

THIRD DIVISION

[G.R. NO. 139460, March 31, 2006]

**KOREA EXCHANGE BANK, PETITIONER, VS. HONORABLE
ROGELIO C. GONZALES, IN HIS CAPACITY AS PRESIDING JUDGE
OF BRANCH 49 OF THE RTC, PAMPANGA, PHI-HAN
DEVELOPMENT, INC., ANTUSA M. MAGNO, FRANCISCO MAGNO,
LOURDES M. MENDOZA, AND TEODORO DE MESA, RESPONDENTS**

D E C I S I O N

TINGA, J.:

This treats of the Petition for Review^[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioner Korea Exchange Bank (the Bank) which assails the Decision^[2] of the Court of Appeals' Former First Division and the Resolution^[3] of the same Division, in CA-G.R. SP No. 43363.

The Court of Appeals dismissed the Bank's petition under Rule 65 of the 1997 Rules of Civil Procedure, finding no grave abuse of discretion in the issuance of the challenged Order^[4] dated 5 December 1996 by the Regional Trial Court (RTC), Branch 49, Guagua, Pampanga in Civil Case No. G-3012. Said Order denied the Bank's Motion to Dismiss^[5] for lack of merit.

The antecedents are as follows:

On 5 September 1996, private respondents Phi-Han Development, Inc. (Phi-Han), Antusa Magno, Lourdes Mendoza, and Teodoro de Mesa (Magno, *et al.*) filed a Complaint^[6] for collection of sum of money with damages against the Bank and Jae Il Aum (Aum). The Complaint filed before the RTC, Branch 49 of Guagua, Pampanga contained the following allegations:

1. That plaintiff phi-han is a corporation duly organized established under philippine laws plaintiffs magno mendoza demesa of legal age married filipinocitizen all are doing business and with postal address at san roque dau 2nd lubaopampangawhile defendants have thefollowing personal circumstances, to wit:

A) KOREA EXCHANGE BANK, it is a corporation doing business in the Philippines under the authority of the Bangko Sentral ng Pilipinas, with principal office address at 33rd Flr., Citibank Tower 8741 Paseo de Roxas St., Makati City;

B) JAE IL AUM — likewise of legal age, Korean national and with postal address at 357 Lirio St., Palm Village, Makati City

—

2. That Plaintiffs Magno, Mendoza and De Mesa are the absolute and registered owners of various parcels of land situated in San Roque Dau 2nd, Lubao, Pampanga[.]

3. That some of these parcels of land were mortgaged in favor of the Defendant-Bank in order to secure a loan of FIVE HUNDRED THOUSAND (U.S.\$500,000.00) U.S. DOLLARS.

4. That the aforesaid loan with the Defendant-Bank was granted thru the mediation of Defendant-Aum, but one of the unwritten conditions imposed by the Defendants was that the loan proceeds should be deposited with the Defendant-Bank and that Defendant-Aum should be one of the official signatories.

5. That pursuant to the said condition imposed by the Defendants, the Plaintiffs agreed to deposit the proceeds of the said loan with the Defendant-Bank under Accounts Nos. 5311000486 (Dollar Account) and 5311000487 (Peso Account), in the name of Plaintiff Phi-Han Development[,] Inc.

x x x x

7. That per Resolution No. 12-10-95, the Official signatories for transacting with the Defendant-Bank, especially on application for withdrawals, were Defendant-Aum and Plaintiff-Mendoza, in their capacity as President and Secretary of Phi-Han Development, Inc.[,] respectively.

8. That as soon as the loan proceeds were deposited under the aforementioned Dollar and Peso Accounts, Defendant-Aum asked from Plaintiff-Mendoza to affix her signatures on several Applications for Withdrawal which were later on used to drain all the deposits of the Plaintiffs with Defendant-Bank, except for about ONE HUNDRED SIXTY THREE THOUSAND (\$163,000.00) U.S. DOLLARS.

9. That on February 15, 1996, in order to further drain the remaining deposits, without the knowledge and consent of all or any of the Plaintiffs, Defendant-Aum managed to withdraw the amount of U.S. \$160,000.00 by conspiring and confederating with the Defendant-Bank and by using an Application for Withdrawal with a forged signature of Plaintiff-Mendoza, to the damage and prejudice of the herein Plaintiffs in the said amount with interest at the legal rate or twelve (12%) per cent per annum, said withdrawal shall be presented anon.

x x x x

10. That the acts of the Defendants is a Large Scale Estafa which is condemned by the Philippine Government and any other civilized countries; WORST, the same was done by Korean Nationals within the Philippine Territory and the victims are Filipinos.

11. That the aforementioned withdrawal in the amount of U.S.

\$160,000.00 on February 15, 1996 could not have been made possible without the indispensable cooperation of the authorized and/or responsible officer/s of the Defendant-Bank.^[7]

In said Complaint, private respondents Phi-Han and Magno, *et al.* prayed in part that judgment be rendered ordering Aum and the Bank to pay US\$160,000.00 or P4,160,000.00, whichever is higher, based on the current conversion rate, with interest at the rate of 12% per annum from the date of the alleged withdrawal, and attorney's fees equivalent to 25% of the amount due.^[8]

Thereafter, on 18 September 1996, the Bank filed a Motion to Dismiss^[9] on the following grounds: (i) the trial court has no jurisdiction over the case; (ii) the Complaint states no cause of action; (iii) the plaintiffs have no legal capacity to sue; and (iv) the venue is improperly laid.^[10]

The trial court denied the Bank's Motion to Dismiss in an Order^[11] dated 5 December 1996. The Bank's Motion for Reconsideration^[12] was likewise denied, thus propelling it to file a Petition^[13] under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals.

The Bank asserted that in refusing to dismiss the Complaint, the trial court acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction for the following reasons: (i) the controversy involved in Civil Case No. G-3012 falls within the jurisdiction of the Securities and Exchange Commission (SEC); (ii) as stockholders of Phi-Han, Magno, *et al.* have no cause of action to recover corporate property; (iii) being married women, private respondents Magno and Mendoza have no legal capacity to sue; and (iv) venue was improperly laid.^[14]

The Court of Appeals dismissed the Bank's Petition for lack of merit.^[15] It ruled that the case at bench is a simple collection suit between a bank and its depositors, thus the jurisdiction of the trial court remains. The appellate court likewise found that there exists a sufficient cause of action to support the Complaint. It also declared that private respondents Mendoza and Magno have the legal capacity to sue, noting their allegation in the Complaint that they are absolute owners of the properties mortgaged to the Bank—which implies that the properties are exclusive or paraphernal properties exempted under pertinent laws. Lastly, the appellate court stated that venue was properly laid as the action was commenced in Pampanga, which is the postal address of Magno, *et al.*

With the Bank's Motion for Reconsideration^[16] having been denied by the appellate court, it filed the instant petition reiterating its previous submissions.^[17]

However, in its Memorandum^[18] the Bank acknowledged that the issue of jurisdiction has become moot in view of Republic Act No. 8799 (R.A. 8799), the Securities Regulation Code, which transferred all cases enumerated under Section 5 of Presidential Decree No. 902-A to courts of general jurisdiction or appropriate regional trial courts. Thus, the remaining issues in this appeal are the following: (i) whether Magno, *et al.* have a cause of action to recover corporate property belonging to Phi-Han; (ii) whether private respondents Magno and Mendoza have legal capacity to sue; and (iii) whether venue was properly laid.

In their Memorandum,^[19] Phi-Han and Magno, *et al.* maintain that the allegations that the money deposited with the Bank—which were withdrawn by Aum without proper authority and with the Bank's assistance—are the proceeds of the loan they obtained from the latter, secured in part by the real properties of Magno, *et al.*, constitute a sufficient cause of action.^[20] They likewise assert that private respondents Magno and De Mesa have capacity to sue as the instant controversy involves only the latter's paraphernal properties. Further, they contend that venue was properly laid as Pampanga is the postal address of Magno, *et al.*

Meanwhile, on 2 April 1997, the Bank filed a complaint against Lourdes Mendoza, Meneleo Mendoza, Antusa Magno, Francisco Magno, Teodoro de Mesa, Firmo de Mesa, Mercedes de Mesa Magno, and Phi-Han (Phi-Han, *et al.*) before the RTC of Guagua, Pampanga, Branch 50, for sum of money and reformation of real estate mortgage executed by Phi-Han in the Bank's favor. The case was docketed as Civil Case No. G-3119.^[21]

The Bank alleged that on 15 January 1996, it extended a loan to Phi-Han in the sum of US\$500,000.00 payable within one year evidenced by a promissory note executed by Aum and Lourdes Mendoza, president and treasurer, respectively, for and on behalf of Phi-Han with Antusa Magno and Teodoro de Mesa acting as witnesses. To secure payment of the loan, Lourdes Mendoza and her siblings, Antusa de Mesa Magno, Firmo de Mesa, Meneleo Mendoza and Mercedes de Mesa, executed a real estate mortgage over 14 parcels of land they owned in common. However, the real estate mortgage failed to express the true intent of the parties as the debtors appearing therein were Lourdes de Mesa Mendoza, Antusa de Mesa Magno, Mercedes de Mesa, and Firmo de Mesa, whereas the real agreement was to bind only Phi-Han as the debtor. It was further alleged that Phi-Han had not paid the loan and the increment thereof despite demands therefor.^[22]

The Bank prayed that judgment be rendered ordering the reformation of the real estate mortgage by designating Phi-Han as the debtor and ordering Phi-Han to pay the loan. The Bank likewise prayed that the mortgaged properties be foreclosed and sold in case of failure to pay the loan and its increment within 90 days from notice of the judgment. The Bank appended to its complaint a copy of the real estate mortgage.^[23]

Phi-Han, *et al.* filed a motion to dismiss the complaint on the ground of forum-shopping, asserting that the Bank should have instead filed a counterclaim in Civil Case No. G-3012. They asserted that since the essential elements of *litis pendentia* were present, the trial court should dismiss the complaint.^[24]

The Bank opposed the motion contending, among others, that the actions in Civil Case Nos. G-3012 and G-3119 were unrelated.^[25]

On 23 July 1997, RTC Branch 50 issued an order denying the motion to dismiss, holding that the essential requirements of *litis pendentia* were not present and the grounds invoked therein were not indubitable.^[26]

Thereafter, Phi-Han, *et al.* filed their answer with counterclaim in Civil Case No. G-