

TOURIST DUTY FREE SHOPS, INC., PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RIZAL COMMERCIAL BANKING CORPORATION AND BANK OF AMERICA,...

G.R. No. 107395. January 26, 2000

Ponente: BUENA, J.

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BUENA, J.:

This petition for review on certiorari seeks to nullify and set aside the Resolutions of the respondent Sandiganbayan, Second Division, dated June 15, 1992 and September 23, 1992, which (1) dismissed the complaint for injunction and specific performance filed by petitioner against private respondents;[1] and (2) denied the motion for reconsideration thereof, respectively.[2]

The facts are undisputed.

On March 11, 1986, the PCGG, through Commissioner Mary Concepcion Bautista, issued a sequestration order against petitioner, the fallo of which reads:

"The Manager
Tourist Duty Free Shops, Inc.
Food Terminal Inc. Compound
Taguig, Metro Manila

Sir:

The Presidential Commission on Good Government by authority of the President of the Philippines has decided to sequester the facilities, assets and funds of Tourist Duty Free Shops, Inc. in order to prevent any dispositions thereof to the prejudice of the people. You are hereby ordered to refrain from:

- entering into new contracts or transactions;
- making any disbursements of funds of the corporation except in the ordinary course of business and for the payment of salaries of legitimate employees which are due; and
- withdrawing funds from the accounts of the corporation, or its branches or subsidiaries.

Please preserve all the records of the corporation, and do not remove or allow the removal of any documents or other records.

Very truly yours,

(SGD.) MARY CONCEPCION BAUTISTA
Commissioner"

On July 21, 1987, respondent PCGG filed with the respondent Sandiganbayan a complaint for reconveyance,

reversion, accounting, restitution and damages against Bienvenido Tantoco, Bienvenido R. Tantoco, Jr., Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda, Dominador Santiago, Ferdinand E. Marcos, Imelda R. Marcos[3] which was docketed as Civil Case No. 0008. The complaint alleged, among others:

"15. Defendants x x x Maria Lourdes Tantoco-Pineda, x x x and Dominador Santiago by themselves and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, collaborated in the tatter's scheme, devices and stratagems to appropriate and conceal the ownership of assets illegally obtained to the grave damage of Plaintiff among others, as follows:

x x x x x x x x

‘(c) Acted with evident purpose of concealing the ownership of assets illegally obtained, as dummies, nominees and/or agents of Defendants Ferdinand E. Marcos and Imelda R. Marcos in acquiring franchise to operate tourist duty-free shops at international airports, hotels and commercial centers, under which defendants Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda with the active participation of Bienvenido Tantoco, Sr., Bienvenido Tantoco, Jr. and Dominador R. Santiago, secured presidential approval for them to operate and manage exclusively TDF shops which were supposed to pay only a minimal franchise tax of 7% of the gross income, x x x but only 2% went to the government coffers and the remaining 5% which ran into millions of pesos became defendant Imelda R. Marcos sources of petty cash since these funds were funneled to her private foundations heretofore stated, to the plaintiff’s grave damage and prejudice.

‘(d) procured, almost unlimited duty and tax-free importation benefits and manipulated importations by mere Draft Acceptances in excess of the amounts allowed by the Central Bank with the knowledge and willing participation of Defendant Dominador Santiago who was then Chairman of Tourist Duty Free Shops, Inc., and the approval of which importations by mere Trade-Acceptance was secured by defendants Tantocos and Santiago through Imelda R. Marcos solely for their personal benefit and for the TDFS.’[4]

Petitioner assailed the sequestration order via a complaint for injunction and specific performance against herein respondents before the respondent Sandiganbayan which was docketed as Civil Case No. 0142. In its complaint, petitioner alleged that the writ of sequestration is void because: (1) it was issued without any investigation; (2) all the assets, funds and properties of petitioner were lawfully acquired and earned; (3) the writ of sequestration was signed by only one of the five commissioners of the respondent PCGG; and (4) the respondent PCGG has not filed any action against petitioner to recover the latter's assets, funds and properties, nor has it registered any list of the sequestered assets with the respondent Sandiganbayan pursuant to Section 26, Article XVIII of the 1987 Constitution[5] and therefore, the writ of sequestration is now deemed automatically lifted. As regards respondent Bank of America (BA for brevity) and respondent Rizal Commercial Banking Corporation (RCBC for brevity), petitioner asserts that said banks refuse to comply with their contractual obligation to allow herein petitioner to withdraw its funds and to honor its checks. Petitioner therefore prays that judgment be rendered (1) declaring the writ of sequestration invalid; (2) enjoining PCGG from implementing the writ of sequestration and (3) ordering respondent banks to comply with their contractual obligations to petitioner and allow the latter to withdraw its funds without need of any approval by the PCGG.[6]

Petitioner likewise filed an ex-parte motion to assign the case to the Second Division of the Sandiganbayan praying that the complaint be assigned to the said division where Civil Case No. 0008 is pending since "it is in a better position to assess/appreciate whether or not the said case is sufficient to bind the complainant and, more importantly, whether or not the said case is sufficient compliance with the requirement of the Constitution." [7]

On December 23, 1991, respondent Sandiganbayan issued a Resolution requiring the private respondents to file their answers which respondent PCGG complied with on January 22, 1992. In its answer, respondent PCGG asserts inter alia: (1) that the writ of sequestration is valid and implemented within the bounds of law; (2) that the

PCGG is not the proper party-in-interest but the Republic of the Philippines; (3) that the Republic and the PCGG are immune from suit; and (4) that the case should be dismissed on the ground of *litis pendencia* or should be consolidated with Civil Case No. 0008 where the subject assets and funds deposited with respondents BA and RCBC are among those placed under sequestration.[8]

Respondents RCBC and BA filed their separate answers basically contending that they are merely obeying the writ of sequestration issued by respondent PCGG and that the case should be merely between petitioner and respondent PCGG.[9]

On March 23, 1992, petitioner filed a motion for immediate relief *pendente lite* praying that it be allowed to withdraw funds from respondent RCBC to pay for its normal and operating expenses.[10] The motion was granted in a Resolution dated April 8, 1992. Respondent RCBC was ordered to honor the checks of the petitioner issued in payment of nine expenses itemized in petitioner's motion but ordered the latter to course its request for further disbursements with the Operations Department of PCGG.[11]

On May 7, 1992, petitioner filed another omnibus motion praying for the reconsideration of the aforesaid resolution, to resolve its pending motion for issuance of a writ of preliminary mandatory injunction and to set the case for pre-trial conference.[12]

On June 15, 1992, respondent Sandiganbayan, without acting on the pending motion of herein petitioner, issued the now assailed Resolution, the decretal portion of which reads:

"WHEREFORE, premises considered, the instant case is hereby dismissed, without costs, and without prejudice to the re-filing by plaintiff of the proper motions in Civil Case No. 0008. Consequently, all pending incidents herein are hereby deemed moot and academic.

"SO ORDERED." [13]

Petitioner moved for reconsideration alleging that respondent Sandiganbayan erred in dismissing the case *motu proprio* and in dismissing the case based on *litis pendencia*, [14] a ground not enumerated in Section 1, Rule 16 of the Rules of Court. The petitioner likewise argues that the reasons/grounds relied upon by the respondent Sandiganbayan in dismissing the complaint are not correct and that the dismissal contravenes the ruling of the respondent Sandiganbayan in a similar case.[15]

Respondent PCGG opposed the motion [16] arguing that the dismissal was repeatedly prayed for in its pleadings and that the basis for praying for the dismissal was *litis pendencia* which is a ground for filing a motion to dismiss under the Rules. It further argues that it is imperative for the court to dismiss the present case because of the substantial identity and correlation in the causes of action, reliefs sought and parties between the present case and Civil Case No. 0008.[17]

On September 23, 1992, public respondent issued the other assailed order denying petitioner's motion for reconsideration.

Hence, this petition.

It is erroneous for petitioner to claim that respondent Sandiganbayan dismissed the case without any motion to dismiss having been filed by the private respondent. The dismissal of petitioner's complaint was prayed for by respondent PCGG in its answer and other pleadings. In its answer, the respondent PCGG alleged that:

"14. This case should be dismissed on the ground of *litis pendencia* or there is another action pending involving the same parties for the same cause, i.e. 'Republic of the Philippines vs. Bienvenido Tantoco, et al, Civil Case No. 0008; or should be consolidated and/or treated a mere incident of Civil Case No. 0008.

"15. The subject assets and funds, deposited with defendants Rizal Commercial Banking Corporation (RCBC) and Bank of America (BA) sequestered by PCGG are among the assets of the defendants in Civil Case No. 0008;"[18] (Underscoring Supplied)

Again, in its Opposition[19] to petitioner's Motion for Immediate Relief Pendente Lite[20] respondent PCGG stated that "this Opposition is filed subject to our position that this case should be dismissed and/or consolidated with the principal case, Civil Case No. 008 x x x as we manifested in our Answer under the Heading 'Special and Affirmative Defenses'." This was reiterated in respondent PCGG's Opposition[21] to petitioner's Omnibus Motion.[22]

Hence, while no motion to dismiss was filed, respondent PCGG has been constantly pleading for the dismissal of the case in its answer and in the subsequent pleadings submitted to the respondent Sandiganbayan. This is allowed under Section 6, Rule 16 of the Rules of Court which provides that if no motion to dismiss has been filed, any of the grounds for dismissal provided for in the Rules may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. A preliminary hearing on the affirmative defense invoking any of the grounds for dismissal is not even mandatory as may be shown from the use of the word "may" in the above rule.

Additionally, the cases of Manila Herald Publishing Co., Inc. vs. Ramos[23] and Malig vs. Bush,[24] relied upon by petitioner in support of its claim finds no application in the case at bar. In the "Manila Herald" case, the defendant never filed any motion to dismiss nor an answer. It never initiated nor prayed for the dismissal of the case. Such is not the case at bar. Respondent PCGG repeatedly sought for the dismissal of the case on the ground of *litis pendencia* in its answer and subsequent pleadings. Similarly, the "Malig" case is not applicable because prescription of action, the ground relied upon by the court in dismissing the case, was not the ground, i.e., lack of jurisdiction, raised by the defendant in its motion to dismiss. In this case, however, the ground for dismissal invoked by respondent PCGG was the same ground which respondent court considered in dismissing the case.

Nonetheless, it was erroneous for the Sandiganbayan to dismiss this case on the ground of *litis pendencia*. The requisites of *litis pendencia*, to note, are the following:

- Identity of parties or of representation in both cases,
- Identity of rights asserted and relief prayed for,
- The relief must be founded on the same facts and the same basis, and
- Identity in the two 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 under consideration.

These requisites are absent in this case. For one, there are no identity of parties in the present case and Civil Case No. 0008. Here, petitioner, RCBA and BA are not parties in Civil Case No. 0008. Neither are the defendants in the latter case parties to the present case. Also, there is no identity of rights asserted and relief prayed for. The action in Civil Case No. 0008 involves "reconveyance, reversion, accounting, restitution and damages " against defendants therein which does not include petitioner, RCBC or BA, while the main thrust of the instant case is for specific performance against RCBC and BA. The evident and logical conclusion then is that any decision that may be rendered in any of these two cases cannot constitute *res judicata* on the other. The instant case and Civil Case No. 0008, therefore, ought to be resolved independently. To merge the former with the latter case via mere motion is clearly unwarranted.

A merger of these two (2) cases can neither be justified under the following doctrines laid down in "Republic vs.

Sandiganbayan"[25] cited by respondents, viz:

"1) Section 26, Article XVI I I of the Constitution does not, by its terms or any fair interpretation thereof, require that corporations or business enterprises alleged to be repositories of 'ill-gotten wealth,' as the term is used in said provision, be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestrations thereof;

"2) complaints for the recovery of ill-gotten wealth which merely identify and/or allege said corporations or enterprises to be the instruments, repositories or the fruits of ill-gotten wealth, without more, come within the meaning of the phrase 'corresponding judicial action or proceeding' contemplated by the constitutional provision referred to; the more so, that normally, said corporations, as distinguished from their stockholders or member, are not generally suable for the latter's illegal or criminal actuations in the acquisition of the assets invested by them in the former;

"3) even assuming the impleading of said corporations to be necessary and proper so that judgment may comprehensively and effectively be rendered in the actions, amendment of the complaints to implead them as defendants may, under existing rules of procedure, be done at any time during the pendency of the actions thereby initiated, and even during the pendency of an appeal to the Supreme Court - a procedure that, in any case, is not inconsistent with or proscribed by the constitutional time limits to the filing of the corresponding complaints 'for' - i.e., with regard or in relation to, in respect of, or in connection with, or concerning - orders of sequestration, freezing, or provisional takeover."

In the much recent case of "PCGG vs. Sandiganbayan and AEROCOM Investors and Managers, Inc.,"[26] this Court, speaking through Mr. Justice Antonio M. Martinez, clarified that the pronouncements made in the aforecited case of Republic vs. Sandiganbayan (Republic case for short) "presupposes a valid and existing sequestration of the unimpleaded corporations concerned." Thus, we held:

"xxx the suit in Civil Case No. 0009 against Mr. Nieto and Mr. Africa as shareholders in Aerocom is not and cannot ipso facto be a suit against the unimpleaded Aerocom itself without violating the fundamental principle that a corporation has a legal personality distinct and separate from its stockholder. Such is the ruling laid down in PCGG v. Interco reiterated anew in a case of more recent vintage - Republic v. Sandiganbayan, Sipalay Trading Corp. and Allied Banking Corp. where this Court, speaking through Mr. Justice Ricardo J. Francisco, hewed to the lone dissent of Mr. Justice Teodoro R. Padilla in the very same Republic v. Sandiganbayan case herein invoked by the PCGG, to wit:

‘xxx failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing.

xxx xxx xxx.’ "

WHEREFORE, the Resolutions of the respondent Sandiganbayan dated June 15, 1992 and September 23, 1992 are hereby REVERSED and SET ASIDE.

SO ORDERED.

Bellosillo, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Davide, Jr., C.J., Puno, Quisumbing, and Purisima, JJ., joins dissenting opinion of J. Vitug.

Melo, Kapunan, Mendoza, and Pardo, JJ., in the result.

Vitug, J., see dissenting opinion.

Panganiban, J., no part. As a former practising lawyer, I was consulted by a party.

[1] Annex O, pp. 142-151, Rollo.

[2] Annex R, pp. 179-194, Id.

[3] Annex A, pp. 38-69, Rollo.

[4] Pp. 50-51, Rollo.

[5] Section 26, Article XVIII (Transitory Provisions) of the Constitution provides:

"Section 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

"A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

"The sequestration or freeze order is deemed automatically lifted if no judicial action of proceeding is commenced as herein provided." (Resolution promulgated on December 4, 1991)

[6] Annex B, pp. 70-76, Rollo.

[7] Annex C, pp. 88-89, Id.

[8] Annex E, pp. 93-98, Id.

[9] Annexes F and G, pp. 100-106, Rollo.

[10] Annex K, pp. 122-124, Id.

[11] Annex M, pp. 127-130, Id.

[12] Annex N, pp. 131-140, Id.

[13] Annex O, pp. 143-151, Rollo.

[14] The pertinent portion of Sandiganbayan's Resolution dated September 23, 1992 denying petitioner's motion for reconsideration reads, thus:

"A reading of the challenged June 15, 1992 Resolution in its entirety would reveal without difficulty that the dismissal of the case was anchored on the pendency of Civil Case No. 0008, a case which the Court deemed as intimately related to the case at bar. An express wording that the ground for the dismissal was *litis pendencia* was deemed not indispensable by the Court, as no rule or jurisprudence whatsoever declares with absolute certitude that the ground for the dismissal of an action must be expressed in verbatim and/or explicitly stated in the resolution. Putting it more succinctly, the ground for dismissal can be discerned or implied from the tenor of the wordings of the resolution itself."

[15] Annex P, pp. 152-167, Rollo. [G.R. No. 92755 entitled, *International Copra Expert Corp. and Interco Manufacturing Corp. vs. PCGG*, October 2, 1990]

[16] Annex Q, pp. 168-177, Id.

[17] Pp. 171-172, Id.

[18] Annex E, p. 97, Id.

[19] Annex 6, pp. 253-256, Rollo.

[20] Annex 5, pp. 249-251, Id.

[21] Annex 9, p. 283, Id., thus:

"Lastly, this Opposition is filed subject to our position that this case should be dismissed and/or consolidated with the principal case of 'Republic of the Philippines vs. Tantoco, et al. al.,' Civil Case No. 0008 under the rule of 'litis pendencia'.

[22] Annex N, pp. 131-140, Rollo.

[23] 88 Phil. 94.

[24] 28 SCRA 449 [1969].

[25] 240 SCRA 376, Jan. 23, 1995.

[26] 290 SCRA 639, June 5, 1998.

DISSENTING OPINION

VITUG, J.:

I find myself unable to fully agree with the disquisition of my esteemed colleague, Mr. Justice Arturo B. Buena, reversing and setting aside the 15th June 1992 and 23rd September 1992 resolutions of the Sandiganbayan which has dismissed Civil Case No. 0142 but without prejudice to the filing of appropriate motions in Civil Case No. 0008.

The ponencia states that *litis pendencia* would not bar Civil Case No. 0142 from proceeding independently of Civil Case No. 0008 on the thesis that *litis pendencia* requires not only that the parties to the action be the same but also that there is substantial identity in the cause of action and relief sought such that the result of the first action would be determinative of the second. That much is a given; as early as *Northcott & Co. vs. Villa-Abrille*[1] this Court has held that a recognized test for such identity is to discover whether a judgment in the prior action would be conclusive on the liability sought to be enforced in the second and would thereby support the pleas of *res judicata*.

Nevertheless, we might have overlooked the fact that Rizal Commercial and Banking Corporation and Bank of America were only brought in as nominal parties in the second case for being the depositary banks of petitioner and for none other. As so aptly proffered by the banks, their refusal to allow petitioner to withdraw its funds was merely in compliance with the sequestration order and not intended to be a disavowal of their fiduciary obligation. The causes of action in the two cases are clearly intertwined, and they would be best determined if jointly considered. To do so would also be in keeping with the spirit behind the proscription on forum-shopping, one which can arise when a party avails himself of different judicial remedies, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues.[2]

At all events, I respectfully submit that the Court is not in good position to make a pronouncement at this stage on the validity of the sequestration order. If at all, Civil Case No. 0142 could be ordered reinstated and the Sandiganbayan thereupon directed to proceed posthaste with its disposition. The PCGG should be accorded an opportunity to adduce its evidence to show that it has a prima facie determination for its sequestration order and that it can provide sufficient factual and legal basis for the continued sequestration of the property involved. Until the Sandiganbayan shall have been able to settle that issue, adjudicate the claims of all contending parties and, eventually, resolve the issue of ownership over the sequestered property, the lifting of the sequestration order could yet, in my view, be precipitate.

I vote to dismiss the petition.

[1] 41 Phil. 462.

[2] See *Gatmaytan vs. Court of Appeals*, 267 SCRA 487.

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