



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

READY FORM, INC.,
Appellant,

- versus -

SEC En Banc Case No. 02-14-315
Ultra Vires Act (Sec. 45 Corp Code)

EASTLAND PRINTINK, INC.,
Appellee.

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DECISION

This is an Appeal filed by READY FORM, INC. (READY FORM), seeking to reverse the **Letter-Order dated 18 November 2013** of the ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD), where the EIPD dismissed its Complaint-Affidavit against alleged EASTLAND PRINTINK, INC. (EASTLAND) for alleged Ultra Vires Acts in violation of Section 45 of the Corporation Code.

RELEVANT FACTS

EASTLAND is a corporation duly-registered¹ with the Commission.

On **10 December 2010**, EASTLAND amended its Articles of Incorporation to include “to engage in repair and general construction business” as a Secondary Purpose.

On **14 December 2010**, EASTLAND was awarded a contract for the “Check-up/Repair/Supply parts of Elevator II” by the National Printing Office (NPO)² through emergency procurement.

On **22 July 2013**, READY FORM’s Complaint-Affidavit³ against EASTLAND was referred to the EIPD, for alleged violation of **Section 45 of the Corporation Code**.

READY FORM alleged that “construction” does not include elevator repair, viz.

xxx EASTLAND’s Articles of Incorporation does not include as its business the installation, repair, fabrication or maintenance of elevators; hence, it is not allowed to engage in such business.⁴

xxx xxx xxx

xxx “repair and general construction business” still does not include the service and repair of elevators which, because of

¹ SEC Registration No. A199908257 dated 26 May 1999.

² NPO Notice of Award dated 14 December 2010.

³ Entitled “Supplemental Complaint-Affidavit” because it was originally filed before the Ombudsman in the related case. The Ombudsman then forwarded the Complaint-Affidavit to the EIPD.

⁴ Page 1 of Complaint-Affidavit filed on 22 July 2013.

safety reasons, require a special permit or license separate from a construction license.⁵

On **18 November 2013**, the EIPD issued the assailed Letter-Order,⁶ which states essentially that “construction” may validly include the repair of elevators.

On **3 December 2013**, READY FORM filed a **Comment** to the assailed Letter-Order.

On **9 December 2013**, the EIPD sent a Letter-Order dismissing READY FORM’s Comment as a prohibited pleading. Despite being entitled “Comment,” it was akin to a Motion for Reconsideration which was prohibited by the then-prevailing 2006 SEC Rules of Procedure. The EIPD added that the proper remedy is an Appeal to the En Banc.

On **20 December 2013**, READY FORM sent a Letter stating that it had not received any final order of dismissal from EIPD, for purposes of filing an appeal.

On **10 January 2014**, the EIPD sent a Letter stating that the it dismissed the Complaint-Affidavit via the Letter-Order dated 18 November 2013, which is consequently the final order of dismissal for purposes of appeal.

On **5 February 2014**, READY FORM filed the instant **Memorandum on Appeal**.

On **6 February 2014**, the En Banc issued an **Order** directing EASTLAND to file its Reply Memorandum. The EIPD was furnished a copy of this Order.

On **24 February 2014**, EASTLAND filed its **Reply Memorandum**

Hence, this Appeal.

DISCUSSION

Absent serious errors of fact, the En Banc may adopt the fact-finding of the EIPD, viz.

Review Standard. – Findings of fact by the Operating Department shall not be disturbed by the Commission En Banc unless serious errors of fact have been committed.⁷

The EIPD stated in its assailed **Letter-Order** that:

After careful evaluation of the facts gathered and evidence adduced by the parties during our investigation, we have reached a conclusion that **there is no basis to hold the subject company liable for violation of ultra vires act.** (Emphasis supplied)

“Ultra vires act is one not within the express, implied and incidental powers of the corporation. It is an act which is

⁵ Pages 5-6 of Complaint-Affidavit filed on 22 July 2013.

⁶ The Letter-Order is addressed to the Ombudsman who referred to Complaint-Affidavit to the EIPD. READY FORM alleges that it was not served a copy of the Letter-Order, and that it only received a copy of the same through the Ombudsman, where it had a related pending case.

⁷ SEC. 11-8, Rule XI of the 2006 SEC Rules of Procedure, which governs this case. This review standard has been reenacted as SEC. 3-11, Rule III, Part V of the current 2016 SEC Rules of Procedure.

impliedly forbidden, because it is not expressly or impliedly authorized or necessary or incidental in the exercise of the powers so conferred.”⁸

It is significant to note that the subject company had amended its Articles of Incorporation to include in its secondary purpose “to engage in [repair and] general construction business.” Its Amended Articles of Incorporation was approved by the SEC on December 10, 2010 or days prior to the questioned invitation to bid and award of contract issued by NPO.

In order to have a better understanding of the meaning of “general construction business,” we searched for the legal definition of the term “construction” as set forth by our existing laws being implemented to regulate public works and similar infrastructure projects.

Under **Section 1.3(d) of the Implementing Rules and Regulations of RA No. 6957**, otherwise known as “An Act authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector and for other purposes, **as amended by RA No. 7718**,⁹ the term “construction” is explicitly defined by law, to wit:

refers to new construction, rehabilitation, improvement, expansion, alteration, and related works and activities including the necessary supply of equipment, materials, labor and services, and related items needed to build or rehabilitate an infrastructure or development facility.

Based on the foregoing definition, it can be reasonably inferred that the term “general construction business,” as stated in the purposes of its Amended Articles of Incorporation dated 10 December 2010, therefore necessarily includes the “installation, repair, and maintenance of elevators.”

