

**UNITED STATES OF AMERICA AND MAXINE BRADFORD,
PETITIONERS, VS. HON. LUIS R. REYES, AS PRE-SIDING JUDGE OF
BRANCH 22, REGIONAL TRIAL COURT OF CAVITE, AND NELIA T.
MONTOKA, RESPON...**

G.R. No. 79253. March 01, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for certiorari and prohibition under Rule 65 of the Rules of Court. Petitioners would have Us annul and set aside, for having been issued with grave abuse of discretion amounting to lack of jurisdiction, the Resolution of 17 July 1987 of Branch 22 of the Regional Trial Court (RTC) of Cavite in Civil Case No. 224-87. The said resolution denied, for lack of merit, petitioners' motion to dismiss the said case and granted the private respondent's motion for the issuance of a writ of preliminary attachment. Likewise sought to be set aside is the writ of attachment subsequently issued by the RTC on 28 July 1987.

The doctrine of state immunity is at the core of this controversy.

The pleadings disclose the following material operative facts:

Private respondent, hereinafter referred to as Montoya, is an American citizen who, at the time material to this case, was employed as an identification (I.D.) checker at the U.S. Navy Exchange (NEX) at the Joint United States Military Assistance Group (JUSMAG) headquarters in Quezon City. She is married to one Edgardo H. Montoya, a Filipino-American serviceman employed by the U.S. Navy and stationed in San Francisco, California. Petitioner Maxine Bradford, hereinafter referred to as Bradford, is likewise an American citizen who was the activity exchange manager at the said JUSMAG headquarters.

As a consequence of an incident which occurred on 22 January 1987 whereby her body and belongings were searched after she had bought some items from the retail store of the NEX JUSMAG, where she had purchasing privileges, and while she was already at the parking area, Montoya filed on 7 May 1987 a complaint[1] with the Regional Trial Court of her place of residence -- Cavite -- -against Bradford for damages due to the oppressive and discriminatory acts committed by the latter in excess of her authority as store manager of the NEX JUSMAG. The complaint, docketed as Civil Case No. 224-87 and subsequently raffled off to Branch 22 at Imus, Cavite, alleges the following material operative facts:

x x x

"3. That on January 22, 1987, after working as the duty ID checker from 7:45 to 11:45 A.M., plaintiff went shopping and left the store at 12:00 noon of that day;

4. That on the way to her car while already outside the store, Mrs. Yong Kennedy, also an ID checker, upon the instruction of the store manager, Ms. Maxine Bradford, approached plaintiff and informed her that she needed to search her bags;

5. That plaintiff went to defendant, who was then outside the store talking to some men, to protest the search but she was informed by the defendant that the search is to be made on all Jusmag employees that day;
6. That the search was thereafter made on the person, car and bags of the plaintiff by Mrs. Yong Kennedy in the presence of the defendant and numerous curious onlookers;
7. That having found nothing irregular on her person and belongings, plaintiff was allowed to leave the premises;
8. That feeling aggrieved, plaintiff checked the records and discovered that she was the only one whose person and belonging was (sic) searched that day contrary to defendant's allegation as set forth in par. 5 hereof and as evidenced by the memorandum dated January 30, 1987 made by other Filipino Jusmag employees, a photocopy of which is hereto attached as ANNEX "A" and made integral (sic) part hereof;
9. That moreover, a check with Navy Exchange Security Manager, R.L. Roynon on January 27, 1987 was made and she was informed by Mr. Roynon that it is a matter of policy that customers and employees of NEX Jusmag are not searched outside the store unless there is a very strong evidence of a wrongdoing;
10. That plaintiff knows of no circumstances sufficient to trigger suspicion of a wrongdoing on her part but on the other hand, is aware of the propensity of defendant to lay suspicion on Filipinos for theft and/or shoplifting;
11. That plaintiff formally protested the illegal search on February 14, 1987 in a letter addressed to Mr. R.L. Roynon, a photocopy of which is hereto attached as ANNEX "B" and made integral (sic) part hereof; but no action was undertaken by the said officer;
12. That the illegal search on the person and belongings of the plaintiff in front of many people has subjected the plaintiff to speculations of theft, shoplifting and such other wrongdoings and has exposed her to contempt and ridicule which has caused her undue embarrassment and indignity;
13. That since the act could not have been motivated by other (sic) reason than racial discrimination in our own land, the act constitute (sic) a blow to our national pride and dignity which has caused the plaintiff a feeling of anger for which she suffers sleepless nights and wounded feelings;
14. That considering the above, plaintiff is entitled to be compensated by way of moral damages in the amount of P500,000.00;
15. That to serve as a deterrent to those inclined to follow the oppressive act of the defendant, exemplary damages in the amount of P100,000.00 should also be awarded."[2]

