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SECOND DIVISION

[G.R. NO. 124772, August 14, 2007]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT AND MAGTANGGOL C. GUNIGUNDO, IN HIS CAPACITY AS CHAIRMAN THEREOF, PETITIONERS, VS. SANDIGANBAYAN AND OFFICECO HOLDINGS, N.V., RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before this Court is a Petition for Certiorari and Prohibition with Prayer for Issuance of a Temporary Restraining Order filed by the Presidential Commission on Good Government (PCGG) to restrain and enjoin respondent Sandiganbayan from further proceeding with Civil Case No. 0164, and to declare null and void the Resolutions of the Sandiganbayan (Second Division) dated 11 January 1996 and 29 March 1996, which denied PCGG's motion to dismiss and motion for reconsideration, respectively, in Civil Case No. 0164.

The antecedent facts follow.

On 7 April 1986, in connection with criminal proceedings initiated in the Philippines to locate, sequester and seek restitution of alleged ill-gotten wealth amassed by the Marcoses and other accused from the Philippine Government,[1] the Office of the Solicitor General (OSG) wrote the Federal Office for Police Matters in Berne, Switzerland, requesting assistance for the latter office to: (a) ascertain and provide the OSG with information as to where and in which cantons the ill-gotten fortune of the Marcoses and other accused are located, the names of the depositors and the banks and the amounts involved; and (b) take necessary precautionary measures, such as sequestration, to freeze the assets in order to preserve their existing value and prevent any further transfer thereof (herein referred to as the IMAC request).[2]

On 29 May 1986, the Office of the District Attorney in Zurich, pursuant to the OSG's request, issued an Order directing the Swiss Banks in Zurich to freeze the accounts of the accused in PCGG I.S. No. 1 and in the "List of Companies and Foundations."[3] In compliance with said Order, Bankers Trust A.G. (BTAG) of Zurich froze the accounts of Officeco Holdings, N.V. (Officeco).[4]

Officeco appealed the Order of the District Attorney to the Attorney General of the Canton of Zurich. The Attorney General affirmed the Order of the District Attorney.[5] Officeco further appealed to the Swiss Federal Court which likewise dismissed the appeal on 31 May 1989.[6]

Thereafter, in late 1992, Officeco made representations with the OSG and the PCGG for them to officially advise the Swiss Federal Office for Police Matters to unfreeze

Officeco's assets.[7] The PCGG required Officeco to present countervailing evidence to support its request.

Instead of complying with the PCGG requirement for it to submit countervailing evidence, on 12 September 1994, Officeco filed the complaint[8] which was docketed as Civil Case No. 0164 of the Sandiganbayan. The complaint prayed for the PCGG and the OSG to officially advise the Swiss government to exclude from the freeze or sequestration order the account of Officeco with BTAG and to unconditionally release the said account to Officeco.

The OSG filed a joint answer[9] on 24 November 1994 in behalf of all the defendants in Civil Case No. 0164.[10] On 12 May 1995, the PCGG itself filed a motion to dismiss[11] which was denied by the Sandiganbayan (Third Division) in its Resolution promulgated on 11 January 1996.[12] PCGG's motion for reconsideration was likewise denied in another Resolution dated 29 March 1996.[13] Hence, this petition.

On 20 May 1996, the Sandiganbayan issued an order in Civil Case No. 0164 canceling the pre-trial scheduled on said date in deference to whatever action the Court may take on this petition.[14]

The issues raised by the PCGG in its Memorandum[15] may be summarized as follows: whether the Sandiganbayan erred in not dismissing Civil Case No. 0164 on the grounds of (1) *res judicata;* (2) lack of jurisdiction on account of the "act of state doctrine"; (3) lack of cause of action for being premature for failure to exhaust administrative remedies; and (4) lack of cause of action for the reason that mandamus does not lie to compel performance of a discretionary act, there being no showing of grave abuse of discretion on the part of petitioners.

According to petitioners, the 31 May 1989 Decision of the Swiss Federal Court denying Officeco's appeal from the 29 May 1986 and 16 August 1988 freeze orders of the Zurich District Attorney and the Attorney General of the Canton of Zurich, respectively, is conclusive upon Officeco's claims or demands for the release of the subject deposit accounts with BTAG. Thus, a relitigation of the same claims or demands cannot be done without violating the doctrine of res judicata or conclusiveness of judgment.[16]

Next, petitioners claim that Civil Case No. 0164 in effect seeks a judicial review of the legality or illegality of the acts of the Swiss government since the Sandiganbayan would inevitably examine and review the freeze orders of Swiss officials in resolving the case. This would be in violation of the "act of state" doctrine which states that courts of one country will not sit in judgment on the acts of the government of another in due deference to the independence of sovereignty of every sovereign state.[17]

Furthermore, if the Sandiganbayan allowed the complaint in Civil Case No. 0164 to prosper, this would place the Philippine government in an uncompromising position as it would be constrained to take a position contrary to that contained in the IMAC request.

Petitioners allege that Officeco failed to exhaust the administrative remedies

available under Secs. 5 and 6 of the PCGG Rules and Regulations Implementing Executive Orders No. 1 and No. 2. This failure, according to petitioners, stripped Officeco of a cause of action thereby warranting the dismissal of the complaint before the Sandiganbayan.

Petitioners further contend that the complaint before the Sandiganbayan is actually one for mandamus but the act sought by Officeco is discretionary in nature. Petitioners add that they did not commit grave abuse of discretion in denying Officeco's request to unfreeze its account with BTAG since the denial was based on Officeco's failure to present countervailing evidence to support its claim. The action for mandamus does not lie, petitioners conclude.

In its comment,[18] Officeco questions the competence of the PCGG lawyers to appear in the case since they are not properly authorized by the OSG to represent the Philippine government and/or the PCGG in ill-gotten wealth cases such as the one in the case at bar. However, this issue has been rendered moot by an agreement by and among the PCGG Chairman, the Solicitor General, the Chief Presidential Legal Counsel, and the Secretary of Justice that the PCGG lawyers would enter their appearance as counsel of PCGG or the Republic and shall directly attend to the various cases of the PCGG, by virtue of their deputization as active counsel.[19] Furthermore, the Memorandum in this case which was prepared by the OSG reiterated the arguments in support of the petition which was initially filed by PCGG.

Nevertheless, the petition is bereft of merit. We find that the Sandiganbayan did not act with grave abuse of discretion in denying petitioners' motion to dismiss.

Res judicata

Res judicata means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment.[20] The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action.[21]

For the preclusive effect of *res judicata* to be enforced, the following requisites must obtain: (1) The former judgment or order must be final; (2) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two actions are substantially between the same parties.[22]

While the first three elements above are present in this case, we rule that the fourth element is absent. Hence, *res judicata* does not apply to prevent the Sandiganbayan from proceeding with Civil Case No. 0164.

Absolute identity of parties is not a condition *sine qua non* for *res judicata* to apply, a shared identity of interest being sufficient to invoke the coverage of the principle.

[23] In this regard, petitioners claim that while "the Philippine government was not an impleaded party respondent in Switzerland," it is undisputed that "the interest of the Philippine government is identical to the interest of the Swiss officials," harping on the fact that the Swiss officials issued the freeze order on the basis of the IMAC request.[24] However, we fail to see how petitioners can even claim an interest identical to that of the courts of Switzerland. Petitioners' interest, as reflected in their legal mandate, is to recover ill-gotten wealth, wherever the same may be located.[25] The interest of the Swiss court, on the other hand, is only to settle the issues raised before it, which include the propriety of the legal assistance extended by the Swiss authorities to the Philippine government.

