

SECOND DIVISION

[G.R. No. 120384, January 13, 2004]

PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, PETITIONER-APPELLANT, VS. PHILIPPINE INFRASTRUCTURES, INC., PHILIPPINE BRITISH ASSURANCE CO., INC., THE SOLID GUARANTY, INC., B.F. HOMES, INC., PILAR DEVELOPMENT CORPORATION AND TOMAS F. AGUIRRE, RESPONDENTS-APPELLEES.

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Philippine Export and Foreign Loan Guarantee Corporation. Petitioner corporation seeks to set aside the Decision^[1] of the Court of Appeals dated August 31, 1994, dismissing CA-G.R. SP No. 31483; the Resolution dated May 18, 1995 denying petitioner's motion for reconsideration; the Order of the Regional Trial Court (Branch 29) of Manila, dated December 7, 1992, dismissing Civil Case No. 86-38169^[2] and the Order dated April 12, 1993 denying the motion for reconsideration of said dismissal order.

The antecedent facts are as follows:

The case was commenced at the Regional Trial Court on October 30, 1986, upon the filing by herein petitioner of a complaint for collection of sum of money against herein respondents Philippine Infrastructures, Inc. (PII for brevity), Philippine British Assurance Co., Inc. (PBAC), The Solid Guaranty, Inc. (Solid), B.F. Homes, Inc. (BF Homes), Pilar Development Corporation (PDC) and Tomas B. Aguirre (Aguirre). The complaint alleges that: petitioner issued five separate Letters of Guarantee in favor of the Philippine National Bank (PNB) as security for various credit accommodations extended by PNB to respondent PII; respondents PII, BF Homes, PDC and Aguirre executed a Deed of Undertaking binding themselves, jointly and severally, to pay or reimburse petitioner upon demand such amount of money or to repair the damages, losses or penalties which petitioner may pay or suffer on account of its guarantees; as security for prompt payment by respondent PII, the latter submitted to petitioner, surety and performance bonds issued by respondents PBAC and Solid; on April 24, 1985, the PNB called on the guarantees of petitioner, and so, the latter demanded from respondent PII the immediate settlement of P20,959, 529.36, representing the aggregate amount of the guarantees of petitioner called by PNB and the further sum of P351,517.57 representing various fees and charges; PII refused to settle said obligations; petitioner likewise demanded payment from respondents Solid and PBAC but they also refused to pay petitioner; and because of the unjustified refusal of respondents to comply with their respective obligations, petitioner was constrained to secure the services of counsel and incur expenses for the purpose of prosecuting its valid claims against the respondents. It is prayed in the complaint

that judgment be rendered ordering respondents PII, BF Homes, PDC and Aguirre to pay petitioner the amount of P21,311,046.93 plus interest and penalty charges thereon, ordering respondents Solid and PBAC to pay P5,758,000.00 and P9,596,000.00, respectively, under their surety and/or performance bonds and ordering respondents to pay petitioner the sums of P2,000,000.00 as attorney's fees and expenses of litigation and P50,000.00 as exemplary damages.

Respondent BF Homes filed a Motion to Dismiss^[3] on the ground that it is undergoing rehabilitation receivership in the Securities and Exchange Commission (SEC) and pursuant to P.D. 902-A, the trial court has no jurisdiction to try the case.

Respondent PII also filed a Motion to Dismiss^[4] on the ground that the complaint states no cause of action since it does not allege that petitioner has suffered any damage, loss or penalty because of the guarantees petitioner had extended for and on behalf of respondent PII.

The other respondents filed their respective responsive pleadings.

On June 10, 1987, Judge Roberto M. Lagman issued an Order^[5] suspending the case only as against respondent BF Homes and denying respondent PII's motion to dismiss. Thereafter, hearing on the merits ensued. On January 21, 1992, petitioner presented Rosauro Termulo, the treasury department manager of petitioner, who testified that the amount of P19,035,256.57 was paid on July 28, 1990 by petitioner to the PNB through the account of the National Treasury to cover the principal loan and interests, as guaranteed by petitioner; and, Exhibit "LL," a debit memo issued by the PNB, showing that the latter was paid by the National Treasurer in behalf of petitioner corporation. Consequently, on February 19, 1992, petitioner filed a Motion to Amend Complaint to Conform to Evidence^[6] pursuant to Section 5, Rule 10 of the Revised Rules of Court, seeking to amend Paragraph 17 and the pertinent portion of the prayer in the complaint, to read as follows:

17. Because of the unjustified refusal of the defendants to comply with their respective obligations, the plaintiff as guarantor has been constrained to pay the Philippine National Bank thru the account of the National Treasury the amount of Nineteen Million Thirty-five Thousand Two Hundred Fifty-six and 57/100 (P19,035,256.57) on July 28, 1990 representing payment of principal loan of P12,790,094.83 and interest of P6,245,111.54 due March 16, 1987 on the Philippine Infrastructure, Inc./Philguaranty loan under the PNB Expanded Loan Collection Program; and which amount was deducted from the equity share of the National Government in Philguarantee. In view of defendants unwarranted failure and refusal to settle their respective accountabilities plaintiff was likewise constrained to secure the services of counsel and incur expenses in the process of prosecuting its just and valid claims against the defendants; accordingly, the defendants should be held liable, jointly and severally, to pay the plaintiff attorney's fees and expenses of litigation in the amount of P2,000,000.00 or about ten (10%) percent of the guaranteed obligations.

...

PRAYER

. . .

(a) Ordering defendant PII, BF Homes, PILAR and AGUIRRE to pay plaintiff, jointly and severally, the amount of P19,035,256.57 plus P351,517.57 extension guarantee fees and amendment fees, plus interests and penalty charges thereon;

. . .^[7]

Acting on the motion to amend, the trial court, at that time presided by Judge Joselito J. Dela Rosa, issued the assailed Order dated December 7, 1992,^[8] dismissing the case without prejudice on the ground of failure of the complaint to state a cause of action, thus in effect, reversing the Order dated June 10, 1987 issued by Judge Lagman five years earlier. Petitioner's motion for reconsideration of the order of dismissal was denied by Judge de la Rosa per his Order^[9] dated April 12, 1993.

On June 9, 1993, a petition for review on certiorari was filed by petitioner against the Regional Trial Court with this Court. On June 23, 1993, the Court issued a Resolution^[10] which reads:

Considering that under Section 9 of Batas Pambansa Blg. 129, the Intermediate Appellate Court (Court of Appeals) now exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, the Court Resolved to *REFER* this case to the Court of Appeals, for disposition.

The Court of Appeals re-docketed the petition as CA-G.R. SP No. 31483.

On August 31, 1994, the Court of Appeals promulgated the assailed Decision, dismissing the petition on the following grounds:

FIRSTLY, an order of dismissal, whether right or wrong, is a final order. If it is erroneous, the remedy of the aggrieved party is appeal. Hence, the same cannot be assailed by certiorari, as in this case (*Marahay vs. Malicor*, 181 SCRA 811). Considering the Supreme Court Circular No. 2-90, paragraph 4 regarding an appeal by wrong mode, the order of dismissal in this case was therefore correctly issued by the respondent court a quo.

SECONDLY, the real purpose of petitioner herein in asking the respondent court a quo for leave to amend its complaint was not ostensibly to make the complaint conform to the evidence presented, as petitioner alleges, but to introduce a cause of action then non-existing when the complaint was filed. The ruling in the leading case of Surigao Mine Exploration Co. vs. Harris (69 Phil. 113) does not allow such amendment.

Hence, the trial court was correct in denying the amendment and instead it dismissed the case.

THIRDLY, in the case at bar, the motion to dismiss was first denied but

there is nothing in the Rules of Court which prohibits the court from later on reversing itself and granting the motion to dismiss.

This ruling is supported by earlier decisions of the Supreme Court in *Lucas vs. Mariano, et al* (L-29157, April 27, 1972) and *Vda. De Haberer vs. Martinez, et al.* (L-39386, Jan. 29, 1975) where the trial court dismissed the complaint, then set it aside and finally again ordered it dismissed.^[11]

On May 19, 1995, the appellate court issued a Resolution^[12] denying petitioner's motion for reconsideration.

Hence, on June 14, 1995, petitioner filed the present petition for review on certiorari, claiming that the Court of Appeals committed the following errors:

I.

THE HONORABLE COURT OF APPEALS' AFFIRMATION OF THE REGIONAL TRIAL COURT JUDGE'S ORDER DISMISSING CIVIL CASE NO. 86-38169 MOTU PROPIO ON THE PREMISE THAT HIS PREDECESSOR JUDGE WAS IN ERROR IN NOT GRANTING THE MOTION TO DISMISS FILED YEARS BACK, ALLEGEDLY BECAUSE "THERE WAS NO CAUSE OF ACTION AT THE TIME OF THE FILING OF THE COMPLAINT" IS CONTRARY TO LAW AND JURISPRUDENCE.

II.

THE HONORABLE COURT OF APPEALS' AFFIRMATION OF THE REGIONAL TRIAL COURT JUDGE'S ORDER IN NOT ALLOWING THE AMENDMENT OF THE COMPLAINT TO CONFORM TO THE EVIDENCE PRESENTED WITHOUT OBJECTIONS, IS CONTRARY TO LAW AND JURISPRUDENCE.

III.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE REAL PURPOSE OF PETITIONER-APPELLANT IN ASKING FOR LEAVE TO AMEND ITS COMPLAINT WAS NOT TO MAKE THE COMPLAINT CONFORM TO THE EVIDENCE PRESENTED BUT TO INTRODUCE A CAUSE OF ACTION THEN NON-EXISTING WHEN THE COMPLAINT WAS FILED.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO PETITIONER-APPELLANT'S PETITION FOR REVIEW.^[13]

Respondents, on the other hand, asseverate that the petitioner went to the Court of Appeals on a wrong remedy as the proper remedy was for it to appeal from the order of dismissal and not to file a petition for review on certiorari; and that the Court of Appeals committed no error in sustaining the lower court as the original complaint below failed to state a cause of action and the real purpose of the amendment was to introduce a subsequently acquired cause of action.