



Republic of the Philippines
Supreme Court
 Baguio City

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**NORTHERN MINDANAO
 INDUSTRIAL PORT and SERVICES
 CORPORATION,**

Petitioner,

- versus -

ILIGAN CEMENT CORPORATION,
Respondent.

G.R. No. 215387

Present:

SERENO,* *C.J., Chairperson,*
 LEONARDO-DE CASTRO,**
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, JJ.

Promulgated:

APR 23 2018

Prunx

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DECISION

DEL CASTILLO, J.:

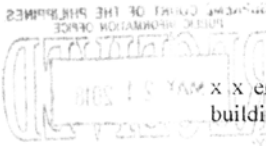
Assailed in this Petition for Review on *Certiorari*¹ are the March 18, 2014 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 03789-MIN, which set aside the August 6, 2009 Order³ of the Regional Trial Court of Iligan City, Branch 3 (RTC) in Civil Case No. 7201, and the CA's October 17, 2014 Resolution⁴ denying herein petitioner's motion for reconsideration.

Factual Antecedents

As narrated by the CA, the facts are as follows:

Mdm

* On leave.
 ** Designated as Acting Chairperson per Special Order No. 2540 dated February 28, 2018.
¹ *Rollo*, pp. 22-70.
² *Id.* at 71-78; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras.
³ *Id.* at 212-215; penned by Presiding Judge Albert B. Abragan.
⁴ *Id.* at 79; penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting.



x x x Iligan Cement Corporation (ICC) is a domestic corporation x x x engaged in the manufacturing and distribution of cement and other building materials.

x x x Northern Mindanao Industrial & Port Services Corporation (NOMIPSCO) is likewise a domestic corporation x x x involved, among others, in the *arrastre* or stevedoring business.

On 27 June 2007, ICC invited NOMIPSCO to a pre-bidding conference for a two-year cargo handling contract. Apart from NOMIPSCO, RC Barreto Enterprises, MN Seno Marketing, VIRLO Stevedoring and Oroport also joined the conference.

In the course of the conference, ICC, through Nestor Camus (Camus), required the participants to submit their respective technical proposals and commercial bids on or before 5 July 2007. x x x

NOMIPSCO thereafter submitted its proposal in which it offered the lowest bid of ₱1.788 per a [sic] 40 kilogram bag.

ICC awarded the cargo handling contract to Europort Logistics and Equipment Incorporated (Europort).

On 2 September 2008, NOMIPSCO filed a Complaint⁵ for Damages and Attorney's fees against ICC [alleging] that, as *per* information from an ICC employee, its bid folder was marked as 'no bid submitted'; that Camus, upon inquiry, revealed that the bid award was based on x x x the recommendation of the end-user; and x x x a new company policy x x x to prioritize new contractors [which] were never made known to the bidders. x x x NOMIPSCO further claimed that ICC was guilty of bad faith when it still invited NOMIPSCO to join the pre-bidding conference despite prior knowledge of its status as an old contractor. NOMIPSCO, thus, contended that the acts of ICC amounted to an abuse of its rights or authority, the same acts that led NOMIPSCO to suffer great losses and unearned income.

On 9 October 2008, ICC filed an Answer with Compulsory Counterclaims⁶ wherein it x x x countered that NOMIPSCO had no cause of action since its complaint failed to state a cause of action. ICC stressed that 'for abuse of right to exist there must be: 1) an act which is legal; 2) but which is contrary to morals, good customs, public order, or public policy; and 3) it is done with intent to injure.' ICC argued that in the instant controversy the last two requisites were wanting. x x x

On 6 August 2009, the RTC rendered an Order denying ICC's affirmative and special defenses - complaint failed to state a cause of action and defective verification. The dispositive portion of the order reads -

⁵ Id. at 96-107.

⁶ Id. at 186-195.

WHEREFORE, premises considered, the prayer for the dismissal of the complaint as it states no cause of action is denied for lack of merit.

The acting clerk of Court is directed to set the case for pre-trial and referral of the case to the mediation center.

SO ORDERED.

On 29 September 2009, [ICC] filed a Motion for Reconsideration.⁷ In its Motion, [ICC] maintained that NOMIPSCO lacked a cause of action and that the Complaint 1) failed to state a cause of action; x x x

On 24 May 2010, the RTC issued an Order⁸ denying [ICC's] Motion for Reconsideration, x x x⁹

Ruling of the Court of Appeals

Respondent ICC instituted an original Petition for *Certiorari*¹⁰ before the CA, docketed as CA-G.R. SP No. 03789-MIN, arguing that the RTC committed grave abuse of discretion in not dismissing Civil Case No. 7201 for failure to state a cause of action and lack of cause of action.

