677 Phil. 351

FIRST DIVISION

[G.R. No. 175799, November 28, 2011]

NM ROTHSCHILD & SONS (AUSTRALIA) LIMITED, PETITIONER, VS. LEPANTO CONSOLIDATED MINING COMPANY, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals dated September 8, 2006 in CA-G.R. SP No. 94382 and its Resolution[2] dated December 12, 2006, denying the Motion for Reconsideration.

On August 30, 2005, respondent Lepanto Consolidated Mining Company filed with the Regional Trial Court (RTC) of Makati City a Complaint[3] against petitioner NM Rothschild & Sons (Australia) Limited praying for a judgment declaring the loan and hedging contracts between the parties void for being contrary to Article 2018[4] of the Civil Code of the Philippines and for damages. The Complaint was docketed as Civil Case No. 05-782, and was raffled to Branch 150. Upon respondent's (plaintiff's) motion, the trial court authorized respondent's counsel to personally bring the summons and Complaint to the Philippine Consulate General in Sydney, Australia for the latter office to effect service of summons on petitioner (defendant).

On October 20, 2005, petitioner filed a Special Appearance With Motion to Dismiss[5] praying for the dismissal of the Complaint on the following grounds: (a) the court has not acquired jurisdiction over the person of petitioner due to the defective and improper service of summons; (b) the Complaint failed to state a cause of action and respondent does not have any against petitioner; (c) the action is barred by estoppel; and (d) respondent did not come to court with clean hands.

On November 29, 2005, petitioner filed two Motions: (1) a Motion for Leave to take the deposition of Mr. Paul Murray (Director, Risk Management of petitioner) before the Philippine Consul General; and (2) a Motion for Leave to Serve Interrogatories on respondent.

On December 9, 2005, the trial court issued an Order[6] denying the Motion to Dismiss. According to the trial court, there was a proper service of summons through the Department of Foreign Affairs (DFA) on account of the fact that the defendant has neither applied for a license to do business in the Philippines, nor filed with the Securities and Exchange Commission (SEC) a Written Power of Attorney designating some person on whom summons and other legal processes maybe served. The trial court also held that the Complaint sufficiently stated a cause of action. The other allegations in the Motion to Dismiss were brushed aside as matters of defense which can best be ventilated during the trial.

On December 27, 2005, petitioner filed a Motion for Reconsideration.[7] On March 6, 2006, the trial court issued an Order denying the December 27, 2005 Motion for Reconsideration and disallowed the twin Motions for Leave to take deposition and serve written interrogatories.[8]

On April 3, 2006, petitioner sought redress via a Petition for *Certiorari*[9] with the Court of Appeals, alleging that the trial court committed grave abuse of discretion in denying its Motion to Dismiss. The Petition was docketed as CA-G.R. SP No. 94382.

On September 8, 2006, the Court of Appeals rendered the assailed Decision dismissing the Petition for *Certiorari*. The Court of Appeals ruled that since the denial of a Motion to Dismiss is an interlocutory order, it cannot be the subject of a Petition for *Certiorari*, and may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. On December 12, 2006, the Court of Appeals rendered the assailed Resolution denying the petitioner's Motion for Reconsideration.

Meanwhile, on December 28, 2006, the trial court issued an Order directing respondent to answer some of the questions in petitioner's Interrogatories to Plaintiff dated September 7, 2006.

Notwithstanding the foregoing, petitioner filed the present petition assailing the September 8, 2006 Decision and the December 12, 2006 Resolution of the Court of Appeals. Arguing against the ruling of the appellate court, petitioner insists that (a) an order denying a motion to dismiss may be the proper subject of a petition for *certiorari*; and (b) the trial court committed grave abuse of discretion in not finding that it had not validly acquired jurisdiction over petitioner and that the plaintiff had no cause of action.

Respondent, on the other hand, posits that: (a) the present Petition should be dismissed for not being filed by a real party in interest and for lack of a proper verification and certificate of non-forum shopping; (b) the Court of Appeals correctly ruled that *certiorari* was not the proper remedy; and (c) the trial court correctly denied petitioner's motion to dismiss.

Our discussion of the issues raised by the parties follows:

Whether petitioner is a real party in interest

Respondent argues that the present Petition should be dismissed on the ground that petitioner no longer existed as a corporation at the time said Petition was filed on February 1, 2007. Respondent points out that as of the date of the filing of the Petition, there is no such corporation that goes by the name NM Rothschild and Sons (Australia) Limited. Thus, according to respondent, the present Petition was not filed by a real party in interest, citing our ruling in *Philips Export B.V. v. Court of Appeals*,[10] wherein we held:

> A name is peculiarly important as necessary to the very existence of a corporation (American Steel Foundries vs. Robertson, 269 US 372, 70 L ed 317, 46 S Ct 160; Lauman vs. Lebanon Valley R. Co., 30 Pa 42; First National Bank vs. Huntington Distilling Co., 40 W Va 530, 23 SE 792).

> Its name is one of its attributes, an element of its existence, and essential to its identity (6 Fletcher [Perm Ed], pp. 3-4). The general rule as to corporations is that each corporation must have a name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person (Cincinnati Cooperage Co. vs. Bate, 96 Ky 356, 26 SW 538; Newport Mechanics Mfg. Co. vs. Starbird, 10 NH 123); and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted (Federal Secur. Co. vs. Federal Secur. Corp., 129 Or 375, 276 P 1100, 66 ALR 934; Paulino vs. Portuguese Beneficial Association, 18 RI 165, 26 A 36).[11]

In its Memorandum[12] before this Court, petitioner started to refer to itself as *Investec Australia Limited (formerly "NM Rothschild & Sons [Australia] Limited"*) and captioned said Memorandum accordingly. Petitioner claims that NM Rothschild and Sons (Australia) Limited still exists as a corporation under the laws of Australia under said new name. It presented before us documents evidencing the process in the Australian Securities & Investment Commission on the change of petitioner's company name from NM Rothschild and Sons (Australia) Limited to Investec Australia Limited.[13]

We find the submissions of petitioner on the change of its corporate name satisfactory and resolve not to dismiss the present Petition for Review on the ground of not being prosecuted under the name of the real party in interest. While we stand by our pronouncement in *Philips Export* on the importance of the corporate name to the very existence of corporations and the significance thereof in the corporation's right to sue, we shall not go so far as to dismiss a case filed by the proper party using its former name when adequate identification is presented. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[14] There is no doubt in our minds that the party who filed the present Petition, having presented sufficient evidence of its identity and being represented by the same counsel as that of the defendant in the case sought to be dismissed, is the entity that will be benefited if this Court grants the dismissal prayed for.

Since the main objection of respondent to the verification and certification against forum shopping likewise depends on the supposed inexistence of the corporation named therein, we give no credit to said objection in light of the foregoing discussion.

Propriety of the Resort to a Petition for *Certiorari* with the Court of Appeals

We have held time and again that an order denying a Motion to Dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. The general rule, therefore, is that the denial of a Motion to Dismiss cannot be questioned in a special civil action for Certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[15] However, we have likewise held that when the denial of the Motion to Dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of Certiorari may be

justified. By "grave abuse of discretion" is meant:

> [S]uch capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[16]

The resolution of the present Petition therefore entails an inquiry into whether the Court of Appeals correctly ruled that the trial court did not commit grave abuse of discretion in its denial of petitioner's Motion to Dismiss. A mere error in judgment on the part of the trial court would undeniably be inadequate for us to reverse the disposition by the Court of Appeals.

Issues more properly ventilated during the trial of the case

As previously stated, petitioner seeks the dismissal of Civil Case No. 05-782 on the following grounds: (a) lack of jurisdiction over the person of petitioner due to the defective and improper service of summons; (b) failure of the Complaint to state a cause of action and absence of a cause of action; (c) the action is barred by estoppel; and (d) respondent did not come to court with clean hands.

As correctly ruled by both the trial court and the Court of Appeals, the alleged absence of a cause of action (as opposed to the failure to state a cause of action), the alleged estoppel on the part of petitioner, and the argument that respondent is in pari delicto in the execution of the challenged contracts, are not grounds in a Motion to Dismiss as enumerated in Section 1, Rule 16[17] of the Rules of Court. Rather, such defenses raise evidentiary issues closely related to the validity and/or existence of respondent's alleged cause of action and should therefore be threshed out during the trial.

As regards the allegation of failure to state a cause of action, while the same is usually available as a ground in a Motion to Dismiss, said ground cannot be ruled upon in the present Petition without going into the very merits of the main case.

It is basic that "[a] cause of action is the act or omission by which a party violates a right of another."[18] Its elements are the following: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right.[19] We have held that to sustain a Motion to Dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist and not only that the claim was defectively stated or is ambiguous, indefinite or uncertain.[20]

The trial court held that the Complaint in the case at bar contains all the three elements of a cause of action, i.e., it alleges that: (1) plaintiff has the right to ask for the declaration of nullity of the Hedging Contracts for being null and void and contrary to Article 2018 of the Civil Code of the Philippines; (2) defendant has the corresponding obligation not to enforce the Hedging Contracts because they are in

the nature of wagering or gambling agreements and therefore the transactions implementing those contracts are null and void under Philippine laws; and (3) defendant ignored the advice and intends to enforce the Hedging Contracts by demanding financial payments due therefrom.[21]

The rule is that in a Motion to Dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff's complaint.[22] However, this principle of hypothetical admission admits of exceptions. Thus, in *Tan v. Court of Appeals,* [23] we held:

> The flaw in this conclusion is that, while conveniently echoing the general rule that averments in the complaint are deemed hypothetically admitted upon the filing of a motion to dismiss grounded on the failure to state a cause of action, it did not take into account the equally established limitations to such rule, i.e., that **a motion to dismiss does not admit** the truth of mere epithets of fraud; nor **allegations of legal conclusions**; nor an erroneous statement of law; nor mere inferences or conclusions from facts not stated; nor **mere conclusions of law**; nor allegations of fact the falsity of which is subject to judicial notice; nor matters of evidence; nor surplusage and irrelevant matter; nor scandalous matter inserted merely to insult the opposing party; nor to legally impossible facts; nor to facts which appear unfounded by a record incorporated in the pleading, or by a document referred to; and, nor to general averments contradicted by more specific averments. A more judicious resolution of a motion to dismiss, therefore, necessitates that the court be not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom. Courts may consider other facts within the range of judicial notice as well as relevant laws and jurisprudence which the courts are bound to take into account, and **they are also fairly entitled to examine records/documents duly incorporated into the complaint by the pleader himself in ruling on the demurrer to the complaint**.[24] (Emphases supplied.)

In the case at bar, respondent asserts in the Complaint that the Hedging Contracts are void for being contrary to Article 2018[25] of the Civil Code. Respondent claims that under the Hedging Contracts, despite the express stipulation for deliveries of gold, the intention of the parties was allegedly merely to compel each other to pay the difference between the value of the gold at the forward price stated in the contract and its market price at the supposed time of delivery.

Whether such an agreement is void is a mere allegation of a conclusion of law, which therefore cannot be hypothetically admitted. Quite properly, the relevant portions of the contracts sought to be nullified, as well as a copy of the contract itself, are incorporated in the Complaint. The determination of whether or not the Complaint stated a cause of action would therefore involve an inquiry into whether or not the assailed contracts are void under Philippine laws. This is, precisely, the very issue to be determined in Civil Case No. 05-782. Indeed, petitioner’s defense against the charge of nullity of the Hedging Contracts is the purported intent of the parties that actual deliveries of gold be made pursuant thereto. Such a defense