

FIRST DIVISION

[G.R. NO. 159786, August 15, 2006]

EDGARDO V. GUEVARA, PETITIONER, VS. BPI SECURITIES CORPORATION, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, seeking the reversal of the Decision of the Court of Appeals in CA-G.R. SP No. 53379, dated 21 March 2003,^[1] dismissing Civil Case No. 95-624, filed by herein petitioner, Edgardo V. Guevara, against herein respondent, BPI Securities Corporation. Likewise assailed is the Resolution^[2] dated 26 August 2003 of the Court of Appeals denying Guevara's Motion for Reconsideration of the foregoing decision.

Culled from the records of the case are the following factual and procedural antecedents:

Guevara was hired by Ayala Securities Corporation in 1958. He was later detailed to the Philippine Investment Corporation (PHILSEC, later named as BPI Securities Corporation), where he acted as its president from 1 September 1980 to 31 December 1983. He thereafter served as vice-president of Ayala Corporation until his voluntary retirement on 31 August 1997.^[3]

Meanwhile, a certain Ventura O. Ducat obtained separate loans from Ayala International Finance Limited (AIFL) and PHILSEC in the amount of US\$2,500,000.00^[4] as of 15 January 1983. The same was secured by shares of stocks in different Philippine corporations, with market value of P14,088,995.00.

To satisfy the indebtedness, Ducat made arrangements with 1488, Inc. (1488), a United States (U.S.)-based corporation, through its president, Drago Daic, to transfer by way of *dacion en pago*, a 72.21-acre tract of land in Harris County, Texas, U.S.A. (subject property), in favor of PHILSEC and AIFL. Ducat, in turn, was to convey to 1488 the same shares of stocks used as security for his loans with PHILSEC and AIFL. The latter, however, had no desire to purchase the land; but they were willing to extend a loan to Athona Holdings, N.V. (ATHONA), a corporation based in Netherlands, with the subject property as mortgage.^[5]

In an agreement^[6] executed in Makati City on 27 January 1983 (the Agreement), 1488 sold the subject property to ATHONA at US\$2,807,209.02. PHILSEC and AIFL loaned US\$2,500,000.00 to ATHONA to subsidize the purchase price of the subject property. The balance of US\$307,209.02 was to be paid by means of a promissory note executed by ATHONA in favor of 1488. Subsequently, PHILSEC and AIFL

released Ducat from his indebtedness and delivered to 1488 all the shares of stocks in their possession used before by Ducat as security.^[7]

Sometime thereafter, ATHONA failed to pay the interest on the balance of US\$307,209.02, hence, the entire amount covered by the promissory note became due and demandable. Consequently, 1488 filed a collection suit in the U.S. against PHILSEC, AIFL and ATHONA for payment of the balance of US\$307,209.02, and damages for breach of contract and for fraud in misrepresenting the marketability of the shares of stocks delivered to 1488 under the Agreement.^[8] The case was originally filed with the U.S. District Court of Texas, 165th Judicial District, where it was docketed as Civil Case No. 85-57746, but the venue of the action was later transferred to the U.S. District Court for the Southern District of Texas as **Civil Case No. H-86-440**. ATHONA filed an Answer with counterclaim, impleading Guevara as counter-defendant for allegedly conspiring with Daic, Ducat and the appraiser, Michael Craig, in selling the subject property at an overvalued price.^[9]

While the case was pending before the U.S. courts, PHILSEC, AIFL and ATHONA filed, on 10 April 1987, a civil suit against 1488, Daic, Ducat and Craig for the annulment of the Agreement due to fraud. The case was docketed as **Civil Case No. 16563** at the Regional Trial Court (RTC) of Makati City, Branch 61. They demanded payment of Ducat's indebtedness of US\$2,500,000.00 and for the other defendants to pay the amount of P8,000,000.00 representing the value of stocks liquidated and remitted to 1488, plus litigation expenses and attorney's fees. Ducat filed a Motion to Dismiss on the grounds of *litis pendentia* and *forum non conveniens*^[10] due to the pendency of Civil Action No. H-86-440 before the U.S. District Court.

The trial court, on 26 January 1988, dismissed the Complaint against Ducat on the ground of *forum non conveniens* and likewise dismissed, on 9 March 1988, the case against 1488 and Daic based on *litis pendentia*, *forum non conveniens* and lack of jurisdiction over the person of the defendants. Plaintiffs elevated the case to the Court of Appeals, docketed as **CA-G.R. CV No. 26761**.^[11] The Court of Appeals, in 6 January 1992, affirmed the decision of the lower court dismissing the case. Consequently, a Petition for Review on Certiorari was filed by the aggrieved parties before this Court in **G.R. No. 103493** entitled, *Philsec Investment Corporation v. Court of Appeals*.^[12]

