

KEIHIN NARASAKI CORPORATION, N. S. SHIPPING CORPORATION, K. SHELL SEKYU OSAKA KATSUBAISHO, KUMAGAI KAIUN KAISHA, LTD., PETITIONERS, VS. CRYSTAL NAVIGATION, S.A., SURREY NAVIG...

G.R. Nos. 90232-33. January 28, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

On June 14, 1989, the Seventh Division of the Court of Appeals rendered a joint Decision in two (2) special civil actions, to wit:

a) CA-G.R. No. SP No. 12341 (Crystal Navigation, S.A., Surrey Navigation, S.A., and The Vessels MV 'Ofelia' and MV 'Cristina C' versus Hon. Sabino de Leon, Presiding Judge, RTC of Manila, Branch XXVIII, Keihin Narasaki Corporation, N.S. Shipping Corporation, Fu Hing Oil Co., Ltd., and K.K. Shell Sekyu Osaka Katsubaisho; and

b) CA-G.R. No. SP No. 12999 (Atlantic Venus Co., S.A., and The Vessel MV 'Estella' versus Hon. Ponciano C. Inopiquez, Presiding Judge, Regional Trial Court of Manila, Branch XIV, Kumagai Kaiun Kaisha, Ltd., N.S. Shipping Corporation, and Keihin Narasaki Corporation).

CA-G.R. No. SP No. 12341

CA-G.R. No. SP No. 12341 originated from an action instituted in the Regional Trial Court of Manila, and assigned to Branch 28 thereof.[1] That action, docketed as Civil Case No. 86-38704, was commenced by complaint dated December 11, 1986, filed by Keihin Narasaki Corporation (a firm organized in Japan, hereafter simply referred to as Keihin). Named defendants were (a) Crystal Navigation S.A. (hereafter, simply Crystal), (b) Surrey Navigation, S.A. (hereafter, Surrey), (c) San Juan Shipping Co., S.A. (hereafter, San Juan), and The Vessels (d) MV "Ofelia" and (e) MV "Cristina C." The complaint averred basically that:

1) Crystal was at all times material the owner of the MV "Ofelia" and Surrey, of the MV "Cristina C;" and San Juan is the operator of both vessels;[2]

2) From 1983 to 1986, Crestamonte, a corporation organized under Philippine laws, was the manager and operator of the MV "Ofelia" and the MV "Cristina C" by agreement with Crystal and San Juan;[3]

3) Under an Agency Agreement dated February 10, 1983, N.S. Shipping Corporation (a Japanese firm, hereafter, simply NSS) was appointed Crestamonte's general agent in Japan;

4) At the request of NSS, Keihin furnished the MV "Ofelia" and the MV "Cristina C" with various supplies, provisions, services and other necessities for which no payment had been made despite demands.

NSS subsequently filed a complaint in intervention, in its own right and as assignee of Keihin and Kumagai Kaiun

Kaisha, Ltd. (another Japanese company, hereafter, simply Kumagai), for recovery of supplies, provisions, services and other necessities also furnished on other occasions to the MV "Ofelia" and the MV "Cristina C."

Another complaint in intervention was filed by K.K. Shell Sekyu Osaka Katsubaisho (hereafter, simply KK Shell), also for recovery of the unpaid value of marine diesel oil, bunker oil, fuel oil and other necessities furnished to the vessels, MV "Ofelia" and MV "Cristina C." One more complaint in intervention was also submitted, this time by Fu Hing Oil Co., Ltd.

Writs of preliminary attachment were issued and enforced on the MV "Ofelia" and MV "Cristina C." However, the attachments were shortly afterwards lifted upon counterbonds posted by the defendants. Answers to the complaints and complaints in intervention were in due course filed by defendants Surrey, Crystal, and the two (2) vessels.

