Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EAST WEST BANKING CORPORATION,
Petitioner,

versus

IAN Y. CRUZ, PAUL ANDREW CHUA HUA, FRANCISCO T. CRUZ, and ALVIN Y. CRUZ,
Respondents.

G.R. No. 221641

Present:

LEONEN, *J.*,
Chairperson,
HERNANDO,
INTING,
ROSARIO,* and
LOPEZ, J. Y., *JJ.*

Promulgated:

July 12, 2021

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the April 24, 2015[2] and December 10, 2015[3] Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 102020, which affirmed the November 25, 2013 Order[4] of the Regional Trial Court (RTC), Branch 139 of Makati in Civil Case No. 12-526 dismissing the Complaint for Sum of Money with Application for Issuance of a Writ of Preliminary Attachment filed by the petitioner.

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* Designated as additional Member per Special Order No. 2833 dated June 29, 2021.

1 *Rollo*, pp. 15-41.

2 Id. at 44-50; penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Francisco P. Acosta and Ramon A. Cruz.

3 Id. at 52-58; penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Francisco P. Acosta and Ramon A. Cruz.

4 Id. at 119-123; penned by Presiding Judge Benjamin T. Pozon.

The Antecedents:

On June 11, 2012, petitioner East West Banking Corporation (petitioner/Bank) filed a Complaint[5] before the RTC for Sum of Money with Application for Issuance of a Writ of Preliminary Attachment against respondents Ian Y. Cruz (Ian) and Paul Andrew Chua Hua (Paul), seeking to recover the total amount of ₱16,054,541.66. In the same Complaint, the Bank impleaded herein respondents Francisco T. Cruz (Francisco), Ian's father, and Alvin Y. Cruz (Alvin), Ian's brother, as unwilling co-plaintiffs. Apparently, Ian, Francisco, and Alvin maintained separate accounts at the Bank's Davao-Lanang Branch. Paul, as the Bank's Sales Officer, handled their deposit accounts.[6]

The Bank alleged that Paul debited ₱16,054,541.66 from the accounts of Francisco and Alvin and then credited the same amount to Ian's account by representing that Francisco and Alvin undertook to "regularize" the transactions later on.[7] Using the debited amounts, Ian successfully obtained a "back-to-back" loan from the Bank. Ian then purportedly used the same amount to pay for the said loan. However, instead of "regularizing" the transactions, Francisco and Alvin demanded the payment of ₱16,054,541.66 from the Bank as evidenced by Foreign Exchange Forward Contracts (FEFCs).[8]

The Bank, however, rejected Francisco and Alvin's demand stating that the FEFCs are spurious. The incident prompted the Bank to conduct an audit of all the transactions of the respondents. The Bank asserted that the issuance of spurious FEFCs was part of the scheme of Ian and Paul to defraud Francisco, Alvin, and the Bank.[9]

A hearing on the prayer for the issuance of a writ of preliminary attachment was conducted by the trial court. The Bank presented Mr. Renato Sampang (Renato) who detailed the transactions involving the accounts of Francisco, Alvin and Ian which were orchestrated by Paul, and discussed the purported spurious FEFCs. However, Renato affirmed that Ian paid the loans.[10] Furthermore, he confirmed that the Bank did not pay Francisco and Alvin after they demanded payment upon presentation of the FEFCs, which was supposedly a legitimate transaction since they even brought the issue to the Bangko Sentral ng Pilipinas.[11]

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5 *Records*, pp. 1-18.

6 *Rollo*, p. 45.

7 TSN, July 17, 2012, pp. 48, 89; The amounts were ₱2M, ₱10M, and another ₱10M (which was used as collateral for Ian's back-to-back loan), all debited from Alvin's account, and then ₱2,015,000.00 (with ₱2M representing the principal and ₱15,000 representing the interest for which the account of the previous ₱2M loan was made) which was debited from Francisco's account.

8 *Rollo*, p. 45; *records*, pp. 19-20.

9 *Records*, p. 145.

10 TSN, July 17, 2012, p. 98.

11 Id. at 109.

In an Order[12] dated May 21, 2013, the RTC granted the Bank's application for the issuance of a writ of preliminary attachment against Paul and Ian. In said Order, the trial court declared that the Bank had "a sufficient cause of action against the defendants [Ian and Paul.]"[13]

On August 12, 2013, Ian filed a Motion to Dismiss[14] on the ground that the Complaint failed to state a cause of action. He explained that the Bank did not allege any right which belonged to it, given that it rejected Alvin and Francisco's demand, thereby causing no damage on its part. He asserted that since the deposit accounts belonged to Alvin and Francisco, the right to these deposits belonged to them and not the Bank.

