NM ROTHSCHILD & SONS (AUSTRALIA) LIMITED, PETITIONER, VS. LEPANTO CONSOLIDATED MINING COMPANY, RESPONDENT.

G.R. No. 175799. November 28, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals dated September 8, 2006 in CA-G.R. SP No. 94382 and its Resolution[2] dated December 12, 2006, denying the Motion for Reconsideration.

On August 30, 2005, respondent Lepanto Consolidated Mining Company filed with the Regional Trial Court (RTC) of Makati City a Complaint[3] against petitioner NM Rothschild & Sons (Australia) Limited praying for a judgment declaring the loan and hedging contracts between the parties void for being contrary to Article 2018[4] of the Civil Code of the Philippines and for damages. The Complaint was docketed as Civil Case No. 05-782, and was raffled to Branch 150. Upon respondent's (plaintiff's) motion, the trial court authorized respondent's counsel to personally bring the summons and Complaint to the Philippine Consulate General in Sydney, Australia for the latter office to effect service of summons on petitioner (defendant).

On October 20, 2005, petitioner filed a Special Appearance With Motion to Dismiss[5] praying for the dismissal of the Complaint on the following grounds: (a) the court has not acquired jurisdiction over the person of petitioner due to the defective and improper service of summons; (b) the Complaint failed to state a cause of action and respondent does not have any against petitioner; (c) the action is barred by estoppel; and (d) respondent did not come to court with clean hands.

On November 29, 2005, petitioner filed two Motions: (1) a Motion for Leave to take the deposition of Mr. Paul Murray (Director, Risk Management of petitioner) before the Philippine Consul General; and (2) a Motion for Leave to Serve Interrogatories on respondent.

On December 9, 2005, the trial court issued an Order[6] denying the Motion to Dismiss. According to the trial court, there was a proper service of summons through the Department of Foreign Affairs (DFA) on account of the fact that the defendant has neither applied for a license to do business in the Philippines, nor filed with the Securities and Exchange Commission (SEC) a Written Power of Attorney designating some person on whom summons and other legal processes maybe served. The trial court also held that the Complaint sufficiently stated a cause of action. The other allegations in the Motion to Dismiss were brushed aside as matters of defense which can best be ventilated during the trial.

On December 27, 2005, petitioner filed a Motion for Reconsideration.[7] On March 6, 2006, the trial court issued an Order denying the December 27, 2005 Motion for Reconsideration and disallowed the twin Motions for Leave to take deposition and serve written interrogatories.[8]

On April 3, 2006, petitioner sought redress via a Petition for Certiorari[9] with the Court of Appeals, alleging that

the trial court committed grave abuse of discretion in denying its Motion to Dismiss. The Petition was docketed as CA-G.R. SP No. 94382.

On September 8, 2006, the Court of Appeals rendered the assailed Decision dismissing the Petition for Certiorari. The Court of Appeals ruled that since the denial of a Motion to Dismiss is an interlocutory order, it cannot be the subject of a Petition for Certiorari, and may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. On December 12, 2006, the Court of Appeals rendered the assailed Resolution denying the petitioner's Motion for Reconsideration.

Meanwhile, on December 28, 2006, the trial court issued an Order directing respondent to answer some of the questions in petitioner's Interrogatories to Plaintiff dated September 7, 2006.

Notwithstanding the foregoing, petitioner filed the present petition assailing the September 8, 2006 Decision and the December 12, 2006 Resolution of the Court of Appeals. Arguing against the ruling of the appellate court, petitioner insists that (a) an order denying a motion to dismiss may be the proper subject of a petition for certiorari; and (b) the trial court committed grave abuse of discretion in not finding that it had not validly acquired jurisdiction over petitioner and that the plaintiff had no cause of action.

Respondent, on the other hand, posits that: (a) the present Petition should be dismissed for not being filed by a real party in interest and for lack of a proper verification and certificate of non-forum shopping; (b) the Court of Appeals correctly ruled that certiorari was not the proper remedy; and (c) the trial court correctly denied petitioner's motion to dismiss.

Our discussion of the issues raised by the parties follows:

Whether petitioner is a real party in interest

Respondent argues that the present Petition should be dismissed on the ground that petitioner no longer existed as a corporation at the time said Petition was filed on February 1, 2007. Respondent points out that as of the date of the filing of the Petition, there is no such corporation that goes by the name NM Rothschild and Sons (Australia) Limited. Thus, according to respondent, the present Petition was not filed by a real party in interest, citing our ruling in Philips Export B.V. v. Court of Appeals,[10] wherein we held:

> A name is peculiarly important as necessary to the very existence of a corporation (American Steel Foundries vs. Robertson, 269 US 372, 70 L ed 317, 46 S Ct 160; Lauman vs. Lebanon Valley R. Co., 30 Pa 42; First National Bank vs. Huntington Distilling Co., 40 W Va 530, 23 SE 792). Its name is one of its attributes, an element of its existence, and essential to its identity (6 Fletcher [Perm Ed], pp. 3-4). The general rule as to corporations is that each corporation must have a name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person (Cincinnati Cooperage Co. vs. Bate, 96 Ky 356, 26 SW 538; Newport Mechanics Mfg. Co. vs. Starbird, 10 NH 123); and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted (Federal Secur. Co. vs. Federal Secur. Corp., 129 Or 375, 276 P 1100, 66 ALR 934; Paulino vs. Portuguese Beneficial Association, 18 RI 165, 26 A 36).[11]

In its Memorandum[12] before this Court, petitioner started to refer to itself as Investec Australia Limited (formerly "NM Rothschild & Sons [Australia] Limited") and captioned said Memorandum accordingly. Petitioner claims that NM Rothschild and Sons (Australia) Limited still exists as a corporation under the laws of Australia under said new name. It presented before us documents evidencing the process in the Australian Securities & Investment Commission on the change of petitioner's company name from NM Rothschild and Sons (Australia) Limited to Investec Australia Limited.[13]

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We find the submissions of petitioner on the change of its corporate name satisfactory and resolve not to dismiss the present Petition for Review on the ground of not being prosecuted under the name of the real party in interest. While we stand by our pronouncement in Philips Export on the importance of the corporate name to the very existence of corporations and the significance thereof in the corporation's right to sue, we shall not go so far as to dismiss a case filed by the proper party using its former name when adequate identification is presented. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[14] There is no doubt in our minds that the party who filed the present Petition, having presented sufficient evidence of its identity and being represented by the same counsel as that of the defendant in the case sought to be dismissed, is the entity that will be benefited if this Court grants the dismissal prayed for.

Since the main objection of respondent to the verification and certification against forum shopping likewise depends on the supposed inexistence of the corporation named therein, we give no credit to said objection in light of the foregoing discussion.

Propriety of the Resort to a Petition for Certiorari with the Court of Appeals

We have held time and again that an order denying a Motion to Dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. The general rule, therefore, is that the denial of a Motion to Dismiss cannot be questioned in a special civil action for Certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[15] However, we have likewise held that when the denial of the Motion to Dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of Certiorari may be justified. By "grave abuse of discretion" is meant:

> [S]uch capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[16]

The resolution of the present Petition therefore entails an inquiry into whether the Court of Appeals correctly ruled that the trial court did not commit grave abuse of discretion in its denial of petitioner's Motion to Dismiss. A mere error in judgment on the part of the trial court would undeniably be inadequate for us to reverse the disposition by the Court of Appeals.

Issues more properly ventilated during the trial of the case

As previously stated, petitioner seeks the dismissal of Civil Case No. 05-782 on the following grounds: (a) lack of jurisdiction over the person of petitioner due to the defective and improper service of summons; (b) failure of the Complaint to state a cause of action and absence of a cause of action; (c) the action is barred by estoppel; and (d) respondent did not come to court with clean hands.

As correctly ruled by both the trial court and the Court of Appeals, the alleged absence of a cause of action (as opposed to the failure to state a cause of action), the alleged estoppel on the part of petitioner, and the argument that respondent is in pari delicto in the execution of the challenged contracts, are not grounds in a Motion to Dismiss as enumerated in Section 1, Rule 16[17] of the Rules of Court. Rather, such defenses raise evidentiary issues closely related to the validity and/or existence of respondent's alleged cause of action and should therefore be threshed out during the trial.