She then prayed for judgment ordering Bradford to pay her P500,000.00 as moral damages, P100,000.00 as exemplary damages and reasonable attorney's fees plus the costs of the suit.[3]

Summons and a copy of the complaint were served on Bradford on 13 May 1987. In response thereto, she filed two (2) motions for extension of time to file her Answer which were both granted by the trial court. The first was filed through Atty. Miguel Famularcano, Jr., who asked for a 20-day extension from 28 May 1987. The second, filed through the law firm of Luna, Sison and Manas, sought a 15-day extension from 17 June 1987.[4] Thus, Bradford had up to 1 July 1987 to file her Answer. Instead of doing so, however, she, together with the government of the United States of America (hereinafter referred to as the public petitioner), filed on 25 June 1987, also through the law firm of Luna, Sison and Manas, a Motion to Dismiss[5] based on the following grounds:

- "1) (This) action is in effect a suit against the United States of America, a foreign sovereign immune from suit without its consent for the cause of action pleaded in the complaint; and

2) Defendant, Maxine Bradford, as manager of the US Navy Exchange Branch at JUSMAG, Quezon City, is immune from suit for act(s) done by her in the performance of her official functions under the Philippines-United States Military Assistance Agreement of 1947 and Military Bases Agreement of 1947, as amended."[6]

In support of the motion, the petitioners claimed that JUSMAG, composed of an Army, Navy and Air Group, had been established under the Philippine-United States Military Assistance Agreement entered into on 21 March 1947 to implement the United States' program of rendering military assistance to the Philippines. Its headquarters in Quezon City is considered a temporary installation under the provisions of Article XXI of the Military Bases Agreement of 1947. Thereunder, "it is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use and operation and defense thereof or appropriate for the control thereof." The 1979 amendment of the Military Bases Agreement made it clear that the United States shall have "the use of certain facilities and areas within the bases and shall have effective command and control over such facilities and over United States personnel, employees, equipment and material." JUSMAG maintains, at its Quezon City headquarters, a Navy Exchange referred to as the NEX-JUSMAG. Checking of purchases at the NEX is a routine procedure observed at base retail outlets to protect and safeguard merchandise, cash and equipment pursuant to paragraphs 2 and 4(b) of NAVRESALEACT SUBIC INST. 5500.1.[7] Thus, Bradford's order to have purchases of all employees checked on 22 January 1987 was made in the exercise of her duties as Manager of the NEX-JUSMAG.

They further claimed that the Navy Exchange (NAVEX), an instrumentality of the U.S. Government, is considered essential for the performance of governmental functions. Its mission is to provide a convenient and reliable source, at the lowest practicable cost, of articles and services required for the well-being of Navy personnel, and of funds to be used for the latter's welfare and recreation. Montoya's complaint, relating as it does to the mission, functions and responsibilities of a unit of the United States Navy, cannot then be allowed. To do so would constitute a violation of the military bases agreement. Moreover, the rights, powers and authority granted by the Philippine government to the United States within the U.S. installations would be illusory and academic unless the latter has effective command and control over such facilities and over American personnel, employees, equipment and material. Such rights, power and authority within the bases can only be exercised by the United States through the officers and officials of its armed forces, such as Bradford. *Baer vs. Tizon*[8] and *United States of America vs. Ruiz*[9] were invoked to support these claims.

