

## SECOND DIVISION

[ G.R. No. 137898, December 15, 2000 ]

**CHINA ROAD AND BRIDGE CORPORATION, PETITIONER, VS.  
COURT OF APPEALS (SPECIAL SEVENTH DIVISION) AND JADE  
PROGRESSIVE SAVINGS AND MORTGAGE BANK, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

This is a petition for certiorari under Rule 65 of the *1997 Rules of Civil Procedure* praying for the nullification of the *Resolution* of the Court of Appeals (Special Seventh Division) dated 29 October 1998 denying petitioner's *Motion to Dismiss Appeal*, and its *Resolution* dated 5 February 1999, denying reconsideration thereof and for the dismissal of CA-G.R. CV No. 57375.

CHINA ROAD AND BRIDGE CORPORATION (CRBC), petitioner, is a corporation organized under the laws of the People's Republic of China duly licensed by the Securities and Exchange Commission to do business in the Philippines. It was awarded by the Philippine Government the contract to construct the EDSA Shaw

Boulevard Overpass in Mandaluyong, which it subcontracted to Hi-Quality Builders and Traders, Inc. (HI-QUALITY), a domestic corporation organized under the laws of the Philippines.

On 17 October 1996 Helen Ambrosio, President of HI-QUALITY, executed a Continuing Suretyship in favor of Jade Progressive Savings and Mortgage Bank (JADEBANK) binding herself to pay the "obligations of the Debtor (Hi-Quality) arising from all credit accommodations extended by the Bank to the Debtor x x x x presently or hereafter owing to the Bank, as appears in the accounts, books and records of the Bank whether direct or indirect x x x x"

On 10 January 1997, in consideration of a loan of P5,000,000.00, HI-QUALITY executed a *Deed of Assignment* in favor of JADEBANK with the approval of CRBC where it assigned to JADEBANK "(a)ll monthly accomplishment billings, the sums of money, credit, or receivables assigned, be in the position (sic) of or due or to be due from China Road and Bridge Corporation, arising from the subcontract agreement in the construction of the EDSA/Shaw Blvd. Overpass Project x x x x"<sup>[1]</sup>

On 17 January 1997 JADEBANK released to HI-QUALITY P500,000.00 as part of the loan both parties earlier contracted. As security for the loan, HI-QUALITY executed Promissory Note No. JB BDO 15/97 promising to pay the loan on 3 April 1997. It also indorsed to JADEBANK Check No. 0000270127 issued by CRBC on 31 March 1997 covering the amount released, drawn on United Coconut Planters Bank (UCPB), Mandaluyong Branch.

On 7 April 1997 JADEBANK released P250,000.00 for which HI-QUALITY executed Promissory Note No. JB BDO 181/97 payable on 18 April 1997 and indorsed to JADEBANK Check No. 0000126132 issued by Helen Ambrosio on 18 April 1997 covering the amount released, drawn on Allied Banking Corporation, Shaw Boulevard Branch (ALLIEDBANK).

On 21 March 1997 JADEBANK released P250,000.00 for which HI-QUALITY executed Promissory Note No. JB BDO 150/97 payable on 5 May 1997 and indorsed to JADEBANK ALLIEDBANK Check No. 0000126131 issued by Ambrosio dated 30 April 1997 for the same amount.

On 25 March 1997 JADEBANK released P400,000.00 for which HI-QUALITY executed Promissory Note No. JB BDO 162/97 payable on 5 May 1997 and indorsed to JADEBANK Check No. 214179 issued by Ambrosio dated 30 April 1997 for the same amount, drawn on Security Bank Corporation, Pateros Branch (SECURITYBANK).

On 7 February 1997 JADEBANK released another P400,000.00 for which HI-QUALITY executed Promissory Note No. JB BDO 33/97 payable on 5 May 1997 and indorsed to JADEBANK UCPB Check No. 270144 issued by CRBC.

On 17 February 1997 JADEBANK released P350,000.00 for which HI-QUALITY executed Promissory Note No. JB BDO 45/97 payable on 5 May 1997 and indorsed to JADEBANK UCPB Check No. 270147 issued by CRBC.

Finally, on 21 February 1997 JADEBANK released P250,000.00 for which HI-QUALITY executed Promissory Note No. JB BDO 75/97 payable on 5 May 1997 and indorsed to JADEBANK UCPB Check No. 270551 issued by CRBC.

All the promissory notes executed by HI-QUALITY provided for twenty-five percent (25%) interest per annum and a five percent (5%) penalty per month in case of default. The amount of each check corresponded to the amount released to HI-QUALITY on the day the check was indorsed to JADEBANK.

When JADEBANK deposited the aforementioned checks for payment, they were returned unpaid. The checks drawn on UCPB were dishonored due to "Stop Payment" orders from the drawer. The ALLIEDBANK checks were dishonored because the account was closed on 19 February 1997. The SECURITYBANK check was dishonored because the account had been closed since the second quarter of 1996.

On 9 June 1997, after repeated demands for payment which were unheeded, JADEBANK filed a case for collection against HI-QUALITY, Helen Ambrosio and CRBC, with an application for a writ of attachment against their properties. The *Complaint* included as cause of action the first four (4) checks indorsed by HI-QUALITY to JADEBANK and alleging among others that the defendants conspired to commit fraudulent acts in order to induce JADEBANK to grant the loans to HI-QUALITY. Firstly, CRBC issued to HI-QUALITY the UCPB check for P500,000.00 dated 31 March 1997 without any intention of honoring the check. JADEBANK alleged that CRBC knew fully well that the check was to be used by HI-QUALITY as security for the loan from JADEBANK. However, in violation of the *Deed of Assignment*, CRBC gave to HI-QUALITY sums of money without notice to or the consent of JADEBANK, thereby releasing funds supposedly already assigned to JADEBANK for the payment

of HI-QUALITY's loans. Secondly, Helen Ambrosio, as President of HI-QUALITY, issued the checks drawn on SECURITYBANK and ALLIEDBANK after her accounts with these banks were closed, thus revealing a fraudulent intention not to honor her obligations even from their inception. She also executed the *Suretyship Agreement* in favor of JADEBANK without any intention of fulfilling her obligations.

On 17 June 1997 the trial court<sup>[2]</sup> issued a *Writ of Preliminary Attachment*. On the same day, a *Notice of Garnishment* was served on UCPB garnishing all the moneys of CRBC in the bank. On 23 June 1997 CRBC filed a *Motion for Discharge of Attachment*. On the same day a *Notice of Levy on Attachment* was also served on CRBC. On 27 June 1997 the preliminary attachment was discharged after CRBC posted a counter-bond in the amount of P1,962,458.00. On 30 June 1997 JADEBANK filed an *Amended Complaint* to include the loans contracted on 7, 17 and 21 February 1997 increasing the total amount collectible to P3,437,424.42.

On 28 July 1997 CRBC filed a *Motion to Dismiss* the 30 May 1997 *Complaint* on the ground of lack of cause of action. According to CRBC, the *Deed of Assignment* upon which JADEBANK based its cause of action against CRBC, was subject to the *Sub-Contracting Agreement* between CRBC and HI-QUALITY -

Under these circumstances, until such time as Hi-Quality is able to perform its obligations pursuant to the Sub-Contract Agreement thereby entitling it to payment for services rendered, China Road has no liability whatsoever in Hi-Quality's favor. Corollarily, until this happens, Hi-Quality has nothing to assign in favor of the plaintiff in the form of collectibles/receivables from China Road pursuant to the Deed of Assignment.<sup>[3]</sup>

CRBC also denied that the issuance of the checks to HI-QUALITY was for the purpose of facilitating the loans in favor of the latter, claiming that the checks were for the use of HI-QUALITY alone, and not for any other purpose. In support of this claim, CRBC asserted that "(n)owhere on the face of the said check does the name of the plaintiff appear. Neither is it accompanied by any document whatsoever specifically evincing that the same was intended for delivery to plaintiff." CRBC also denied that it had been releasing money to HI-QUALITY, claiming that the latter had failed to comply with its obligations to CRBC.

On 27 August 1997 the lower court granted the *Motion to Dismiss* the complaint with respect to CRBC. Its *Motion for Reconsideration* having been denied on 31 June 1997 JADEBANK appealed to the Court of Appeals under Rule 41 of the Rules of Court. On 12 August 1997 CRBC filed with the Court of Appeals a *Motion to Dismiss Appeal* asserting that "the determination of whether the ultimate facts in a *Complaint* state a cause of action against the defendant is a pure question of law and does not involve any question of fact."<sup>[4]</sup> According to CRBC, the proper mode of appeal was not by way of ordinary appeal under Rule 41 but rather by way of a petition for review on certiorari under Rule 45.

On 29 October 1998 the Court of Appeals (*Special Seventh Division*) issued the assailed *Resolution* denying CRBC's *Motion to Dismiss*, finding the appeal involved both questions of fact and of law. On 5 February 1999 the appellate court denied

reconsideration; hence, this petition.

The only issue that needs to be resolved is whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's *Motion to Dismiss*. In resolving the issue it is necessary to determine only if private respondent's appeal to the Court of Appeals involved purely questions of law, in which case the proper mode of appeal would be a petition for review on certiorari to the Supreme Court under Rule 45;<sup>[5]</sup> or questions of fact or mixed questions of fact and law, in which case the proper mode would be by ordinary appeal under Rule 41.

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts,<sup>[6]</sup> or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation.<sup>[7]</sup> Ordinarily, the determination of whether an appeal involves only questions of law or both questions of law and fact is best left to the appellate court,<sup>[8]</sup> and all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.<sup>[9]</sup> However, in the instant case, we find that there was grave abuse of discretion on the part of respondent Court of Appeals, hence, we grant the petition.

The ground for dismissal invoked by petitioner is that the complaint of JADEBANK before the trial court stated no cause of action, under Sec. 1, par. (g), Rule 16, the *1997 Revised Rules of Civil Procedure*. It is well settled that in a motion to dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations assuming them to be true.<sup>[10]</sup> The court does not inquire into the truth of the allegations and declare them to be false, otherwise it would be a procedural error and a denial of due process to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence.<sup>[11]</sup> To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint.<sup>[12]</sup>

In a motion to dismiss based on failure to state a cause of action, there cannot be any question of fact or "doubt or difference as to the truth or falsehood of facts," simply because there are no findings of fact in the first place. What the trial court merely does is to apply the law to the facts as alleged in the complaint, assuming such allegations to be true. It follows then that any appeal therefrom could only raise questions of law or "doubt or controversy as to what the law is on a certain state of facts." Therefore, a decision dismissing a complaint based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. One is the legal and logical opposite of the other.

In resolving the *Motion to Dismiss*, the lower court ruled -