Additionally, the latter failed to allege that Ian had an obligation not to violate the Bank's right, assuming that it even had one. Likewise, the Bank failed to allege that Ian committed an act or omission which violated its right or which constituted as a breach of Ian's supposed obligation to the Bank.[15]

Moreover, Ian posited that the Bank had no legal personality to institute the case since Francisco and Alvin, as owners of the debited accounts, were the real parties-in-interest.[16] The Bank even benefitted because it received interest payments on the back-to-back loans. As such, impleading Alvin and Francisco as unwilling co-plaintiffs (when they should have been impleaded as defendants since their consent to file the case was not obtained) did not cure the Complaint's inherent fatal defect.[17]

In its Comment/Opposition[18] to the Motion to Dismiss, the Bank asserted that it was the legal owner of the money which was maintained in the deposit accounts of Alvin and Francisco. Thus, it had the legal right to institute said action. It added that Alvin and Francisco already demanded the payment of their deposits, albeit the same being wrongly premised on a spurious transaction. The Bank averred that its liability to Alvin and Francisco would be paid or reduced, depending on the amount that may be recovered, and assuming that the trial court would rule that the transfers of funds were illegal.

In addressing its failure to secure the consent of Alvin and Francisco to file the Complaint, the Bank argued that the said individuals already demanded payment which should qualify as a statement as to why their consent was not obtained. It opined that even if their consent were not obtained, the Complaint should not be dismissed because such defect was not considered as a ground for the dismissal of the suit.

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12 *Records*, pp. 145-148.
13 Id. at 148.
14 *Rollo*, pp. 104-118.
15 Id. at 104-110.
16 Id. at 45.
17 Id. at 115-116.
18 *Records*, pp. 230-237.

Ruling of the Regional Trial Court:

In an Order[19] dated November 25, 2013, the RTC dismissed the Complaint for failure to state a cause of action as the Bank did not sufficiently allege its right. Likewise, it failed to allege that Ian violated the Bank's supposed right, which would have constituted as a breach of his obligation, if any, to the Bank. Also, the latter did not specify Ian's actual participation in the allegedly unauthorized withdrawals.

Moreover, the trial court ruled that Francisco and Alvin were the real parties-in-interest, not the Bank, who would stand to be benefitted or injured by the judgment in the suit. It explained that the inclusion of Francisco and Alvin as unwilling co-plaintiffs did not cure the inherent defect of the Complaint, and that instead, they should have been impleaded as unwilling defendants in accordance with Section 10, Rule 3 of the Rules of Court. The dispositive portion of the RTC's Decision reads:

> WHEREFORE, premises considered, the instant ***Motion to Dismiss*** filed by defendant Ian Y. Cruz is hereby **GRANTED**.
>
> The instant Complaint is hereby **DISMISSED** on grounds of plaintiff's failure to state a cause of action and plaintiff's lack of legal personality to institute the case, it not being the real party in interest in this case.
>
> Furnish copies of this Order to the parties and their respective counsels.
>
> SO ORDERED.[20]

Aggrieved, the Bank elevated[21] the case to the CA by filing a Notice of Appeal under Rule 41 of the Rules of Court.

Ian, Francisco and Alvin filed a Motion to Dismiss[22] before the CA, contending that since only pure questions of law were involved, the Bank availed of the wrong remedy when it appealed the RTC's November 25, 2013 Order under Rule 41 when it should have filed a Petition for Review on *Certiorari* under Rule 45 before the Supreme Court.

