

PHILSEC INVESTMENT CORPORATION, BPI-INTERNATIONAL FINANCE LIMITED, AND ATHONA HOLDINGS, N.V., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, 1488, INC., DRAGO DAIC, VENTURA O....

G.R. No. 103493. June 19, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case presents for determination the conclusiveness of a foreign judgment upon the rights of the parties under the same cause of action asserted in a case in our local court. Petitioners brought this case in the Regional Trial Court of Makati, Branch 56, which, in view of the pendency at the time of the foreign action, dismissed Civil Case No. 16563 on the ground of *litis pendentia*, in addition to *forum non conveniens*. On appeal, the Court of Appeals affirmed. Hence this petition for review on certiorari.

The facts are as follows:

On January 15, 1983, private respondent Ventura O. Ducat obtained separate loans from petitioners Ayala International Finance Limited (hereafter called AYALA)[1] and Philsec Investment Corporation (hereafter called PHILSEC) in the sum of US\$2,500,000.00, secured by shares of stock owned by Ducat with a market value of P14,088,995.00. In order to facilitate the payment of the loans, private respondent 1488, Inc., through its president, private respondent Drago Daic, assumed Ducat's obligation under an Agreement, dated January 27, 1983, whereby 1488, Inc. executed a Warranty Deed with Vendor's Lien by which it sold to petitioner Athona Holdings, N.V. (hereafter called ATHONA) a parcel of land in Harris County, Texas, U.S.A., for US\$2,807,209.02, while PHILSEC and AYALA extended a loan to ATHONA in the amount of US\$2,500,000.00 as initial payment of the purchase price. The balance of US\$307,209.02 was to be paid by means of a promissory note executed by ATHONA in favor of 1488, Inc. Subsequently, upon their receipt of the US\$2,500,000.00 from 1488, Inc., PHILSEC and AYALA released Ducat from his indebtedness and delivered to 1488, Inc. all the shares of stock in their possession belonging to Ducat.

As ATHONA failed to pay the interest on the balance of US\$307,209.02, the entire amount covered by the note became due and demandable. Accordingly, on October 17, 1985, private respondent 1488, Inc. sued petitioners PHILSEC, AYALA, and ATHONA in the United States for payment of the balance of US\$307,209.02 and for damages for breach of contract and for fraud allegedly perpetrated by petitioners in misrepresenting the marketability of the shares of stock delivered to 1488, Inc. under the Agreement. Originally instituted in the United States District Court of Texas, 165th Judicial District, where it was docketed as Case No. 85-57746, the venue of the action was later transferred to the United States District Court for the Southern District of Texas, where 1488, Inc. filed an amended complaint, reiterating its allegations in the original complaint. ATHONA filed an answer with counterclaim, impleading private respondents herein as counterdefendants, for allegedly conspiring in selling the property at a price over its market value. Private respondent Perlas, who had allegedly

appraised the property, was later dropped as counterdefendant. ATHONA sought the recovery of damages and excess payment allegedly made to 1488, Inc. and, in the alternative, the rescission of sale of the property. For their part, PHILSEC and AYALA filed a motion to dismiss on the ground of lack of jurisdiction over their person, but, as their motion was denied, they later filed a joint answer with counterclaim against private respondents and Edgardo V. Guevarra, PHILSEC's own former president, for the rescission of the sale on the ground that the property had been overvalued. On March 13, 1990, the United States District Court for the Southern District of Texas dismissed the counterclaim against Edgardo V. Guevarra on the ground that it was "frivolous and [was] brought against him simply to humiliate and embarrass him." For this reason, the U.S. court imposed so-called Rule 11 sanctions on PHILSEC and AYALA and ordered them to pay damages to Guevarra.

