

## THIRD DIVISION

[ G.R. NO. 171532, August 07, 2007 ]

**UNITED OVERSEAS BANK (FORMERLY WESTMONT BANK),  
PETITIONER, VS. HON. JUDGE REYNALDO ROS, PRESIDING  
JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 33,  
AND ROSEMOOR MINING AND DEVELOPMENT CORPORATION,  
RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioner United Overseas Bank, seeking the reversal and the setting aside of the Decision<sup>[1]</sup> dated 19 April 2005, and the Resolution<sup>[2]</sup> dated 13 February 2006 of the Court of Appeals in CA-G.R. SP No. 82626. The appellate court, in its assailed Decision and Resolution affirmed the Order of the Regional Trial Court (RTC) of Manila, Branch 33, denying the Motion to Dismiss Civil Case No. 98-90089 filed by petitioner on the ground of *estoppel*.

Petitioner is a banking institution duly authorized as such under Philippine laws.<sup>[3]</sup>

Private respondent Rosemoor Mining and Development Corporation, on the other hand, is a domestic corporation likewise duly authorized by the Philippine laws to engage in mining operation.<sup>[4]</sup>

On 5 August 1998, private respondent filed an action for damages, accounting, release of the balance of the loan and machinery and annulment of foreclosure sale against petitioner before the RTC of Manila, Branch 33. The case was docketed as Civil Case No. 98-90089.<sup>[5]</sup>

In its Complaint,<sup>[6]</sup> private respondent alleged that it obtained a loan from petitioner in the amount of P80,000,000.00 in order to raise the needed capital for the importation of machineries necessary for its operation. The said loan was secured by two Real Estate Mortgage Contracts over several parcels of land situated in the Provinces of Bulacan and Nueva Ecija.

The arrangement agreed to by the parties was for the petitioner to handle on behalf of the private respondent the amount of P50,000,000.00 while the loan balance of P30,000,000.00 will be released by petitioner to private respondent as a revolving credit line. Petitioner, however, allegedly mishandled the proceeds of the loan causing serious financial injury to private respondent.

On 10 August 1998, petitioner filed an Urgent Motion to Dismiss<sup>[7]</sup> the private respondent's complaint on the ground of improper venue since the said complaint

included the prayer for the nullification of the foreclosure of real estate mortgage, a real action which must be lodged before the RTC of the place where the property or one of the properties is situated. Consequently, the private respondent amended its Complaint, this time praying for Accounting, Release of the Balance of the Loan and Damages.

In resolving petitioner's Urgent Motion to Dismiss, the RTC of Manila issued an Omnibus Resolution<sup>[8]</sup> on 24 January 2000 denying the same for lack of merit. Petitioner timely interposed a Motion for Reconsideration<sup>[9]</sup> but it was also denied by the lower court in an Order<sup>[10]</sup> dated 29 May 2000.

On 11 November 1999, private respondent filed a Second Amended Complaint, dropping Lourdes Pascual as plaintiff and impleaded the officers of the petitioners namely, Florido Casuela, Rolando Castro, Avelina de la Cruz and Proserfina Cruz, as defendants.

Subsequently, petitioner filed its Answer with Counterclaim.<sup>[11]</sup> After the pre-trial was conducted, trial on the merits ensued.

On 11 March 2002, private respondent filed another action for Injunction with Damages before the RTC of Malolos, Bulacan docketed as Civil Case No. 275-M-2002.<sup>[12]</sup>

The filing of the above mentioned case prompted the petitioner to file a second Motion to Dismiss<sup>[13]</sup> Civil Case No. 98-90089, before the RTC of Manila on the ground of forum shopping. In an Order<sup>[14]</sup> dated 23 October 2002, the Manila RTC denied the second Motion to Dismiss for lack of merit. The subsequent Motion for Reconsideration<sup>[15]</sup> filed by the petitioner was also denied for the arguments raised therein were merely a rehash of the issues already raised and considered by the lower court.<sup>[16]</sup>

On 29 September 2003, a third Motion to Dismiss Civil Case No. 98-90089 was filed by the petitioner with the Manila RTC this time raising the issue of jurisdiction. In its latest Motion to Dismiss, petitioner claimed that private respondent failed to specify the amount of damages, either in the body or the prayer of its Second Amended Complaint, in order to evade the payment of the docket fees. As a result, the Manila RTC cannot acquire jurisdiction over the main action, which should be dismissed.

On 16 October 2003, the Manila RTC denied petitioner's third Motion to Dismiss Civil Case No. 98-90089 on the ground that petitioner was already *estopped* to raise the issue. Having participated in several stages of the proceedings, and having invoked the authority of the court by seeking an affirmative relief therefrom through the filing of the Answer with Counterclaim, petitioner was now barred from assailing the authority of the Court to hear and decide the case.<sup>[17]</sup> The dispositive portion of the Order of the Manila RTC dated 16 October 2003 thus reads:

WHEREFORE, the motion to dismiss is DENIED on the ground of *estoppel*.

Similarly ill-fated was petitioner's motion for reconsideration of the foregoing Order which was denied by the RTC in another Order dated 5 January 2004.<sup>[18]</sup>

Aggrieved, petitioner filed a Petition for *Certiorari*<sup>[19]</sup> before the Court of Appeals, alleging that the Manila RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated 16 October 2003 and 5 January 2004.

In a Decision<sup>[20]</sup> promulgated on 19 April 2005, the Court of Appeals affirmed the Manila RTC Orders dated 16 October 2003 and 5 January 2004 and upheld the latter's finding that petitioner was now barred from questioning the jurisdiction of the lower court after it had participated in several stages of the proceedings therein including the presentation of its witness. In addition, the appellate court declared that an interlocutory order, such as an Order denying the Motion to Dismiss, cannot be the subject of the extraordinary remedy of *certiorari*, save on well-recognized exceptions, which were wanting in the instant case.

The Court of Appeals likewise denied petitioner's Motion for Reconsideration, since the arguments raised therein were mere reiterations of those already considered and passed upon by the appellate court.<sup>[21]</sup>

Undaunted, petitioner filed this instant Petition for Review on *Certiorari*<sup>[22]</sup> before this Court, alleging that the Decision and Resolution of the Court of Appeals denying its Petition for *Certiorari* are contrary to law.

For the resolution of this Court then are the following issues:

- I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN DENYING THE PETITION FOR CERTIORARI FILED BY THE PETITIONER.
- II. WHETHER OR NOT THE PETITIONER IS BARRED BY LACHES FROM QUESTIONING THE RTC'S JURISDICTION.
- III. WHETHER OR NOT THE FAILURE OF THE PRIVATE RESPONDENT TO PAY THE DOCKET FEES WARRANTS THE DISMISSAL OF THE INSTANT CASE.

Petitioner asserts that the appellate court committed an error of law in dismissing its petition for *certiorari* and affirming the Orders dated 16 October 2003 and 5 January 2004 of the RTC. It argues that the private respondent's attempted subterfuge, *i.e.*, failing to state the amount of damages being claimed and to pay the corresponding docket fees, warrant the penalty of dismissal of its case.

At the outset, attention must be called to Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure, to wit:

SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

**(c) An interlocutory order;**

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, crossclaims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice;

**In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.** (Emphasis provided.)

Based on the foregoing, it is clear that no appeal, under Rule 45 of the Revised Rules of Court, may be taken from an interlocutory order. In case of denial of an interlocutory order, the immediate remedy available to the aggrieved party is to file an appropriate Special Civil Action for *Certiorari* under Rule 65 of the Revised Rules of Court.

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.<sup>[23]</sup> This Court had the occasion to distinguish a final order or resolution from an interlocutory one in the case of *Investments, Inc. v. Court of Appeals*, thus:

x x x A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented on the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

x x x x

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" e.g., an order denying motion to dismiss under Rule 16 of the Rules, or granting of motion on extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.<sup>[24]</sup>

Since an Order denying a Motion to Dismiss does not finally dispose of the case, and in effect, allows the case to proceed until the final adjudication thereof by the court, then such order is merely interlocutory in nature.

In affirming the interlocutory nature of an order denying a motion to dismiss, the Court thus categorically declares in *España v. Court of Appeals*<sup>[25]</sup>:

**We find occasion here to state the rule, once more, that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be subject of a petition for review on certiorari.** Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.

Indubitably, the Order of the RTC dated 16 October 2003 is merely an interlocutory order which cannot be made the subject of appeal or *certiorari*.

This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.<sup>[26]</sup> To allow appeals from interlocutory orders would result in the "sorry spectacle" of a case being a subject of a counter-productive ping-pong to and from the trial court, as often as the trial court is perceived to have made an error in any of its interlocutory resolutions.<sup>[27]</sup>

In *Sitchon v. Sheriff of Occidental Negros*,<sup>[28]</sup> this Court reiterated the rationale for this rule:

The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be