Ruling of the Court of Appeals:

The CA, in its assailed April 24, 2015 Resolution,[23] granted the Motion to Dismiss.[24] It found that the issues of whether or not a complaint states a cause of action and whether or not a litigant is a real party-in-interest are

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19 *Rollo*, pp. 119-123.
20 Id. at 123.
21 CA *rollo*, pp. 13-14, 16.
22 *Rollo*, pp. 124-151.
23 Id. at 44-50
24 Id. at 49.

questions of law, as these do not involve an evaluation of facts.[25] It held that the RTC's November 25, 2013 Order which dismissed the Complaint on the grounds of failure to state a cause of action and lack of legal personality involved pure questions of law. Hence, the Bank should have filed a petition for review on *certiorari* to the Supreme Court under Rule 45 and not an appeal under Rule 41.[26]

The appellate court clarified that an appeal under Rule 41 addresses questions of fact or mixed questions of fact and law while a petition under Rule 45 refers only to questions of law.[27] Finally, it held that an appeal is a mere statutory privilege and may be exercised only in accordance with law, particularly the Rules of Court. Thus, for being the wrong mode of review, the CA dismissed the Bank's appeal.[28]

The Bank asked for a reconsideration[29] which the CA denied in a Resolution[30] dated December 10, 2015. The appellate court reiterated that the Bank raised pure questions of law as these did not involve the truth or falsehood of facts but only posed controversies on what the law is on a certain set of facts.[31] Moreover, it rules that under Section 2, Rule 51 of the Rules of Court, it had no jurisdiction over an appeal under Rule 41 if the said appeal only raised questions of law.[32]

The CA noted the Bank's insistence that the questions raised were not purely those of law since the RTC, in its May 21, 2013 Order, held that the Bank had a cause of action. The Bank also posited that factual issues already raised and tried in the process of securing the said Order (for preliminary attachment) amended the Complaint. The CA, however, declared that the Order granting the Bank's application for a writ of preliminary attachment was interlocutory which could not attain finality or immutability. Hence, the RTC's November 25, 2013 Order dismissing the Complaint was not precluded or barred by the previous findings in the May 21, 2013 Order.[33]

The appellate court emphasized that the Bank's appeal questioned the RTC's dismissal based on its failure to state a cause of action, its lack of legal personality to sue, and its failure to allege why it was a real party-in-interest. These involved pure questions of law. Furthermore, it found that the Bank overestimated the value of the RTC's factual determination in the May 21, 2013 Order, *i.e.*, the credibility of Renato and the documents submitted to support the Bank's application for a writ of preliminary attachment. While these may have been questions of fact in the Bank's application for the

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25 Id. at 48.
26 Id.
27 Id. at 47.
28 Id. at 49.
29 CA *rollo*, pp. 156-159.
30 *Rollo*, pp. 52-58
31 Id. at 54.
32 Id. at 55-56.
33 Id. at 56.

preliminary attachment, these matters would not aid the Bank in the appellate level since these factual findings did not change the nature of the questions it raised on appeal before the CA, which are purely questions of law.[34]

In addition, the CA stated that the filing of a Motion to Dismiss based on a failure to state a cause of action already hypothetically admits the allegations in the Bank's Complaint. Thus, any alleged advantage drawn from the RTC's findings is merely imaginary, and dissipates easily when the court considers that the allegations are assumed to be true anyway. Withal, there is no need to examine the facts as pleaded by the Bank.[35] Even with the Bank's argument that the Complaint has been remedied under Section 5, Rule 10[36] of the Rules of Court, the CA held that the said provision only invokes a determination of how a procedural rule applies to the facts before it, which again, is a question of law outside of its jurisdiction.[37]

Undeterred, the Bank filed the instant Petition for Review on *Certiorari*[38] before the Court raising this sole issue:

> THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN DISMISSING PETITIONER'S APPEAL FOR BEING THE WRONG MODE TO ASSAIL THE TRIAL COURT'S ORDER."[39]

Issue:

Thus, the main issue is whether or not the Bank availed of the correct remedy in assailing the RTC's November 25, 2013 Order of dismissal of its Complaint.

Our Ruling

The petition is unmeritorious.

Petitioner Bank avers that the RTC's assailed November 25, 2013 Order of dismissal contains factual findings and issues that are proper for

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34 Id.

35 Id. at 57.

36 RULES OF COURT, Rule 10, § 5.

> **Section 5**. *Amendment to conform to or authorize presentation of evidence.* – When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

37 *Rollo*, p. 57.

