

478 Phil. 260

SPECIAL FIRST DIVISION**[G.R. No. 111159, July 13, 2004]**

NORDIC ASIA LIMITED (NOW KNOWN AS DNC LIMITED) AND BANKERS TRUST COMPANY, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, NAM UNG MARINE CO., LTD., KIM JEONG SEONG, P. U. ULSTRUP, BAK JEONG RANG, SIN SUK NO, HWANG IN CHAN, O JEONG SUK, LEE MYUNG UNG, CHAE DOO EUP, SEOK HAEONG JO, KIM YONG JIN, KIM BU YUL, JEONG DONG SONG, LEE ON CHUN, GYEONG GI GIM, MUN KU HAN, SEUNG HO AN, BYANG YEOL YANG, SEOG MAN HAN, KIM JUNG GON, LEE DONG HWA, LEE MOON HYEONG, SEONG MUG JANG, HAN IL IM, SANG MYEONG GIM, WOO JEONG SUL, GIL HUN GIM, CHAE DONG CHONG, RESPONDENTS.

R E S O L U T I O N**AZCUNA, J.:**

This is to resolve petitioners' motion for reconsideration of the decision rendered by the Court on June 10, 2003.

As a brief background: On May 26, 1981, Sextant Maritime, S.A., (Sextant) borrowed US\$5,300,000 from petitioners Nordic Asia Limited and Bankers Trust Company. The loan amount was used by Sextant to purchase the vessel M/V "Fylyppa." As security for the loan, a First Preferred Mortgage over the vessel M/V "Fylyppa" was constituted in favor of petitioners. Sextant eventually defaulted on the loan, prompting petitioners to institute extrajudicial foreclosure proceedings under P.D. 1521.^[1]

By coincidence, the same day that extrajudicial proceedings were instituted, respondents Nam Ung Marine Co., Ltd., manning agent of the vessel, and twenty-seven (27) crew members filed a collection case before the Regional Trial Court of Manila (RTC). The object of the suit was to claim their preferred maritime liens under the Code of Commerce and P.D. 1521, consisting of unpaid wages, overtime pay, allowances and other benefits due to them for services rendered on board the vessel and for the manning and provisioning thereof. Impleaded defendants were M/V "Fylyppa" (the vessel), Maritime (the registered owner of the vessel), P.V. Christensen Lines (time-charterer of the vessel), Theil Bolvinkel Shipping, A.S. (ship manager) and Jibfair Shipping (the alleged local ship agent of the vessel). After filing the complaint, the manning agent and the crewmen were able to cause the arrest of the vessel.

Upon learning of the collection case, petitioners filed with the RTC a motion for leave to intervene in the collection case. Petitioners alleged that they hold a mortgage over the vessel and that their intervention is only for the purpose of opposing the crew

members' unfounded and grossly exaggerated claim. After the intervention was granted, petitioners were able to discharge the attachment over vessel by putting up a counterbond.

Jibfair Shipping filed a motion to dismiss, while all the other defendants failed to file responsive pleadings. As a result, the RTC declared all the defendants, except Jibfair Shipping, in default and directed respondents to present their evidence *ex-parte*.

Respondents presented their evidence in four separate hearings. Petitioners, who were admitted as intervenors, did not attend any of the four hearings. Later, petitioners took up the cudgels for the defaulting defendants by filing a motion to lift order of default and/or to expunge *ex-parte* evidence.

The RTC eventually rendered a decision, ordering the defendants to pay, among others, the wages of the crewmen and Nam Ung Marine Ltd.'s agency fees and other expenses incurred for manning the vessel during its last voyage. It further ordered the counterbond posted by petitioners to answer for all the awards.

Petitioners appealed the decision to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 21343 (the "Appeal Case"). Subsequently, upon motion by respondents, the RTC issued an order of execution pending appeal. In response, petitioners instituted another action with the Court of Appeals to question the execution pending appeal. This second case was docketed as CA-G.R. SP No. 13874 (the "Certiorari Case").

The *Certiorari* Case was first disposed of by the Court of Appeals. The order of execution pending appeal was affirmed in all respects, excluding the portion allowing the immediate execution on moral damages, attorney's fees, litigation expenses and interest, as they cannot be the subject of an execution pending appeal. This decision eventually became final and executory.

As for the Appeal Case, the Court of Appeals affirmed the decision of the RTC in all respects and dismissed the appeal. It is this decision that was elevated to the Court through a petition for review on *certiorari*.

The Court, in its June 10, 2003 decision, dismissed the petition based on two grounds: 1) Petitioners have no right to intervene because the complaint-in-intervention fails to state a cause of action and because the requisites for intervention are not present; and 2) Petitioners are guilty of forum shopping.

The Court ruled that the allegations contained in the complaint-in-intervention failed to state a cause of action. It is required of every complaint, including a complaint-in-intervention, to state the ultimate facts upon which a party relies for his cause of action.^[2] The Court found that petitioners' complaint-in-intervention failed to satisfy this requirement.

Petitioners, in their motion for reconsideration, insist that their cause of action springs from the bloated and exaggerated claims of respondents so that nothing will be left to

answer for their own claims. Thus, they should be allowed to intervene, even if it is only to oppose the claims of the manning agent and crewmen.

