

PACIFIC MILLS, INC., PETITIONER, VS. HON. ZENAIDA R. DAGUNA, PRESIDING JUDGE OF BR. 19 OF THE RTC OF MANILA, AND THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF CU...

Ponente: TAGLE, J.

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TAGLE, J.:

This is a petition to annul and set aside the Orders dated April 11, 2003 and October 1, 2004 of the RTC, Branch 19, of Manila in Civil Case No. 02-102630, entitled “Republic of the Philippines, represented by the Bureau of Customs vs. Pacific Mills, Inc.” The April 11, 2003 Order denied petitioner's motion to dismiss while the October 1, 2004 Order denied its motion for reconsideration of the first order. The instant petition assails the said orders for having been issued with grave abuse of discretion in violation and contravention of laws and existing jurisprudence.

THE FACTS.

Petitioner Pacific Mills, Inc. is a domestic corporation engaged in the manufacture of clothes since 1951 with plants at Quirino Highway, Balintawak, Quezon City. It imports its raw materials and supplies and therefore, pays taxes and duties on its importations.

A certain Arnold Velasco offered the transfer of Tax Credit Certificates (TCCs) to petitioner at the discounted rate of 18%. Said TCCs were issued by the Board of Investments (BOI) pursuant to Article 21 of Executive Order No. 266 or the Omnibus Investments Code.

After conducting a due diligence check, petitioner found the subject TCCs to be genuine. Thus, the transfer materialized and some of the TCC's issued to Filipino Way Industries, Integrated Multi-Cotton Mills, Inc. and Scope Industries, Inc. were assigned to petitioner which it used in payment of custom duties and taxes on its importations.

On November 30, 1997, a fire gutted the two buildings of petitioner including the equipment, machineries, raw material and finished products stored therein. As a consequence thereof, petitioner stopped its operations and closed shop. Its license, permits and registration from concerned government agencies were surrendered by it for cancellation.

Sometime in 2002, the Republic through the Bureau of Customs demanded the payment of around P32 Million from petitioner corresponding to unpaid taxes and duties. Petitioner, however, refused to pay, claiming that the same have already been paid long ago with the TCCs.

In October 2002, the Republic represented by BOC filed a case against petitioner for collection of P32,477,050.00 representing taxes and duties it owes inasmuch as the TCCs used for the payment thereof turned out to be “fake and spurious”. The case is docketed as Civil Case No. 02-102630 and pending before the RTC Br. 19 of Manila.

It appears that earlier, separate cases were filed by the Republic against Dragon Textile Mills, Inc. and Filyson Corporation before Branches 10 & 17 of the RTC of Manila involving also the collection of taxes and duties as the TCCs used in payment thereof were spurious. The defendants in said cases also acquired their TCCs from Filipino Way Industries, Integrated Multi-Cotton Mills & Scope Industries, Inc.

In the present complaint instituted by the Republic,, petitioner filed a motion to dismiss it on grounds of (1) violation of the rule against forum-shopping, (2) failure to state a cause of action and (3) failure to implead the transferors of the TCCs who are indispensable parties.

An Opposition was filed by the Republic, followed by the Reply of petitioner and finally, a Rejoinder by the Republic.

It is in this context that respondent judge issued the assailed orders denying petitioner's Motion to Dismiss.

Before the resolution of its motion to dismiss, petitioner filed an Answer Ad Cautelam reiterating as defenses that (a) the complaint failed to state a cause of action and/or premature; (b) plaintiff violated the rule against forum shopping and, (c) the claim in the complaint had been paid and extinguished.

Hence, the case was set for pre-trial conference. Due to the unavailability, however, of the respondent judge and the failure of the Republic to appear, petitioner filed the instant petition contending that:

I

RESPONDENT JUDGE ACTED ARBITRARILY AND CAPRICIOUSLY WHEN SHE DECLARED THAT THE REPUBLIC DID NOT COMMIT FORUM-SHOPPING.

II

RESPONDENT JUDGE GROSSLY ERRED AND IGNORED THE LAW AND JURISPRUDENCE IN RULING THAT THE COMPLAINT STATES A CAUSE OF ACTION.

II

RESPONDENT JUDGE FAILED TO APPLY THE SETTLED RULE THAT FAILURE TO IMPLEAD INDISPENSABLE PARTIES DEPRIVES THE COURT OF JURISDICTION.

The stance of petitioner is that the Republic is guilty of forum shopping because the complaints in the two earlier cases it filed against Dragon Textiles and Filyson Corp. essentially contain the same allegations as the present one. The parties in the earlier cases and in this case are substantially in the same situation and represent the same interest.

Petitioner maintains that absolute identity of parties is not required for res judicata or the rule on bar by prior judgment to apply. Mere substantial identity of parties or community of interests between the parties in the first cases and the party in the subsequent case, even if the latter was not impleaded in the first cases, is sufficient.

Petitioner pointed out that the parties in the earlier 2 cases and in this case are similarly situated, being transferee's of the allegedly false TCCs with the same relief; that is, collection of taxes and duties. And all of the defendants merely relied on the approval of the subject TCCs by the One-Stop Shop Tax Credit and Duty Drawback Center of the Department Of Finance. Accordingly, the three cases boil down to one principal issue: the validity of the TCCs, the resolution of which will definitely determine whether or not petitioner has already settled its tax obligations.

It is also the contention of petitioner that the complaint states no cause of action because it does not contain a

concise statement of ultimate facts constituting plaintiff's cause of action. For, the complaint failed to state with particularity why the TCC's are fake and spurious. The allegation in the complaint that the TCCs in question are spurious is a general averment and a mere conclusion of law.

Finally, petitioner opined that the complaint did not implead indispensable parties without whom no final determination can be had in an action. Being mere assignee of subject TCCs, the assignors namely: Filipino Way Industries, Integrated Multi-Cotton Mills and Scope Industries, Inc., should have been made parties as they are the ones principally responsible for the efficacy of the TCCs. Whatever fraud attended the issuance of said TCCs would necessarily involve the assignors and the persons or entities who issued the subject TCCs. Thus, it is mandatory for the courts to join them; otherwise, there would be no complete determination of all the possible issues.

In its Comment, the Republic countered that it has not violated the rule on forum shopping. There is no substantial identity of parties in the first two cases and in the case a quo although they obtained their spurious TCCs from the same companies. According to the Republic, the crux of its complaint is the tax liability of petitioner which is distinct from that of the other defendants in the 2 cases. There can be no community of interests, therefore, between the 3 defendants since each of them has distinct and separate tax liabilities, such that payment by petitioner of its tax liabilities would not benefit or exonerate the other two defendants, and vice-versa. There is also no identity in the TCCs as they bear different numbers. The only similarity in all these TCCs is that they came from the same companies and nothing more.

The Republic postulated that its cause of action is the collection of taxes and duties and not the validity of the TCCs. Besides, the subject TCCs have already been cancelled by the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance and therefore can no longer be availed of by petitioner in paying its tax liability.

As to the non-joinder of indispensable parties, the Republic argued that its complaint is primarily between it and the petitioner as taxpayer. And in resolving said issue, there is no need to implead other person or entity.

RULING:

The petition is without merit.

No grave abuse of discretion was committed by respondent judge when she denied petitioner's motion to dismiss and also the motion for reconsideration.

To determine whether a party violated the rule against forum shopping, the deciding factor is whether the elements of *litis pendentia* are present or whether a final judgment in one case will be *res judicata* in another, i.e. whether in the two cases, there is identity of parties, right or causes of action and relief sought.[1] The elements of *litis pendentia*, are: (1) identity of parties or representation on both cases; (2) identity of rights asserted and relief prayed for; (3) the relief must be founded on the same fact and the same bases; and, (4) the identity of the preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action in consideration.[2]

The argument of petitioner that there is substantial identity of party or community of interest because all the TCCs used for the payment of taxes and duties were purchased from the same assignors is unavailing. There is simply no community of interest between the three (3) taxpayers with respect to their distinct and separate tax liabilities. As correctly stressed by the Republic, the TCCs involved in all these cases have different numbers. And so, whatever judgment may be rendered in the earlier cases will not constitute as a bar in the present case.

For a cause of action to exist, the elements are: (1) the legal right of plaintiff; (2) the correlative obligation of the defendant; and (3) the act or omission of the defendant in violation of said legal right.[3]

In the case at bench, the requirements for a valid cause of action had been met, to wit: the legal right of the Republic to demand payment of taxes and custom duties and the correlative obligation of petitioner to pay the same. The failure or refusal of petitioner to comply with its obligation to pay is the omission which violates the right of the Republic.

We agree with the Republic that its primary cause of action is the collection of taxes and not the validity of the TCCs. It is not necessary for the Republic to allege specifically and with particularity the fraudulent character of the TCC's that were already cancelled by DOF.

Likewise, there is no need for the Republic to implead the assignors as parties in the present complaint. If petitioner wants their presence, it should have filed a third-party complaint against them.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Orders of the respondent judge dated April 11, 2003 and October 1, 2004 are hereby AFFIRMED in toto.

SO ORDERED.

Buzon, (Chairman) and Maambong, JJ., concur.

[1] Young vs. Keng Sang, 398 SCRA 629.

[2] Tirona vs. Alejo, 367 SCRA 17.

[3] Avisado vs. Rumbaua, 354 SCRA 245.

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