38 Id. at 15-41.

39 Id. at 30.

adjudication before the CA.[40] It contends that the matter of ownership of the accounts where the unauthorized withdrawals were made is a question of fact.[41] Likewise, it asserts that whether or not it will suffer damage is a question of fact which will require the introduction of evidence.[42] Petitioner adds that the fact that it only prayed for the payment to Alvin and Francisco and not to itself is inconsequential since it also asked for the cost of suit and other equitable remedies, as well as attorney's fees.[43] It alleges that the RTC made a factual finding contrary to the recitals in the Complaint when it found that the Bank failed to allege Ian's participation in the use of spurious FEFCs and the unauthorized withdrawals.[44]

Apart from this, the Bank maintains that the RTC declared that it had a sufficient cause of action when it granted the prayer for a writ of preliminary attachment in the May 21, 2013 Order. The RTC allowed the Bank to present its evidence while the respondents failed to present proof to support their opposition to the writ, even while they filed their comments to the Bank's formal offer of exhibits.[45]

Hence, petitioner insists that the respondents are precluded from claiming that the factual findings during the hearing on the issuance of the writ of preliminary attachment should not be considered in determining the sufficiency of the Bank's cause of action.[46] Thus, it asks the Court to correct the errors committed by the RTC and CA and for the remand of the case for further proceedings.[47]

On the other hand, Francisco, Alvin, and Ian maintain that the Bank failed to state a cause of action because it did not allege any right which belonged to it. Instead, the Complaint stemmed from the demand made by Francisco and Alvin to the Bank to pay in view of the FEFCs.[48] Respondents add that the petitioner did not show that Ian had violated the Bank's right, assuming that it even had a right, as it did not allege the circumstances constituting fraud and merely determined that Ian employed fraud, a mere conclusion of law.[49] Additionally, the Complaint did not allege that Paul acted in conspiracy with Ian, so there was no act or omission which was supposedly violative of the Bank's right or which constituted as a breach of obligation.[50]

They assert that the Bank is not a real party-in-interest since it seeks payment in favor of Alvin and Francisco; thus, its concern is not based on its

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40 Id.
41 Id. at 31.
42 Id.
43 Id. at 32.
44 Id. at 33.
45 Id. at 167-168.
46 Id. at 169-170.
47 Id. at 36, 170-171.
48 Id. at 87.
49 Id. at 88.
50 Id.

own right or interest.[51] It even wrongly impleaded Francisco and Alvin as unwilling co-plaintiffs instead of defendants. Doing so did not cure the Complaint's fatal infirmity that the Bank is not a real party-in-interest.[52]

The respondents posit that the Bank did not avail of the proper remedy as it raised questions of law which should have been coursed through a petition for review on *certiorari* pursuant to Rule 45 of the Rules of Court.[53] They aver that in a motion to dismiss based on failure to state a cause of action, the court does not delve into the truth of the allegations but applies the law to the facts as alleged in the Complaint, assuming such allegations to be true. Thus, a complaint which was dismissed based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. Moreover, any alleged admission or determination of factual matters, as posited by the Bank, is merely in connection with the resolution of the said motion to dismiss. Respondents stress that even if there was proof already presented, there was no resolution on the veracity of the facts alleged based on such evidence offered.[54]

They assert that if a case was dismissed because the complainant is not a real party-in-interest, the issue is one purely of law. This is because this issue is evaluated based on the examination of the allegations in the complaint and not on the assessment of the credibility of the witnesses or the existence/relevance of the attendant circumstances.[55]

The respondents contend that since the Bank employed the wrong remedy, filing a Notice of Appeal did not toll the reglementary period for filing a Rule 45 petition. In effect, the November 25, 2013 Order of the RTC became final and executory.[56] In addition, they insist that the Bank may not invoke the liberal application of the Rules especially when it should exercise utmost diligence to protect the interests of its clients.[57] They state that the Bank may not change its theory for the first time upon review to the Supreme Court, as the Bank insinuated that Alvin and Francisco participated in the alleged anomalies, which was never brought up in the lower court.[58] Also, the respondents opine that the writ of preliminary attachment is a provisional remedy, the grant of which has no bearing on the latter decision of dismissal.[59] Finally, they assert that even if the Bank availed of the correct mode of appeal, its Complaint should still be dismissed for lack of merit.[60]

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51 Id. at 89.
52 Id. at 89-90.
53 Id. at 93-94.
54 Id. at 95-96.
55 Id. at 96-97.
56 Id. at 98-99.
57 Id. at 99.
58 Id. at 100.
59 Id. at 100-101.
60 Id. at 101-102.

