

SECOND DIVISION

[**G.R. No. 155635, November 07, 2008**]

**MARIA REBECCA MAKAPUGAY BAYOT, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS AND VICENTE MADRIGAL BAYOT,
RESPONDENTS.**

[**G.R. NO. 163979**]

**MARIA REBECCA MAKAPUGAY BAYOT, PETITIONER, VS. VICENTE
MADRIGAL BAYOT, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

The Case

Before us are these two petitions interposed by petitioner Maria Rebecca Makapugay Bayot impugning certain issuances handed out by the Court of Appeals (CA) in CA-G.R. SP No. 68187.

In the first, a petition for certiorari^[1] under Rule 65 and docketed as **G.R. No. 155635**, Rebecca assails and seeks to nullify the April 30, 2002 Resolution^[2] of the CA, as reiterated in another Resolution of September 2, 2002,^[3] granting a writ of preliminary injunction in favor of private respondent Vicente Madrigal Bayot staving off the trial court's grant of support *pendente lite* to Rebecca.

The second, a petition for review under Rule 45,^[4] docketed **G.R. No. 163979**, assails the March 25, 2004 Decision^[5] of the CA, (1) dismissing Civil Case No. 01-094, a suit for declaration of absolute nullity of marriage with application for support commenced by Rebecca against Vicente before the Regional Trial Court (RTC) in Muntinlupa City; and (2) setting aside certain orders and a resolution issued by the RTC in the said case.

Per its Resolution of August 11, 2004, the Court ordered the consolidation of both cases.

The Facts

Vicente and Rebecca were married on April 20, 1979 in Santuario de San Jose, Greenhills, Mandaluyong City. On its face, the Marriage Certificate^[6] identified Rebecca, then 26 years old, to be an American citizen^[7] born in Agaña, Guam, USA to Cesar Tanchiong Makapugay, American, and Helen Corn Makapugay, American.

On November 27, 1982 in San Francisco, California, Rebecca gave birth to Marie Josephine Alexandra or Alix. From then on, Vicente and Rebecca's marital relationship seemed to have soured as the latter, sometime in 1996, initiated divorce proceedings in the Dominican Republic. Before the Court of the First Instance of the Judicial District of Santo Domingo, Rebecca personally appeared, while Vicente was duly represented by counsel. On February 22, 1996, the Dominican court issued **Civil Decree No. 362/96**,^[8] ordering the dissolution of the couple's marriage and "leaving them to remarry after completing the legal requirements," but giving them joint custody and guardianship over Alix. Over a year later, the same court would issue **Civil Decree No. 406/97**,^[9] settling the couple's property relations pursuant to an Agreement^[10] they executed on December 14, 1996. Said agreement specifically stated that the "conjugal property which they acquired during their marriage consist[s] only of the real property and all the improvements and personal properties therein contained at 502 Acacia Avenue, Alabang, Muntinlupa."^[11]

Meanwhile, on March 14, 1996, or less than a month from the issuance of Civil Decree No. 362/96, Rebecca filed with the Makati City RTC a petition^[12] dated January 26, 1996, with attachments, for declaration of nullity of marriage, docketed as Civil Case No. 96-378. Rebecca, however, later moved^[13] and secured approval^[14] of the motion to withdraw the petition.

On May 29, 1996, Rebecca executed an Affidavit of Acknowledgment^[15] stating under oath that she is an American citizen; that, since 1993, she and Vicente have been living separately; and that she is carrying a child not of Vicente.

On March 21, 2001, Rebecca filed another petition, this time before the Muntinlupa City RTC, for declaration of absolute nullity of marriage^[16] on the ground of Vicente's alleged psychological incapacity. Docketed as Civil Case No. 01-094 and entitled as *Maria Rebecca Makapugay Bayot v. Vicente Madrigal Bayot*, the petition was eventually raffled to Branch 256 of the court. In it, Rebecca also sought the dissolution of the conjugal partnership of gains with application for support *pendente lite* for her and Alix. Rebecca also prayed that Vicente be ordered to pay a permanent monthly support for their daughter Alix in the amount of PhP 220,000.

On June 8, 2001, Vicente filed a Motion to Dismiss^[17] on, *inter alia*, the grounds of lack of cause of action and that the petition is barred by the prior judgment of divorce. Earlier, on June 5, 2001, Rebecca filed and moved for the allowance of her application for support *pendente lite*.