On 6 July 1987, Montoya filed a motion for preliminary attachment[10] on the ground that Bradford was about to depart from the country and was in the process of removing and/or disposing of her properties with intent to defraud her creditors. On 14 July 1987, Montoya filed her opposition to the motion to dismiss[11] alleging therein that the grounds proffered in the latter are bereft of merit because (a) Bradford, in ordering the search upon her person and belongings outside the NEX JUSMAG store in the presence of onlookers, had committed an improper, unlawful and highly discriminatory act against a Filipino employee and had exceeded the scope of her authority; (b) having exceeded her authority, Bradford cannot rely on the sovereign immunity of the public petitioner because her liability is personal; (c) Philippine courts are vested with jurisdiction over the case because Bradford is a civilian employee who had committed the challenged act outside the U.S. Military Bases; such act is not one of those exempted from the jurisdiction of Philippine courts; and (d) Philippine courts can inquire into the factual circumstances of the case to determine whether or not Bradford had acted within or outside the scope of her authority.

On 16 July 1987, public petitioner and Bradford filed a reply to Montoya's opposition and an opposition to the motion for preliminary attachment.[12]

On 17 July 1987,[13] the trial court[14] resolved both the motion to dismiss and the motion for preliminary attachment in this wise:

"On the motion to dismiss, the grounds and arguments interposed for the dismissal of this case are determined to be not indubitable. Hence, the motion is denied for lack of merit.

The motion for preliminary attachment is granted in the interest of justice, upon the plaintiff's filing of a bond in the sum of P50,000.00."

Upon Montoya's filing of the required bond, the trial court issued on 28 July 1987 an Order[15] decreeing the issuance of a writ of attachment and directing the sheriff to serve the writ immediately at the expense of the private respondent. The writ of attachment was issued on that same date.[16]

Instead of filing a motion to reconsider the last two (2) orders, or an answer -- insofar as Bradford is concerned -- both the latter and the public petitioner filed on 6 August 1987 the instant petition to annul and set aside the above Resolution of 17 July 1987 and the writ of attachment issued pursuant thereto. As grounds therefor, they allege that:

"10. The respondent judge committed a grave abuse of discretion amounting to lack of jurisdiction in denying the motion to dismiss the complaint in Civil Case No. 224-87 'for lack of merit.' For the action was in effect a suit against the United States of America, a foreign sovereign immune from suit without its consent for the cause of action pleaded in the complaint, while its co-petitioner was immune from suit for act(s) done by her in the performance of her official functions as manager of the US Navy Exchange Branch at the headquarters of JUSMAG, under the Philippines-United States Military Assistance Agreement of 1947 and Military Bases Agreement of 1947, as amended." [17]

On 5 August 1987, the trial court set Civil Case No. 224-87 for pre-trial and trial on 27 August 1987 at 9:30 a.m.[18]

On 12 August 1987, this Court resolved to require the respondents to comment on the petition.[19]

On 19 August 1987, petitioners filed with the trial court a Motion to Suspend Proceedings[20] which the latter denied in its Order of 21 August 1987.[21]

In the meantime, however, for failure to file an answer, Bradford was declared in default in Civil Case No. 224-87 and Montoya was allowed to present her evidence ex-parte.[22] She thus took the witness stand and presented Mrs. Nam Thi Moore and Mrs. Missy Yu as her witnesses.

On 10 September 1987, the trial court rendered its decision[23] in Civil Case No. 224-87, the dispositive portion of which reads:

"Prescinding from the foregoing, it is hereby determined that the unreasonable search on the plaintiff's person and bag caused (sic) done recklessly and oppressively by the defendant, violated, impaired and undermined the plaintiff's liberty guaranteed by the Constitution, entitling her to moral and exemplary damages against the defendant. The search has unduly subjected the plaintiff to intense humiliation and indignities and had consequently ridiculed and embarrassed publicly said plaintiff so gravely and immeasurably.

WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendant Maxine Bradford assessing the latter to pay unto the former the sums of P300,000.00 for moral damages, P100,000.00 for exemplary damages and P50,000.00 for actual expenses and attorney's fees.

No costs.

SO ORDERED." [24]

Bradford received a copy of the decision on 21 September 1987. On that same date, she and the public petitioner filed with this Court a Petition for Restraining Order^[25] which sought to have the trial court's decision vacated and to prevent the execution of the same; it was also prayed that the trial court be enjoined from continuing with Civil Case No. 224-87. We noted this pleading in the Resolution of 23 September 1987.^[26]

In the meantime, since no motion for reconsideration or appeal had been interposed by Bradford challenging the 10 September 1987 Decision which she had received on 21 September 1987, respondent Judge issued on 14 October 1987 an order directing that an entry of final judgment be made. A copy thereof was received by Bradford on 21 October 1987.^[27]

Also on 14 October 1987, Montoya filed her Comment with Opposition to the Petition for Restraining Order.^[28] Respondent Judge had earlier filed his own Comment to the petition on 14 September 1987.^[29]

On 27 October 1987, Montoya filed before the trial court a motion for the execution of the Decision of 10 September 1987 which petitioners opposed on the ground that although this Court had not yet issued in this case a temporary restraining order, it had nevertheless resolved to require the respondents to comment on the petition. It was further averred that execution thereof would cause Bradford grave injury; moreover, enforcement of a writ of execution may lead to regrettable incidents and unnecessarily complicate the situation in view of the public petitioner's position on the issue of the immunity of its employees. In its Resolution of 11 November 1987, the trial court directed the issuance of a writ of execution.^[30]

Consequently, the petitioners filed on 4 December 1987, a Manifestation and Motion reciting the foregoing incidents obtaining before the trial court and praying that their petition for a restraining order be resolved.^[31]

On 7 December 1987, this Court issued a Temporary Restraining Order "ENJOINING the respondents and the Provincial Sheriff of Pasig, Metro Manila, from enforcing the Decision dated September 10, 1987, and the Writs of Attachment and Execution issued in Civil Case No. 224-87."^[32]

On 28 November 1988, after the private respondent filed a Rejoinder to the Consolidated Reply to the Comments filed by the petitioners, this Court gave due course to the petition and required the parties to submit their respective memoranda. Petitioners filed their Memorandum on 8 February 1989^[33] while private respondent filed her Memorandum on 14 November 1990.^[34]

The kernel issue presented in this case is whether or not the trial court committed grave abuse of discretion in denying the motion to dismiss based on the following grounds: (a) the complaint in Civil Case No. 224-87 is in effect a suit against the public petitioner, a foreign sovereign immune from suit which has not given consent to and such suit and (b) Bradford is immune from suit for acts done by her in the performance of her official functions as manager of the U.S. Navy Exchange of JUSMAG pursuant to the Philippines-United States Military Assistance Agreement of 1947 and the Military Bases Agreement of 1947, as amended.

Aside from maintaining the affirmative view, the public petitioner and Bradford even go further by asserting that even if the latter's act were ultra vires, she would still be immune from suit for the rule that public officers or employees may be sued in their personal capacity for ultra vires and tortious acts is "domestic law" and not applicable in International Law. It is claimed that the application of the immunity doctrine does not turn upon the lawlessness of the act or omission attributable to the foreign national for if this were the case, the concept of immunity would be meaningless as inquiry into the lawlessness or illegality of the act or omission would first have to be made before considering the question of immunity; in other words, immunity will lie only if such act or omission is found to be lawful.

On the other hand, Montoya submits that Bradford is not covered by the protective mantle of the doctrine of

sovereign immunity from suit as the latter is a mere civilian employee of JUSMAG performing non-governmental and proprietary functions. And even assuming arguendo that Bradford is performing governmental functions, she would still remain outside the coverage of the doctrine of state immunity since the act complained of is ultra vires or outside the scope of her authority. What is being questioned is not the fact of search alone, but also the manner in which the same was conducted as well as the fact of discrimination against Filipino employees. Bradford's authority to order a search, it is asserted, should have been exercised with restraint and should have been in accordance with the guidelines and procedures laid down by the cited "NAVRESALEACT, Subic Inst." Moreover, ultra vires acts of a public officer or employee, especially tortious and criminal acts, are his private acts and may not be considered as acts of the State. Such officer or employee alone is answerable for any liability arising therefrom and may thus be proceeded against in his personal capacity.