It is clear that the main issue is a procedural one which relates to the application of the correct mode of review concerning judgments rendered by the RTC. Under the Rules of Court, there are three modes to appeal a decision or final judgment of the RTC, *viz.*:

> The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law.[61]

In the case at bench, the RTC released its November 25, 2013 Order of dismissal, a final judgment, in the exercise of its original jurisdiction. Hence, the RTC's order may be reviewed through: 1) a Notice of Appeal under Rule 41 which addresses questions of fact or mixed questions of fact and law, and is brought to the CA; or 2) a petition for review on *certiorari* under Rule 45 which contemplates a discussion on purely questions of law, and is brought to the Supreme Court. In order to understand this concept further, there is a need to distinguish between a question of law and of fact, as follows:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[62] For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must solely rely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to the question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[63]

Stated differently, "[t]here is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts."[64]

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[61] *Heirs of Garcia v. Spouses Burgos*, G.R. No. 236173, March 4, 2020 citing *Heirs of Cabigas v. Limbaco*, 670 Phil. 274 (2011).

[62] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760-771, 767 (2013) citing *Heirs of Cabigas v. Limbaco*, 670 Phil. 274 (2011).

[63] Id.

[64] *Heirs of Garcia v. Spouses Burgos*, supra.

In the instant case, the issue of whether there is a failure to state a cause of action or not is undoubtedly a question of law, as one needs only to look at the allegations in the Complaint and its annexes. This is important when juxtaposed with the averments in the Motion to Dismiss. Withal, "[i]n determining the sufficiency of a cause of action, the test is, whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the court may validly grant the relief prayed for in the complaint."[65] Based on the RTC's November 25, 2013 Order, one of the grounds for the dismissal of the Complaint was failure to state a cause of action, which, as previously mentioned, is a question of law. To expound:

> The Court has held that '[f]ailure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action.'[66] The Court explained that failure to state a cause of action refers to the insufficiency of the allegations in the pleading, while lack of cause of action refers to the insufficiency of the factual basis for the action.[67] A dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules.[68] On the other hand, a dismissal for lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of stipulations, admission, or evidence presented by the plaintiff.[69] In determining the existence of a cause of action, the court may only consider the allegations in the complaint.[70]

The RTC deemed the Bank's allegations in its Complaint as insufficient, hence the declaration that it failed to state a cause of action. Simply, the Bank was not able to show through its averments in the Complaint and the annexes that it had a right which the defendants had the obligation to honor, and that the alleged right was violated. We thus quote with approval the RTC's explanation in its November 25, 2013 Order:

> As correctly stated by [Ian], the Complaint fails to state a cause of action. Perusal of the allegations in the Complaint reveal[s] that the elements of a cause of action are wanting. First, plaintiff Bank does not allege any right belonging to it. If ever, that right belongs to the unwilling co-plaintiffs, Francisco and Alvin Cruz, who are the owners of the accounts where the alleged unauthorized withdrawals were made. Similarly, plaintiff Bank cannot derive its cause of action on the alleged spurious FEFCs simply because [it] had rejected the demand to pay made by Alvin and Francisco, which demand is premised on the said FEFCs, thereby causing no damage on the part of the [Bank]. Second, [Ian] is also correct in his argument that even assuming *arguendo* that [the Bank] has a right recognized or protected by law, it nevertheless failed to allege in the Complaint that [Ian] has an obligation not to violate such right, or that [Ian] has indeed violated that right, as the demand was made by Francisco and Alvin, not

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65 *Tocoms Philippines, Inc. v. Philips Electronics and Lighting, Inc.*, G.R. No. 214046, February 5, 2020 citing *Spouses Fernandez v. Smart Communications, Inc.*, G.R. No. 212885, July 17, 2019; *Guillermo v. Philippine Information Agency*, 807 Phil. 555 (2017); *Aquino v. Quiazon*, 755 Phil. 793 (2015).

66 *Heirs of Garcia v. Spouses Burgos*, supra note 61 citing *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171, 177 (2014).

