

FIRST DIVISION

[G.R. No. 189206, June 08, 2011]

**GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS.
THE HONORABLE 15TH DIVISION OF THE COURT OF APPEALS
AND INDUSTRIAL BANK OF KOREA, TONG YANG MERCHANT
BANK, HANAREUM BANKING CORP., LAND BANK OF THE
PHILIPPINES, WESTMONT BANK AND DOMSAT HOLDINGS, INC.,
RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

The subject of this petition for *certiorari* is the Decision ^[1] of the Court of Appeals in CA-G.R. SP No. 82647 allowing the *quashal* by the Regional Trial Court (RTC) of Makati of a *subpoena* for the production of bank ledger. This case is incident to Civil Case No. 99-1853, which is the main case for collection of sum of money with damages filed by Industrial Bank of Korea, Tong Yang Merchant Bank, First Merchant Banking Corporation, Land Bank of the Philippines, and Westmont Bank (now United Overseas Bank), collectively known as "the Banks" against Domsat Holdings, Inc. (Domsat) and the Government Service Insurance System (GSIS). Said case stemmed from a Loan Agreement, ^[2] whereby the Banks agreed to lend United States (U.S.) \$11 Million to Domsat for the purpose of financing the lease and/or purchase of a Gorizon Satellite from the International Organization of Space Communications (Intersputnik). ^[3]

The controversy originated from a surety agreement by which Domsat obtained a surety bond from GSIS to secure the payment of the loan from the Banks. We quote the terms of the Surety Bond in its entirety. ^[4]

Republic of the Philippines
GOVERNMENT SERVICE INSURANCE SYSTEM
GENERAL INSURANCE FUND
GSIS Headquarters, Financial Center
Roxas Boulevard, Pasay City

G(16) GIF Bond 027461

S U R E T Y B O N D

KNOW ALL MEN BY THESE PRESENTS:

That we, DOMSAT HOLDINGS, INC., represented by its President as PRINCIPAL, and the GOVERNMENT SERVICE INSURANCE SYSTEM, as Administrator of the GENERAL INSURANCE FUND, a corporation duly

organized and existing under and by virtue of the laws of the Philippines, with principal office in the City of Pasay, Metro Manila, Philippines as SURETY, are held and firmly bound unto the OBLIGEES: LAND BANK OF THE PHILIPPINES, 7th Floor, Land Bank Bldg. IV. 313 Sen. Gil J. Puyat Avenue, Makati City; WESTMONT BANK, 411 Quintin Paredes St., Binondo, Manila: TONG YANG MERCHANT BANK, 185, 2-Ka, Ulchi-ro, Chungk-ku, Seoul, Korea; INDUSTRIAL BANK OF KOREA, 50, 2-Ga, Ulchi-ro, Chung-gu, Seoul, Korea; and FIRST MERCHANT BANKING CORPORATION, 199-40, 2-Ga, Euliji-ro, Jung-gu, Seoul, Korea, in the sum, of US \$ ELEVEN MILLION DOLLARS (\$11,000,000.00) for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THE OBLIGATION ARE AS FOLLOWS:

WHEREAS, the above bounden PRINCIPAL, on the 12th day of December, 1996 entered into a contract agreement with the aforementioned OBLIGEES to fully and faithfully

Guarantee the repayment of the principal and interest on the loan granted the PRINCIPAL to be used for the financing of the two (2) year lease of a Russian Satellite from INTERSPUTNIK, in accordance with the terms and conditions of the credit package entered into by the parties.

This bond shall remain valid and effective until the loan including interest has been fully paid and liquidated,

a copy of which contract/agreement is hereto attached and made part hereof;

WHEREAS, the aforementioned OBLIGEES require said PRINCIPAL to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said contract/agreement.

NOW, THEREFORE, if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said contract/agreements, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

WITNESS OUR HANDS AND SEALS this 13th day of December 1996 at Pasay City, Philippines.

DOMSAT HOLDINGS, INC
Principal

By:
CAPT. RODRIGO A. SILVERIO

GOVERNMENT SERVICE
INSURANCE
SYSTEM
General Insurance Fund

By:
AMALIO A. MALLARI

When Domsat failed to pay the loan, GSIS refused to comply with its obligation reasoning that Domsat did not use the loan proceeds for the payment of rental for the satellite. GSIS alleged that Domsat, with Westmont Bank as the conduit, transferred the U.S. \$11 Million loan proceeds from the Industrial Bank of Korea to Citibank New York account of Westmont Bank and from there to the Binondo Branch of Westmont Bank. [5] The Banks filed a complaint before the RTC of Makati against Domsat and GSIS.

In the course of the hearing, GSIS requested for the issuance of a *subpoena duces tecum* to the custodian of records of Westmont Bank to produce the following documents:

1. Ledger covering the account of DOMSAT Holdings, Inc. with Westmont Bank (now United Overseas Bank), any and all documents, records, files, books, deeds, papers, notes and other data and materials relating to the account or transactions of DOMSAT Holdings, Inc. with or through the Westmont Bank (now United Overseas Bank) for the period January 1997 to December 2002, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise;
2. All applications for cashier's/ manager's checks and bank transfers funded by the account of DOMSAT Holdings, Inc. with or through the Westmont Bank (now United Overseas Bank) for the period January 1997 to December 2002, and all other data and materials covering said applications, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise;
3. Ledger covering the account of Philippine Agila Satellite, Inc. with Westmont Bank (now United Overseas Bank), any and all documents, records, files, books, deeds, papers, notes and other data and materials relating to the account or transactions of Philippine Agila Satellite, Inc. with or through the Westmont bank (now United Overseas Bank) for the period January 1997 to December 2002, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise;
4. All applications for cashier's/manager's checks funded by the account of Philippine Agila Satellite, Inc. with or through the Westmont Bank (now United Overseas Bank) for the period January 1997 to December 2002, and all other data and materials covering said applications, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise. [6]

The RTC issued a *subpoena decus tecum* on 21 November 2002. [7] A motion to

quash was filed by the banks on three grounds: 1) the *subpoena* is unreasonable, oppressive and does not establish the relevance of the documents sought; 2) request for the documents will violate the Law on Secrecy of Bank Deposits; and 3) GSIS failed to advance the reasonable cost of production of the documents. [8] Domsat also joined the banks' motion to quash through its Manifestation/Comment. [9] On 9 April 2003, the RTC issued an Order denying the motion to quash for lack of merit. We quote the pertinent portion of the Order, thus:

After a careful consideration of the arguments of the parties, the Court did not find merit in the motion.

The serious objection appears to be that the subpoena is violative of the Law on Secrecy of Bank Deposit, as amended. The law declares bank deposits to be "absolutely confidential" except: x x x (6) In cases where the money deposited or invested is the subject matter of the litigation.

The case at bench is for the collection of a sum of money from defendants that obtained a loan from the plaintiff. The loan was secured by defendant GSIS which was the surety. It is the contention of defendant GSIS that the proceeds of the loan was deviated to purposes other than to what the loan was extended. The quashal of the subpoena would deny defendant GSIS its right to prove its defenses.

WHEREFORE, for lack of merit the motion is DENIED. [10]

On 26 June 2003, another Order was issued by the RTC denying the motion for reconsideration filed by the banks. [11] On 1 September 2003 however, the **trial court granted the second motion for reconsideration** filed by the banks. The previous *subpoenas* issued were consequently quashed. [12] The trial court invoked the ruling in *Intengan v. Court of Appeals*, [13] where it was ruled that foreign currency deposits are absolutely confidential and may be examined only when there is a written permission from the depositor. The motion for reconsideration filed by GSIS was denied on 30 December 2003.

Hence, these assailed orders are the subject of the petition for *certiorari* before the Court of Appeals. GSIS raised the following arguments in support of its petition:

I.

Respondent Judge acted with grave abuse of discretion when it favorably considered respondent banks' (second) Motion for Reconsideration dated July 9, 2003 despite the fact that it did not contain a notice of hearing and was therefore a mere scrap of paper.

II.

Respondent judge capriciously and arbitrarily ignored Section 2 of the Foreign Currency Deposit Act (RA 6426) in ruling in his Orders dated September 1 and December 30, 2003 that the US\$11,000,000.00 deposit in the account of respondent Domsat in Westmont Bank is covered by the

secrecy of bank deposit.

III.

Since both respondent banks and respondent Domsat have disclosed during the trial the US\$11,000,000.00 deposit, it is no longer secret and confidential, and petitioner GSIS' right to inquire into what happened to such deposit can not be suppressed. [14]

The Court of Appeals addressed these issues in *seriatim*.

The Court of Appeals resorted to a liberal interpretation of the rules to avoid miscarriage of justice when it allowed the filing and acceptance of the second motion for reconsideration. The appellate court also underscored the fact that GSIS did not raise the defect of lack of notice in its opposition to the second motion for reconsideration. The appellate court held that failure to timely object to the admission of a defective motion is considered a waiver of its right to do so.

The Court of Appeals declared that Domsat's deposit in Westmont Bank is covered by Republic Act No. 6426 or the Bank Secrecy Law. We quote the pertinent portion of the Decision:

It is our considered opinion that Domsat's deposit of \$11,000,000.00 in Westmont Bank is covered by the Bank Secrecy Law, as such it cannot be examined, inquired or looked into without the written consent of its owner. The ruling in *Van Twest vs. Court of Appeals* was rendered during the effectivity of CB Circular No. 960, Series of 1983, under Sec. 102 thereof, transfer to foreign currency deposit account or receipt from another foreign currency deposit account, whether for payment of legitimate obligation or otherwise, are not eligible for deposit under the System.

CB Circular No. 960 has since been superseded by CB Circular 1318 and later by CB Circular 1389. Section 102 of Circular 960 has not been re-enacted in the later Circulars. What is applicable now is the decision in *Intengan vs. Court of Appeals* where the Supreme Court has ruled that the under R.A. 6426 there is only a single exception to the secrecy of foreign currency deposits, that is, disclosure is allowed only upon the written permission of the depositor. Petitioner, therefore, had inappropriately invoked the provisions of Central Bank (CB) Circular Nos. 343 which has already been superseded by more recently issued CB Circulars. CB Circular 343 requires the surrender to the banking system of foreign exchange, including proceeds of foreign borrowings. This requirement, however, can no longer be found in later circulars.

In its Reply to respondent banks' comment, petitioner appears to have conceded that what is applicable in this case is CB Circular 1389. Obviously, under CB 1389, proceeds of foreign borrowings are no longer required to be surrendered to the banking system.

Undaunted, petitioner now argues that paragraph 2, Section 27 of CB