

AMOS P. FRANCIA, JR. AND CECILIA ZAMORA, PETITIONERS, VS. POWER MERGE CORPORATION, RESPONDENT.

G.R. No. 162461. November 23, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The setting aside by the Court of Appeals of the Order of the Makati Regional Trial Court (RTC), Branch 58, denying the Motion to Dismiss the complaint filed by petitioners against respondent is challenged in the present petition for review on certiorari.

Petitioner Amos P. Francia, Jr. (Francia), a depositor of Westmont Bank, Meycauayan, Bulacan branch, placed on November 16, 1998, on the suggestion of the bank manager, an investment of P14,581,710.28 at Westmont Investment Corporation (WINCORP), to bear a net interest rate of 17% over a 35-day spread. Upon maturity on December 21, 1998 of his investment, Francia instructed WINCORP to roll it over.[1] Thereafter, every time his investment matured, Francia would instruct a roll over and he would be issued a receipt reflecting the amount of his placement, the net interest rate, and the duration of the placement.[2] By February 14, 2000, Francia's placement had increased to P17,258,907.76.[3]

WINCORP subsequently invested Francia's investment in herein respondent Power Merge Corporation (PMC) as indicated in Confirmation Advice No. 89960[4] issued to him.

The Confirmation Advice, which showed the name of borrower, the amount of placement, the interest rate, and the amount of the placement upon maturity, served "to confirm that pursuant to the [client's] authority, [WINCORP] has acted in [the client's] behalf and/or for [the client's] benefit, risk and account without recourse or liability, real or contingent, to [WINCORP] in respect to the loan granted to the Borrower." And it provided that "[f]or convenience but without any obligation on [WINCORP's] part, [WINCORP] may act as [the client's] collecting and paying agent for [the] transaction," and "[the client's receipt of the Confirmation Advice] is an indication of [his] conformity to the terms and conditions of the transaction."

Francia soon convinced his sister-herein co-petitioner Cecilia Zamora (Cecilia) to make a similar placement at WINCORP.

Thus, on December 21, 1999, Francia and Cecilia made a joint placement of P16,397,387.22 at WINCORP in consideration of a net interest rate of 11.5% over a 48-day spread. Upon the maturity of their joint placement, the siblings instructed WINCORP to roll it over. Per Confirmation Advice No. 89248,[5] the joint placement was likewise later invested at PMC with a maturity value of P16,872,185.41 due on March 20, 2000.

Sometime in March 2000, Francia and Cecilia attempted to withdraw their investments but they failed, and they learned that WINCORP and Westmont Bank were facing financial difficulties. Confirmation Advice dated February 14, 2000 bearing Serial No. 89960[6] showed that at the time, Francia's placement had a book value of P17,490,464.77. As for Francia's joint placement with Cecilia, it had a book value of P16,872,185.41.

As despite several attempts to forge an out-of-court settlement between Francia and Cecilia on one hand, and WINCORP and PMC on the other, the same failed, Francia, through counsel, sent PMC a November 15, 2000 demand letter[7] to pay within fifteen days the total amount of P34,362,650.18 representing the maturity values of his placement of P17,490,464.77 and his joint placement of P16,872,185.41. Francia received no response from PMC, however, prompting him and Cecilia (hereafter "petitioners") to file on March 13, 2001 before the RTC of Makati a Complaint for Sum of Money and Damages against WINCORP and PMC, docketed as Civil Case No. 01-436, praying that judgment be rendered as follows:

a)

On the First and Second Causes of Action, for defendants WESTMONT INVESTMENT CORPORATION and POWER MERGE CORPORATION to pay plaintiffs, jointly and severally, the amount of THIRTY FOUR MILLION THREE HUNDRED SIXTY TWO THOUSAND SIX HUNDRED FIFTY PESOS AND EIGHTEEN CENTAVOS (P34,362,650.18) with interest at 11.5% as stipulated in the contract from March 20, 2000 (Confirmation Advice No. 89248) and March 27, 2000 (Confirmation Advice No. 89960), until fully paid;

b)

On the Third Cause of Action, for defendants WESTMONT INVESTMENT CORPORATION and POWER MERGE CORPORATION to pay plaintiffs, jointly and severally, ONE HUNDRED THOUSAND PESOS (Php 100,000.00) by way of EXEMPLARY and CORRECTIVE DAMAGES; and

c)

On the Fourth Cause of Action, for defendants WESTMONT INVESTMENT CORPORATION and POWER MERGE CORPORATION to pay plaintiffs, jointly and severally, ATTORNEY'S FEES equivalent to TEN PERCENT (10%) CONTINGENT FEE of whatever amount will be recovered from this litigation plus TWO THOUSAND PESOS (Php 2,000.00) per appearance as APPEARANCE FEES, and COST OF SUIT. (Underscoring omitted)

PMC filed a Motion to Dismiss[8] the complaint on the ground that summons was not properly served on it, and that the complaint failed to state a cause of action against it.

WINCORP filed a Motion to Dismiss[9] too, contending that the allegations in the complaint and its annexes failed to state a cause of action against it.

