

PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, PETITIONER-APPELLANT, VS. PHILIPPINE INFRASTRUCTURES, INC., PHILIPPINE BRITISH ASSURANCE CO., INC., THE SOLID GUARANTY,...

G.R. No. 120384. January 13, 2004

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-120384/>

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Philippine Export and Foreign Loan Guarantee Corporation. Petitioner corporation seeks to set aside the Decision[1] of the Court of Appeals dated August 31, 1994, dismissing CA-G.R. SP No. 31483; the Resolution dated May 18, 1995 denying petitioner's motion for reconsideration; the Order of the Regional Trial Court (Branch 29) of Manila, dated December 7, 1992, dismissing Civil Case No. 86-38169[2] and the Order dated April 12, 1993 denying the motion for reconsideration of said dismissal order.

The antecedent facts are as follows:

The case was commenced at the Regional Trial Court on October 30, 1986, upon the filing by herein petitioner of a complaint for collection of sum of money against herein respondents Philippine Infrastructures, Inc. (PII for brevity), Philippine British Assurance Co., Inc. (PBAC), The Solid Guaranty, Inc. (Solid), B.F. Homes, Inc. (BF Homes), Pilar Development Corporation (PDC) and Tomas B. Aguirre (Aguirre). The complaint alleges that: petitioner issued five separate Letters of Guarantee in favor of the Philippine National Bank (PNB) as security for various credit accommodations extended by PNB to respondent PII; respondents PII, BF Homes, PDC and Aguirre executed a Deed of Undertaking binding themselves, jointly and severally, to pay or reimburse petitioner upon demand such amount of money or to repair the damages, losses or penalties which petitioner may pay or suffer on account of its guarantees; as security for prompt payment by respondent PII, the latter submitted to petitioner, surety and performance bonds issued by respondents PBAC and Solid; on April 24, 1985, the PNB called on the guarantees of petitioner, and so, the latter demanded from respondent PII the immediate settlement of P20,959, 529.36, representing the aggregate amount of the guarantees of petitioner called by PNB and the further sum of P351,517.57 representing various fees and charges; PII refused to settle said obligations; petitioner likewise demanded payment from respondents Solid and PBAC but they also refused to pay petitioner; and because of the unjustified refusal of respondents to comply with their respective obligations, petitioner was constrained to secure the services of counsel and incur expenses for the purpose of prosecuting its valid claims against the respondents. It is prayed in the complaint that judgment be rendered ordering respondents PII, BF Homes, PDC and Aguirre to pay petitioner the amount of P21,311,046.93 plus interest and penalty charges thereon, ordering respondents Solid and PBAC to pay P5,758,000.00 and P9,596,000.00, respectively, under their surety and/or performance bonds and ordering respondents to pay petitioner the sums of P2,000,000.00 as attorney's fees and expenses of litigation and P50,000.00 as exemplary damages.

Respondent BF Homes filed a Motion to Dismiss[3] on the ground that it is undergoing rehabilitation receivership in the Securities and Exchange Commission (SEC) and pursuant to P.D. 902-A, the trial court has no jurisdiction to try the case. Respondent PII also filed a Motion to Dismiss[4] on the ground that the complaint states no cause of action since it does not allege that petitioner has suffered any damage, loss or penalty because of the guarantees petitioner had extended for and on behalf of respondent PII.

The other respondents filed their respective responsive pleadings.

On June 10, 1987, Judge Roberto M. Lagman issued an Order[5] suspending the case only as against respondent BF Homes and denying respondent PII's motion to dismiss. Thereafter, hearing on the merits ensued. On January 21, 1992, petitioner presented Rosauro Termulo, the treasury department manager of petitioner, who testified that the amount of P19,035,256.57 was paid on July 28, 1990 by petitioner to the PNB through the account of the National Treasury to cover the principal loan and interests, as guaranteed by petitioner; and, Exhibit "LL," a debit memo issued by the PNB, showing that the latter was paid by the National Treasurer in behalf of petitioner corporation. Consequently, on February 19, 1992, petitioner filed a Motion to Amend Complaint to Conform to Evidence[6] pursuant to Section 5, Rule 10 of the Revised Rules of Court, seeking to amend Paragraph 17 and the pertinent portion of the prayer in the complaint, to read as follows:

- Because of the unjustified refusal of the defendants to comply with their respective obligations, the plaintiff as guarantor has been constrained to pay the Philippine National Bank thru the account of the National Treasury the amount of Nineteen Million Thirty-five Thousand Two Hundred Fifty-six and 57/100 (P19,035,256.57) on July 28, 1990 representing payment of principal loan of P12,790,094.83 and interest of P6,245,111.54 due March 16, 1987 on the Philippine Infrastructure, Inc./Philguaranty loan under the PNB Expanded Loan Collection Program; and which amount was deducted from the equity share of the National Government in Philguarantee. In view of defendants unwarranted failure and refusal to settle their respective accountabilities plaintiff was likewise constrained to secure the services of counsel and incur expenses in the process of prosecuting its just and valid claims against the defendants; accordingly, the defendants should be held liable, jointly and severally, to pay the plaintiff attorney's fees and expenses of litigation in the amount of P2,000,000.00 or about ten (10%) percent of the guaranteed obligations.

...

PRAYER

...

(a) Ordering defendant PII, BF Homes, PILAR and AGUIRRE to pay plaintiff, jointly and severally, the amount of P19,035,256.57 plus P351,517.57 extension guarantee fees and amendment fees, plus interests and penalty charges thereon;

...[7]

Acting on the motion to amend, the trial court, at that time presided by Judge Joselito J. Dela Rosa, issued the assailed Order dated December 7, 1992,[8] dismissing the case without prejudice on the ground of failure of the complaint to state a cause of action, thus in effect, reversing the Order dated June 10, 1987 issued by Judge Lagman five years earlier. Petitioner's motion for reconsideration of the order of dismissal was denied by Judge de la Rosa per his Order[9] dated April 12, 1993.

On June 9, 1993, a petition for review on certiorari was filed by petitioner against the Regional Trial Court with this Court. On June 23, 1993, the Court issued a Resolution[10] which reads:

Considering that under Section 9 of Batas Pambansa Blg. 129, the Intermediate Appellate Court (Court of

Appeals) now exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, the Court Resolved to REFER this case to the Court of Appeals, for disposition.

The Court of Appeals re-docketed the petition as CA-G.R. SP No. 31483.

On August 31, 1994, the Court of Appeals promulgated the assailed Decision, dismissing the petition on the following grounds:

FIRSTLY, an order of dismissal, whether right or wrong, is a final order. If it is erroneous, the remedy of the aggrieved party is appeal. Hence, the same cannot be assailed by certiorari, as in this case (*Marahay vs. Malicor*, 181 SCRA 811). Considering the Supreme Court Circular No. 2-90, paragraph 4 regarding an appeal by wrong mode, the order of dismissal in this case was therefore correctly issued by the respondent court a quo.

SECONDLY, the real purpose of petitioner herein in asking the respondent court a quo for leave to amend its complaint was not ostensibly to make the complaint conform to the evidence presented, as petitioner alleges, but to introduce a cause of action then non-existing when the complaint was filed. The ruling in the leading case of *Surigao Mine Exploration Co. vs. Harris* (69 Phil. 113) does not allow such amendment.

Hence, the trial court was correct in denying the amendment and instead it dismissed the case.

THIRDLY, in the case at bar, the motion to dismiss was first denied but there is nothing in the Rules of Court which prohibits the court from later on reversing itself and granting the motion to dismiss.

This ruling is supported by earlier decisions of the Supreme Court in *Lucas vs. Mariano, et al* (L-29157, April 27, 1972) and *Vda. De Haberer vs. Martinez, et al.* (L-39386, Jan. 29, 1975) where the trial court dismissed the complaint, then set it aside and finally again ordered it dismissed.[11]

On May 19, 1995, the appellate court issued a Resolution[12] denying petitioner's motion for reconsideration.

Hence, on June 14, 1995, petitioner filed the present petition for review on certiorari, claiming that the Court of Appeals committed the following errors:

I.

THE HONORABLE COURT OF APPEALS' AFFIRMATION OF THE REGIONAL TRIAL COURT JUDGE'S ORDER DISMISSING CIVIL CASE NO. 86-38169 MOTU PROPIO ON THE PREMISE THAT HIS PREDECESSOR JUDGE WAS IN ERROR IN NOT GRANTING THE MOTION TO DISMISS FILED YEARS BACK, ALLEGEDLY BECAUSE "THERE WAS NO CAUSE OF ACTION AT THE TIME OF THE FILING OF THE COMPLAINT" IS CONTRARY TO LAW AND JURISPRUDENCE.

II.

THE HONORABLE COURT OF APPEALS' AFFIRMATION OF THE REGIONAL TRIAL COURT JUDGE'S ORDER IN NOT ALLOWING THE AMENDMENT OF THE COMPLAINT TO CONFORM TO THE EVIDENCE PRESENTED WITHOUT OBJECTIONS, IS CONTRARY TO LAW AND JURISPRUDENCE.

III.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE REAL PURPOSE OF PETITIONER-APPELLANT IN ASKING FOR LEAVE TO AMEND ITS COMPLAINT WAS NOT TO MAKE THE COMPLAINT CONFORM TO THE EVIDENCE PRESENTED BUT TO INTRODUCE A CAUSE OF ACTION THEN NON-EXISTING WHEN THE COMPLAINT WAS FILED.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO PETITIONER-APPELLANT'S PETITION FOR REVIEW.[13]

Respondents, on the other hand, asseverate that the petitioner went to the Court of Appeals on a wrong remedy as the proper remedy was for it to appeal from the order of dismissal and not to file a petition for review on certiorari; and that the Court of Appeals committed no error in sustaining the lower court as the original complaint below failed to state a cause of action and the real purpose of the amendment was to introduce a subsequently acquired cause of action.

The Court will first resolve the question whether an order dismissing a petition without prejudice should be appealed by way of ordinary appeal, petition for review on certiorari or a petition for certiorari. Indeed, prior to the 1997 Rules of Civil Procedure, an order dismissing an action may be appealed by ordinary appeal as what happened in *Lucas vs. Mariano*[14] and *Vda. de Haberer vs. Martinez*,[15] cited by the Court of Appeals in its assailed decision. However, in the advent of the 1997 Rules of Civil Procedure, Section 1(h), Rule 41 thereof expressly provides that no appeal may be taken from an order dismissing an action without prejudice. It may be subject of a special civil action for certiorari under Rule 65 of the Rules of Court, as amended by the said 1997 Rules of Civil Procedure. Considering that the assailed decision of the Court of Appeals was promulgated in 1994, respondent appellate court could not have committed any grave abuse of discretion in dismissing CA-G.R. SP No. 31483.

Nevertheless, in the higher interest of substantial justice and pursuant to the hornbook doctrine that procedural laws may be applied retroactively,[16] the Court gives due course to the present petition and will resolve the issue whether the Court of Appeals erred in affirming the lower court's order dismissing the complaint on the ground that petitioner failed to state a cause of action for not alleging loss or actual payment made by it to PNB under its guarantees.

The trial court issued an order of dismissal in stead of granting a motion to amend complaint to conform to evidence, pursuant to Section 5, Rule 10 of the Revised Rules of Court, to wit:

Sec. 5. Amendment to conform to or authorize presentation of evidence. – When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

It should be stressed that amendment was sought after petitioner had already presented evidence, more specifically, the testimony of petitioner's Treasury Department Manager and a debit memo from the PNB (Exhibit "LL") proving that petitioner had paid the PNB in the amount of P19,035,256.57 pursuant to the guarantees it accorded to respondent PII.

Petitioner avers that respondents did not raise any objection when it presented evidence to prove payment to PNB. Hence, as provided for in Section 5, Rule 10 of the Revised Rules of Court, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had

been raised in the pleadings. A scrutiny of the pleadings filed by respondents reveal that none of them denied petitioner's claim that said evidence was presented before the trial court without objections having been raised by respondents. None of them claimed that they raised any objections at the time when petitioner presented its evidence to prove its payment to PNB. Respondents Pilar and Aguirre admitted the presentation of the said evidence.

Respondents contend that since they had already alleged the failure of the complaint to state a cause of action as an affirmative defense in their answer, there was no further need for them to raise an objection at the time the evidence was introduced. This is not plausible. In *Bernardo, Sr. vs. Court of Appeals*,^[17] respondents therein also put up in their answer the affirmative defense of failure of the complaint to state a cause of action and the parties went on to present their respective evidence. The Court did not consider the allegation of this affirmative defense in the answer as an objection to evidence presented by the plaintiffs. Furthermore, the Court ruled that:

The presentation of the contrariant evidence for and against imputations undoubtedly cured, clarified or expanded, as the case may be, whatever defects in the pleadings or vagueness in the issues there might have been in the amended complaint. . . .

It is settled that even if the complaint be defective, but the parties go to trial thereon, and the plaintiff, without objection, introduces sufficient evidence to constitute the particular cause of action which it intended to allege in the original complaint, and the defendant voluntarily produces witnesses to meet the cause of action thus established, an issue is joined as fully and as effectively as if it had been previously joined by the most perfect pleadings. Likewise, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.^[18]

Evidently, herein respondents' failure to object to the evidence at the time it is presented in court is fatal to their cause inasmuch as whatever perceived defect the complaint had was cured by the introduction of petitioner's evidence proving actual loss sustained by petitioner due to payment made by it to PNB.

Thus, the contention of respondents that the amendment would introduce a subsequently acquired cause of action as there was none at the time the original complaint was filed, is untenable.

Furthermore, petitioner's cause of action against respondents stemmed from the obligation of respondents PII, BF Homes, PDC and Aguirre under their Deed of Undertaking that was secured by the surety and performance bonds issued by respondents PBAC and Solid. Said Deed of Undertaking, which was annexed to and made an integral part of the complaint, provides as follows:

. . .

NOW, THEREFORE, for and in consideration of the foregoing premises, the OBLIGOR [PII] and CO-OBLIGORS [BF HOMES, PILAR, AGUIRRE] hereby promise, undertake and bind themselves to keep the OBLIGEE [PETITIONER] free and harmless from any damage or liability which may arise out of the issuance of its guarantee referred to in the first "whereas" clause. By these presents, the OBLIGOR and CO-OBLIGORS further bind themselves, jointly and severally, to pay or reimburse on demand, such amount of money, or repair the damages, losses or penalties which the OBLIGEE may pay or suffer on account of the aforementioned guarantees. The OBLIGOR and CO-OBLIGORS further undertake to comply with and be bound by the aforementioned terms and conditions enumerated in the attached Annex "A" and to perform such other acts and deeds which the OBLIGEE may impose for the implementation of the aforementioned guarantees.

It is a condition of this instrument that failure of the OBLIGOR and CO-OBLIGORS to comply with this undertaking and to make good the performance of the other obligations herein undertaken and/or promised, shall be sufficient cause for the OBLIGEE to consider such failure as an event of default which shall give to

the OBLIGEE the right to take such action against the OBLIGOR and/or CO-OBLIGORS for the protection of the OBLIGEE's interests.

...[19]

A reading of the foregoing provisions of the contract, specially the phrase "the OBLIGOR and CO-OBLIGORS hereby promise, undertake and bind themselves to keep the OBLIGEE free and harmless from any damage or liability which may arise out of the issuance of its guarantee referred to in the first 'whereas' clause," shows that the Deed of Undertaking is actually an indemnity against liability. In *Cochingyan, Jr. vs. R & B Surety and Insurance Co., Inc.*, [20] the Court held thus:

The petitioners lose sight of the fact that the Indemnity Agreements are contracts of indemnification not only against actual loss but against liability as well. While in a contract of indemnity against loss an indemnitor will not be liable until the person to be indemnified makes payment or sustains loss, in a contract of indemnity against liability, as in this case, the indemnitor's liability arises as soon as the liability of the person to be indemnified has arisen without regard to whether or not he has suffered actual loss.

...

(3) Petitioners are indemnitors of R & B Surety against both payments to and liability for payments to the PNB. The present suit is therefore not premature despite the fact that the PNB has not instituted any action against R & B Surety for the collection of its matured obligation under the Surety Bond.[21] [Emphasis supplied]

In the present petition, petitioner had become liable to pay the amounts covered by said guarantees when, as the original complaint alleges, the PNB called upon said guarantees. Respondents' obligation under the Deed of Undertaking to keep petitioner free and harmless from any damage or liability then became operative as soon as the liability of petitioner arose and there was no need for petitioner to first sustain actual loss before it could have a cause of action against respondents. The mere inclusion in petitioner's original complaint of the allegation that the PNB had already called on the guarantees of petitioner is sufficient to constitute a cause of action against respondents. Clearly therefore, the original complaint, by itself, stated a valid cause of action.

Verily, it was patently erroneous on the part of the trial court not to have allowed the amendments as to make the complaint conform to petitioner's evidence that was presented without any objection from respondents. The trial court likewise patently acted with grave abuse of discretion or in excess of its jurisdiction amounting to lack of jurisdiction when, acting on a mere motion to amend the complaint, it erroneously dismissed the complaint on the ground of failure to state a cause of action. Consequently, the Court of Appeals committed a reversible error in sustaining the trial court.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated August 31, 1994 and its Resolution dated May 18, 1995 are REVERSED and SET ASIDE; and the Orders of the Regional Trial Court (Branch 29), Manila, dated December 7, 1992 and April 12, 1993 are NULL and VOID and SET ASIDE.

Let the original records of Civil Case No. 86-38169 be REMANDED to the Regional Trial Court (Branch 29), Manila, for continuation of the trial on the merits. The presiding judge is directed to proceed with immediate dispatch upon receipt of the records of the case.

Treble costs against private respondents.

SO ORDERED.

Puno, Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Justice Jainal D. Rasul, with Justices Arturo B. Buena and Ramon Mabutas, Jr. concurring.

[2] Entitled “Philippine Export and Foreign Loan Guarantee Corporation vs. Philippine Infrastructures, Inc., Philippine British Assurance Co., Inc., The Solid Guaranty, Inc., B.F. Homes, Inc., Pilar Development Corporation and Tomas B. Aguirre”

[3] Records, pp. 123-125.

[4] Records, pp. 172-174.

[5] Records, pp. 227-229.

[6] Records, p. 605.

[7] Records, pp. 606-607

[8] Rollo, pp. 38-39.

[9] Rollo, p. 41.

[10] CA Rollo, p. 57.

[11] CA Rollo pp. 106-107.

[12] CA Rollo, p. 134.

[13] Rollo, p. 13.

[14] 44 SCRA 501 (1972).

[15] 62 SCRA 162 (1975).

[16] Pfizer, Inc. vs. Galan, 358 SCRA 240, 246 (2001).

[17] 263 SCRA 660 [1996].

[18] Id. at pp. 673-674.

[19] Records, p. 25.

[20] 151 SCRA 339 [1987].

[21] Id. at pp. 353-354.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.