Secondly, a subject matter is the item with respect to which the controversy has arisen, or concerning which the wrong has been done, and it is ordinarily the right, the thing, or the contract under dispute.[26] In the case at bar, the subject matter in the Swiss Federal Court was described in the 31 May 1989 decision itself as "ruling on temporary measures (freezing of accounts) and of taking of evidence (gathering bank information)."[27] It was thus concerned with determining (1) whether "there is a reason of exclusion as defined in Art. 2 lit. b and [Art.] 3 par. 1 IRSG[28] or an applicable case of Art. 10 Par. 2 IRSG;" [29] (2) whether legal assistance should be refused on the basis of Art. 2 lit. a IRSG;[30] (3) whether Officeco should be regarded as a disinterested party owing to the fact that its name was not included in the list accompanying the IMAC request as well as in the order of the District Attorney of Zurich; and (4) whether the grant of legal assistance is proper considering the actions of Gapud.[31] In short, the subject matter before the Swiss courts was the propriety of the legal assistance extended to the Philippine government. On the other hand, the issue in Civil Case No. 0164 is whether the PCGG may be compelled to officially advise the Swiss government to exclude or drop from the freeze or sequestration order the account of Officeco with BTAG and to release the said account to Officeco. In short, the subject matter in Civil Case No. 0164 is the propriety of PCGG's stance regarding Officeco's account with BTAG.

In arguing that there is identity of causes of action, petitioners claim that "the proofs required to sustain a judgment for [Officeco] in Switzerland is no different from the proofs that it would offer in the Philippines." We disagree.

A cause of action is an act or omission of one party in violation of the legal right of the other.[32] Causes of action are identical when there is an identity in the facts essential to the maintenance of the two actions, or where the same evidence will sustain both actions.[33] The test often used in determining whether causes of action are identical is to ascertain whether the same facts or evidence would support and establish the former and present causes of action.[34] More significantly, there is identity of causes of action when the judgment sought will be inconsistent with the prior judgment.[35] In the case at bar, allowing Civil Case No. 0164 to proceed to its logical conclusion will not result in any inconsistency with the 31 May 1989 decision of the Swiss Federal Court. Even if the Sandiganbayan finds for Officeco, the same will not automatically result in the lifting of the questioned freeze orders. It will merely serve as a basis for requiring the PCGG (through the OSG) to make the appropriate representations with the Swiss government agencies concerned.

Act of State Doctrine

The classic American statement of the act of state doctrine, which appears to have taken root in England as early as 1674,[36] and began to emerge in American jurisprudence in the late eighteenth and early nineteenth centuries, is found in *Underhill v. Hernandez,*[37] where Chief Justice Fuller said for a unanimous Court:

> Every sovereign state is bound to respect the independence of every other state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.[38]

The act of state doctrine is one of the methods by which States prevent their national courts from deciding disputes which relate to the internal affairs of another State, the other two being immunity and non-justiciability.[39] It is an avoidance technique that is directly related to a State's obligation to respect the independence and equality of other States by not requiring them to submit to adjudication in a national court or to settlement of their disputes without their consent.[40] It requires the forum court to exercise restraint in the adjudication of disputes relating to legislative or other governmental acts which a foreign State has performed within its territorial limits.[41]

It is petitioners' contention that the Sandiganbayan "could not grant or deny the prayers in [Officeco's] complaint without first examining and scrutinizing the freeze order of the Swiss officials in the light of the evidence, which however is in the possession of said officials" and that it would therefore "sit in judgment on the acts of the government of another country."[42] We disagree.

The parameters of the use of the act of state doctrine were clarified in *Banco Nacional de Cuba v. Sabbatino.*[43] There, the U.S. Supreme Court held that international law does not require the application of this doctrine nor does it forbid the application of the rule even if it is claimed that the act of state in question violated international law. Moreover, due to the doctrine's peculiar nation-to-nation character, in practice the usual method for an individual to seek relief is to exhaust local remedies and then repair to the executive authorities of his own state to persuade them to champion his claim in diplomacy or before an international tribunal.[44]

Even assuming that international law requires the application of the act of state doctrine, it bears stressing that the Sandiganbayan will not examine and review the freeze orders of the concerned Swiss officials in Civil Case No. 0164. The Sandiganbayan will not require the Swiss officials to submit to its adjudication nor will it settle a dispute involving said officials. In fact, as prayed for in the complaint, the Sandiganbayan will only review and examine the propriety of maintaining PCGG's position with respect to Officeco's accounts with BTAG for the purpose of further determining the propriety of issuing a writ against the PCGG and the OSG. Everything considered, the act of state doctrine finds no application in this case and petitioners' resort to it is utterly mislaid.

Exhaustion of Administrative Remedies