To the motion to dismiss, Rebecca interposed an opposition, insisting on her Filipino citizenship, as affirmed by the Department of Justice (DOJ), and that, therefore, there is no valid divorce to speak of.

Meanwhile, Vicente, who had in the interim contracted another marriage, and Rebecca commenced several criminal complaints against each other. Specifically, Vicente filed

adultery and perjury complaints against Rebecca. Rebecca, on the other hand, charged Vicente with bigamy and concubinage.

Ruling of the RTC on the Motion to Dismiss and Motion for Support *Pendente Lite*

On August 8, 2001, the RTC issued an Order^[18] denying Vicente's motion to dismiss Civil Case No. 01-094 and granting Rebecca's application for support *pendente lite*, disposing as follows:

Wherefore, premises considered, the Motion to Dismiss filed by the respondent is DENIED. Petitioner's Application in Support of the Motion for Support Pendente Lite is hereby GRANTED. Respondent is hereby ordered to remit the amount of TWO HUNDRED AND TWENTY THOUSAND PESOS (Php 220,000.00) a month to Petitioner as support for the duration of the proceedings relative to the instant Petition.

SO ORDERED.^[19]

The RTC declared, among other things, that the divorce judgment invoked by Vicente as bar to the petition for declaration of absolute nullity of marriage is a matter of defense best taken up during actual trial. As to the grant of support *pendente lite*, the trial court held that a mere allegation of adultery against Rebecca does not operate to preclude her from receiving legal support.

Following the denial^[20] of his motion for reconsideration of the above August 8, 2001 RTC order, Vicente went to the CA on a petition for certiorari, with a prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.^[21] His petition was docketed as CA-G.R. SP No. 68187.

Grant of Writ of Preliminary Injunction by the CA

On January 9, 2002, the CA issued the desired TRO.^[22] On April 30, 2002, the appellate court granted, via a Resolution, the issuance of a writ of preliminary injunction, the decretal portion of which reads:

IN VIEW OF ALL THE FOREGOING, pending final resolution of the petition at bar, let the Writ of Preliminary Injunction be ISSUED in this case, enjoining the respondent court from implementing the assailed Omnibus Order dated August 8, 2001 and the Order dated November 20, 2001, and from conducting further proceedings in Civil Case No. 01-094, upon the posting of an injunction bond in the amount of P250,000.00.

SO ORDERED.^[23]

Rebecca moved^[24] but was denied reconsideration of the aforementioned April 30, 2002 resolution. In the meantime, on May 20, 2002, the preliminary injunctive writ^[25] was issued. Rebecca also moved for reconsideration of this issuance, but the

CA, by Resolution dated September 2, 2002, denied her motion.

The adverted CA resolutions of April 30, 2002 and September 2, 2002 are presently being assailed in Rebecca's petition for certiorari, docketed under **G.R. No. 155635**.

Ruling of the CA

Pending resolution of **G.R. No. 155635**, the CA, by a Decision dated March 25, 2004, effectively dismissed Civil Case No. 01-094, and set aside incidental orders the RTC issued in relation to the case. The *fallo* of the presently assailed CA Decision reads:

IN VIEW OF THE FOREGOING, the petition is GRANTED. The Omnibus Order dated August 8, 2001 and the Order dated November 20, 2001 are REVERSED and SET ASIDE and a new one entered DISMISSING Civil Case No. 01-094, for failure to state a cause of action. No pronouncement as to costs.

SO ORDERED.^[26]

To the CA, the RTC ought to have granted Vicente's motion to dismiss on the basis of the following premises:

(1) As held in *China Road and Bridge Corporation v. Court of Appeals*, the hypothetical-admission rule applies in determining whether a complaint or petition states a cause of action.^[27] Applying said rule in the light of the essential elements of a cause of action,^[28] Rebecca had no cause of action against Vicente for declaration of nullity of marriage.

(2) Rebecca no longer had a legal right in this jurisdiction to have her marriage with Vicente declared void, the union having previously been dissolved on February 22, 1996 by the foreign divorce decree she personally secured as an American citizen. Pursuant to the second paragraph of Article 26 of the Family Code, such divorce restored Vicente's capacity to contract another marriage.

(3) Rebecca's contention about the nullity of a divorce, she being a Filipino citizen at the time the foreign divorce decree was rendered, was dubious. Her allegation as to her alleged Filipino citizenship was also doubtful as it was not shown that her father, at the time of her birth, was still a Filipino citizen. The Certification of Birth of Rebecca issued by the Government of Guam also did not indicate the nationality of her father.

