

SECOND DIVISION

[G.R. No. 159590, October 18, 2004]

**HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED,
PETITIONER, VS. CECILIA DIEZ CATALAN, RESPONDENT.**

[G.R. NO. 159591]

**HSBC INTERNATIONAL TRUSTEE LIMITED, PETITIONER, VS.
CECILIA DIEZ CATALAN, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us are two petitions for review on certiorari under Rule 45 of the Rules of Court separately filed by the Hongkong and Shanghai Banking Corporation Limited (HSBANK) and HSBC International Trustee Limited (HSBC TRUSTEE). They seek the reversal of the consolidated Decision,^[1] dated August 14, 2003, of the Court of Appeals (CA) in CA-G.R. SP Nos. 75756 and 75757, which dismissed the petitions for certiorari of herein petitioners assailing the Order, dated May 15, 2002, of the Regional Trial Court, Branch 44, Bacolod City (RTC) in Civil Case No. 01-11372 that denied their respective motions to dismiss the amended complaint of respondent Cecilia Diez Catalan.

The factual antecedents are as follows:

On January 29, 2001, respondent filed before the RTC, a complaint for a sum of money with damages against petitioner HSBANK, docketed as Civil Case No. 01-11372, due to HSBANK's alleged wanton refusal to pay her the value of five HSBANK checks issued by Frederick Arthur Thomson (Thomson) amounting to HK\$3,200,000.00.^[2]

On February 7, 2001, summons was served on HSBANK at the Enterprise Center, Tower I, Ayala Avenue corner Paseo de Roxas St., Makati City.^[3] HSBANK filed a Motion for Extension of Time to File Answer or Motion to Dismiss dated February 21, 2001.^[4] Then, it filed a Motion to Dismiss, dated March 8, 2001, on the grounds that (a) the RTC has no jurisdiction over the subject matter of the complaint; (b) the RTC has not acquired jurisdiction for failure of the plaintiff to pay the correct filing or docket fees; (c) the RTC has no jurisdiction over the person of HSBANK; (d) the complaint does not state a cause of action against HSBANK; and (e) plaintiff engages in forum-shopping.^[5]

On September 10, 2001, Catalan filed an Amended Complaint impleading petitioner HSBC TRUSTEE as co-defendant and invoking Article 19 of the Civil Code as basis for her cause of action.^[6]

The Amended Complaint alleges:

Defendants HSBANK and HSBC TRUSTEE, doing business in the Philippines, are corporations duly organized under the laws of the British Virgin Islands with head office at 1 Grenville Street, St. Helier Jersey, Channel Islands and with branch offices at Level 12, 1 Queen's Road Central, Hongkong and may be served with summons and other court processes through their main office in Manila with address at HSBC, the Enterprise Center, Tower 1, Ayala Avenue corner Paseo de Roxas Street, Makati City.

Sometime in March 1997, Thomson issued five HSBANK checks payable to Catalan, to wit:

CHECK NO.	DATE	AMOUNT
807852	Mar. 15, 1997	\$600,000.00
807853	Mar. 17, 1997	800,000.00
807854	Mar. 17, 1997	600,000.00
807855	Mar. 22, 1997	600,000.00
807856	Mar. 23, 1997	<u>600,000.00</u>
	TOTAL	<u>\$3,200,000.00</u>

The checks when deposited were returned by HSBANK purportedly for reason of "payment stopped" pending confirmation, despite the fact that the checks were duly funded. On March 18, 1997, Thomson wrote a letter to a certain Ricky Sousa^[7] of HSBANK confirming the checks he issued to Catalan and requesting that all his checks be cleared. On March 20, 1997, Thomson wrote another letter to Sousa of HSBANK requesting an advice in writing to be sent to the Philippine National Bank, through the fastest means, that the checks he previously issued to Catalan were already cleared. Thereafter, Catalan demanded that HSBANK make good the checks issued by Thomson. On May 16, 1997, Marilou A. Lozada, personal secretary and attorney-in-fact of Thomson, wrote a letter to Sousa of HSBANK informing him that HSBANK's failure to clear all the checks had saddened Thomson and requesting that the clearing of the checks be facilitated. Subsequently, Thomson died and Catalan forwarded her demand to HSBC TRUSTEE. Catalan sent photocopies of the returned checks to HSBC TRUSTEE. Not satisfied, HSBC TRUSTEE through deceit and trickery, required Catalan, as a condition for the acceptance of the checks, to submit the original copies of the returned checks, purportedly, to hasten payment of her claim. HSBC TRUSTEE succeeded in its calculated deception because on April 21, 1999, Catalan and her former counsel went to Hongkong at their own expense to personally deliver the originals of the returned checks to the officers of HSBC TRUSTEE, anxious of receiving the money value of the checks but HSBC TRUSTEE despite receipt of the original checks, refused to pay Catalan's claim. Having seen and received the original of the checks, upon its request, HSBC TRUSTEE is deemed to have impliedly accepted the checks. Moreover, the refusal of HSBANK and HSBC TRUSTEE to pay the checks is equivalent to illegal freezing of one's deposit. On the assurance of HSBC TRUSTEE that her claim will soon be paid, as she was made to believe that payments of the checks shall be made by HSBC TRUSTEE "upon sight," the unsuspecting Catalan left the originals of the checks with HSBC TRUSTEE and was given only an acknowledgment receipt. Catalan made several demands and after several more follow ups, on August 16, 1999, Phoenix Lam, Senior Vice

President of HSBC TRUSTEE, in obvious disregard of her valid claim, informed Catalan that her claim is disapproved. No reason or explanation whatsoever was made why her claim was disapproved, neither were the checks returned to her. Catalan appealed for fairness and understanding, in the hope that HSBC TRUSTEE would act fairly and justly on her claim but these demands were met by a stonewall of silence. On June 9, 2000, Catalan through counsel sent a last and final demand to HSBC TRUSTEE to remit the amount covered by the checks but despite receipt of said letter, no payment was made. Clearly, the act of the HSBANK and HSBC TRUSTEE in refusing to honor and pay the checks validly issued by Thomson violates the abuse of rights principle under Article 19 of the Civil Code which requires that everyone must act with justice, give everyone his due and observe honesty and good faith. The refusal of HSBANK and HSBC TRUSTEE to pay the checks without any valid reason is intended solely to prejudice and injure Catalan. When they declined payment of the checks despite instructions of the drawer, Thomson, to honor them, coupled with the fact that the checks were duly funded, they acted in bad faith, thus causing damage to Catalan. A person may not exercise his right unjustly or in a manner that is not in keeping with honesty or good faith, otherwise he opens himself to liability for abuse of right.^[8]

Catalan prays that HSBANK and HSBC TRUSTEE be ordered to pay P20,864,000.00 representing the value of the five checks at the rate of P6.52 per HK\$1 as of January 29, 2001 for the acts of HSBANK and HSBC TRUSTEE in refusing to pay the amount justly due her, in addition to moral and exemplary damages, attorney's fees and litigation expenses.^[9]

On October 2, 2001, HSBANK filed a Motion to Dismiss Amended Complaint on the grounds that: (a) the RTC has no jurisdiction over the subject matter of the complaint since the action is a money claim for a debt contracted by Thomson before his death which should have been filed in the estate or intestate proceedings of Thomson; (b) Catalan engages in forum shopping by filing the suit and at the same time filing a claim in the probate proceeding filed with another branch of the RTC; (c) the amended complaint states no cause of action against HSBANK since it has no obligation to pay the checks as it has not accepted the checks and Catalan did not re-deposit the checks or make a formal protest; (d) the RTC has not acquired jurisdiction over the person of HSBANK for improper service of summons; and, (e) it did not submit to the jurisdiction of the RTC by filing a motion for extension of time to file a motion to dismiss.^[10]

Meanwhile, on October 17, 2001, summons for HSBC TRUSTEE was tendered to the In House Counsel of HSBANK (Makati Branch) at the Enterprise Center, Tower 1, Ayala Avenue corner Paseo de Roxas, Makati. Without submitting itself to the jurisdiction of the RTC, HSBC TRUSTEE filed a Special Appearance for Motion to Dismiss Amended Complaint, dated October 29, 2001, questioning the jurisdiction of the RTC over it.^[11] HSBC TRUSTEE alleges that tender of summons through HSBANK Makati did not confer upon the RTC jurisdiction over it because: (a) it is a corporation separate and distinct from HSBANK; (b) it does not hold office at the HSBANK Makati or in any other place in the Philippines; (c) it has not authorized HSBANK Makati to receive summons for it; and, (d) it has no resident agent upon whom summons may be served because it does not transact business in the Philippines.

Subsequently, HSBC TRUSTEE filed a Submission, dated November 15, 2001, attaching the Affidavit executed in Hongkong by Phoenix Lam, Senior Vice-President of HSBC TRUSTEE, attesting to the fact that: 1) HSBC TRUSTEE has not done nor is it doing business in the Philippines; 2) it does not maintain any office in Makati or anywhere in the Philippines; 3) it has not appointed any agent in Philippines; and 4) HSBANK Makati has no authority to receive any summons or court processes for HSBC TRUSTEE.^[12]

On May 15, 2002, the RTC issued an Order denying the two motions to dismiss.^[13] The RTC held that it has jurisdiction over the subject matter of the action because it is an action for damages under Article 19 of the Civil Code for the acts of unjustly refusing to honor the checks issued by Thomson and not a money claim against the estate of Thomson; that Catalan did not engage in forum-shopping because the elements thereof are not attendant in the case; that the question of cause of action should be threshed out or ventilated during the proceedings in the main action and after the plaintiff and defendants have adduced evidence in their favor; that it acquired jurisdiction over the person of defendants because the question of whether a foreign corporation is doing business or not in the Philippines cannot be a subject of a Motion to Dismiss but should be ventilated in the trial on the merits; and defendants voluntarily submitted to the jurisdiction of the RTC setting up in their Motions to Dismiss other grounds aside from lack of jurisdiction.

HSBANK and HSBC TRUSTEE filed separate motions for reconsideration^[14] but both proved futile as they were denied by the RTC in an Order dated December 20, 2002.^[15]

On February 21, 2003, Catalan moved to declare HSBANK and HSBC TRUSTEE in default for failure to file their answer to the amended complaint.

On March 5, 2003, HSBANK and HSBC TRUSTEE filed separate petitions for certiorari and/or prohibition with the CA, docketed as CA-G.R. SP Nos. 75756^[16] and 75757,^[17] respectively.

Subsequently, HSBANK and HSBC TRUSTEE filed before the RTC separate Answers *ad cautelam*, both dated March 18, 2003, as a "precaution against being declared in default and without prejudice to the separate petitions for certiorari and/or prohibition then pending with the CA."^[18]

Meanwhile, the two petitions for certiorari before the CA were consolidated and after responsive pleadings were filed, the cases were deemed submitted for decision.

In a consolidated Decision dated August 14, 2003, the CA dismissed the two petitions for certiorari.^[19] The CA held that the filing of petitioners' answers before the RTC rendered moot and academic the issue of the RTC's lack of jurisdiction over the person of the petitioners; that the RTC has jurisdiction over the subject matter since it is one for damages under Article 19 of the Civil Code for the alleged unjust acts of petitioners and not a money claim against the estate of Thomson; and, that the amended complaint states a cause of action under Article 19 of the Civil Code which could merit a favorable judgment if found to be true. The CA noted that Catalan may have prayed for payment of the value of the checks but ratiocinated

that she merely used the value as basis for the computation of the damages.

Hence, the present petitions.

In G.R. No. 159590, HSBANK submits the following assigned errors:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE COURT A QUO, ACTING AS AN (SIC) REGULAR COURT, HAS JURISDICTION OVER THE AMENDED COMPLAINT SEEKING TO ORDER HSBC TRUSTEE, THE EXECUTOR OF THE DECEASED FREDERICK ARTHUR THOMSON, TO PAY SUBJECT CHECKS ISSUED BY THE LATE FREDERICK ARTHUR THOMSON, ADMITTEDLY IN PAYMENT OF HIS INDEBTEDNESS TO CATALAN.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE AMENDED COMPLAINT DOES NOT SEEK TO ORDER HSBANK AND HSBC INTERNATIONAL TRUSTEE LIMITED TO PAY THE OBLIGATION OF THE (SIC) FREDERICK ARTHUR THOMSON AS EVIDENCED BY THE CHECKS, BUT PRAYS FOR DAMAGES EQUIVALENT OR COMPUTED ON THE BASIS OF THE VALUE OF THE CHECKS BECAUSE THE DEFENDANTS FAILED TO COMPLY WITH THE MANDATES OF ARTICLE 19 OF THE NEW CIVIL CODE.

III.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT ALLEGATIONS IN THE AMENDED COMPLAINT MAKE OUT A CAUSE OF ACTION WHICH COULD MERIT A FAVORABLE JUDGMENT IF FOUND TO BE TRUE, OR IN NOT HOLDING THAT THE AMENDED COMPLAINT STATES NO CAUSE OF ACTION AGAINST HSBANK, AS DRAWEE BANK.

IV.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN DISREGARDING THE FACT THAT CATALAN ENGAGED IN FORUM SHOPPING BY FILING THE AMENDED COMPLAINT WHILE HER PETITION FOR THE PROBATE OF THE SUPPOSED WILL OF THE DECEASED FREDERICK ARTHUR THOMSON IS PENDING WITH ANOTHER BRANCH OF THE COURT A QUO.

V.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT HSBANK HAD SUBMITTED TO THE JURISDICTION OF THE COURT A QUO BY SUBMITTING AN ANSWER TO THE AMENDED COMPLAINT.^[20]

In G.R. No. 159591, HSBC TRUSTEE also assigns the foregoing first, second and fifth errors as its own.^[21] In addition, it claims that: