeals, the Certificate clearly incorporates the entire Club Rules—not only those provisions relating to cancellation and alteration of the policy.[148]

"[W]hen the text of a contract is explicit and leaves no doubt as to its intention, the court may not read into it any other intention that would contradict its plain import."[149]

The incorporation of the Club Rules in the insurance policy is without any qualification. This includes the arbitration clause even if not particularly stipulated. A basic rule in construction is that the entire contract, and each and all of its parts, must be read together and given effect, with all its clauses and provisions harmonized with one another.[150]

II.C

The Court of Appeals ruled that the arbitration agreement in the 2005/2006 Club Rules is not valid because it was not signed by the parties.

In domestic arbitration, the formal requirements of an arbitration agreement are that it must "be in writing and subscribed by the party sought to be charged, or by his lawful

---

[148] *Id*. at 106.

[149] *Sea-Land Service, Inc. v. Court of Appeals,* 383 Phil. 887, 896 (2000) [Per *J*. Ynares-Santiago, First Division] citing *Cruz v. Court of Appeals*, 354 Phil. 1036 (1998) [Per *J*. Panganiban, First Division].

[150] *National Union Fire Insurance Co. of Pittsburg v. Stolt-Nielsen Phil., Inc.,* 263 Phil. 634, 640 (1990) [Per *J*. Melencio-Herrera, Second Division].

Supreme Court E-Library

agent."[151] In international commercial arbitration,[152] it is likewise required that the arbitration agreement must be in writing.

An arbitration agreement is in writing if it is contained (1) in a document signed by the parties, (2) in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or (3) in an exchange of statements of claim and defense in which the existence of an agreement is alleged by a party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.[153]

In *BF Corp. v. Court of Appeals,*[154] one (1) of the parties denied the existence of the arbitration clause on the ground that it did not sign the Conditions of Contract that contained the clause. This Court held that the arbitration clause was nonetheless binding because the Conditions of Contract were expressly made an integral part of the principal contract between the parties. The formal requirements of the law were deemed

---

[151] Rep. Act No. 876, Sec. 4 in relation to Rep. Act No. 9285, Sec. 32.

[152] UNCITRAL Model Law on International Commercial Arbitration, Chapter I, Art. 1(3) provides:

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

[153] UNCITRAL Model Law on International Commercial Arbitration, Chapter II, Art. 7.

[154] 351 Phil. 507 (1998) [Per *J.* Romero, Third Division].

Supreme Court E-Library

complied with because "the subscription of the principal agreement effectively covered the other documents incorporated by reference [to them]."[155] In arriving at this ruling, this Court explained:

> A contract need not be contained in a single writing. It may be collected from several different writings which do not conflict with each other and which, when connected, show the parties, subject matter, terms and consideration, as in contracts entered into by correspondence. **A contract may be encompassed in several instruments even though every instrument is not signed by the parties, since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments.** Similarly, a written agreement of which there are two copies, one signed by each of the parties, is binding on both to the same extent as though there had been only one copy of the agreement and both had signed it.[156] (Emphasis supplied)

Thus, an arbitration agreement that was not embodied in the main agreement but set forth in another document is binding upon the parties, where the document was incorporated by reference to the main agreement. The arbitration agreement contained in the Club Rules, which in turn was referred to in the Certificate of Entry and Acceptance, is binding upon Sulpicio even though there was no specific stipulation on dispute resolution in this Certificate.

Furthermore, as stated earlier, Sulpicio became a member of Steamship by the very act of making a contract of insurance with it. The Certificate of Entry and Acceptance issued by Steamship states that "[its] name has been entered in the Register of Members of the Club as a Member."[157] Sulpicio admits its membership and the entry of its vessels to Steamship.

Rule 8(v) of the 2005/2006 Club Rules provides that:

---

[155] *Id*. at 524.

[156] *Id*. at 523.

[157] *Rollo* (G.R. No. 196072), p. 130.

Supreme Court E-Library

Each Member or other person whose application for insurance or reinsurance is accepted shall be deemed to have agreed both for itself and its successors and each of them that both it and they and each and all of them will be subject to and bound by and will perform their obligations under the Rules, Act and By(e)-Laws of the Club and any contract of insurance with the Club.

Sulpicio's agreement to abide by Steamship's Club Rules, including its arbitration clause, can be reasonably inferred from its submission of an application for entry of its vessels to Steamship "subject to the Rules, receipt of which we acknowledge."[158]

The ruling of this Court in *Associated Bank v. Court of Appeals*[159] is applicable by analogy to this case.

In that case, plaintiffs sought to recover the amount of 16 checks that were honored by Associated Bank despite the apparent alterations in the name of the payee. Associated Bank filed a Third-Party Complaint against Philippine Commercial International Bank, Far East Bank & Trust Company, Security Bank and Trust Company, and Citytrust Banking Corporation for reimbursement, contribution, and indemnity. This Complaint was based on their being the collecting banks and by virtue of their bank guarantee for all checks sent for clearing to the Philippine Clearing House Corporation (PCHC). The trial court dismissed the Third-Party Complaint for lack of jurisdiction, citing Section 36 of the Clearing House Rules and Regulations of the PCHC, which provides for arbitration. This Court, in affirming the dismissal, held:

Under the rules and regulations of the Philippine Clearing House Corporation (PCHC), *the mere act of participation of the parties concerned in its operations in effect amounts to a manifestation of agreement by the parties to abide by its rules and regulations. As a consequence of such participation, a party cannot invoke the jurisdiction of the courts over disputes and controversies which fall under the PCHC Rules and Regulations without first going through*

---

[158] *Id*. at 809.

[159] 343 Phil. 145 (1994) [Per *J*. Kapunan, First Division].

Supreme Court E-Library

the arbitration processes laid out by the body. Since claims relating to the regularity of checks cleared by banking institutions are among those claims which should first be submitted for resolution by the PCHC's Arbitration Committee, petitioner Associated Bank, having voluntarily bound itself to abide by such rules and regulations, is estopped from seeking relief from the Regional Trial Court on the coattails of a private claim and in the guise of a third party complaint without first having obtained a decision adverse to its claim from the said body. It cannot bypass the arbitration process on the basis of its averment that its third party complaint is inextricably linked to the original complaint in the Regional Trial Court.

. . . . . .

Section 36.6 is even more emphatic:

> 36.6 The fact that a bank participates in the clearing operations of PCHC shall be deemed its written and subscribed consent to the binding effect of this arbitration agreement as if it had done so in accordance with Section 4 of the Republic Act No. 876 otherwise known as the Arbitration Law.

Thus, not only do the parties manifest by mere participation their consent to these rules, but such participation is deemed (their) written and subscribed consent to the binding effect of arbitration agreements under the PCHC rules. Moreover, a participant subject to the Clearing House Rules and Regulations of the PCHC may go on appeal to any of the Regional Trial Courts in the National Capital Region where the head office of any of the parties is located only after a decision or award has been rendered by the arbitration committee or arbitrator on questions of law.[160] (Emphasis supplied, citation omitted)

This Court held that mere participation by the banks in the clearing operations of the PCHC manifest their consent to the PCHC Rules, including the binding effect of the arbitration agreements under these Rules.

In this case, by its act of entering its fleet of vessels to Steamship and accepting without objection the Certificate of Entry and Acceptance covering its vessels, Sulpicio manifests its consent to be bound by the Club Rules. The contract between

---

[160] *Id*. at 152–154.

Supreme Court E-Library

Sulpicio and Steamship gives rise to reciprocal rights and obligations. Steamship undertakes to provide protection and indemnity cover to Sulpicio's fleet. On the other hand, Sulpicio, as a member, agrees to observe Steamship's rules and regulations, including its provisions on arbitration.

III.A

The Court of Appeals' finding that there was no proof that Sulpicio was given a copy of the 2005/2006 Club Rules is contradicted by the evidence on record.

In its Comment, Sulpicio contends that it "was never given or sent a copy" of the Rulebook as stated in the affidavits of its Executive Vice President, Atty. Eusebio S. Go and its Safety and Quality Assurance Manager, Engr. Ernelson P. Morales.[161] It also quoted a portion of the Affidavit of its Executive Vice President and Chief Executive Officer, Carlos S. Go, who declared that "[Sulpicio] and Steamship have not signed any arbitration agreement" and "[n]o such agreement exists."[162]

Sulpicio cannot feign ignorance of the arbitration clause since it was already charged with notice of the Club Rules due to an appropriate reference to it in the Certificate of Entry and Acceptance. Assuming its contentions were true that it was not furnished a copy of the 2005/2006 Club Rules, by the exercise of ordinary diligence, it could have easily obtained a copy of them from Pioneer Insurance or Seaboard-Eastern.

In any case, Sulpicio's bare denials cannot succeed in light of the preponderance of evidence submitted by Steamship.

The Affidavit[163] dated August 29, 2007 of Jonathan Andrews, Director and Head of Underwriting of the Eastern Syndicate of the Managers of Steamship and in charge of Steamship's Far East membership, including the Philippines, stated:

---

[161] *Rollo* (G.R. No. 196072), pp. 2186–2188.

[162] *Id.* at 2188.

[163] *Id*. at 797–807.

Supreme Court E-Library

4. The contract of insurance between the Club and a Member is contained in, and evidenced by:

   a) The Rules of the Club for whichever Class or Classes the vessel is entered, for the time being in force; and

   b) A Certificate of Entry.

. . . . . .

5. The Club's policy year runs from noon on 20th February of each year until noon on 20th February of the year following . . . The Rule book is published on an annual basis prior to the commencement of the Policy year to which it applies. Although the Rules can be amended pursuant to Rule 45, the dispute resolution provisions of the Rules have provided for arbitration in London since well before the Plaintiff's entry in the Club.

. . . . . .

10. In addition, it is quite clear that throughout their lengthy membership of the Club, the Plaintiffs were aware of, and relied upon, the terms of the Club's Rules. Produced and shown to me, marked "JHDA 4", is a copy of a letter[164] from the Plaintiffs, dated 4th June, 1993, seeking a refund of premium for the "SURIGAO PRINCESS" on the grounds that the vessel was laid up. That letter's enclosures consist of:

    (a) The Club's printed form for returns of premium when a vessel is laid-up . . . signed by Mr. Carlos S. Go on behalf of the Plaintiffs;

    (b) A photocopy of the relevant provision in the Club's Rules dealing with laid-up returns, Rule 29; and

    (c) A Certificate from the Philippines Port Authority . . .

The fact that Sulpicio's application for a laid-up return attached a photocopy of the Club's Rule book demonstrates both that this was physically in their possession and that they were familiar with its contents.

---

[164] *Id*. at 863–866.

Supreme Court E-Library

11. Throughout the lengthy period of this entry, as might be anticipated, there was a considerable volume of correspondence between the Plaintiffs and the Club via the former's brokers. Examples of that correspondence are produced and shown to me, marked "JHDA 5". As the Court will note from that correspondence, it contains numerous and frequent references to various of the Club's Rules, e.g.:

- Rule 22, dealing with double insurance
- Rule 25 xix, dealing with towage
- Rule 23 i, dealing with classification
- Rule 23 v b and c, dealing with defect warranties
- Rule 23 iv, dealing with safety audits.

. . . . . .

12. The fact that Plaintiffs possessed and were fully conversant with the Club's Rules is most clearly demonstrated by the correspondence provided and shown to me, marked "JHDA 6". After the grounding of the "PRINCESS OF THE PACIFIC", due to the concerns arising out of this casualty, the Club initially reserved cover pending further investigation and required an independent audit of the Plaintiff's Safety Management System. When this decision was conveyed to the Plaintiffs via their brokers, Seaboard-Eastern, they replied:

As expected, Carlos Go was so upset and expressed disappointment when the undersigned spoke to him about the report of Noble Denton and the club's decision to suspend any action on the claim especially so since owners believe the findings of the surveyors to the club are inaccurate and after relating such findings to the club rules owners find no basis for club's decision to suspend action on the claim.[165]

Roderick Gil Narvacan, Vice-President of the Hull Unit of Pioneer Insurance which handled Sulpicio's account, also narrated in his Affidavit[166] dated September 4, 2007:

---

[165] *Id*. at 798–802.