(4) Rebecca was estopped from denying her American citizenship, having professed to have that nationality status and having made representations to that effect during momentous events of her life, such as: (a) during her marriage; (b) when she applied for divorce; and (c) when she applied for and eventually secured an American passport on January 18, 1995, or a little over a year before she initiated the first but later withdrawn petition for nullity of her marriage (Civil Case No. 96-378) on March 14, 1996.

(5) Assuming that she had dual citizenship, being born of a purportedly Filipino father in Guam, USA which follows the *jus soli* principle, Rebecca's representation and assertion about being an American citizen when she secured her foreign divorce precluded her from denying her citizenship and impugning the validity of the divorce.

Rebecca seasonably filed a motion for reconsideration of the above Decision, but this recourse was denied in the equally assailed June 4, 2004 Resolution.^[29] Hence, Rebecca's Petition for Review on Certiorari under Rule 45, docketed under **G.R. No. 163979**.

The Issues

In **G.R. No. 155635**, Rebecca raises four (4) assignments of errors as grounds for the allowance of her petition, all of which converged on the proposition that the CA erred in enjoining the implementation of the RTC's orders which would have entitled her to support pending final resolution of Civil Case No. 01-094.

In **G.R. No. 163979**, Rebecca urges the reversal of the assailed CA decision submitting as follows:

I

THE COURT OF APPEALS GRAVELY ERRED IN NOT MENTIONING AND NOT TAKING INTO CONSIDERATION IN ITS APPRECIATION OF THE FACTS THE FACT OF PETITIONER'S FILIPINO CITIZENSHIP AS CATEGORICALLY STATED AND ALLEGED IN HER PETITION BEFORE THE COURT A QUO.

II

THE COURT OF APPEALS GRAVELY ERRED IN RELYING ONLY ON ANNEXES TO THE PETITION IN RESOLVING THE MATTERS BROUGHT BEFORE IT.

III

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER THAT RESPONDENT IS ESTOPPED FROM CLAIMING THAT HIS MARRIAGE TO PETITIONER HAD ALREADY BEEN DISSOLVED BY VIRTUE OF HIS SUBSEQUENT AND CONCURRENT ACTS.

IV

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE WAS ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT, MUCH LESS A GRAVE ABUSE.^[30]

We shall first address the petition in G.R. No. 163979, its outcome being determinative of the success or failure of the petition in G.R. No. 155635.

Three legal premises need to be underscored at the outset. *First*, a divorce obtained

abroad by an alien married to a Philippine national may be recognized in the Philippines, provided the decree of divorce is valid according to the national law of the foreigner.^[31] *Second*, the reckoning point is not the citizenship of the divorcing parties at birth or at the time of marriage, but their citizenship at the time a valid divorce is obtained abroad. And *third*, an absolute divorce secured by a Filipino married to another Filipino is contrary to our concept of public policy and morality and shall not be recognized in this jurisdiction.^[32]

Given the foregoing perspective, the determinative issue tendered in G.R. No. 155635, i.e., the propriety of the granting of the motion to dismiss by the appellate court, resolves itself into the questions of: *first*, whether petitioner Rebecca was a Filipino citizen at the time the divorce judgment was rendered in the Dominican Republic on February 22, 1996; and *second*, whether the judgment of divorce is valid and, if so, what are its consequent legal effects?

The Court's Ruling

The petition is bereft of merit.

Rebecca an American Citizen in the Purview of This Case

There can be no serious dispute that Rebecca, at the time she applied for and obtained her divorce from Vicente, was an American citizen and remains to be one, absent proof of an effective repudiation of such citizenship. The following are compelling circumstances indicative of her American citizenship: (1) she was born in Agaña, Guam, USA; (2) the principle of *jus soli* is followed in this American territory granting American citizenship to those who are born there; and (3) she was, and may still be, a holder of an American passport.^[33]

And as aptly found by the CA, Rebecca had consistently professed, asserted, and represented herself as an American citizen, particularly: (1) during her marriage as shown in the marriage certificate; (2) in the birth certificate of Alix; and (3) when she secured the divorce from the Dominican Republic. Mention may be made of the Affidavit of Acknowledgment^[34] in which she stated being an American citizen.

