

COKALIONG SHIPPING LINES, INC., PETITIONER, VS. HON. OMAR U. AMIN, PRESIDING JUDGE OF THE RTC, MAKATI, BRANCH 135 AND PRUDENTIAL GUARANTEE & ASSURANCE, INC., RESPONDENTS.

G.R. No. 112233. July 31, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to annul the Order, dated September 1, 1993, of the Regional Trial Court of Makati, Branch 135, denying petitioner's Motion to Dismiss Civil Case No. 93-319 (Prudential Guarantee and Assurance, Inc. v. Edgar Cokaliong Shipping Lines) on the ground of *litis pendentia* and the Order, dated October 7, 1993, denying petitioner's Motion for Reconsideration.

On May 5, 1992, petitioner filed a Complaint for Damages, with Prayer for Writ of Preliminary Attachment, against Carlos A. Go Thong Lines and Eugenio Manubag, Jr. The case was filed with the Regional Trial Court of Cebu, where it was docketed as Civil Case No. 11660 and assigned to Branch XII thereof.[1] The petitioner alleged that by reason of defendants' negligence, a collision took place on April 3, 1992 between its vessel, the M/V Filipinas Tandag and Go Thong Lines' vessel, the M/V Our Lady of Lourdes. Petitioner and its coplaintiffs, who were crew members of its vessel, prayed that Go Thong Lines and the master of the other vessel, Eugenio Manubag, be held solidarily liable for damages.

Defendants filed an Answer with Counterclaim, denying negligence on their part and alleging that "the collision was caused by the faulty, erratic and erroneous maneuvers of [petitioner's vessel] and the lack of skill, poor seamanship, imprudence, lack of care and negligence of the officers and crew of [petitioner]."

On February 1, 1993, private respondent, as insurer of Go Thong Lines, filed a Complaint against herein petitioner. The case was filed with the Regional Trial Court of Makati, Branch 135, where it was docketed as Civil Case No. 93-319.[2] Private respondent claimed that it had paid the insured the amount of P2,420,325.59 and, by virtue thereof, had been subrogated to the rights of Go Thong Lines against petitioner. The complaint contained the same allegations stated in Go Thong Lines' Answer with Counterclaim in Civil Case No. 11660, to the effect that the collision had been caused by the faulty maneuvers of petitioner's vessel and the gross negligence of its officers and crew.

Petitioner filed on August 3, 1993 a Motion to Dismiss Civil Case No. 93-319 (Makati Case) due to the pendency of Civil Case No. 11660 (Cebu Case) on the ground that the two cases involved the same parties, the same causes of action and the same issues. But petitioner's motion was denied by the trial court which held that there was no similarity of causes of action. The trial court ruled that the Cebu Case was one for damages arising from the alleged negligence of Go Thong Lines and its vessel master, while the Makati Case involved collection of a sum of money under the principle of subrogation, based on a contract of insurance between private respondent and Go Thong Lines. Petitioner's Motion for Reconsideration was likewise denied, hence this petition for certiorari.

The petition is well taken. For *litis pendentia* to be a ground for the dismissal of an action, the following requisites

must concur: (a) identity of parties or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two (2) cases should be such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other.[3]

As regards the first requirement, it is evident that petitioner is a party in both cases, i.e., as plaintiff in the Cebu Case and as defendant in the Makati Case. Private respondent claims, however, that since it was not impleaded as a party in the Cebu Case, there is no identity of parties to warrant the dismissal of its complaint in the Makati Case. This contention has no merit. Private respondent filed the complaint in the Makati Case as a subrogee of Go Thong Lines. In other words, since private respondent was subrogated to the rights of Go Thong Lines private respondent stepped into the shoes of Go Thong Lines[4] so that the case was in reality between the insured Go Thong Lines and petitioner.[5] We have held that the fact that the position of the parties was reversed, the plaintiffs in the first case being the defendants in the second case and vice versa, does not negate the identity of parties for the purpose of *litis pendentia*.[6]

As to the second requirement, a reading of the allegations of the respective complaints of the parties shows that the asserted rights are founded on an identical set of facts which gave rise to one basic issue, that is, whether the collision between the two vessels was due to the negligence of the employees of one vessel or those of the other vessel. Indeed in the Cebu Case the parties agreed that the only issue to be resolved was whether the collision was due to petitioner's negligence or that of Go Thong Lines.[7] This is the same issue raised in the Makati Case instituted by Go Thong Lines' insurer against petitioner. In *Pampanga Bus Company v. OCFEMIA*,[8] we held that the fact that in both cases the parties imputed negligence to each other and claimed damages resulting from the alleged wrong based on the same incident, occurring in the same place on the same day, established the identity of rights asserted and prayed for as based on the same facts.

The identity in both cases is such that regardless of the decision in the Cebu Case the same would constitute *res judicata* on the Makati Case as the judgment would determine which party was at fault.

There is another reason why the Makati Case should be dismissed. Go Thong Lines filed an Answer With Counter Claim in the Cebu Case alleging negligence of petitioner. A counterclaim partakes of the nature of complaint.[9] Hence, the pendency of the counterclaim in the Cebu Case which, as stated above, involved identical parties and sought the same reliefs as the Makati Case, is a ground for dismissing the complaint filed by Go Thong Lines' insurer.

WHEREFORE, the petition is GRANTED, the questioned orders dated September 1, 1993 and October 7, 1993 are SET ASIDE, and Civil Case No. 93-319, now pending before Branch 135 of the Regional Trial Court of Makati, is DISMISSED.

SO ORDERED.

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

[1] Petition, Annex B, Rollo, pp. 25-32.

[2] Petition, Annex A, Rollo, pp. 15-20.

[3] *Sanpiro v. Intermediate Appellate Court*, 220 SCRA 527 (1993); *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, 217 SCRA 517 (1993); *Alarcon v. Torres*, 19 SCRA 706 (1967).

[4] *National Union Fire Insurance Co. v. Stolt-Nielsen Phil.*, 184 SCRA 682 (1990).

[5] *Compania Maritima v. Insurance, Co.*, 12 SCRA 213 (1964).

[6] *Yu v. Court of Appeals*, 232 SCRA 594 (1994).

[7] Pretrial Order, Rollo, pp. 39-40.

[8] 18 SCRA 407 (1966).

[9] *Arceo v. Oliveros*, 134 SCRA 308 (1985); *Matela v. Chua Tay*, 5 SCRA 163 (1962).

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