Montoya further argues that both the acts and person of Bradford are not exempt from the Philippine courts' jurisdiction because (a) the search was conducted in a parking lot at Scout Borromeo, Quezon City, outside the JUSMAG store and, therefore, outside the territorial control of the U.S. Military Bases in the Philippines; (b) Bradford does not possess diplomatic immunity under Article 16(b) of the 1953 Military Assistance Agreement creating the JUSMAG which provides that only the Chief of the Military Advisory Group and not more than six (6) other senior members thereof designated by him will be accorded diplomatic immunity;^[35] and (c) the acts complained of do not fall under those offenses where the U.S. has been given the right to exercise its jurisdiction (per Article 13 of the 1947 Military Bases Agreement, as amended by the Mendez-Blair Notes of 10 August 1965).^[36]

Finally, Montoya maintains that at the very least, Philippine courts may inquire into the factual circumstances of the case to determine whether petitioner Bradford is immune from suit or exempt from Philippine jurisdiction. To rule otherwise would render the Philippine courts powerless as they may be easily divested of their jurisdiction upon the mere invocation of this principle of immunity from suit.

A careful review of the records of this case and a judicious scrutiny of the arguments of both parties yield nothing but the weakness of the petitioners' stand. While this can be easily demonstrated, We shall first consider some procedural matters.

Despite the fact that public petitioner was not impleaded as a defendant in Civil Case No. 224-87, it nevertheless joined Bradford in the motion to dismiss -- on the theory that the suit was in effect against it -- without, however, first having obtained leave of court to intervene therein. This was a procedural lapse, if not a downright improper legal tack. Since it was not impleaded as an original party, the public petitioner could, on its own volition, join in the case only by intervening therein; such intervention, the grant of which is discretionary upon the court,^[37] may be allowed only upon a prior motion for leave with notice to all the parties in the action. Of course, Montoya could have also impleaded the public petitioner as an additional defendant by amending the complaint if she so believed that the latter is an indispensable or necessary party.

Since the trial court entertained the motion to dismiss and the subsequent pleadings filed by the public petitioner and Bradford, it may be deemed to have allowed the public petitioner to intervene. Corollarily, because of its voluntary appearance, the public petitioner must be deemed to have submitted itself to the jurisdiction of the trial court.

Moreover, the said motion does not specify any of the grounds for a motion to dismiss enumerated in Section 1, Rule 16 of the Rules of Court. It merely recites state immunity on the part of the public petitioner and immunity on the part of Bradford for the reason that the act imputed to her was done in the performance of her official functions. The upshot of this contention is actually lack of cause of action -- a specific ground for dismissal under

the aforesaid Rule -- because assuming *arguendo* that Montoya's rights had been violated by the public petitioner and Bradford, resulting in damage or injury to the former, both would not be liable therefor, and no action may be maintained thereon, because of the principle of state immunity.

The test of the sufficiency of the facts to constitute a cause of action is whether or not, admitting the facts alleged in the complaint, the court could render a valid judgment upon the same, in accordance with the prayer in the complaint.[38]

A motion to dismiss on the ground of failure to state a cause of action hypothetically admits the truth of the allegations in the complaint.

In deciding a motion to dismiss, a court may grant, deny, allow amendments to the pleadings or defer the hearing and determination of the same if the ground alleged does not appear to be indubitable.[39] In the instant case, while the trial court concluded that "the grounds and arguments interposed for the dismissal" are not "indubitable," it denied the motion for lack of merit. What the trial court should have done was to defer the resolution on the motion instead of denying it for lack of merit.

In any event, whatever may or should have been done, the public petitioner and Bradford were not expected to accept the verdict, making their recourse to this Court via the instant petition inevitable. Thus, whether the trial court should have deferred resolution on or denied outright the motion to dismiss for lack of merit is no longer pertinent or relevant.

The complaint in Civil Case No. 224-87 is for damages arising from what Montoya describes as an "illegal search" on her "person and belongings" conducted outside the JUSMAG premises in front of many people and upon the orders of Bradford, who has the propensity for laying suspicion on Filipinos for theft or shoplifting. It is averred that the said search was directed only against Montoya.

Howsoever viewed, it is beyond doubt that Montoya's cause of action is premised on the theory that the acts complained of were committed by Bradford not only outside the scope of her authority -- or more specifically, in her private capacity -- but also outside the territory where she exercises such authority, that is, outside the NEX-JUSMAG -- particularly, at the parking area which has not been shown to form part of the facility of which she was the manager. By their motion to dismiss, public petitioner and Bradford are deemed to have hypothetically admitted the truth of the allegations in the complaint which support this theory.

The doctrine of state immunity and the exceptions thereto are summarized in *Shauf vs. Court of Appeals*,[40] thus:

"I. The rule that a state may not be sued without its consent, now expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2. This latter provision merely reiterates a policy earlier embodied in the 1935 and 1973 Constitutions and also intended to manifest our resolve to abide by the rules of the international community.[41]

While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded.[42] It must be noted, however, that the rule is not so all-encompassing as to be applicable under all circumstances.

It is a different matter where the public official is made to account in his capacity as such for acts contrary to

law and injurious to the rights of plaintiff. As was clearly set forth by Justice Zaldivar in *Director of the Bureau of Telecommunications, et al. vs. Aligaen, etc., et al.*[43] 'Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority which he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent.'[44] The rationale for this ruling is that the doctrine of state immunity cannot be used as an instrument for perpetrating an injustice.[45]

In the case of *Baer, etc. vs. Tizon, etc., et al.*,[46] it was ruled that:

'There should be no misinterpretation of the scope of the decision reached by this Court. Petitioner, as the Commander of the United States Naval Base in Olongapo, does not possess diplomatic immunity. He may therefore be proceeded against in his personal capacity, or when the action taken by him cannot be imputed to the

government which he represents.'

Also, in *Animos, et al. vs. Philippine Veterans Affairs Office, et al.*,[47] we held that:

'x x x it is equally well-settled that where a litigation may have adverse consequences on the public treasury, whether in the disbursements of funds or loss of property, the public official proceeded against not being liable in his personal capacity, then the doctrine of non-suability may appropriately be invoked. It has no application, however, where the suit against such a functionary had to be instituted because of his failure to comply with the duty imposed by statute appropriating public funds for the benefit of plaintiff or petitioner. x x x.'

The aforecited authorities are clear on the matter. They state that the doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction.[48]

The agents and officials of the United States armed forces stationed in Clark Air Base are no exception to this rule. In the case of *United States of et al. vs. Guinto, etc., et al.*, ante,[49] we declared:

It bears stressing at this point that the above observations do not confer on the United States of America blanket immunity for all acts done by it or its agents in the Philippines. Neither may the other petitioners claim that they are also insulated from suit in this country merely because they have acted as agents of the United States in the discharge of their official functions."

Since it is apparent from the complaint that Bradford was sued in her private or personal capacity for acts allegedly done beyond the scope and even beyond her place of official functions, said complaint is not then vulnerable to a motion to dismiss based on the grounds relied upon by the petitioners because as a consequence of the hypothetical admission of the truth of the allegations therein, the case falls within the exception to the doctrine of state immunity.

In the recent cases of *Williams vs. Rarang*[50] and *Minucher vs. Court of Appeals*,[51] this Court reiterated this exception. In the former, this Court observed:

"There is no question, therefore, that the two (2) petitioners actively participated in screening the features and articles in the POD as part of their official functions. Under the rule that U.S. officials in the performance of their official functions are immune from suit, then it should follow that the petitioners may not be held liable for the questioned publication.

It is to be noted, however, that the petitioners were sued in their personal capacities for their alleged tortious acts in publishing a libelous article.

The question, therefore, arises -- are American naval officers who commit a crime or tortious act while discharging official functions still covered by the principle of state immunity from suit? Pursuing the question further, does the grant of rights, power, and authority to the United States under the RP-US Bases Treaty cover immunity of its officers from crimes and torts? Our answer is No."

In the latter, even on the claim of diplomatic immunity -- which Bradford does not in fact pretend to have in the instant case as she is not among those granted diplomatic immunity under Article 16(b) of the 1953 Military Assistance Agreement creating the JUSMAG[52] -- this Court ruled:

"Even Article 31 of the Vienna Convention on Diplomatic Relations admits of exceptions. It reads:

'1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction except in the case of:

x x x

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.'" (Emphasis supplied).

