

**ALEXANDER VAN TWEST AND THE HON. SALVADOR P. DE GUZMAN,
IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT OF MAKATI, BRANCH 142, PETITIONERS, VS. THE HON.
COURT OF ...**

G.R. No. 106253. February 10, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 8 March 1990, petitioner Alexander Van Twest filed a complaint against private respondent Gloria Anacleto and International Corporate Bank ("Interbank") for recovery of a sum of money with prayer for a writ of preliminary injunction, before Branch 142 of the Regional Trial Court of Makati, where the action was docketed as Civil Case No. 90-659.[1]

Petitioner alleged in his complaint that in 1989, he and private respondent opened a joint foreign currency savings account with Interbank to hold funds which "belonged entirely and exclusively" to petitioner, to "facilitate the funding of certain business undertakings" of both of them and which funds were to be "temporarily (held) in trust" by private respondent, who "shall turnover the same to plaintiff upon demand." Petitioner further alleged that withdrawals from the account were always made through their joint signatures; that when his business relationship with private respondent turned sour, the latter unilaterally closed their joint account, withdrew the remaining balance of Deutschmark (DM) 269,777.37 and placed the money in her own personal account with the same bank.[2] Petitioner thus sought an injunctive writ to prevent private respondent from withdrawing the money at any time and thereby defeat petitioner's main and pending action in Civil Case No. 90-659.[3]

After issuing a temporary restraining order upon the filing of the complaint, the trial court conducted hearings on four (4) successive session dates on the application for a writ of preliminary injunction, examining petitioner and his two (2) witnesses, as well as private respondent. The hearings culminated in the issuance of an order dated 28 March 1990, enjoining private respondent and Interbank from effecting and allowing withdrawals from the foreign currency deposit account until further orders from the trial court.[4]

The preliminary injunction order of the Regional Trial Court was, however, annulled on petition for certiorari filed by private respondent before the Court of Appeals in a Decision dated 19 July 1991.[5]

Petitioner's motion for reconsideration having been denied by the Court of Appeals, he is now before this Court on Petition for Review, seeking reinstatement of the writ of preliminary injunction issued by the trial court.[6]

In a Resolution dated 12 August 1992, the Court *motu proprio* issued an indefinite temporary restraining order enjoining the Court of Appeals from enforcing its questioned Decision and Resolution.[7] The parties subsequently complied with the requirement of the Court to submit responsive pleadings in amplification of their respective positions regarding the soundness of the Court of Appeals' Decision under review.[8] The Court then resolved to give due course to the Petition and required the parties to submit their memoranda. The parties did.[9]

Deliberating on the present Petition for Review, the Court considers that the Court of Appeals was in reversible error in annulling the writ of preliminary injunction issued in petitioner's favor by the Regional Trial Court.

In ruling that petitioner was not entitled to the provisional remedy of preliminary injunction during the pendency of Civil Case No. 90-659, the Court of Appeals said:

"Upon the facts of the complaint filed, we rule that the writ of preliminary injunction issued by the lower court is improper and without basis. It is clear from the complaint that the subject foreign currency was deposited in a savings account under the name of private respondent (herein petitioner) 'and/or' herein petitioner (now private respondent). By virtue of this 'and/or' agreement, petitioner is authorized to withdraw from the account on the strength of her signature alone. The allegation of private respondent that the said foreign currency solely belonged to him loses its meaning in the face of the fact that the amount was deposited in a joint fund and had become, under the eyes of the law, property jointly owned by petitioner and private respondent. Furthermore, by private respondent's own admission, said foreign currency deposit was to be used to fund the business venture of private respondent and petitioner. The evidence on record shows that petitioner was going to withdraw the subject foreign currency deposit so that it may be used as collateral for a peso loan, which, in turn, would be used to pay-off the obligations incurred by both petitioner and private respondent in the course of their business venture. In fact, an action to collect the amount of P2,998,500.00 representing the unpaid obligation of private respondent and petitioner to one of their creditors, had been filed in the Regional Trial Court of Makati on 29 March 1990.

In short, private respondent had failed to show that he has a right to stop petitioner from withdrawing the foreign currency deposit under their joint 'and/or' account. And it was error for respondent Judge to have issued the Order dated 29 March 1990 granting the writ of preliminary injunction." [10] (Underscoring supplied)

Petitioner's principal contention is that the public respondent misappreciated the facts of the case; he did not seek injunction to restrain private respondent from withdrawing the funds from their joint account, since private respondent indeed enjoyed a semblance of right to do so and the withdrawal had already become a fait accompli. Rather, petitioner seeks to restrain private respondent from effecting withdrawals from her personal account, into which she had transferred the foreign currency, in order not to defeat his main action seeking recovery of said fund. [11]

The Court must agree with petitioner. The Court of Appeals evidently misapprehended the facts of this case, a relatively exceptional situation warranting the Court to rule on factual issues in a petition for review, preparatory to the resolution of the legal issues posed in this proceeding. [12]

It would be untenable for petitioner to try and restrain private respondent from withdrawing money from their joint account, an accomplished fact which can no longer be enjoined. [13] Petitioner, and the trial court, correctly directed the writ applied for against private respondent's personal savings account because the object of the writ is to preserve the status quo, the last, actual, peaceable and uncontested status that preceeded the pending controversy. [14] An injunctive writ would prevent private respondent from withdrawing from her personal account at will, or at least without the prior knowledge and consent of the trial court and petitioner, thereby approximating the situation obtaining when the money subject of the main action was previously deposited in a joint savings account, as well as ensuring that the continuation of petitioner's main suit for recovery of the sum of money would be worthwhile.

There is also a more fundamental reason why issuance of an injunctive writ was warranted in this case. The record of the preliminary hearings conducted by the trial court on the application for a writ of injunction indicates that petitioner had shown a clear legal right over the fund, notwithstanding the circumstance that the foreign currency was initially placed in a joint savings account, such that petitioner's right must be protected from the prospective

acts of the private respondent, following the fund's transfer to her personal account.[15]

First, as found by the Court of Appeals, private respondent intended to use the Deutschmarks as collateral for a peso loan which she would use to pay-off the debts incurred by her faltering joint venture with petitioner. It should be noted that private respondent's declared object does not articulate a claim of ownership over the foreign exchange funds.

Second, although private respondent specifically denied in her answer petitioner's averment in his complaint that the money is owned by him,[16] she did make an affirmative allegation in her answer that petitioner "agreed to finance the project." [17] One cannot finance a project without owning the funds with which the financing is to be undertaken. She also declared, in her testimony during the preliminary hearings on petitioner's application for a writ of preliminary injunction, that petitioner undertook to remit his cash investment in her name and that she was the industrial partner in the joint venture:

"x x x x x x x x

(Atty. Racela; private respondent's counsel)

Q:

How about your finances, the proposed investment share of Mr. Alexander Van Twest?

A:

We agreed that Alexander Van Twest would remit his cash investment in my name and that he will open an 'and/or' savings account and placed (sic) there my name.

x x x x x x x x

(Court:)

Q:

Now, Madam witness, may we ask what was your agreement insofar as this plan of yours with Mr. Alexander Van Twest to undertake (a) leather industry project?

A:

As far as the professional services is concerned, I am the industrial partner of Mr. Alexander Van Twest.

x x x x x x x x"[18]

(Underscoring supplied)

Petitioner submitted, during the same hearings, documentary evidence indicating he had directed the transfer to the Philippines of large amounts of Deutschmarks, enough to account for the funds subject of this controversy, from foreign banks to Interbank between November 1989 and February 1990.[19]

And third, private respondent's own counsel admitted that the money subject of the inward remittances above-noted belonged to petitioner:

"x x x x x x x x

Atty. Racela:

A:

Insofar as the holdings (sic) of the plaintiff, under the custody of the NBI, your Honor, those are matters extraneous to the proceedings. Now, insofar as the injunction is concerned, your Honor, the evidence presented by the plaintiff clearly revolve only on the issue of the savings account, your Honor, opened by the plaintiff and the defendant, your Honor and there is no need for him to prove the ownership of the account. Insofar as we are concerned, whether or not defendant can withdraw on the savings account which they opened jointly, your Honor.

Court:

A:

Will the defendant stipulate that all the inward remittances from abroad and the money belong to the plaintiff?

Atty. Racela:

A:

We are willing to stipulate, your Honor.

Atty. Reyes: (counsel of petitioner)

A:

May we make of record that the defense counsel -- that all the money (which) came in the same savings account, subject of the complaint came from the plaintiff.

Atty. Racela:

A:

Inward remittances came from abroad in pursuit of the joint agreement between [Plaintiff and] defendant, your Honor.

Atty. Reyes:

A:

He would also prove the agreement between the plaintiff and the defendant with respect to the deposit and withdrawal of the same account, your Honor.

Court:

A:

Is there a written agreement?

Atty. Reyes:

A:

There is none, your Honor. The agreement was based on trust. We need to present the plaintiff, himself to testify on the trust agreement.

Atty. Racela:

A:

We admit that the proceeds came from foreign sources, from the plaintiff, your Honor, by way of investment in pursuit of a joint venture agreement with the defendant, your Honor."

x x x x x x x x"[20]

(Underscoring supplied)

To the mind of the Court, the evidence of record sufficiently rebut the perception of the Court of Appeals that the foreign funds previously deposited in the joint savings account were in effect owned in common by the petitioner and private respondent, such that petitioner could validly oppose private respondent's attempt to dispose of such funds by obtaining a writ of preliminary injunction. It does not appear indubitable that private respondent was a co-owner of the funds who could unilaterally control the application thereof in payment of partnership debts. Indeed, petitioner has affirmatively shown that the Deutschmarks originated from him alone and that he alone was owner thereof. By depositing those funds in a joint 'and/or' account, petitioner did not convey ownership thereof to private respondent and private respondent could not convert those funds to her personal and exclusive ownership and use.

We believe and so hold that the trial court did not act with grave abuse of discretion in issuing the injunctive writ and that the Court of Appeals committed reversible error in concluding otherwise; private respondent was heard and had exhaustively presented all her arguments in opposition to the writ of preliminary injunction.[21]

In a bid to buttress the Decision of the Court of Appeals, private respondent contends for the first time in this proceeding that the personal foreign currency deposit account she is maintaining is exempt from processes issued by the courts, pursuant to Section 8 of R.A. 6426 as amended by P.D. 1246, the statute in force on 26 February 1990, the date she withdrew the foreign exchange fund from her joint account with petitioner and transferred the same to her personal account.[22] Private respondent adds that the Court has plenary authority to disregard the procedural defect attending private respondent's new contention; since this case cannot be resolved adequately without a ruling on the nature of the exemption from court processes granted by the statute.[23]

Private respondent's contentions do not persuade. Her belated invocation of the provisions of R.A. No. 6426 as amended violates basic procedural due process by interposing a new matter before this Court the consideration of which would further delay a final disposition on the propriety of petitioner's application for an injunctive writ.[24]

On a substantive level, the Court holds that the privileges extended by the statute cited by private respondent are actually enjoyed, and are invocable only, by the petitioner, both because private respondent's transactions fall outside the ambit of the statute, and because petitioner is the owner of the foreign exchange fund subject of this case. This conclusion is anchored on the consistent and contemporaneous administrative construction by the Central Bank of the basic statute, as manifested in the relevant circulars issued by it in implementation of that law, which are entitled to great respect by the courts.[25]

Section 8 of R.A. No. 6426 (the Foreign Currency Deposit Act), as amended by P.D. No. 1246, which is still in force, provides:

"Sec. 8. Secrecy of Foreign Currency Deposits -- All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office, whether judicial or administrative or legislative or any other entity whether public or private: Provided, however, that said foreign currency shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever." [26] (Underscoring supplied)

Section one hundred-two of Circular No. 960, Series of 1983, provides in relevant part:

"x x x x x x x x

Sec. 102. Foreign currency funds ineligible for deposits.

a.

Foreign exchange purchased from authorized agent banks in accordance with existing regulations such as excess travel funds; unspent financial assistance of dependents abroad of Philippine residents; foreign exchange acquired from any resident persons, firm, association and corporation; and transfers to a foreign currency deposit account or receipt from another foreign currency deposit account, whether for payment of legitimate obligation or otherwise, are not eligible for deposit under the System.

x x x x x x x x"[27]

(Underscoring supplied)

This Circular was in force at the time private respondent undertook her questioned transactions; thus, such local transfer from the original joint foreign currency account to another (personal) foreign currency account, was not an eligible foreign currency deposit within the coverage of R.A. No. 6426 and not entitled to the benefit of the confidentiality provisions of R.A. No. 6426.

Circular No. 960 was superseded by Circular No. 1318, Series of 1992, which did not reenact and continue the administrative provision above-mentioned (Section 102). Nevertheless, Section seventy-four, Chapter seven of Circular No. 1318, which deals with the foreign currency deposit system, provides in relevant part:

"Section 74. Definition of Terms. As used in this Chapter, the following terms shall have the meaning indicated unless the context clearly indicates otherwise:

x x x x x x x x

The definition of such other terms used in this Chapter shall be consistent with the definition of terms used under the Chapter on Offshore Banking System."[28] (Underscoring supplied)

Section forty-nine, Chapter five of the same Circular, dealing with the Offshore Banking System, stated in part:

"Section 49. Definition of Terms. x x x

x x x x x x x x

d. 'Deposits' shall refer to funds in foreign currencies which are accepted and held by an OBU (offshore banking unit) in the regular course of business, with the obligation to return an equivalent amount to the owner thereof, with or without interest;

x x x x x x x x"[29]

(Underscoring supplied)

In other words, although transfers from one foreign currency deposit account to another foreign currency deposit account in the Philippines are now eligible deposits under the Central Bank's Foreign Currency Deposit System, private respondent is still not entitled to the confidentiality provisions of the relevant circulars. For, as noted earlier, private respondent is not the owner of such foreign currency funds and her personal deposit account is not, under Section 49 of Circular No. 1318, protected by this Circular.

Circular No. 1318 was superseded for a brief period by Circular No. 1353, Series of 1992, which in turn was superseded by Circular No. 1389, Series of 1993. Circular No. 1389 is the current implementing issuance for R.A. No. 6426; the relevant provisions (Sections 74 and 49) of Circular No. 1318 have been incorporated en toto in the

current Circular.[30]

ACCORDINGLY, the Petition for Review is hereby GRANTED. The Decision and Resolution of the Court of Appeals dated 19 July 1991 and 9 July 1992, respectively, are hereby REVERSED and SET ASIDE. The temporary restraining order issued by the Court dated 12 August 1992, enjoining the public respondent from dissolving the writ of preliminary injunction issued by the Regional Trial Court through its order dated 28 March 1990, is hereby MADE PERMANENT. The case is hereby REMANDED to the trial court for continuation of the main proceeding in Civil Case No. 90-659. No pronouncement as to costs.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Decision of the Court of Appeals (hereafter referred to as the "Decision"), p. 1; Rollo, p. 23.

[2] Id, pp. 1-3; Rollo, pp. 23-25.

[3] Complaint, pp. 4-5; Rollo, pp. 35-36.

[4] File of transcript of stenographic notes for Civil Case No. 90-659; Decision, pp. 3-5; Rollo, pp. 25-27.

[5] Decision, pp. 1 and 7; Rollo, pp. 23 and 29

[6] Petition, pp. 1 and 16; Resolution of the Court of Appeals, p. 1; Rollo, pp. 2, 17 and 31.

[7] Rollo, pp. 47-49.

[8] Id., pp. 47 and 69.

[9] Id., p. 71.

[10] Decision, pp. 5-6; Rollo, pp. 27-28.

[11] Petition, pp. 8-11; Rollo, pp. 9-12.

[12] Verendia v. Court of Appeals, 217 SCRA 417, 421-422 (1993).

[13] Acop v. National Labor Relations Commission, 192 SCRA 430, 433 (1990); Manila Banking Corp. v. Court of Appeals, 187 SCRA 138, 146 (1990).

[14] Searth Commodities Corp. v. Court of Appeals, 207 SCRA 622, 630 (1992).

[15] See Carino v. Capulong, et. al., G.R. No. 97203, 26 May 1993, p. 11; see also Toyota Motors Phils. Corp. v. Court of Appeals, 216 SCRA 236, 251 (1992).

[16] Record, p. 5 (complaint) and p. 119 (answer).

[17] Id., p. 122 (answer).

[18] TSN, 28 March 1992, pp. 17 and 20-21.

[19] Plaintiff's Formal Offer of Exhibits and Exhibits "B", "C" and "D" for the plaintiff; Record, pp. 64-65 and 72-74.

[20] TSN, 26 May 1990, pp. 80-83.

[21] See *Santos v. Court of Appeals*, 214 SCRA 162, 172 (1992).

[22] Comment, p. 4; Rollo, p. 56; TSN, 28 March 1992, pp. 49-52.

[23] Memorandum, pp. 5-8; Rollo, pp. 100-103.

[24] Section 18, Rule 46, Revised Rules of Court; see *Caltex (Phils.), Inc. v. Court of Appeals*, 212 SCRA 448, 461--462 (1992); *Go v. Court of Appeals*, 210 SCRA 661, 670 (1992).

[25] *In Re Allen*, 2 Phil 630, 640 (1903), reiterated in *Nestle' Phils., Inc. v. Court of Appeals*, 203 SCRA 504, 510 (1991) and in *Philippine Duplicators, Inc. v. National Labor Relations Commission, et. al.*, G.R. No. 110068, 11 November 1993, p. 11; see also *Philippine Long Distance Telephone Co. v. National Telecommunications Co.*, 190 SCRA 717, 726-728 (1990); and *Sagun v. PHHC*, 162 SCRA 411, 417-418 (1988).

[26] 74 O.G. No. 30, 5733-E (supplemental), 24 July 1978.

[27] Manual of Regulations on Non-Trade (Invisibles) Foreign Exchange Transactions, Central Bank, p. 75.

[28] Revised Manual of Rules and Regulations Governing Non-Trade Foreign Exchange Transactions, Central Bank, pp. 16-17.

[29] *Id.*, pp. 10-11.

[30] Consolidated Foreign Exchange Rules and Regulations (loose-leaf), Central Bank, pp. 36 and 48-49.

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