67 Id.

68 Id.

69 Id.

70 Id. citing *Aquino v. Quiazon*, 755 Phil. 793 (2015).

> by [Ian]. Regarding the two alleged spurious FEFCs, nowhere in the Complaint is it alleged that [Ian] issued or even used the same in violation of [the Bank's] right. If ever, [the Bank's] allegation against [Ian] is a mere conclusion of law which [does] not demonstrate the latter's unlawful act or omission violative of the right of the [Bank]. Third, [Ian] likewise correctly argued that the Complaint fails to allege an act or omission on his part violative of the right of the [Bank] or constitutes a breach of his obligation to the [Bank]. In support of the said contention, [Ian] repeated that if there is anyone who violated such purported right of the [Bank] not to be demanded upon, it was Alvin and Francisco only, not [Ian], who violated that right because they were the ones who demanded payment from the [Bank]. Moreover, [the Bank] cannot claim that its right was violated because it rejected the demand. As regards the alleged use of the purported two spurious FEFCs, [Ian] again correctly asserted that there can be no act or omission on his part which could have violated [the Bank's] right or constitute[d] a breach of his obligation to the [Bank] because the Complaint does not allege his actual participation in the issuance or use of the said supposedly spurious FEFCs. With respect to the alleged unauthorized withdrawals, [the Bank] cannot validly claim to have any right to such deposit accounts as it belongs to their owners, Francisco and Alvin. [Besides], the Complaint fails to allege that it was [Ian] who made the unauthorized withdrawals, but what was mentioned in the Complaint is that the purported unauthorized withdrawals were made only by [Paul].[71]

In relation to this, in deposits of money, a bank is considered as the debtor while the depositor is the creditor. Since their contract is governed by the provisions of the Civil Code on simple loan or *mutuum*,[72] the deposit must be paid upon demand by the depositor.[73] Thus, the Bank in this case would not stand to be injured as it is merely maintaining or keeping the money in trust for the depositors.

Indeed, the complainant's failure to state a cause of action in its initiatory pleading is a ground for the dismissal of the case pursuant to Section 1, Rule 16 of the Rules of Court, to wit:

> SECTION 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> x x x x
>
> (g) That the pleading asserting the claim states no cause of action[.][74] (Emphasis supplied)

The recent case of *Tocoms Philippines, Inc. v. Philips Electronics and Lighting, Inc.*[75] teaches that "[t]hough obvious from the text of the provision,

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[71] *Rollo*, pp. 121-122.

[72] *Citystate Savings Bank v. Tobias*, 827 Phil. 430, 438 (2019) citing CIVIL CODE, Article 1980 which states that: "Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan."

[73] *Philippine National Bank v. Bacani*, 833 Phil. 668, 684 (2018) citing *The Metropolitan Bank and Trust Co. v. Rosales*, 724 Phil. 66, 68 (2014).

[74] RULES OF COURT, Rule 16, § 1 (g).

[75] *Tocoms Philippines, Inc. v. Philips Electronics and Lighting, Inc.*, G.R. No. 214046, February 5, 2020.

it bears emphasis that the non-statement of the cause of action must be apparent from the complaint or other initiatory pleading. For this reason, it has been consistently held that in ruling upon a motion to dismiss grounded upon failure to state a cause of action, courts must only consider the facts alleged in the complaint, without reference to matters outside thereof.[76] Thus, an early commentary on the Rules of Court describes a motion to dismiss as 'the usual, proper, and ordinary method of testing the legal sufficiency of a complaint.'"[77] *Tocoms* continues that a "motion to dismiss for failure to state a cause of action must be resolved within the four corners of the complaint and its annexes, given its purpose as a filter for reducing court dockets by eliminating unmeritorious claims at the earliest opportunity."[78]

The Bank's failure to state a cause of action, then, justifies the RTC's dismissal of its Complaint. Given that Ian called for the dismissal of the Complaint, the trial court correctly considered the allegations in the Complaint and the annexes in eventually assessing that the Bank failed to state a cause of action. Moreover, the trial court declared that the Bank was not the real party-in-interest to institute the action – another question of law.

In this regard, a reading of the Complaint reveals that the Bank is not actually the real party-in-interest, since Alvin and Francisco were the ones who would stand to be benefitted or injured by the debiting of their respective deposits without their consent, as well as the issuance and subsequent denial of the demand to collect from the supposed spurious FEFCs. In relation to this, Section 2, Rule 3 of the Rules of Court states:

> **Section 2.** *Parties in Interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.[79]

The Bank did not comply with the aforementioned provision when it filed the instant Complaint.[80] Worse, the Bank did not take into consideration Section 10, Rule 3 of the Rules of Court, which provides:

> **Section 10.** *Unwilling co-plaintiff.* – If the consent of any party who should be joined as plaintiff cannot be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.[81]

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[76] Id. citing Vicente J. Francisco, The Revised Rules of Court in the Philippines 628 (1965) citing *Dalandan v. Julio*, 119 Phil. 678 (1964); *Lim v. De los Santos*, 118 Phil. 800 (1963); *Mindanao Realty Corp. v. Kintanar*, 116 Phil. 1130 (1962); *Uy Chao v. De la Rama Steamship Co., Inc.*, 116 Phil. 392 (1962); *Reinares v. Arrastia and Hizon*, 115 Phil. 726 (1962); *Convets, Inc. v. Nat. Dev. Co.*, 103 Phil. 46 (1958); *Zobel v. Abreu*, 98 Phil. 343 (1956); *Dimayuga v. Dimayuga*, 96 Phil. 859 (1955); *De Jesus v. Belarmino*, 95 Phil. 365 (1954); *Francisco v. Robles*, 94 Phil. 1035 (1954).

[77] *Tocoms Philippines, Inc. v. Philips Electronics and Lighting, Inc.*, supra note 75 citing Vicente J. Francisco, The Revised Rules of Court in the Philippines 628 (1965).

[78] Id.

[79] RULES OF COURT, Rule 3, § 2.

[80] *Collao, Jr. v. Albania*, G.R. No. 228905, July 15, 2020.

[81] RULES OF COURT, Rule 3, § 10.

The Bank arbitrarily impleaded Francisco and Alvin as unwilling co-plaintiffs without securing their consent, and did not bother to explain in the Complaint why their permission was not obtained. The Bank conveniently reasoned that Francisco and Alvins' demand pursuant to the FEFCs which it subsequently denied should be construed as an "explanation" for the consent requirement. All the same, since this "explanation" is insufficient, Francisco and Alvin should have been impleaded as defendants in the Complaint instead, absent their express consent to be included as co-plaintiffs.

Another point. The RTC's May 21, 2013 Order is an interlocutory order which only concerns the matter of the issuance of the writ of preliminary attachment. While the evidence presented in the hearing for the issuance of the writ may be deemed included in the main action, it does not necessarily follow that the pronouncements in the May 21, 2013 Order should dictate the findings in the main case, in this instance, the RTC's November 25, 2013 Order of dismissal. To clarify:

> The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates the particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case?* If it does, the order or judgment is interlocutory; otherwise, it is final.[82]

The RTC's May 21, 2013 Order is no doubt an interlocutory order which did not completely dispose of the case, and did not address Ian's reasons for asking for the dismissal of the case. In other words, the said order was confined to a determination of the propriety of issuing a writ of preliminary attachment. It did not directly tackle the merits of the Complaint or even discuss the assertions in Ian's motion to dismiss before the RTC.

To explain, "[b]y its nature, preliminary attachment, under Rule 57 of the Rules of Court (Rule 57), is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental in the main action. As such, it is available during its pendency which may be resorted to by a litigant to preserve and protect certain rights and interests during the interim, awaiting the ultimate effects of a final judgment in the case."[83] Additionally, "the remedy of attachment is harsh,

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[82] *Home Development Mutual Fund Pag-Ibig Fund v. Sagun*, G.R. Nos. 205698, 205780, 208744, 209424, 209446, 209489, 209852, 210095, 210143, 228452, 228730 & 230680, July 31, 2018 citing *Pahila-Garrido v. Tortogo*, 671 Phil. 320-345 (2011).

[83] *Lim, Jr. v. Spouses Lazaro*, 713 Phil. 356, 361 (2013) citing *Republic v. Estate of Alfonso Lim, Sr.*, 611 Phil. 37-59 (2009).

extraordinary, and summary in nature."[84] Hence:

> The proceeding in the issuance of a writ of preliminary attachment, as a mere provisional remedy, is ancillary to an action commenced at or before the time when the attachment is sued out. Accordingly[,] the attachment does not affect the decision of the case on the merits, the right to recover judgment on the alleged indebtedness and the right to attach the property of the debtor being entirely separate and distinct. As a rule, the judgment in the main action neither changes the nature nor determines the validity of the attachment.[85]

There may even be times when the "applicant's cause of action [or lack thereof] may be entirely different from the ground relied upon by him [or her] for a preliminary attachment."[86] If so, and if the evidence supports the grant of the writ of the preliminary attachment, it is not automatic that such finding warrants a final judgment in favor of the party requesting for the attachment, in this case, the Bank.

To reiterate, the pronouncements of the RTC in its May 21, 2013 Order should not dictate how the trial court should dispose of the main action. Although the trial court can consider in the main case those which were presented as evidence during the hearing for the issuance of a writ of preliminary attachment, such findings should not control the outcome of the main case because the purposes for both are different. One is for the issuance of the writ as an ancillary or interlocutory remedy while the other is for the actual disposition of the case.

In view of the foregoing, the CA correctly dismissed the Bank's appeal because the issues involved are pure questions of law which cannot be appealed through a notice of appeal under Rule 41. It is settled that "an appeal from the RTC to the Court of Appeals raising only questions of law shall be dismissed; and that an appeal erroneously taken to the Court of Appeals shall be dismissed outright."[87] This is in accordance with Section 2, Rule 50 of the Rules of Court, to wit:

> Sec. 2. *Dismissal of improper appeal to the Court of Appeals.* – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues of pure law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.
>
> An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.[88]

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[84] *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*, 269 Phil. 450-457, 456 (1990).

[85] *Peroxide Philippines Corp. v. Court of Appeals*, 276 Phil. 980, 995 (1991) citing C.J.S. 187-188, cited in Francisco, Revised Rules of Court, Vol. IV-A, 1971 Ed., 7.

[86] *Philippine Charter Insurance Corp. v. Court of Appeals*, 259 Phil. 74, 85, 80 (1989).

[87] *Sevilleno v. Carilo*, 559 Phil. 789-793, 792-793 (2007).

[88] RULES OF COURT, Rule 50, § 2.

To stress, since the Bank availed of the wrong mode of appeal, its case was correctly dismissed by the CA. As a consequence, the RTC's November 25, 2013 Order became final and executory, given that the filing of a notice of appeal did not toll the reglementary period to file a petition for review on *certiorari*, the proper remedy to assail the dismissal order of the trial court.[89] Although unfortunate for the Bank, it should be reminded that "[r]ules of procedure are essential to the proper, efficient and orderly dispensation of justice. Such rules are to be applied in a manner that will help secure and not defeat justice."[90]

It is important to mention as well that "'the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost.'[91] Compliance with procedural rules is mandatory, 'since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.'"[92]

A final note. It is known that "the business of banking is one imbued with public interest. As such, banking institutions are obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions.[93] The law expressly imposes upon the banks a fiduciary duty towards its clients[94] and to treat in this regard the accounts of its depositors with meticulous care."[95]

If the Bank deemed that it received damage in any way, it has no one to blame but itself, or rather, its employees who allowed the transfer of funds without proper verification, including the issuance of the alleged spurious FEFCs. Paul could not have successfully completed the transactions without the approval of his superiors. However, a further discussion of these matters is not proper as this already involves a consideration of factual incidents not within the ambit of the present suit.

WHEREFORE, the instant petition is hereby **DENIED**. The assailed April 24, 2015 and December 10, 2015 Resolutions rendered by the Court of Appeals in CA-G.R. CV No. 102020 are hereby **AFFIRMED**. The Writ of Preliminary Attachment issued by the Regional Trial Court, Branch 139 of Makati is **DISSOLVED**.

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89 *See: Montoya v. Ombudsman*, G.R. No. 246188 *(Notice)*, June 10, 2019.

90 *Five Star Marketing Co., Inc. v. Booc*, 561 Phil. 167, 184 (2007) citing *Jaro v. Court of Appeals*, 427 Phil. 532-549 (2002).

91 *Tamboa y Laday v. People*, G.R. No. 248264, July 27, 2020 citing *Manila Mining Corporation v. Amor*, 758 Phil. 268 (2015) which cited *Philux v. NLRC*, 586 Phil. 19, 26 (2008).

92 Id. citing *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, 700 Phil. 575, 581 (2012).

93 *Citystate Savings Bank v. Tobias*, 827 Phil. 430, 438 (2018) citing *Comsavings Bank v. Spouses Capistrano*, 716 Phil. 547, 550 (2013).

94 Id. citing Republic Act No. 8791, or the General Banking Law, Section 2.

95 Id. citing *Simex International (Manila), Inc. v. Court of Appeals*, 262 Phil. 387, 396 (1990).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice