

SECOND DIVISION

[G.R. No. 178271, October 31, 2008]

BANCO DE ORO-EPCI, INC. (FORMERLY KNOWN AS EQUITABLE PCI BANK INC. *), PETITIONER, VS. HON. ZENAIDA R. DAGUNA, IN HER CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT OF MANILA, BR. 19, AND PHILIPPINE DEVELOPMENT AND INDUSTRIAL CORPORATION, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

Assailed in the present petition for review on *certiorari* are two issuances of the Manila Regional Trial Court (RTC), Branch 19 in Civil Case No. 03-106886: Order of September 5, 2003^[1] which denied petitioner's motion to dismiss, and Order of June 22, 2005^[2] which denied the motion for reconsideration thereof.

In 1996, PCI Bank, Inc. (PCIB) approved the credit line application of Philippine Development and Industrial Corporation (respondent) consisting of secured and clean lines to fund the latter's townhouse project in Sta. Ana, Manila. As collateral for its secured line, respondent executed a real estate mortgage over the mother title of its townhouse project.^[3]

Defaulting, however, in the payment of its obligations, respondent executed a Repayment Agreement^[4] wherein it secured all its obligations with real estate mortgages (REMs) over twenty nine (29) condominium units, and a titled real estate property located in Meycauayan, Bulacan. Again, respondent failed to meet its obligations under the repayment arrangement, compelling PCIB, which merged with Equitable Bank to form Equitable PCIBank (EPCIB), to initiate foreclosure proceedings before the RTC of Manila.

Respondent conversely filed a complaint on April 11, 2003 against EPCIB for "Cancellation of Mortgage, Restitution of Titles and Damages" before the Makati RTC, docketed as Civil Case No. 03-401. On even date, respondent filed an *Amended Complaint*^[5] modifying its complaint into one for "Release of Mortgage and Damages."

By Order of April 15, 2003, the Makati RTC Branch 63 dismissed the *Amended Complaint without prejudice*, for "lack of jurisdiction (*sic*)" "after a finding that the principal cause of action is for annulment (*sic*) of real estate mortgage contracted in the City of Manila over a real property located in Sta. Ana, Manila . . . ," the action being one *in rem*.^[6] Respondent moved to have the order of dismissal reconsidered. Later manifesting that EPCIB had already foreclosed its mortgages, it moved to withdraw its *Amended Complaint* for "Release of Mortgage," to thus limit its cause of action to one for "Damages" which was made the subject of its *Second*

Amended Complaint,^[7] which it also moved to be admitted.^[8]

Without awaiting the resolution by the Makati RTC of the foregoing incidents, respondent filed on June 16, 2003 before the Manila RTC a complaint for "Annulment of Mortgage and the Foreclosure Sale with Application for TRO and Preliminary Injunction" against EPCIB, the Manila Register of Deeds, and Manila RTC Sheriff Amor Dait.^[9] The Verification/Certification accomplished by respondent's representative stated that:

4. I, or the corporation that I represent, have not commenced any other action or proceeding involving the same issues in the Court of Appeals, Regional Trial Courts, or any other tribunal or agency, **except an action for Damages which is presently pending with the Regional Trial Court of Makati, Branch 63, and docketed therein as Civil Case No. 03-401 entitled "Philippine Development [and] Industrial Corporation v. Equitable PCI Bank". The said case involves a separate and distinct cause of action and thus involves a different issue;**^[10] (Emphasis, italics and underscoring supplied)

EPCIB moved for the dismissal of respondent's complaint lodged in the Manila RTC, contending that, *inter alia*, respondent is guilty of forum shopping,^[11] and that respondent's Verification/Certification therein is false, if not defective, since what was filed before the Makati RTC was an action for "Release of Mortgage and Damages," a complaint similar to the one pending before the Manila RTC â€œ for Annulment of Mortgage and Foreclosure Sale.

Branch 19 of the Manila RTC, in its first assailed order, denied petitioner's motion to dismiss on the ground that the case pending before it is "an action for annulment of mortgage while the [other] is one for damages."^[12] The other assailed order denied petitioner's motion for reconsideration.

In the meantime, the Makati RTC, by Order^[13] of June 9, 2004, granted respondent's motion to withdraw its action for "Release of Mortgage" admitted respondent's *Second Amended Complaint* for "Damages."

Respondent's *Second Amended Complaint* for "Damages" is predicated on the alleged malicious refusal of petitioner to release funds under the secured credit line, despite the fact that it (respondent) had put up sufficient collateral.^[14]

Via *certiorari*, EPCIB brought the case to the Court of Appeals which sustained the decision of the Manila RTC by Decision of June 6, 2007.^[15]

Hence, the present petition of EPCIB, which has, after its merger with Banco de Oro, became known as Banco de Oro-EPCI, Inc. (hereafter petitioner), which raises the sole issue of whether respondent resorted to forum shopping.

The Court holds in the negative.

It bears noting that respondent filed its complaint at the Manila RTC on June 16, 2003, **before** the issuance of the June 9, 2004 Order by the Makati RTC resolving

respondent's Motion for Reconsideration of its Order dismissing respondent's *Amended* Complaint by reinstating respondent's complaint for "Damages" subject of respondent's *Second Amended* Complaint.

In other words, at the time respondent filed its complaint before the Manila RTC, the reinstatement of its complaint for "Damages" which was to become the subject of its *Second Amended* Complaint was still pending consideration by the Makati RTC.

As did the Manila RTC, the appellate court relied on respondent's statement in its Certification of Non-Forum Shopping about the pendency of an action for Damages. Thus the appellate court observed:

The cause of action and the relief sought in its complaint before the RTC of Makati is limited to a claim for damages, an action in personam, against the [petitioner] for unjustly refusing to turn over to the former the questioned certificates of title covering the condominium units, subject of the controversy. **In contrast, the complaint lodged before the RTC of Manila, an action in rem[,] is for the annulment of the real estate mortgage** (REM), constituted over the condominium units, subject of the controversy, based on PDIC's vitiated consent. (Emphasis and underscoring supplied)

The statement of respondent was not exactly accurate because at the time the Certification of Non-Forum Shopping segment of respondent's complaint before the Manila RTC was accomplished, the reinstatement of its action for damages was still pending by the Makati RTC. At any rate, the Makati RTC eventually reinstated such action for "Damages."

A reading of the Complaint before the Manila RTC and the *Amended* Complaint and *Second Amended* Complaint before the Makati RTC shows that these pleadings allege the same factual circumstances as bases for the reliefs respectively prayed for. Thus, the Manila RTC complaint for "Annulment of Mortgage and Foreclosure Sale" reads:

2.1 x x x.

x x x x

2.8 On or about January 1997, PDIC tried to draw on the secured credit line and requested the Bank to release funds therefrom as the clean line was already fully utilized. The additional drawdown was needed to complete the construction of the Project. Unfortunately, the Bank, without any justification or explanation, refused to release any amount in favor of PDIC from the Php100.0M Secured Credit Line. This unjustified refusal of the Bank to release an amount which it earlier committed to grant PDIC, resulted in the delay in the construction as PDIC could not pay the progress billings of the contractor.

2.9 Subsequently, PDIC requested the Bank for the release of Pesos: Forty Five Million (Php45.0M), an amount which was then sufficient to complete the Project, from the Php100M Secured Credit Line. In a letter dated 15 October 1998, the Bank flatly