By Order[10] of October 19, 2001, Branch 58 of the Makati RTC denied WINCORP's and PMC's separate motions to dismiss and directed them to file their respective answers.

PMC moved to reconsider the October 19, 2001 Order but the same was denied by Order[11] dated April 18, 2002.

PMC thereupon assailed the trial court's orders before the Court of Appeals via petition for certiorari and prohibition under Rule 65.

By Decision[12] of August 13, 2003, the appellate court, finding that petitioners' complaint did not state a cause of action against PMC, set aside the trial court's October 19, 2001 and April 18, 2002 Orders and dismissed the complaint as against PMC in this wise:

A perusal of the complaint reveals that indeed, the complaint filed by [petitioners], did not contain allegations sufficient to establish a cause of action against [PMC]. The allegations in the complaint filed by [petitioners], where [PMC] was mentioned are, among others, as follows:

"7. It turns out that WINCOR[P] was, in turn, lending the placements to other companies. Francia would only be advised later on that his placement was invested in [PMC]. x x x x x x x x

8. At no time did Francia ha[ve] any involvement or participation in the selection of borrowers, like PMC, and the placement of his investment in such borrowers. This was entirely the call and discretion of WINCOR[P].

17. On November 17, 2000, plaintiff Francia caused the service, through undersigned counsel, of a demand letter on PMC, asking the latter to pay within fifteen (15) days, the total amount of P34,362,650.18. x x x

21. WINCOR[P] lent the monies of plaintiffs to PMC without their prior knowledge and consent. Plaintiffs has no involvement or participation with the placement by WINCOR[P] of their monies with PMC. These placements to other borrowers were entirely the call and discretion of WINCOR[P]. Hence, there can be no effective novation of the contract if the substitution of the new debtor in place of the original one was 'without the consent of the creditor' (Article 1293, Civil Code)."

[Petitioners'] contention that [PMC] is an indispensable party, and the complaint sufficiently alleged a valid cause of action against [PMC] is contrary to what is on record. If there is no allegation in the complaint of any cause of action against [PMC], [petitioners] had nothing to prove during the trial on the merits.

Applying the aforementioned jurisprudential pronouncements and as borne by the records, the Court finds that [petitioners] had not sufficiently alleged a cause of action in their complaint against [PMC]. (Underscoring supplied)

Their motion for reconsideration having been denied by Order[13] dated March 1, 2004, petitioners lodged the present petition faulting the appellate court:

I

. . . IN RULING THAT THE COMPLAINT . . . FAILS TO STATE A CAUSE OF ACTION AGAINST [PMC].

(a)

There was no grave abuse of discretion on the part of the trial court which justifies the filing of a petition for certiorari under Rule 65.

(b)

Contrary to the findings of the Court of Appeals, the complaint before the trial court clearly states a cause of action against respondent Power Merge.

(c)

The Court of Appeals failed to take into consideration, paragraph 20 of, as well as other averments in the Complaint which clearly alleges the cause of action against [PMC]

(d)

The Court of Appeals likewise gravely erred when it failed to take into consideration the annexes attached to the Complaint in determining whether there is a cause of action against [PMC].

II

. . . [IN] FAILING TO CONSIDER THE ARGUMENTS RAISED BY WESTMONT INVESTMENT CORPORATION IN THE LATTER'S COMMENT AND MOTION FOR RECONSIDERATION IN DETERMINING WHETHER THERE IS A CAUSE OF ACTION AGAINST [PMC].

III

. . . NOT CONSIDER[ING] THE FACT THAT THE TWO DEFENDANTS A QUO . . . HAVE PENDING CROSS-CLAIMS AGAINST EACH OTHER.

(a)

WINCORP has already presented evidence that showed that [PMC] received the monies invested by petitioners.

IV

. . . IN NOT RULING THAT [PMC] IS AN INDISPENSABLE PARTY TO THE CASE BEFORE THE TRIAL COURT.

(a)

The CA Decision would lead to multiplicity of suit.

V

. . . IN RULING THAT NO JURIS VINCULUM EXISTS BETWEEN PETITIONERS AND [PMC].

(a)

The CA also erred in saying that there is no juris vinculum between respondent Power Merge and WINCORP.

(b)

There is juris vinculum between respondent and petitioners.

(c)

Respondent's motion to dismiss a quo was actually grounded on alleged "lack of cause of action," which cannot be resolved until a full-blown trial.

VI

. . . WHEN IT ACCOMMODATED A LATE PLEADING FROM THE RESPONDENT POWER MERGE IN RESOLVING THE MOTION FOR RECONSIDERATION.[14] (Underscoring supplied)

In its Comment, PMC contends that, among other things, petitioners' complaint does not allege that it was privy to the alleged transaction between petitioners and WINCORP, or that petitioners were privy to the supposed loan transaction between WINCORP and PMC; the complaint is bereft of any averment that PMC will be unduly enriched at the expense of petitioners if they cannot recover their alleged investments in WINCORP; PMC is not an indispensable party since its participation is not necessary for petitioners to recover their alleged investments with WINCORP; and WINCORP should be deemed the sole debtor of petitioners.

The issue in the main is whether petitioners' complaint alleges a cause of action against PMC (hereafter

"respondent").

A cause of action has three elements, to wit: (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. In the determination of whether these elements are present, inquiry is generally confined to the four corners of the complaint and no other,[15] but the annexes attached to the complaint may be considered, they being parts thereof.[16]

A perusal of the complaint, together with its annexes, shows that each of the Confirmation Advice issued by PMC to petitioners provides that "[WINCORP] has acted in [the client's] behalf and/or for [the client's] benefit, risk and account without recourse or liability, real or contingent, to [WINCORP] in respect to the loan granted to the Borrower," the "borrower" being PMC. Each Confirmation Advice thus shows that the creditor-debtor relationship is between petitioners and PMC, WINCORP having merely acted as petitioners' agent.

In another vein, by filing a Motion to Dismiss, PMC hypothetically admitted the truth of the material allegations of the complaint including those in paragraph 14[17] reading:

- Francia and Zamora, however, learned of WINCOR's and WESTMONT BANK's financial woes only too late when they attempted to retire their placement on March 20, 2000. At that time, their investment had a book value of P16,872,185.41.

A copy of Confirmation Advice No. 89248 (for the amount of P16,872,185.41 [maturity value as of March 20, 2000]) issued by WINCOR is hereto attached as Annex "D". This confirmation advice shows the name of the borrower, PMC, the placement value, the maturity value and a description of the instrument (denominated as a "loan agreement") between WINCOR and PMC. (Emphasis omitted; underscoring supplied)

Thus this Court explicitly teaches:

In a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint. This hypothetical admission extends to relevant and material facts pleaded in, and the inferences fairly deducible from, the complaint. Hence, to determine whether the sufficiency of the facts alleged in the complaint constitutes a cause of action, the test is as follows: admitting the truth of the facts alleged, can the court render a valid judgment in accordance with the prayer?[18] (Emphasis supplied)

PMC cannot thus disclaim privity of contract with petitioners for whom WINCORP was merely acting as agent.

On the pending matter regarding the failure of PMC's counsel, Atty. Mark Thursday P. Alciso, to file Comment on the petition, this Court, by Resolution[19] of September 27, 2004, directed said counsel to show cause why he should not be disciplinary dealt with for failure to file Comment despite the grant of his requests for extension for the purpose.

By Compliance[20] filed on November 8, 2004, Atty. Alciso apologized, explaining that he unfortunately missed the deadline for filing PMC's Comment due to heavy volume of work; and he realized only after petitioners filed a Motion to Resolve Petition dated August 5, 2004 that he had not yet filed a Comment, at which time he thought that PMC would no longer be allowed to do the same "since he already requested several extensions of time to file the same and several weeks had already lapsed since the last extended deadline he had prayed for," hence, his decision not to file a comment anymore.

Rule 12.03, Canon 12 of the Code of Professional Responsibility instructs:

Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so. (Underscoring supplied),

yet, it was only after this Court directed the above-said September 27, 2004 show-cause Resolution that Atty. Alciso proffered an explanation, which is not even satisfactory, for which he is fined in the amount of Ten Thousand (P10,000.00) Pesos.

WHEREFORE, the petition is GRANTED. The August 13, 2003 Decision and March 1, 2004 Resolution of the Court of Appeals are SET ASIDE. The Regional Trial Court of Makati, Branch 58 is DIRECTED to REINSTATE in Civil Case No. 01-436 the complaint against respondent Power Merge Corporation and to take appropriate action thereon with dispatch.

Respondent's counsel Atty. Mark Thursday P. Alciso is FINED the amount of Ten Thousand (P10,000.00) Pesos for violation of the Code of Professional Responsibility with WARNING that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Annex "A"; I Records at 15.

[2] Annexes "A" – "A-6"; I Records at 15-21.

[3] Annex B; I Records at 22.

[4] Ibid.

[5] Annex "D"; I Records at 25.

[6] Annex "B"; I Records at 22.

[7] Annex "E"; I Records at 26-27.

[8] I Records at 52-61.

[9] Id. at 77-85.

[10] Id. at 156-157.

[11] Id. at 344.

[12] Loose copy attached to the Court of Appeals rollo.

[13] Rollo at 120-121.

[14] Id. at 34-37.

[15] *Dabuco v. Court of Appeals*, G.R. No. 133775, January 20, 2000, 322 SCRA 853, 863.

[16] *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 126212, March 2, 2000, 327 SCRA 135, 139-140; *Fil-Estate Golf and Development, Inc. v. Court of Appeals*, G.R. No. 120958, Dec. 16, 1996, 265 SCRA 614, 637.

[17] I Records at 6.

[18] *Jimenez, Jr. v. Jordana*, G.R. No. 152526, November 25, 2004, 444 SCRA 250, 260.

[19] Rollo at 729-a.

[20] Id. at 739-742.

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