As regards the allegation of failure to state a cause of action, while the same is usually available as a ground in a Motion to Dismiss, said ground cannot be ruled upon in the present Petition without going into the very merits of

the main case.

It is basic that "[a] cause of action is the act or omission by which a party violates a right of another."[18] Its elements are the following: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right.[19] We have held that to sustain a Motion to Dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist and not only that the claim was defectively stated or is ambiguous, indefinite or uncertain.[20]

The trial court held that the Complaint in the case at bar contains all the three elements of a cause of action, i.e., it alleges that: (1) plaintiff has the right to ask for the declaration of nullity of the Hedging Contracts for being null and void and contrary to Article 2018 of the Civil Code of the Philippines; (2) defendant has the corresponding obligation not to enforce the Hedging Contracts because they are in the nature of wagering or gambling agreements and therefore the transactions implementing those contracts are null and void under Philippine laws; and (3) defendant ignored the advice and intends to enforce the Hedging Contracts by demanding financial payments due therefrom.[21]

The rule is that in a Motion to Dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff's complaint.[22] However, this principle of hypothetical admission admits of exceptions. Thus, in Tan v. Court of Appeals, [23] we held:

> The flaw in this conclusion is that, while conveniently echoing the general rule that averments in the complaint are deemed hypothetically admitted upon the filing of a motion to dismiss grounded on the failure to state a cause of action, it did not take into account the equally established limitations to such rule, i.e., that a motion to dismiss does not admit the truth of mere epithets of fraud; nor allegations of legal conclusions; nor an erroneous statement of law; nor mere inferences or conclusions from facts not stated; nor mere conclusions of law; nor allegations of fact the falsity of which is subject to judicial notice; nor matters of evidence; nor surplusage and irrelevant matter; nor scandalous matter inserted merely to insult the opposing party; nor to legally impossible facts; nor to facts which appear unfounded by a record incorporated in the pleading, or by a document referred to; and, nor to general averments contradicted by more specific averments. A more judicious resolution of a motion to dismiss, therefore, necessitates that the court be not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom. Courts may consider other facts within the range of judicial notice as well as relevant laws and jurisprudence which the courts are bound to take into account, and they are also fairly entitled to examine records/documents duly incorporated into the complaint by the pleader himself in ruling on the demurrer to the complaint.[24] (Emphases supplied.)

In the case at bar, respondent asserts in the Complaint that the Hedging Contracts are void for being contrary to Article 2018[25] of the Civil Code. Respondent claims that under the Hedging Contracts, despite the express stipulation for deliveries of gold, the intention of the parties was allegedly merely to compel each other to pay the difference between the value of the gold at the forward price stated in the contract and its market price at the supposed time of delivery.

Whether such an agreement is void is a mere allegation of a conclusion of law, which therefore cannot be hypothetically admitted. Quite properly, the relevant portions of the contracts sought to be nullified, as well as a copy of the contract itself, are incorporated in the Complaint. The determination of whether or not the Complaint stated a cause of action would therefore involve an inquiry into whether or not the assailed contracts are void under Philippine laws. This is, precisely, the very issue to be determined in Civil Case No. 05-782. Indeed, petitioner's defense against the charge of nullity of the Hedging Contracts is the purported intent of the parties that actual deliveries of gold be made pursuant thereto. Such a defense requires the presentation of evidence on the merits of the case. An issue that "requires the contravention of the allegations of the complaint, as well as the

full ventilation, in effect, of the main merits of the case, should not be within the province of a mere Motion to Dismiss."[26] The trial court, therefore, correctly denied the Motion to Dismiss on this ground.

It is also settled in jurisprudence that allegations of estoppel and bad faith require proof. Thus, in Parañaque Kings Enterprises, Inc. v. Court of Appeals,[27] we ruled:

> Having come to the conclusion that the complaint states a valid cause of action for breach of the right of first refusal and that the trial court should thus not have dismissed the complaint, we find no more need to pass upon the question of whether the complaint states a cause of action for damages or whether the complaint is barred by estoppel or laches. As these matters require presentation and/or determination of facts, they can be best resolved after trial on the merits.[28] (Emphases supplied.)

On the proposition in the Motion to Dismiss that respondent has come to court with unclean hands, suffice it to state that the determination of whether one acted in bad faith and whether damages may be awarded is evidentiary in nature. Thus, we have previously held that "[a]s a matter of defense, it can be best passed upon after a full-blown trial on the merits."[29]

Jurisdiction over the person of petitioner

Petitioner alleges that the RTC has not acquired jurisdiction over its person on account of the improper service of summons. Summons was served on petitioner through the DFA, with respondent's counsel personally bringing the summons and Complaint to the Philippine Consulate General in Sydney, Australia.

In the pleadings filed by the parties before this Court, the parties entered into a lengthy debate as to whether or not petitioner is doing business in the Philippines. However, such discussion is completely irrelevant in the case at bar, for two reasons. Firstly, since the Complaint was filed on August 30, 2005, the provisions of the 1997 Rules of Civil Procedure govern the service of summons. Section 12, Rule 14 of said rules provides:

> Sec. 12. Service upon foreign private juridical entity. – When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines. (Emphasis supplied.)

This is a significant amendment of the former Section 14 of said rule which previously provided:

> Sec. 14. Service upon private foreign corporations. — If the defendant is a foreign corporation, or a nonresident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines. (Emphasis supplied.)

The coverage of the present rule is thus broader.[30] Secondly, the service of summons to petitioner through the DFA by the conveyance of the summons to the Philippine Consulate General in Sydney, Australia was clearly made not through the above-quoted Section 12, but pursuant to Section 15 of the same rule which provides:

> Sec. 15. Extraterritorial service. – When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the

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> court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

Respondent argues[31] that extraterritorial service of summons upon foreign private juridical entities is not proscribed under the Rules of Court, and is in fact within the authority of the trial court to adopt, in accordance with Section 6, Rule 135:

> Sec. 6. Means to carry jurisdiction into effect. – When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comformable to the spirit of said law or rules.

Section 15, Rule 14, however, is the specific provision dealing precisely with the service of summons on a defendant which does not reside and is not found in the Philippines, while Rule 135 (which is in Part V of the Rules of Court entitled Legal Ethics) concerns the general powers and duties of courts and judicial officers.

Breaking down Section 15, Rule 14, it is apparent that there are only four instances wherein a defendant who is a non-resident and is not found in the country may be served with summons by extraterritorial service, to wit: (1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is property, within the Philippines, in which the defendant claims a lien or an interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines. In these instances, service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[32]

Proceeding from this enumeration, we held in Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation[33] that:

> Undoubtedly, extraterritorial service of summons applies only where the action is in rem or quasi in rem, but not if an action is in personam.
>
> When the case instituted is an action in rem or quasi in rem, Philippine courts already have jurisdiction to hear and decide the case because, in actions in rem and quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the court acquires jurisdiction over the res. Thus, in such instance, extraterritorial service of summons can be made upon the defendant. The said extraterritorial service of summons is not for the purpose of vesting the court with jurisdiction, but for complying with the requirements of fair play or due process, so that the defendant will be informed of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of the plaintiff, and he can thereby take steps to protect his interest if he is so minded. On the other hand, when the defendant or respondent does not reside and is not found in the Philippines, and the action involved is in personam, Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court.[34] (Emphases supplied.)

In Domagas v. Jensen,[35] we held that:

> [T]he aim and object of an action determine its character. Whether a proceeding is in rem, or in personam, or quasi in rem for that matter, is determined by its nature and purpose, and by these only. A proceeding in personam is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific

> property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding in personam is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him.[36]

It is likewise settled that "[a]n action in personam is lodged against a person based on personal liability; an action in rem is directed against the thing itself instead of the person; while an action quasi in rem names a person as defendant, but its object is to subject that person's interest in a property to a corresponding lien or obligation."[37]

The Complaint in the case at bar is an action to declare the loan and Hedging Contracts between the parties void with a prayer for damages. It is a suit in which the plaintiff seeks to be freed from its obligations to the defendant under a contract and to hold said defendant pecuniarily liable to the plaintiff for entering into such contract. It is therefore an action in personam, unless and until the plaintiff attaches a property within the Philippines belonging to the defendant, in which case the action will be converted to one quasi in rem.

Since the action involved in the case at bar is in personam and since the defendant, petitioner Rothschild/Investec, does not reside and is not found in the Philippines, the Philippine courts cannot try any case against it because of the impossibility of acquiring jurisdiction over its person unless it voluntarily appears in court.[38]

In this regard, respondent vigorously argues that petitioner should be held to have voluntarily appeared before the trial court when it prayed for, and was actually afforded, specific reliefs from the trial court.[39] Respondent points out that while petitioner's Motion to Dismiss was still pending, petitioner prayed for and was able to avail of modes of discovery against respondent, such as written interrogatories, requests for admission, deposition, and motions for production of documents.[40]

Petitioner counters that under this Court's ruling in the leading case of La Naval Drug Corporation v. Court of Appeals,[41] a party may file a Motion to Dismiss on the ground of lack of jurisdiction over its person, and at the same time raise affirmative defenses and pray for affirmative relief, without waiving its objection to the acquisition of jurisdiction over its person.[42]

It appears, however, that petitioner misunderstood our ruling in La Naval. A close reading of La Naval reveals that the Court intended a distinction between the raising of affirmative defenses in an Answer (which would not amount to acceptance of the jurisdiction of the court) and the prayer for affirmative reliefs (which would be considered acquiescence to the jurisdiction of the court):

> In the same manner that a plaintiff may assert two or more causes of action in a court suit, a defendant is likewise expressly allowed, under Section 2, Rule 8, of the Rules of Court, to put up his own defenses alternatively or even hypothetically. Indeed, under Section 2, Rule 9, of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in an answer, except for the failure to state a cause of action, are deemed waived. We take this to mean that a defendant may, in fact, feel enjoined to set up, along with his objection to the court's jurisdiction over his person, all other possible defenses. It thus appears that it is not the invocation of any of such defenses, but the failure to so raise them, that can result in waiver or estoppel. By defenses, of course, we refer to the grounds provided for in Rule 16 of the Rules of Court that must be asserted in a motion to dismiss or by way of affirmative defenses in an answer.
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> Mindful of the foregoing, in Signetics Corporation vs. Court of Appeals and Freuhauf Electronics Phils., Inc. (225 SCRA 737, 738), we lately ruled:
>
> "This is not to say, however, that the petitioner's right to question the jurisdiction of the court over its person is now to be deemed a foreclosed matter. If it is true, as Signetics claims, that its only involvement in the

> Philippines was through a passive investment in Sigfil, which it even later disposed of, and that TEAM Pacific is not its agent, then it cannot really be said to be doing business in the Philippines. It is a defense, however, that requires the contravention of the allegations of the complaint, as well as a full ventilation, in effect, of the main merits of the case, which should not thus be within the province of a mere motion to dismiss. So, also, the issue posed by the petitioner as to whether a foreign corporation which has done business in the country, but which has ceased to do business at the time of the filing of a complaint, can still be made to answer for a cause of action which accrued while it was doing business, is another matter that would yet have to await the reception and admission of evidence. Since these points have seasonably been raised by the petitioner, there should be no real cause for what may understandably be its apprehension, i.e., that by its participation during the trial on the merits, it may, absent an invocation of separate or independent reliefs of its own, be considered to have voluntarily submitted itself to the court's jurisdiction."[43] (Emphases supplied.)

In order to conform to the ruling in La Naval, which was decided by this Court in 1994, the former Section 23, Rule 14[44] concerning voluntary appearance was amended to include a second sentence in its equivalent provision in the 1997 Rules of Civil Procedure:

> SEC. 20. Voluntary appearance. – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (Emphasis supplied.)

The new second sentence, it can be observed, merely mentions other grounds in a Motion to Dismiss aside from lack of jurisdiction over the person of the defendant. This clearly refers to affirmative defenses, rather than affirmative reliefs.

Thus, while mindful of our ruling in La Naval and the new Section 20, Rule 20, this Court, in several cases, ruled that seeking affirmative relief in a court is tantamount to voluntary appearance therein.[45] Thus, in Philippine Commercial International Bank v. Dy Hong Pi,[46] wherein defendants filed a "Motion for Inhibition without submitting themselves to the jurisdiction of this Honorable Court" subsequent to their filing of a "Motion to Dismiss (for Lack of Jurisdiction)," we held:

> Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction. It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction.[47] (Emphasis supplied.)

In view of the above, we therefore rule that petitioner, by seeking affirmative reliefs from the trial court, is deemed to have voluntarily submitted to the jurisdiction of said court. A party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.[48] Consequently, the trial court cannot be considered to have committed grave abuse of discretion amounting to lack or excess of jurisdiction in the denial of the Motion to Dismiss on account of failure to acquire jurisdiction over the person of the defendant.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Decision of the Court of Appeals dated September 8, 2006 and its Resolution dated December 12, 2006 in CA-G.R. SP No. 94382 are hereby AFFIRMED.

No pronouncement as to costs.

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SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

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[1] Rollo, pp. 81-90; penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring.

[2] Id. at 92-93.

[3] Id. at 484-492.

[4] Article 2018. If a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void. The loser may recover what he has paid.

[5] Rollo, pp. 495-531.

[6] Id. at 564-574.

[7] Id. at 575-592.

[8] Id. at 660-664.

[9] CA rollo, pp. 2-58.

[10] G.R. No. 96161, February 21, 1992, 206 SCRA 457.

[11] Id. at 462-463.

[12] Rollo, pp. 1305-1369.

[13] Id. at 1142-1149.

[14] RULES OF COURT, Rule 3, Section 2.

[15] Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation, 507 Phil. 631, 645 (2005).

[16] Global Business Holdings, Inc. v. Surecomp Software, B.V., G.R. No. 173463, October 13, 2010, 633 SCRA 94, 102.

[17] Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) That the pleading asserting the claim states no cause of action;
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds;

and
(j) That a condition precedent for filing the claim has not been complied with.

[18] RULES OF COURT, Rule 2, Section 2.

[19] Luzon Development Bank v. Conquilla, 507 Phil. 509, 524 (2005).

[20] Pioneer Concrete Philippines, Inc. v. Todaro, G.R. No. 154830, June 8, 2007, 524 SCRA 153, 162.

[21] Rollo, p. 573.

[22] Vitangcol v. New Vista Properties, Inc., G.R. No. 176014, September 17, 2009, 600 SCRA 82, 93.

[23] Tan v. Court of Appeals, 356 Phil. 555 (1998).

[24] Id. at 563-564.

[25] Article 2018. If a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void. The loser may recover what he has paid.

[26] See Signetics Corp. v. Court of Appeals, G.R. No. 105141, August 31, 1993, 225 SCRA 737, 746.

[27] 335 Phil. 1184 (1997).

[28] Id. at 1201.

[29] Spouses Arenas v. Court of Appeals, 399 Phil. 372, 386 (2000).

[30] Pioneer International, Ltd. v. Guadiz, Jr., G.R. No. 156848, October 11, 2007, 535 SCRA 584, 600.

[31] Rollo, p. 1275.

[32] Banco Do Brasil v. Court of Appeals, 389 Phil. 87, 99 (2000).

[33] G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[34] Id. at 187-188.

[35] G.R. No. 158407, January 17, 2005, 448 SCRA 663.

[36] Id. at 673-674.

[37] Ramos v. Ramos, 447 Phil. 114, 120 (2003).

[38] Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation, supra note 33 at 188.

[39] Rollo, pp. 1275-1281.

[40] Id. at 1275.

[41] G.R. No. 103200, August 31, 1994, 236 SCRA 78.

[42] Rollo, pp. 1179-1180.

[43] La Naval Drug Corporation v. Court of Appeals, supra note 41 at 89.

[44] Sec. 23. What is equivalent to service. – The defendant’s voluntary appearance in the action shall be

equivalent to service.

[45] Palma v. Galvez, G.R. No. 165273, March 10, 2010, 615 SCRA 86, 99; Dole Philippines, Inc. (Tropifresh Division) v. Quilala, G.R. No. 168723, July 9, 2008, 557 SCRA 433, 437; Herrera-Felix v. Court of Appeals, 479 Phil. 727, 735 (2004).

[46] G.R. No. 171137, June 5, 2009, 588 SCRA 612.

[47] Id. at 629.

[48] Sta. Lucia Realty and Development, Inc. v. Cabrigas, 411 Phil. 369, 390 (2001).

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