Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DALE STRICKLAND,
Petitioner,

- versus -

ERNST & YOUNG LLP,
Respondent.

G.R. No. 193782

x----------x

DALE STRICKLAND,
Petitioner,

- versus -

PUNONGBAYAN & ARAULLO,
Respondent.

G.R. No. 210695

Present:
LEONARDO-DE CASTRO,
Acting Chairperson,[*]
DEL CASTILLO,
JARDELEZA,
TIJAM, and
GESMUNDO,[**] *JJ.*

Promulgated:
AUG 01 2018

x----------x

DECISION

JARDELEZA, *J.*:

These are consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court both filed by petitioner Dale Strickland (Strickland): (1) G.R. No. 193782 is against respondent Ernst & Young LLP (EYLLP) assailing the Decision[2] dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 102805 which annulled and set aside the Orders[3] of the Regional Trial Court, Branch 150, Makati City, ordered

---

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

[**] Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

1 *Rollo* (G.R. No. 193782), pp. 9-48; *rollo* (G.R. No. 210695), pp. 34-91.

2 *Rollo* (G.R. No. 193782), pp. 54-67. Penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

3 Dated January 2, 2007 and January 16, 2008, respectively, *id.* at 54.

EYLLP to be dropped as defendant in Civil Case No. 05-692, and referred the dispute between Strickland and EYLLP to arbitration;[4] and (2) G.R. No. 210695, which is against respondent Punongbayan & Araullo (PA), and assails the Decision[5] dated August 5, 2013 of the CA in CA-G.R. SP No. 120897 which declared null and void the Orders[6] of the RTC and directed it to suspend proceedings in the same Civil Case No. 05-692.[7]

Civil Case No. 05-692 is a complaint[8] filed by Strickland against, among others, respondents PA and EYLLP praying for collection of sum of money.

On March 26, 2002, National Home Mortgage Finance Corporation (NHMFC) and PA entered into a Financial Advisory Services Agreement (FASA) for the liquidation of the NHMFC's Unified Home Lending Program (UHLP). At the time of the engagement, PA was the Philippine member of respondent global company, EYLLP. In the March 26, 2002 letter[9] of PA to NHMFC confirming their engagement as exclusive Financial Advisor for the UHLP Project, PA is designated as P&A/Ernst & Young.[10]

During this period, Strickland was a partner of EYLLP seconded to respondent Ernst & Young Asia Pacific Financial Solutions (EYAPFS),[11] who was listed in the FASA as member of the Engagement Team, in pertinent part:

> Our Engagement Team is highly experienced and qualified in planning, managing and executing similar transactions. Our Team will be lead by cross-border professionals supplied by both Ernst & Young Asia Pacific Financial Solutions LLC ("EY/APFS") and P&A[/]ERNST & YOUNG. P&A ERNST & YOUNG has assembled a group of Financial Consultants with the specific individual expertise to address the requirements for this engagement. The key members of the Team include:
>
> ***Due Diligence & Transaction Support***
> *Lead Due Diligence Partner* – Dale Strickland, *EY/APFS*[12]

Significantly, Strickland played a role in negotiating the FASA between PA and NHMFC. In a letter dated April 15, 2002, PA wrote

---

4 *Id.* at 64.

5 *Rollo* (G.R. No. 210695), pp. 9-21. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla concurring.

6 Dated March 11, 2011 and May 19, 2011, respectively, *id.* at 9.

7 *Id.* at 20.

8 *Id.* at 127-136.

9 *Id.* at 107-126.

10 Several of the correspondences between the parties refers to the Engagement Letter and the FASA as NHMFC Agreement. The designations are used interchangeably throughout this Decision.

11 Subsidiary of EYLLP authorized to do business within the Asia Pacific Region. *Rollo* (G.R. No. 193782), pp. 54-55; *rollo* (G.R. No. 210695), p. 128.

12 *Rollo* (G.R. No. 210695), p. 110.

Strickland to formalize the working relationship between PA/EYLLP and EY/APFS for the FASA with NHMFC:

> Dear Dale,
>
> Ernst & Young, as represented by Punongbayan & Araullo, the Ernst & Young member firm in the Philippines (P&A/ERNST & YOUNG) and Ernst & Young Asia Pacific Solutions LLC (EY/APFS) was chosen as the exclusive Financial Advisor for National Home Mortgage Finance Corporation (NHMFC) with respect to the liquidation of its Php40 Billion Unified Home Lending Program (UHLP) portfolio (or the "Transaction"). P&A/ERNST &YOUNG acted as the contracting party, on behalf of EY/APFS, and signed the contract with NHMFC to officially kick-off the engagement.
>
> In line with this, we would like to underscore several issues, which would formalize the working relationship between P&A/ERNST & YOUNG and EY/APFS.
>
> 1) P&A/ERNST & YOUNG will be the contracting party to the NHMFC engagement and will sub-contract to EY/APFS key aspects of the engagement as well as source the technical expertise of EY/APFS staff, as outlined in the Technical Proposal submitted to the Pre-qualification, Bids and Awards Committee (PBAC).
>
> 2) EY/APFS will provide a list of its staff members with individual expertise, who will be seconded to P&A/ERNST & YOUNG, including Marisa Liu or other EY/APFS Managers such as Hye Soo Shim or Beaux Pontac.
>
> 3) P&A/ERNST & YOUNG will bill and receive payments directly from NHMFC and shall forward the balance due EY/APFS in U.S. Dollars at an exchange rate of 51 Philippine Pesos to One (1) U.S. Dollar.
>
> 4) Based on the initial Technical Proposal, Total Fees for this engagement will be U.S.$2.25 Million broken into a Fixed Fee of U.S.$1.5 Million for the Due Diligence portion and a Success Fee of U.S.$750 Thousand. The Fixed Fee sharing will be U.S.$690 Thousand for P&A/ERNST & YOUNG and U.S.$810 Thousand for EY/APFS or 46% and 54%, respectively, in accordance with the terms of the initial Technical Proposal. However, we wish to point out that due to modifications made on the Success Fee portion of the Technical Proposal, any fee above U.S.$2.25 Million shall be split equally (50%-50%) between P&A/ERNST & YOUNG and EY/APFS.

