499 Phil. 268

FIRST DIVISION

[G.R. NO. 154188, June 15, 2005]

MONDRAGON LEISURE AND RESORTS CORPORATION, PETITIONER, VS.COURT OF APPEALS, ASIAN BANK CORPORATION, FAR EAST BANK AND TRUST COMPANY, AND UNITED COCONUT PLANTERS BANK, RESPONDENTS.

DECISION

QUISUMBING, J.:

In its **Decision**[1] dated March 12, 2002, the Court of Appeals in CA-G.R. SP No. 61047 dismissed the petition for certiorari filed by Mondragon Leisure and Resorts Corporation against the **Order**[2] dated March 9, 2000, of the Regional Trial Court of Angeles City, Branch 61, in Civil Case No. 9527. Likewise, in its Resolution dated July 3, 2002, the CA denied the motion for reconsideration.

The facts of the case are undisputed.

On February 28, 1994, Mondragon International Philippines, Inc. (MIPI), Mondragon Securities Corporation (MSC) and herein petitioner entered into a lease agreement with the Clark Development Corporation (CDC) for the development of what is now known as the Mimosa Leisure Estate.

To help finance the project, petitioner, on June 30, 1997, entered into an Omnibus Loan and Security Agreement[3] (hereafter Omnibus Agreement) with respondent banks for a syndicated term loan in the aggregate principal amount of US$20M. Under the agreement, as amended on January 19, 1999,[4] the proceeds of the loan were to be released through advances evidenced by promissory notes to be executed by petitioner in favor of each lender-bank, and to be paid within a six-year period from the date of initial advance inclusive of a one year and two quarters grace period.

To secure the repayment of the loan, petitioner pledged in favor of respondents US$20M worth of MIPI shares of stocks; assigned, transferred and delivered all rights, title to and interest in the pledged shares; and assigned by way of security its leasehold rights over the project and all the rights, title, interests and benefits in, to and under any and all agreements in connection with the project.

On July 3, 1997, petitioner fully availed of and received the full amount of the syndicated loan agreement. Petitioner, which had regularly paid the monthly interests due on the promissory notes until October 1998, thereafter failed to make payments. Consequently, on January 6 and February 5, 1999, written notices of default, acceleration of payment and demand letters were sent by the lenders to the petitioner. Then on August 27, 1999, respondents filed a complaint, docketed as Civil Case No. 9527, for the foreclosure of leasehold rights against petitioner.

Petitioner moved for the dismissal of the complaint on the following grounds: (1) a condition precedent for the filing of the complaint has not been complied with and/or the instant complaint failed to state a cause of action, or otherwise the filing was premature; (2) the certification of non-forum shopping appended to the complaint was fatally defective since one of the plaintiffs, UCPB, deliberately failed to mention that it had previously filed another complaint; and (3) plaintiffs had engaged in forum shopping in filing the instant complaint.

The trial court denied the motion and ruled as follows:

. . .

> After a careful study of the arguments of the parties, this court finds that the motion to dismiss is without merit. As correctly pointed out by the plaintiffs under par. 6.01, the borrower defaults when interests due at stated maturity are not paid and the lenders are authorized to accelerate any amount payable under the loan agreements. One of the consequences of such default is the foreclosure of collaterals. This is the action taken by the herein plaintiffs-lenders.
>
> This court also finds the alleged *force majeure* baseless. The same are not those provided for under Sec. 1, Article 41 of the loan agreement.
>
> As to the allegation of forum shopping, the herein parties Asian Bank Corporation and Far East Bank and Trust Company are not parties to this case in 9510 (sic). The subject matter of Civil Case No. 9527 is not the same with the subject matter in Civil Case No. 9510.
>
> Wherefore, premises considered, the motion to dismiss is denied. The defendant is given 15 days from receipt hereof within which to file its answer and/or responsive pleading.
>
> SO ORDERED.[5]

Petitioner moved for the reconsideration of the order and argued that the complaint is premature, since it had not been validly declared in default.[6] The trial court denied the motion for reconsideration. Seasonably, petitioner filed a special civil action for certiorari with the Court of Appeals.

Before the appellate court, petitioner reiterated its arguments in its motion to dismiss before the trial court, including the failure of the respondents to attach the board resolutions authorizing them to file the complaint.[7]

The Court of Appeals dismissed the petition and denied the subsequent motion for reconsideration. Hence, this appeal by certiorari[8] imputing the following errors:

I

> THE RESPONDENT-APPELLEE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN

RULING THAT THE COMPLAINT IN CIVIL CASE NO. 9527 COMPLIED WITH THE MANDATORY REQUIREMENTS OF CERTIFICATION OF NON-FORUM SHOPPING.