Thereafter the defendants filed a "MOTION TO DISMISS THE AMENDED AND SUPPLEMENTAL COMPLAINT, AMENDED AND SUPPLEMENTAL COMPLAINT IN INTERVENTION AND COMPLAINTS IN INTERVENTION." The movants' attorneys alleged that -

- 1) in line with the doctrine of forum non conveniens, the Court should refuse to exercise its jurisdiction over the complaints; and
- 2) in light of the provisions of the Ship Mortgage Decree of 1978 (PD 1521), the complaints state no cause of action.

The motion was denied for lack of merit in an extended Order rendered by Judge Sabino R. de Leon, Jr. dated April 30, 1987. The Court ruled that jurisdiction cannot be subject of agreement or compromise; the action was one in rem and had been correctly filed in the Philippines where the res was located, and the defendants were estopped from questioning the Court's jurisdiction since they had moved to discharge the attachments and posted counterbonds for that purpose. Defendants' motion for reconsideration was denied by Order dated June 26, 1987.

It is these two Orders which were assailed in CA-G.R. SP No. 12341.

CA-G.R. No. SP No. 12999

In CA-G.R. No. SP No. 12999, on the other hand, the petitioners sought the issuance of writs of certiorari and prohibition to annul, and perpetually enjoin enforcement of, the Orders of Judge Inopiquez of April 30, 1987 and June 26, 1987, rendered in Civil Case No. 87-38930.

Said Civil Case No. 87-38930 was commenced on January 7, 1987 by Kumagai (plaintiff-intervenor in Civil Case No. 86-38704, *supra*) against (a) Atlantic Venus Co., S.A., (hereafter, Atlantic, a corporation registered in Panama), (b) the vessel MV "Estella," and (c) Crestamonte, Inc., the same Philippine firm involved in said Civil Case No. 86-38704. Kumagai's complaint identified Atlantic as the owner of the "Estella," and Crestamonte as the manager and operator thereof. The complaint, like that in Civil Case No. 86-38704, alleged that Crestamonte had appointed NSS (N.S. Shipping Corporation) its general agent in Japan under the Agency Agreement of February 10, 1983; and that on request of NSS, Kumagai had furnished the vessel, "Estella," with provisions, supplies and necessities, which however had not been paid for despite demands.

The general agent, NSS, in its own right subsequently filed a complaint-in-intervention for recovery of the unpaid value of other supplies, provisions, services and necessities furnished also to the MV "Estella."

The Japanese firm, Keihin -- plaintiff in Civil Case No. 86-38704 -- also presented a complaint in intervention in Case No. 87--38930, seeking recovery, too, of the value of supplies and services furnished by it on request of NSS (general agent of Crestamonte), to the same vessel, MV "Estella."

Writs of preliminary attachment were issued by Judge Inopiquez as prayed for by all three (3) parties plaintiffs (Kumagai, NSS and Keihin) -- represented by the same counsel (Attys. del Rosario, et al.) -- on bonds in the aggregate sum of P16,600,000.00. The writs were levied on the MV "Estella."

The other plaintiffs-in-intervention in Civil Case No. 86-38704, Fu Hing and K.K. Shell, also intervened as plaintiffs in Case No. 87-38930, represented by different counsel (Attys. Hernandez, et al.). They sought to recover the price of fuel and other services furnished by them to the MV "Estella." They also obtained preliminary attachments on said vessel.

The answer of defendants Atlantic and MV "Estella" to Kumagai's complaint inter alia alleged that Kumagai's claim, as sub-agent of NSS, was "subject exclusively to the courts of Japan pursuant to the Agency Agreement ** (between NSS and Crestamonte, dated February 10, 1983, supra) which provides:

12.0. - That this Agreement shall be governed by the laws of Japan. Any matters, disputes and/or differences arising between the parties hereto concerned regarding this Agreement shall be subject exclusively to the jurisdiction of the District Courts of Japan."

It also raised other defenses such as, that Kumagai's claims are not preferred maritime liens, the appointment, of Kumagai was unauthorized, its claims are subordinate to a preferred ship mortgage lien in favor of Nichimen America, Inc., etc.

Answers with counterclaims were also filed by Atlantic and MV "Estella" to the complaints in intervention, setting up substantially the same defenses.

Afterwards, said defendants filed a "MOTION FOR PRELIMINARY HEARING WITH MOTION TO DISMISS THE COMPLAINT AND COMPLAINTS-IN-INTERVENTION," on precisely the same grounds and arguments set out in the "MOTION TO DISMISS THE AMENDED AND SUPPLEMENTAL COMPLAINT IN INTERVENTION AND COMPLAINTS IN INTERVENTION" filed by them in Civil Case No. 86-38704 in Branch 28, supra, viz.:

1) the Trial Court should apply the doctrine of forum non conveniens since the case raises a problem in conflict of laws, even if it has jurisdiction over the subject matter and the parties, one of the factors impelling application of the doctrine being the provision in the Agency Agreement that, "matters, disputes and/or differences arising between the parties ** regarding ** (said) Agreement shall be subject exclusively to the jurisdiction of the District Court of Japan;" and

2) the complaints do not state a cause of action for failure to allege the requisites for the existence of maritime liens on necessities in accordance with the Ship Mortgage Decree of 1978 (PD 1521).

Acting on the motion, the Court, by Order dated April 30, 1987, ruled that it "prefers to hold in abeyance the resolution (thereof) ** until after the trial on the merits of this case is terminated." On August 11, 1987, the Court promulgated an Omnibus Order inter alia (1) refusing to reconsider its Order of April 30, 1987, which denied the defendants' motion to discharge attachment upon counterbond, and (2) allowing intervention by KK Shell. By another Order dated September 3, 1987, the Trial Court dissolved all the preliminary attachments issued at the instance of Kumagai, NSS, Keihin, Fu Hing Oil Co., Ltd. and KK Shell, upon counter-bonds put up by defendants in the total sum of P21,500,000.00.

It is the first two (2) orders (dated April 30, 1987 and August 11, 1987) that were challenged in CA-G.R. No. 12999.

The Court of Appeals, by judgment dated June 14, 1989, granted the petitions in both cases (CA-G.R. SP No.

12999 and CA--G.R. SP No. 12341) -

1) annulling and setting aside the questioned orders (dated April 30, 1987 and August 11, 1987, rendered in Civil Case No. 87- 38930, and April 30 and June 26, 1987 in Civil Case No. 86-38704) and

2) directing the Trial Courts (Branches 14 and 28 of the Manila RTC) "to desist from further proceedings in the two cases."

Essentially, the Appellate Court's joint judgment was that, considering their legal and factual settings, the cases under consideration "can be dismissed on the principle of non-conveniens, even assuming arguendo that respondent trial court has jurisdiction over the subject matter and the parties." [4]

Keihin, NSS and KK Shell, as parties adversely affected by the judgment in CA-G.R. SP No. 12999, and Keihin, NSS and Kumagai, as parties adversely affected by the judgment in CA-G.R. SP No. 12341, have come to this Court by petition for review on certiorari, filed by their common counsel. Their appeal was docketed as G.R. Nos. 90232-33, and assigned to the First Division. Comment on their petition was filed by the respondents, Crystal, Surrey, MV "Ofelia," MV "Cristina C," Atlantic, and MV "Estella," and noted in the First Division's Resolution of February 7, 1990.

A separate appeal from the decision as regards CA-G.R. No. 12341 was also perfected to this Court by KK Shell and Fu Hing --- parties in CA-G.R. No. 12341, through other counsel. Their petition for review was docketed in this Court as G.R. Nos. 90306-07, was given due course, and was thereafter decided by the Third Division on July 30, 1990.

The Third Division's Decision of July 30, 1990 basically held that it was error for the Court of Appeals to have decided the merits of the case involving KK Shell and Fu Hing, on the pretext of reviewing interlocutory orders affecting them, since there was absence of evidence to enable the Court to determine whether or not the choice-of forum clause in the Agency Agreement was binding on the petitioners, and the doctrine of forum non conveniens could properly apply. It ruled that the terms of the Agency Agreement of February 10, 1983 do not support the view that KK Shell is a sub--agent of NSS and is, therefore, bound by the agreement; that it is not indubitable from the record that KK Shell and Fu Hing [5] had been designated and had acted as sub-agents of NSS. Neither is there evidence, in the Third Division's view, that the situation falls within the provisions of Section 21 of the Ship Mortgage Law of 1978 (PD 1521), an issue arising from the invocation by private respondents of the forum non conveniens clause in the Agency Agreement of February 10, 1983. In fine, there being "still numerous material facts to be established in order to arrive at a conclusion as to the true nature of the relationship between Crestamonte and K.K. Shell and between NSS and K.K. Shell," the "best recourse," the judgment of July 30, 1990 continues, would be "to allow the trial court to proceed with Civil Case No. 87-38930 and consider whatever defenses may be raised by private respondents after they have filed their answer and evidence to support their conflicting claims has been presented." Accordingly, the Third Division granted the petition for review, reversed the judgment in CA-G.R. SP No. 12999 "insofar as it annulled the orders ** (in question) and directed the trial court to cease and desist from proceeding with Civil Case No. 87-38930."

As should be evident from the extended statement of the cases hereinabove set forth, the factual situation obtaining, and the legal issues raised, in G.R. Nos. 90232-33 are substantially identical to those in G.R. Nos. 90306-07. Both cases concern the same basic contract, the Agency Agreement of February 10, 1983. Involved are the same parties, or persons asserting rights stemming from the same contractual relation -- Crestamonte, NSS, Keihin, Kumagai, KK Shell, Fu Hing -- and the same acts, the furnishing of supplies and services (by NSS, Keihin, Kumagai, KK Shell and Fu Hing) to ocean--going vessels operated by the same company, Crestamonte, acting thru its general agent, NSS. The same basic issues are asserted in relation to the Agency Agreement and the

relations thereby created. There is need, in Civil Case No. 87-38930 as in Civil Case No. 86-38704, to determine by competent evidence presented in due course of trial, among other things, the true nature of the relationship between Crestamonte and NSS, and between NSS and K.K. Shell, Keihin and Kumagai, as well, of course, as the precise amounts due to the latter four as suppliers, and the damages recoverable in the premises, if any. Indeed, a motion for consolidation of G.R. Nos. 90203-33 and G.R. NOS. 90306-07 was presented to and granted by the First Division, without objection from any party. Unfortunately, the consolidation was declined by the Third Division because it had already rendered judgment on the merits in G.R. Nos. 90306-07. Nothing however precludes the arrival by this Court in the cases at bar at the same conclusions as those pronounced in G.R. Nos. 90306-07 given the identity in essential facts and basic issues. Those conclusions are hereby adopted and hereinto incorporated by reference.

WHEREFORE, the joint Decision promulgated on June 14, 1989 by the Seventh Division of the Court of Appeals in CA-G.R. SP No. 12341 (Crystal Navigation, versus Hon. Sabino de Leon, Presiding Judge, RTC of Manila, Branch XXVIII, Keihin Narasaki Corporation, N.S. Shipping Corporation, Fu Hing Oil Co., Ltd., and K.K. Shell Sekyu Osaka Katsubaisho), is hereby REVERSED insofar as it annulled the order rendered by the Regional Trial Court (Branch 28, Manila, through Judge Sabino R. de Leon, Jr.) dated April 30, 1987, as well as its Order of June 26, 1987 denying the petitioners' (therein defendants') motion for reconsideration, and said Trial Court is hereby DIRECTED to proceed with Civil Case No. 86-38704 and decide it on the merits in due course. SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Then presided over by Hon. Sabino de Leon (now Associate Justice of the Sandiganbayan

[2] San Juan was the first bareboat charterer of the MV "Estella," involved in Civil Case No. 87-38930 of Branch 14 of the RTC, Manila, *infra*.

[3] Crestamonte was not impleaded as party in Case No. 86-38704

[4] Rollo, p. 19

[5] However, prior to the Third Division's Decision of July 30, 1990, Fu Hing was allowed to withdraw as co-petitioner for the reason that it had reached an amicable settlement with Atlantic and the M/V "Estella."

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