

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**LA NAVAL DRUG CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 103200
August 31, 1994**

**THE HONORABLE COURT OF
APPEALS and WILSON C. YAO,
*Respondents.***

X-----X

DECISION

VITUG, J.:

In an effort to declog the courts of an increasing volume of work load and, most importantly, in order to accord contending parties with expeditious alternatives for settling disputes, the law authorizes, indeed discourages, out of court settlements or adjudications. Compromises and arbitration are widely known and used as such acceptable methods of resolving adversarial claims.

Arbitrations, in particular, is governed by a special law, Republic Act 876, suppletory to which are laws and rules of general application. This case before us concerns the jurisdiction of courts, in relation to the provisions of Section 6 of Republic Act No. 876, and, in that

respect, the applicability of the doctrine of estoppel. The law (R.A. 876), specifically Section 6 thereof, provides:

“Sec. 6. Hearing by court. — A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

“The court shall decide all motions, petitions or application filed under the provisions of this Act, within ten days after such motions, petitions, or applications have been heard by it.”

In chronology, the events that have led to the case at bench are detailed in the appealed decision of respondent appellate court, which we here reproduce in toto.

“Original action for Certiorari and Prohibition for Annulment of the Orders, dated April 26, 1990 and June 22, 1990, respectively, of Branch LXI, Regional Trial Court, Angeles City, in Special Case No. 6024 for Enforcement of ARBITRATION Agreement with Damages. Petitioner assails that portion of subject Order of April 26, 1990, stating as follows:

“(1) Petitioner’s claim for damages predicated on alleged tortuous acts of respondents La Naval Drug corporation such as their alleged interference and dilatory tactics, etc. in the implementation of the Arbitration Agreement in the Contract of Lease, thereby compelling among others the petitioner to go to Court for redress; and respondent La Naval Drug Corporation’s counterclaim for damages may be entertained by this Court in a hearing - not summary - for the purpose, under the Rules of Court.

‘(2) A preliminary hearing of the special and affirmative defense to show that Petitioner has no cause of action against respondent’s claim for damages is denied; a resolution on this issue deferred after the trial of the case on the merits.’

And challenges the Order of June 22, 1990 denying its motion for reconsideration of the said earlier Order.

“From the petition below of respondent Yao, it appears that he is the present owner of a commercial building a portion of which is leased to petitioner under a contract of lease executed on December 23, 1983 with the former owner thereof, La Proveedora, Inc., which contract expired on April 30, 1989. However, petitioner exercised its option to lease the same building for another five years. But petitioner and respondent Yao disagreed on the rental rate, and to resolve the controversy, the latter, thru written notices to the former, expressed his intention to submit their disagreement to arbitration, in accordance with Republic Act 876, otherwise known as the Arbitration Law, and paragraph 7 of their lease contract, providing that:

“7. Should the parties fail to agree on the rate of rentals, the same shall be submitted to a group of Arbitrators composed of three (3) members, one to be appointed by LESSOR, another by LESSEE and the third one to be agreed upon by the two arbitrators previously chosen and the parties hereto shall submit to the decision of the arbitrators.’

“Thus, on May 6, 1989, respondent Yao appointed Domingo Alamarez, Jr. as his arbitrator, while on June 5, 1989, petitioner chose Atty. Casiano Sabile as its arbitrator. The confirmation of the appointment of Aurelio Tupang, as third arbitrator, was held in abeyance because petitioner instructed Atty. Sabile to defer the same until its Board of Directors could convene and approve Tupang’s appointment. Respondent Yao theorizes that this was petitioner’s design to delay the arbitration proceedings, in violation of the Arbitration Law, and the governing stipulations of their contract of lease.

“On the basis of the aforesaid allegations, respondent Yao prayed that after summary hearing pursuant to Section 6 of the Arbitration Law, Atty. Casiano Sabile and Domingo Alamarez be directed to proceed with the arbitration in accordance with Section 7 of subject Contract of Lease and the applicable provisions of the Arbitration Law, by appointing and confirming the appointment of the Third Arbitrator; and that the Board of Three Arbitrators be ordered to immediately convene and resolve the controversy before it, pursuant to Section 12 and the succeeding sections of the Arbitration Law. (Annex ‘A,’ Petition.).

“In its Answer with Counterclaim (Annex ‘C,’ Petition), petitioner here specifically denied the averments of the petition below; theorizing that such petition is premature since respondent Yao has not yet formally required arbitrators Alamarez and Sabile to agree on the third arbitrator, within ten (10) days from notice, and that the delay in the arbitration was due to respondent Yao’s failure to perform what is incumbent upon him, of notifying and thereafter, requiring both arbitrators to appoint the third member of the Board of Arbitrators. According to petitioner, it actually gave arbitrators Sabile and Alamarez a free hand in choosing the third arbitrator; and, therefore, respondent Yao has no cause of action

against it (petitioner). By way of Counterclaim, petitioner alleged that it suffered actual damages of P100,000.00; and incurred attorney's fees of P50,000.00, plus P500.00 for every court appearance of its counsel.

“On October 20, 1989, respondent Yao filed an amended petition for ‘Enforcement of Arbitration Agreement with Damages;’ praying that petitioner be ordered to pay interest on the unpaid rents, at the prevailing rate of interest in commercial banks, and exemplary damages of at least P250,000.00.

“On October 24, 1989, despite petitioner's opposition to the motion to admit the amended petition, the respondent court admitted the same.

“On October 31, 1989, petitioner answered the amended petition; contending, among others, that the amended petition should be dismissed on the ground of non-payment of the requisite filing fees therefor; and it being in the nature of an ordinary civil action, a full blown and regular trial is necessary; so that respondent Yao's proposition for a summary hearing of the arbitration issue and separate trial for his claim for damages is procedurally untenable and implausible.

“Invoking Section 5, Rule 16 of the Rules of Court, petitioner presented a ‘Motion to Set Case for Preliminary Hearing’ of its special and affirmative defenses, which are grounds for a motion to dismiss.

“In its Order of November 14, 1989, the respondent court announced that the two arbitrators chose Mrs. Eloisa R. Narciso as the third arbitrator. And on November 21, 1989, it ordered the parties to submit their position papers on the issue as to whether or not respondent Yao's claim for damages may be litigated upon in the summary proceeding for enforcement of arbitration agreement. It likewise informed the parties that petitioner's ‘Motion to Set Case for Preliminary Hearing’ of Special and

Affirmative Defenses would be resolved together with the question of damages.

“On April 26, 1990, the aforequoted assailed Order issued. In moving for reconsideration of the said Order, petitioner argued that in Special Case No. 6024, the respondent court sits as a special court exercising limited jurisdiction and is not competent to act on respondent Yao’s claim for damages, which poses an issue litigable in an ordinary civil action. But the respondent court was not persuaded by petitioner’s submission. On June 22, 1990, it denied the motion for reconsideration.” (Rollo, pp. 89-93).

While the appellate court has agreed with petitioner that, under Section 6 of Republic Act No. 876, a court, acting within the limits of its special jurisdiction, may in this case solely determine the issue of whether the litigants should proceed or not to arbitration, it, however, considered petitioner in estoppel from questioning the competence of the court to additionally hear and decide in the summary proceedings private respondent’s claim for damages, it (petitioner) having itself filed similarly its own counterclaim with the court a quo.

It is hardly disputable that when a court is called upon to exercise limited and special jurisdiction, that court cannot stray to matters outside the area of its declared authority or beyond what has been expressly invested by law (*Elumbaring vs. Elumbaring*, 12 Phil. 384, 387), particularly, such as in this instance, where the proceedings are summary in nature.

Prefatorily, recalling the distinctions, pertinent to the case, between the court’s lack of jurisdiction over the person of the defendant, on the one hand, and its lack of jurisdiction over the subject matter or the nature of the action, upon the other hand, should be useful.

The lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction

of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction. The decisions promulgated heretofore by this Court would likewise seemingly apply estoppel to bar the defendant from pursuing that defense by alleging in his answer any other issue for dismissing the action.

A citation of a few of our decisions might be apropos.

In *Wang Laboratories, Inc., vs. Mendoza* (156 SCRA 44), this Court has ruled that if the defendant, besides setting up in a motion to dismiss his objection to the jurisdiction of the court, alleges at the same time any other ground for dismissing the action, he is deemed to have submitted himself to the jurisdiction of the court. In the process, it has equated the matter to a situation where, such as in *Immaculata vs. Judge Navarro, et al.* (146 SCRA 5), the defendant invokes an affirmative relief against his opponent.

In *De Midgely vs. Judge Ferandos* (64 SCRA 23, 31), the Court elaborated thusly:

“We are of the opinion that the lower court has acquired jurisdiction over the person of Mrs. Midgely by reason of her voluntary appearance. The reservation in her motion to dismiss that she was making a special appearance to contest the court’s jurisdiction over her person may be disregarded.

