517 Phil. 609

FIRST DIVISION

[G.R. NO. 167900, February 13, 2006]

SPOUSES CRISOLOGO ABINES AND PRISCILLA O. ABINES, PETITIONERS, VS. BANK OF THE PHILIPPINE ISLANDS AND BPI FAMILY BANK, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the October 7, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 73606 setting aside the June 14, 2002 Omnibus Order[2] and September 18, 2002[3] Order of the Regional Trial Court (RTC) of Cebu City, Branch 16 in Civil Case No. CEB-27700 and ordering the dismissal of Civil Case No. CEB-27700, and the March 14, 2005 Resolution[4] denying petitioners' motion for reconsideration.

On February 27, 2002, respondent Bank of the Philippine Islands (BPI) filed a complaint[5] for collection of sum of money and damages with prayer for preliminary injunction against petitioners spouses Crisologo and Priscilla Abines before the Regional Trial Court of Cebu City docketed as Civil Case No. 27464 (COLLECTION CASE).

BPI alleged in the complaint that on April 23, 1999 and May 26, 2000, petitioners obtained from respondents BPI and BPI Family Bank a loan in the amount of P22,935,200.00 and P23,162,959.42, respectively, as evidenced by BPI Promissory Note Nos. 5012531-00 and 1120000014, and secured by two deeds of real estate mortgage. When the petitioners defaulted on their loan payments, the mortgaged properties were extrajudicially foreclosed and sold at public auction where BPI emerged as the highest bidder. The bid price of P35,730,184.00, however, did not cover the total amount owed by petitioners to respondents, hence, BPI sought the collection of the deficiency amount plus interest.

On the other hand, petitioners filed on May 13, 2002, a complaint against respondents for accounting in order to determine the correct amount of principal and outstanding obligations, annulment of foreclosure, annulment or reformation of documents, annulment of registration of certificate of sale, redemption, specific performance, injunction, and damages, with an application for preliminary injunction before the RTC of Cebu City, which was docketed as Civil Case No. 27700 (REFORMATION CASE).

In their complaint, petitioners assailed the genuineness and due execution of the promissory notes and deeds of real estate mortgage. They alleged that the principal amount and interest on the loan as reflected in these documents are inaccurate which made the subsequent foreclosure sale invalid.

In their answer, respondents asserted that the filing of the REFORMATION CASE constituted forum shopping because of the similarity of the parties and issues with the COLLECTION CASE previously filed by BPI against petitioners. Respondents thus sought the consolidation of the two cases or the outright dismissal of the REFORMATION CASE.

On June 14, 2002, the trial court issued the Omnibus Order denying respondents' motion for consolidation and granting petitioners' application for preliminary injunction. On August 13, 2002, a writ of preliminary injunction[6] was issued upon petitioners' posting of a bond in the amount of P2,000,000.00.

Respondents' motion for reconsideration from the omnibus order and a motion to lift preliminary injunction was denied by the trial court in an order issued on September 18, 2002.

Respondents appealed to the Court of Appeals through a petition for certiorari. On October 7, 2004, the Court of Appeals rendered the assailed decision holding that the trial court committed grave abuse of discretion when it failed to dismiss the REFORMATION CASE on the ground of forum shopping. It ruled that the REFORMATION CASE and the COLLECTION CASE are intimately related because they involve the same parties, transactions and issues and that the disposition of one will amount to *res judicata* in the other. Hence, it ordered the dismissal of the REFORMATION CASE and likewise held that the issuance of the writ of preliminary injunction was tainted with grave abuse of discretion because there was no proof of deposit of the requisite bond before the writ was issued; that the amount of the bond was fixed at only P2,000,000.00 while respondents' claim was more than P36,000,000.00. Thus, the principal purpose of the bond to protect the enjoined party against loss or damage by reason of the injunction was subverted.

Petitioners' motion for reconsideration having been denied, hence, the instant petition on the following issues: (1) whether the REFORMATION CASE should be dismissed on the ground of forum shopping; and (2) whether the issuance of the writ of preliminary injunction was proper.

The petition lacks merit.

Petitioners contend that the issue of forum shopping was not the proper subject of the petition for certiorari filed by respondents before the Court of Appeals. They claim that the omnibus order dated June 14, 2002 issued by the trial court did not touch on the issue of forum shopping but merely resolved petitioners' application for the writ of preliminary injunction and respondents' motion for consolidation. They assert that it is respondents' motion to dismiss which squarely touches on the issue of forum shopping which should have been resolved first.

We are not persuaded.

The omnibus order categorically stated that the REFORMATION CASE and the COLLECTION CASE involved different issues and parties.[7] In effect, the trial court ruled that there was no forum shopping. Thus, to require the trial court in the REFORMATION CASE to rule on the issue of forum shopping in the pending motion to dismiss, as suggested by the petitioners, would be a puerile exercise. No useful

purpose will be served if the determination of the issue of forum shopping is remanded to the trial court which has already shown its predisposition to rule that there was none.

Petitioners next contend that respondents are estopped from raising the issue of forum shopping because they have already argued in the COLLECTION CASE that the two cases have no identity of causes of action. Relying on the equitable doctrine of estoppel, petitioners posit that respondents should not be allowed to assert that there is forum shopping in the subject REFORMATION CASE.

Petitioners' contention is untenable.

The doctrine of estoppel applies only to questions of fact and not of law.[8] Evidently, the determination of whether petitioners are liable for forum shopping is a question of law that properly belongs to the courts. Moreover, if we were to uphold petitioners' contention, then we would effectively allow the parties to determine for themselves when forum shopping exists, in violation of the basic precept that estoppel cannot give validity to an act that is prohibited by law or is against public policy.[9] Undoubtedly, the public policy considerations behind forum shopping are superior to that of petitioners' claim of estoppel.

Petitioners claim that when they filed the REFORMATION CASE, they were not aware of the pending COLLECTION CASE filed by respondents against them. Thus, they posit that they did not misrepresent when they stated in the certificate of no forum shopping that they were not aware of any pending action involving the same parties and issues in another court.

Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another opinion in another forum other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[10] The practice of forum shopping is proscribed because it unnecessarily burdens our courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary and trifles with and mocks our judicial processes thereby affecting the efficient administration of justice.[11]

In the case at bar, the records reveal that the COLLECTION CASE was filed by BPI against petitioners on February 27, 2002, which was subsequently amended on May 6, 2002, while petitioners filed the REFORMATION CASE against respondents on May 13, 2002. However, petitioners were served with the summons in the COLLECTION CASE through substituted service only on May 16, 2002,[12] hence, they were unaware of the pending COLLECTION CASE when they filed the REFORMATION CASE. Thus, it cannot be said that the REFORMATION CASE was filed in anticipation of an unfavorable decision in the COLLECTION CASE. On this score, petitioners do not appear to be liable for forum shopping. Nonetheless, the REFORMATION CASE should still be dismissed on the ground of *litis pendentia.*

An action may be dismissed when there is another action pending between the same parties for the same cause.[13] This ground for dismissal is commonly known as *litis pendentia,* the requisites of which are: (a) identity of parties or at least such as

representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amounts to *res judicata* in the other.[14]

As to the first requisite, petitioners and respondents are the same parties in both cases. BPI is the plaintiff while petitioners are the defendants in the COLLECTION CASE. With respect to the REFORMATION CASE, petitioners are the plaintiffs while BPI and BPI Family Bank are the defendants therein. It is of no moment that BPI Family Bank is not a party-plaintiff in the COLLECTION CASE because what the rule requires is not absolute identity of parties but merely substantial identity of parties or such as representing the same interests in both actions. In the case at bar, it is not disputed that BPI Family Bank represents the same interests as BPI.

As to the second requisite, the rights asserted by both parties are based on the same promissory notes and real estate mortgages. In the COLLECTION CASE, respondents seek to enforce its rights under the promissory notes and real estate mortgages and would thus have to prove that they are valid and enforceable; that the subsequent foreclosure is likewise valid; and that there is still a deficiency after deducting the proceeds of the foreclosure sale from petitioners' loan obligation.

On the other hand, in the REFORMATION CASE, petitioners seek to diminish their liability under the promissory notes and real estate mortgages by proving that the terms do not reflect the correct amount of principal and interest; that the deficiency amount being demanded by respondents is erroneous; and that the subsequent foreclosure is void.

Clearly then, the resolution of both cases revolve on the validity and enforceability of the promissory notes and real estate mortgages and foreclosure proceedings. A judgment in the COLLECTION CASE will be *res judicata* in the REFORMATION CASE and vice versa. The same evidence would be presented and the same subject matter would be litigated. Thus, in *Casil v. Court of Appeals*,[15] where the petitioner filed a case against private respondent for the enforcement of their agreement while private respondent subsequently filed a case against petitioner for the rescission of this same agreement, we ruled that the first case would constitute *res judicata* in the second case:

> Furthermore, any judgment in the First Case will serve as *res adjudicata* to the Second Case. The requisites of *res adjudicata* are as follows:
>
> > "(a) The former judgment or order must be final;
> > (b) 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;
> > (c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
> > (d) 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."