

**METROPOLITAN BANK AND TRUST COMPANY, SUBSTITUTED BY
MERIDIAN (SPV-AMCI) CORPORATION, PETITIONER, VS.
INTERNATIONAL EXCHANGE BANK, RESPONDENT.**

G.R. No. 176008. August 10, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court, both of which are seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated May 5, 2006 and December 22, 2006, respectively, in CA-G.R. SP No. 00549-MIN which annulled and set aside the Orders dated September 6, 2004 and February 14, 2005, the Resolution dated March 15, 2005 and the Joint Resolution dated June 8, 2005 of the Regional Trial Court (RTC) of Misamis Oriental, Branch 17 in Civil Case Nos. 2004-197 and 2004-200.

The pertinent factual and procedural antecedents of the case are as follows:

Sacramento Steel Corporation (SSC) is a business entity engaged in manufacturing and producing steel and steel products, such as cold rolled coils and galvanized sheets, in its own steel manufacturing plant located at Tagoloan, Misamis Oriental.

For the purpose of increasing its capital, SSC entered into a Credit Agreement with herein respondent International Exchange Bank (IEB) on September 10, 2001 wherein the latter granted the former an omnibus credit line in the amount of P60,000,000.00, a loan of P20,000,000.00 and a subsequent credit line with a limit of P100,000,000.00.

As security for its loan obligations, SSC executed five separate deeds of chattel mortgage constituted over various equipment found in its steel manufacturing plant. The deeds of mortgage were dated September 17, 2001, February 26, 2003, April 16, 2003, May 25, 2004 and June 7, 2004.

Subsequently, SSC defaulted in the payment of its obligations. IEB's demand for payment went unheeded. On July 7, 2004, the IEB filed with the RTC of Misamis Oriental an action for injunction for the purpose of enjoining SSC from taking out the mortgaged equipment from its premises. The case was docketed as Civil Case No. 2004-197. Thereafter, IEB filed a Supplemental Complaint praying for the issuance of a writ of replevin or, in the alternative, for the payment of SSC's outstanding obligations and attorney's fees.[3]

On the other hand, on July 18, 2004, SSC filed with the same RTC of Misamis Oriental a Complaint for annulment of mortgage and specific performance for the purpose of compelling the IEB to restructure SSC's outstanding obligations. SSC also prayed for the issuance of a Temporary Restraining Order (TRO) and writ of preliminary injunction to prevent IEB from taking any steps to dispossess SSC of any equipment in its steel manufacturing plant as well as to restrain it from foreclosing the mortgage on the said equipment.[4] The RTC issued a TRO. The case was docketed as Civil Case No. 2004-200 and was subsequently consolidated with Civil

Case No. 2004-197.

On July 23, 2004, the RTC issued an Order^[5] granting IEB's application for the issuance of a writ of replevin. However, upon agreement of the parties, the implementation of the said writ was held in abeyance pending the trial court's resolution of the other incidents in the said case.^[6] The RTC also directed that there shall be "no commercial operation without court approval."^[7]

On August 26, 2004, the IEB filed a petition for extrajudicial foreclosure of chattel mortgage.

SSC opposed IEB's petition and prayed for the issuance of a writ of preliminary injunction.

On September 6, 2004, the RTC issued an Order disposing as follows:

WHEREFORE, let a Writ of preliminary injunction be issued restraining defendant iBank [IEB], the Sheriff, his agents and other person/s acting in their behalf as agents - privies or representative[s] in whatever capacity, from conducting foreclosure, whether judicial or extrajudicial, of any properties subject of the controversy and are further directed not to take any steps that will, in effect, dispossess plaintiff [SSC] of any of its machineries and equipment in its steel manufacturing plant pending determination of the case. Let a bond (cash or surety) of Five Hundred Thousand (P500,000.00) Pesos be posted by the plaintiff Sacramento Steel Corporation as required by law.

SO ORDERED.^[8]

Meanwhile, on August 30, 2004, SSC entered into a Capacity Lease Agreement with herein petitioner Chuayuco Steel Manufacturing Corporation (CSMC) which allowed the latter to lease and operate the former's cold rolling mill and galvanizing plant for a period of five years.