[166] *Id*. at 914–915.

Supreme Court E-Library

7. I know for a fact that Sulpicio received a copy of the Club's Rule Book and had full knowledge of the Club's Rules during the length of time that it was a member of the Club.

8. [I]n all Entry Forms signed and submitted by Sulpicio to the Club throughout its years of membership in the Club, Sulpicio always acknowledged that it received a copy of Club's Rule Book. A sample of Sulpicio's duly signed Entry Form submitted to the Club on 6 February 1997 is hereto attached as Annex "1."

9. The Company, through my department, also makes it a point to remind all the Club's Members including Sulpicio to familiarize themselves with the Club's Rulebook as the rules therein provided are applied to all Club related matters including claims procedures. A copy of Ms. May Valles' email[167] to Sulpicio dated 27 August 2002 is hereto attached as Annex "2" and her letter[168] to Sulpicio dated 17 October 2002 is hereto attached as Annex "3." Ms. Valles was a former member of the Company's Hull Department and in both written communications, she reminded Sulpicio through its Executive Vice-President and CFO Mr. Carlos S. Go of certain Club Rules such as the prescriptive period to claim for lay-up premium refund.

10. In reply to the 27 August 2002 email, Mr. Carlos S. Go, by a 28 August 2002 email[169] to Ms. Valles, explained his understanding of the provision on the prescriptive period to claim for lay-up premium refund under the Club's Rules, thereby clearly showing that Sulpicio was aware of the Club's Rules. A copy of the 28 August 2002 email of Mr. Go is hereto attached as Annex "4."

11. To further prove Sulpicio's knowledge of Club's Rules, I hereto attach the following copies of letters from Sulpicio addressed to the Company with attached letter by Sulpicio to the Club:

- Letter-request[170] for refund of lay-up premiums for the vessel M/V Surigao Princess dated 4 June 1993 as Annex "5";

---

[167] *Id*. at 921.

[168] *Id*. at 922.

[169] *Id*. at 923.

[170] *Id*. at 924–925.

Supreme Court E-Library

- Letter-request[171] for refund of lay-up premiums for the vessel M/V Manila Princess dated 10 June 1998 as Annex "6";
- Letter-request[172] for refund of lay-up premiums for the vessel M/V Filipina Princess dated 21 June 1999 as Annex "7";
- Letter-request[173] for refund of lay-up premiums for the vessel M/V Manila Princess dated 17 May 2001 as Annex "8"; and
- Letter-request[174] for refund of lay-up premiums for the vessel M/V Nasipit Princess dated 16 August 2002 as Annex "9";

In each of the above letters, Sulpicio declared to both the Company and the Club that "(w)e shall therefore be glad to receive a credit note for the return of premium under the Rules of the Association."[175] (Emphasis in the original)

Finally, Elmer Felipe, Manager of Marine Department of Seaboard-Eastern in charge of Sulpicio's account, also narrated:

11. As insurers for the Hull & Machinery of Sulpicio's Fleet, the Company, through my department, assisted Sulpicio in regard to its [Protection and Indemnity] cover by sending copy of the Club's Rulebook while it was an active Member of the Club.

12. By way of example, in the year 2002, the Company sent five (5) copies of the Club's Rulebook to Mr. Carlos S. Go, Executive Vice-President and CEO of Sulpicio as evidenced by a transmittal letter dated 11 April 2002 duly signed by the Company's First Vice-President Joli Co-Wu. A copy of said transmittal letter[176] dated 11 April 2002 is hereto attached as Annex "1."

13. The other transmittal letters proving distribution of the Club's Rulebook to Sulpicio in its other years of membership with the Club

---

[171] *Id*. at 926–927.

[172] *Id*. at 928–929.

[173] *Id*. at 930.

[174] *Id.* at 931–932.

[175] *Id*. at 914–915.

[176] *Id.* at 936.

Supreme Court E-Library

were among those discarded by the Company when it moved . . . to a smaller office . . .

14. [Sulpicio is presumed to] know the Club's Rules as it was provided with copies of the Rulebook on an annual basis.

