SHELL PHILIPPINES EXPLORATION B.V., REPRESENTED BY ITS MANAGING DIRECTOR, JEREMY CLIFF, PETITIONER, VS. EFREN JALOS, JOVEN CAMPANG, ARNALDO MIJARES, CARLITO TRIVINO, LUCIANO ASE...

G.R. No. 179918. September 08, 2010

Ponente: ABAD, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-179918/

ABAD, J.:

This case is about a question of jurisdiction over an action against a petroleum contractor, whose pipeline operation has allegedly driven the fish away from coastal areas, inflicting loss of earnings among fishermen.

The Facts and the Case

On December 11, 1990 petitioner Shell Philippines Exploration B.V. (Shell) and the Republic of the Philippines entered into Service Contract 38 for the exploration and extraction of petroleum in northwestern Palawan. Two years later, Shell discovered natural gas in the Camago-Malampaya area and pursued its development of the well under the Malampaya Natural Gas Project. This entailed the construction and installation of a pipeline from Shell's production platform to its gas processing plant in Batangas. The pipeline spanned 504 kilometers and crossed the Oriental Mindoro Sea.

On May 19, 2003, respondents Efren Jalos, Joven Campang, Arnaldo Mijares, and 75 other individuals (Jalos, et al) filed a complaint for damages[1] against Shell before the Regional Trial Court (RTC), Branch 41, Pinamalayan, Oriental Mindoro. Jalos, et al claimed that they were all subsistence fishermen from the coastal barangay of Bansud, Oriental Mindoro whose livelihood was adversely affected by the construction and operation of Shell's natural gas pipeline.

Jalos, et al claimed that their fish catch became few after the construction of the pipeline. As a result, their average net income per month fell from a high of P4,848.00 to only P573.00. They said that "the pipeline greatly affected biogenically hard-structured communities such as coral reefs and led [to] stress to the marine life in the Mindoro Sea." They now have to stay longer and farther out at sea to catch fish, as the pipeline's operation has driven the fish population out of coastal waters.[2]

Instead of filing an answer, Shell moved for dismissal of the complaint. It alleged that the trial court had no jurisdiction over the action, as it is a "pollution case" under Republic Act (R.A.) 3931, as amended by Presidential Decree (P.D.) 984 or the Pollution Control Law. Under these statutes, the Pollution Adjudication Board (PAB) has primary jurisdiction over pollution cases and actions for related damages.[3]

Shell also claimed that it could not be sued pursuant to the doctrine of state immunity without the State's consent. Shell said that under Service Contract 38, it served merely as an agent of the Philippine government in the development of the Malampaya gas reserves.

Moreover, said Shell, the complaint failed to state a cause of action since it did not specify any actionable wrong or particular act or omission on Shell's part that could have caused the alleged injury to Jalos, et al. The complaint likewise failed to comply with requirements of a valid class suit, verification and certification against forum shopping, and the requisites for a suit brought by pauper litigants.[4]

On March 24, 2004 the RTC dismissed the complaint. It ruled that the action was actually pollution-related, although denominated as one for damages. The complaint should thus be brought first before the PAB, the government agency vested with jurisdiction over pollution-related cases.[5]

Jalos, et al assailed the RTC's order through a petition for certiorari[6] before the Court of Appeals (CA). In due course, the latter court reversed such order and upheld the jurisdiction of the RTC over the action. It said that Shell was not being sued for committing pollution, but for constructing and operating a natural gas pipeline that caused fish decline and considerable reduction in the fishermen's income. The claim for damages was thus based on a quasi-delict over which the regular courts have jurisdiction.

The CA also rejected Shell's assertion that the suit was actually against the State. It observed that the government was not even impleaded as party defendant. It gave short shrift to Shell's insistence that, under the service contract, the government was solidarily liable with Shell for damages caused to third persons. Besides, the State should be deemed to have given its consent to be sued when it entered into the contract with Shell.

The CA also held that the complaint sufficiently alleged an actionable wrong. Jalos, et al invoked their right to fish the sea and earn a living, which Shell had the correlative obligation to respect. Failure to observe such obligation resulted in a violation of the fishermen's rights and thus gave rise to a cause of action for damages.[7]

Finally, the CA held that Jalos, et al substantially complied with the technical requirements for filing the action. But since they failed to prove the requisites of a class suit, only those who have verified the complaint should be deemed party plaintiffs.[8]

Shell moved for reconsideration of the CA's decision but the same was denied.[9] Hence, it filed this petition for review under Rule 45.

The Issues Presented

The case presents the following issues:

- Whether or not the complaint is a pollution case that falls within the primary jurisdiction of the PAB;

- Whether or not the complaint sufficiently alleges a cause of action against Shell; and

- Whether or not the suit is actually against the State and is barred under the doctrine of state immunity.

The Court's Rulings

First. Although the complaint of Jalos, et al does not use the word "pollution" in describing the cause of the alleged fish decline in the Mindoro Sea, it is unmistakable based on their allegations that Shell's pipeline produced some kind of poison or emission that drove the fish away from the coastal areas. While the complaint did not specifically attribute to Shell any specific act of "pollution," it alleged that "the pipeline greatly affected biogenically hard-structured communities such as coral reefs and led [to] stress to the marine life in the Mindoro Sea."[10] This constitutes "pollution" as defined by law.