> 5) EY/APFS and P&A/ERNST & YOUNG will guarantee the success of this project.
>
> Once again, we wish to express our appreciation for the opportunity you have accorded us to undertake this pursuit with you. We look forward to working with you in this engagement.
>
> Thank you very much.[13]

By June 6, 2002, EYLLP wrote PA of the termination of its membership in EYLLP.[14] Despite the termination, the working relationship among the parties continued. In an assignment letter[15] dated November 15, 2002, EYLLP confirmed Strickland's assignment to Manila as a partner and summarized the working arrangement, specifying the following provisions: (1) assignment and the terms; (2) compensation and benefits; (3) tax; (4) change of circumstances; (5) repatriation; and (6) acceptance.

In July 2004, the transactional relationship between the parties went awry. In an exchange of letters, notice was given to NHMFC of PA's intention to remove Strickland from the NHMFC Engagement Team as a result of Strickland's resignation from EYLLP and/or EYAPFS effective on July 2, 2004.[16] Responding to NHMFC's concerns on the removal of Strickland from the UHLP Project and his replacement by Mark Grinis (Grinis), EYAPFS' Managing Director, EYLLP reiterated Grinis' qualifications and affirmed its team of professionals' dedication of "all the time necessary to close this transaction and to make NHMFC [their team's, headed by Grinis,] first priority."[17]

Since NHMFC was intent on retaining Strickland's services despite his separation from EYLLP and/or EYAPFS, the parties entered into negotiations to define Strickland's possible continued participation in the UHLP Project. PA, NHMFC, and Strickland exchanged letters containing proposed amendments to cover the new engagement and Strickland's participation within the UHLP Project.[18] No actual written and final agreement among the parties amending the original engagement letter of March 26, 2002 materialized.

On August 20, 2004, PA wrote a letter,[19] signed by its President/Chairman & CEO, Benjamin R. Punongbayan, to NHMFC to

---

[13] *Id.* at 787-788. Also cited in the Decision of the Court of Appeals in CA G.R. SP No. 120897, *id.* at 10-11.

[14] *Id.* at 689; records, pp. 126-127.

[15] CA *rollo* (CA-G.R. SP No. 102805), pp. 263-266.

[16] See records, pp. 364-365.

[17] *Id.* at 366.

[18] *Id.* at 368-369; *rollo* (G.R. No. 193782), p. 55; *rollo* (G.R. No. 210695), pp. 38, 308.

[19] Records, pp. 371-374.

initiate discussions on a "mutual voluntary termination of the NHMFC Agreement."[20]

On November 18, 2003, PA and NHMFC executed an addendum to the March 26, 2002 original engagement letter covering additional terms of the financial advisory services.[21]

Subsequently, conflict on Strickland's actual participation and concurrent designation on the project arose among PA, NHMFC, and Strickland as reflected in the proposed revisions to the "Draft Financial Advisory Services" initially prepared by PA.[22]

The timeline of specific occurrences is contained in the letter[23] of PA to NHMFC dated December 20, 2004:

> [PA] subsequently met on September 6, 2004 with Mr. Angelico T. Salud, then president of NHMFC. In that meeting, Mr. Salud asked that P&A and EYAPFS continue with the project and remain as financial advisors to NHMFC. But he also proposed that NHMFC will hire Mr. Strickland for a nominal compensation from NHMFC so that Mr. Strickland can continue to participate in the project and work together with us. Right after that meeting, P&A and EYAPFS x x x decided to accept its proposal in order to finally resolve this pending matter. However, before anything can be finalized, a change in the management of NHMFC occurred. We sought to meet with the new president, Mr. Celso delos Angeles, and were able to meet with him on October 20, 2004. In that meeting, it was confirmed by both parties that NHMFC will hire Mr. Strickland and this engagement will be the basis for moving forward. We then proceeded to conclude with Mr. Strickland the discussion about his compensation which was proposed to come out of the success fee for the engagement. We also drew up the draft agreement that was submitted on November 19, 2004 to both NHMFC and Mr. Strickland for their review.[24]

PA objected to Strickland's proposed amendments, specifically on the terms of compensation, which now contemplated PA's engagement of Strickland as subcontractor for the closing of the UHLP Project.[25]

By May 23, 2005, counsel for Strickland wrote PA asking for "equitable compensation for professional services" rendered to NHMFC on the UHLP Project from the time of his separation from EYLLP and/or EYAPFS in July 2004 "up and through the recent Signing and Closing

---

20 *Id.* at 371.
21 *Id.*
22 See records, pp. 525-531.
23 *Id.* at 1548-1550.
24 *Id.* at 1549.
25 *Id.* at 1548.

Ceremony held on 22 April 2004 and [his continued provision of] services as the final closing approaches."[26]

On June 2, 2005, counsel for PA responded, categorically denying any contractual relationship with Strickland and his assertion that he effectively substituted EYLLP and/or EYAPFS for the portion of the work he carried out in the UHLP Project.[27]

Succeeding events are fairly summarized by the CA in CA-G.R. SP No. 120897:

> Thus, [Strickland] filed a Complaint, dated May 17, 2005, which included [EYAPFS], [PA] and NHMFC among the defendants, seeking the following reliefs:
>
> *"Based on the foregoing, [Strickland] respectfully prays for judgment directing defendants, either jointly or severally or solidarily, or one or some or all defendants as may be deemed appropriate after trial, to pay [Strickland] Eighteen Million Pesos (=P=18,000,000.00) as equitable compensation for services rendered or actual or nominal damages, moral damages, and attorney's fees as may be proved."*
>
> Subsequent to the complaint, [EYLLP and/or EYAPFS] filed a "Motion to Refer to Arbitration," dated February 27, 2006.
>
> In the meantime, x x x Strickland filed an Amended Complaint, dated June 29, 2006, adding more causes of action and including Strickland's replacement Mark Grinis as a party-defendant while deleting several defendants but retaining [EYLLP and/or EYAPFS], NHMFC and [PA].
>
> The trial court admitted the Amended Complaint in its Order, dated December 6, 2006. Subsequently, it also issued an Order, dated January 2, 2007, denying [EYAPFS'] Motion To Refer to Arbitration, thus:
>
> *"The dispute between the defendants and [Strickland] covers domestic arbitral proceedings and cannot be categorized as a commercial dispute of an international character since the dispute arose from their professional and service relationship and does not cover matters arising from a relationship of a commercial nature or commercial intercourse that would qualify as commercial. The agreement has also no reasonable relationship with one or more foreign states.*

---

[26] *Id.* at 1551-1553; *rollo* (G.R. No. 210695), pp. 12-13.

[27] Records, pp. 1554-1555; *rollo* (G.R. No. 210695), p. 13.

It appearing therefore that the arbitral clause in question is inoperative or incapable of being performed in this jurisdiction referral to arbitration in the United States pursuant to the arbitration clause is uncalled for.

Accordingly, the motion is denied.

SO ORDERED."

[EYLLP and/or EYAPFS] sought reconsideration of the aforequoted Order, which was also denied by the trial court, prompting it to file a Petition for Certiorari before this Court, docketed as CA-G.R. SP No. 102805. The same was resolved by the Seventh Division in a Decision, dated June 17, 2010, annulling the ruling of the trial court, *viz*:

*"**WHEREFORE**, premises considered, the Petition is **GRANTED**. The Orders dated January 2, 2007 and January 16, 2008, and any further orders or actions after the filing of this Petition taken against x x x Ernst & Young LLP, issued or made by the Hon. Elmo M. Alameda, Presiding Judge of the Regional Trial Court of Makati City, Branch 150, in Civil Case No. 05-692 are **ANNULLED** and **SET ASIDE.** Accordingly, [EYLLP] is ordered dropped from Civil Case No. 05-692 and the dispute between [EYLLP] and Dale Strickland is hereby referred to arbitration.*

***SO ORDERED**."*

Pursuant to the said ruling, x x x [PA] filed a Motion to Suspend with Motion to Reset Pre-Trial Conference on the ground that any settlement during the arbitration between [EYLLP] and Strickland may cause prejudice to [PA] if the trial court proceedings are continued as Strickland's cause of action against [PA] was merely incidental to that against [EYLLP].

[PA's] Motion, however, was denied in the first assailed Order, dated March 11, 2011, the dispositive portion of which reads:

"The decision of the Court of Appeals dated June 17, 2010 ordering the dispute between [Strickland] and [EYLLP] to be referred to in arbitration is clear. The aforesaid decision involves [Strickland] and [EYLLP] only. Since [PA] is not a party thereto, it cannot enforce the same or find relief thereto. Only [EYLLP] is benefited from the decision.

WHEREFORE, in the light of the foregoing disquisition, the motion to suspend proceedings is DENIED.

> *Pre-trial will push through as scheduled on March 22, 2011 at 9:00 o'clock in the morning. [EYLLP] is excluded therefrom.*
>
> *SO ORDERED.* "[28] (Citations omitted.)

PA filed a motion for reconsideration which the RTC denied in its May 19, 2011 Order.[29] Thus, PA filed a petition for *certiorari* before the CA docketed as CA-G.R. SP No. 120897, alleging grave abuse of discretion in the RTC's Orders denying its motion to suspend proceedings.[30]

As adverted to, the CA annulled the March 11 and May 19, 2011 Orders:

> **WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **GRANTED**. The Orders, dated March 11, 2011 and May 19, 2011, issued by the Regional Trial Court of Makati City, Branch 150, in Civil Case No. 05-692, are **DECLARED NULL and VOID**. The Regional Trial Court of Makati City, Branch 150, is directed to **SUSPEND** its proceedings in the aforementioned case pending arbitration.[31] (Citations omitted.)

Hence, these consolidated petitions filed by Strickland.