15. In fact, in a 8 May 2004 letter addressed to the Company, Sulpicio claimed for refund of lay-up premiums from the Club in connection with the vessel M/V Princess of the World and in Sulpicio's letter to the Club attached to the said 8 May 2004 letter, Sulpicio declared that "(w)e shall therefore be glad to receive a credit note for the return of premium under the Rules of the Association." This was followed by a 8 December 2004 letter for refund of lay-up returns for the vessel M/V Princess of the World where Sulpicio also invoked the Club Rules. A copy of the 8 May 2004 letter[177] with attachment is hereto attached as Annex "2" and a copy of the 8 December 2004 letter[178] is hereto attached as Annex "3."

. . . . . .

18. More importantly, after the Club denied cover for the vessel M/V Princess of the World and prior to the date when the termination of Sulpicio's entry in the Club took effect, our EVP, Mr. Jose G. Banzon, Jr. sent an email[179] dated 30 November 2005 to Mr. Carlos Go reminding Sulpicio of the remedy of voluntary arbitration under Rule 47 of the Club's Rulebook and attaching a copy of Rule 47. Copies of these documents are attached as Annex "4."[180]

These foregoing affidavits and the attached supporting documents consistently declared that Sulpicio was given copies of the Rulebook on an annual basis and had even invoked its provisions in making a claim from Steamship. Sulpicio's previous letters to Steamship referring to provisions of the Club Rules show its knowledge. Sulpicio was also reminded of the

---

[177] *Id*. at 937–938.

[178] *Id*. at 939–940.

[179] *Id*. at 941–942.

[180] *Id*. at 933–935.

Supreme Court E-Library

arbitration clause during the negotiations preceding the institution of the present case.

"[A] party is not relieved of the duty to exercise the ordinary care and prudence that would be exacted in relation to other contracts. The conformity of the insured to the terms of the policy is implied from [its] failure to express any disagreement with what is provided for."[181] The agreement to submit all disputes to arbitration is a long standing provision in the Club Rules. It was incumbent upon Sulpicio to familiarize itself with the Club Rules, under the presumption that a person takes due care of its concerns. Being a member of Steamship for 20 years,[182] it has been bound by its Rules and has been expected to abide by them in good faith.

In *Development Bank of the Philippines v. National Merchandising Corp.*,[183] the parties, who were acute businessmen of experience, were presumed to have assented to the assailed documents with full knowledge:

> The principal stockholders and officers of NAMERCO, particularly the Sycips who co-signed the promissory notes in question, were, as the lower court found, businessmen of experience and intelligence . . . We might say — paraphrasing *Tin Tua Sia vs. Yu Biao Sontua*, 56 Phil. 707 — that they being of age and businessmen of experience, it must be presumed that they had acted with due care and to have signed the documents in question with full knowledge of their import and the obligations they were assuming thereby; that this presumption of law may not be overcome by the mere testimony of the obligor or obligors; that, to permit a party, when, sued upon a contract, to admit that he signed it but to deny that it expresses the agreement he had made, or to allow him to admit that he signed it solely on the verbal assurance given by one party, however high his station may be, that he would not be held liable thereon, would destroy the value of all contracts. Indeed, it would be disastrous to give more weight and

---

[181] *New Life Enterprises v. Court of Appeals,* G.R. No. 94071, March 31, 1992, 207 SCRA 669, 676 [Per *J.* Regalado, Second Division].

[182] *Rollo* (G.R. No. 196072), p. 958.

[183] 148-B Phil. 310 (1971) [Per *J.* Dizon, First Division].

Supreme Court E-Library

reliability to the self-serving testimony of a party bound by the contract than to the contents thereof. *Verba volant, scripta manent*.[184]

Sulpicio is estopped from denying knowledge of the Rulebook by its own acts and representations, as evidenced by its various letters to Steamship, showing its familiarity with the Rulebook and its provisions.

"In estoppel, a person, who by his [or her] deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another."[185] It further bars a party from denying or disproving a fact, which has become settled by its acts.[186]

Hence, this Court finds a preponderance of evidence showing that Sulpicio was given a copy and had knowledge of the 2005/2006 Club Rules. Moreover, the 2005/2006 Club Rules' provision on arbitration is valid and binding upon Sulpicio.

III.B

The Regional Trial Court should suspend proceedings to give way to arbitration. Even if there are other defendants who are not parties to the arbitration agreement, arbitration is still proper.

Republic Act No. 9285 was approved on April 2, 2004 and was the controlling law at the time the original and amended complaints were filed.

Section 25 of Republic Act No. 9285 is explicit that:

> [W]here action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

---

[184] *Id*. at 331–332.

[185] *Cruz v. Court of Appeals,* 354 Phil. 1036, 1054 (1998) [Per *J.* Panganiban, First Division].

[186] *Roblett Industrial Construction Corporation v. Court of Appeals*, 334 Phil. 62 (1997) [Per *J.* Bellosillo, First Division].

Supreme Court E-Library

Rule 4.7 of the Special Rules on Alternative Dispute Resolution[187] (2009 Special ADR Rules) further expresses:

> The court shall not decline to refer some or all of the parties to arbitration for any of the following reasons:
>
> a. Not all of the disputes subject of the civil action may be referred to arbitration;
>
> b. Not all of the parties to the civil action are bound by the arbitration agreement and referral to arbitration would result in multiplicity of suits;
>
> c. The issues raised in the civil action could be speedily and efficiently resolved in its entirety by the court rather than in arbitration;
>
> d. Referral to arbitration does not appear to be the most prudent action; or
>
> e. The stay of the action would prejudice the rights of the parties to the civil action who are not bound by the arbitration agreement.

The present rule on multiple parties manifests due regard to the policy of the law in favor of arbitration. In light of the express mandate of Republic Act No. 9285 and the subsequent 2009 Special ADR Rules, this Court's ruling in *European Resources and Technologies, Inc. v. Ingenieuburo Birkhann + Nolte, Ingeniurgesellschaft Gmbh*[188] is deemed abrogated.

Notably, the Regional Trial Court did not rule on whether or not a valid and existing arbitration agreement existed between the parties. It merely stated in its Order, citing *European Resources*, that:

> ["]Even if there is an arbitration clause, there are instances when referral to arbitration does not appear to be the most prudent action. The object of arbitration is to allow the expeditious determination of a dispute. Clearly, the issue before us could not be speedily and

---

[187] A.M. No. 07-11-08-SC (2009).

[188] 479 Phil. 114 (2004) [Per *J.* Ynares-Santiago, First Division].

Supreme Court E-Library

efficiently resolved in its entirety if we allow simultaneous arbitration proceedings and trial, or suspension of trial pending arbitration."

Moreover, it is noted that defendants Seaboard-Eastern Insurance Co. Inc. and Pioneer Insurance and Surety Corporation already filed their respective Answers to the second amended complaint.[189]

On this basis, the Regional Trial Court denied Steamship's Motion to Dismiss and/or to Refer Case to Arbitration and directed it to file an answer.

This Court finds that the Regional Trial Court acted in excess of its jurisdiction.

Where a motion is filed in court for the referral of a dispute to arbitration, Section 24 of Republic Act No. 9285 ordains that the dispute shall be referred "to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed."

Thus, the Regional Trial Court went beyond its authority of determining only the issue of whether or not there was a valid arbitration agreement between the parties when it denied Steamship's Motion to Dismiss and/or to Refer Case to Arbitration solely on the ground that it would not be the most prudent action under the circumstances of the case. The Regional Trial Court went against the express mandate of Republic Act No. 9285. Consequently, the Court of Appeals erred in finding no grave abuse of discretion on the part of the trial court in denying referral to arbitration.

IV

In G.R. No. 208603, Sulpicio contends that Steamship's acts were contumacious because they were intended to defeat Civil Case No. 07-577 and oust the Regional Trial Court of its jurisdiction, without the approval of this Court.

Sulpicio further contends that there was no valid off-setting of the amount of US$69,570.99 from the refund payable to it

---

[189] *Rollo* (G.R. No. 196072), p. 301.

Supreme Court E-Library

in the *Unabia* case because the issue on the propriety of the referral to arbitration had yet to be resolved by this Court.[190] It adds that the "arbitration – anti-suit injuction" cost was not a debt of Sulpicio but a unilateral charge arising from an arbitration that it had not participated in, or was enforceable in the Philippines.[191]

In its Comment/Opposition[192] to the Petition for Indirect Contempt, Steamship contends that it "exercised its right to set-off in good faith"[193] and that the amount set-off represents costs of obtaining the Anti-Suit Injunction awarded to it by the English Commercial Court and are not arbitration costs as contended by Sulpicio.[194] It also holds that Sulpicio's prayer for restitution of the offset amount was improper in a petition for indirect contempt.[195]

Steamship emphasizes that even before the denial of its Motion to Dismiss in Civil Case No. 07-577 on July 11, 2008, it already commenced arbitration in London[196] on July 31, 2007.[197] It had also "obtained a permanent Anti-Suit Injunction [with interim award for costs][198] from the English Commercial Court on 4th April 2008[.]"[199] The April 4, 2008 Order enjoined Sulpicio from proceeding with Civil Case No. 07-577 and to refer the dispute to arbitration in London.[200]

---

[190] *Rollo* (G.R. No. 208603), p. 365.

[191] *Id*. at 370.

[192] *Id*. at 42–61.

[193] *Id*. at 42.

[194] *Id*. at 45.

[195] *Id*. at 57–58.

[196] *Id*. at 55.

[197] *Id*. at 43.

[198] *Id*. at 44.

[199] *Id*. at 43.

[200] *Id*. at 92–93.

Supreme Court E-Library

Steamship further avers that "Sulpicio was served a copy of an Order to file Claims Submissions in the London arbitration and a copy of the Anti-Suit Injunction but it refused to participate in the London Arbitration."[201] It also did not pay the costs of the Anti-Suit Injunction. Sulpicio refused "service of all orders, notices, pleadings and documents related to the London arbitration and the Commercial Court proceedings."[202]

Steamship adds that in 2012, Sulpicio filed a claim for reimbursement of US$96,958.47 representing passenger liabilities arising from the capsizing of one (1) of Sulpicio's fleet in 1998.[203] Pursuant to Rule 32 of the Club Rules for the 1998 policy, which gave Steamship "the right to make deduction 'from any claims . . . due to a Member' of 'any liabilities of such Member to the Club,'"[204] Steamship set-off the costs awarded by the English Commercial Court from the amount reimbursed to Sulpicio. Sulpicio's brokers and lawyers were informed of the set-off through an email dated December 3, 2012.[205]

Steamship contends that there was no legal impediment when it initiated arbitration proceedings in London.[206] The action was taken in good faith to preserve its rights while defending its position that Sulpicio's filing of Civil Case No. 07-577 constituted a breach of the Club Rules.[207] On the other hand, Sulpicio's acts were far from desirable for it did not only fail to participate in the London arbitration proceedings but also evaded service of all notices "so that it could feign ignorance of the existence of arbitration proceedings."[208]

---

[201] *Id*. at 43–44.

[202] *Id*. at 44.

[203] *Id*.

[204] *Id*. at 44–45.

[205] *Id*. at 45.

[206] *Id*. at 55.

[207] *Id*. at 57.

[208] *Id*. at 53.

Supreme Court E-Library

This Court finds Sulpicio's arguments to be untenable.

Steamship's commencement of arbitration even before the Regional Trial Court had ruled on its motion to dismiss and suspend proceedings does not constitute an "improper conduct" that "impede[s], obstruct[s] or degrade[s] the administration of justice."[209]

In *Heirs of Trinidad de Leon vda. de Roxas v. Court of Appeals*,[210] this Court explained the concept of contempt of court:

> Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation . . .
>
> Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice . . .
>
> This Court has thus repeatedly declared that the power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice . . . [211]

The court's contempt power should be exercised with restraint and for a preservative, and not a vindictive, purpose. "Only in cases of clear and contumacious refusal to obey should the power be exercised."[212]

---

[209] *Id*. at 4.

[210] 466 Phil. 697 (2004) [Per *J*. Carpio, First Division] citing *Halili v. CIR,* 220 Phil. 507 (1985).

