

QUASHA ANCHETA PEÑA & NOLASCO LAW OFFICE and LEGEND INTERNATIONAL RESORTS, LIMITED, PETITIONERS, VS. THE SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS, KHOO BOO BOON AND THE LA...

G.R. No. 182013. December 04, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a special civil action for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure filed by petitioners Quasha Ancheta Peña and Nolasco Law Office (Quasha Law Office) and Legend International Resorts, Limited (LIRL), seeking to reverse and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolution[1] dated 22 January 2008 of the Special Sixth Division of the Court of Appeals in CA-G.R. CV No. 87281, which refused to recognize the Entry of Appearance of petitioner Quasha Law Office as the duly authorized counsel of petitioner LIRL in CA-G.R. CV No. 87281.

Petitioner Quasha Law Office is the duly authorized counsel of petitioner LIRL in the Philippines. Petitioner LIRL is a foreign corporation organized under the laws of Hong Kong and licensed to operate a resort casino hotel in Subic Bay, Philippines, on the basis of the 19 March 1993 Agreement it entered into with Philippine Amusement and Gaming Corporation (PAGCOR) and Subic Bay Metropolitan Authority (SBMA), which was later amended in July, 2000. It is doing business in the Philippines through its branch, LIRL-Subic.

Private respondent Khoo Boo Boon was the former Chief Executive Officer of LIRL-Subic. Private respondent Picazo Buyco Tan Fider and Santos Law Office (Picazo Law Office) was the former counsel of petitioner LIRL in the Philippines.

The controversy in this case arose from the following facts:

Petitioner LIRL filed a Complaint for Annulment of Contract, Specific Performance with Damages and Application for Preliminary Injunction and Temporary Restraining Order before the Regional Trial Court (RTC) of Olongapo City, Branch 72, docketed as Civil Case No. 219-0-2004, against PAGCOR and SBMA for amending the 19 March 1993 Agreement, notwithstanding the total absence of any consideration supporting petitioner LIRL's additional obligations imposed under the amended Agreement.

On 28 December 2004, the trial court rendered a Decision[2] annulling the amendment to the 19 March 1993 Agreement executed between petitioner LIRL, PAGCOR and SBMA, as well as all the agreements that may have been entered into by PAGCOR pursuant thereto. The trial court also restrained PAGCOR from enforcing the amendment. It further enjoined PAGCOR from terminating the Agreement dated 19 March 1993 or from otherwise suspending, limiting, reducing or modifying petitioner LIRL's license to operate the Subic Bay Casinos and from entering into or continuing with any agreement with other entities for the operation of other casinos in the Subic Freeport Zone or from any such acts, which would in any way reduce or mitigate petitioner LIRL's right

under the aforesaid Agreement.[3]

Resultantly, PAGCOR filed its Notice of Appeal Ad Cautelam before the Special Sixth Division of the Court of Appeals, and the case was docketed as CA-G.R. CV No. 87281.

Meanwhile, in relation to petitioner LIRL Companies' Winding-Up No. 1139 of 2004 filed before the Hong Kong Court of First Instance (Hong Kong Court), the said foreign court issued Orders dated 9 June 2006 appointing Kelvin Edward Flynn (Flynn) and Cosimo Borrelli (Borrelli) as the joint and several liquidators of petitioner LIRL and granting them the power to carry on and manage the business of petitioner LIRL, including its business in Subic, Philippines. Pursuant to the said Orders, Flynn sent a letter[4] dated 10 July 2006 to private respondent Khoo Boo Boon informing him that he had already been terminated from his position as Chief Executive Officer of LIRL-Subic. On the same date, Flynn also sent a letter[5] to private respondent Picazo Law Office notifying it that its legal services as counsel of petitioner LIRL had also been terminated. Petitioner LIRL later engaged the legal services of petitioner Quasha Law Office as its new counsel to represent it in all proceedings in the Philippines.

Accordingly, petitioner Quasha Law Office filed its Entry of Appearance as counsel for petitioner LIRL in CA-G.R. CV No. 87281 pending before the Special Sixth Division of the Court of Appeals, through a Manifestation and Motion Ex Abudante Cautelam attaching thereto a copy of the letter dated 10 July 2006 terminating the services of Picazo Law Office and engaging the services of petitioner Quasha Law Office.

In a Resolution[6] dated 19 October 2007, the Special Sixth Division of the Court of Appeals refused to recognize the Entry of Appearance of petitioner Quasha Law Office as the new counsel of petitioner LIRL. The appellate court ratiocinated that a mere photocopy of a letter dated 10 July 2006, which was sent by one of the appointed liquidators of petitioner LIRL, informing private respondent Picazo Law Office that its legal services as counsel of LIRL had been terminated, had no probative value. Further the appointment of petitioner LIRL's joint and several liquidators were made pursuant to an Order of the Hong Kong Court. Because it was a foreign judgment, our courts could not take judicial notice thereof, as the final orders of foreign tribunals could only be enforced in Philippine courts after appropriate proceedings filed therein. Thus, the appellate court concluded that until the alleged Order of the Hong Kong Court had been validated and recognized in an appropriate proceeding before our local courts, private respondent Picazo Law Office was recognized as the only counsel entitled to represent and file pleadings for and on behalf of petitioner LIRL.[7]

Petitioners moved for the reconsideration of the aforesaid Resolution, but their Motion was denied in a Resolution[8] dated 9 January 2008.

Petitioners filed a Manifestation with the Special Sixth Division of the Court of Appeals that in a related case filed before the Special Tenth Division of the appellate court, docketed as CA-G.R. SP No. 96717, the said Division issued a Decision[9] dated 14 December 2007 recognizing petitioner Quasha Law Office as the duly authorized counsel of petitioner LIRL. In such Manifestation, petitioner Quasha Law Office attached a copy of the aforesaid 14 December 2007 Decision of the Special Tenth Division of the Court of Appeals.

On 22 January 2008, the Special Sixth Division of the Court of Appeals issued the assailed Resolution wherein it simply noted petitioners' aforesaid Manifestation. The appellate court then pointed out that decisions of a division of the Court of Appeals is not binding on the other divisions, for only decisions of the Supreme Court form part of the legal system from which all other inferior courts must take its bearing. The appellate court even directed the petitioners to elevate the matter to this Court to settle who between petitioner Quasha Law Office and private respondent Picazo Law Office can legally represent petitioner LIRL in the instant case.

Hence, this Petition.

The grounds relied upon by the petitioners for the allowance of this Petition are as follows:

I.

WHETHER OR NOT THE SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS COMMITTED PATENT GRAVE ABUSE OF DISCRETION, AMOUNTING TO EXCESS OF JURISDICTION, WHEN IT REFUSED TO GIVE DUE DEFERENCE TO A DECISION OF A CO-DIVISION OF THE SAME COURT.

i.

THE DECISION OF THE COURT OF APPEALS IN CA-G.R. SP NO. 96717 HAS BECOME FINAL AND EXECUTORY CONSIDERING THAT THE PETITION FOR REVIEW ON CERTIORARI FILED BY [PRIVATE RESPONDENT PICAZO LAW OFFICE] WAS DISMISSED OUTRIGHT BY THE SECOND DIVISION OF THIS HONORABLE COURT FOR BEING FILED OUT OF TIME.

II

IN A RELATED CASE WHERE THE ISSUE OF [PETITIONER QUASHA LAW OFFICE'S] AUTHORITY WAS RAISED, THE SEVENTH DIVISION OF THE COURT OF APPEALS SUSTAINED [PETITIONER QUASHA LAW OFFICE'S] STANDING AS THE DULY AUTHORIZED COUNSEL OF [PETITIONER] LIRL.

III

WHETHER OR NOT SECTION 48, RULE 39 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE ON RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENT APPLIES IN THIS CASE.

i

SECTION 48, RULE 39 PRESUPPOSES THAT A FOREIGN JUDGMENT, REPRESENTING A CLAIM, IS SOUGHT TO BE ENFORCED AGAINST A SPECIFIC THING OR AGAINST A PERSON.

ii

COROLLARY TO THE ABOVE, THE ORDERS OF THE HONG KONG COURT DO NOT ASSERT A CLAIM AGAINST LIRL-SUBIC BRANCH, THE APPOINTMENT OF LIQUIDATORS IS A PURELY INTERNAL MATTER BETWEEN A CORPORATION AND A MERE BRANCH THEREOF.

iii

[PETITIONER] LIRL-SUBIC BRANCH, WHICH [PRIVATE RESPONDENT] MR. KHOO BOO BOON PURPORTEDLY REPRESENTS, CANNOT ASSAIL THE ORDERS OF THE HONG KONG COURT BY INVOKING A RIGHT INDEPENDENT OF ITS MOTHER OFFICE.

IV

[PRIVATE RESPONDENT] PICAZO LAW OFFICE AS COUNSEL DERIVES ITS AUTHORITY FROM [PRIVATE RESPONDENT] MR. KHOO BOO BOON, THE FORMER CHIEF [EXECUTIVE] OFFICER OF [PETITIONER] LIRL.

i

[PRIVATE RESPONDENT] MR. KHOO BOO BOON IS NO LONGER THE CHIEF EXECUTIVE

OFFICER, HAVING RECOGNIZED THE APPOINTED LIQUIDATORS OF [PETITIONER] LIRL BY VOLUNTARILY YIELDING CONTROL AND MANAGEMENT OF LIRL-SUBIC BRANCH.

ii

COROLLARY TO THE ABOVE, THE AUTHORITY OF [PRIVATE RESPONDENT] PICAZO LAW [OFFICE] TO REPRESENT [PETITIONER] LIRL HAS BEEN TERMINATED BY THE APPOINTED LIQUIDATORS.[10]

On 16 June 2009, petitioner Quasha Law Office already filed its withdrawal of appearance as counsel for petitioner LIRL. Thus, the issue of petitioner Quasha Law Office's authority or standing as the duly authorized counsel of petitioner LIRL has already become moot and academic.

Even if we are to resolve the issues in the case at bar on their merits, we will nevertheless arrive at the same conclusion.

Basically, the aforesaid grounds are the very arguments of the petitioners. Thus, the issues in this case may be summed up into: (1) whether the Special Sixth Division of the Court of Appeals acted with grave abuse of discretion in not giving due deference to a Decision of its co-division, which similarly resolved the issue of proper legal representation of petitioner LIRL; and (2) whether the Special Sixth Division of the Court of Appeals gravely abused its discretion in considering that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL involved enforcement and recognition of a foreign judgment.

In CA-G.R. SP No. 96717 entitled "In the Matter of Corporate Rehabilitation of Legend International Resorts Limited," which was raffled to the Special Tenth Division of the Court of Appeals, petitioner LIRL's proper legal representation was raised as one of the issues. In the said case, petitioner Quasha Law Office's authority to represent petitioner LIRL was questioned by private respondent Picazo Law Office, petitioner LIRL's former counsel whose legal services had been terminated by petitioner LIRL's appointed liquidators. Private respondent Picazo Law Office argued that the Orders of the Hong Kong Court from which the authority of the liquidators, who engaged the legal services of petitioner Quasha Law Office to be the counsel of petitioner LIRL, was derived, could not be enforced in this jurisdiction, since these foreign orders have not been recognized by Philippine courts.

On 14 December 2007, the said division of the appellate court rendered its Decision resolving the issue of petitioner LIRL's proper legal representation in favor of petitioner Quasha Law Office. The said division of the appellate court ratiocinated that private respondent Picazo Law Office ceased to be the counsel of petitioner LIRL when it received the 10 July 2006 letter of one of the appointed liquidators of LIRL, notifying it that its legal services had been terminated and that petitioner Quasha Law Office's legal services were engaged in its stead. Moreover, there is actually no foreign judgment or order that is being enforced in this jurisdiction because what is involved is the prerogative of petitioner LIRL, through its duly authorized representative, which in this case is its appointed liquidators, to terminate and engage the services of a counsel, which is an internal affair that requires no prior recognition in a separate action. The right of petitioner LIRL to terminate the authority of its counsel includes the right to cause a change or substitution of counsel at any stage of the proceedings.

The said Decision of the Special Tenth Division of the Court of Appeals was immediately brought by the petitioners to the attention of the Special Sixth Division of the said appellate court where CA-G.R. CV No. 87281 (the subject of this Petition) was pending. However, the Special Sixth Division of the Court of Appeals merely noted the same and still refused to recognize petitioner Quasha Law Office's entry of appearance. It even advised petitioner Quasha Law Office to elevate to this Court the issue of who between petitioner Quasha Law Office and private respondent Picazo Law Office can legally represent petitioner LIRL in the instant case.

Thus, petitioners ascribe grave abuse of discretion on the part of the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division.

Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough; it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[11]

In the case at bar, this Court holds that there was no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division. As correctly pointed out by the Special Sixth Division of the Court of Appeals, the decision of its co-division is not binding on its other division. Further, it must be stressed that judicial decisions that form part of our legal system are only the decisions of the Supreme Court.[12] Moreover, at the time petitioners made the aforesaid Manifestation, the Decision dated 14 December 2007 in CA-G.R. SP No. 96717 of the Special Tenth Division was still on appeal before this Court.

Therefore, the Special Sixth Division of the Court of Appeals cannot be faulted for not giving due deference to the said Decision of its co-division, and its actuation cannot be considered grave abuse of discretion amounting to lack or excess of its jurisdiction.

However, as regards the second issue of whether the Special Sixth Division of the Court of Appeals gravely abused its discretion in considering that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL involved enforcement and recognition of a foreign judgment, we hold that the same is already barred by the principle of *res judicata*--conclusiveness of judgment.

The doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept - conclusiveness of judgment - states that a fact or question, which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required, but merely identity of issues.[13]

Legarda v. Savellano[14] elucidates the rationale for respecting the conclusiveness of judgment, thus -

As we have repeatedly enunciated, public policy and sound practice enshrine the fundamental principle upon which the doctrine of *res judicata* rests that parties ought not to be permitted to litigate the same issues more than once. It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept

in the organization of every jural system. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.

It must be stressed that the Decision dated 14 December 2007 in CA-G.R. SP No. 96717 of the Special Tenth Division of the Court of Appeals was appealed to this Court via a Petition for Review on Certiorari under Rule 45 and was docketed as G.R. No. 184463. The said Decision resolved the issue of petitioner LIRL's proper legal representation in favor of petitioner Quasha Law Office. It also ruled that there was no enforcement of a foreign judgment when one of the appointed liquidators terminated the legal services of private respondent Picazo Law Office and engaged in its stead petitioner Quasha Law Office to be the duly authorized counsel of petitioner LIRL. What is involved is the prerogative of petitioner LIRL, through its duly authorized representative -- which, in this case, is its appointed liquidators -- to terminate and engage the services of a counsel, which is an internal affair that requires no prior recognition in a separate action.[15] On 20 October 2008, this Court issued a Resolution denying the said Petition for Review for being filed out of time and for failure to sufficiently show any reversible error. Thus, the 14 December 2007 Decision of the Special Tenth Division of the Court of Appeals in CA-G.R. SP No. 96717 became final and executory.

In a related case filed before the Seventh Division of the Court of Appeals docketed as CA-G.R. SP No. 98893,[16] petitioner LIRL's proper legal representation and Quasha Law Office's entry of appearance as tantamount to an enforcement of a foreign judgment, were also raised. On 26 February 2009, the said division of the Court of Appeals rendered a Decision stating that no enforcement of a foreign judgment was involved in the said case. It further decreed that petitioner LIRL's appointed liquidators had been duly authorized to manage petitioner LIRL. The authority of the said liquidators extended to all of petitioner LIRL's branches, wherever situated, the branch in the Philippines included. Pursuant to 9 June 2006 Orders of the Hong Kong Court, the appointed liquidators were given the power to, among other powers, "bring or defend any action or other legal proceeding in the name and on behalf of the company or themselves in Hong Kong, the Republic of the Philippines or attorneys in the Republic of the Philippines or elsewhere and appoint a solicitor in Hong Kong and lawyers or assist the Liquidators in the performance of their duties generally." No cogent reason existed to prevent petitioner LIRL from exercising its prerogative in terminating the services of one counsel and in engaging the services of another. Such act was purely an internal affair of the corporation, which did not require prior recognition in a separate action.[17]

The aforesaid Decision of the Seventh Division of the Court of Appeals was appealed to this Court via a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, docketed as G.R. No. 189265. On 12 October 2009, this Court rendered a Resolution denying the Petition for late filing, for failure to serve a copy of the Petition to the Court of Appeals, for lack of the required number of plain copies of the Petition, and for failure to sufficiently show any reversible error. Thus, the Decision dated 26 February 2009 of the Seventh Division of the Court of Appeals in CA-G.R. SP No. 98893 became final and executory.

It has already been settled in the aforesaid two Decisions that the Orders of the Hong Kong Court appointing liquidators for petitioner LIRL did not involve the enforcement of a foreign judgment. The act of terminating the legal services of private respondent Picazo Law Office and engaging in its place petitioner Quasha Law Office was a mere exercise of petitioner LIRL's prerogative, through its appointed liquidators, which was an internal affair that required no prior recognition in a separate action. Therefore, this Court can no longer pass upon the said issue.

WHEREFORE, premises considered, the instant Petition for Certiorari, is hereby DISMISSED. No costs.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring; rollo, pp. 53-54.

[2] Penned by Judge Eliodoro G. Ubiadas, id. at 93-101.

[3] Id. at 101.

[4] Id. at 115-116.

[5] Id. at 117.

[6] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring. Rollo, pp. 119-120.

[7] Id.

[8] CA rollo, pp. 346-348.

[9] Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta, concurring; rollo, pp. 135-147.

[10] Id. at 19-21.

[11] Suliguin v. The Commission on Elections, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.

[12] Government Service Insurance System v. Cadiz, 453 Phil. 384, 391 (2003).

[13] Heirs of Clemencia Parasac v. Republic of the Philippines, G.R. No. 159910, 4 May 2006, 489 SCRA 498, 517-518.

[14] G.R. No. L-38892, 26 February 1988, 158 SCRA 194, 200.

[15] Rollo, p. 141.

[16] This case stemmed from a Complaint for Breach of Agreement and Damages filed by PAGCOR against LIRL docketed as Civil Case No. 04-109372.

[17] Rollo, pp. 299-300.

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