

## FIRST DIVISION

[ G.R. No. 154187, April 14, 2004 ]

**MONDRAGON LEISURE AND RESORTS CORPORATION,  
PETITIONER, VS. UNITED COCONUT PLANTERS BANK,  
RESPONDENT.**

### D E C I S I O N

**PANGANIBAN, J.:**

An order denying a motion to dismiss is interlocutory. To remedy the denial, a party has to file an answer and interpose as a defense the objections raised in the motion, and then to proceed to trial. A petition for certiorari is appropriate only when an order has been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. In the instant case, no such ground has been established by petitioner.

#### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the February 18, 2002 Decision<sup>[2]</sup> and the July 2, 2002 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR SP No. 61046. The assailed Decision disposed as follows:

**"WHEREFORE,** foregoing premises considered, this petition is **denied due course** and accordingly **DISMISSED.**"<sup>[4]</sup>

The July 2, 2002 Resolution denied reconsideration.

#### The Facts

The facts of the case are narrated by the appellate court as follows:

"On February 28, 1994, Mondragon International Philippines (MIPI), Mondragon Securities Corporation (MSC) and petitioner x x x entered into a Lease Agreement with the Clark Development Corporation (CDC) for the development of what is now known as the Mimosa Leisure Estate. The parties also subsequently executed Supplemental Lease Agreements for additional smaller areas.

x x x    x x x    x x x

"Over the years, petitioner poured more than P5 Billion in investments to develop the 232-hectare Mimosa Leisure Estate. Among others, petitioner put up the Holiday Inn Hotel, the Mimosa Regency Casino, the Monte Vista Hotel, the Mimosa Golf and Country Club with its 36-hole golf

course and other world-class facilities and amenities.

"On November 23, 1995, the parties herein executed an Omnibus Credit and Security Agreement (Omnibus Agreement) whereby respondent bank has agreed, among others, to provide financing to petitioner to be used for the development, operation and management of the leased properties covered by the Lease Agreement, consisting of a Term Loan in the principal amount of Three Hundred Million Pesos (P300,000,000.00). In the said Omnibus Agreement, petitioner has agreed, among others, to constitute an assignment of its leasehold rights accruing from the Lease Agreement, in favor of respondent x x x, up to the extent of the value of such leasehold rights in the amount of Six Hundred Million Pesos (P600,000,000.00).

"In order to secure the repayment of the loan which petitioner had obtained from the respondent bank, petitioner agreed to provide as collateral the assignment of the leasehold rights granted pursuant to the Lease Agreement.

"Likewise, petitioner executed in favor of respondent x x x Promissory Note PN 573595040194 on December 21, 1995 in the amount of Three Hundred Million Pesos (P300,000,000.00).

"Petitioner likewise executed a Deed of Assignment also dated November 23, 1995, over its leasehold rights, in favor of respondent x x x.

"On April 24, 1996, the parties executed an Amendment to Omnibus Credit and Security Agreement (Amendment) whereby the collateral under the Omnibus Agreement was limited to that of the leasehold right covering the Holiday Inn Hotel Building.

x x x    x x x    x x x

"x x x [B]ecause of the impact of the Asian economic crisis which started in July 1997 and x x x differences with [Philippine Amusement and Gaming Corporation (PAGCOR)] and CDC which eventually led to the untimely temporary closure of the Mimosa Regency Casino, petitioner experienced severe financial setbacks. x x x

x x x    x x x    x x x

"[On August 12, 1999, respondent filed Civil Case No. 9510, entitled 'United Coconut Planters Bank vs. Mondragon Leisure and Resorts Corporation,' at the Regional Trial Court of Angeles City, for foreclosure of real estate mortgage. The case was raffled to Branch 61.] On September 27, 1999, petitioner filed a Motion to Dismiss x x x on the following grounds:

- 1) [T]he Certification of Non-Forum Shopping appended to the Complaint is fatally defective;
- 2) Respondent bank has deliberately engaged in forum-shopping

in filing the instant Complaint; and

- 3) A condition precedent for the filing of the Complaint has not been complied with and/or the instant Complaint fails to state a cause of action against petitioner or is otherwise premature.

"[Petitioner claimed that] [t]he Complaint was filed, verified and certified by a certain Enrique L. Gana and Milaflor S. Guieb, in violation of the mandatory requirement of certification on non-forum shopping. [It claimed that] Mr. Gana and Ms. Guieb deliberately failed to mention the pendency of Civil Case No. 99-1171 which is required under the Rules. x x x.

"In its opposition dated November 1999, respondent x x x alleged that there is no forum-shopping since Civil Case No. 99-1171 involves different facts, transactions, issues and causes of action.

"On March 9, 2000, [the trial court] issued an Order [denying the motion to dismiss].

"Petitioner moved for the reconsideration of the aforesaid order [which was denied]."<sup>[5]</sup>

### **Ruling of the Court of Appeals**

On appeal, the CA ruled that respondent bank was not guilty of forum shopping in instituting Civil Case No. 9510. The appellate court noted that although the subject matter in Civil Case No. 99-1171 involved the same parties, it dealt with an entirely different set of facts, transactions, issues and causes of action.<sup>[6]</sup> Moreover, the CA found that an event of default under the Omnibus Agreement and the corresponding written notice required under it were the bases for respondent's Complaint.<sup>[7]</sup>

Hence, this Petition.<sup>[8]</sup>

### **The Issues**

In its Memorandum, petitioner assigns the following errors for our consideration:

"I. The [Court of Appeals] committed a serious error of law and acted with grave abuse of discretion amounting to lack or excess of jurisdiction x x x in not holding that respondent x x x deliberately engaged in forum shopping [in filing the complaint in Civil Case No. 9510].

"II. The [Court of Appeals] committed a serious error of law and acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not holding that a condition precedent for filing Civil Case No. 9510 has not been complied, or that is otherwise premature, and/or that the complaint fails to state a cause of action."<sup>[9]</sup>