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G.R. Nos. 80908 & 80909. May 24, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The propriety of an injunctive relief granted by the Court of Appeals against the trial court from preventing the sale by the GSIS of the COMBANK to the First National Bank of Boston (FNBB) and a group of investors is the issue in the instant Petition.

The petitioners erroneously denominated the instant Petition as one for certiorari under Rule 45 of the Rules of Court even if no question of law has been raised[1] and the private respondents called the attention of the Court on the matter.[2] This error notwithstanding, and in the interest of justice, the Court resolved to treat the instant Petition as a special civil action for certiorari under Rule 65 on account of the jurisdictional issues raised herein.[3]

The pertinent facts of the case are as follows --

On June 15, 1987, the petitioners filed before the Regional Trial Court in Makati a Complaint for specific performance, rescission of contract and damages against the private respondents Government Service Insurance System (GSIS), the Commercial Bank of Manila (COMBANK) and the Atrium Capital Corporation. The case was docketed as Civil Case No. 17027.[4]

The petitioners prayed, among others, for the issuance of a restraining order or writ of preliminary injunction enjoining the GSIS and COMBANK from pushing through with a reported plan to sell COMBANK to the private respondent FNBB and a group of Filipino investors represented by the private respondent Edgardo L. Tordesillas. In support thereof, the petitioners alleged that the GSIS has no legal right to sell COMBANK inasmuch as both the GSIS and COMBANK failed to comply with their obligations to the petitioners as embodied in an Agreement of May 9, 1980 executed by the petitioners and the IUCF investors group where petitioners sold to the latter 187,649 shares in the Overseas Bank of Manila under the terms and conditions provided therein.[5] In sum, the petitioners maintained that they have considerable proprietary interest in COMBANK and, accordingly, their consent must be obtained before COMBANK can be legally sold to interested purchasers.

The case was initially raffled to Branch 133 with Judge Buenaventura Guerrero presiding therein. When Judge Guerrero inhibited himself from further hearing the case, the suit was raffled anew, this time to Branch 57, the sala of Judge Francisco X. Velez. In the meantime, the petitioners filed an Amended Complaint to implead the FNBB and private respondent Tordesillas.

The Amended Complaint notwithstanding, the GSIS, the FNBB and the group of Tordesillas executed a

Memorandum of Agreement for the sale of the bank to FNBB, and the Tordesillas group on June 22, 1987 for the price of P510,000,000.00. The agreement provides, among others, that the GSIS will be responsible for any claims which may be brought by the petitioners against the FNBB and/or Tordesillas on account of the sale of COMBANK.[6]

On July 24, 1987, the trial court issued the restraining order prayed for and set the hearing on the application for the issuance of a writ of preliminary injunction on August 12, 1987. On August 31, 1987, and after due hearing, the trial court issued the writ of preliminary injunction upon a bond in the amount of Five Million Pesos (P5,000,000.00) filed by the petitioners in favor of the private respondents.[7]

On September 7, 1987, the FNBB and Tordesillas sought a reconsideration of the action taken by the trial court. On September 8, 1987, the GSIS and COMBANK also asked the trial court to reconsider the injunctive relief it granted. As of September 20, 1987, the trial court had yet to resolve the motions for reconsideration filed by the private respondents.

On September 21, 1987, the FNBB and Tordesillas filed a special civil action for certiorari and prohibition with the Court of Appeals praying, inter alia, for the issuance of a restraining order enjoining the trial court from enforcing the writ of preliminary injunction issued on August 31, 1987. The case was docketed as CA-G.R. SP-No. 12859 and raffled to the Eleventh Division of the appellate court.[8]

On September 25, 1987, the Eleventh Division of the appellate court resolved to hold in abeyance the consideration of the Petition for certiorari and prohibition pending the resolution of the motions for reconsideration by the trial court.[9]

On the same day, September 25, 1987, the GSIS and COMBANK filed a special civil action for certiorari and mandamus with the Court of Appeals, praying for the same reliefs sought in the special civil action filed by the FNBB and Tordesillas. The case was docketed as CA-G.R. SP No. 12903 and raffled to the Seventh Division of the appellate court.[10]

On September 30, 1987, the Seventh Division of the appellate court resolved to give due course to the Petition (CA-G.R. SP No. 12903) and to issue a temporary restraining order enjoining the trial court from enforcing the writ of preliminary injunction it had issued upon a bond in the amount of Five Million Pesos (P5,000,000.00) to be filed by the GSIS and COMBANK in favor of the petitioners.[11]

In view of the said Resolution of the Seventh Division, the petitioners filed a Motion seeking the consolidation of the two cases (CA-G.R. SP Nos. 12859 and 12903) and praying that the temporary restraining order issued by the Seventh Division be lifted. The Seventh Division heard oral arguments on the said Motion.

On October 7, 1987, the Seventh Division resolved to consolidate the two cases under the Seventh Division in accordance with the internal rules of the appellate court on such matters and upon observing that both cases raise almost identical issues.[12] The Seventh Division also resolved to hold in abeyance the consideration of the motion to lift the temporary restraining order it had earlier issued in order not to pre-empt the action of the Eleventh Division on the matter.[13]

Meanwhile, in an order dated October 12, 1987, the trial court denied the two motions seeking a reconsideration of its previous order relating to the writ of preliminary injunction it had issued.[14]

The petitioners filed an Urgent Manifestation/Motion praying that the restraining order issued by the Seventh Division be lifted.[15] They also asked the appellate court to schedule a hearing on the motion. The petitioners likewise accused the herein private respondents of engaging in forum shopping.[16]

On November 10, 1987, the Eleventh Division resolved to deny the Urgent Manifestation/Motion on the ground that there is no cogent reason for granting the same.[17] The appellate court also instructed the parties to submit their respective memoranda on the issue of whether or not the restraining order issued by the Seventh Division should be converted into a writ of preliminary injunction in lieu of oral argument.[18]

On December 7, 1987, the Eleventh Division resolved to convert the restraining order issued by the Seventh Division into a writ of preliminary injunction.[19] The same Division, however, did not pass upon the issue of forum shopping. The pertinent portions of the said Resolution are as follows --

"After considering the arguments of the parties contained in their respective memoranda, and without going into the merits of the petition, this Court holds that the restraining order should be converted into a (writ of) preliminary injunction. In this regard, We are not unmindful of the fact that the Memorandum of Agreement provides additional protection to private respondents (herein petitioners), particularly paragraph 10 thereof, which provides:

'By closing, the seller shall further have executed a document holding ComBank and the Buyers free and harmless from any and all present or future claims which may be raised by Mr. Emerito M. Ramos, Sr. and/or such entities owned, managed or controlled by him, whether directly or indirectly, and agreeing to fully indemnify ComBank and/or the Buyers for all actual and other damages which may be suffered therefrom.'

"Indeed, the existing bond and stipulation amply protect the interests of private respondents (herein petitioners) without unnecessarily hampering the privatization program of the government.

" . . . The Court's main concern at this stage of the proceedings is to determine whether the issuance of a (writ of) preliminary injunction to enjoin the lower court from enforcing the questioned order and writ, would work injustice to private respondents (herein petitioners) or render the judgment in the main case ineffectual. From what have (sic) been discussed above, the Court is constrained to rule in the negative.

"IN VIEW OF THE FOREGOING, a writ of preliminary injunction is hereby ISSUED in the same tenor as the restraining order issued by the Seventh Division and adopted by this Court." (Page 54, Rollo.)

In effect, the writ of preliminary injunction issued by the Eleventh Division set aside the writ of preliminary injunction issued by the trial court. Therefore, there was no more judicial obstacle to the sale of COMBANK. On December 11, 1987, the GSIS and the FNBB and the group of Filipino investors represented by Tordesillas executed the Purchase and Sale Agreement of the COMBANK pursuant to the Memorandum Agreement of June 22, 1987.[20]

On December 15, 1987, the instant Petition was filed with this Court. The petition raised the following issues:

"I

WHILE THE TWO PETITIONS WHICH PRIVATE RESPONDENTS FILED WITH RESPONDENT COURT CLEARLY CONSTITUTE 'FORUM SHOPPING' AND HENCE, SHOULD HAVE BEEN DISMISSED OUTRIGHT, RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING DUE COURSE TO THE TWO PETITIONS AND GRANTING THE ANCILLARY RELIEFS THEREIN SOUGHT.

II

IN ISSUING THE RESOLUTION DATED DECEMBER 7, 1987 CONVERTING THE RESTRAINING ORDER OF SEPTEMBER 30, 1987 INTO AN INJUNCTION, RESPONDENT COURT OVERSTEPPED ITS JURISDICTIONAL BOUNDS OR COMMITTED GRAVE ABUSE OF DISCRETION BY MAKING

FINDINGS AND CONCLUSIONS WITHOUT FACTUAL OR LEGAL BASIS BUT BASED MERELY ON SPECULATIONS AND CONJECTURES.

III

RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO TAKE COGNIZANCE OF THE FACT THAT FNBB WAS FOUND GUILTY OF VIOLATING U.S. FEDERAL BANKING LAWS AND IN CONSIDERING PRESS REPORTS ON THIS MATTER AS 'HEARSAY' WHEN FNBB ITSELF HAS ADMITTED SUCH FACT IN ITS OWN PLEADINGS." (Pages 15, 18 and 29, Rollo.)

As instructed by the Court, the private respondents filed their respective Comments on the Petition.[21] Private respondent Tordesillas filed a Manifestation and Motion on January 20, 1988 informing the Court that he ceased to have any real interest in the subject matter of this case, and that there is no possible act of his which can be properly enjoined by the Court.[22] This Court granted the prayer that he be excused from filing a Comment on the Petition.[23]

For their part, the other private respondents maintain that the Petition should be dismissed on the ground that, among others, the act sought to be enjoined, i.e., the sale of COMBANK to the FNBB and the group of Filipino investors, is already a consummated act. In addition thereto, the private respondents contend that the instant Petition is insufficient in form and substance.

In the course of the proceedings, the parties submitted other pleadings in support of their arguments. Thereafter, the case was considered submitted for decision.[24]

After a careful examination of the entire record of the case, the Court finds the instant petition to be devoid of merit. There is no cogent reason to hold that the Eleventh Division of the Court of Appeals committed a grave abuse of discretion amounting to lack of jurisdiction as alleged by the petitioners.

I.

The Court is not persuaded that the private respondents were engaged in forum shopping in the Court of Appeals.

It should be noted that this controversy involves three groups of litigants -- the petitioners as the first group, the GSIS and COMBANK as the second group, and the FNBB and the group of Filipino investors composing the third group. When the GSIS and COMBANK felt aggrieved by the action taken by the trial court, they had the prerogative to question the same by way of a separate special civil action filed with Court of Appeals. By the same token, the FNBB and the group of Filipino investors can avail of the same remedy. Since they were not satisfied with the action taken by the trial court, they had the option to challenge the same through a separate special civil action filed with the appellate court. The two groups of private respondents are different litigants with different interests. One group need not get the consent of the other before seeking relief in the appellate court through a special civil action. Each group was represented by its own lawyers. The two groups filed separate pleadings.

The private respondents can be considered to have engaged in forum shopping if all of them, acting as one group, filed identical special civil actions in the Court of Appeals and in this Court. There must be identity of parties or interests represented, rights asserted and relief sought in different tribunals.[25] In the case at bar, the two groups of private respondents appear to have acted independently of each other when they sought relief from the appellate court. Both groups sought relief from the same tribunal.

It would not matter even if there are several divisions in the Court of Appeals and that both suits could be

assigned to different divisions. The adverse party can always ask for the consolidation of the two cases. In fact, the petitioners sought the consolidation of both CA.-G.R. SP Nos. 12859 and 12903.

The petitioners must have been aware that the two groups of private respondents are different entities. When the petitioners filed their Complaint with the trial court, the GSIS and COMBANK were the original defendants therein. The petitioners later amended their Complaint by including the FNBB and the Tordesillas investors group as defendants.

The Court, therefore, holds that the Court of Appeals did not commit a grave abuse of discretion amounting to lack of jurisdiction when it refused to order the dismissal of CA-G.R. SP Nos. 12859 and 12903 on the ground of forum shopping.

II.

This Court finds that the Eleventh Division of the Court of Appeals did not commit a grave abuse of discretion amounting to lack of jurisdiction when it issued the questioned writ of preliminary injunction. The court reproduces with approval the disquisition of the respondent court in its resolution of December 7, 1987 --

"The principal relief sought by private respondents as plaintiffs in the court below is one for specific performance. Rescission is invoked merely as an alternative remedy should specific performance be impossible of compliance. This is as it should be because 'the action for rescission is subsidiary; it cannot be instituted except when the party suffering damages has no other legal means to obtain reparation for the same.' (Art. 1383, Civil Code; Vinco v. Fuentebella, 12 C.A. Rep. 645; Guash v. Espirity, 11 Phil. 184; Goquiolay, et al. v. Sycip, et al., 108 Phil. 947).

What are those matters which private respondents seek to be performed by petitioners, particularly petitioners GSIS and COMBANK?

They are:

- (1) To release their titles within 90 days from the opening of the COMBANK on January 8, 1981;
- (2) To grant them a loan of P20,000,000.00;
- (3) To restructure their loan of P45 million on the books of OBM (now COMBANK) over a period of eight years with a 3-year grace period on principal and interest;
- (4) To implement the non-accrual of interest on the aforesaid P45 million loan during the closure of OBM (now COMBANK);
- (5) To grant them the option to purchase 10% of the COMBANK shares within three (3) years from the re-opening of ComBank on January 9, 1981 and pending the exercise of said option, to assign voting rights equivalent to 10% of COMBANK's equity.

Private respondents contend that the foregoing conditions have not been complied with, and that therefore, the earlier sales of Overseas Bank (now COMBANK), organized and founded by the Ramos family, to the IUCP/Herdis group, and by the latter to the GSIS should be rescinded. In the meanwhile, they contend that the proposed sale by GSIS to FNBB/ Tordesillas group should be enjoined as it has been enjoined by respondent court.

The foregoing, in their bare essence, are the issues to be resolved.

Private respondents do not deny the existence of the Memorandum of Agreement in connection with the sale of COMBANK, which includes a provision that GSIS would assume the latter's obligation. Nor is the solvency of

GSIS denied, as it could not be denied, by them. Hence, insofar as the principal relief of specific Performance of the conditions heretofore mentioned are concerned, private respondents are duly protected and assured that the same will be complied with by GSIS itself provided that private respondents themselves comply with their end of the agreement. This is in keeping with the policy of the State 'to promote privatization through an orderly, coordinated and efficient program for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government owned or controlled corporations which have been found unnecessary or inappropriate for the government sector to maintain.' (Sec. 1, Proclamation No. 50 of December 8, 1986). In fine, private respondents have failed to show indubitably that Specific Performance of the conditions earlier mentioned is impossible of compliance considering the guarantee of GSIS.

Of course, private respondents may be right in claiming that the privatization policy of the government will not be violated if they succeed in re-acquiring OBM, now COMBANK. After all, the Ramos group are also Filipino private enterprises who were the founders of OBM and should, as a rule, be entitled to priority, instead of a foreign group whose reputation is allegedly tainted or questionable. But that is not the point here. In asking for rescission, private respondents as plaintiffs failed to allege in their complaint their ability and willingness to restore or return what they have received from the IUCP-Herdis group under the Basic Agreement of May 9, 1980. Instead, they confirm their inability or unwillingness to restore what they had received by saying that 'no offer of restoration is necessary where it would be in vain and useless as where it is patent that a tender, if made, would be rejected,' (Langdon v. Loup Rive Public Power District, 139, Neb. 296, 297 NW 557 as cited in 17 Am. Jur. 2nd 997; Schlake v. McConnel, 83 Cal. App. 725; Esau v. Briggs, 89 Cal. App. 2d 427; Simmons v. Briggs, 69 Cal. App. 447 cited on p. 40 of Answer to Petition). Aside from the foregoing, private respondents do not deny having sold their own remaining shares in COMBANK to petitioner GSIS, thereby placing in serious doubt whether they could still question the sale of the bank by IUCP-Herdis group to GSIS.

In view of the foregoing circumstances, the proposed sale or negotiation and eventual consummation of said sale to the prospective buyer (FNBB/Tordesillas) would be unduly hampered, if the order and writ of preliminary injunction issued by the respondent court would be allowed to remain in force in contravention of the state policy to effect 'prompt disposition of x x x government owned controlled corporation.'" (Pages 51-53, Rollo.)

Respondent GSIS denies non-compliance with any of its commitment under the agreement of May 9, 1980 or that if any had not been complied with it was because of the default of petitioners. Nevertheless, as above discussed the Memorandum of Agreement regarding the sale of COMBANK executed by the GSIS on one hand and the FNBB and the group of Filipino investors on the other provides sufficient protection to the petitioners in the event that their claim against the GSIS and COMBANK is substantiated before the trial court. The Memorandum of Agreement clearly provides that the GSIS will be responsible for any claims which may be brought by the petitioners against the FNBB and/or Tordesillas on account of the sale of COMBANK. The same provision can be found in the Purchase and Sale Agreement covering COMBANK.[26] In a Deed of Assignment executed also on December 11, 1987, COMBANK assigned to GSIS "all outstanding and existing loans, accrued interest and other receivables" of petitioners.[27] On the same date too, a separate Indemnity Agreement was executed by GSIS in favor of FNBB holding the latter "free and harmless from any and all present or future claims which may be raised" by petitioners.[28] Moreover, as correctly pointed out by the Court of Appeals, the bond in the amount of Five Million Pesos filed by the GSIS and COMBANK with the Court of Appeals provides additional protection to the petitioners.

As to the alleged repeated violation of Federal Banking laws by FNBB, it must be assumed that when the GSIS sold the COMBANK to the FNBB with the approval of the President of the Philippines, the credit standing and reputation of FNBB had been taken into consideration. There is a presumption of regularity in the performance of

official duties.[29]

III.

The instant Petition should also be dismissed on another ground. The act sought to be enjoined in this case, i. e., the sale of COMBANK to the FNBB and the group of Filipino investors, is already a consummated act. The established principle is that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited.[30] Thus, the instant Petition is moot and academic.

The petitioners, however, may still pursue their claim against the GSIS in the trial court pursuant to the provisions of the Memorandum of Agreement and the Purchase and Sale Agreement and the accompanying documents aforesated.

WHEREFORE, the instant Petition is hereby DISMISSED for lack of merit without pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera and Griño-Aquino, JJ., no part.

[1] Only questions of law may be raised in a petition for review on certiorari under Rule 45.

[2] Pages 10 to 12, Comment filed by private respondent Government Service Insurance System; pages 324 to 326, Rollo. Also, pages 18 to 20, Comment filed by private respondent First National Bank Boston, pages 359 to 361, Rollo.

[3] Resolution dated December 17, 1987; page 304, Rollo. A special civil action for certiorari lies against the Court of Appeals pursuant to the provisions of Rule 65 in relation to Section 5, Article VIII of the 1987 Constitution.

[4] Paragraphs 1 and 2, Petition; pages 7-9, Rollo. Manifestation filed by the petitioners; pages 309 and 310, Rollo; See also questioned order of the RTC of Makati of August 26, 1987, Annex H to petition, pages 90-93, Rollo.

[5] Annex F to petition; pages 56-75, Rollo.

[6] Pages 76 to 86, Rollo.

[7] Pages 90 to 96, Rollo.

[8] At that time, the Eleventh division of the Court of Appeals was composed of Justices Lorna S. L. De La Fuente, Ricardo J. Francisco and Alfredo L. Benipayo.

[9] Page 151, Rollo.

[10] The Seventh Division of the Court of Appeals was then composed of Justices Vicente V. Mendoza, Manuel C. Herrera and Jorge S. Imperial.

[11] Pages 37 and 38, Rollo.

[12] Pages 190 to 193, Rollo.

[13] Ibid.

[14] Pages 194 to 195, Rollo. An examination of the Order of the trial court shows that although the trial court was aware of the temporary restraining order issued by the Seventh Division of the appellate court, it went on to resolve the Motions for Reconsideration in compliance with the Resolution of the Eleventh Division which in effect authorized such action.

[15] Pages 201 to 204, Rollo.

[16] Ibid.

[17] Page 43, Rollo.

[18] Ibid.

[19] Pages 48 to 55, Rollo.

[20] Pages 373 to 391, Rollo.

[21] Pages 315 to 341 and pages 342 to 364, Rollo. The GSIS and the FNBB filed separate Comments.

[22] Pages 366 and 367, Rollo.

[23] Resolution dated January 28, 1988; page 419, Rollo.

[24] On January 20, 1989, petitioners submitted their Manifestation with a copy of the Rejoinder filed in the lower court.

[25] *Palm Avenue Realty Development Corp. vs. PCGG*, G.R. No. 76296, August 31, 1987; *E. Razon, Inc. vs. Phil. Ports Authority*, G.R. No. 75197, June 22, 1987; and *Buan vs. Lopez, Sr.*, 145 SCRA 34, 38, 39 (1987).

[26] Sec. 6.1 The parties shall indemnify and hold the BANK and each other free and harmless at all times, from and against and in respect of any damage, loss, cost, expense, liability and/or counsel's fees, resulting from any misrepresentation or breach of representation or warranty.

Sec. 6.2 The BUYERS are granted the power to collect damages which are the natural and probable consequences of any misrepresentation or breach of representation or warranty and those which may be reasonably attributed to non-compliance due to the SELLER's misrepresentation, breach and/or failure or refusal to comply with any of its obligations.

[27] Pages 386-388, Rollo.

[28] Pages 389-391, Rollo.

[29] Section 5(m), Rule 131, Rules of Court.

[30] *Aragones vs. Subido*, 25 SCRA 95 (1968); and *Ramonte vs. Bonto*, 16 SCRA 257, 263 (1966).

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