

FIRST DIVISION

[G.R. No. 162461, November 23, 2005]

**AMOS P. FRANCIA, JR. AND CECILIA ZAMORA, PETITIONERS, VS.
POWER MERGE CORPORATION, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

The setting aside by the Court of Appeals of the Order of the Makati Regional Trial Court (RTC), Branch 58, denying the Motion to Dismiss the complaint filed by petitioners against respondent is challenged in the present petition for review on certiorari.

Petitioner Amos P. Francia, Jr. (Francia), a depositor of Westmont Bank, Meycauayan, Bulacan branch, placed on November 16, 1998, on the suggestion of the bank manager, an investment of P14,581,710.28 at Westmont Investment Corporation (WINCORP), to bear a net interest rate of 17% over a 35-day spread. Upon maturity on December 21, 1998 of his investment, Francia instructed WINCORP to roll it over.^[1] Thereafter, every time his investment matured, Francia would instruct a roll over and he would be issued a receipt reflecting the amount of his placement, the net interest rate, and the duration of the placement.^[2] By February 14, 2000, Francia's placement had increased to P17,258,907.76.^[3]

WINCORP subsequently invested Francia's investment in herein respondent Power Merge Corporation (PMC) as indicated in Confirmation Advice No. 89960^[4] issued to him.

The Confirmation Advice, which showed the name of borrower, the amount of placement, the interest rate, and the amount of the placement upon maturity, served **"to confirm that pursuant to the [client's] authority, [WINCORP] has acted in [the client's] behalf and/or for [the client's] benefit, risk and account without recourse or liability, real or contingent, to [WINCORP] in respect to the loan granted to the Borrower."** And it provided that "[f]or convenience but without any obligation on [WINCORP's] part, [WINCORP] may act as [the client's] collecting and paying agent for [the] transaction," and "[the client's receipt of the Confirmation Advice] is an indication of [his] conformity to the terms and conditions of the transaction."

Francia soon convinced his sister-herein co-petitioner Cecilia Zamora (Cecilia) to make a similar placement at WINCORP.

Thus, on December 21, 1999, Francia and Cecilia made a joint placement of P16,397,387.22 at WINCORP in consideration of a net interest rate of 11.5% over a 48-day spread. Upon the maturity of their joint placement, the siblings instructed

WINCORP to roll it over. Per Confirmation Advice No. 89248,^[5] the joint placement was likewise later invested at PMC with a maturity value of P16,872,185.41 due on March 20, 2000.

Sometime in March 2000, Francia and Cecilia attempted to withdraw their investments but they failed, and they learned that WINCORP and Westmont Bank were facing financial difficulties. Confirmation Advice dated February 14, 2000 bearing Serial No. 89960^[6] showed that at the time, Francia's placement had a book value of P17,490,464.77. As for Francia's joint placement with Cecilia, it had a book value of P16,872,185.41.

As despite several attempts to forge an out-of-court settlement between Francia and Cecilia on one hand, and WINCORP and PMC on the other, the same failed, Francia, through counsel, sent PMC a November 15, 2000 demand letter^[7] to pay within fifteen days the total amount of P34,362,650.18 representing the maturity values of his placement of P17,490,464.77 and his joint placement of P16,872,185.41. Francia received no response from PMC, however, prompting him and Cecilia (hereafter "petitioners") to file on March 13, 2001 before the RTC of Makati a Complaint for Sum of Money and Damages against WINCORP and PMC, docketed as Civil Case No. 01-436, praying that judgment be rendered as follows:

a)

On the First and Second Causes of Action, for defendants WESTMONT INVESTMENT CORPORATION and POWER MERGE CORPORATION to pay plaintiffs, jointly and severally, the amount of THIRTY FOUR MILLION THREE HUNDRED SIXTY TWO THOUSAND SIX HUNDRED FIFTY PESOS AND EIGHTEEN CENTAVOS (P34,362,650.18) with interest at 11.5% as stipulated in the contract from March 20, 2000 (Confirmation Advice No. 89248) and March 27, 2000 (Confirmation Advice No. 89960), until fully paid;

b)

On the Third Cause of Action, for defendants WESTMONT INVESTMENT CORPORATION and POWER MERGE CORPORATION to pay plaintiffs, jointly and severally, ONE HUNDRED THOUSAND PESOS (Php 100,000.00) by way of EXEMPLARY and CORRECTIVE DAMAGES; and

c)

On the Fourth Cause of Action, for defendants WESTMONT INVESTMENT CORPORATION and POWER MERGE CORPORATION to pay plaintiffs, jointly and severally, ATTORNEY'S FEES equivalent to TEN PERCENT (10%) CONTINGENT FEE of whatever amount will be recovered from this litigation plus TWO THOUSAND PESOS (Php 2,000.00) per appearance as APPEARANCE FEES, and COST OF SUIT. (Underscoring omitted)

PMC filed a Motion to Dismiss^[8] the complaint on the ground that summons was not properly served on it, and that the complaint failed to state a cause of action against it.

WINCORP filed a Motion to Dismiss^[9] too, contending that the allegations in the complaint and its annexes failed to state a cause of action against it.

By Order^[10] of October 19, 2001, Branch 58 of the Makati RTC denied WINCORP's and PMC's separate motions to dismiss and directed them to file their respective answers.

PMC moved to reconsider the October 19, 2001 Order but the same was denied by Order^[11] dated April 18, 2002.

PMC thereupon assailed the trial court's orders before the Court of Appeals *via* petition for certiorari and prohibition under Rule 65.

By Decision^[12] of August 13, 2003, the appellate court, finding that petitioners' complaint did not state a cause of action against PMC, set aside the trial court's October 19, 2001 and April 18, 2002 Orders and dismissed the complaint as against PMC in this wise:

A perusal of the complaint reveals that indeed, the complaint filed by [petitioners], did not contain allegations sufficient to establish a cause of action against [PMC]. The allegations in the complaint filed by [petitioners], where [PMC] was mentioned are, among others, as follows:

"7. It turns out that WINCOR[P] was, in turn, lending the placements to other companies. Francia would only be advised later on that his placement was invested in [PMC]. x x x x x x
x x x

8. At no time did Francia ha[ve] any involvement or participation in the selection of borrowers, like PMC, and the placement of his investment in such borrowers. This was entirely the call and discretion of WINCOR[P].

17. On November 17, 2000, plaintiff Francia caused the service, through undersigned counsel, of a demand letter on PMC, asking the latter to pay within fifteen (15) days, the total amount of P34,362,650.18. x x x

21. WINCOR[P] lent the monies of plaintiffs to PMC without their prior knowledge and consent. Plaintiffs has no involvement or participation with the placement by WINCOR[P] of their monies with PMC. These placements to other borrowers were entirely the call and discretion of WINCOR[P]. Hence, there can be no effective novation of the contract if the substitution of the new debtor in place of the original one was 'without the consent of the creditor' (Article 1293, Civil Code)."

[Petitioners'] contention that [PMC] is an indispensable party, and the complaint sufficiently alleged a valid cause of action against [PMC] is contrary to what is on record. If there is no allegation in the complaint of any cause of action against [PMC], [petitioners] had nothing to prove during the trial on the merits.

Applying the aforementioned jurisprudential pronouncements and as borne by the records, the Court finds that [petitioners] had not sufficiently alleged a cause of action in their complaint against [PMC]. (Underscoring supplied)

Their motion for reconsideration having been denied by Order^[13] dated March 1, 2004, petitioners lodged the present petition faulting the appellate court:

I

. . . IN RULING THAT THE COMPLAINT . . . FAILS TO STATE A CAUSE OF ACTION AGAINST [PMC].

(a)

There was no grave abuse of discretion on the part of the trial court which justifies the filing of a petition for certiorari under Rule 65.

(b)

Contrary to the findings of the Court of Appeals, the complaint before the trial court clearly states a cause of action against respondent Power Merge.

(c)

The Court of Appeals failed to take into consideration, paragraph 20 of, as well as other averments in the Complaint which clearly alleges the cause of action against [PMC]

(d)

The Court of Appeals likewise gravely erred when it failed to take into consideration the annexes attached to the Complaint in determining whether there is a cause of action against [PMC].

II

. . . [IN] FAILING TO CONSIDER THE ARGUMENTS RAISED BY WESTMONT INVESTMENT CORPORATION IN THE LATTER'S COMMENT AND MOTION FOR RECONSIDERATION IN DETERMINING WHETHER THERE IS A CAUSE OF ACTION AGAINST [PMC].

III

. . . NOT CONSIDER[ING] THE FACT THAT THE TWO DEFENDANTS A QUO . . . HAVE PENDING CROSS-CLAIMS AGAINST EACH OTHER.

(a)