There can be no doubt that on the basis of the allegations in the complaint, Montoya has a sufficient and viable cause of action. Bradford's purported non-suability on the ground of state immunity is then a defense which may be pleaded in the answer and proven at the trial.

Since Bradford did not file her Answer within the reglementary period, the trial court correctly declared her in default upon motion of the private respondent. The judgment then rendered against her on 10 September 1987 after the ex-parte reception of the evidence for the private respondent and before this Court issued the Temporary Restraining Order on 7 December 1987 cannot be impugned. The filing of the instant petition and the knowledge thereof by the trial court did not prevent the latter from proceeding with Civil Case No. 224-87. "It is elementary that the mere pendency of a special civil action for certiorari, commenced in relation to a case pending before a lower Court, does not interrupt the course of the latter when there is no writ of injunction restraining it." [53]

WHEREFORE, the instant petition is DENIED for lack of merit. The Temporary Restraining Order of 7 December 1987 is hereby LIFTED.

Costs against petitioner Bradford.
SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

Gutierrez, Jr., J., on terminal leave.

Quiason, J., no part.

[1] Annex "A" of Petition; Rollo, 26-29.

[2] Rollo, 26-28.

[3] Id., 28.

[4] Rollo, 118.

[5] Annex "D" of Petition; Id., 39-51.

[6] Id., 39.

[7] Annex "2" of the motion.

[8] 57 SCRA 1 [1974].

[9] 136 SCRA 487 [1985].

[10] Annex "C-1" of Petition; Rollo, 34-38.

[11] Annex "E", Id.; Id., 67-77.

[12] Annex "F" of Petition; Rollo, 82.

[13] Annex "A", Id.; Id., 24.

[14] Per Judge Luis R. Reyes.

[15] Annex "G" of Petition, op. cit.; Rollo, op. cit., 88.

[16] Annex "B", Id.; Id., 25.

[17] Rollo, 6.

[18] Id., 101.

[19] Id., 89.

[20] Annex "B" of Petition for Restraining Order; Id., 101-104.

[21] Annex "C", Id.; Id., 105.

[22] Rollo, 110.

[23] Annex "A" of Petition for Restraining Order; Id., 97-99; Annex "A" of Supplement to Petition for Restraining Order; Id., 110-112.

[24] Id., 99.

[25] Rollo, 92-95.

[26] Id., 106.

[27] Id., 139.

[28] Id., 117-136.

[29] Id., 115.

[30] Rollo, 146-147.

[31] Id., 142-149.

[32] Id., 152-154.

[33] Id., 204-232.

[34] Id., 249-267.

[35] Rollo, 265. A member of the Military Advisory Group is defined in the Agreement as a member of the U.S. Military on active duty.

[36] Rollo, 265-266.

[37] Section 2, Rule 12, Rules of Court.

[38] Paminsan vs. Costales, 28 Phil. 487 [1914]; Adamos vs. J.M. Tuason & Co., Inc., 25 SCRA 529 [1968], citing Garcon vs. Redemptorist Fathers, 123 Phil. 1192 [1966]; Republic Bank vs. Cuaderno, 125 Phil. 1076 [1967]; and Virata vs. Sandiganbayan, 202 SCRA 680 [1991].

[39] Mendoza vs. Court of Appeals, 201 SCRA 343 [1991].

[40] 191 SCRA 713, 726-728 [1990].

[41] Citing United States of America vs. Guinto, 182 SCRA 644 [1990].

[42] Id.

[43] 33 SCRA 368 [1970].

[44] Citing Ministerio vs. CFI of Cebu, 40 SCRA 464 [1971].

[45] Citing Sanders vs. Veridiano, 162 SCRA 88 [1988].

[46] 57 SCRA 1 [1974].

[47] 174 SCRA 214 [1989].

[48] Citing Dumlao vs. Court of Appeals, 114 SCRA 247 [1982].

[49] Supra.

[50] G.R. No. 74135, 28 May 1992.

[51] G.R. No. 97765, 24 September 1992.

[52] Rollo, 265.

[53] Peza vs. Alikpala, 160 SCRA 31 [1988].

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