On March 18, 2014, the CA rendered the assailed Decision, declaring as follows:

The petition is meritorious.

x x x x

Considering exclusively the allegations of the above Complaint, the Court finds that NOMIPSCO has no legal right to impute to ICC an abuse of its right or authority in the bidding selection or to impugn the validity of the cargo handling contract executed between the latter and Europort.

In its Complaint, NOMIPSCO mainly anchored its right to institute this action on the fact that it won the bidding had it not for the alleged abuse of rights of ICC. However, as correctly argued by ICC, 'NOMIPSCO's right as a bidder is only to be considered in the evaluation of the entity to handle the stevedoring requirements' and that it has no right to dictate as to whom the award should be granted. It bears stressing that an advertisement to possible bidders is simply an invitation to make



⁷ Id. at 216-220.

⁸ Id. at 222-223.

⁹ Id. at 135.

¹⁰ Id. at 224-252.

proposals, and that an advertiser is not bound to accept the [lowest] bidder unless the contrary appears. Moreover, ICC has the unprecedented right to reject bids and it cannot be compelled by a party who called the bids to accept its proposal and execute a contract in its favor. Considering that NOMIPSCO was not selected as the winner and that ICC cannot be legally obliged to accept its bid, the former therefore has no legal right against the latter. Considering that the existence of a legal right is wanting, it is thus ineluctable that the 2 September 2008 Complaint failed to state a cause of action.

The above disquisitions render a discussion on the second issue of ICC unnecessary.

All told, this Court finds grave abuse of discretion on the part of the RTC in denying the dismissal of NOMIPSCO's complaint. x x x

WHEREFORE, the instant petition for *certiorari* is GRANTED.

Accordingly, the assailed Order dated 6 August 2009 of the Regional Trial Court, 12th Judicial Region, Branch 3, Iligan City, is hereby ordered SET ASIDE.

SO ORDERED.¹¹ (Citations omitted)

Petitioner sought to reconsider but to no avail. Hence, the present Petition.

Meanwhile, the proceedings continued on to trial. Petitioner's key witnesses testified in court.

Issues

In an April 18, 2016 Resolution,¹² this Court resolved to give due course to the Petition, which contains the following assignment of errors:

1. WHETHER X X X THE COURT OF APPEALS ERRED IN FINDING THAT RTC-03 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT (RTC-03) DENIED THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION OF ICC, BOTH RAISING THE ISSUE THAT NOMIPSCO HAS NO CAUSE OF ACTION AGAINST ICC.

1.1. WHETHER X X X THE ISSUE RAISED BY ICC TO SUPPORT THE DISMISSAL OF THE



¹¹ id. at 74-78.

¹² id. at 662-663.

COMPLAINT INVOLVES EVIDENTIARY ISSUE THAT SHOULD BE VENTILATED DURING THE TRIAL OF THE CASE.

1.2. WHETHER X X X ICC WAIVED THE ISSUE ON CAUSE OF ACTION WHEN IT PARTICIPATED IN THE TRIAL.

2. WHETHER X X X AN ISSUE NOT PRESENTED BEFORE RTC-03 (IN RESOLVING THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION) BE BROUGHT BEFORE, AND CONSIDERED BY, THE COURT OF APPEALS IN RESOLVING THE ISSUE OF GRAVE ABUSE OF DISCRETION.¹³

Petitioner's Arguments

In praying that the assailed CA dispositions be set aside and that Civil Case No. 7201 be instead reinstated, petitioner basically argues in its Petition and Reply¹⁴ that while respondent had the right to accept or reject bids for its project, it exercised said right in bad faith to petitioner's prejudice, in that the bidding process was a mere ruse for respondent to secure petitioner's lowest bid in order to use it as basis or leverage for setting its contract price with Europort; respondent had no intention to award the contract to the bid participants, but to Europort, and the bidding process was intended merely to elicit the lowest bid which respondent would use to set its contract price with Europort.

Petitioner argues that respondent's bad faith can be seen from the fact that respondent made it appear that petitioner did not submit its bid, the folder in which the commercial and technical bids were kept was stamped with "No Bid Submitted" as to petitioner; that Europort, which eventually won the project, was not a participant in the bidding process; that respondent awarded the project on the basis of criteria, parameters, and policies that were not disclosed to petitioner prior to the bidding; and that Europort had no corporate and legal personality when it executed the cargo handling contract with respondent.

Petitioner further contends that under Article 19 of the Civil Code¹⁵ which enunciates the principle of abuse of rights, when a right is exercised in a manner that disregards legal norms and standards, thus resulting in damage to another, a legal wrong is committed for which the guilty party

¹³ Id. at 40.

¹⁴ Id. at 575-615.

¹⁵ Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.



may be held accountable; that respondent abused its rights and thus violated Article 19 and other laws; that petitioner thus has a cause of action against respondent; and that the issue of bad faith as a component of petitioner's cause of action requires proof and thus may only be resolved after trial on the merits.

Respondent's Arguments

Respondent, on the other hand, counters in its Comment¹⁶ that petitioner remains without cause of action, which makes its case dismissible; that petitioner's claim that respondent made it appear that the former did not submit a bid is pure hearsay and speculation as no documentary or testimonial evidence was attached to the complaint/pleadings, nor was any submitted in court, to prove this allegation; that for the same foregoing reasons, petitioner's claim that the bid was grounded on policies that were not disclosed to the bidders has no basis; that even if preference is given to new contractors as a matter of policy, this does not constitute an abuse of respondent's right since "preference" does not mean exclusion of other contractors; that petitioner's argument that Europort was not a corporate entity at the time and that respondent used the bidding for the sole purpose of obtaining the optimum contract price are unfounded and have no legal basis; that petitioner has no right to dictate who should be the winning bidder for respondent's cargo handling contract, since advertisements for bidders are simply invitations to make proposals, and an advertiser is not bound to accept the highest or lowest bidder unless the contrary appears; that there was thus no abuse of respondent's rights; and that respondent's participation in the trial does not result in waiver of its right to seek dismissal of the case on the basis of lack or absence of cause of action.

Our Ruling

The Court denies the Petition.

Petitioner's cause of action in Civil Case No. 7201 rests on the theory that respondent, in bad faith, used the bidding process for the cargo handling contract as a mere ruse to elicit the lowest bid which it would use to set its contract price with Europort; that respondent made it appear that petitioner did not submit a bid, when in fact it did; that respondent awarded the project on the basis of criteria, parameters, and policies that were not disclosed to petitioner prior to the bidding; and that respondent awarded the contract to Europort, which did not participate in the bidding and had no corporate and

¹⁶ *Rollo*, pp. 515-552.



legal personality when it executed the cargo handling contract with respondent.

A review of the record and the evidence, however, reveals that petitioner's allegations do not reconcile with the facts and evidence on record; on the contrary, it appears that petitioner is twisting and inventing facts, circumstances, and documents that did not in fact take place nor exist.

Contrary to what petitioner would have this Court believe, it appears that there was a *bona fide* bidding process for respondent's designated cargo handling contract, and the project or contract was awarded to one of the participating bidders, which – for whatever reason – eventually changed its corporate name during the bidding process, prompting the execution of the awarded cargo handling contract under its new corporate name instead of the old one used during the submission of bids.

Thus, it appears that one of the five bidders that participated in the subject bidding, Oroport, was eventually chosen by respondent – although it did not necessarily submit the lowest bid. At or about the time that Oroport and respondent were consummating the cargo handling contract, Oroport changed its corporate name to Europort Logistics and Equipment Incorporated, or Europort. As a result, the cargo handling contract executed was between respondent and Europort, the new name of Oroport. This is not proscribed by law. The fact that the original bidder and winner was Oroport, and the resulting cargo handling contract was between respondent and Europort–Oroport's derivative – has no bearing; in legal contemplation, Oroport and Europort are one and the same.

x x x. The effect of the change of name was not a change of the corporate being, for, as well stated in *Philippine First Insurance Co., Inc. v. Hartigan*: 'The changing of the name of a corporation is no more the creation of a corporation than the changing of the name of a natural person is begetting of a natural person. The act, in both cases, would seem to be what the language which we use to designate it imports – a change of name, and not a change of being.'

x x x x

x x x. A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon the change in its name, is in no sense a new corporation, nor the successor of the original



corporation. It is the same corporation with a different name, and its character is in no respect changed.¹⁷

As to the claim that respondent made it appear that petitioner did not submit a bid when in fact it did, the evidence and testimonies of the witnesses do not bear this out. Thus, while petitioner claims that its bid folder was marked as “no bid submitted,” it did not attach a copy of said bid folder to its complaint below. Nor was the bid folder document introduced during trial. And an examination of the transcripts of the testimonies of its witnesses¹⁸ equally fails to elicit even a faint shadow of truth to its claim of being deliberately excluded from the bidding process; indeed, the opposite is true: petitioner participated in the bidding process and its bid was considered, along with the others’ bids.

