

SECOND DIVISION

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

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., LOURDES DE MESA MENDOZA, MENELEO MENDOZA, ANTUSA DE MESA MAGNO, FRANCISCO MAGNO, TEODORO DE MESA, FIRMO DE MESA AND MERCEDES DE MESA, RESPONDENTS.

D E C I S I O N

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 It was further alleged that Jae Il Aum could not have withdrawn the said deposits without the connivance of the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