“It may be disregarded because it was nullified by the fact that in her motion to dismiss she relied not only on the ground of lack of jurisdiction over her person but also on the ground that there was no showing that earnest efforts were exerted to compromise the case and because she prayed ‘for such other relief as’ may be deemed ‘appropriate and proper.’

“ x x x

“When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby

submits himself to the jurisdiction of the court. A special appearance by motion made for the purpose of objecting to the jurisdiction of the court over the person will be held to be a general appearance, if the party in said motion should, for example, ask for a dismissal of the action upon the further ground that the court had no jurisdiction over the subject matter. (Syllabus, Flores vs. Zurbito, supra, at page 751. That rule was followed in Ocampo vs. Mina and Arejola, 41 Phil. 308).”

The justification for the rule was expressed in Republic vs. Ker and Company, Ltd. (18 SCRA 207, 213-214), in this wise:

“We observe that the motion to dismiss filed on April 14, 1962, aside from disputing the lower court’s jurisdiction over defendant’s person, prayed for dismissal of the complaint on the ground that plaintiff’s cause of action has prescribed. By interposing such second ground in its motion to dismiss, Ker & Co., Ltd. availed of an affirmative defense on the basis of which it prayed the court to resolve controversy in its favor. For the court to validly decide the said plea of defendant Ker & Co., Ltd., it necessarily had to acquire jurisdiction upon the latter’s person, who, being the proponent of the affirmative defense, should be deemed to have abandoned its special appearance and voluntarily submitted itself to the jurisdiction of the court.

“Voluntary appearance cures defects of summons, if any. Such defect, if any, was further cured when defendant filed its answer to the complaint. A defendant can not be permitted to speculate upon the judgment of the court by objecting to the court’s jurisdiction over its person if the judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defenses.”

The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. It is a principle intended to avoid a clear case of injustice. The term is hardly distinguishable from a waiver of right. Estoppel, like its said counterpart, must be unequivocal and intentional for, when misapplied, it can easily become a most convenient and effective

means of injustice. Estoppel is not understood to be a principle that, as a rule, should prevalently apply but, such as it concededly is, as a mere exception from the standard legal norms of general application that can be invoked only in highly exceptional and justifiable cases.

Tested by the above criteria, the Court sees it propitious to re-examine specifically the question of whether or not the submission of other issues in a motion to dismiss, or of an affirmative defense (as distinguished from an affirmative relief) in an answer, would necessarily foreclose, and have the effect of a waiver of, the right of a defendant to set up the court's lack of jurisdiction over the person of the defendant.

Not inevitably.

Section 1, Rule 16, of the Rules of Court, provides that a motion to dismiss may be made on the following grounds:

- “(a) That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;
- “(b) That the court has no jurisdiction over the nature of the action or suit;
- “(c) The venue is improperly laid;
- “(d) That the plaintiff has no legal capacity to sue;
- “(e) That there is another action pending between the same parties for the same cause;
- “(f) That the cause of action is barred by a prior judgment or by statute of limitations;
- “(g) That the complaint states no cause of action;
- “(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

“(i) That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds;

“(j) That the suit is between members of the same family and no earnest efforts towards a compromise have been made.”

Any ground for dismissal in a motion to dismiss, except improper venue, may, as further set forth in Section 5 of the same rule, be pleaded as an affirmative defense and a preliminary hearing may be had thereon as if a motion to dismiss had been filed. An answer itself contains the negative, as well as affirmative, defenses upon which the defendant may rely (Section 4, Rule 6, Rules of Court). A negative defense denies the material facts averred in the complaint essential to establish the plaintiff's cause of action, while an affirmative defense is an allegation of a new matter which, while admitting the material allegations of the complaint, would, nevertheless, prevent or bar recovery by the plaintiff. Inclusive of these defenses are those mentioned in Rule 16 of the Rules of Court which would permit the filing of a motion to dismiss.

In the same manner that a plaintiff may assert two or more causes of action in a court suit, a defendant is likewise expressly allowed, under Section 2, Rule 8, of the Rules of Court, to put up his own defenses alternatively or even hypothetically. Indeed, under Section 2, Rule 9, of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in an answer, except for the failure to state a cause of action, are deemed waived. We take this to mean that a defendant may, in fact, feel enjoined to set up, along with his objection to the court's jurisdiction over his person, all other possible defenses. It thus appears that it is not the invocation of any of such defenses, but the failure to so raise them, that can result in waiver or estoppel. By defenses, of course, we refer to the grounds provided for in Rule 16 of the Rules of Court that must be asserted in a motion to dismiss or by way of affirmative defenses in an answer.

Mindful of the foregoing, in *Signetics Corporation vs. Court of Appeals and Freuhauf Electronics Phil., Inc.* (225 SCRA 737, 738), we lately ruled:

“This is not to say, however, that the petitioner’s right to question the jurisdiction of the court over its person is now to be deemed a foreclosed matter. If it is true, as Signetics claims, that its only involvement in the Philippines was through a passive investment in Sigfil, which it even later disposed of, and that TEAM Pacific is not its agent, then it cannot really be said to be doing business in the Philippines. It is a defense, however, that requires the contravention of the allegations of the complaint, as well as a full ventilation, in effect, of the main merits of the case, which should not thus be within the province of a mere motion to dismiss. So, also, the issue posed by the petitioner as to whether a foreign corporation which has done business in the country, but which has ceased to do business at the time of the filing of a complaint, can still be made to answer for a cause of action which accrued while it was doing business, is another matter that would yet have to await the reception and admission of evidence. Since these points have seasonably been raised by the petitioner, there should be no real cause for what may understandably be its apprehension, i.e., that by its participation during the trial on the merits, it may, absent an invocation of separate or independent reliefs of its own, be considered to have voluntarily submitted itself to the court’s jurisdiction.”

Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal (Roxas vs. Rafferty, 37 Phil. 957) or even after final judgment (Cruzcosa vs. Judge Concepcion, et al., 101 Phil. 146). Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In *People vs. Casiano* (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:

“The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from

assailing such jurisdiction, for the same ‘must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel’ (5 C.J.S., 861-863).

However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon.”

The rule was reiterated in *Calimlim vs. Ramirez* (118 SCRA 399, 406), and quite recently, in *Southeast Asian Fisheries Development Center-Aquaculture Department vs. National Labor Relations Commission* (206 SCRA 283).

Jurisdiction over the nature of the action, in concept, differs from jurisdiction over the subject matter. Illustrated, lack of jurisdiction over the nature of the action is the situation that arises when a court, which ordinarily would have the authority and competence to take a case, is rendered without it either because a special law has limited the exercise of its normal jurisdiction on a particular matter or because the type of action has been reposed by law in certain other courts or quasi-judicial agencies for determination. Nevertheless, it can hardly be questioned that the rules relating to the effects of want of jurisdiction over the subject matter should apply with equal vigor to cases where the court is similarly bereft of jurisdiction over the nature of the action.

In summary, it is our considered view, as we now so hereby express, that —

- (1) Jurisdiction over the person must be seasonably raised, i.e., that it is pleaded in a motion to dismiss or by way of an affirmative defense in an answer. Voluntary appearance shall be deemed a waiver of this defense. The assertion, however, of affirmative defenses shall not be construed as an estoppel or as a waiver of such defense.

(2) Where the court itself clearly has no jurisdiction over the subject matter or the nature of the action, the invocation of this defense may be done at any time. It is neither for the courts nor the parties to violate or disregard that rule, let alone to confer that jurisdiction, this matter being legislative in character. Barring highly meritorious and exceptional circumstances, such as hereinbefore exemplified, neither estoppel nor waiver shall apply.

In the case at bench, the want of jurisdiction by the court is indisputable, given the nature of the controversy. The arbitration law explicitly confines the court's authority only to pass upon the issue of whether there is or there is no agreement in writing providing for arbitration. In the affirmative, the statute ordains that the court shall issue an order "summarily directing the parties to proceed with the arbitration in accordance with the terms thereof." If the court, upon the other hand, finds that no such agreement exists, "the proceeding shall be dismissed." The proceedings are summary in nature.

All considered, the court a quo must then refrain from taking up the claims of the contending parties for damages, which, upon the other hand, may be ventilated in separate regular proceedings at an opportune time and venue. The circumstances obtaining in this case are far, we hold, from justifying the application of estoppel against either party.

WHEREFORE, the decision of the Court of Appeals and the orders of the trial court in question are **SET ASIDE**. The court a quo, in the instant proceedings, is ordered to **DESIST** from further hearing private respondent's claim, as well as petitioner's counterclaim, for damages. No costs.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan and Mendoza, JJ., concur.

SEPARATE OPINIONS

FELICIANO, J.:

I concur except that in respect of penultimate paragraph in p. 17, I reserve my vote as to compulsory counterclaims for damages.

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com