



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

JACQUES A. DUPASQUIER and G.R. No. 211044

CARLOS S. RUFINO for themselves and on behalf of THE NET GROUP, composed of 19-1 REALTY CORPORATION, 18-2 PROPERTY HOLDINGS, INC., 6-3 PROPERTY HOLDINGS INC., ADD LAND, INC., REMEDIOS A. DUPASQUIER, PIERRE DUPASQUIER, ANNA MARIE MORRONGIELLO, DELRUF REALTY & DEVELOPMENT, INC., VAR BUILDINGS, INC., MARILEX REALTY, ARESAR REALTY, SUNVAR, INC., MACARIO S. RUFINO, REMIGIO TAN, JR., MA. AUXILIO R. PRIETO, MA. PAZ R. TANJANCO, RAMON D. RUFINO, PAOLO R. PRIETO, VICENTE L. RUFINO, THERESA P. VALDES, ALEXANDRA P. ROMUALDEZ, TERESA R. TAN, JAVIER VICENTE RUFINO, CARLO D. RUFINO, LUIS CARLO R. LAUREL, MA. ASUNCION L. UICHICO, MA. PAZ FARAH L. IMPERIAL, MA. ISABEL L. BARANDIARAN, ALFREDO PARUNGAO, AND ALOYSIUS B. COLAYCO,

Present:

BERSAMIN, CJ., Chairperson, DEL CASTILLO,* Working Chairperson, JARDELEZA, Acting Working Chairperson GESMUNDO, and J. REYES, JR.,*** JJ.**

Promulgated:

JUL 24 2019

Petitioners,

- versus -

ASCENDAS (PHILIPPINES) CORPORATION,

Respondent.

* On official leave.

** Designated as Acting Working Chairperson of the First Division per Special Order No. 2680 dated July 12, 2019.

*** Designated as Additional Member per Raffle dated June 3, 2019 in lieu of Associate Justice Rosmari D. Carandang.

DECISION**JARDELEZA, J.:**

This is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated April 3, 2012 and Resolution³ dated January 27, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 90835. The CA set aside the Order⁴ dated December 14, 2007 of Branch 59 of the Regional Trial Court (RTC) in Makati City, in Civil Case No. 07-860, which declared, on summary judgment, that petitioners cannot be compelled to arbitrate and petitioners are entitled to the Due Diligence L/C in the amount of US\$1,000,000.00.

Petitioners Jacques A. Dupasquier and Carlos S. Rufino, for themselves and on behalf of The Net Group, composed of 19-1 Realty Corporation, 18-2 Property Holdings, Inc., 6-3 Property Holdings, Inc., Add Land, Inc., Remedios A. Dupasquier, Pierre Dupasquier, Anna Marie Morrongiello, Delruf Realty & Development, Inc., VAR Buildings, Inc., Marilex Realty, Aresar Realty, Sunvar, Inc., Macario S. Rufino, Remigio Tan, Jr., Ma. Auxilio R. Prieto, Ma. Paz R. Tanjanco, Ramon D. Rufino, Paolo R. Prieto, Vicente L. Rufino, Theresa P. Valdes, Alexandra P. Romualdez, Teresa R. Tan, Javier Vicente Rufino, Carlo D. Rufino, Luis Carlo R. Laurel, Ma. Asuncion L. Uichico, Ma. Paz Farah L. Imperial, Ma. Isabel L. Barandiaran, Alfredo Parungao, and Aloysius B. Colayco (collectively referred to as The Net Group) are corporations and individuals who grouped together to engage in business as developer and operator of Philippine Economic Zone Authority (PEZA)-accredited office buildings.⁵

Ascendas (Philippines) Corporation (Ascendas) is a corporation duly organized and existing under Philippine laws.⁶ It is engaged in the real estate industry, providing business space solutions in Singapore, Philippines, and other Asian countries.⁷

On January 18, 2007, The Net Group and Ascendas entered into a Memorandum of Understanding (MOU),⁸ wherein the parties agreed in principle to Ascendas' acquisition of the entire issued and outstanding shares of stock of the Net Corporations. The parties agreed that the details of the contractual framework of their transaction will be contained in the Definitive Agreements to be executed by the parties subsequent to the signing of the

¹ *Rollo*, pp. 3-44-A.

² *Id.* at 87-109. Penned by Associate Justice Rosmari D. Carandang (now a Member of this Court), concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

³ *Id.* at 111-141. Penned by Associate Justice Rosmari D. Carandang, concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion; dissented by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

⁴ *Id.* at 348-356.

⁵ *Id.* at 3, 88.

⁶ *Id.* at 170.

⁷ *Id.* at 88.

⁸ *Id.* at 170-202.

MOU.⁹ The parties stipulated that the Closing Date of the MOU shall be defined as “two calendar weeks after the signing of the Memorandum of Agreement (MOA) but not later than March 31, 2017.”¹⁰ The MOA is defined as the Memorandum of Agreement to be signed by the parties on or before March 15, 2007, or such other date as may be subsequently agreed upon by the parties in writing, and which, when signed, will supersede the MOU.¹¹

By way of security for full compliance with the provisions of the MOU, the parties stipulated in Clause 5 that:

- a. Within five (5) business days upon signing of this MOU, Ascendas shall deliver to The Net Group the Due Diligence L/C in the amount of US\$1,000,000.00, in the form acceptable to The Net Group, to be issued by a reputable bank duly licensed to conduct business within the Philippines and acceptable to The Net Group.
 - i. If Ascendas fails or refuses to sign the MOA without any justifiable reason, including but not limited to an instance when: (1) it is given a Due Diligence report showing no Relevant Findings; or (2) in case there are Relevant Findings in the Due Diligence report and The Net Group issues a certification that it shall cure and/or remedy all such Relevant Findings in accordance with Clause 4(b) and/or as agreed upon by the Parties, then The Net Group shall be authorized to draw upon the Due Diligence L/C upon signing of the MOA or on March 31, 2007, whichever comes earlier: provided, however, that The Net Group submits a certification to the issuing bank that it is willing to execute the MOA upon submission by Ascendas to The Net Group of the Transaction Price L/C, without need of presenting or submitting a copy of the MOA to the said issuing bank. The amount so drawn by The Net Group shall serve as liquidated damages in its favor.
 - ii. If The Net Group fails or refuses to execute the MOA by March 31, 2007 without any justifiable reason, then The Net Group shall not be authorized to draw down on the Due Diligence L/C and will be considered in breach of this MOU.
 - iii. If the MOA is executed by the Parties on or before March 15, 2007, The Net Group shall be authorized to draw upon the Due Diligence L/C on the date of

⁹ *Id.* at 170, 173.

¹⁰ *Id.* at 172.

¹¹ *Id.* at 175.

signing of the MOA and the amount so drawn shall form part of the Transaction Price.¹²

The MOU likewise provided an Arbitration clause, as part of Clause 14 entitled “Miscellaneous Provision,” which reads:

- i. **Arbitration.** In case of any dispute arising out of or in connection with this MOU, the Parties agree to negotiate in good faith within a period of thirty (30) days after written notice by one Party to the other Party of the existence of such dispute, failing which the said dispute shall be referred to and finally resolved by arbitration under the Rules of the United Nations Commission of International Trade Law, which Rules are deemed to be incorporated by reference into this Clause. The arbitration shall be held in Hong Kong. The language to be used in the arbitration shall be English.¹³ (Emphasis in the original.)

Likewise in Clause 14 of the MOU, the parties incorporated the effectivity of the MOU in the following manner:

1. **Effectivity.** This MOU shall take effect upon the signing thereof and shall continue to have force and effect unless earlier terminated pursuant to Clause 11 [Execution of Definitive Agreements] or until this is superseded by the execution of the Definitive Agreements. Upon the termination or lapse of this MOU, the MOU shall cease to have any force and effect except for Clause 14(e) [Confidentiality], which shall survive and remain effective and enforceable.¹⁴

The parties appended, as Annex “C” of the MOU, a Transaction Timeline, to wit:

	Particulars
Day 1	Signing of MOU
No later than Day 5	Delivery of Due Diligence L/C
No later than Day 7	Delivery of Ascendas of list of documents subject of Due Diligence
No later than Day 14	Compilation and preparation of The Net Group of requested documents
Day 1 to Day 42	Due Diligence Period Negotiation on MOA Negotiation on Definitive Agreements
No later than Day 45	Presentation of Due Diligence Findings to The Net Group
No later than Day 52	Discussion on Relevant Findings

¹² *Id.* at 186.

¹³ *Id.* at 194-195.

¹⁴ *Id.* at 195.

	The Net Group to decide whether to remedy or cure Relevant Findings
Day 52 to 97	The Net Group to effect remedy or cure to (<i>sic</i>) Relevant Findings
Within Day 45 to March 15, 2007	Signing of MOA and Drawdown on Due Diligence L/C
No later than March 31, 2007	Delivery of Transaction Price L/C Signing of Project Development and Management Agreement Signing of Asset Management Agreement Signing of Property Management Agreement Signing of Executive Marketing Agreement Signing of Lease Contract between The Net Group and Ascendas Signing of Deeds of Absolute Sale of Shares of Stock Net One and/or Net Square] Payment of Full Purchase Price of Net One and Net Square and Initial Payment of Net Cube, Net Quad and Net Five, if applicable Drawdown on Due Diligence L/C (in case no MOA is signed)
After March 15, 2007 / March 31, 2007	Payment of Balance Payments ¹⁵

In accordance with the MOU and the Transaction Timeline, Ascendas delivered to The Net Group an irrevocable Letter of Credit (L/C) in the amount of US\$1,000,000.00 or the Due Diligence L/C specified in the MOU.¹⁶ Thereafter, Ascendas began its due diligence investigation on The Net Group.¹⁷

During the first quarter of 2007, Ascendas' Mr. Edwin Kung Wee Tack (Mr. Tack) sent an electronic mail to The Net Group's Vice-President, Mr. Raymond Rufino (Mr. Rufino), stating that Ascendas could not execute the MOA by the Closing Date because the projected completion date of the due diligence is after March 31, 2007. Mr. Rufino replied that the request for extension is unwarranted because the remaining items are minor and can be resolved quickly. He, instead, offered to meet with Ascendas'

¹⁵ *Id.* at 199-200.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

representatives in order to address the outstanding issues so the original timetable could be observed.¹⁸

By March 31, 2007, the parties were not able to execute a MOA and Definitive Agreements. They did not agree in writing to an extension of the Closing Date or a revision of the Timetable.¹⁹

The Net Group informed Ascendas that they deemed the MOU as lapsed as of April 1, 2007. The Net Group, however, manifested their willingness to continue negotiations with Ascendas on purely voluntary and non-exclusive basis.²⁰

In its letters dated June 11, 2007,²¹ July 26, 2007²² and August 28, 2007,²³ Ascendas informed The Net Group of its position that the MOU did not expire. Ascendas also attributed the delay in the execution of the MOA to The Net Group. According to Ascendas, The Net Group committed lapses in providing the information and documentation necessary to complete its due diligence audit, and it failed to provide Ascendas with a credible party nominated for representations and warranties on behalf of the Dupasquier family.

On September 14, 2007, Ascendas wrote another letter to The Net Group specifying that the parties have until September 28, 2007 to resolve the disputes between them, otherwise, Ascendas will refer the dispute to arbitration.²⁴

On September 18, 2007, The Net Group filed a petition²⁵ for declaratory relief with an application for preliminary injunction/temporary restraining order (TRO) before the RTC in Makati City. This was docketed as Civil Case No. 07-860. In its petition, The Net Group alleged that Ascendas' demand to arbitrate is baseless. According to its interpretation of the MOU, the Arbitration Clause would not survive the lapse of the MOU on March 31, 2007 because the parties agreed that only the confidentiality clause will survive the termination or lapse of the MOU. Hence, The Net Group pleaded for a judicial declaration that the arbitration agreement contained in the MOU be declared ineffective and that Ascendas can no longer compel The Net Group to submit to arbitration pursuant to the relevant clause.²⁶ In addition, The Net Group sought for a judicial declaration that it is already entitled to the Due Diligence L/C on the basis of

¹⁸ *Id.*

¹⁹ *Rollo*, pp. 10-11.

²⁰ *Id.* at 11.

²¹ *Id.* at 222-223.

²² *Id.* at 224-225.

²³ *Id.* at 226.

²⁴ *Id.* at 12.

²⁵ *Id.* at 227-242.

²⁶ *Id.* at 235-236.

the MOU.²⁷ The case was raffled to Branch 59 of the RTC in Makati City.²⁸

On September 25, 2007, the RTC granted The Net Group's prayer for the issuance of a TRO.²⁹

Ascendas filed an urgent omnibus motion to: (a) defer further proceedings, including the hearing of petitioners' application for the issuance of a writ of preliminary injunction pending the resolution of the omnibus motion; (b) dismiss the petition; and (c) reconsider the issuance of the TRO.³⁰ The RTC denied the omnibus motion and set the hearing for the application of preliminary injunction on October 9 and 10, 2007. Ascendas filed a petition for *certiorari* before the CA, but the CA upheld the RTC's Orders.³¹

On October 17, 2007, Ascendas filed its answer *ex abundanti ad cautelam* with compulsory counterclaim.³² Ascendas claimed that the petition failed to state a cause of action because petitioners' prayer that they be entitled to the cash equivalent of the Due Diligence L/C requires a determination of whether a breach of the MOU was committed is improper in a petition for declaratory relief. Also, it vehemently argued that the MOU had not lapsed and assuming it had lapsed, the Arbitration Clause therein survived and thus, the condition precedent, which is the referral to arbitration, for filing the claim was not complied with.³³

The Net Group filed a motion for summary judgment³⁴ with the RTC alleging that Ascendas' defenses were purely legal in nature.

On December 14, 2007, the RTC promulgated its Decision³⁵ granting The Net Group's motion for summary judgment, the *fallo* reads:

WHEREFORE, premises considered, summary judgment is hereby rendered in favor of the petitioners and against the respondent in the following manner:

- a) Declaring that respondent cannot compel petitioners to proceed to arbitration on the basis of said arbitration clause;
- b) Declaring that petitioners are entitled to the Due Diligence L/C in the amount of US1,000,000.00;

²⁷ *Id.* at 237.

²⁸ *Id.* at 12.

²⁹ *Id.* at 323-325.

³⁰ *Id.* at 12.

³¹ *Id.* at 13.

³² *Id.* at 357-368.

³³ *Id.* at 364-365.

³⁴ *Id.* at 387-411.

³⁵ *Supra* note 4.

- c) Denying respondent's compulsory counter claim, prayer for attorney's fees and litigation expenses for lack of merit; and
- d) Making the injunction permanent.

SO ORDERED.³⁶

Ascendas then filed a notice of appeal.

In the assailed Decision³⁷ dated April 3, 2012, the CA unanimously set aside the RTC's Order dated December 14, 2007. It ruled that considering the separability doctrine wherein the Arbitration Clause remains operative despite the termination of the contract, the RTC cannot exercise jurisdiction over the dispute because the parties should have referred the matter to arbitration. It likewise ruled that The Net Group's prayer to be declared entitled to liquidated damages in their petition should have forewarned the RTC that there has been a breach of the MOU, in which case, a petition for declaratory relief is a procedural mistake.

Acting on The Net Group's motion for reconsideration, the members of the CA split their votes: three in favor of the denial of the motion for reconsideration and two dissenting.³⁸

Hence, this petition wherein The Net Group poses the following arguments:

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR IN THE ASSAILED DECISION AND RESOLUTION CONSIDERING THAT:

- I. THE EXPIRATION OF THE MOU ALSO TERMINATED THE EFFECTIVITY OF THE SUBJECT ARBITRATION CLAUSE;**
- II. THE PETITION FOR DECLARATORY RELIEF IN CIVIL CASE NO. 07-860 IS PROPER AS THERE WAS NO BREACH OF THE MOU WHICH WAS THE SUBJECT THEREOF; AND**
- III. THE SUMMARY JUDGMENT IN THE CIVIL CASE NO. 07-860 IS PROPER CONSIDERING THAT THERE WAS NO GENUINE ISSUE OF FACT BEFORE THE RTC.**³⁹ (Emphasis in the original.)

We grant the petition.

³⁶ *Id.* at 355-356.

³⁷ *Supra* note 2.

³⁸ *Supra* note 3.

³⁹ *Rollo*, pp. 16-17.

I.

The Net Group argues that the Arbitration Clause was time-limited, there being no express reservation as to its continued applicability. It claims that the parties agreed to an express termination date of the MOU including all the provisions thereof, except the Confidentiality Clause 14(e). It alleges that such an agreement is not prohibited by law and the courts are not free to substitute their own discretion.

Ascendas, on the other hand, claims that the CA correctly found that the parties did not intend that the Arbitration Clause would end together with the MOU. Rather, the parties intended to submit to arbitration any dispute arising out of or in connection with the MOU. It states that the MOU's wordings are broad enough as to cover the issue of whether the MOU had lapsed since it involves the interpretation and application of the provisions of the contract.

Article 1370 of the Civil Code on the interpretation of contracts mandates that the literal meaning of the stipulations shall prevail if the contract's terms are clear and leave no doubt as to the intention of the contracting parties. If, however, the words of the contract are contrary to the evident intention of the parties, the intention of the parties shall be controlling. Thus:

Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

The foregoing rule was thoroughly discussed in *Abad v. Goldloop Properties, Inc.*:⁴⁰

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: “[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control”. This provision is akin to the “**plain meaning rule**” applied by **Pennsylvania courts, which assumes that the intent of the parties to an instrument is “embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement.”** It also resembles the “four corners” rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to

⁴⁰ G.R. No. 168108, April 13, 2007, 521 SCRA 131.

interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.⁴¹ (Emphasis supplied; italics in the original; citations omitted.)

Thus, in interpreting a contract, the primary function of the court is to determine whether its wordings are clear and unambiguous. If so, the court is bound to apply the literal meaning of the contract because the manifest intention of the parties is apparent. If the wordings, however, are ambiguous and may lead to different interpretations, the court should determine the actual intention of the contracting parties.

In the present case, while there is no doubt that the parties intended that disputes be referred to arbitration, the parties, nonetheless, are in conflict as to whether the Arbitration Clause is time-limited.

A.

It must be remembered that arbitration is a matter of contract and the parties cannot be obliged to submit any dispute to arbitration, in the absence of their consent to submit thereto.⁴² The parties may lay their rights and liabilities in relation to the parties' resort to arbitration in the contract. As any other agreements, the parties have freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order and public policy.⁴³ The parties may, therefore, agree as to the submission of the disputes to arbitration, the forum of arbitration, the subject of arbitration and the termination of their arbitration agreement.

It is thus proper that a review of the following provisions of Clause 14 of the MOU be conducted to determine the intention of the parties:

- i. **Arbitration.** In case of any dispute arising out of or in connection with this MOU, the Parties agree to negotiate in good faith within a period of thirty (30) days after written notice by one Party to the other Party of the existence of such dispute, failing which the said dispute shall be referred to and finally resolved by arbitration under the Rules of the United Nations

⁴¹ *Id.* at 143-144.

⁴² See *Gonzales v. Climax Mining Ltd.*, G.R. No. 161957, January 22, 2007, 152 SCRA 148, 167.

⁴³ CIVIL CODE, Art. 1306.

Commission of International Trade Law, which Rules are deemed to be incorporated by reference into this Clause. The arbitration shall be held in Hong Kong. The language to be used in the arbitration shall be English.

x x x x

1. **Effectivity.** This MOU shall take effect upon the signing thereof and shall continue to have force and effect unless earlier terminated pursuant to Clause 11 [Execution of Definitive Agreements] or until this is superseded by the execution of the Definitive Agreements. Upon the termination or lapse of this MOU, this MOU shall cease to have any force and effect except for Clause 14(e) [Confidentiality], which shall survive and remain effective and enforceable.⁴⁴ (Emphasis in the original.)

Using the guidelines for interpreting a contract, the literal meaning of Clause 14(e) of the MOU is that the lapse of the MOU shall have an effect of making all its provisions, except Clause 14(e) on Confidentiality, ineffectual. The MOU itself provides that its “Closing Date” shall be two calendar weeks after the signing of the MOA, but not later than March 31, 2007. Since no MOA was signed by the parties, the MOU lapsed on March 31, 2007 by operation of the provisions of the MOU. Reading Clause 14(e) in relation to the MOU’s definition of “Closing Date”, the MOU’s provisions, including the Arbitration Clause, shall be of no effect as of March 31, 2007. This is the manifest intent of the contracting parties.

B.


The complexity arose with Ascendas’ application of the doctrine of separability in the interpretation of the entire MOU. The doctrine of separability or severability enunciates that an arbitration agreement is independent of the main contract. It denotes that the invalidity of the main contract does not affect the validity of the arbitration agreement.⁴⁵ Ascendas espouses an argument that the Arbitration Clause remained valid despite the lapse of the MOU.

We have to balance the application of this doctrine with the manifest intention of the contracting parties. To our mind, this doctrine is relevant in the absence of the parties’ specific stipulation as to the Arbitration Clause’s term of effectivity.

Indeed, We have adopted the doctrine of separability and ruled on its application as recognition that arbitration may serve as an effective alternative mode of settling disputes.

⁴⁴ *Rollo*, pp. 194-195.

⁴⁵ *Gonzales v. Climax Mining Ltd.*, *supra* note 42 at 170.



In *Gonzales v. Climax Mining Ltd.*, respondent therein argued that the case should not be brought to arbitration since it was claiming that the contract should be rescinded. There, we held that “the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself.”⁴⁶

In *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.*,⁴⁷ we applied our ruling in *Gonzales* by elaborating that an “arbitration agreement which forms part of the main contract shall not be regarded as invalid or non-existent just because the main contract is invalid or did not come into existence, since the arbitration agreement shall be treated as a separate agreement independent of the main contract.”⁴⁸

Lastly, in *Koppel, Inc. v. Makati Rotary Club Foundation, Inc.*⁴⁹ we acknowledged therein petitioner’s right to invoke the arbitration clause of its lease contract even if it was assailing the validity of that contract.⁵⁰

A review of those cases, however, reveals that one of the respective parties therein, impugned the validity of the contract or unilaterally invoked the non-existence of the “container contract” or the contract containing the arbitration clause. In stark contrast to the present case, there was no agreement among the parties in the above-mentioned cases to terminate the arbitration clause.

On this point, we note the Rhode Island Supreme Court’s ruling in *Radiation Oncology Associates, Inc. v. Roger Williams Hospital*.⁵¹ In that case, the Court resolved the issue of whether the parties intended to submit a dispute concerning the duration of their service agreement to arbitrate. The agreement provided that it shall commence on October 1, 2001 and shall terminate on December 31, 2004. It added that if an extension or substitute contract is not signed by the parties prior to December 31, 2004, the agreement shall be null and of no further effect. The Court held that the parties did not intend to submit dispute to arbitration after the expiration of the service agreement, thus:

Our review of the services agreement leads us to conclude that the parties did not intend to submit to arbitration disputes over the duration of their services agreement because the terms of their agreement included a date certain for expiration. **The final sentence to paragraph 22(a) of the services agreement reads: “If an extension or substitute contract is not signed by the parties prior to December 31, 2004, this Agreement**

⁴⁶ *Id.* at 173.

⁴⁷ G.R. No. 175404, January 31, 2011, 641 SCRA 31.

⁴⁸ *Id.* at 47.

⁴⁹ G.R. No. 198075, September 4/2013, 105 SCRA 142.

⁵⁰ *Id.* at 162.

⁵¹ No. 2005-218-appeal (2006).

shall be null and void and of no further effect.” As a matter of contract construction, the strong and specific language of this expiration provision limited the reach of the noticeably nonspecific language of the arbitration clause that “all disputes” arising under the agreement “shall be settled by arbitration.” See *Crouch*, 808 A.2d at 1079 (interpreting the broad language of arbitration provisions in a collective bargaining agreement to be superseded by the more explicit provisions of a statute incorporated into the agreement); accord *Antonio Marcaccio, Inc. v. Santurri*, 51 R.I. 440, 442, 155 A. 571, 572 (1931) (applying the rule that more specific contract provisions govern more general ones in a dispute over a broker’s commission); cf. 11 Samuel Williston, *A Treatise on the Law of Contracts* § 32:15 at 509-10 (Richard A. Lord ed., West Group 4th ed. 1999) (indicating that, when interpreting a contract that contains contradictory clauses, courts will typically give preference to the more specific of the two clauses).

It is true that this Court has voiced a preference in favor of arbitration as a particularly efficacious alternative method of dispute resolution. See, e.g., *Crouch*, 808 A.2d at 1078; *Brown v. Amaral*, 460 A.2d 7, 10 (R.I.1983); *School Committee of Pawtucket v. Pawtucket Teachers Alliance*, 120 R.I. 810, 815, 390 A.2d 386, 389 (1978). But we do not see our holding today as an affront to that principle, particularly in cases, such as that under review, involving a challenge to the duration of a contract the terms of which include an express expiration date. We observe that federal circuit courts similarly have discounted the import of any “presumption” in favor of arbitration when called upon to determine the arbitrability of duration disputes concerning contracts containing a date certain for expiration. See *Virginia Carolina Tools, Inc.*, 984 F.2d at 118 (holding that an intent to arbitrate a duration dispute could not be inferred from an agreement that contained a nonspecific arbitration clause and an express termination date provision); *National Railroad Passenger Corp. v. Boston and Maine Corp.*, 850 F.2d 756, 763-64 (D.C.Cir.1988) (holding that a party could overcome a broad arbitration clause by showing an unambiguous expiration date); cf. *Municipality of San Juan v. Corporacion Para el Fomento Economico de la Ciudad Capital*, 415 F.3d 145, 150 & n. 8 (1st Cir.2005) (distinguishing *Virginia Carolina Tools, Inc.* because, in that case, the contract at issue contained a more specific termination date).⁵² (Emphasis supplied; italics in the original.)

The language used in the subject service agreement of *Radiation Oncology* is somehow identical with the MOU of the present case. In both cases, the parties incorporated a time-limit to the agreement which gave rise to the eventual ineffectivity of the contract and its provision. In no uncertain

⁵² *Id.* at 514-515

way that this time-limit refers to the non-signing of extension or substitute contract before the expiration of a date certain. It is thus wise to rule that the parties intended that the happening of the date certain would give no effect to all parts of the MOU, including the Arbitration Clause. This ruling, however, should not be understood as abandoning the doctrine of separability, but merely giving way to the manifest intention of the contracting parties.

Moreover, the parties agreed to exempt the Confidentiality Clause in the effects of the Closing Date is an indication of their intent. To our mind, this exception bolsters the manifest intent of the parties to terminate the Arbitration Clause. The parties expressly specified the provision of the contract that is not time-limited. Since the Arbitration Clause is not one mentioned as an item to survive upon the termination or lapse of the MOU, the only conclusion is that said provision has been deliberately included to be time-limited. There is more reason for us to conclude that the parties manifested that the Arbitration Clause should cease to effect simply because they incorporated a phrase which would not be affected by the lapse of the period. If the parties intended the Arbitration Clause to survive, there is no reason why they would not have so stated it expressly.

To reiterate, where a contract is clear and unambiguous as to the intent of the parties, it is the court's obligation to enforce its wordings accordingly. Thus, the Arbitration Clause of the MOU ceased to have an effect by March 31, 2007 and should not be considered a condition precedent prior to the filing of an appropriate case before our courts.


II.

We now proceed to discuss whether a declaratory relief is a proper recourse of the parties in this case.

Declaratory relief is defined as an action by a person interested under a deed, will, contract, or other written instrument whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question or construction or validity arising, and for a declaration of his rights or duties, thereunder.⁵³

The requisites of an action for declaratory relief are: (i) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (ii) the terms of said documents and the validity thereof are doubtful and require judicial construction; (iii) there must have been no breach or the "ripening seeds" of one between persons whose interests are adverse; (iv) there must be an

⁵³ RULES OF COURT, Rule 63, Sec. 1.



actual controversy or the “ripening seeds” of one between persons whose interests are adverse; (v) the issue must be ripe for judicial determination; and (vi) adequate relief is not available through other means or other forms of action or proceeding.⁵⁴

The CA viewed that The Net Group’s petition for declaratory relief is improper on the ground that petitioners’ purported claim for Due Diligence L/C is a claim for “liquidation damages,” which presupposes that a breach of the MOU has already been committed. The CA stated that the court cannot take cognizance of a case for declaratory relief after a breach of the subject contract has already been committed.⁵⁵

The Net Group belies the CA’s conclusion by asserting that it never claimed liquidated damages in the context of the Civil Code and that it only sought for the interpretation of the MOU’s provision on Due Diligence L/C.

We reverse the findings of the CA on this matter.

Jurisdiction over the subject matter is conferred by the Constitution or by law, and is determined by the allegations of the complaint and the relief prayed for, regardless of whether the plaintiff is entitled to recover all or some of the claims. Jurisdiction is not dependent on defendant’s answer or motion to dismiss.⁵⁶

Certainly, Rule 63 vests with the RTC the jurisdiction to hear petitions for declaratory relief. The question now for our determination is whether the allegations in the initiatory pleading and the character of the reliefs prayed for contemplate an action for declaratory relief. It also requires us to resolve whether the initiatory pleading connotes a breach of contract which removed the subject matter from the jurisdiction of the RTC over declaratory relief. It is imperative, therefore, to examine the pertinent allegations in the petition:

Factual Antecedents

3. On 18 January 2007, THE NET GROUP and Ascendas entered into a Memorandum of Understanding where the parties agreed in principle to A[s]cendas’ acquisition, either directly or indirectly through qualified entities, of the entire issued and outstanding shares of stock of THE NET GROUP companies. x x x

4. As stated in Section 1 of the MOU, the “Closing Date” was defined “two (2) weeks after the signing of the MOA but not later than March 31, 2007.” Section 11 of the MOU provides:

⁵⁴ *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283.

⁵⁵ *Rollo*, pp. 96-98.

⁵⁶ *Presidential Commission on Good Governance (PCGG) v. Dumayas*, G.R. No. 209447, August 11, 2015, 765 SCRA 524, 551.

X X X X

5. The MOU further provides that:

5. *Security.* By way of security for full compliance by both Parties with the provisions of this MOU and/or the Definitive Agreements, each Party agrees to issue or grant the following security to the other Party:

- a. Within five (5) business days upon signing of this MOU, Ascendas shall deliver to The Net Group the Due Diligence L/C in the amount of US\$1,000,000.00, in the form to The Net Group, to be issued by a reputable bank duly licensed to conduct business within the Philippines and acceptable to The Net Group.
- i. If Ascendas fails or refuses to sign the MOA without any justifiable reason, including but not limited to an instance when: (1) it is given a Due Diligence report showing no Relevant Findings; or (2) in case there are Relevant Findings in accordance with Clause 4(b) and/or as agreed upon by the Parties, then The Net Group shall be authorized to draw upon the Due Diligence L/C upon the signing of the MOA or on March 31, 2007, whichever comes earlier; provided, however, the The Net Group submits a certification to the issuing bank that it is willing to execute the MOA upon submission by Ascendas to The Net Group of the Transaction Price L/C, without need of presenting or submitting a copy of the MOA to the said issuing bank. The amount so drawn by The Net Group shall serve as liquidated damages in its favor.

X X X X

14(i) *Arbitration.* In case of any dispute arising out of or in connection with this MOU, the Parties agree to negotiate in good faith within a period of thirty (30) days after written notice by one Party to the other Party of the existence of such dispute, failing which the said dispute shall be referred to and finally resolved by arbitration under the Rules of the United Nations Commission of International Trade Law, which Rules are deemed to be incorporated by reference into this Clause. The arbitrations shall be held in Hong Kong. The language used in the arbitration shall be English.

14(l) *Effectivity.* This MOU shall take effect upon the signing thereof and shall continue to have

force and effect unless earlier terminated pursuant to Clause 11 or until this is superseded by the execution of the Definitive Agreements. Upon the termination or lapse of this MOU, this MOU shall cease to have any force and effect except for Clause 14(e), which shall survive and remain effective and enforceable.

6. As of 31 March 2007, the parties failed to enter into any Definitive Agreement, or agreements to implement the MOU. In a letter dated 21 May 2007, THE NET GROUP informed respondent that due to the delay in the original timetable agreed upon, it deemed the MOU to have lapsed as of 1 April 2007. THE NET GROUP, however, stated that it would continue to negotiate with respondent, no longer under the MOU, but on purely voluntary and non-exclusive basis.


7. A meeting thereafter ensued between petitioner Carlos S. Rufino, Mr. Nonoy Colayco and respondent's Mr. Beng Khoeong Ong ("Mr. Ong"), the latter purporting to be respondent's authorized representative in the signing negotiation and execution of the MOU. Mr. Ong was also accompanied by respondent's Atty. Joel Cruz. At said meeting, the parties already agreed to the release of a joint press statement to inform the public that negotiations between the parties will no longer continue.

8. Thereafter, respondent's representatives requested THE NET GROUP to draft the joint press statement and to process the release of the due diligence fund. Respondent further asked THE NET GROUP to draft an agreement to be executed by the parties to confirm the lapse of the MOU.

9. It was to THE NET GROUP's shock and surprise that in letters dated 11 and 25 June 2007, and 28 August 2007, respondent, through Mr. Ong, suddenly took the position that the MOU did not lapse, and that the delays were caused by THE NET GROUP. Respondent further demanded that THE NET GROUP inhibit itself from negotiating with other parties and finalize the MOU's implementing agreements. Worse, in its letter dated 25 July 2007, respondent sent THE NET GROUP its "final offer" for the purchase of the shares of THE NET GROUP companies, with a threat that if THE NET GROUP would not accept respondent's offer, the latter would bring the matter to arbitration.

Ground for Declaratory Relief

THE EFFECTIVITY OF THE MOU BETWEEN THE PARTIES LAPSED ON 31 MARCH 2007, AND THE PARTIES EXPRESSLY AGREED THAT EVEN THE ARBITRATION CLAUSE WOULD NOT SURVIVE THE MOU. HENCE, RESPONDENT CAN



NO LONGER RELY ON SAID ARBITRATION CLAUSE AND CANNOT COMPEL THE NET GROUP TO ARBITRATE.

THE NET GROUP IS ENTITLED TO THE FULL AMOUNT OF THE DUE DILIGENCE L/C.

Discussion

The Effectivity of the Arbitration Clause has lapsed. Thus, respondent cannot compel THE NET GROUP to arbitrate.

X X X X

THE NET GROUP is entitled to the full amount of the Due Diligence L/C.

18. The language of the MOU does not expressly and categorically deem the Due Diligence L/C forfeited in favor of THE NET GROUP. It appears, however, that Section 5(a)(i) of the MOU entitles THE NET GROUP to the Due Diligence L/C as liquidated damages, in the event that respondent fails to sign the MOA on 31 March 2007.

19. But respondent, at the time it initially confirmed the MOU to have lapsed, requested for the return of the amount of the Due Diligence L/C. Respondent informed THE NET GROUP that a return of the amount was necessary since the Due Diligence L/C, for all intents and purposes, vested upon THE NET GROUP.

20. THE NET GROUP, however, believes that respondent, under the MOU, is not entitled to the return of the monetary equivalent of the Due Diligence L/C. For THE NET GROUP, the term used in the MOU, "Due Diligence L/C," describes its true intention, it is respondent's payment to THE NET GROUP for gaining the right to look into, evaluate, study a competitor's books, trade information and secrets. This is further supported by the parties' intention to consider the Due Diligence L/C to represent liquidated damages due to THE NET GROUP in the event no implementing agreement is signed by 31 March 2007.

21. Yet, the ambivalent language of the MOU causes THE NET GROUP to be cautious as it is exposed to charges of misappropriation in the event that THE NET GROUP's interpretation of the MOU is mistaken. THE NET GROUP is even willing to consign the amount of P48,000,000.00 (US\$1,000,000.00) with this Honorable Court until the matter is finally resolved. Accordingly, THE NET GROUP also comes to this Honorable Court for a

judicial declaration that it is already entitled to the Due Diligence L/C.⁵⁷ (Citations omitted; emphasis in the original.)

It is apparent in the petition that The Net Group is merely seeking for the interpretation of the MOU on two counts: (i) the applicability of the Arbitration Clause vis-à-vis the Effectivity Clause; and (ii) the nature of the Due Diligence L/C – whether The Net Group may automatically appropriate it under the tenor of the MOU. There is nothing in the petition which connotes breach of contract. In so far as the wordings of the petition are concerned, its allegations properly fall within the RTC's jurisdiction over a petition for declaratory relief.

At any rate, the interpretation as to the actual meaning of the Due Diligence L/C in the MOU falls within the ambit of declaratory relief, regardless of whether the ruling may be granted in favor of The Net Group.

III.

The actual nature of the “Due Diligence L/C” may be determined in the wordings of the MOU.

The Net Group's prayer to be declared entitled to Due Diligence L/C is founded on Clause 5 in relation to Clause 4 and the Transaction Timeline allowing the “drawdown of the Due Diligence L/C (in case no MOA is signed)” no later than March 31, 2007. The doubtful provisions of Clauses 4 and 5 of the MOU state:

4. ***Due Diligence.*** Ascendas, through its authorized representatives, shall conduct the Due Diligence Audit during the Due Diligence Period provided in Annex “C” of this MOU. Upon commencement of the Due Diligence Period and subject to the presentation by Ascendas of the Due Diligence L/C to The Net Group, The Net Group shall make available to Ascendas all relevant information and data as may be requested by Ascendas from time to time during the Due Diligence Audit concerning the Assets for the purpose of confirming all information contained in the Declaration Statement and other relevant records of the concerned Net Corporation. x x x

x x x x

5. ***Security.*** By way of security for full compliance by both Parties with the provisions of this MOU and/or the Definitive Agreements, each Party agrees to issue or grant the following security to the other Party:

⁵⁷ Rollo, pp. 231-237.

- a. Within five (5) business days upon signing of this MOU, Ascendas shall deliver to The Net Group the Due Diligence L/C in the amount of US\$1,000,000.00, in the form acceptable to The Net Group, to be issued by a reputable bank duly licensed to conduct business within the Philippines and acceptable to The Net Group.
 - i. If Ascendas fails or refuses to sign the MOA without any justifiable reason, including but not limited to an instance when: (1) it is given a Due Diligence report showing no Relevant Findings; or (2) in case there are Relevant Findings in the Due Diligence report and The Net Group issues a certification that it shall cure and/or remedy all such Relevant Findings in accordance with Clause 4(b) and/or as agreed upon by the Parties, then The Net Group shall be authorized to draw upon the Due Diligence L/C upon the signing of the MOA or on March 31, 2007, whichever comes earlier; provided, however, that The Net Group submits a certification to the issuing bank that it is willing to execute the MOA upon submission by Ascendas to The Net Group of the Transaction Price L/C, without need of presenting or submitting a copy of the MOA to the said issuing bank. The amount so drawn by The Net Group shall serve as liquidated damages in its favor.⁵⁸ (Emphasis in the original.)

Also settled in this jurisdiction is the contract interpretation rule that “[the contract’s] provisions should not be read in isolation but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.”⁵⁹ Instead of resorting to extrinsic factors to determine the intent of the parties, the court should first examine the contract in its entirety.

A reading of Clause 5 the MOU allows two interpretations: (i) The Net Group will only be entitled to draw on the Due Diligence L/C should Ascendas fail or refuse to sign the MOA without any justifiable reason: in which case the Due Diligence L/C serves as a penalty for Ascendas’ breach; and (ii) Ascendas has the option not to sign the MOA, regardless of its reasons, provided that The Net Group will be allowed to draw on the Due Diligence L/C, in which case Ascendas is not in breach but is merely exercising its option to perform another prestation by paying the Due

⁵⁸ *Rollo*, pp. 183, 186.

⁵⁹ *Juico v. China Banking Corporation*, G.R. No. 187678, April 10, 2013, 695 SCRA 520, 538. Citation omitted.

Diligence L/C instead of proceeding with the execution of the MOA. If Clause 5 will be read together with Clause 4 and the Transaction Timeline, the actual intention of the parties will be revealed.

Clause 4 of the MOU states the purpose for which the Due Diligence L/C: this serves as remuneration for The Net Group for allowing Ascendas to audit its business records. The RTC's observation on this matter is convincing:

On the entitlement to and as to the true nature of the US\$1,000,000.00, this Court so holds that the said amount is in the nature of a fee given to petitioners for giving the respondent the right to look into and evaluate their books, trade information and secrets, and not liquidated damages.

From the name given to it, "Due Diligence L/C," it is descriptive of the parties' intention to treat the same as payment to petitioners to conduct due diligence. As stipulated by the parties, "Due Diligence L/C," under the definition of terms in their MOU, has reference to section 5(a), which provides that the said amount shall be given to petitioners within 5 days from the signing of the MOU. The obligation of respondent to give the amount to petitioners within 5 days from the signing of the MOU shows the intent of the parties to treat it as payment to petitioners for the conduct of due diligence, and not as a penalty in the form of liquidated damages.

x x x Since petitioners are already given the Due Diligence L/C upon the signing of the MOU and because they are entitled to a drawdown no later than March 31, 2007 in case no MOA is signed, entitlement to the amount is not dependent on whether a breach of contract occurred.⁶⁰

The Due Diligence L/C under Section 5(a) serves as an "exit" clause which allows the parties to terminate the deal.⁶¹ In mergers and acquisitions, this concept is commonly referred to as break-up or walk-away fees, if it is the seller who terminated the deal, or reverse break-up fees, if it is the buyer who failed to proceed with the agreement. The clause on break-up fees allows the buyer to recoup some of its expenses if the seller walks away or terminates the deal because of change in circumstances or the desire to accept a better offer from another buyer. On the other hand, the reciprocal clause, or the clause on reverse break-up fees, protects the seller by covering the latter's expenses should the buyer walk away or default on a preliminary obligation or condition to closing.⁶²

⁶⁰ *Rollo*, pp. 354-355.

⁶¹ Yves Quintin, *M & (and) A Contracts in the American Financial Maelstrom: Have Reverse Break-up Fees and Mac Clauses Turned Them into Mere Options*, 2008 Int'l Bus. L.J. 275 (2008)

⁶² Andrew J. Sherman, *Mergers & Acquisitions From A to Z*, 52 & 57, 3rd Ed. (2010).

To our mind, the RTC's interpretation is thus, more in consonance with the parties' intention as to the real nature of the Due Diligence L/C. It is a remuneration to The Net Group for the expenses it incurred when it opened its business to Ascendas' audit should the latter opt out by not signing the MOA.

IV.

Lastly, we agree with the RTC that the conflict between the parties may be addressed in a summary judgment pursuant to Rule 35 of the Rules of Court, to wit:

Sec. 1. *Summary Judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Under this provision, a summary judgment may be used to expedite the proceedings and to avoid useless delays, when the pleadings, depositions, affidavits or admissions on file show that there exists no genuine question or issue of fact in the case, and the moving party is entitled to a judgment as a matter of law.⁶³

Here, the parties merely presented issues as to the interpretation of the MOU. There was therefore no genuine question or issue of fact that must be resolved using the presentation of evidence. At most, the Court may rule on the interpretation of the contract by simply reviewing its terms.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated April 3, 2012 and Resolution dated January 27, 2014 of the Court of Appeals are hereby **SET ASIDE**.

The Order of the RTC dated December 14, 2007 on the summary judgment in favor of petitioners is **REINSTATED**. No costs.

SO ORDERED.



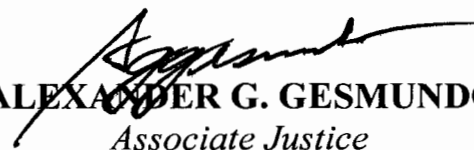
FRANCIS H. JARDELEZA
Acting Working Chairperson
Associate Justice

⁶³ *Mortel v. Brundige*, G.R. No. 190236, June 15, 2015, 757 SCRA 432, 438.

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice
Chairperson

(On Official Leave)
MARIANO C. DEL CASTILLO
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


JOSE C. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby 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.


LUCAS P. BERSAMIN
Chief Justice