[211] *Id*. at 711–712.

[212] *Bank of the Philippine Islands v. Calanza,* 647 Phil. 507-517 (2010) [Per *J*. Nachura, Second Division].

Supreme Court E-Library

In *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*,[213] this Court held that:

There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[214] (Citations omitted)

In *Lim-Lua v. Lua,*[215] the father's deferral in giving monthly support *pendente lite* granted by the trial court was held not contumacious, considering that "he had not been remiss in actually providing for the needs of his children." It was also taken into account that he "believed in good faith that the trial and appellate courts, upon equitable grounds, would allow him to offset the substantial amounts he had spent or paid directly to his children." This Court explained:

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. The good faith, or lack of it, of the alleged contemnor should be considered. [216]

---

[213] 672 Phil. 1 (2011) [Per *J.* Bersamin, First Division].

[214] *Id*. at 16.

[215] 710 Phil. 211 (2013) [Per *J.* Villarama, Jr., First Division].

[216] *Id.* at 232–233.

Supreme Court E-Library

This Court finds no clear and contumacious conduct on the part of Steamship. It does not appear that Steamship was motivated by bad faith in initiating the arbitration proceedings. Rather, its act of commencing arbitration in London is but a bona fide attempt to preserve and enforce its rights under the Club Rules.

There was no legal impediment at the time Steamship initiated London arbitration proceedings. Steamship commenced arbitration on July 31, 2007 even before the Regional Trial Court denied its Motion to Dismiss and/or Refer Case to Arbitration on July 11, 2008. There was no order from the Regional Trial Court enjoining Steamship from initiating arbitration proceedings in London. Besides, the 2009 Special ADR Rules specifically provided that arbitration proceedings may be commenced or continued and an award may be made, while the motion for the stay of civil action and for referral to arbitration is pending resolution by the court.[217]

This Court notes that while the arbitration proceeding was commenced as early as July 31, 2007, it is only six (6) years later that Sulpicio filed its Petition[218] to cite Steamship for indirect contempt. Sulpicio cannot invoke lack of knowledge of the London arbitration proceedings due to several reasons. First, it received and replied[219] to the notice of commencement of arbitration proceedings[220] dated July 31, 2007. Second, Steamship presented evidence showing Sulpicio's refusal to receive any notices, orders, or communications related to the arbitration proceedings. Lastly, the pendency of the London arbitration was made known to the Court of Appeals and this Court through Steamship's petitions. Sulpicio's belated filing of its Petition, only after Steamship has deducted from the refund due it the alleged "arbitration costs," indicates its lack of sincerity and good faith.

---

[217] A.M. No. 07-11-08-SC, Rule 4.8.

[218] The petition was received by the Court on September 6, 2013.

[219] *Rollo* (G.R. No. 196072), pp. 434–435.

[220] *Id*. at 432–433.

Supreme Court E-Library

Finally, this Court finds Sulpicio's claim for damages to be improperly raised. It should be addressed in an ordinary civil action. Its petition for indirect contempt is not the proper action to determine the validity of the set-off and to make a factual determination relating to the propriety of ordering restitution.

WHEREFORE, the Petition for Review in **G.R. No. 196072** is **GRANTED.** The Decision dated November 26, 2010 of the Court of Appeals in CA-G.R. SP No. 106103 and the Order dated July 11, 2008 of the Regional Trial Court, Branch 149, Makati City in Civil Case No. 07-577 are **SET ASIDE.** The dispute between Sulpicio Lines, Inc. and Steamship Mutual Underwriting (Bermuda) Limited is referred to arbitration in London in accordance with Rule 47 of the 2005/2006 Club Rules.

The Petition for Indirect Contempt in **G.R. No. 208603** is **DISMISSED** for lack of merit**.**

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin,* and *Martires, JJ.,* concur.

Gesmundo, J., on official leave.

FIRST DIVISION

[G.R. No. 201271. September 20, 2017]

ROBERTO A. TORRES, IMMACULADA TORRES-ALANON, AGUSTIN TORRES, and JUSTO TORRES, JR., *petitioners, vs.* **ANTONIA F. ARUEGO,** *respondent.*