

BANK OF AMERICA NT&SA, BANK OF AMERICA INTERNATIONAL, LTD., PETITIONERS, VS. COURT OF APPEALS, HON. MANUEL PADOLINA, EDUARDO LITONJUA, SR., AND AURELIO K. LITONJUA, JR., RESPOND...

G.R. No. 120135. March 31, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the November 29, 1994 decision of the Court of Appeals[1] and the April 28, 1995 resolution denying petitioners' motion for reconsideration.

The factual background of the case is as follows:

On May 10, 1993, Eduardo K. Litonjua, Sr. and Aurelio J. Litonjua (Litonjuas, for brevity) filed a Complaint[2] before the Regional Trial Court of Pasig against the Bank of America NT&SA and Bank of America International, Ltd. (defendant banks for brevity) alleging that: they were engaged in the shipping business; they owned two vessels: Don Aurelio and El Champion, through their wholly-owned corporations; they deposited their revenues from said business together with other funds with the branches of said banks in the United Kingdom and Hongkong up to 1979; with their business doing well, the defendant banks induced them to increase the number of their ships in operation, offering them easy loans to acquire said vessels;[3] thereafter, the defendant banks acquired, through their (Litonjuas') corporations as the borrowers: (a) El Carrier[4]; (b) El General[5]; (c) El Challenger[6]; and (d) El Conqueror[7]; the vessels were registered in the names of their corporations; the operation and the funds derived therefrom were placed under the complete and exclusive control and disposition of the petitioners;[8] and the possession the vessels was also placed by defendant banks in the hands of persons selected and designated by them (defendant banks).[9]

The Litonjuas claimed that defendant banks as trustees did not fully render an account of all the income derived from the operation of the vessels as well as of the proceeds of the subsequent foreclosure sale;[10] because of the breach of their fiduciary duties and/or negligence of the petitioners and/or the persons designated by them in the operation of private respondents' six vessels, the revenues derived from the operation of all the vessels declined drastically; the loans acquired for the purchase of the four additional vessels then matured and remained unpaid, prompting defendant banks to have all the six vessels, including the two vessels originally owned by the private respondents, foreclosed and sold at public auction to answer for the obligations incurred for and in behalf of the operation of the vessels; they (Litonjuas) lost sizeable amounts of their own personal funds equivalent to ten percent (10%) of the acquisition cost of the four vessels and were left with the unpaid balance of their loans with defendant banks.[11] The Litonjuas prayed for the accounting of the revenues derived in the operation of the six vessels and of the proceeds of the sale thereof at the foreclosure proceedings instituted by petitioners; damages for breach of trust; exemplary damages and attorney's fees.[12]

Defendant banks filed a Motion to Dismiss on grounds of forum non conveniens and lack of cause of action against them.[13]

On December 3, 1993, the trial court issued an Order denying the Motion to Dismiss, thus:

“WHEREFORE, and in view of the foregoing consideration, the Motion to Dismiss is hereby DENIED. The defendant is therefore, given a period of ten (10) days to file its Answer to the complaint.

“SO ORDERED.”[14]

Instead of filing an answer the defendant banks went to the Court of Appeals on a “Petition for Review on Certiorari”[15] which was aptly treated by the appellate court as a petition for certiorari. They assailed the above-quoted order as well as the subsequent denial of their Motion for Reconsideration.[16] The appellate court dismissed the petition and denied petitioners’ Motion for Reconsideration.[17]

Hence, herein petition anchored on the following grounds:

“1. RESPONDENT COURT OF APPEALS FAILED TO CONSIDER THE FACT THAT THE SEPARATE PERSONALITIES OF THE PRIVATE RESPONDENTS (MERE STOCKHOLDERS) AND THE FOREIGN CORPORATIONS (THE REAL BORROWERS) CLEARLY SUPPORT, BEYOND ANY DOUBT, THE PROPOSITION THAT THE PRIVATE RESPONDENTS HAVE NO PERSONALITIES TO SUE.

“2. THE RESPONDENT COURT OF APPEALS FAILED TO REALIZE THAT WHILE THE PRINCIPLE OF FORUM NON CONVENIENS IS NOT MANDATORY, THERE ARE, HOWEVER, SOME GUIDELINES TO FOLLOW IN DETERMINING WHETHER THE CHOICE OF FORUM SHOULD BE DISTURBED. UNDER THE CIRCUMSTANCES SURROUNDING THE INSTANT CASE, DISMISSAL OF THE COMPLAINT ON THE GROUND OF FORUM NON-CONVENIENS IS MORE APPROPRIATE AND PROPER.

“3. THE PRINCIPLE OF RES JUDICATA IS NOT LIMITED TO FINAL JUDGMENT IN THE PHILIPPINES. IN FACT, THE PENDENCY OF FOREIGN ACTION MAY BE THE LEGAL BASIS FOR THE DISMISSAL OF THE COMPLAINT FILED BY THE PRIVATE RESPONDENT. COROLLARY TO THIS, THE RESPONDENT COURT OF APPEALS FAILED TO CONSIDER THE FACT THAT PRIVATE RESPONDENTS ARE GUILTY OF FORUM SHOPPING.”[18]

As to the first assigned error: Petitioners argue that the borrowers and the registered owners of the vessels are the foreign corporations and not private respondents Litonjuas who are mere stockholders; and that the revenues derived from the operations of all the vessels are deposited in the accounts of the corporations. Hence, petitioners maintain that these foreign corporations are the legal entities that have the personalities to sue and not herein private respondents; that private respondents, being mere shareholders, have no claim on the vessels as owners since they merely have an inchoate right to whatever may remain upon the dissolution of the said foreign corporations and after all creditors have been fully paid and satisfied;[19] and that while private respondents may have allegedly spent amounts equal to 10% of the acquisition costs of the vessels in question, their 10% however represents their investments as stockholders in the foreign corporations.[20]

Anent the second assigned error, petitioners posit that while the application of the principle of forum non conveniens is discretionary on the part of the Court, said discretion is limited by the guidelines pertaining to the private as well as public interest factors in determining whether plaintiffs’ choice of forum should be disturbed, as elucidated in *Gulf Oil Corp. vs. Gilbert*[21] and *Piper Aircraft Co. vs. Reyno*,[22] to wit:

“Private interest factors include: (a) the relative ease of access to sources of proof; (b) the availability of compulsory process for the attendance of unwilling witnesses; (c) the cost of obtaining attendance of willing witnesses; or (d) all other practical problems that make trial of a case easy, expeditious and inexpensive. Public

interest factors include: (a) the administrative difficulties flowing from court congestion; (b) the local interest in having localized controversies decided at home; (c) the avoidance of unnecessary problems in conflict of laws or in the application of foreign law; or (d) the unfairness of burdening citizens in an unrelated forum with jury duty.”[23]

In support of their claim that the local court is not the proper forum, petitioners allege the following:

“i) The Bank of America Branches involved, as clearly mentioned in the Complaint, are based in Hongkong and England. As such, the evidence and the witnesses are not readily available in the Philippines;

“ii) The loan transactions were obtained, perfected, performed, consummated and partially paid outside the Philippines;

“iii) The monies were advanced outside the Philippines. Furthermore, the mortgaged vessels were part of an offshore fleet, not based in the Philippines;

“iv) All the loans involved were granted to the Private Respondents’ foreign CORPORATIONS;

“v) The Restructuring Agreements were ALL governed by the laws of England;

“vi) The subsequent sales of the mortgaged vessels and the application of the sales proceeds occurred and transpired outside the Philippines, and the deliveries of the sold mortgaged vessels were likewise made outside the Philippines;

“vii) The revenues of the vessels and the proceeds of the sales of these vessels were ALL deposited to the Accounts of the foreign CORPORATIONS abroad; and

“viii) Bank of America International Ltd. is not licensed nor engaged in trade or business in the Philippines.”[24]

Petitioners argue further that the loan agreements, security documentation and all subsequent restructuring agreements uniformly, unconditionally and expressly provided that they will be governed by the laws of England;[25] that Philippine Courts would then have to apply English law in resolving whatever issues may be presented to it in the event it recognizes and accepts herein case; that it would then be imposing a significant and unnecessary expense and burden not only upon the parties to the transaction but also to the local court. Petitioners insist that the inconvenience and difficulty of applying English law with respect to a wholly foreign transaction in a case pending in the Philippines may be avoided by its dismissal on the ground of forum non conveniens. [26]

Finally, petitioners claim that private respondents have already waived their alleged causes of action in the case at bar for their refusal to contest the foreign civil cases earlier filed by the petitioners against them in Hongkong and England, to wit:

“1.) Civil action in England in its High Court of Justice, Queen’s Bench Division Commercial Court (1992-Folio No. 2098) against (a) LIBERIAN TRANSPORT NAVIGATION. SA.; (b) ESHLEY COMPANIA NAVIERA SA., (c) EL CHALLENGER SA; (d) ESPRIONA SHIPPING CO. SA; (e) PACIFIC NAVIGATORS CORP. SA; (f) EDDIE NAVIGATION CORP. SA; (g) EDUARDO K. LITONJUA & (h) AURELIO K. LITONJUA.

“2.) Civil action in England in its High Court of Justice, Queen’s Bench Division, Commercial Court (1992-Folio No. 2245) against (a) EL CHALLENGER S.A., (b) ESPRIONA SHIPPING COMPANY S.A., (c) EDUARDO KATIPUNAN LITONJUA and (d) AURELIO KATIPUNAN LITONJUA.

“3.) Civil action in the Supreme Court of Hongkong High Court (Action No. 4039 of 1992), against (a) ESHLEY COMPANIA NAVIERA S.A., (b) EL CHALLENGER S.A., (c) ESPRIONA SHIPPING

COMPANY S.A., (d) PACIFIC NAVIGATORS CORPORATION (e) EDDIE NAVIGATION CORPORATION S.A., (f) LITONJUA CHARTERING (EDYSHIP) CO., INC., (g) AURELIO KATIPUNAN LITONJUA, JR., and (h) EDUARDO KATIPUNAN LITONJUA.

“4.) A civil action in the Supreme Court of Hong Kong High Court (Action No. 4040 of 1992), against (a) ESHLEY COMPANIA NAVIERA S.A., (b) EL CHALLENGER S.A., (c) ESPRIONA SHIPPING COMPANY S.A., (d) PACIFIC NAVIGATORS CORPORATION (e) EDDIE NAVIGATION CORPORATION S.A., (f) LITONJUA CHARTERING (EDYSHIP) CO., INC., (g) AURELIO KATIPUNAN LITONJUA, JR., and (h) EDUARDO KATIPUNAN LITONJUA.”

and that private respondents’ alleged cause of action is already barred by the pendency of another action or by *litis pendentia* as shown above.[27]

On the other hand, private respondents contend that certain material facts and pleadings are omitted and/or misrepresented in the present petition for certiorari; that the prefatory statement failed to state that part of the security of the foreign loans were mortgages on a 39-hectare piece of real estate located in the Philippines;[28] that while the complaint was filed only by the stockholders of the corporate borrowers, the latter are wholly-owned by the private respondents who are Filipinos and therefore under Philippine laws, aside from the said corporate borrowers being but their alter-egos, they have interests of their own in the vessels.[29] Private respondents also argue that the dismissal by the Court of Appeals of the petition for certiorari was justified because there was neither allegation nor any showing whatsoever by the petitioners that they had no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law from the Order of the trial judge denying their Motion to Dismiss; that the remedy available to the petitioners after their Motion to Dismiss was denied was to file an Answer to the complaint;[30] that as upheld by the Court of Appeals, the decision of the trial court in not applying the principle of *forum non conveniens* is in the lawful exercise of its discretion.[31] Finally, private respondents aver that the statement of petitioners that the doctrine of *res judicata* also applies to foreign judgment is merely an opinion advanced by them and not based on a categorical ruling of this Court;[32] and that herein private respondents did not actually participate in the proceedings in the foreign courts.[33]

We deny the petition for lack of merit.

It is a well-settled rule that the order denying the motion to dismiss cannot be the subject of petition for certiorari. Petitioners should have filed an answer to the complaint, proceed to trial and await judgment before making an appeal. As repeatedly held by this Court:

“An order denying a motion to dismiss is interlocutory and cannot be the subject of the extraordinary petition for certiorari or mandamus. The remedy of the aggrieved party is to file an answer and to interpose as defenses the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, to elevate the entire case by appeal in due course. xxx Under certain situations, recourse to certiorari or mandamus is considered appropriate, i.e., (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff’s baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case.”[34]

Records show that the trial court acted within its jurisdiction when it issued the assailed Order denying petitioners’ motion to dismiss. Does the denial of the motion to dismiss constitute a patent grave abuse of discretion? Would appeal, under the circumstances, not prove to be a speedy and adequate remedy? We will resolve said questions in conjunction with the issues raised by the parties.

First issue. Did the trial court commit grave abuse of discretion in refusing to dismiss the complaint on the ground

that plaintiffs have no cause of action against defendants since plaintiffs are merely stockholders of the corporations which are the registered owners of the vessels and the borrowers of petitioners?

No. Petitioners' argument that private respondents, being mere stockholders of the foreign corporations, have no personalities to sue, and therefore, the complaint should be dismissed, is untenable. A case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest. Lack of personality to sue can be used as a ground for a Motion to Dismiss based on the fact that the complaint, on the face thereof, evidently states no cause of action.[35] In *San Lorenzo Village Association, Inc. vs. Court of Appeals*,[36] this Court clarified that a complaint states a cause of action where it contains three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. If these elements are absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[37] To emphasize, it is not the lack or absence of cause of action that is a ground for dismissal of the complaint but rather the fact that the complaint states no cause of action.[38] "Failure to state a cause of action" refers to the insufficiency of allegation in the pleading, unlike "lack of cause of action" which refers to the insufficiency of factual basis for the action. "Failure to state a cause of action" may be raised at the earliest stages of an action through a motion to dismiss the complaint, while "lack of cause of action" may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented.[39]

In the case at bar, the complaint contains the three elements of a cause of action. It alleges that: (1) plaintiffs, herein private respondents, have the right to demand for an accounting from defendants (herein petitioners), as trustees by reason of the fiduciary relationship that was created between the parties involving the vessels in question; (2) petitioners have the obligation, as trustees, to render such an accounting; and (3) petitioners failed to do the same.

Petitioners insist that they do not have any obligation to the private respondents as they are mere stockholders of the corporation; that the corporate entities have juridical personalities separate and distinct from those of the private respondents. Private respondents maintain that the corporations are wholly owned by them and prior to the incorporation of such entities, they were clients of petitioners which induced them to acquire loans from said petitioners to invest on the additional ships.

We agree with private respondents. As held in the *San Lorenzo* case,[40]

"xxx assuming that the allegation of facts constituting plaintiffs' cause of action is not as clear and categorical as would otherwise be desired, any uncertainty thereby arising should be so resolved as to enable a full inquiry into the merits of the action."

As this Court has explained in the *San Lorenzo* case, such a course, would preclude multiplicity of suits which the law abhors, and conduce to the definitive determination and termination of the dispute. To do otherwise, that is, to abort the action on account of the alleged fatal flaws of the complaint would obviously be indecisive and would not end the controversy, since the institution of another action upon a revised complaint would not be foreclosed.[41]

Second Issue. Should the complaint be dismissed on the ground of forum non-conveniens?

No. The doctrine of forum non conveniens, literally meaning 'the forum is inconvenient', emerged in private international law to deter the practice of global forum shopping,[42] that is to prevent non-resident litigants from choosing the forum or place wherein to bring their suit for malicious reasons, such as to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. Under this doctrine, a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the

most “convenient” or available forum and the parties are not precluded from seeking remedies elsewhere.[43]

Whether a suit should be entertained or dismissed on the basis of said doctrine depends largely upon the facts of the particular case and is addressed to the sound discretion of the trial court.[44] In the case of *Communication Materials and Design, Inc. vs. Court of Appeals*,[45] this Court held that “xxx [a] Philippine Court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met: (1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and, (3) that the Philippine Court has or is likely to have power to enforce its decision.”[46] Evidently, all these requisites are present in the instant case.

Moreover, this Court enunciated in *Philsec. Investment Corporation vs. Court of Appeals*,[47] that the doctrine of *forum non conveniens* should not be used as a ground for a motion to dismiss because Sec. 1, Rule 16 of the Rules of Court does not include said doctrine as a ground. This Court further ruled that 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; and that the propriety of dismissing a case based on this principle of *forum non conveniens* requires a factual determination, hence it is more properly considered a matter of defense.[48]

Third issue. Are private respondents guilty of forum shopping because of the pendency of foreign action?

No. Forum shopping exists where the elements of *litis pendentia* are present and where a final judgment in one case will amount to *res judicata* in the other.[49] Parenthetically, for *litis pendentia* to be a ground for the dismissal of an action there must be: (a) identity of the parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[50]

In case at bar, not all the requirements for *litis pendentia* are present. While there may be identity of parties, notwithstanding the presence of other respondents,[51] as well as the reversal in positions of plaintiffs and defendants[52], still the other requirements necessary for *litis pendentia* were not shown by petitioner. It merely mentioned that civil cases were filed in Hongkong and England without however showing the identity of rights asserted and the reliefs sought for as well as the presence of the elements of *res judicata* should one of the cases be adjudged.

As the Court of Appeals aptly observed:

“xxx [T]he petitioners, by simply enumerating the civil actions instituted abroad involving the parties herein ..., failed to provide this Court with relevant and clear specifications that would show the presence of the above-quoted elements or requisites for *res judicata*. While it is true that the petitioners in their motion for reconsideration (CA Rollo, p. 72), after enumerating the various civil actions instituted abroad, did aver that “Copies of the foreign judgments are hereto attached and made integral parts hereof as Annexes ‘B’, ‘C’, ‘D’ and ‘E’”, they failed, wittingly or inadvertently, to include a single foreign judgment in their pleadings submitted to this Court as annexes to their petition. How then could We have been expected to rule on this issue even if We were to hold that foreign judgments could be the basis for the application of the aforementioned principle of *res judicata*?”[53]

Consequently, both courts correctly denied the dismissal of herein subject complaint.

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioners.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[1] In CA-G.R. SP No. 34382, entitled, “Bank of America NT&SA, Bank of America International Ltd., Plaintiffs/Petitioners, versus, Hon. Manuel S. Padolina, as Judge Regional Trial Court of Pasig, M.M., Branch 162 and Eduardo Litonjua, Sr., et al., Defendants/Respondents”.

[2] Docketed as Civil Case No. 63181 and entitled, “Eduardo K. Lintonjua, Sr. and Aurelio K. Litonjua, Jr., Plaintiffs, versus, Bank of America, National Trust & Savings Corporation and Bank of America, Internaitonal Ltd., Defendants.” p. 54, SC Rollo.

[3] Id., at pp. 54-56.

[4] Panamanian flag, registered owners Espriona Shipping Co., S.A.

[5] Liberian flag, registered owners Liberia Transport Navigation S.A.

[6] Panamanian flag, registered owners El Challenger S.A.

[7] Panamanian flag, registered owners Eshley Compania Naviera S.A.

[8] Rollo, p. 57.

[9] Id., at 58.

[10] Id., at p. 59.

[11] Id., at p. 60.

[12] Rollo, pp. 62-63.

[13] Id., at p. 38.

[14] Id., at pp. 24-25.

[15] Rollo, pp. 71-98

[16] Rollo, at p. 71-98.

[17] Id., at pp. 48-50.

[18] Rollo, p. 18.

[19] Id., at p. 20.

[20] Id., at p. 21.

[21] 330 US 501, 508 (1947), cited on page 14, Petition for Review.

[22] 454 US 235, 241 (1981), cited on page 14, Petition for Review.

[23] Petition for Review, p. 14; Rollo, p. 24.

[24] Rollo, pp. 24-25.

[25] Rollo, p. 26, Petition for Review, 16.

- [26] Rollo, pp. 25-26.
- [27] Id., p. 248
- [28] Rollo, pp. 103-104.
- [29] Id., at pp. 104-105.
- [30] Id., at pp. 108-109.
- [31] Id., at p. 117.
- [32] Id., at p. 120.
- [33] Id., at p. 121.
- [34] Far East Bank and Trust Company vs. Court of Appeals and SMP, Inc., 341 SCRA 485, 492 (2000).
- [35] Columbia Pictures Inc. vs. Court of Appeals, 261 SCRA 144, 162 (1996).
- [36] San Lorenzo Village Association, Inc. vs. Court of Appeals, 288 SCRA 115 (1998).
- [37] Id. at p. 128.
- [38] Ibid.
- [39] Dabuco et al., vs. Court of Appeals, (January 20, 2002).
- [40] Supra, at p. 128.
- [41] Ibid, at p. 128 (1998).
- [42] Jorge R. Coquia and Elizabeth Aguilin-Pangalangan, CONFLICTS OF LAWS, pp. 40-41, 2000 Ed.
- [43] First Philippine International Bank vs. Court of Appeals, 252 SCRA 259, 281 (1996).
- [44] Hongkong and Shanghai Banking Corp. vs. Sherman, 176 SCRA 331, 339 (1989).
- [45] 260 SCRA 673 (1996).**
- [46] Id. at p. 695.
- [47] Philsec. Investment Corp. vs. Court of Appeals, 274 SCRA 102, 113 (1997), citing Hongkong and Shanghai Banking Corp. vs. Sherman, 176 SCRA 331 at 339 (1989).
- [48] Id. at p. 113.
- [49] R & M General Merchandise, Inc. vs. Court of Appeals and La Perla Industries, Inc., G.R. No. 144189 (October 5, 2001).
- [50] Ibid.
- [51] Dasmariñas Vill. Assn. Inc., et al., vs. CA, 299 SCRA 598, 605 (1998).
- [52] Cokaliong Shipping Lines, Inc. vs. Amin, 260 SCRA 122, 125 (1996).
- [53] Rollo, p. 47; CA Decision, p. 14.

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