Thus, we dismissed the complaint for violation of ultra vires act against the subject company [EASTLAND] for lack of merit.

For your information.

READY FORM argued in its **Memorandum on Appeal** that:

The issue in this case is whether the provision in EASTLAND’s Amended Articles of Incorporation stating that it may engage in “general construction business” allows it to engage in the repair, service, and supply of parts for elevators.¹⁰

⁸ De Leon, *The Law on Partnerships and Private Corporations* (2013) at 403.

⁹ Also known as the Build-Operate-Transfer (BOT) Law.

¹⁰ Page 2 of Memorandum on Appeal filed on 5 February 2014.

READY FORM argues that the EIPD went beyond its jurisdiction when it equated the term “construction” which “infrastructure.” It further argues that “infrastructure” refers only to “civil works” such as roads, bridges, railways, airports, seaports, etc., Elevators, being dissimilar to these civil works, are thus outside the corporate purpose of EASTLAND.

Meanwhile, EASTLAND argued in its **Reply Memorandum** that:

(1) the EIPD has jurisdiction to interpret “general construction business” in its purpose clause; and

(2) the EIPD was correct in dismissing the Complaint-Affidavit.

EASTLAND further argues that:

It is absurd and illogical to limit the term “construction” to mean only projects for buildings, roads, bridges, seaports, airports, etc.

The term “construction” should be understood in its ordinary, everyday meaning.¹¹

xxx xxx xxx

Thus, **the term “construction” has a wide-ranging meaning covering** not only the construction or erection of buildings, roads, seaports, etc. (or projects usually termed as “infrastructure”) but **[also] anything and everything to do with what is put into a building, road, seaport, etc.** as emphasized by the phrase: “including the necessary design, supply, installation, testing and commissioning of equipment systems, plants, materials, labor and services and related items needed to build or rehabilitate an infrastructure or development facility.” (Emphasis supplied)

xxx xxx xxx

One cannot argue that a building—which can be called an infrastructure project—may need the **installation** of equipment such as elevators and a contractor or person undertaking “general construction business” would also be contracted not only to erect the building but to do all works to make the building useable.¹²

Under **Section 45 of the Corporation Code**, a corporation is prohibited from performing an act that is beyond its express, implied, or incidental powers, viz.

Sec. 45. Ultra vires acts of corporations. – No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

¹¹ Page 5 of Reply Memorandum filed on 24 February 2014.

¹² Page 8 of Reply Memorandum filed on 24 February 2014.

Here, one of the secondary purposes of EASTLAND is “to engage in repair and general construction business,” while the act it seeks to perform is the repair of elevators.

It is within the EIPD’s jurisdiction to interpret the terms used in EASTLAND’s secondary purpose, including the term “construction,” because the Commission is mandated by law to ascertain the lawfulness of a corporation’s purpose.

For this purpose, the EIPD adopted the statutory definition of “construction” in the RA 6957 as amended by RA 7718, a.k.a. the Build-Operate-Transfer (BOT) Law, viz.

Construction. – Refers to new construction, rehabilitation, improvement, expansion, alteration and related works and activities including the necessary supply of equipment, materials, labor and services and related items.¹³

The Implementing Rules of the BOT Law further clarify that:

Construction. – Refers to new construction, rehabilitation, improvement, expansion, alteration and related works and activities including the necessary supply of equipment, materials, labor and services and related items needed to build or rehabilitate an infrastructure or development facility.¹⁴

According to these definitions, “construction” is not limited to infrastructure, but includes necessary “equipment, materials, labor and services, and related items.”

There is a similar provision in P.D. 1746, as amended, the law which created the Construction Industry Authority of the Philippines (CIAP Law), the governing body for both public and private construction. Section 3.08 of the Implementing Rules of the CIAP Law includes necessary equipment in the definition of “Construction Contracting,” viz.

Construction Contracting – Refers to the act of providing all services for new construction works, rehabilitation works, improvement works, expansion works, and such other related works and activities including the necessary supply of labor and services, materials, equipment and related items needed to effect such works.

Thus, the EIPD did not equate “general construction business” with infrastructure, but ruled instead that it includes necessary equipment. **An elevator, especially an existing elevator in dire need of repair, is necessary equipment in relation to a building.** Only the building is included in the term “infrastructure,” but both the building and its necessary equipment (e.g. elevators) are included in the term “construction.”

EASTLAND added that the “general construction business” includes not only buildings but all works to make buildings useable.

On the other hand, READY FORM merely rehashed arguments already duly-considered by the EIPD. It insists that elevators are not akin to infrastructure, which refer to “civil works” such as buildings, roads, bridges, railways, airports, seaports, etc.

¹³ Section 2(p) of RA 6957 as amended by RA 7718.

¹⁴ Section 1.3(d) of the Implementing Rules of the BOT Law (RA 6957 as amended by RA 7718).

However, nowhere in the assailed Letter-Order does the EIPD rule that “construction” is equivalent to “infrastructure.” As already discussed, the EIPD ruled that elevators are necessarily included in the infrastructure to which they are attached, and that the statutory definition of “construction” includes necessary equipment.

Therefore, the EIPD correctly ruled that the term “general construction business” necessarily includes the “installation, repair, and maintenance of elevators.”

It bears mentioning that EASTLAND’s purpose clause expressly states “repair.” The meaning of this term was not put in issue by parties, but it is relevant because the act claimed to be ultra vires is the repair of elevators.


WHEREFORE, premises considered, the Letter-Order of the EIPD dated 18 November 2013 is hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 8 November 2018.


EMILIO B. AQUINO
Chairperson


ANTONIETA F. IBE
Commissioner


EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO*
Commissioner

*On Official Business Leave