

SECOND DIVISION

[G.R. No. 110480, June 29, 2001]

**BANGKO SILANGAN DEVELOPMENT BANK, PETITIONER, VS.
COURT OF APPEALS, JUDGE PABLO D. ATIENZA, IN HIS
CAPACITY AS PRESIDING JUDGE OF BRANCH 14, REGIONAL
TRIAL COURT, FOURTH JUDICIAL REGION, NASUGBU, BATANGAS
AND LEONIDA UMANDAL-BAUSAS, RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Challenged in this petition for review on *certiorari* is the Decision^[1] dated February 26, 1993 of the Court of Appeals in CA-G.R. No. SP-29659 which affirmed the Resolution^[2] dated September 10, 1992 of the Regional Trial Court of Batangas, Branch 14, Nasugbu, Batangas in Civil Case No. 221. The said Regional Trial Court (RTC) denied the motion to dismiss filed by petitioner Bangko Silangan Development Bank (BSDB), Nasugbu Branch, Batangas.

The motion to dismiss was based on the ground of *litis pendentia allegedly* arising from the same controversy, subject of Civil Case No. 91-56185, then pending before the Regional Trial Court of Manila.

The antecedent facts are as follows:

Private respondent Leonida Umandal-Bausas had been maintaining Savings Account No. 04-3652 as depositor of petitioner BSDB, Nasugbu Branch, Batangas since 1985. As of April 1990, she had Fifteen Thousand Pesos (P15,000.00) deposited under her Savings Account No. 04-3652. On April 23, 1990, respondent Leonida Umandal-Bausas attempted to withdraw Five Thousand Pesos (P5,000.00) from that savings account but, to her surprise, the bank teller told her that the withdrawal could not be done because her brother, Antonio Umandal, had already withdrawn on April 16, 1990 the amount of Fifteen Thousand Pesos (P15,000.00) allegedly with her written authorization and that her remaining balance was only Eight Hundred Pesos (P800.00). Respondent Bausas then inquired about the withdrawal slip and found that the signatures appearing thereon were not hers and neither that of her brother.^[3]

Dismayed by the turn of events, respondent Bausas sought the assistance of a family friend, Edmundo Villadolid, who was then the President-Manager of the Rural Bank of Nasugbu, Batangas. On the following day, Villadolid sent petitioner BSDB a letter, dated April 24, 1990, together with an affidavit executed by respondent Bausas. In substance, Villadolid in his letter, informed petitioner BSDB of the "sad experience" of respondent Bausas, a daughter of his *kumadre*, whose savings passbook had since been withheld by the petitioner bank which allowed the withdrawal of the amount of Fifteen Thousand Pesos (P15,000.00) from her savings

account without verifying whether the withdrawal was duly authorized by respondent Bausas. Claiming that the withdrawal smacked of "foul play" and "dubious exercise of unwarranted banking operation", Villadolid warned the petitioner bank that he would be constrained to elevate the matter to "higher authorities" should there be no "reasonable and convincing results at the earliest (sic) possible".^[4]

Upon receipt of the letter, petitioner BSDB caused an investigation on the matter through its auditor, Benedicto I. Ramirez. On May 4, 1990, Ramirez submitted a report, a portion of which reads:

"Savings ledger No. 3652 under the name Leonida B. Umandal shows a FIFTEEN THOUSAND PESO (P15,000.00) withdrawal made last April 16. Said withdrawal is evidenced by a withdrawal slip bearing the signatures of both the depositor, Leonida B. Umandal and her representative, Antonio Umandal, which are genuine. Both Leonida B. Umandal and her brother Antonio Umandal, who dropped by to complaint (sic) sometime after April 22, 1990, denied having signed said withdrawal slip as per statements gathered from the officers and staff of Nasugbu Branch. Said withdrawal was processed in accordance with the standard operating procedure."^[5]

Subsequently, on May 15, 1990, Villadolid requested the Central Bank of the Philippines to intervene and conduct an investigation on petitioner BSDB's banking operations on account of the petitioner bank's "indifference" in the conduct of its investigation on the unauthorized withdrawal from respondent Bausas' savings account. This was subsequently referred by the Central Bank to petitioner BSDB's Head Office in Batangas City.

On May 31, 1990, Villadolid wrote petitioner BSDB another letter, a copy of which was furnished the Central Bank. He reminded the petitioner bank that it had been forty-five (45) days since the failed withdrawal and that, notwithstanding the attempt of respondent Bausas' father to thresh out the matter with Sofronio Comia, petitioner bank's officer-in-charge, no "concrete results and/or remedies" has been arrived at. He warned that if, within five (5) days, the petitioner bank would continue its "insulting treatment" on the matter, respondent Bausas would be constrained to hire the services of a lawyer in order that the proper charges would be filed against the petitioner bank.^[6]

In a letter dated June 6, 1990, petitioner BSDB, through Alberto Buquid, informed respondent Bausas that the investigation it had conducted on the matter revealed that on April 16, 1990, her brother, Antonio Umandal, bearing her passbook under Savings Account No. 04-3652 and the withdrawal slip to which her signature was affixed, withdrew the amount of Fifteen Thousand Pesos (P15,000.00). The petitioner bank asserted that it observed the usual procedure in bank transactions - it made the proper verification, posted the withdrawal on the passbook and the bank ledger, and approved the withdrawal.^[7]

As a result of that information, respondent Bausas sought the help of the National Bureau of Investigation (NBI) in Region IV, Batangas City. After an investigation, a

case was filed with the Office of the Provincial Prosecutor of Batangas on February 21, 1993 and docketed therein as Investigation Slip (I.S.) No. 91-37.^[8]

It appears that respondent Bausas sought another venue for airing her complaint - the press. Thus, in the September 17, 1990 issue of the *People's Journal Tonight*, the following headline appeared: "Bank Money Withdrawn w/o. Depositor's Knowledge".^[9] Aside from that publication, respondent Bausas and Villadolid reproduced by xerox machine the said news item and posted the xerox copies in conspicuous places within the municipal hall of Nasugbu.

Aggrieved, on February 22, 1991, petitioner BSDB filed in the RTC of Manila a complaint for damages^[10] against respondent Bausas, Villadolid, the Philippine Journalists, Inc., Zacarias Nuguid, Jr. (publisher), Alfredo M. Marquez (managing editor), Franklin Cabaluna (news editor), Benjamin Ayllon (city editor) and Raul S. Beltran (reporter). Docketed as Civil Case No. 91-56185 in the RTC of Manila, Branch 24, the complaint alleged that the "series of publications" were "clearly defamatory and libelous", and that the publication constituted the crime defined and penalized under Article 353 of the Revised Penal Code that damaged the "goodwill, integrity and good reputation" of the 21-year old bank.^[11] Petitioner BSDB prayed for compensatory damages of One Hundred Thousand Pesos (P100,000.00), moral damages of One Million Five Hundred Thousand Pesos (P1,500,000.00), exemplary damages of Seven Hundred Thousand Pesos (P700,000.00), and attorney's fees of Two Hundred Thousand Pesos (P200,000.00).

In their answer with compulsory counterclaim,^[12] In Civil Case No. 91-56185 respondent Bausas and Villadolid alleged that the withdrawal slip was a forgery and that Villadolid's actions were moved by a "sense of moral duty" to respondent Bausas and her family. They raised lack of actual malice as a defense and interposed a compulsory counterclaim for One Million Pesos (P1,000,000.00) in moral damages, Two Hundred Fifty Thousand Pesos (P250,000.00) in litigation expenses and other damages, Five Hundred Thousand Pesos (P500,000.00) in exemplary damages, and Fifty Thousand Pesos (P50,000.00) plus Two Thousand Pesos (P2,000.00) per appearance as attorney's fees.

While Civil Case No. 91-56185 was pending in the RTC of Manila, or on February 13, 1992, respondent Bausas, joined by her husband Ricardo, filed Civil Case No. 221, a complaint for a sum of money, with damages, against petitioner BSDB before the RTC of Batangas, Branch 14 in Nasugbu, Batangas. The complaint specifically prayed that petitioner BSDB be ordered to pay them (a) Fifteen Thousand Pesos (P15,000.00) "plus whatever balance" remained of her deposit, including accrued interests thereon; (b) Twenty Thousand Pesos (P20,000.00) as litigation expenses and/or damages; and (c) Ten Thousand Pesos (P10,000.00) as attorney's fees plus One Thousand Pesos (P1,000.00) per hearing attended by their lawyer.^[13]

Instead of filing a responsive pleading to the complaint, petitioner BSDB filed a motion to dismiss,^[14] alleging that (a) there was another action pending between the same parties for the same case (sic); (b) the action caused the splitting of the cause of action raised in the answer and counterclaim in Civil Case No. 91-56185; (c) the action violated the principle of multiplicity of suits, and; (d) the filing of the complaint constituted forum-shopping.

On September 10, 1982, the RTC of Batangas^[15] issued a Resolution^[16] denying the motion to dismiss.

Petitioner BSDB then filed a motion for reconsideration^[17] which the RTC of Batangas, however, denied in an Order^[18] dated November 19, 1992.

Petitioner BSDB elevated the matter to the Court of Appeals via a petition for certiorari, prohibition and mandamus,^[19] seeking the reversal of the said Resolution and Order of the RTC of Batangas.

On February 26, 1993, the Court of Appeals rendered the now assailed Decision dismissing petitioner BSDB's petition for certiorari, prohibition and mandamus and upholding the denial of its motion to dismiss Civil Case No. 221.^[20] The appellate court held that an order denying a motion to dismiss, being interlocutory, cannot be the subject of a petition for certiorari.

Besides, the principle of *litis pendentia* invoked by petitioner BSDB is not applicable to the case at bar. The appellate court correctly found and declared that:

"In the present case, while concededly, certain pieces of evidence may be identical (to) both Civil Case No. 91-56185 and Civil Case No. 221, it cannot be said however, that exactly the same evidence will support the decisions in both. In Civil Case No. 91-56185 pending before the Regional Trial Court of Manila, the issues raised are (1) whether the publication in the September 17, 1990 issue of the People's Journal Tonight is false and libelous and the action is directed, not only against private respondent Leonida Umandal-Bausas but also against the publisher and editorial staff of the publication concerned; and (2) whether Leonida Umandal-Bausas acted with malice in causing the posting of xerox copies of said publication at conspicuous places at the Municipal Building of Nasugbu, Batangas. In Civil Case No. 221, however, the primary issue, shown (sic) of unessential trimmings, is whether or not petitioner Bank could be held liable to Leonida Umandal-Bausas for the withdrawal from her savings account in the amount of P15,000.00.

Private respondent Bausas did not invoke as a permissive counterclaim in Civil Case No. 91-56185, that petitioner indemnify her of her savings deposit which she claims to have been withdrawn by someone else without her authority.

We therefore rule that the court *a quo* did not commit an abuse of discretion in denying petitioner's motion to dismiss in Civil Case No. 221 on the ground of *litis pendentia*. "^[21]

Petitioner BSDB's motion for reconsideration^[22] thereof was denied in a Resolution,^[23] dated June 7, 1993, of the appellate court.

Hence, the instant petition wherein petitioner BSDB raises the following assignment

of errors:

I

THE RESPONDENT COURT ERRED WHEN IT HELD THAT THE PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS SEEKING TO NULLIFY AND SET ASIDE THE ORDER OF THE RESPONDENT JUDGE DENYING PETITIONER'S MOTION TO DISMISS "DOES NOT FALL WITHIN THE AMBIT OF THE EXCEPTION" TO THE GENERAL RULE THAT AN ORDER DENYING A MOTION TO DISMISS IS NOT AN INTERLOCUTORY ORDER AND CANNOT BE THE SUBJECT OF A PETITION FOR CERTIORARI.

II

THE RESPONDENT COURT COMMITTED AN ERROR REVIEWABLE ON APPEAL BY CERTIORARI WHEN IT DENIED DUE COURSE TO THE PETITION AND TO HAVE DISMISSED THE SAME BECAUSE OF ITS FINDING THAT THERE IS NO *LITIS PENDENTIA* BETWEEN CIVIL CASE NO. 221 AND CIVIL CASE NO. 91-56185.

Petitioner argues that respondent RTC of Batangas acted without or in excess of jurisdiction or was guilty of grave abuse of discretion when it refused to dismiss Civil Case No. 221 despite the pendency of Civil Case No. 91-56185 in the RTC of Manila. It insists that *litis pendentia* barred the proceedings in Civil Case No. 221 because the special and affirmative defenses raised by respondent Bausas in Civil Case No. 91-56185 are really the same cause of action which she relied upon in Civil Case No. 221. For that matter, it claimed that respondent trial court abetted the possibility of conflicting decisions between two (2) co-equal and coordinate courts that may in the end sow confusion and chaos that would take years to untangle and settle.^[24]

Private respondent, on the other hand, counters that an order denying a motion to dismiss is interlocutory, and hence, cannot be the subject of a petition for certiorari. She claims that the remedy of petitioner bank should be to proceed with the trial and, in the event of an adverse decision, interpose an appeal to the proper forum.

As regards petitioner's claim of *litis pendentia*, respondent Bausas contends that the issue in Civil Case No. 91-56185 is whether or not she and Villadolid acted with malice in publishing the allegedly libelous letters so as to warrant their liability for damages whereas the issue in Civil Case No. 221 which is an action for collection of a sum of money, is whether or not there was an unauthorized withdrawal of her savings deposit that would warrant the petitioner's liability therefor.

The petition, not being meritorious, the same should be, as it is hereby, denied.

The petition for certiorari, prohibition and mandamus interposed by petitioner before the Court of Appeals is not the proper remedy to question the denial of its motion to dismiss in Civil Case No. 221. The Resolution and Order of the RTC of Batangas denying the motion to dismiss are merely interlocutory. An interlocutory order does not terminate nor finally dispose of the case, but leaves something to be done by