Section 2(a) of P.D. 984 defines "pollution" as "any alteration of the physical, chemical and biological properties of any water x x x as will or is likely to create or render such water x x x harmful, detrimental or injurious to

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes."

It is clear from this definition that the stress to marine life claimed by Jalos, et al is caused by some kind of pollution emanating from Shell's natural gas pipeline. The pipeline, they said, "greatly affected" or altered the natural habitat of fish and affected the coastal waters' natural function as fishing grounds. Inevitably, in resolving Jalos, et al's claim for damages, the proper tribunal must determine whether or not the operation of the pipeline adversely altered the coastal waters' properties and negatively affected its life sustaining function. The power and expertise needed to determine such issue lies with the PAB.

Executive Order 192 (1987) transferred to the PAB the powers and functions of the National Pollution and Control Commission provided in R.A. 3931, as amended by P.D. 984.[11] These empowered the PAB to "[d]etermine the location, magnitude, extent, severity, causes and effects" of water pollution.[12] Among its functions is to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution." In this regard, the PAB has the power to conduct hearings,[13] impose penalties for violation of P.D. 984,[14] and issue writs of execution to enforce its orders and decisions.[15] The PAB's final decisions may be reviewed by the CA under Rule 43 of the Rules of Court.[16]

Jalos, et al had, therefore, an administrative recourse before filing their complaint with the regular courts.[17] The laws creating the PAB and vesting it with powers are wise. The definition of the term "pollution" itself connotes the need for specialized knowledge and skills, technical and scientific, in determining the presence, the cause, and the effects of pollution. These knowledge and skills are not within the competence of ordinary courts.[18] Consequently, resort must first be made to the PAB, which is the agency possessed of expertise in determining pollution-related matters.

To this extent, the failure of Jalos, et al to allege in their complaint that they had first taken resort to PAB before going to court means that they failed to state a cause of action that the RTC could act on. This warranted the dismissal of their action.[19]

Second. Still, Shell points out that the complaint also states no cause of action because it failed to specify any actionable wrong or particular act or omission on Shell's part. The Court cannot agree.

As mentioned above, the complaint said that the natural gas pipeline's construction and operation "greatly affected" the marine environment, drove away the fish, and resulted in reduced income for Jalos, et al. True, the complaint did not contain some scientific explanation regarding how the construction and operation of the pipeline disturbed the waters and drove away the fish from their usual habitat as the fishermen claimed. But lack of particulars is not a ground for dismissing the complaint.

A cause of action is the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff.[20] Its elements consist of: (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.[21] To sustain a motion to dismiss for lack of cause of action, however, 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.[22]

Here, all the elements of a cause of action are present. First, Jalos, et al undoubtedly had the right to the preferential use of marine and fishing resources which is guaranteed by no less than the Constitution.[23] Second, Shell had the correlative duty to refrain from acts or omissions that could impair Jalos, et al's use and enjoyment of the bounties of the seas. Lastly, Shell's construction and operation of the pipeline, which is an act of physical intrusion into the marine environment, is said to have disrupted and impaired the natural habitat of fish and

resulted in considerable reduction of fish catch and income for Jalos, et al.

Thus, the construction and operation of the pipeline may, in itself, be a wrongful act that could be the basis of Jalos, et al's cause of action. The rules do not require that the complaint establish in detail the causal link between the construction and operation of the pipeline, on the one hand, and the fish decline and loss of income, on the other hand, it being sufficient that the complaint states the ultimate facts on which it bases its claim for relief. The test for determining the sufficiency of a cause of action rests on whether the complaint alleges facts which, if true, would justify the relief demanded.[24] In this case, a valid judgment for damages can be made in favor of Jalos, et al, if the construction and operation of the pipeline indeed caused fish decline and eventually led to the fishermen's loss of income, as alleged in the complaint.

Third. Shell claims that it cannot be sued without the State's consent under the doctrine of state immunity from suit. But, to begin with, Shell is not an agent of the Republic of the Philippines. It is but a service contractor for the exploration and development of one of the country's natural gas reserves. While the Republic appointed Shell as the exclusive party to conduct petroleum operations in the Camago-Malampayo area under the State's full control and supervision,[25] it does not follow that Shell has become the State's "agent" within the meaning of the law.

An agent is a person who binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[26] The essence of an agency is the agent's ability to represent his principal and bring about business relations between the latter and third persons.[27] An agent's ultimate undertaking is to execute juridical acts that would create, modify or extinguish relations between his principal and third persons.[28] It is this power to affect the principal's contractual relations with third persons that differentiates the agent from a service contractor.

Shell's main undertaking under Service Contract 38 is to "[p]erform all petroleum operations and provide all necessary technology and finance" as well as other connected services[29] to the Philippine government. As defined under the contract, petroleum operation means the "searching for and obtaining Petroleum within the Philippines", including the "transportation, storage, handling and sale" of petroleum whether for export or domestic consumption.[30] Shell's primary obligation under the contract is not to represent the Philippine government for the purpose of transacting business with third persons. Rather, its contractual commitment is to develop and manage petroleum operations on behalf of the State.

Consequently, Shell is not an agent of the Philippine government, but a provider of services, technology and financing[31] for the Malampaya Natural Gas Project. It is not immune from suit and may be sued for claims even without the State's consent. Notably, the Philippine government itself recognized that Shell could be sued in relation to the project. This is evident in the stipulations agreed upon by the parties under Service Contract 38.

Article II, paragraph 8, Annex "B" of Service Contract 38[32] states that legal expenses, including "judgments obtained against the Parties or any of them on account of the Petroleum Operations", can be recovered by Shell as part of operating expenses to be deducted from gross proceeds. Article II, paragraph 9B of the same document allows a similar recovery for "[a]ll actual expenditures incurred and paid by CONTRACTOR [Shell] in settlement of any and all losses, claims, damages, judgments, and any other expenses not covered by insurance, including legal services." This signifies that the State itself acknowledged the suability of Shell. Since payment of claims and damages pursuant to a judgment against Shell can be deducted from gross proceeds, the State will not be required to perform any additional affirmative act to satisfy such a judgment.

In sum, while the complaint in this case sufficiently alleges a cause of action, the same must be filed with the PAB, which is the government agency tasked to adjudicate pollution-related cases. Shell is not an agent of the

State and may thus be sued before that body for any damages caused by its operations. The parties may appeal the PAB's decision to the CA. But pending prior determination by the PAB, courts cannot take cognizance of the complaint.

WHEREFORE, the Court GRANTS the petition and REVERSES the decision of the Court of Appeals in CA-G.R. CV 82404 dated November 20, 2006. Respondent Efren Jalos, et al's complaint for damages against Shell Philippines Exploration B.V. in Civil Case P-1818-03 of the Regional Trial Court, Branch 41, Pinamalayan, Oriental Mindoro is ordered DISMISSED without prejudice to its refiling with the Pollution Adjudication Board or PAB.

SO ORDERED.

Carpio, Peralta, Del Castillo,[*] and Mendoza, JJ., concur.

---

[*]Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated June 7, 2010.

[1] Docketed as Civil Case P-1818-03 (also referred to as Civil Case R-1818-03 in some parts of the records).

[2] Rollo, p. 119.

[3]Id. at 141-143.

[4] Id. at 146-157.

[5] Id. at 114.

[6] Docketed as CA-G.R. CV 82404.

[7] Rollo, pp. 96-100.

[8] Id. at 102.

[9] Id. at 108-110.

[10] Biogenic means "essential to life and its maintenance." (Webster's Third New International Dictionary, Unabridged, p. 218.)

[11] Estrada v. Court of Appeals, 484 Phil. 730, 742 (2004).

[12] P.D. 984, Section 6(a).

[13] Id., Section 6(d).

[14] Id., Section (9).

[15] Id., Section 7(d).

[16] Id., Section 7(c).

[17] The Alexandra Condominium Corporation v. Laguna Lake Development Authority, G.R. No. 169228, September 11, 2009, 599 SCRA 452, 461.

[18] Mead v. Hon. Argel, 200 Phil. 650, 662 (1982).

[19] Supra note 11, at 739.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[20] Remedial Law Compendium, Vol. I (2002 Ed.), Justice Florenz D. Regalado. p. 66.

[21] Luzon Development Bank v. Conquilla, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 546.

[22]Philippine Bank of Communications v. Trazo, G.R. No. 165500, August 30, 2006, 500 SCRA 242, 255.

[23] Article XIII, Section 7 provides:

SEC. 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

[24] Raytheon International, Inc. v. Rouzie, Jr., G.R. No. 162894, February 26, 2008, 546 SCRA 555, 565.

[25] Rollo, p. 378.

[26] CIVIL CODE OF THE PHILIPPINES, Article 1869.

[27] Philex Mining Corporation v. Commissioner of Internal Revenue, G.R. No. 148187, April 16, 2008, 551 SCRA 428, 442.

[28]Nielson & Company, Inc. v. Lepanto Consolidated Mining Company, 135 Phil. 532, 541 (1968).

[29] Rollo, p. 384.

[30] Id. at 380.

[31] See Sections 6 and 7, Presidential Decree 87 or The Oil Exploration and Development Act of 1972.

[32] Rollo, p. 403. The stipulation reads in full:

"8. Legal Expenses.

All costs and expenses of litigation, or legal service otherwise necessary or expedient for the protection of the joint interests, including attorney's fees and expenses as hereinafter provided, together with all judgments obtained against the Parties or any of them on account of the Petroleum Operations, and actual expenses incurred in securing evidence for the purpose of defending against the Operations of the subject matter of the Contract. In the event actions or claims affecting interests under the Contract shall be handled by the legal staff not otherwise charged to Operating Expenses of one or more of the Parties, a charge commensurate with the cost of providing and furnishing such services may be made against Operating Expenses."

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

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.