On October 21, 2004, herein petitioner Metropolitan Bank and Trust Company (Metrobank) filed a motion for intervention contending that it has legal interest in the properties subject of the litigation between IEB and SSC because it is a creditor of SSC and that the mortgage contracts between IEB and SSC were entered into to defraud the latter's creditors.^[9] Metrobank prayed for the rescission of the chattel mortgages executed by SSC in favor of IEB.

On January 21, 2005, CSMC filed an Omnibus Motion for intervention and for allowance to immediately operate the cold rolling mill and galvanizing plant of SSC contending that its purpose in intervening is to seek the approval of the court to operate the said plant pursuant to the Capacity Lease Agreement it entered into with SSC.^[10] IEB filed its Opposition to the said Motion.^[11]

On February 14, 2005, the RTC issued an Order^[12] admitting the motions for intervention filed by CSMC and Metrobank.

On March 15, 2005, the RTC issued a Resolution, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the motion to operate the machineries pendente lite is hereby GRANTED based on law and equity as soon as practicable. This is without prejudice on the part of the I-bank [IEB] to assert the enforcement of the proposed schedule of payment submitted by SSC to the Court (Exh. "A" - Motion for Early Resolution, 2/16/2005 hearing) and to continually post their security guards unless withdrawn.

SO ORDERED.^[13]

On June 8, 2005, the RTC issued a Joint Resolution^[14] reiterating its admission of CSMC's motion for intervention and directing the latter to file its complaint-in-intervention.

On August 25, 2005, IEB filed a petition for certiorari, prohibition and mandamus with the CA assailing the RTC Orders dated September 6, 2004 and February 14, 2005, Resolution dated March 15, 2005 and Joint Resolution dated June 8, 2005.[15]

On May 5, 2006, the CA rendered its presently assailed Decision which disposed of the case as follows:

WHEREFORE, the petition is hereby GRANTED. The questioned Orders dated September 6, 2004, February 14, 2005, March 15, 2005 and June 8, 2005 issued by public respondent RTC, Branch 17, Misamis Oriental, presided by Hon. Florencia D. Sealana-Abbu in Civil Case Nos. 2004-197 and 2004-200 are hereby ANNULLED and SET ASIDE. Public respondent is hereby DIRECTED to turn-over the mortgaged properties covered by the writ of replevin to petitioner I-Bank for the eventual foreclosure thereof.

SO ORDERED.[16]

Metrobank, CSMC and SSC filed their respective motions for reconsideration, but these were all denied by the CA in its Resolution dated December 22, 2006.

Hence, the instant petitions for review on certiorari.

In G.R. No. 176008, petitioner Metrobank submits the following issues:

(A) WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT PETITIONER'S COMPLAINT-IN-INTERVENTION IS AN ACCION PAULIANA, A SUBSIDIARY ACTION, WHICH PRESUPPOSES AN UNSATISFIED JUDGMENT, WHICH UNSATISFIED JUDGMENT IS ABSENT IN THE CASE AT BAR.

(B) WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ALLOWING PETITIONER'S COMPLAINT-IN-INTERVENTION.[17]

In G.R. No. 176131, petitioner CSMC raises the following grounds:

I. THE HONORABLE COURT ERRED IN NOT PASSING UPON THE ISSUE THAT HEREIN RESPONDENT IBANK IS GUILTY OF FORUM-SHOPPING.

II. THE HONORABLE COURT ERRED IN NOT RULING THAT HEREIN RESPONDENT IBANK'S FAILURE TO FILE A MOTION FOR RECONSIDERATION TO THE ORDER DATED 08 JUNE 2005 IS FATAL TO ITS PETITION.

III. THE HONORABLE COURT ERRED IN RULING THAT THE ORDER OF JUDGE SEALANA-ABBU ADMITTING THE INTERVENTION OF HEREIN PETITIONER CSMC IS WITHOUT LEGAL BASIS.[18]

In a Manifestation and Motion dated September 26, 2007, petitioner Metrobank manifested that it no longer has any interest in pursuing the instant case as the loan obligation owed by SSC to it has been sold by the latter to a corporation known as Meridian (SPV-AMC) Corporation (Meridian). Accordingly, Metrobank prayed that it be substituted by Meridian as petitioner in the instant case.[19]

In a Resolution[20] dated November 12, 2007, this Court granted Metrobank's Motion.

At the outset, the Court takes note that no arguments or questions were raised by petitioners with respect to the September 6, 2004 Order and March 15, 2005 Resolution of the RTC which were annulled by the CA. Hence, the only issues left for resolution in the instant petition are whether or not petitioners Metrobank and CSMC may be allowed to intervene in Civil Case Nos. 2004-197 and 2004-200.

The Court will dwell first on the issues raised by Metrobank in G.R. No. 176008.

In its first assigned error, Metrobank contends that the CA erred in ruling that its Complaint-in-Intervention is in the nature of an accion pauliana.

The Court does not agree.

A perusal of Metrobank's Complaint-in-Intervention would show that its main objective is to have the chattel mortgages executed by SSC in favor of IEB rescinded. This is clearly evident in its prayer, which reads as follows:

WHEREFORE, premises considered, it is respectfully prayed unto the Honorable Court that judgment be rendered:

(1) RESCINDING the chattel mortgages executed by Defendants Sacramento and Delmo in favor of Defendant Ibank dated May 25, 2004 and June 7, 2004, respectively;

(2) Ordering defendants Sacramento, Delmo and Ibank to pay, jointly and severally, Plaintiff-Intervenor the amounts of:

(A) P500,000.00, as and by way of exemplary damages;

(B) P500,000.00, as and by way of attorney's fees; and

(C) Costs of suit.

Other reliefs as may be just and equitable under the premises are likewise prayed for.

x x x[21]

Under Article 1381 of the Civil Code, an accion pauliana is an action to rescind contracts in fraud of creditors.[22]

However, jurisprudence is clear that the following successive measures must be taken by a creditor before he may bring an action for rescission of an allegedly fraudulent contract: (1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as are exempt by law from execution; (2) exercise all the rights and actions of the debtor, save those personal to him (accion subrogatoria); and (3) seek rescission of the contracts executed by the debtor in fraud of their rights (accion pauliana).[23] It is thus apparent that an action to rescind, or an accion pauliana, must be of last resort, availed of only after the creditor has exhausted all the properties of the debtor not exempt from execution or after all other legal remedies have been exhausted and have been proven futile.[24]

It does not appear that Metrobank sought other properties of SSC other than the subject lots alleged to have been transferred in fraud of creditors. Neither is there any showing that Metrobank subrogated itself in SSC's transmissible rights and actions. Without availing of the first and second remedies, Metrobank simply undertook the third measure and filed an action for annulment of the chattel mortgages. This cannot be done. Article 1383 of the New Civil Code is very explicit that the right or remedy of the creditor to impugn the acts which the debtor may have done to defraud them is subsidiary in nature.[25] It can only be availed of in the absence of any other legal remedy to obtain reparation for the injury.[26] This fact is not present in this case. No evidence was presented nor even an allegation was offered to show that Metrobank had availed of the abovementioned remedies before it tried to question the validity of the contracts of chattel mortgage between IEB and SSC.

Metrobank also contends that in order to apply the concept of, and the rules pertaining to, accion pauliana, the subject matter must be a conveyance, otherwise valid, which is undertaken in fraud of creditors. Metrobank claims that since there is no conveyance involved in the contract of chattel mortgage between SSC and IEB, which Metrobank seeks to rescind, the CA erred in ruling that the latter's Complaint-in-Intervention is an accion

pauliana.

The Court is not persuaded.

In the instant case, the contract of chattel mortgage entered into by and between SSC and IEB involves a conveyance of patrimonial benefit in favor of the latter as the properties subject of the chattel mortgage stand as security for the credit it extended to SSC. In a very recent case involving an action for the rescission of a real estate mortgage,[27] while this Court found that some of the elements of accion pauliana were not present, it found that a mortgage contract involves the conveyance of a patrimonial benefit.

In sum, Metrobank may not be allowed to intervene and pray for the rescission of the chattel mortgages executed by SSC in favor of IEB. The remedy being sought by Metrobank is in the nature of an accion pauliana which, under the factual circumstances obtaining in the present case, may not be allowed. Based on the foregoing, the Court finds no error in the ruling of the CA that the RTC committed grave abuse of discretion in allowing Metrobank's intervention.

The Court will now proceed to resolve the issues raised by petitioner CSMC in G.R. No. 176131.

Firstly, CSMC contends that IEB was forum shopping when it filed a petition for certiorari with the CA seeking, among others, the enjoinder of the commercial operation of the subject machineries and equipment when its Opposition[28] to the implementation of the Capacity Lease Agreement between SSC and CSMC is still pending determination by the RTC.

The Court does not agree.

Forum shopping has been defined as an act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or a special civil action for certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[29]

Forum shopping exists when two or more actions involve the same transactions, essential facts and circumstances, and raise identical causes of action, subject matter, and issues.[30] Still another test of forum shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another - whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions); (b) rights or causes of action, and (c) reliefs sought.[31]

In the instant case on the one hand, IEB's Opposition questions the legality and seeks to prevent the implementation of the Capacity Lease Agreement between CSMC and SSC which, in essence, authorizes CSMC to operate the subject machineries *pendente lite*. On the other hand, the petition for certiorari filed by IEB assails and seeks to nullify, among others, the March 15, 2005 and June 8, 2005 Orders of the RTC allowing SSC to operate the subject machineries *pendente lite*. It is, thus, clear that there is no identity of subject matter, cause of action and reliefs sought in IEB's Opposition filed with the RTC and in its petition for certiorari filed with the CA. Hence, IEB is not guilty of forum shopping.

Secondly, CSMC argues that IEB's failure to file a motion for reconsideration of the RTC Order dated June 8, 2005 is fatal to its petition for certiorari filed with the CA.

The Court is not persuaded.

While the general rule is that before certiorari may be availed of, petitioner must have filed a motion for reconsideration of the act or order complained of, the Court has dispensed with this requirement in several instances.[32] Thus, a previous motion for reconsideration before the filing of a petition for certiorari is necessary

unless: (i) the issue raised is one purely of law; (ii) public interest is involved; (iii) there is urgency; (iv) a question of jurisdiction is squarely raised before and decided by the lower court; and (v) the order is a patent nullity.[33] In the instant case, the Court agrees with the CA that there is no need for such motion because the issue regarding the applicability of the rule on intervention raised by IEB in its petition for certiorari filed with the CA, insofar as the June 8, 2005 Order of the RTC is concerned, is one purely of law.

The foregoing notwithstanding, the Court finds that the CA erred in ruling that the allowance of CSMC's motion for intervention is improper. CSMC's intervention should be allowed.

The purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims.[34] Intervention is allowed to avoid multiplicity of suits more than on due process considerations.[35] To warrant intervention under Rule 19 of the Rules of Court, two requisites must concur: (1) the movant has a legal interest on the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding.[36]

In the present case, CSMC, being a lessee of the subject properties, has a legal interest therein. The RTC correctly held, thus:

Under the Rules of Court, intervention is permissive and maybe permitted by the Court when the applicant shows facts which satisfy the requirements of the law authorizing intervention. (Firestone Ceramics Inc. vs. CA 313 SCRA 522) Records of the case showed that on August 30, 2004, an agreement was finalized and entered into by applicant Chuayuco and defendant/plaintiff Sacramento Steel Corporation whereby the former shall lease and make use of the machineries of Sacramento Steel under the Capacity Lease Agreement (CLA). One of the terms and condition[s] under [the] CLA was for the monthly lease payments to take effect upon signing of the contract. A person seeking to intervene in a suit must show that he has legal interest which must be actual and material, direct and immediate. He must show that he will either gain or lose by direct legal operation and effect of a judgment. (Hrs. of Nicolas Orosa vs. Migrino 218 SCRA 311) The Court finds that Chuayuco had a constituted and sufficient legal interest in the machineries subject of the litigation which is actual and material. Any disposition of the case will adversely affect the standing of the intervenor.[37]

Moreover, considering that CSMC's interest is limited only to the operation of the subject machineries pursuant to its lease contract with SSC, its intervention would not unduly delay or prejudice the adjudication of the rights of SSC and IEB. CSMC's intervention should be treated as one *pro interesse suo* which is a mode of intervention in equity wherein a stranger desires to intervene for the purpose of asserting a property right in the res, or thing, which is the subject matter of the litigation, without becoming a formal plaintiff or defendant, and without acquiring control over the course of a litigation, which is conceded to the main actors therein.[38]

Lastly, the Court does not agree with the CA when it ruled that the applicable provision is Rule 3, Section 19 (erroneously cited as Section 20) of the Rules of Court on transfer of interest and substitution of parties. Being a mere lessee of the subject properties, CSMC is a stranger insofar as the dispute between SSC and IEB is concerned. The action filed by IEB against SSC is an action for the payment or satisfaction of the loans incurred by the latter, which includes a possible foreclosure of the subject properties given as security for the said loans. CSMC may not be considered a successor, and may not be substituted in place of SSC, insofar as these loans are concerned. If any, what has been transferred to CSMC is only the right of SSC to operate the subject equipment and machineries which it owns. As such, SSC may not be removed as defendant because its interest in the subject properties remains, being the owner thereof.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 00549-MIN are **AFFIRMED** with **MODIFICATION**. The February 14, 2005 Order of the Regional Trial Court of Misamis

Oriental, Branch 17, is MODIFIED by denying Metrobank's Motion for Intervention, while the Joint Resolution of the same trial court, dated June 8, 2005, reiterating its admission of CSMC's Motion for Intervention and directing the latter to file its complaint-in-intervention, is REINSTATED.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Brion,**]Peralta, and Sereno,[***] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1059 dated August 1, 2011.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

[***] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Normandie B. Pizarro and Ramon R. Garcia, concurring.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring.

[3] CA rollo, p. 74.

[4] Id. at 94.

[5] Id. at 84.

[6] See RTC 2[nd] Order dated July 30, 2004, id. at 160.

[7] Id.

[8] Id. at 56.

[9] Id. at 218; See also Complaint-in-Intervention, id. at 221-227.

[10] Id. at 236.

[11] Id. at 243.

[12] Id. at 59-60.

[13] Id. at 68-69.

[14] Id. at 70-73.

[15] Id. at 2.

[16] Rollo (G.R. No.176131), p. 65.

[17] Rollo (G.R. No. 176008), p. 13.

[18] Rollo (G.R. No. 176131), pp. 22-23.

[19] Id. at 519.

[20] Id. at 523.

[21] CA rollo, p. 225. (Emphasis supplied.)

[22] *Lee v. Bangkok Bank Public Company, Limited*, G.R. No. 173349, February 9, 2011; *Siguan v. Lim*, G.R. No. 134685, November 19, 1999, 318 SCRA 725,

[23] *Khe Hong Cheng v. Court of Appeals*, G.R. No. 144169, March 28, 2001, 355 SCRA 701, 710; *Adorable v. Court of Appeals*, G.R. No. 119466, November 25, 1999, 319 SCRA 200, 207.

[24] *Khe Hong Cheng v. Court of Appeals*, *supra* at 708; *Unionbank of the Philippines v. Spouses Ong*, G.R. No. 152347, June 21, 2006, 491 SCRA 581, 596.

[25] Art. 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has not other legal means to obtain reparation for the same.

[26] *Adorable v. Court of Appeals*, *supra* note 23.

[27] See *Lee v. Bangkok Bank Public Company, Limited*, *supra* note 22.

[28] CA rollo, p. 576.

[29] *PHILPHARMAWEALTH, Inc. v. Pfizer, Inc. and Pfizer (Phil.), Inc.*, G.R. No. 167715, November 17, 2010; *Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Co., Inc.*, G.R. No. 167674, June 17, 2008, 554 SCRA 561, 569; *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, June 7, 2007, 523 SCRA 405, 416-417.

[30] *Polanco v. Cruz*, G.R. No. 182426, February 13, 2009, 579 SCRA 489, 495.

[31] *Id.* at 495-496.

[32] *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*, G.R. No. 177121, March 16, 2009, 581 SCRA 553, 560-561; *Llamzon v. Logronio*, G.R. No. 167745, June 26, 2007, 525 SCRA 691, 706.

[33] *Id.*

[34] *Heirs of Francisca Medrano v. De Vera*, G.R. No. 165770, August 9, 2010, 627 SCRA 108, 122.

[35] *Id.*

[36] *Office of the Ombudsman v. Sison*, G.R. No. 185954, February 16, 2010, 612 SCRA 702, 713.

[37] CA rollo, p. 72.

[38] *Perez v. Court of Appeals*, G.R. No. 107737, October 1, 1999, 316 SCRA 43, 58.

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