On 13 March 1990, the U.S. District Court ruled in favor of 1488, and *motu proprio* dismissed the counter-complaint against Guevara on the ground that he was impleaded simply to humiliate and embarrass him.^[13] The U.S. District Court also imposed jointly and severally against PHILSEC and AIFL a penalty of US\$49,450.00 in favor of Guevara in accordance with Rule 11 of the Federal Rules of Court.^[14] PHILSEC and AIFL elevated the matter to the U.S. Court of Appeals for the Fifth Circuit which remanded the case to the U.S. District Court for further proceedings, but finally affirmed, on 30 December 1991, the order of the U.S. District Court imposing the penalty, and the same became final and executory.^[15]

On 8 April 1992, PHILSEC, AIFL and ATHONA, filed with the Makati City RTC, Branch 61, an amended Complaint in Civil Case No. 16563, impleading Guevara as one of the party-defendants. The plaintiff corporations alleged that Guevara together with Ducat and Daic conspired and agreed to overvalue the subject property in excess of

400 percent of its actual price. To induce the sale of the subject property at an overvalued amount, Guevara made representations to the plaintiff corporations that the appraisal was obtained from a reliable and independent source, and the plaintiffs, relying on Guevara's loyalty and representation, accepted the appraisal and entered into the Agreement. It was later found out, however, that the appraiser, Craig, was neither an independent nor a reliable appraiser but rather a close associate of Daic, whose interest Guevara knew were adverse to that of the plaintiff corporations.^[16]

A Motion to Dismiss the amended Complaint was later filed by 1488, Ducat and Daic. The Resolution of the said Motion was, however, deferred pending the resolution by the Supreme Court of G.R. No. 103493^[17] which involved Ducat's earlier Motion to Dismiss the original complaint in Civil Case No. 16563.

On 22 April 1992, while G.R. No. 103493^[18] was still pending with this Court, 1488 and Daic filed a Petition for the enforcement of the judgment of the U.S. District Court with the Makati City RTC, Branch 134, docketed as **Civil Case No. 92-1070**.^[19]

On 28 May 1992, Guevara filed a case against BPI Securities Corp. (PHILSEC was already renamed), for enforcement of the judgment of the U.S. District Court ordering PHILSEC and AIFL to pay him US\$49,450.00 as penalty in accordance with Rule 11 of the Federal Rules of Court. The case was docketed as **Civil Case No. 92-1445** with the Makati City RTC, Branch 137.^[20]

On 24 April 1995, Guevara filed another Complaint against BPI Securities Corp. seeking the recovery of actual, moral and exemplary damages, and attorney's fees in the aggregate amount of P11,900,000.00 as indemnity for the expenses and annoyance of litigation, arising from his being wrongly impleaded as a party-defendant in the U.S. case. Guevara banked on the ruling of the U.S. District Court that the counter-complaint filed by PHILSEC, AIFL and ATHONA was frivolous and dilatory.^[21] This case was docketed as **Civil Case No. 95-624** with the Makati City RTC, Branch 135.^[22] A Motion to Dismiss was filed by BPI Securities Corp. alleging forum shopping for Civil Case No. 16563 was still pending before the Makati City RTC, Branch 61.^[23] The Motion was denied by the trial court in its Order dated 17 November 1995^[24] and the Motion for Reconsideration was likewise denied by the same court on 22 February 1996.^[25] On *certiorari* under Rule 65 to the Court of Appeals, docketed as **CA-G.R. SP No. 40303**, the appellate court affirmed, in a Decision dated 26 January 1998, the ruling of the trial court.^[26] The said Decision thereafter became final and executory.

Subsequently, BPI Securities Corp. filed another Motion to Dismiss Civil Case No. 95-624 based on prescription. It alleged that the summons from the U.S. District Court was received by Guevara on 22 September 1988. Although he learned of the tortuous act when the summons was served on him in 1988, Guevara filed the case only on 24 April 1995, so the case had already prescribed.

In the meantime, G.R. No. 103493,^[27] which involved Ducat's Motion to Dismiss the original complaint in Civil Case No. 16563, was finally resolved. In a Decision dated

19 June 1997,^[28] this Court reversed the Court of Appeals and remanded the case to the trial court for continuance and consolidation of Civil Case No. 16563 with Civil Case No. 92-1070, then pending with the Makati City RTC, Branch 134. In the same Decision, this Court also allowed Civil Case No. 92-1445, pending with the Makati City RTC, Branch 137, to proceed as the judgment sought to be enforced therein is severable from the main judgment under consideration in Civil Case No. 16563.

Consequently, in a Resolution of the Makati City RTC, Branch 134, dated 1 July 1998, Civil Cases No. 16563 and No. 92-1070 were consolidated and the pending Motion to Dismiss the amended Complaint in Civil Case No. 16563 filed by 1488, Daic and Ducat was denied.^[29]

As to the second Motion to Dismiss filed by BPI Securities Corp. in Civil Case No. 95-624, the Makati RTC, Branch 135, found the action as having prescribed and granted the said Motion in an Order dated 12 October 1998.^[30] In a Motion for Reconsideration of the foregoing order filed by Guevara, he argued that the prescriptive period of the action should be counted from the date of finality of the Decision of the U.S. District Court, following the ruling in *Drilon v. Court of Appeals*.^[31] Acting favorably on Guevara's Motion, the trial court in an Order dated 18 February 1999,^[32] set aside its earlier Order dated 12 October 1998 and calendared Civil Case No. 95-624 for pre-trial.^[33]

BPI Securities Corp. filed a Motion for Reconsideration of the Order, dated 18 February 1999, of the Makati RTC, Branch 135, again raising the arguments of *res judicata* and forum shopping. The said Motion was denied by the trial court in another Order dated 3 June 1999.^[34] Thus, BPI Securities Corp. filed before the Court of Appeals a Petition for *Certiorari* under Rule 65, with a prayer for temporary restraining order, docketed as **CA-G.R. SP No. 53379**.^[35] In its Petition, BPI Securities Corp. not only questioned the propriety of the ruling of the trial court on prescription, but again raised the issue of *litis pendentia* and forum shopping. The legal issues that BPI Securities Corp. submitted for the resolution of the Court of Appeals were as follows:

4.01. Whether or not the pendency of the [Civil Case No. 95-624] before respondent court is barred by the principles of *litis pendentia* or forum shopping due to the pendency of the [Civil Case No. 16563] and the [Civil Case No. 92-1445]?

4.02. Whether or not the [Civil Case No. 95-624] is barred by prescription? Stated in a slightly different matter the issue is: Whether or not the public respondent erred in ruling that the complaint in the [Civil Case No. 95-624] was for "malicious prosecution" (not quasi-delict as contended by petitioner) so that the prescriptive period for such action started to run only after the judgment in the Houston Case became final (and because of this the action was filed on a timely basis)?

BPI Securities Corp. submitted that Civil Case No. 16563 bars the filing of Civil Case No. 95-624 under the principle of *litis pendentia*. It is noteworthy, BPI Securities Corp. asserted, that the consolidated Cases No. 16563 and No. 90-1070 would determine whether the judgment rendered by the U.S. District Court is enforceable in the Philippines. Since the allegations in Civil Case No. 95-624 are anchored on the

U.S. Court Decision, then consequently, the pendency of the consolidated Civil Cases No. 16563 and No. 90-1070 bars Civil Case No. 95-624.^[36] Furthermore, BPI Securities Corp. reiterated that the continuance of Civil Case No. 95-624 was proscribed by the principle of forum shopping as Guevara's counterclaim in Civil Case No. 16563 involved the very same issues he pleaded in Civil Case No. 95-624.

Although the Court of Appeals, in its Decision dated 21 March 2003, denied the Petition of BPI Securities Corp. in CA-G.R. SP No. 53379, it still ruled to dismiss Guevara's claim for damages in Civil Case No. 95-624. The dispositive portion of the said Decision reads:

WHEREFORE, the instant petition is hereby denied and the assailed Order of the Regional Trial Court of Makati City, Branch 135, is hereby affirmed with the modification that the claim for damages due to the suit filed against Guevara in the United States is DISMISSED due to the existence of another action pending between the same parties involving the same cause of action in Civil Case No. 92-1445. Costs against petitioner.^[37]

Aggrieved by the Decision of the Court of Appeals in CA-G.R. SP No. 53379, Guevara filed a partial motion for reconsideration and in a Resolution,^[38] issued on 26 August 2003, the Court of Appeals denied his Motion.

Guevara, thus, filed before this Court the instant Petition for Review on Certiorari^[39] under Rule 45 of the Rules of Court, based on the following assignment of errors:

I.

THE COURT OF APPEALS ERRED IN REFUSING TO DISMISS THE PETITION CONSIDERING THAT THE ISSUE RAISED THEREIN WAS ALREADY PASSED UPON IN CA-G.R. NO. 40303

II.

THE COURT OF APPEALS ERRED IN RULING THAT CIVIL CASE NO. 624 (SIC) SHOULD BE DISMISSED BASED ON THE GROUND OF *LITIS PENDENTIA*.

On one hand, petitioner Guevara argues that the Court of Appeals should have dismissed the Petition of BPI Securities Corp. in CA-G.R. SP No. 53379 as the issue of *litis pendentia* and forum shopping was already passed upon by the same court in CA-G.R. SP No. 40303. In its Decision in the latter case, the Court of Appeals made the following pronouncements:

8. And, finally, Civil Case 95-624 is not similar to Civil Case 16563, and forum-shopping does not exist, in line with *International Container Terminal Services, Inc. vs. Court of Appeals*, 249 SCRA 389, holding that forum-shopping exists when both actions involve the same parties, the same subject matter, the same essential facts and circumstances, and the same identical issues. Civil Case 16563 and Civil Case 95-264 do not have the same parties as Edgardo V. Guevara is not a party in Civil Case