On the claim that respondent awarded the project on the basis of criteria, parameters, and policies that were not disclosed to petitioner prior to the bidding, particularly that the award would be given to a new contractor and will be based on the recommendation of the end-user, the evidence does not bear this out. On the contrary, one of the witnesses, Alex Sagario, who worked for the end-user component of the contract as Pack House Manager of ICC, testified that there was no consultation prior to the award,¹⁹ which thus belies petitioner’s claim that undisclosed policies became the basis for the award.

On the claim that it became the policy of respondent to award the contract to a new contractor, the Court finds nothing wrong with this. This is the prerogative of respondent, and petitioner had no right to interfere in the exercise thereof. The CA is correct in saying that an advertisement to possible bidders is simply an invitation to make proposals, and that an advertiser is not bound to accept the lowest bidder unless the contrary appears; respondent had the right to reject bids, and it cannot be compelled to accept a bidder’s proposal and execute a contract in its favor. Indeed, under Article 1326 of the Civil Code, “advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.” “[A]s the discretion to accept or reject bids and award contracts is of such wide latitude, courts will not interfere, unless it is apparent that such discretion is exercised arbitrarily, or used as a shield to a fraudulent award. The exercise of that discretion is a policy decision that necessitates prior inquiry, investigation,

¹⁷ *Zuellig Freight and Cargo Systems v. National Labor Relations Commission*, 714 Phil. 401, 411 (2013), citing *Philippine First Insurance Co., Inc. v. Hartigan*, 145 Phil. 310 (1970), *P.C. Javier & Sons, Inc. v. Court of Appeals*, 500 Phil. 419 (2005), and *Avon Dale Garments, Inc. v. National Labor Relations Commission*, 316 Phil. 898 (1995).

¹⁸ *Rollo*, pp. 399-459, 460-511, 616-640.

¹⁹ *Id.* at 629-632.

comparison, evaluation, and deliberation.”²⁰

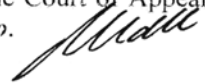
Article 1326 of the Civil Code, which specifically tackles offer and acceptance of bids, provides that advertisements for bidders are simply invitations to make proposals, and that an advertiser is not bound to accept the highest bidder unless the contrary appears. In the present case, Section 4.3 of the ASBR explicitly states that APT reserves the right to reject any or all bids, including the highest bid. Undoubtedly, APT has a legal right to reject the offer of Dong-A Consortium, notwithstanding that it submitted the highest bid.

In *Leoquinco v. The Postal Savings Bank and C & C Commercial Corporation v. Menor*, we explained that this right to reject bids signifies that the participants of the bidding process cannot compel the party who called for bids to accept the bid or execute a deed of sale in the former's favor. x x x²¹ (Citations omitted)

Finally, the insistence on Europort's ineligibility on account of its supposed non-participation in the bidding process, despite petitioner's knowledge and admission of the fact that Europort underwent a change of corporate name during the period material to this case – which explains why the entity to which the cargo handling contract was awarded appears to be a total stranger to the bidding process, is a clear attempt to muddle the issues and confuse this Court in the vain hope of influencing its judgment – by stretching an irrelevant issue and capitalizing on a perceived technicality that has no material bearing whatsoever in the resolution of the case.

Thus, far from having a cause of action upon which to base its claim for damages, petitioner's complaint is based on false assumptions and non-existent facts, tending to deceive and mislead this Court to the belief that respondent committed a so-called 'abuse of rights' against it, when in fact there is none. This is certainly contemptible, and petitioner is warned that any more attempt at stretching this case and manipulating the facts will be dealt with severely. It has wasted the Court's time enough. Its claim is illusory, to say the least; this has become evident not only from a reading of the allegations of the complaint and its annexes as well as the other pleadings, but also from the testimonial and documentary evidence presented by petitioner itself during trial.

WHEREFORE, the Petition is **DENIED**. The March 18, 2014 Decision and October 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 03789-MIN are **AFFIRMED in toto**.



²⁰ *National Power Corporation v. Pinatubo Commercial*, 630 Phil. 599 608 (2010).

²¹ *Privatization and Management Office v. Strategic Alliance Development Corporation*, 711 Phil. 209, 223 (2013).

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

(On leave)
MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ATTESTATION

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


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

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



ANTONIO T. CARPIO
*Acting Chief Justice**



* Per Special Order No. 2539 dated February 28, 2018.