

KOREA EXCHANGE BANK, PETITIONER, VS. HON. ROGELIO C. GONZALES, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 50 OF THE REGIONAL TRIAL COURT OF PAMPANGA, PHI-HAN DEVELOPMENT, INC....

G.R. NOS. 142286-87. April 15, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

For review in these consolidated petitions is the Joint Decision[1] of the Court of Appeals (CA) in CA-G.R. SP Nos. 46194 and 46436, as well as its Order[2] dated February 28, 2000 denying the motion for reconsideration thereof.

The Antecedents

The Phi-Han Development, Inc. (PHDI) is a domestic corporation organized primarily for the purpose of engaging in the real estate business.[3] Teodoro de Mesa and his siblings, namely, Antusa de Mesa Magno and Lourdes de Mesa Mendoza, were among its original incorporators and members of its board of directors. Jae Il Aum, a Korean national, was the president of the corporation, while Lourdes Mendoza served as its corporate secretary and treasurer.[4]

On September 5, 1996, or barely a year after its operations began, the PHDI, together with Teodoro de Mesa, Antusa Magno and Lourdes Mendoza, filed a complaint in the Regional Trial Court (RTC) of Guagua, Pampanga, against Jae Il Aum and the Korea Exchange Bank (KEB), a foreign banking corporation licensed to do business in the Philippines.

The plaintiffs alleged therein that through the machination of Jae Il Aum, KEB granted a loan to the PHDI in the amount of US\$500,000.00, with the condition that the said loan be deposited with the KEB in the name of PHDI. Thereafter, the plaintiffs executed a real estate mortgage over their properties located in Lubao, Pampanga. As security for the said loan, PHDI deposited the said amount under its name with the KEB in two accounts, namely, Dollar Account No. 5311000486 and Peso Account No. 5311000487. Per Resolution No. 12-10-95 of the PHDI Board of Directors, the only authorized signatories to all applications for withdrawals from the said accounts were Jae Il Aum and Lourdes Mendoza. Jae Il Aum withdrew US\$160,000.00 from the said account on February 15, 1996 by forging the signature of Lourdes Mendoza. He was again able to withdraw from the separate accounts, leaving US\$163,000.00 as the balance thereof. It was further alleged that Jae Il Aum could not have withdrawn the said deposits without the connivance of the KEB. Moreover, the defendants' failure to heed demands for an accounting of the said withdrawals and for the restitution of the said amounts constituted large scale estafa for which they are liable for exemplary and moral damages.[5] The case was docketed as Civil Case No. G-3012 and raffled to Branch 49 of the court.

On September 13, 1996, the KEB filed a Motion to Dismiss[6] the complaint on the ground,[7] among others, that

the case was within the exclusive jurisdiction of the Securities and Exchange Commission (SEC). On December 5, 1996, the trial court issued an Order denying the motion. The KEB filed a motion for reconsideration of the court's decision which was, however, denied.

The KEB filed a petition for certiorari and prohibition with the CA for the nullification of the orders of the RTC. The case was docketed as CA-G.R. SP No. 43363.[8] On March 17, 1999, the CA dismissed the petition. The KEB filed a motion for reconsideration, which was denied by the appellate court on July 22, 1999. It then filed a petition for review on certiorari in this Court, docketed as G.R. No. 139460.[9]

Meanwhile, on April 2, 1997, the KEB filed a Complaint[10] against Lourdes Mendoza, Meneleo Mendoza, Antusa Magno, Francisco Magno, Teodoro de Mesa, Firmo de Mesa, Mercedes de Mesa Magno and the PHDI (PHDI, et al.) before the RTC of Guagua, Pampanga, for sum of money and reformation of real estate mortgage executed by PHDI in its favor. The case was docketed as Civil Case No. G-3119 and was raffled to Branch 50 of the court.

The KEB alleged therein that on January 15, 1996, it extended a loan to the PHDI in the sum of US\$500,000.00, payable within one year, with interest at "3 months London Interbank Offering Rate (LIBOR) + 2% per annum," evidenced by a promissory note executed by Jae Il Aum and Lourdes Mendoza, president and treasurer, respectively, for and in behalf of the PHDI, with Antusa Magno and Teodoro de Mesa acting as witnesses. Jae Il Aum and Lourdes Mendoza were authorized by resolution of the Board of Directors of PHDI to sign documents and other papers and mortgage corporate assets. To secure the payment of the said loan, Lourdes Mendoza and her siblings, Antusa de Mesa Magno, Firmo de Mesa, Meneleo Mendoza and Mercedes de Mesa, executed a real estate mortgage over 14 parcels of land they owned in common, under a Special Power of Attorney executed by them in favor of Teodoro, Lourdes and Antusa. However, the real estate mortgage failed to express the true intent and agreement of the parties therein because the debtors appearing therein were Lourdes de Mesa Mendoza, Antusa de Mesa Magno, Mercedes de Mesa and Firmo de Mesa, whereas the true agreement was to bind only PHDI as the debtor. It was further alleged that PHDI, et al. had not paid the loan of US\$500,000.00 and the increment thereof despite demands therefor.

The KEB prayed that, after due proceedings, judgment be rendered in its favor, ordering the reformation of the said real estate mortgage by designating the PHDI as the debtor; ordering PHDI, et al., jointly and severally, to pay US\$500,000.00, with interest thereon at the rate of the LIBOR for a three-month loan plus 2%, compounded monthly; 10% of the total amount due as interest as withholding tax on the interest; 20% of the total amount due as attorney's fees; and costs of suit. The KEB, likewise, prayed that the properties mortgaged be foreclosed and sold in case of failure to pay the said loan and its increment within 90 days from notice of the judgment.[11] The KEB appended to its complaint a copy of the real estate mortgage and the secretary's certificate containing the resolution of the Board of Directors.

The PHDI, et al. filed a motion to dismiss[12] the complaint on the ground of forum shopping, asserting that the KEB should have filed its counterclaim for the reformation of the real estate mortgage and the collection of US\$500,000.00, including increment and damages in Civil Case No. G-3012. They averred that since the KEB sought the collection of the US\$500,000.00 loan which was referred to in paragraphs 2 and 3 of their complaint in Civil Case No. G-3012, the essential elements of *litis pendentia* were present; hence, the trial court should dismiss the complaint.

The KEB opposed[13] the motion, contending that the complaint in Civil Case No. G-3012 involved corporate fraud; hence, the RTC had no jurisdiction over the action in the said case, and as such, could not interpose any counterclaims therein. The KEB, likewise, averred that *litis pendentia* may be involved only when the RTC had

jurisdiction over the action in Civil Case No. G-3012. Moreover, the actions in Civil Case Nos. G-3012 and G-3119 were unrelated.

On July 23, 1997, the RTC issued an Order^[14] denying the motion to dismiss, holding that the essential requirements of *litis pendentia* were not present, and that the grounds invoked therein were not indubitable.

Thereafter, PHDI, et al. filed, in due course, their answer^[15] with counterclaims in Civil Case No. G-3119 where they denied being indebted to the KEB. By way of special and affirmative defenses, they alleged that they were deceived by Jae Il Aum, in connivance with the KEB, into agreeing to secure a loan of US\$500,000.00 from the latter with their properties as security therefor to be used for the development of their properties into a housing project; the US\$500,000.00 loan of the PHDI was deposited in Account No. 5311000487 and Account No. 5311000486 with the KEB. Jae Il Aum was able to withdraw the amount of US\$160,000.00 from the dollar account of PHDI based on an application for withdrawal bearing the forged signature of Lourdes Mendoza. Believing that Jae Il Aum could not validly withdraw from the said account without her presence, Lourdes de Mesa Mendoza signed applications for the withdrawals from the said accounts, authorizing Jae Il Aum to make the said withdrawals. Jae Il Aum was then able to withdraw the rest of the deposits of the PHDI. It was thus alleged that the acts of the plaintiff and Jae Il Aum constituted large scale *estafa*, and that he had been charged with large scale *estafa* in Criminal Case Nos. 4085 and 4092 in the RTC of Pampanga. The aforementioned unauthorized withdrawals could not have been made possible without the indispensable cooperation of the authorized and/or responsible officer/s of the KEB.^[16] Moreover, the loan of the PHDI should be extinguished under the principle of set-off or compensation. By way of counterclaims, PHDI, et al., repleaded by reference all the allegations in their special and affirmative defenses as part thereof, and alleged that by reason of the foregoing acts of the KEB and Jae Il Aum, they suffered shame and humiliation.

The PHDI, et al., prayed that the complaint be dismissed and, by way of counterclaim, that the KEB be ordered to pay P500,000.00 as moral damages, P500,000.00 as exemplary damages to deter like-minded foreigners from victimizing Filipinos, and P100,000.00 as attorney's fees, plus the cost of suit.^[17]

On September 12, 1997, the KEB filed two motions: (1) a motion in Civil Case No. G-3119 to dismiss the counterclaims of the PHDI, et al. for their failure to attach in their answer with counterclaims a certification of non-forum shopping as mandated by Supreme Court Administrative Circular No. 04-94 (now Section 5, Rule 7 of the Rules of Court);^[18] and (2) a motion in Civil Case No. G-3012 to dismiss the complaint for forum shopping.^[19]

In its motion to dismiss the counterclaims in Civil Case No. G-3119, the KEB alleged that the causes of action of the PHDI, et al. as plaintiffs in Civil Case No. G-3012 for the collection of US\$160,000.00 and damages, and their claim in Civil Case No. G-3119 for the set-off of the said amount against its claim of US\$500,000.00 were identical; hence, their counterclaims should be dismissed for forum shopping and, consequently, their complaint in Civil Case No. G-3012 should likewise be dismissed.

The PHDI, et al. opposed the motion to dismiss their complaint in Civil Case No. G-3012 alleging that the KEB failed to include forum shopping as a ground in its motion to dismiss their complaint; hence, is bound by the omnibus motion rule. They further alleged that their complaint could not be dismissed on the ground of forum shopping based on their counterclaims in their answer to the complaint, since they filed their answer and counterclaim after filing their complaint in Civil Case No. G-3012.^[20] Besides, the trial court had already denied their motion to dismiss the complaint in Civil Case No. G-3119 on its finding that there was no *litis pendentia*.

The PHDI, et al. also opposed the motion to dismiss^[21] their counterclaims in Civil Case No. G-3119, on the ground that the causes of action in Civil Case No. G-3012 and their counterclaims in Civil Case No. G-3119 were

unrelated. They asserted that the subject matter, causes of action and the issues in the two cases were different.

On October 14, 1997, the trial court issued an Order[22] in Civil Case No. G-3012 denying the KEB's motion to dismiss the complaint, on its finding that the causes of action of the PHDI in Civil Case No. G-3012 were different from those in their counterclaim in Civil Case No. G-3119. The trial court also denied the motion (in Civil Case No. G-3119) to dismiss the counterclaims of the PHDI, et al., on its finding that the reliefs prayed for by the latter did not include the collection of US\$160,000.00 from the KEB; hence, there was no forum shopping. The KEB's respective motions for reconsideration of the orders of dismissal in Civil Case Nos. G-3119 and G-3012 were denied by the trial courts, per the Orders dated October 24, 1997[23] and November 14, 1997.[24]

The KEB filed a petition for certiorari, prohibition and mandamus against the PHDI, et al., in the CA, assailing the October 13 and 24, 1997 Orders of the trial court in Civil Case No. G-3119. The case was docketed as CA-G.R. SP No. 46194.

The KEB also filed a petition for certiorari, prohibition and mandamus with the CA on January 6, 1998, assailing the RTC's Orders dated October 24 and November 14, 1997 in Civil Case No. G-3012. The case was docketed as CA-G.R. SP No. 46436. The two petitions were consolidated.

Meanwhile, the KEB filed its answer to the counterclaims of the PHDI, et al., in Civil Case No. G-3119 for moral and exemplary damages.[25] It alleged, inter alia, that only the consent of the PHDI, through its signatories, was required for any withdrawal, and that all such withdrawals were made with the knowledge and consent of Lourdes de Mesa Mendoza, with her genuine signatures;[26] that the trial court had no jurisdiction over the counterclaims for moral and exemplary damages since the controversy involved corporate fraud which, under Subsection (a), Section 5 of Presidential Decree No. 902-A, was within the exclusive jurisdiction of the SEC; and that the counterclaims for moral and exemplary damages should be dismissed because of the pendency of Civil Case No. G-3012 which involved the same parties, the same rights, the same reliefs, the same issues, and the same causes of action, insofar as the complaint in Civil Case No. G-3012 and the counterclaim in this case were concerned. Moreover, there was no certification against forum shopping as required by Section 3, Rule 7 of the Rules of Court. They further insisted that all the withdrawals were authorized and made on the basis of genuine signatures; that PHDI, being a corporation and an artificial person, had no feelings, and, as such, moral damages could not be recovered from it; that it had all along acted in good faith; and that if PHDI, et al., hired the services of counsel, the attorney's fees should be for their own account, since they unjustifiably refused to pay.[27]

On January 27, 2000, the CA rendered a Joint Decision[28] in CA-G.R. SP Nos. 46194 and 46436. The CA affirmed the assailed orders of the RTC in Civil Case No. G-3012, dismissing the petition in CA-G.R. SP No. 46436 but partially giving due course to and granting the petition in CA-G.R. SP No. 46194, by dismissing the counterclaims of the respondents for moral and exemplary damages in Civil Case No. G-3119 on the ground of forum shopping. The CA declared that the counterclaims of the PHDI, et al., for moral and exemplary damages in Civil Case No. G-3119, were merely permissive; hence, they were mandated to append thereto a certification of non-forum shopping.

The CA anchored its decision on the rulings of this Court in *Santo Tomas University Hospital v. Surla*[29] and *Valencia v. Court of Appeals*. [30] However, the CA did not order the dismissal of the complaint in Civil Case No. G-3012, on its finding that the RTC did not commit grave abuse of its discretion in not ordering the dismissal of the same. Besides, the trial court had already dismissed the counterclaims of the PHDI, et al., for moral and exemplary damages in Civil Case No. G-3119.[31]

Following the denial of its motion for reconsideration, the KEB, now the petitioner, filed with this Court, a consolidated petition for review on certiorari against PHDI, et al., the respondents, alleging that the CA erred (a)

in not ordering the dismissal of the counterclaim of the latter in Civil Case No. G-3119 for their failure to append a certificate of non-forum shopping, and (b) in not dismissing the complaint in Civil Case No. G-3012 for forum shopping.[32]

As the issues in this case are interrelated, the Court shall delve into and resolve them simultaneously.

The petitioner avers that the respondents are guilty of forum shopping because they sought to recover US\$160,000.00 by way of set-off in their counterclaims in Civil Case No. G-3119, pending in Branch 50 of the RTC of Guagua, Pampanga, the same amount they sought to recover in their complaint in Civil Case No. G-3012 pending in Branch 49 of the said court. The petitioner asserts that the respondents also sought to recover P500,000.00 in moral damages, and P500,000.00 as exemplary damages in Civil Case No. G-3012, which are the same amounts the respondents sought to collect from the petitioner in their counterclaims in Civil Case No. G-3119. The petitioner notes that although the respondents alleged set-off of the US\$160,000.00 in their special and affirmative defenses, they, however, repleaded and incorporated, by way of reference, the said allegations in their counterclaims for moral and exemplary damages and attorney's fees; hence, the claim of set-off or compensation of the respondents was a counterclaim. The respondents were, thus, mandated to append a certificate of non-forum shopping to their counterclaims as mandated by Section 5, Rule 7 of the Rules of Court, but failed to do so. The petitioner avers that there is identity of causes of action, issues and reliefs prayed for in the complaint of the respondents in Civil Case No. G-3012, and their counterclaims for set-off or compensation of the US\$160,000.00, moral damages of P500,000.00 and P500,000.00 as exemplary damages in Civil Case No. G-3119. As such, the petitioner insists that the respondents were guilty of forum shopping, for which reason their complaint in Civil Case No. G-3012 should be dismissed.

The respondents, for their part, refute the contentions of the petitioner and maintain that their claim for set-off or compensation[33] in Civil Case No. G-3119 is a counterclaim but is compulsory in nature; hence, there was no need for them to append a certificate of non-forum shopping. The respondents also allege that the petitioner itself is guilty of forum shopping because instead of filing counterclaims against them in Civil Case No. G-3012, it filed a complaint for reformation of the real estate mortgage and for the collection of US\$500,000.00 and, in case of refusal or failure of the respondents to pay the said amount of US\$500,000.00 for the judicial foreclosure of the real estate mortgage, docketed as Civil Case No. G-3119. The respondents assert that, by praying for the dismissal of their complaint in Civil Case No. G-3012 and their counterclaims in Civil Case No. G-3119, the petitioner could win in both instances without due process of law.

The Court's Ruling

A counterclaim, as now used and understood, includes both set-off and recoupment and is broader than both; it includes equitable demands and secures to the defendant full relief which is a separate action at law and would have secured him on the same state of facts being substantially a cross-action by the defendant against the plaintiff.[34]

A set-off (compensacion) is a money demand by the defendant against the plaintiff arising upon contract and constituting a debt independent of and unconnected with the cause of actions set forth in the complaint, and may be used to offset a plaintiff's claim but not to recover affirmatively. As in the case with recoupment, set-off may be used to offset a plaintiff's claim but not to recover affirmatively. This is similar to the English rule which was first authorized by an English statute in 1729.

A recoupment (reconvenccion) differs from a counterclaim (contrarreclamacion) in that, under a counterclaim, the defendant may have an affirmative judgment where he is able to prove a demand in excess of the plaintiff's

demand, whereas in the case of recoupment, whatever the damages proved by the defendant, they can go only to reduce or extinguish the claim against him. Recoupment must arise out of the contract or transaction upon which the plaintiff's claim is founded. Recoupment is of French origin and means the "cutting back of the plaintiff's claim by the defendant." It thus implies an admission of the plaintiff's claim.

In *Lopez v. Gloria and Sheriff of Leyte*,^[35] the Court ruled that for set-off or recoupment to be considered as a counterclaim, the following must concur: (1) the same be essentially a genuine action of the defendant against the plaintiff; (2) the same should have as its object to neutralize, wholly or partially, that which the plaintiff is trying to obtain; (3) the same does not have for its object to destroy directly the action of the plaintiff; and (4) the same ought not to pray for a positive remedy distinct from the payment of money.

The Court explained that under the first requisite, independent of any other consideration, a genuine action is constituted by the defendant which could be employed separately against the plaintiff. On the second requisite, the Court declared that the defendant admits the facts upon which the action of the plaintiff is based. The second requisite is absent if the defendant bases his claim on facts which directly destroy the action or cause of action of the plaintiff. In such a case, the claim of the defendant would only be a special defense.^[36] On the third requisite, set-off or recoupment may be merely a defense and not a counterclaim if it only tends to oppose or to destroy the action of the plaintiff.

After consideration of the material allegations of the answer of the respondents in Civil Case No. G-3119, we believe that the respondents' claim of set-off or compensation of the US\$160,000.00 against the claim of US\$500,000.00 of the petitioner against the respondents is a counterclaim. The respondents admit in their complaint in Civil Case No. G-3012 and in their answer in Civil Case No. G-3119 that they secured a loan from the petitioner in the amount of US\$500,000.00, but maintain that they are not liable for the payment of the said loan because the petitioner, in connivance with Jae Il Aum, had withdrawn not only US\$160,000.00 but the entire deposit of US\$500,000.00 from the peso and dollar accounts of respondent PHDI without the consent of the respondents. The latter did not seek to recover affirmatively from the petitioner.

However, we do not agree with the contention of the respondents that their counterclaims are compulsory in nature. Section 7, Rule 5 of the Rules of Court reads:

Sec. 7. Compulsory counterclaim. – A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount.

As correctly held by the CA, the counterclaim of the respondents for moral and exemplary damages against the petitioner is permissive. So is the respondents' claim of a set-off or compensation of the US\$160,000.00 which they sought in Civil Case No. G-3012 against the US\$500,000.00 claimed by the petitioner against the respondents in Civil Case No. G-3119.

As the Court held in *Yulienco v. Court of Appeals*:^[37]

A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party. A counterclaim is compulsory if (a) it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim; (b) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim. In other words, a compulsory counterclaim cannot be made the subject

of a separate action but should be asserted in the same suit involving the same transaction or occurrence giving rise to it.

The criteria or tests by which the compulsory or permissive nature of specific counterclaims can be determined are as follows:

- (1) Are the issues of fact and law raised by the claim and counterclaim largely the same?
- (2) Would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?
- (3) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
- (4) Is there any logical relation between the claim and the counterclaim?[38]

In the present case, the issues of fact and law raised by the petitioner in its complaint in Civil Case No. G-3119, and in the counterclaims of the respondents for the set-off of not only the US\$160,000.00 but the entirety of the deposits of the respondent PHDI of US\$500,000.00, and for moral and exemplary damages, are not identical or even largely the same. In the complaint of the petitioner in Civil Case No. G-3119, the issue is whether the loan of US\$500,000.00 was secured by respondent PHDI from the petitioner, and whether the respondents failed to pay the same and its increment despite the petitioner's demands. On the other hand, the issues in the respondents' counterclaims for set-off of the amount of US\$160,000.00 are the following: whether the signature of respondent Lourdes Mendoza appearing on the said withdrawal application was forged; whether the petitioner connived with Jae Il Aum when the latter withdrew the said amount from the accounts of respondent PHDI; whether the petitioner and Jae Il Aum are obliged to pay the said amount to the respondent PHDI; and whether the obligations of the respondent to pay their loan of US\$500,000.00 is extrajudicial pro tanto. Any judgment of the court on the complaint of the petitioner in Civil Case No. G-3119 would not bar any suit on the respondents' counterclaim. The evidence of the petitioner on its claim in its complaint, and that of the respondents on their counterclaims are thus different. There is, likewise, no logical relation between the claim of the petitioner and the counterclaim of the respondents. Hence, the counterclaim of the respondents is an initiatory pleading, which requires the respondents to append thereto a certificate of non-forum shopping. Their failure to do so results to the dismissal of their counterclaim without prejudice.[39]