II

THE RESPONDENT-APPELLEE 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 RULING THAT A CONDITION PRECEDENT FOR THE FILING OF THE COMPLAINT IN CIVIL CASE NO. 9527 HAS NOT BEEN COMPLIED WITH, OR THAT IT IS OTHERWISE PREMATURE, AND/OR THAT IT FAILS TO STATE A CAUSE OF ACTION AGAINST PETITIONER-APPELLANT.

III

THE RESPONDENT-APPELLEE 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 RULING THAT RESPONDENT-APPELLEE BANKS, IN FILING THE COMPLAINT IN CIVIL CASE NO. 9527, DELIBERATELY ENGAGED IN FORUM SHOPPING.[9]

In brief, three issues are presented for resolution, namely, (1) Was the certificate of non-forum shopping defective? (2) Did respondents engage in forum shopping? and (3) Do respondents have a cause of action against the petitioner?

On the first issue, petitioner asserts that the verification and certificate of forum shopping were defective because there was no proof as to the authority of the signatories to file the complaint. Petitioner avers that UCPB Resolution 48-87, which was only presented in the Court of Appeals, merely authorized the signatory to "appear, act for, or otherwise represent the bank in all judicial, quasi-judicial or administrative hearings or incidents, including pre-trial conference, and in connection therewith, to do any and all of the following acts and deeds…" and clearly pertains to a pending proceeding.

Respondents, on the other hand, contend that the lack of authority of the persons who verified and certified the complaint was neither raised in the motion to dismiss nor in the motion for reconsideration of the petitioner. They aver that the verification and certification of non-forum shopping contained a statement by the persons who signed it that they had been so authorized by the board of directors of their respective corporations.

Considering the submissions of the parties, we are constrained to agree with the respondents' contention. The trial court did not err in denying the motion to dismiss. The issue concerning the signatories' authorization was never raised before it. Likewise, the appellate court did not err in refusing to take cognizance of the issue, since the parties did not raise it beforehand. Issues not raised in the trial court cannot be raised for the first time on appeal.[10]

On the second issue, petitioner claims that respondent UCPB engaged in forum shopping since it earlier instituted an action for foreclosure of mortgage and/or

collection, docketed as Civil Case No. 9510.[11] This claim, in our view, is untenable. A comparison of the two complaints would show its utter lack of merit.

Civil Case No. 9510 pertains to an Omnibus Credit and Security Agreement executed by and between the petitioner and respondent UCPB on November 23, 1995. This is separate and distinct from the Omnibus Agreement involved in Civil Case No. 9527. Moreover, respondents Asian Bank and Far East Bank are not among the parties to Civil Case No. 9510.

As pointed out by the Court of Appeals, forum shopping exists when both actions involve the same transactions, with the same essential facts and circumstances; and where identical causes of actions, subject matter and issues are raised. The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.[12] The requisites in order that an action may be dismissed on the ground of *litis pendentia* are (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[13] Such requisites are not present in this controversy.

Apropos the third issue, petitioner contends the subject obligation of the instant case is not yet due and demandable because the Omnibus Agreement allows a full six-year term of payment. Even if it failed to pay some installments, petitioner insists it is not in default because respondents merely sent collection and demand letters, but failed to give the written notice of default required under their agreement. Moreover, petitioner avers that the provisions on default in the Omnibus Agreement have been rendered inapplicable and unenforceable by fortuitous events, namely the Asian economic crisis and the closure of the Mimosa Regency Casino, which was petitioner's primary source of revenues.

Respondents counter that the Omnibus Agreement defines, as an event of default, the failure of petitioner to pay when due at stated maturity, by acceleration or otherwise, any amount payable under the loan documents. Since petitioner is also required to pay interest, respondents posit that non-payment thereof constituted a clear and unmistakable case of default. Respondents add that they had properly advised the petitioner that it had been declared in default, referring to the January 6 and February 5, 1999 letters as their compliance with the notice requirement.

On this issue, we are unable to agree with the petitioner.

Section 2.06 (a) of Part B of the Omnibus Agreement provides that the borrower shall pay interest on the advances outstanding from time to time on each interest payment date, while Section 6 of Part A reads

> 6.01 **Events of Default**
>
> Each of the following events shall constitute an Event of Default under this Omnibus Agreement: