

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-45515 October 29, 1987

ASBESTOS INTEGRATED MANUFACTURING, INC., (AIMI), petitioner,

vs.

HON. ELVIRO L. PERALTA, Presiding Judge, Branch XVII. Manila Court of First Instance, METROPOLITAN WATERWORKS and SEWERAGE SYSTEM (MWSS), ETERNIT CORPORATION, respondents.

PADILLA, J.:

This is a petition for certiorari, with preliminary prohibitory and/or mandatory injunction, to annul and set aside the Order issued by the respondent judge on 25 January 1977, dissolving the restraining order previously issued in Civil Case No. 105410 Of the Court of First Instance of Manila, entitled: "Asbestos Integrated Manufacturing, Inc. (AIMI), petitioner, *versus* Metropolitan Waterworks and Sewerage System (MWSS), et al., respondents" as well as the Order dated 2 February 1977, which dismissed petitioner's complaint and upheld the Order of 25 January 1977.

The antecedent facts of the case are, as follows:

Petitioner Asbestos Integrated Manufacturing, Inc. (AIMI for short) is a 100% Filipino-owned and controlled manufacturing and trading corporation, organized and existing under Philippine laws and engaged in the marketing of asbestos cement pressure pipes manufactured by Asbestos Cement Products Philippines, Inc. (ACPPI for short) which is also a 100% Filipino-owned and controlled manufacturing corporation organized under Philippine laws and doing business in the Philippines. ¹

The respondent Eternit Corporation (Eternit, for short) is a domestic corporation, incorporated under Philippine laws, with 90% of its capital stock, owned and controlled by aliens. ²

The respondent Sanvar Development Corporation (Sanvar, for short) is also a 100% Filipino-owned and controlled corporation, organized and existing under Philippine laws "to carry on and undertake any business undertaking, transaction or operation commonly carried on or undertaken by general contractors, sub-contractors etc." and whose secondary purpose, among others, is "to engage in, operate, conduct and maintain the business of trading (buy and sell), manufacturing or otherwise dealing in any and all kinds of commodities, wares, supplies,

merchandise of whatever description and to carry on such business as wholesaler, retailer, importer, etc." ³

The respondent Metropolitan Waterworks and Sewerage System (MWSS, for short) is a government owned and controlled corporation.

On 18 May 1976, the MWSS, in pursuance of its interim program of construction, improvement, repair and expansion in order to insure continuous and adequate supply of potable water to the inhabitants of Metro Manila, conducted a public bidding for its asbestos cement pipe requirements. Among those which participated were the petitioner AIMI, and the respondent Sanvar. In the bidding conducted, Sanvar submitted a total bid price of P373,122.30 while AIMI, submitted a total bid price of P423,913.96, which is 13.6% higher than that of the former.⁴ However, no award was made since "the pipes needed for the projects mentioned in this bidding, will now come from the pipes to be supplied in the 27 September 1976, public bidding." ⁵

In the public bidding of 27 September 1976, Sanvar submitted a total bid price of P2,653,360.00 while AIMI, submitted a total bid price of P3,259,492.00, which is 22.84% higher than the bid of Sanvar. ⁶ As a result, the contract to supply the asbestos cement pressure pipes was awarded to Sanvar. ⁷

Whereupon, AIMI, claiming that Sanvar is but a mere dealer or distributor or marketing arm of the alien-owned Eternit, filed a petition against the MWSS, Eternit and Sanvar before the Court of First Instance of Manila, docketed therein as Civil Case No. 105410, to nullify the award and to restrain the respondents from enforcing the same. The Petitioner invoked the Retail Trade Nationalization Act (Rep. Act No. 1180), the Flag Law (Com. Act No. 138), the Anti-Dummy Act (Com. Act No. 108), and the law reserving to Filipinos and Filipino-owned corporations the exclusive right to enter into contracts with any government owned or controlled corporation, company, agency or municipal corporation for the supply of materials, equipment, goods, and commodities (Rep. Act No. 5183) in support of its petition.

Finding the petition to be sufficient in form and substance, and that the acts complained of, unless restrained, would cause the petitioner great harm and irreparable injury, the trial court issued an order on 12 November 1976, restraining the respondents "from entering into contract covering the public biddings on 18 May 1976 and 27 September 1976, or making and accepting deliveries under any contract which may have been entered into in the meantime, or from otherwise implementing the Board resolution of the Metropolitan Waterworks and Sewerage System awarding the questioned bids in favor of defendants Sanvar Development Corporation and/or Eternit Corporation, until further orders from the Court", and forthwith set the hearing on the issuance of a writ of preliminary injunction on 18 November 1976. ⁸

In the meantime, the respondents filed separate motions for the (1) dismissal of the petition; (2) lifting of the restraining order issued, and (3) denial of the prayer for the issuance of a writ of preliminary injunction. ⁹

On 25 February 1977, the trial court, for reasons stated in its order of even date, lifted the restraining order issued on 12 November 1976 and denied the motion for the issuance of a writ of preliminary injunction. **10**

AIMI filed a motion for reconsideration of the order and after hearing the parties on the incident, the trial court issued an order on 28 January 1977, giving the respondents "until Monday, 31 January 1977, within which to file their comment or opposition to the motion for reconsideration, subject to the condition that if no deliveries of asbestos pipes have not (sic) yet been made, no deliveries shall commence until after this incident is finally resolved, and that if deliveries have started, the same should be stopped in the meanwhile, and that no payments on said deliveries shall be made until the Court will issue its order hereof which shall be not later than Wednesday, 2 February 1977." **11**

On 2 February 1977, the trial court denied the motion for reconsideration and dismissed the complaint. **12**

Hence, the present recourse.

On 7 February 1977, the Court issued a temporary restraining order, restraining the respondents and their representatives "from executing the covering contracts for the questioned bids of 18 May 1976 and 27 September 1976 and/or from accepting any pipes deliveries from respondents *Sanvar* and/or *Eternit* under the contract awards if such covering contracts for the two bids had in the meantime been concluded precipitately following the afore-alleged MWSS board resolution approving the *Sanvar* and *Eternit* bids, and/or paying respondents *Sanvar* and/or *Eternit* for pipes deliveries if these had been made, and/or from otherwise implementing in any way said MWSS board resolution awarding the 18 May 1976 and 27 September 1976 bids to *Eternit* through *Sanvar*" **13**

The petitioner's contention is that *Sanvar* is but an *alter ego* or the marketing arm of *Eternit* so that it is prohibited by law from entering into a contract with the MWSS for the supply of asbestos cement pressure pipes:

We find, however, that the evidence presented by the petitioner is not sufficient to support the conclusion that *Sanvar* is an *alter ego* of *Eternit*. We quote with approval the following disquisitions of the respondent judge:

Even were the Court to go into the merits of the case, it would be difficult for it to go along with plaintiff on the latter's submission that *Sanvar* is an alter ego or agent of *Eternit* and that, although plaintiff's bid is higher than *Sanvar*'s, the award should be given it because of the Flag Law and other laws calculated to protect Filipino Industrialists from the cut-throat competition of more powerful and more financed alien enterprises. Among plaintiff's evidence on the alleged relationship of principal and agent between *Eternit* and *Sanvar* are the dealership agreement of the two which describes it as "*for the operation of a*

dealer-owned outlet for the sale of Eternit construction materials"(Exhibit "A"); and portions of the Confidential Statement for Determining Prospective Bidder's Responsibility, which is MWSS Form No. EO-4 and accomplished by Sanvar (Exhibit "8"), viz: the typewritten words '*distributor of Eternit products, Eternit Corporation Mandaluyong, Rizal*', supplied by Sanvar, after the words, which form part of the official form, manufacturer's exclusive agent of' (Exhibit "B-1" the phrase "*distributor of Eternit Products such as roofing material*", which is descriptive of the business of Sanvar as the organization submitting the bid (Exhibit "B-2") that which states that the bidder has been in business as "*manufacturer's representatiue or agent*" for "2 years" (Exhibit "B-3", and that which shows that materials sold by Sanvar to Rudy Pagdanganan La Paz Gaissue, Invictus Inc., and Ayala Group, all in 1975, were supplied by Eternit (Exhibit "B-4".) In the interpretation of a contract the evident intention of the parties prevails over the words which appear contrary to it (Article 1370, Civil Code); as a general rule that essence of a contract determines what law should apply to the relation between the parties and not what they prefer to call that relationship. (American Rubber Co. vs. Collector of Customs, 64 SCRA 560). To ascertain the meaning or import of a contract the whole of it, and not mere portions thereof, must be taken into account. (Ruiz vs. Sheriff of Manila, 34 SCRA 63). What the words "dealership" and "dealer-owned" derived from "deal" which means to do a distributing or retailing business or to have intercourse on business relations (Webster's New Collegiate Dictionary). as appearing in Exhibit "A" of the plaintiff, is clear from many explicit and unmistakable provisions spread over the entire agreement, viz: ... "the dealer shall RESELL Eternit construction products PURCHASED from the company (Par 1) ... the dealer shall PURCHASE from the company his/its requirement for RESALE (Par. 3) ... all PURCHASES under this agreement shall be paid in cash ... any loss or damage to, or deterioration of, the products due to any cause whatsoever occurring after delivery shall be borne by the dealer (Par. 5) ... delivery shall be deemed complete and transfer of title to products effected when the products are delivered to carrier... (Par 5)... nothing in this agreement shall be construed as reserving to the company any right to exercise any control over, or direct in respect the conduct or management of, the business or operations of the dealer ... the entire control and direction of such business and operations shall be and remains in the dealer the dealer shall not have any right or authority to, and shall not, incur any debts or liabilities or enter into any contract or transact any business whatsoever in the name of, or for, or on behalf of the company". (Par. 10, Exhibit "1-A Sanvar") "The foregoing, clear and distinct that they are, were carried out by the parties. Sanvar buying from Eternit construction materials (Exhibits " 18-B Sanvar" to "18-G-15- Sanvar") receiving them (Exhibits "18-C-14- Sanvar to 18-D Sanvar paying for them, (Exhibits "18-D Sanvar" to 18-G-5- Sanvar") and, in turn, selling them for its own account, and not in behalf of Eternit.

The letter of Romeo Fajardo, General Manager of Sanvar, to the MWSS treasurer (Exhibit "L") the letter of the regional manager of Eternit to MWSS (Exhibit "R"); and the "letter of the Branch Manager of Eternit to Sanvar (Exhibit "Q"), all to the effect that Sanvar is the exclusive distributor of pipes manufactured by Eternit, do not detract a whit from Sanvar's position *vis a vis* Eternit, as a buyer of the products of the latter, for a buyer engaged in the business of selling what he buys from the manufacturer has to necessarily distribute what he buys, without thereby becoming the seller's agent, and an agreement that the buyer shall deal exclusively with the products of the seller a — well-known practice in the business world — is not inconsistent with the contract of sale, much less convert it into one of agency. **14**

Since Sanvar, a domestic corporation wholly owned or controlled by Filipino citizens, is not an *alter ego* of Eternit, it follows that Republic Act No. 5183, which bars aliens and alien owned or controlled corporations from participating in biddings to supply the government or its instrumentalities with materials, equipment, goods, and commodities, as well as the Anti-Dummy Act (Com. Act No. 108) and the Retail Trade Nationalization Act (Rep. Act No. 1180), cannot be invoked against Sanvar.

Neither can the petitioner find support in the Flag Law. Under said law, Commonwealth Act No. 138, preference is given (a) in favor of unmanufactured articles, materials or supplies of the growth or production of the Philippines, and manufactured articles, materials and supplies, produced, made and manufactured in the Philippines substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines; and (b) in favor of domestic entities.

The Flag Law may be invoked only against a bidder who is not a domestic entity, as defined in the law, or against a domestic entity who offers imported articles, materials or supplies or those made or produced in the Philippines from imported materials. But, where all the materials, goods or supplies offered in the bids submitted are produced, made and manufactured in the Philippines substantially from articles, materials or supplies of the growth of the Philippines, and the bidders are domestic entities, as in the instant case, the Flag Law finds no application.

Portions of the Opinion of the Secretary of Justice, Hon. Jose W. Diokno, a true and acclaimed Filipino nationalist, on the applicability of the Flag Law, which had been adopted by the Court of Appeals in a case also involving Eternit and MWSS and asbestos cement pressure pipes,**15** although not controlling upon the Court, are reproduced hereunder:

1. The Flag Law CA 138) establishes only two types of preference:

(a) One in favor of unmanufactured articles, materials or supplies of the growth or production of the Philippines, and of manufactured articles, materials and supplies produced, made

and manufactured in the Philippines substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines (Secs. 1; 2(c) and (d); and (3);

(b) The other, in favor of domestic entities, that is, citizens of the Philippines or corporate bodies or commercial companies, duly organized and registered under the laws of the Philippines, 75% of whose capital is owned by citizens of the Philippines, and who are habitually established in business engaged in the manufacture or sale of the merchandise covered by their bid (Secs. 1; 2(b); and (4).