The general rule is that compliance with the certificate of forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.[40]

Case law has it that there is forum shopping when, between an action pending before the court and another one, there exist:

... (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. ...[41]

Otherwise stated, there is forum shopping where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending. The defense of *litis pendentia* in one case is a bar to the other/others; and, a final judgment is one that would constitute res judicata and thus would cause the dismissal of the rest. Absolute identity of parties is not required. It is enough that there is substantial identity of parties.[42] It is enough that the party against whom the estoppel is set up is actually a party to the former case.[43] There is identity of causes of action if the same evidence will sustain the

second action. The principle applies even if the relief sought in the two cases may be different.[44] Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[45]

What is truly important to consider, the Court ruled in *Golangco v. Court of Appeals*,[46] is the vexation caused the courts and parties-litigants who ask different courts and/or administrative agencies to rule on the same or restated causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts upon the same issues. In *Yupangco Cotton Mills, Inc. v. Court of Appeals*,[47] the Court ruled that for forum shopping to exist, both actions must involve the same transactions, the same circumstances; and the actions must also raise identical causes of actions, subject matter and issues. Forum shopping is an act of malpractice that is prohibited and considered as trifling with the court. It is an improper conduct which tends to degrade the administration of justice. But there is no forum shopping where two different orders or questions, two different causes of action and issues are raised, and two objectives are sought.[48]

In this case, in interposing their counterclaim for set-off of the US\$160,000.00 against their loan of US\$500,000.00 in Civil Case No. G-3119, as well as the counterclaims for P500,000.00 as moral damages, and P500,000.00 as exemplary damages, the respondents thereby engaged in forum shopping. As gleaned from the material averments of their complaint in Civil Case No. G-3012, the respondents, who are the plaintiffs therein, claimed that Jae Il Aum, who was the president of respondent PHDI, withdrew US\$160,000.00 from the deposit accounts of the said respondent with the petitioner; that such withdrawal application bore the forged signature of respondent Lourdes Mendoza; and that the authorized office/officers of the petitioner connived with Jae Il Aum in consummating the withdrawal. The respondents prayed that the petitioner and Jae Il Aum be ordered to pay, jointly and severally, the said amount, plus P500,000.00 as moral damages and P500,000.00 as exemplary damages based on their claim that the petitioner, a corporation incorporated in Korea, and Jae Il Aum, a Korean national, victimized the respondents, who are Filipinos. The respondents merely restated and repleaded the same allegations in their counterclaims in Civil Case No. G-3119, and prayed that the aforesaid amount of US\$160,000.00 be set-off against their loan of US\$500,000.00 which was being claimed by the petitioner in the said case, in addition to awards for P500,000.00 as moral damages, and P500,000.00 as exemplary damages against the petitioner for allegedly victimizing Filipinos in their country. The threshold issues common to and decisive of the complaint in Civil Case No. G-3012 and the counterclaim for set-off in Civil Case No. G-3119 are whether the signature of respondent Lourdes Mendoza on the application for withdrawal of US\$160,000.00 was forged, and whether the petitioner connived with Jae Il Aum in the alleged fraudulent withdrawal of the said amount. The evidence of the respondents as plaintiffs in Civil Case No. G-3012 is the same evidence that they will have to adduce as plaintiffs on their counterclaim for set-off in Civil Case No. G-3119. Any judgment of the RTC of Guagua, Pampanga, Branch 49, in Civil Case No. G-3012 will, likewise, resolve the threshold issue in the respondents' counterclaim for set-off in Civil Case No. G-3119. That Jae Il Aum is not a party in Civil Case No. G-3119 is not important; that the respondents did not pray in their counterclaim that the petitioner pay to them the US\$160,000.00 withdrawn by Jae Il Aum is, likewise, not a bar to the application of the principle of *litis pendentia*.

It must be stressed, however, that the dismissal of the complaint of the respondents against the petitioner in Civil Case No. G-3012 is without prejudice to the continuation of the case against Jae Il Aum.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The complaint of the respondents against the petitioner in Civil Case No. G-3012 is DISMISSED without prejudice to the continuation thereof against the defendant Jae Il Aum. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Quirino D. Abad Santos, Jr. (retired) and Bennie A. Adeguin-de la Cruz (retired), concurring.

[2] Rollo, p. 192.

[3] Records, p. 64.

[4] Id. at 67-71.

[5] CA Rollo, pp. 17-21. (CA-G.R. SP No. 46436)

[6] Records, pp. 54-73.

[7] The motion to dismiss was anchored on four (4) grounds: a) that the case falls within the exclusive jurisdiction of the Securities and Exchange Commission (SEC) and not of the court; b) that the complaint states no cause of action insofar as Antusa M. Magno, Lourdes M. Mendoza and Teodoro de Mesa are concerned because, as stockholders, they have no right to sue in their own name to recover property belonging to PHDI; c) that defendants Antusa M. Magno and Lourdes M. Mendoza have no legal capacity to sue because, being married women, they cannot sue without including their respective husbands; and d) that the venue is improperly laid because none of the parties is a resident of Pampanga.

[8] Rollo, p. 221.

[9] Ibid.

[10] Records, pp. 2-10.

[11] Rollo, pp. 44-45.

[12] Records, p. 27.

[13] Id. at 41-48.

[14] Id. at 112-113.

[15] Id. at 117-121.

[16] Id. at 119-120.

[17] Ibid.

[18] Prescribing Additional Requisites for Civil Complaints, Petitions and Other Initiatory Pleadings Filed in All Courts and Agencies, Other than the Supreme Court and the Court of Appeals, to Prevent Forum Shopping or Multiple Filing of Such Pleadings.

[19] CA Rollo, pp. 48-52. (CA-G.R. SP No. 46436)

[20] Id. at 58-59.

[21] Records, p. 127.

[22] CA Rollo, p. 64. (CA-G.R. SP No. 46436).

[23] Id. at 140.

[24] Rollo, p. 222.

[25] Records, pp. 147-152.

[26] Id. at 148.

[27] Id. at 150-151.

[28] Rollo, pp. 177-183.

[29] G.R. No. 129718, 17 August 1998, 294 SCRA 382.

[30] G.R. No. 111404, 17 October 1996, 263 SCRA 275.

[31] Rollo, pp. 180-182.

[32] Id. at 3.

[33] Under Article 1231(5) of the New Civil Code, obligations are extinguished by compensation. It is the offsetting of two obligations which are reciprocally extinguished if they are of equal value or extinguished to the concurrent amount if of different values. (Tolentino, Vol. IV, p. 365)

[34] Lopez v. Gloria and Sheriff of Leyte, 40 Phil. 26 (1919); Haven Federal Savings and Loan Association v. Kirian, 579 So.2d 730 (1991).

[35] Id. at 32.

[36] Id.

[37] G.R. No. 131692, 10 June 1999, 308 SCRA 206.

[38] Id. at 211-212.

[39] Ong v. Court of Appeals, G.R. No. 144581, 5 July 2002, 384 SCRA 139.

[40] Prubankers Association v. Prudential Bank & Trust Company, G.R. No. 131247, 25 January 1999, 302 SCRA 74.

[41] Benedicto v. Court of Appeals, G.R. No. 125359, 4 September 2001, 364 SCRA 334.

[42] Santos v. Gabriel, G.R. No. L-22996, 31 May 1972, 45 SCRA 288.

[43] Salamanca v. Ramos, G.R. No. L-30360, 26 February 1988, 158 SCRA 152.

[44] Sempio v. Court of Appeals, G.R. No. 124326, 22 January 1998, 284 SCRA 580; Carlet v. Court of Appeals, G.R. No. 114275, 7 July 1997, 275 SCRA 97.

[45] Leyson, Jr. v. Office of the Ombudsman, G.R. No. 134990, 27 April 2000, 331 SCRA 227.

[46] 347 Phil. 771 (1997).

[47] G.R. No. 126322, 16 January 2002, 373 SCRA 451.

[48] Supra.

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