In G.R. No. 193782, Strickland raises the following issues:

> WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT RELIED ON AN UNSIGNED AND UNAUTHENTICATED "PARTNERSHIP AGREEMENT" WHICH WAS NOT PROPERLY PRODUCED, PLEADED, AUTHENTICATED AND PROVED.
>
> WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT EVEN CONSIDERED MR. STRICKLAND A PARTNER EVEN IF THIS ISSUE WAS NOT YET RULED ON BY THE TRIAL COURT VIOLATING THE RULE THAT THE COURT OF APPEALS CANNOT TAKE UP ISSUES IN THE FIRST INSTANCE ESPECIALLY WHEN THE ISSUE INVOLVED QUESTIONS OF FACT THAT HAVE NOT BEEN SUBJECTED TO EVIDENTIARY PROCEEDING.
>
> WHETHER OR NOT THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE

---

28 *Rollo* (G.R. No. 210695), pp. 13-15.
29 *Id.* at 570.
30 *Id.* at 16.
31 *Id.* at 20.

> APPLICABLE DECISIONS WHEN IT HELD THAT MR. STRICKLAND'S CLAIMS FOR DAMAGES FROM E&Y'S TORTIOUS CONDUCT IS ARBITRABLE.[32]

In G.R. No. 210695, Strickland posits the following issues:

> WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT [PRECIPITATELY] CONCLUDED THAT P&A WAS AN AGENT OF E&Y WITHOUT THE COURT OF APPEALS OR THE RTC CONDUCTING AN EVIDENTIARY HEARING[.]
>
> WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW SUSPEND[ING] THE PROCEEDINGS IN THE RTC AGAINST P&A BECAUSE THE CAUSES OF ACTION AGAINST P&A AND E&Y ARE ALLEGEDLY "INTRICATELY INTERTWINED[,"] WITHOUT AN EVIDENTIARY HEARING HELD EITHER AT THE COURT OF APPEALS OR THE RTC[.]
>
> WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT SUSPENDED THE PROCEEDINGS IN THE RTC BECAUSE OF AN ALLEGED BINDING ARBITRATION CONTRACT BETWEEN E&Y AND STRICKLAND WHICH HAS NOT BEEN PROVED OR AUTHENTICATED[.]
>
> WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND ALSO COMMITTED AN ERROR OF LAW WHEN IT CONCLUDED THAT THERE IS A PENDING ARBITRATION PROCEEDING, WITHOUT EVIDENCE THEREFOR, BETWEEN STRICKLAND AND [EYLLP], VIOLATING THE RULE THAT THE COURT OF APPEALS CANNOT TAKE UP FACTUAL ISSUES IN THE FIRST INSTANCE[.]
>
> WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT HELD THAT THE PRESIDING JUDGE COMMIT[T]ED GRAVE ABUSE OF DISCRETION WHEN HE REFUSED TO SUSPEND THE PROCEEDINGS AGAINST P&A AS A MATTER OF "JUDICIAL COURTESY" AND "PROPRIETY[."]
>
> WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT HELD THAT THE PRESIDING JUDGE COMMIT[T]ED GRAVE ABUSE OF DISCRETION IN REFUSING TO SUSPEND THE PROCEEDINGS AGAINST P&A IN ALLEGED VIOLATION OF THE RULE ON LITIS PENDENTIA[.]

---

[32] *Rollo* (G.R. No. 193782), p. 25.

> WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT SUSPENDED THE ENTIRE PROCEEDINGS IN THE RTC AND NOT ONLY P&A BUT ALSO AS TO NHMFC EVEN IF P&A'S PETITION FOR CERTIORARI RAISED ARGUMENTS FOR THE SUSPENSION SOLELY RELEVANT TO P&A AND NOT TO NHMFC.
>
> WHETHER OR NOT THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS WHEN IT HELD ARBITRATION PROCEEDINGS AMONG SOME PARTIES NECESSARILY SUSPENDS THE PROCEEDINGS BEFORE THE REGULAR COURTS.[33]

We simplify the issues for our resolution, to wit:

1. In G.R. No. 193782, whether the CA erred in referring the dispute between Strickland and EYLLP to arbitration and ordering that EYLLP be dropped as defendant in Civil Case No. 05-692.

1.1 Whether the Partnership Agreement[34] was properly alleged and proven according to Section 7, Rule 8 of the Rules of Court on actionable documents; and

1.2 Whether the dispute between Strickland and EYLLP based on Strickland's complaint is arbitrable.

2. In G.R. No. 210695, whether the CA erred anew when it suspended the proceedings in Civil Case No. 05-692 pending the arbitration between Strickland and EYLLP.

2.1 Whether PA is an agent of EYLLP; and

2.2 Whether Strickland's causes of action against all the defendants are intricately intertwined such that the separate causes of action against PA and the other impleaded defendants cannot independently proceed from the arbitration between Strickland and EYLLP.

We deny the petitions.

I

In annulling the January 2, 2007 and January 16, 2008 Orders of the RTC, the CA ruled that: (1) EYLLP substantially complied with Section 7, Rule 8 of the Rules of Court on setting forth actionable documents in a

---

[33] *Rollo* (G.R. No. 210695), pp. 50-52.
[34] *Rollo* (G.R. No. 193782), pp. 189-193.

pleading; (2) the Partnership Agreement indeed contained a valid arbitration clause; and (3) applying processual presumption, albeit EYLLP failed to prove the applicable foreign law, the dispute between EYLLP and Strickland falls under the category of international commercial arbitration.[35]

Strickland contends that the CA's referral of the dispute between EYLLP and Strickland to arbitration is grave error since EYLLP failed to properly allege and prove the Partnership Agreement. Absent an actionable Partnership Agreement, there is no existing arbitration clause.[36]

We are not persuaded. We do not find reversible error in the Decision of the CA in CA-G.R. SP No. 102805.

Section 7, Rule 8 of the Rules of Court provides:

> Sec. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

In this case, EYLLP initially only quoted the provision of the Partnership Agreement on Dispute Resolution, including a section on Arbitration, in its answer[37] dated February 15, 2006. Eventually, it submitted a copy of the Partnership Agreement in a manifestation[38] dated March 15, 2006. Thus, we agree with the holding of the CA that EYLLP substantially, and ultimately, complied with the provision given that Strickland himself did, and does not even deny, the Partnership Agreement nor the arbitration clause.

In *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.*,[39] we discussed at length the nature of an arbitration clause as a contract in itself and the continued referral of a dispute to arbitration despite a party's repudiation of the main contract:

> Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction. R.A. No. 876 authorizes arbitration of domestic disputes. Foreign arbitration, as a system of settling commercial disputes of an international character, is likewise recognized. The enactment of R.A. No. 9285 on April 2, 2004 further institutionalized the use of alternative dispute

---

35 *Id.* at 58-64.
36 *Id.* at 11.
37 CA *rollo* (CA-G.R. SP No. 102805), pp. 65-72.
38 *Id.* at 90-91.
39 G.R. No. 175404, January 31, 2011, 641 SCRA 31.

resolution systems, including arbitration, in the settlement of disputes.

A contract is required for arbitration to take place and to be binding. Submission to arbitration is a contract and a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of the contract and is itself a contract.

x x x x

The CA ruled that arbitration cannot be ordered in this case, since petitioner alleged that the contract between the parties did not exist or was invalid and arbitration is not proper when one of the parties repudiates the existence or validity of the contract. x x x

x x x x

However, the *Gonzales* case, which the CA relied upon for not ordering arbitration, had been modified upon a motion for reconsideration in this wise:

> "x x x **The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in G.R. No. 161957. Hence, we now hold that the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid**. We add that when it was declared in G.R. No. 161957 that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues."

In so ruling that the validity of the contract containing the arbitration agreement does not affect the applicability of the arbitration clause itself, we then applied the doctrine of separability, thus:

> "The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate

> agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end.
>
> The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable."[40] (Citations omitted; emphasis supplied.)

Here, we consider the Partnership Agreement which explicitly provides for alternative dispute resolution:

> **16. Dispute Resolution**
>
> (a) **Resolution of Disputes**. Any dispute, claim or controversy between (i) the Firm and any Partner or Former Partner or (ii) any Partner or any Former Partner and any other Partner or Former Partner (to the extent such dispute, claim or controversy relates to their association with the Firm and/or its business and affairs), whether arising or being asserted during or after the termination of any such individual's relationship with the Firm (a "Dispute"), shall be resolved as provided in this Section.
>
> x x x x
>
> (b) **Procedure**. Except as otherwise provided herein, all Disputes shall be resolved by first submitting them to voluntary mediation in accordance with the procedures set forth in paragraph (c) of this Section and, if such mediation is not successful, then to binding arbitration in accordance with paragraphs (d) and (e) of this Section.
>
> x x x x
>
> (d) **Arbitration**. Any arbitration hereunder will be conducted in accordance with the procedures set forth herein and the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution as in effect on the date hereof, or such other rules mutually agreed upon by the parties. x x x
>
> (i) The arbitration will be held either in the County and State of New York or in the

[40] *Id.* at 43-46.

> County and State where the Firm is organized as an LLP, or at another location if so ordered by a court in an action to compel arbitration. x x x
>
> (ii) Any issue concerning the extent to which any Dispute is subject to arbitration, or the formation, applicability, interpretation or enforceability of the provisions of this Section, including any claim or contention that all or any part of this Agreement is void or voidable, will be governed by the Federal Arbitration Act and will be resolved by the arbitrators.[41]

Plainly, considering that the arbitration clause is in itself a contract, the setting forth of its provisions in EYLLP's answer and in its motion to refer to arbitration,[42] coupled with the actual submission by EYLLP of the Partnership Agreement, complies with the requirements of Section 7, Rule 8 of the Rules of Court which Strickland should have specifically denied.[43]

We note that while the cases before us have a foreign element involving foreign parties and international transactions, the parties do not question the jurisdiction of our courts to hear and decide the case. The parties quibble only on whether the dispute between Strickland and EYLLP should be referred to arbitration despite Strickland's alleged causes of action based on tortious conduct of the parties in refusing to compensate him for services rendered. Moreover, in relation to the other defendants, specifically respondent PA, the issue pertains to the suspension of the proceedings in Civil Case No. 05-692 pending resolution of the arbitration between Strickland and EYLLP.

We have consistently affirmed that commercial relationships covered by our arbitration laws are purely private and contractual in nature. Article 1306 of the Civil Code provides for autonomy of contracts where the parties are free to stipulate on such terms and conditions except for those which go against law, morals, and public policy. In our jurisdiction, commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* which we have consistently recognized as valid, binding, and enforceable.[44]

Thus, we agree with the CA's ruling on the nature of the contract between Strickland and EYLLP, and its application of our commercial arbitration laws to this case:

---

41 *Rollo* (G.R. No. 193782), pp. 190-192.

42 *Id.* at 79-85.

43 See RULES OF COURT, Rule 8, Sec. 8.

44 *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197, November 23, 2016, 810 SCRA 280, 308.

x x x "[T]he International Law doctrine of *presumed-identity approach* or *processual presumption* comes into play. Where a foreign law is not pleaded, or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours."

In this jurisdiction, one of the laws governing arbitration is the [Alternative Dispute Resolution (ADR)] Act. Under this statute, international commercial arbitration shall be governed by the Model Law on International Commercial Arbitration ("Model Law") adopted by the United Nations Commission on International Trade Law. Meanwhile, domestic arbitration is governed by the Arbitration Law as amended by the ADR Act.

To determine the applicable law here, the nature of the arbitration sought to be undertaken must be looked at. The ADR Act defines domestic arbitration negatively by stating that it is one that is not international as defined in the Model Law[]. In turn, Article 1 (3) of the Model Law provides that 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." x x x (Emphasis in the original; citations omitted.)

It is obvious then that the arbitration sought in the instant case is international for falling under Article 1(3)(b)(ii) quoted above. The place of business of EYLLP is in the United States of America. x x x It is here [the Philippines] that the services for which [Strickland] seeks remuneration were rendered. (Emphasis supplied.)

For the Model Law to apply, however, the arbitration should also be commercial. The explanatory footnote to Article 1(1) of the Model Law explains that "[t]he term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not." It also states that

> relationships of a commercial nature include the following transactions among others:
>
> > "any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; **joint venture and other forms of industrial or business co-operation**; carriage of goods or passengers by air, sea, rail or road." x x x
>
> The meaning attached to the term "commercial" by the Model Law is broad enough to cover a partnership. The Civil Code x x x defines a partnership as a contract where "two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves." Hence, considering that EYLLP and Strickland had a partnership relationship, which was not changed during his assignment [to] Manila for the Project, the request for arbitration here has a commercial character. The dispute between the said parties relates to Strickland's and EYLLP's association with each other.[45] x x x (Emphasis and underscoring in the original; citations omitted.)

The following factors further militate against Strickland's insistence on Philippine courts to primarily adjudicate his claims of tortious conduct, and not commercial arbitration, as stipulated in the Partnership Agreement:

1. From his complaint and amended complaint, Strickland's causes of action against EYLLP and PA hinge primarily on contract, *i.e.*, the Partnership Agreement, and the resulting transactions and working relationship among the parties, where Strickland seeks to be paid.[46]

2. The Partnership Agreement is bolstered by the assignment letter of EYLLP to Strickland confirming his assignment to Manila as partner and which assignment letter contains a choice of law provision:

> **I. ASSIGNMENT**
>
> **Terms of Assignment**
>
> x x x x
>
> During the assignment, you will be seconded to Asia Pacific Financial Solutions LLC and subject to its rules and regulations. Additionally, you must abide by all laws in the Philippines. It is also expected that you will conduct yourself in a professional manner at all times, and carry out

---

[45] *Rollo* (G.R. No. 193782), pp. 59-60.

[46] See Complaint and Amended Complaint, *rollo* (G.R. No. 210695), pp. 127-136 and 181-211, respectively.

> your duties and responsibilities in the high standard achieved throughout Ernst & Young practices worldwide.
>
> **This assignment letter will be governed by, and construed in accordance with, the laws of the U.S., under which the firm and you agree to the exclusive jurisdiction of the U.S. courts. In addition, all terms and conditions of your Partnership Agreement with Ernst & Young LLP, which are not consistent with this letter, shall remain in full force and effect.**[47] (Emphasis supplied.)

3. The allegations in Strickland's complaint, specifically his narration of facts, admit that the entire controversy stems from his working relationship with EYLLP as a partner, thus:

> ~~(14)~~(9) When the NHMFC Agreement was signed, [Strickland] was a Partner in E&Y and held the title of Managing Director of Ernst & Young Asia Pacific Financial Solutions LLC ("EYAPFS"), a 100% owned and controlled subsidiary of Ernst & Young LLP ("E&Y").[48] x x x

On the whole, the dispute between Strickland and EYLLP, even considering the former's allegations of tortious conduct, were properly referred by the CA to arbitration.

II

In its Decision in CA-G.R. SP No. 120897, the CA suspended the proceedings in Civil Case No. 05-692, finding that: (1) PA is an agent of EYLLP who cannot be sued by Strickland on the contract of employment between Strickland and EYLLP/EYAPFS; and (2) even without delving into the contract of agency between PA and EYLLP/EYAPFS, "a comparison of the causes of action against [EYLLP/EYAPFS] and x x x PA would justify a suspension of the proceedings in the trial court."[49]

Strickland maintains, however, that the CA's suspension of the proceedings in Civil Case No. 05-692 is grave error because: (1) the Partnership Agreement containing the arbitration clause was not sufficiently proved and authenticated;[50] (2) the CA should have ordered the RTC to conduct an evidentiary hearing on the factual assertions that PA is an agent of EYLLP/EYAPFS and that the causes of action of Strickland against EYLLP are intricately intertwined with those against PA and the other

---

47 CA *rollo* (CA-G.R. SP No. 102805), p. 263.
48 *Rollo* (G.R. No. 210695), p. 186.
49 *Id.* at 18.
50 *Id.* at 71-72.

defendants;[51] and (3) Strickland has distinct causes of action against other defendants such as NHMFC.[52]

We disagree. We affirm the CA's ruling.

First. PA was unequivocally an agent of EYLLP at the time it executed, as Philippine Member of the EYLLP global company, the FASA with NHMFC for the UHLP Project.

The records bear out in at least two documents that PA represented EYLLP/EYAPFS in the FASA with NHMFC for the UHLP Project, to wit:

1. The April 15, 2002 letter of PA to Strickland:

> Dear Dale,
>
> Ernst & Young, as represented by Punongbayan & Araullo, the Ernst & Young member firm in the Philippines (P&A/ERNST & YOUNG) and Ernst & Young Asia Pacific Solutions LLC (EY/APFS) was chosen as the exclusive Financial Advisor for National Home Mortgage Finance Corporation (NHMFC) with respect to the liquidation of its Php40 Billion Unified Home Lending Program (UHLP) portfolio (or the "Transaction"). **P&A/ERNST & YOUNG acted as the contracting party, on behalf of EY/APFS, and signed the contract with NHMFC to officially kick-off the engagement.**[53] (Emphasis supplied.)

2. The March 26, 2002 letter covering the FASA between NHMFC and PA, where PA, as one of the parties, was designated in all references as "P&A/ERNST & YOUNG" or "P&A/E&Y."[54]

This fact of agency relationship between PA and EYLLP cannot be denied and avoided by Strickland, given Articles 1868 and 1873 of the Civil Code which provides, thus:

> Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.
>
> Art. 1873. If a person specially informs another or states by public advertisement that he has given a power of attorney to a third person, the latter thereby becomes a duly authorized agent, in the former case with respect to the

---

51 *Id.* at 60.
52 *Id.* at 64-70, 86.
53 *Id.* at 787.
54 *Id.* at 107.

> person who received the special information, and in the latter case with regard to any person.
>
> x x x x

Clearly, with the foregoing documents, PA is considered an agent of EYLLP. We quote with favor the analysis of the CA in CA-G.R. SP No. 120897:

> x x x Strickland admitted the following: (1) that he is an employee of Ernst & Young Asia, assigned to different projects in Korea, Japan, Thailand, China and the Philippines; and (2) that x x x P&A is an agent of Ernst & Young Asia. Such agency is also reflected in the letter addressed to Strickland, dated April 15, 2002, stating that P&A was representing Ernst & Young Asia, being its member firm located in the Philippines. P&A, as agent of Ernst & Young Asia, was authorized to act in behalf of the latter with regard to the liquidation of the UHLP as financial advisor for NHMFC.
>
> Having established the fact of agency, there is no question that P&A derives its authority for the UHLP liquidation from Ernst & Young Asia. As such agent, P&A cannot sue and be sued on the contract of employment between Strickland and Ernst & Young Asia. As explained by a recognized authority in civil law:
>
> > *"(a) Normally, the agent has neither rights nor liabilities as against the third party.* ***He cannot sue or be sued on the contract. Since the contract may be violated only by the parties thereto against each other, the real party-in-interest, either as plaintiff or defendant in an action upon that contract must, generally be a party to said contract.***"
>
> In this case, the conflict arose from the terms of Strickland's employment contract with Ernst & Young Asia and P&A's involvement in the same was a mere consequence that the termination occurred while the UHLP was ongoing. The fact of agency in itself and the aforequoted discussion of its effects shows that [PA's] liability is anchored on that of Ernst & Young Asia, giving rise to a reason why the trial court's proceedings must be suspended in the light of the pending arbitration proceedings between [PA's] principal[, EYLLP,] and x x x Strickland.[55] (Emphasis in the original; citations omitted.)

Moreover, that PA is not a signatory to the Partnership Agreement containing the arbitration clause is of no moment. The arbitration clause is applicable to PA and effectively stays the proceedings against it.

---

[55] *Id.* at 17-18.

In *BF Corporation v. Court of Appeals*,[56] we ruled thus:

> Petitioner's contention that there was no arbitration clause because the contract incorporating said provision is part of a "hodge-podge" document, is therefore untenable. 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.
>
> The flaw in petitioner's contentions therefore lies in its having segmented the various components of the whole contract between the parties into several parts. This notwithstanding, petitioner ironically admits the execution of the Articles of Agreement. Notably, too, the lower court found that the said Articles of Agreement "also provides that the 'Contract Documents' therein listed 'shall be deemed an integral part of this Agreement,' and one of the said documents is the 'Conditions of Contract' which contains the Arbitration Clause.'" It is this Articles of Agreement that was duly signed by Rufo B. Colayco, president of private respondent SPI, and Bayani F. Fernando, president of petitioner corporation. The same agreement was duly subscribed before notary public Nilberto R. Briones. In other words, the subscription of the principal agreement effectively covered the other documents incorporated by reference therein.[57] (Citations omitted.)

Second. The confusion arises because Strickland insists on foregoing suit on his Partnership Agreement with EYLLP precisely because such has an arbitration clause and a choice of law provision. It is quite apparent that Strickland wishes to sue all the defendants before our courts based on a combination of causes of action for violation of obligations arising out of tort,[58] *quasi*-contract,[59] and contract.[60] However, Strickland's allegations in both the complaint and amended complaint are undoubtedly hinged, and unavoidably linked, to his former contractual relationship with EYLLP to which the present controversy among all the parties can be traced:

---

[56] G.R. No. 120105, March 27, 1998, 288 SCRA 267.
[57] *Id.* at 283-284.
[58] See CIVIL CODE, Art. 2176.
[59] See CIVIL CODE, Arts. 2142 and 2143.
[60] See CIVIL CODE, Art. 1157.

> ~~(28)~~(23) It is likely that one of the reasons that P&A refused to compensate him was because of the influence of [EYLLP]. It is believed that [EYLLP] sought to punish Mr. Strickland by trying to prevent him from receiving compensation despite [EYLLP's] deliberate and reckless abandonment of its contractual responsibilities. NHMFC appears to have refused to compensate [Strickland] because it was not contractually bound by the Agreement to compensate him, although NHMFC believed it could oblige [Strickland] to complete the work because of [his] designation as Project Manager.
>
> ~~(29)~~(24) [Strickland] is entitled to be compensated for his work.[61] x x x

The designation in Strickland's amended complaint of "Additional Cause of Action Against [respondent EYLLP]"[62] further demonstrates that the totality of his causes of action are actually anchored on the disintegration of his working relationship with EYLLP whom he faults for his failure to receive compensation from the other defendants.

In a hodge podge of allegations, Strickland, without being a party to the FASA between NHMFC and PA/EYLLP, insists on the continuation of his suit contending that his designation as "Lead Due Diligence Partner," forming part of the Engagement Team, entitles him to equitable compensation. Thus, Strickland maintains that the proceedings in Civil Case No. 05-692 should not have been suspended, and should then proceed independently of the arbitration between Strickland and EYLLP.

We do not agree. We do not find the designation of Strickland in the Engagement Team of the FASA as a stipulation *pour atrui*. Article 1311, paragraph 2 of the Civil Code reads:

> Art. 1311. x x x
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

Considering the clear applicability of the Partnership Agreement and the terms of the arbitration clause, and absent a clear right-duty correlative[63] which supports Strickland's causes of action, the CA certainly did not err in suspending the proceedings in CA-G.R. SP No. 120897.

---

61 *Rollo* (G.R. No. 210695), p. 190.
62 *Id.* at 191.
63 See RULES OF COURT, Rule 2, Sec. 2.

Third. We are not unaware of previous holdings where we disallowed suspension of trial pending arbitration, even simultaneous arbitration proceedings and trial, where the issue before the court could not then be speedily and efficiently resolved in its entirety. We emphasized that the object of arbitration (that is, to expedite the determination of a dispute) would only be served if the trial court hears and adjudicates the case in a single and complete proceeding.[64]

The following circumstances underscore the high probability of an expeditious resolution of the conflict with the referral to arbitration of the dispute between EYLLP and Strickland and the succeeding suspension of the proceedings before the RTC in Civil Case No. 05-692:

1. As previously stated, these cases comprise of a foreign element, involving foreign parties and international transactions. While the parties have not questioned the jurisdiction of our courts, the RTC may still refuse to assume jurisdiction.[65]

2. As previously discussed, the causes of action cited by Strickland in his complaint (and amended complaint) all undoubtedly relate to his Partnership Agreement with EYLLP which is subject to arbitration. This very same Partnership Agreement is even reiterated in the November 15, 2002 Assignment Letter assigning Strickland to Manila.[66]

3. Strickland himself admits that as Partner of EYLLP, he was assigned to various parts of Asia. He has also not denied that he was seconded to EYAPFS because of certain tax consequences of his different assignments.[67] In fact, in his additional cause of action against EYLLP, Strickland alleged, among others, that EYLLP did not pay his correct taxes making him liable for these.[68] Evidently, the real dispute between Strickland and EYLLP falls within its Partnership Agreement involving its own choice of law provision.

In *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari,"*[69] the Court used balancing of basic interest to weigh the varying foreign elements of the case listed in the US case of *Lauritzen v. Larsen.*[70] With Philippine law falling only under one factor as the law of the forum where petitioner Crescent filed suit, the Court declared it inconceivable that the Philippine court had any interest in the case that would outweigh the interests of the

---

[64] See *Del Monte Corporation-USA v. Court of Appeals*, G.R. No. 136154, February 7, 2001, 351 SCRA 373, 381-382, citing *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation*, G.R. No. 135362, December 13, 1999, 320 SCRA 610.

[65] See *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari,"* G.R. No. 155014, November 11, 2005, 474 SCRA 623.

[66] See CA *rollo* (CA-G.R. SP No. 102805), p. 263.

[67] See email thread prior to Strickland's assignment to Manila to ensure that he maximizes his compensation benefits. *Rollo* (G.R. No. 210695), pp. 223-256.

[68] *Id.* at 197-201.

[69] *Supra.*

[70] 345 U.S. 571 (1953).

involved foreign jurisdictions (Canada or India).[71] Ultimately, the Court held that:

> *Finally.* The submission of petitioner is not in keeping with the reasonable expectation of the parties to the contract. Indeed, when the parties entered into a contract for supplies in Canada, they could not have intended the laws of a remote country like the Philippines to determine the creation of a lien by the mere accident of the Vessel's being in Philippine territory.[72]

In all, while we do not preclude Strickland from pursuing all remedies available to him, we point out that the factual circumstances obtaining here, given that Strickland was then partner of the global company EYLLP, the Philippines is not automatically the law of the place of performance of the contract nor is it the only factor to be considered in the ultimate choice-of-law final analysis.

WHEREFORE, the petitions in G.R. Nos. 193782 and 210695 are **DENIED**. The Decisions of the Court of Appeals in CA-G.R. SP No. 102805 dated June 17, 2010 and CA-G.R. SP No. 120897 dated August 5, 2013 are **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

---

71 *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari," supra* note 65 at 641.
72 *Id.* at 641-642.

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

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

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
*Senior Associate Justice****

*** Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.