

## SECOND DIVISION

[ G.R. No. 164798, November 17, 2005 ]

### CHINA BANKING CORPORATION, PETITIONER, VS. MONDRAGON INTERNATIONAL PHILIPPINES, INC. AND ANTONIO GONZALES, RESPONDENTS.

#### DECISION

**PUNO, J.:**

We begin with the facts.

On February 28, 1994, respondent Mondragon International Philippines, Incorporated (MIPI), together with the Mondragon Leisure & Resorts Corporation and Mondragon Securities Corporation, entered into a Lease Agreement with Clark Development Corporation to develop the 232-hectare Mimosa Leisure Estate. Thereafter, the parties thereto entered into supplemental lease agreements to develop other additional areas. Part of the funds used for these projects was generated from loans obtained from petitioner China Banking Corporation (CBC). To secure these loans, MIPI executed promissory notes in favor of CBC. In addition, respondent Antonio U. Gonzales executed a Surety Agreement in favor of CBC in the amount of Php100,000,000.00.<sup>[1]</sup>

Sometime in 1997, the Asian financial crisis transpired. The ensuing shock to the Philippine economy affected MIPI's ability to pay its obligations to CBC.

On December 28, 2000, CBC filed a complaint for a sum of money with the Regional Trial Court of Makati City against MIPI and Mr. Gonzales. The complaint was raffled to Branch 57 thereof and docketed as Civil Case No. 00-1357. The certification of forum shopping attached to the complaint reads as follows:

I, MERCEDES E. GERMAN, of legal age and with post office address at 3<sup>rd</sup> Floor China Bank Building, 8745 Paseo de Roxas cor. Villar Sts., Makati City, under oath, depose and state that:

1. I am the Manager of Loans & Discounts Department of the China Banking Corporation.
2. I caused the preparation and filing of the foregoing Complaint.
3. I have read and understood all the allegations contained therein which are true and correct on the basis of authentic documents on file.
4. I hereby certify that the defendant China Bank has not commenced any other action or proceeding involving the same issues in the

Supreme Court, the Court of Appeals, or different Divisions thereof, or before any other tribunal or agency, and that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals or any Divisions thereof before any other tribunal or agency.

5. If I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification has been filed.<sup>[2]</sup>

On March 26, 2001, MIPI and Mr. Gonzales filed a motion to dismiss the complaint on the following grounds: 1) the complaint failed to comply with the requirements set forth under Supreme Court Administrative Circular No. 04-94 and Section 5, Rule 7 of the 1997 Rules of Civil Procedure as regards certifications against forum shopping; and 2) there was noncompliance with a condition precedent for the filing of the case and/or the same failed to state a cause of action or was premature.<sup>[3]</sup>

The Regional Trial Court denied the motion to dismiss for lack of merit in its order dated July 4, 2001 and denied the respondents' motion for reconsideration in its order dated November 9, 2001.<sup>[4]</sup>

From the trial court's resolution, the respondents filed a petition for *certiorari* and prohibition with the Court of Appeals on February 5, 2002. The petition was raffled to the Sixteenth Division of the appellate court and was docketed as CA-G.R. SP No. 68984.

In its Decision promulgated on February 27, 2004, the Court of Appeals granted the petition for *certiorari* and reversed the assailed July 4 and November 9, 2001 orders of the Regional Trial Court.<sup>[5]</sup> The Court of Appeals ruled that CBC failed to comply with the requirements of Section 5, Rule 7 of the 1997 Rules of Civil Procedure as there was nothing in the records showing that the signatory of the certification against forum shopping was authorized by CBC. It referred to the Corporation Code and jurisprudence which state that corporations exercise their corporate powers through their board of directors and no person can bind the corporation without authority from the latter.<sup>[6]</sup> It likewise ruled against the petitioner's motion for reconsideration in its resolution promulgated on August 2, 2004.<sup>[7]</sup>

Hence, the present petition.

The issue is whether the Court of Appeals erred in ruling that the Regional Trial Court committed grave abuse of discretion in denying the respondents' motion to dismiss and motion for reconsideration.

We rule for the petitioner.

Respondents contend that CBC's omission of allegations that Ms. German was an authorized signatory in its certification against forum shopping was fatal. The respondents forget that the petition pending before the Court of Appeals was filed under **Rule 65** of the 1997 Rules of Civil Procedure which requires the existence of