The Court finds no merit in this argument.

The requirements for intervention are: [a] legal interest in the matter in litigation; and [b] consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not.^[3] Petitioners failed to meet both requirements.

Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment.^[4] Petitioners, being co-creditors, are not the parties liable for the claims of the manning agent and crewmen. Also, petitioners' remedies as unpaid mortgagees remain preserved as the collection case will not preclude the foreclosure of the vessel. Lastly, that petitioners would be adversely affected by the disposition of the property is contingent upon two eventualities: 1) the successful foreclosure on the vessel; and 2) the proceeds of the sale being insufficient to cover the loan amount. Clearly, the outcome of the collection case has no "direct" effect on petitioners.

As for the second requisite for intervention, petitioners' rights were already protected through their extrajudicial foreclosure proceeding, while on the other hand, the rights of the manning agent and crewmen, who are the original plaintiffs, have been unduly delayed or prejudiced. The decision of the RTC, rendered in October 30, 1987, has not attained finality, even though the actual judgment obligors did not appeal. The only parties prolonging the case are the intervenors, in the persons of petitioners.

Petitioners claim to possess legal interest by citing the case of *International Banking Corp. v. Pilar Corrales, et al.*,^[5] which stated that a lien or statutory right of preference clothed the intervenor with an interest in the subject-matter in litigation. Petitioners also claim that their intervention was in the nature of an intervention *pro interesse suo*. Citing *Joaquin v. Herrera*,^[6] they argue that intervention *pro interesse suo* is a mode of intervention wherein a stranger desires to intervene for the purpose of asserting a property right which is the subject matter of litigation without becoming a formal plaintiff or defendant.

The Court finds the two aforecited cases not applicable to the present case.

In the *International Banking Corp.* case, intervention was allowed because the intervenor had a **superior right** of preference over the subject property and he had sought **to enforce his own claims against the defendant and to foreclose on the said subject property**. Petitioners herein prayed that they be allowed to intervene, on the basis of their **secondary right** as unpaid mortgagees, **merely to oppose the claims** of respondents and not for the purpose of enforcing their own claims.

In the *Joaquin* case, the plaintiff sought to compel the local officials of Caloocan to

issue a cockpit license to him. A third party intervened **to oppose the plaintiff's application and to assert his own right** by asking that the cockpit license be issued to him instead. In this case, petitioners wanted only to oppose the claims of respondents **without asserting** their unpaid mortgage.

On the issue of forum-shopping, the Court found that although the *Certiorari* Case was supposed to be strictly limited to questioning the order of execution pending appeal, petitioners also sought to reverse the main decision by asking the Court of Appeals to declare it null and void and to set aside the evidence received *ex-parte*.^[7]

On the other hand, in the Appeal Case, petitioners filed their appellants' brief and included a prayer for setting aside the execution pending appeal of said decision.^[8] In addition, petitioners repeated issues in the Appeal Case, that were already raised and decided with finality in the *Certiorari* Case, regarding: 1) declaring defendants in default; and 2) receiving the evidence *ex-parte*.

In other words, petitioners assailed the main decision in the *Certiorari* Case and the order of execution pending appeal in the Appeal Case.

Petitioners, however, claim that when they filed the second case before the Court of Appeals, they divulged the other case earlier filed. Thus, by their disclosure, they should not be considered to have committed forum shopping.

Ordinarily, as held by the Court, even if a party admits in the certification of non-forum shopping the existence of other related cases pending before another body, this fact alone does not exculpate such party who is obviously and deliberately seeking a more friendly forum for his case.^[9]

In this case, however, after hearing the parties in oral argument and after careful study of their memoranda submitted thereafter, the Court is of the view that petitioners' acts in this case fall short of forum shopping. Considering that petitioners did inform the Court of Appeals when it filed the *Certiorari* Case of the fact of the earlier filing of the Appeal Case, and considering, further, the absence of bad faith on petitioners' part or any deliberate intention to mislead the courts, the finding that petitioners engaged in forum shopping should be reconsidered.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is PARTIALLY GRANTED. The finding that petitioners were guilty of forum shopping is reconsidered and removed. The decision is AFFIRMED in all other respects.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Carpio, JJ., concur.

- [1] Ship Mortgage Decree of 1978.
- [2] Republic v. De los Angeles, 41 SCRA 422 (1971).
- [3] Magsaysay-Labrador v. Court of Appeals, 180 SCRA 266 (1989).
- [4] *Ibid*; underscoring supplied.
- [5] 10 Phil 435 (1908).
- [6] 37 Phil. 705 (1918).
- [7] CA Decision, *Rollo*, p. 58.
- [8] CA *Rollo*, Appellee's brief, p. 64.
- [9] United Special Watchman Agency v. Court of Appeals, G.R. No. 152476, July 8, 2003, citing *Request for Consolidation of Civil Case No. 1169, RTC Br. 45, San Jose, Occidental Mindoro with Civil Case No. 3640, RTC Br. 49, Cabanatuan City*.



Source: Supreme Court E-Library
This page was dynamically generated
by the E-Library Content Management System (E-LibCMS)