2. The two contending bidders at the bid in question were Amon Trading and C & C Construction Supply, both of whom offered asbestos cement pipes produced and manufactured in the Philippines, substantially from articles, materials and supplies of the growth, production or manufacture of the Philippines. Both therefore qualify as domestic bidders, as that term is defined in Section 2(c) of the Flag Law (CA 138), so that neither is entitled over the other to the preference provided for in Section 3 of the law. The fact that the pipes offered by Amon Trading Corporation are manufactured by Eternit Corporation, a foreign owned corporation, while the pipes offered by C & C Commercial Corporation, a Philippine owned corporation, does not entitle the latter to preference over the former, since both brands of pipes are manufactured in the Philippines of raw materials that are of Philippine origin, and it is not the nationality of the manufacturer, but the place of manufacture, that determine whether the first type of preference granted by the Flag Law applies.

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4. As to the second type of preference, both Amon Trading Corporation and C & C Construction Supply, are equally qualified as domestic entities, as that term is defined in Article 2(b) of the Flag Law (CA 138), because both are 100% Filipino owned corporations, organized and registered under the laws of the Philippines, and when the bidding in question was held, both were habitually established in business, and engaged in the sale of the asbestos cement pipes covered by their respective bids to both Government and private entities (See documentary evidence submitted by parties in reply to the Department's request dated January 24, 1962). Neither may, therefore, legitimately claim over the other the second type of preference granted by Section 4 of the Flag Law (CA 138).

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7. The professed motive for Opinion No. 263, Series of 1961 of this Department, which is to prevent foreign manufacturers in the Philippines from subverting the

Flag Law by designating Filipino firms as their representatives or sole distributors in Government bids, is laudable but has no real foundation, and indeed, the danger was foreseen and provided for by the Flag Law itself which, in defining a domestic entity, requires not only that the bidder is a Filipino or Philippine owned entity, but also that he must have been habitually established in business and engaged in the sale of the commodity covered by his bid, which means that he is a *bona fide* businessman or entity engaged in the line of business covered by his bid. Obviously, such a bidder cannot be considered a dummy or front for a foreign manufacturer. Moreover, such a Filipino bidder, being habitually engaged in the line of business covered by his bid, is entitled to as much protection as a Filipino manufacturer who bids directly or through a Filipino distributor.

But, even if the petitioner were to be given a preference, pursuant to the Flag Law, the petitioner would still not be entitled to an award since its bid of P3,259,492.00, is 22.84% higher than the bid of Sanvar of P2,653,360.00. Petitioner's bid would still be higher by 7.84%, over the 15% margin or mark-up given by the Flag Law to the bid of a domestic entity over that of a non-domestic entity.

In this connection, also, we agree with MWSS that the petitioner's handwritten offer in its Bidder's Tender to the effect that:

6. We are also willing to offer to supply your requirements for a period of one year with an additional discount of 10% (ten percent) from the above unit price.

is not called for in the bid and hence, may not be considered in favor of petitioner.

In view of the foregoing findings, we no longer deem it necessary to discuss the issue raised by the respondents that the petitioner failed to exhaust all administrative remedies before resort was made to the courts.

WHEREFORE, the petition is hereby DISMISSED. The temporary restraining order heretofore issued by the Court is lifted and set aside. With costs against the petitioner.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Bidin, Sarmiento and Cortes, JJ., concur.

Feliciano, J., took no part.

Footnotes

1 Rollo, p. 10.

2 Exhibit D, D-1, D-2, D-3 Folder of Exhibits, pp. 16-26.

3 Rollo, p. 232.

4 *Id.*, p. 13.

5 Exh. 7-MWSS, Folder of Exhibits, p. 64.

6 Exit 7-Sanvar, Original Record, p. 96; See also Rollo, pp. 261, 262.

7 Exh. 8-MWSS, Folder of Exhibits, p. 72.

8 Rollo, p. 41.

9 *Id.*, p. 43; Original Record, pp. 49, 87.

10 *Id.*, p. 70.

11 *Id.*, p. 76.

12 *Id.*, p. 78.

13 *Id.*, p. 94.

14 *Id.*, pp. 84-87.

15 Opinion No. 8, Series of 1962, Annex A of Rejoinder, Rollo, p. 432, adopted in CA-G.R. No. 38545-R, C & C Construction Supply versus MWSS, et al., from March 1, 1974, See Rollo p. 342.