On April 10, 1987, while Civil Case No. H-86-440 was pending in the United States, petitioners filed a complaint "For Sum of Money with Damages and Writ of Preliminary Attachment" against private respondents in the Regional Trial Court of Makati, where it was docketed as Civil Case No. 16563. The complaint reiterated the allegation of petitioners in their respective counterclaims in Civil Action No. H-86-440 of the United States District Court of Southern Texas that private respondents committed fraud by selling the property at a price 400 percent more than its true value of US\$800,000.00. Petitioners claimed that, as a result of private respondents' fraudulent misrepresentations, ATHONA, PHILSEC, and AYALA were induced to enter into the Agreement and to purchase the Houston property. Petitioners prayed that private respondents be ordered to return to ATHONA the excess payment of US\$1,700,000.00 and to pay damages. On April 20, 1987, the trial court issued a writ of preliminary attachment against the real and personal properties of private respondents.[2]

Private respondent Ducat moved to dismiss Civil Case No. 16563 on the grounds of (1) *litis pendentia*, vis-a-vis Civil Action No. H-86-440 filed by 1488, Inc. and Daic in the U.S., (2) *forum non conveniens*, and (3) failure of petitioners PHILSEC and BPI-IFL to state a cause of action. Ducat contended that the alleged overpricing of the property prejudiced only petitioner ATHONA, as buyer, but not PHILSEC and BPI-IFL which were not parties to the sale and whose only participation was to extend financial accommodation to ATHONA under a separate loan agreement. On the other hand, private respondents 1488, Inc. and its president Daic filed a joint "Special Appearance and Qualified Motion to Dismiss," contending that the action being in personam, extraterritorial service of summons by publication was ineffectual and did not vest the court with jurisdiction over 1488, Inc., which is a non-resident foreign corporation, and Daic, who is a non-resident alien.

On January 26, 1988, the trial court granted Ducat's motion to dismiss, stating that "the evidentiary requirements of the controversy may be more suitably tried before the forum of the *litis pendentia* in the U.S., under the principle in private international law of *forum non conveniens*," even as it noted that Ducat was not a party in the U.S. case.

A separate hearing was held with regard to 1488, Inc. and Daic's motion to dismiss. On March 9, 1988, the trial court[3] granted the motion to dismiss filed by 1488, Inc. and Daic on the ground of *litis pendentia* considering that

the "main factual element" of the cause of action in this case which is the validity of the sale of real property in the United States between defendant 1488 and plaintiff ATHONA is the subject matter of the pending case in the United States District Court which, under the doctrine of *forum non conveniens*, is the better (if not exclusive) forum to litigate matters needed to determine the assessment and/or fluctuations of the fair market value of real estate situated in Houston, Texas, U.S.A. from the date of the transaction in 1983 up to the present and verily, . . . (emphasis by trial court)

The trial court also held itself without jurisdiction over 1488, Inc. and Daic because they were non-residents and

the action was not an action in rem or quasi in rem, so that extraterritorial service of summons was ineffective. The trial court subsequently lifted the writ of attachment it had earlier issued against the shares of stocks of 1488, Inc. and Daic.

Petitioners appealed to the Court of Appeals, arguing that the trial court erred in applying the principle of *litis pendentia* and *forum non conveniens* and in ruling that it had no jurisdiction over the defendants, despite the previous attachment of shares of stocks belonging to 1488, Inc. and Daic.

On January 6, 1992, the Court of Appeals^[4] affirmed the dismissal of Civil Case No. 16563 against Ducat, 1488, Inc., and Daic on the ground of *litis pendentia*, thus:

The plaintiffs in the U.S. court are 1488 Inc. and/or Drago Daic, while the defendants are Philsec, the Ayala International Finance Ltd. (BPI-IFL's former name) and the Athona Holdings, NV. The case at bar involves the same parties. The transaction sued upon by the parties, in both cases is the Warranty Deed executed by and between Athona Holdings and 1488 Inc. In the U.S. case, breach of contract and the promissory note are sued upon by 1488 Inc., which likewise alleges fraud employed by herein appellants, on the marketability of Ducat's securities given in exchange for the Texas property. The recovery of a sum of money and damages, for fraud purportedly committed by appellees, in overpricing the Texas land, constitute the action before the Philippine court, which likewise stems from the same Warranty Deed.

The Court of Appeals also held that Civil Case No. 16563 was an action in personam for the recovery of a sum of money for alleged tortious acts, so that service of summons by publication did not vest the trial court with jurisdiction over 1488, Inc. and Drago Daic. The dismissal of Civil Case No. 16563 on the ground of *forum non conveniens* was likewise affirmed by the Court of Appeals on the ground that the case can be better tried and decided by the U.S. court:

The U.S. case and the case at bar arose from only one main transaction, and involve foreign elements, to wit: 1) the property subject matter of the sale is situated in Texas, U.S.A.; 2) the seller, 1488 Inc. is a non-resident foreign corporation; 3) although the buyer, Athona Holdings, a foreign corporation which does not claim to be doing business in the Philippines, is wholly owned by Philsec, a domestic corporation, Athona Holdings is also owned by BPI-IFL, also a foreign corporation; 4) the Warranty Deed was executed in Texas, U.S.A.

In their present appeal, petitioners contend that:

1. THE DOCTRINE OF PENDENCY OF ANOTHER ACTION BETWEEN THE SAME PARTIES FOR THE SAME CAUSE (*LITIS PENDENTIA*) RELIED UPON BY THE COURT OF APPEALS IN AFFIRMING THE TRIAL COURT'S DISMISSAL OF THE CIVIL ACTION IS NOT APPLICABLE. 2. THE PRINCIPLE OF *FORUM NON CONVENIENS* ALSO RELIED UPON BY THE COURT OF APPEALS IN AFFIRMING THE DISMISSAL BY THE TRIAL COURT OF THE CIVIL ACTION IS LIKEWISE NOT APPLICABLE. 3. AS A COROLLARY TO THE FIRST TWO GROUNDS, THE COURT OF APPEALS ERRED IN NOT HOLDING THAT PHILIPPINE PUBLIC POLICY REQUIRED THE ASSUMPTION, NOT THE RELINQUISHMENT, BY THE TRIAL COURT OF ITS RIGHTFUL JURISDICTION IN THE CIVIL ACTION FOR THERE IS EVERY REASON TO PROTECT AND VINDICATE PETITIONERS' RIGHTS FOR TORTIOUS OR WRONGFUL ACTS OR CONDUCT PRIVATE RESPONDENTS (WHO ARE MOSTLY NON-RESIDENT ALIENS) INFLICTED UPON THEM HERE IN THE PHILIPPINES.

We will deal with these contentions in the order in which they are made.

First. It is important to note in connection with the first point that while the present case was pending in the Court of Appeals, the United States District Court for the Southern District of Texas rendered judgment^[5] in the case before it. The judgment, which was in favor of private respondents, was affirmed on appeal by the Circuit Court

of Appeals.[6] Thus, the principal issue to be resolved in this case is whether Civil Case No. 16536 is barred by the judgment of the U.S. court.

Private respondents contend that for a foreign judgment to be pleaded as *res judicata*, a judgment admitting the foreign decision is not necessary. On the other hand, petitioners argue that the foreign judgment cannot be given the effect of *res judicata* without giving them an opportunity to impeach it on grounds stated in Rule 39, §50 of the Rules of Court, to wit: “want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.”

Petitioners’ contention is meritorious. While this Court has given the effect of *res judicata* to foreign judgments in several cases,[7] it was after the parties opposed to the judgment had been given ample opportunity to repel them on grounds allowed under the law.[8] It is not necessary for this purpose to initiate a separate action or proceeding for enforcement of the foreign judgment. What is essential is that there is opportunity to challenge the foreign judgment, in order for the court to properly determine its efficacy. This is because in this jurisdiction, with respect to actions in personam, as distinguished from actions in rem, a foreign judgment merely constitutes *prima facie* evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary.[9] Rule 39, §50 provides:

SEC. 50. Effect of foreign judgments. - The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

- (a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;
- (b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

Thus, in the case of *General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd.*,[10] which private respondents invoke for claiming conclusive effect for the foreign judgment in their favor, the foreign judgment was considered *res judicata* because this Court found “from the evidence as well as from appellant’s own pleadings”[11] that the foreign court did not make a “clear mistake of law or fact” or that its judgment was void for want of jurisdiction or because of fraud or collusion by the defendants. Trial had been previously held in the lower court and only afterward was a decision rendered, declaring the judgment of the Supreme Court of the State of Washington to have the effect of *res judicata* in the case before the lower court. In the same vein, in *Philippine International Shipping Corp. v. Court of Appeals*,[12] this Court held that the foreign judgment was valid and enforceable in the Philippines there being no showing that it was vitiated by want of notice to the party, collusion, fraud or clear mistake of law or fact. The *prima facie* presumption under the Rule had not been rebutted.

In the case at bar, it cannot be said that petitioners were given the opportunity to challenge the judgment of the U.S. court as basis for declaring it *res judicata* or conclusive of the rights of private respondents. The proceedings in the trial court were summary. Neither the trial court nor the appellate court was even furnished copies of the pleadings in the U.S. court or apprised of the evidence presented thereat, to assure a proper determination of whether the issues then being litigated in the U.S. court were exactly the issues raised in this case such that the judgment that might be rendered would constitute *res judicata*. As the trial court stated in its disputed order dated March 9, 1988:

On the plaintiff’s claim in its Opposition that the causes of action of this case and the pending case in the United States are not identical, precisely the Order of January 26, 1988 never found that the causes of action of this case and the case pending before the USA Court, were identical. (emphasis added)

It was error therefore for the Court of Appeals to summarily rule that petitioners' action is barred by the principle of res judicata. Petitioners in fact questioned the jurisdiction of the U.S. court over their persons, but their claim was brushed aside by both the trial court and the Court of Appeals.[13]

Moreover, the Court notes that on April 22, 1992, 1488, Inc. and Daic filed a petition for the enforcement of judgment in the Regional Trial Court of Makati, where it was docketed as Civil Case No. 92-1070 and assigned to Branch 134, although the proceedings were suspended because of the pendency of this case. To sustain the appellate court's ruling that the foreign judgment constitutes res judicata and is a bar to the claim of petitioners would effectively preclude petitioners from repelling the judgment in the case for enforcement. An absurdity could then arise: a foreign judgment is not subject to challenge by the plaintiff against whom it is invoked, if it is pleaded to resist a claim as in this case, but it may be opposed by the defendant if the foreign judgment is sought to be enforced against him in a separate proceeding. This is plainly untenable. It has been held therefore that:

[A] foreign judgment may not be enforced if it is not recognized in the jurisdiction where affirmative relief is being sought. Hence, in the interest of justice, the complaint should be considered as a petition for the recognition of the Hongkong judgment under Section 50 (b), Rule 39 of the Rules of Court in order that the defendant, private respondent herein, may present evidence of lack of jurisdiction, notice, collusion, fraud or clear mistake of fact and law, if applicable.[14]

Accordingly, to insure the orderly administration of justice, this case and Civil Case No. 92-1070 should be consolidated.[15] After all, the two have been filed in the Regional Trial Court of Makati, albeit in different salas, this case being assigned to Branch 56 (Judge Fernando V. Gorospe), while Civil Case No. 92-1070 is pending in Branch 134 of Judge Ignacio Capulong. In such proceedings, petitioners should have the burden of impeaching the foreign judgment and only in the event they succeed in doing so may they proceed with their action against private respondents.

Second. Nor is the trial court's refusal to take cognizance of the case justifiable under the principle of forum non conveniens. First, a motion to dismiss is limited to the grounds under Rule 16, §1, which does not include forum non conveniens.[16] The propriety of dismissing a case based on this principle requires a factual determination, hence, it is more properly considered a matter of defense. Second, while it is within the discretion of the trial court to abstain from assuming jurisdiction on this ground, it should do so only after "vital facts are established, to determine whether special circumstances" require the court's desistance.[17]

In this case, the trial court abstained from taking jurisdiction solely on the basis of the pleadings filed by private respondents in connection with the motion to dismiss. It failed to consider that one of the plaintiffs (PHILSEC) is a domestic corporation and one of the defendants (Ventura Ducat) is a Filipino, and that it was the extinguishment of the latter's debt which was the object of the transaction under litigation. The trial court arbitrarily dismissed the case even after finding that Ducat was not a party in the U.S. case.

Third. It was error we think for the Court of Appeals and the trial court to hold that jurisdiction over 1488, Inc. and Daic could not be obtained because this is an action in personam and summons were served by extraterritorial service. Rule 14, §17 on extraterritorial service provides that service of summons on a non-resident defendant may be effected out of the Philippines by leave of Court where, among others, "the property of the defendant has been attached within the Philippines." [18] It is not disputed that the properties, real and personal, of the private respondents had been attached prior to service of summons under the Order of the trial court dated April 20, 1987.[19]

Fourth. As for the temporary restraining order issued by the Court on June 29, 1994, to suspend the proceedings in Civil Case No. 92-1445 filed by Edgardo V. Guevarra to enforce so-called Rule 11 sanctions imposed on the

petitioners by the U.S. court, the Court finds that the judgment sought to be enforced is severable from the main judgment under consideration in Civil Case No. 16563. The separability of Guevarra's claim is not only admitted by petitioners,[20] it appears from the pleadings that petitioners only belatedly impleaded Guevarra as defendant in Civil Case No. 16563.[21] Hence, the TRO should be lifted and Civil Case No. 92-1445 allowed to proceed.

WHEREFORE, the decision of the Court of Appeals is REVERSED and Civil Case No. 16563 is REMANDED to the Regional Trial Court of Makati for consolidation with Civil Case No. 92-1070 and for further proceedings in accordance with this decision. The temporary restraining order issued on June 29, 1994 is hereby LIFTED.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Now BPI-International Finance Ltd. (hereafter called BPI-IFL).

[2] Records, p. 58.

[3] Per Judge Fernando V. Gorospe, Jr.

[4] Per Associate Justice Consuelo Ynares-Santiago with Associate Justices Ricardo L. Pronove, Jr. and Nicolas P. Lapeña, Jr., concurring.

[5] C.A. Rollo, pp. 205-206.

[6] Rollo, p. 303.

[7] Philippine International Shipping Corp. v. Court of Appeals, 172 SCRA 810 (1989); Nagarmull v. Binalbagan-Isabela Sugar Co., Inc., 33 SCRA 46 (1970); General Corporation of the Philippines v. Union Insurance Society of Canton Ltd., G.R. No. L-2303, Dec. 29, 1951 (unreported); Boudard v. Tait, 67 Phil. 170 (1939).

[8] Hang Lung Bank v. Saulog, 201 SCRA 137 (1991).

[9] Boudard v. Tait, 67 Phil. 170.

[10] G.R. No. L-2303, Dec. 29, 1951.

[11] Id., p. 6.

[12] 172 SCRA 810.

[13] C.A. Decision, p. 6; Rollo, p. 52.

[14] Hang Lung Bank v. Saulog, 201 SCRA 137.

[15] Borromeo v. Intermediate Appellate Court, 255 SCRA 75 (1995).

[16] Development Bank of the Philippines v. Pundogar, 218 SCRA 118 (1993).

[17] K.K. Shell Sekiyu Osaka Hatsubaisho v. Court of Appeals, 188 SCRA 145 at 153 (1990); Hongkong and Shanghai Banking Corp. v. Sherban, 176 SCRA 331 at 339 (1987).

[18] Rule 14, §17.

SEC. 17. Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the

Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer. (emphasis added)

[19] Records, pp. 58, 80 and 100. (Sheriff's Report, Record, p. 100).

[20] Rollo, p. 353.

[21] Edgardo V. Guevara was impleaded as party defendant in petitioners' amended complaint on March 31, 1992.

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