

FIRST DIVISION

[G.R. NO. 157629, March 22, 2007]

J & N SHIPPING LINES, INC., PETITIONER, VS. TECHNOMARINE CO., LTD. AND PHILIPPINE NIPPON KYOEI CORPORATION, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari^[1] seeking to reverse the Decision^[2] dated October 18, 2002 and Resolution dated February 26, 2003 of the Court of Appeals in CA-G.R. SP No. 71701.

The facts are:

Technomarine Co., Ltd. (Technomarine), respondent, is a corporation organized and existing under the laws of Japan. It is represented in the Philippines by Philippine Nippon Kyoei Corporation (Philippine Nippon), a domestic corporation with principal office at 648 Remedios Street, Malate, Manila, also a respondent herein.

On October 28, 1998, by way of a Sales Agreement,^[3] Technomarine, through Philippine Nippon, sold to ASKA Shipping Corporation (ASKA) the vessel *Ferry Tsuyoshi* (later renamed *ASKA Shuttle*) for US\$300,000.00 or P12 million.

Pursuant to the agreement, ASKA will mortgage to Philippine Nippon the vessel to secure the payment of the purchase price and will execute the corresponding mortgage contract. Thereafter, ASKA, through its President, Gina Kozasa, issued several postdated checks (in pesos and dollars) in favor of Philippine Nippon.

Meantime, ASKA, after taking possession of the vessel, refused to execute the mortgage contract. When the postdated checks fell due, they were dishonored. As a result, on May 29, 1999, Philippine Nippon and ASKA entered into a Supplemental Agreement which rescheduled ASKA's terms of payment.

Surprisingly, on April 4, 2001, ASKA sold to J & N Shipping Lines, Inc. (J & N), petitioner, the same vessel for P4 million, as shown by a Deed of Absolute Sale.^[4] On July 12, 2001, the Maritime Industry Authority (MARINA) issued a Certificate of Ownership and a Certificate of Vessel Registry in favor of petitioner. It also approved the change of name of the vessel from *ASKA Shuttle* to *MV J & N Cruiser*.

Upon learning that ASKA sold the vessel to petitioner J & N, respondents Philippine Nippon and Technomarine filed with the Regional Trial Court (RTC), Branch 24, Manila a complaint for annulment of sale and damages with prayer for the issuance of a writ of replevin against petitioner J & N, ASKA and MARINA, docketed as Civil Case No. 01-101763.

For their part, petitioner and ASKA filed two separate motions to dismiss the complaint. In an Order dated March 8, 2002, the RTC, Branch 24 granted the motions. Accordingly, the writ of replevin issued in favor of respondents was recalled; and the deputy sheriff was directed to return the vessel to petitioner.

In dismissing the complaint, the RTC, Branch 24,^[5] held:

It is not disputed that when the vessel, subject of the suit, was sold by defendant ASKA to defendant J & N, with the exception of a writ of preliminary attachment issued against the vessel, the same was free from all liens and encumbrances. And said attachment was even dissolved with the payment of the claim of the attaching creditor by defendant J & N.

A cursory reading of the sales agreement, Annex "A" of the amended complaint, between Techno Marine and defendant ASKA does not at all contain any stipulation that notwithstanding the terms of payment, ownership of the vessel should be retained by the seller until full payment is made. Thus, even with the partial payments made, ownership was likewise transferred to defendant ASKA.

On this score alone, the suit for replevin must necessarily fail. As held in *Distilleria Washington, Inc. v. Court of Appeals* (263 SCRA 303), "replevin is a possessory in action, the gist of which focuses on the right of possession that in turn is dependent on a legal basis that, not infrequently, looks to the ownership of the object ought to the replevined." And from the facts adduced, ownership is neither within the plaintiffs nor with defendant ASKA **but with defendant J & N.**

The only way for plaintiffs to enforce their claim against defendant J & N is if there was a chattel mortgage over the vessel. A mere agreement between plaintiffs and defendant ASKA creating a lien over the chattel would not create in favor of the plaintiffs any lien that can be enforced against third parties. Thus, although plaintiff Technomarine has not been fully paid, its lien over the vessel remained only so long as it was in possession thereof (Art. 1527, Civil Code). When plaintiff gave up possession with the delivery of the vessel, the lien created by law was automatically extinguished (Art. 1529, Civil Code).

As against defendant J & N, therefore, plaintiffs have no cause of action. **As against defendant ASKA, the more appropriate suit would be an action for damages on account of ASKA's failure to execute the mortgage as stipulated in the sales agreement since neither annulment of sale nor specific performance is now feasible.**

Respondents interposed an appeal to the Court of Appeals. Eventually, they filed a motion to withdraw the appeal. This was granted in a Resolution dated July 3, 2002 **which became final and executory on July 3, 2002.**

It appears, however, that the reason why respondents withdrew their appeal was because earlier, they filed with the RTC, Branch 37, Manila a second complaint for

recovery of possession/replevin with damages against petitioner J & N, ASKA and MARINA, docketed as Civil Case No. 02-103850.

On June 25, 2002, the said RTC issued a writ of replevin in favor of respondents. Two (2) days thereafter, and upon their posting a bond of P24 million, the corresponding warrant of seizure of the vessel was implemented by the sheriff.

On June 28, 2002, petitioner filed an "Urgent Motion to Dismiss" the complaint on the ground of **forum shopping**, alleging that previously, respondents filed with the RTC, Branch 24, Manila a similar complaint (Civil Case No. 01-101763) which was dismissed; and that later, they withdrew their appeal before the Court of Appeals.

On July 11, 2002, the RTC, Branch 37, Manila, acting on petitioner's motion, dismissed respondents' complaint in Civil Case No. 02-103850 on the ground of forum shopping and ordered the return of the vessel to petitioner.

On July 16, 2002, respondents filed a motion for reconsideration. Two days later, or on July 18, 2002, without waiting for the ruling of the court on their motion, they filed with the Court of Appeals a petition for prohibition seeking to enjoin Branch 37 from implementing its July 11, 2002 Order directing the seizure of the vessel in favor of petitioner.

In its assailed Decision dated October 18, 2002, the Court of Appeals granted respondents' petition for prohibition, set aside the July 11, 2002 Order of the RTC, Branch 37, and reinstated the complaint in Civil Case No. 02-103850. The appellate court held that in implementing the Order of July 11, 2002 which has not yet attained finality, the Presiding Judge of Branch 37 committed grave abuse of discretion.

Petitioner filed a motion for reconsideration but it was denied by the Court of Appeals in its Resolution dated February 26, 2003.

Hence, the present petition.

The issues for our determination are:

1. Whether respondents resorted to forum shopping when they filed a second complaint (Civil Case No. 02-103850) with the RTC, Branch 37, Manila after their first complaint (Civil Case No. 01-101763) was dismissed by the RTC, Branch 24.
2. Whether the Court of Appeals erred in granting respondents' petition for prohibition and declaring that in enforcing the Order dated July 11, 2002 directing the seizure of the vessel in possession of petitioner, Presiding Judge Hidalgo of Branch 37 committed grave abuse of discretion.

On the first issue, **we hold that respondents engaged in forum shopping**. It may be recalled that they filed with the RTC, Branch 24 the first complaint against petitioner J & N, ASKA and MARINA for annulment of sale and damages. The case was dismissed. Respondents then appealed to the Court of Appeals but later, they withdrew their appeal because prior thereto, they filed a similar complaint with the RTC, Branch 37. These two cases involve identity of parties, rights or causes of