It is true that Rebecca had been issued by the Bureau of Immigration (Bureau) of Identification (ID) Certificate No. RC 9778 and a Philippine Passport. On its face, ID Certificate No. RC 9778 would tend to show that she has indeed been recognized as a Filipino citizen. It cannot be over-emphasized, however, that such recognition was given only on June 8, 2000 upon the affirmation by the Secretary of Justice of Rebecca's recognition pursuant to the Order of Recognition issued by Bureau Associate Commissioner Edgar L. Mendoza.

For clarity, we reproduce in full the contents of ID Certificate No. RC 9778:

To Whom It May Concern:

This is to certify that *MARIA REBECCA MAKAPUGAY BAYOT* whose

photograph and thumbprints are affixed hereto and partially covered by the seal of this Office, and whose other particulars are as follows:

Place of Birth: Guam, USA Date of Birth: March 5, 1953
Sex: female Civil Status: married Color of Hair: brown
Color of Eyes: brown Distinguishing marks on face: none

was - r e c o g n i z e d - as a citizen of the Philippines as per pursuant to Article IV, Section 1, Paragraph 3 of the 1935 Constitution per order of Recognition JBL 95-213 signed by Associate Commissioner Jose B. Lopez dated October 6, 1995, and duly affirmed by Secretary of Justice Artemio G. Tuquero in his 1st Indorsement dated June 8, 2000.

Issued for identification purposes only. NOT VALID for travel purposes.

Given under my hand and seal this 11th day of October, 1995

(SGD) EDGAR L. MENDOZA
ASSO. COMMISSIONER

Official Receipt No. 5939988
issued at Manila
dated Oct. 10, 1995 for P
2,000

From the text of ID Certificate No. RC 9778, the following material facts and dates may be deduced: (1) Bureau Associate Commissioner Jose B. Lopez issued the Order of Recognition on **October 6, 1995**; (2) the 1st Indorsement of Secretary of Justice Artemio G. Tuquero affirming Rebecca's recognition as a Filipino citizen was issued on **June 8, 2000** or almost five years from the date of the order of recognition; and (3) ID Certificate No. RC 9778 was purportedly issued on **October 11, 1995** after the payment of the PHP 2,000 fee on October 10, 1995 per OR No. 5939988.

What begs the question is, however, how the above certificate could have been issued by the Bureau on October 11, 1995 when the Secretary of Justice issued the required affirmation only on June 8, 2000. No explanation was given for this patent aberration.

There seems to be no error with the date of the issuance of the 1st Indorsement by Secretary of Justice Tuquero as this Court takes judicial notice that he was the Secretary of Justice from February 16, 2000 to January 22, 2001. There is, thus, a strong valid reason to conclude that the certificate in question must be spurious.

Under extant immigration rules, applications for recognition of Filipino citizenship require the affirmation by the DOJ of the Order of Recognition issued by the Bureau. Under Executive Order No. 292, also known as the *1987 Administrative Code*, specifically in its Title III, Chapter 1, Sec. 3(6), it is the DOJ which is tasked to "provide immigration and naturalization regulatory services and **implement the laws governing citizenship** and the admission and stay of aliens." Thus, the confirmation by the DOJ of any Order of Recognition for Filipino citizenship issued by the Bureau is

required.

Pertinently, Bureau Law Instruction No. RBR-99-002^[35] on Recognition as a Filipino Citizen clearly provides:

The Bureau [of Immigration] through its Records Section shall automatically furnish the Department of Justice an official copy of its Order of Recognition within 72 days from its date of approval by the way of indorsement for confirmation of the Order by the Secretary of Justice pursuant to Executive Order No. 292. **No Identification Certificate shall be issued before the date of confirmation by the Secretary of Justice** and any Identification Certificate issued by the Bureau pursuant to an Order of Recognition shall prominently indicate thereon the date of confirmation by the Secretary of Justice. (Emphasis ours.)

Not lost on the Court is the acquisition by Rebecca of her Philippine passport only on June 13, 2000, or five days after then Secretary of Justice Tuquero issued the 1st Indorsement confirming the order of recognition. It may be too much to attribute to coincidence this unusual sequence of close events which, to us, clearly suggests that prior to said affirmation or confirmation, Rebecca was not yet recognized as a Filipino citizen. The same sequence would also imply that ID Certificate No. RC 9778 could not have been issued in 1995, as Bureau Law Instruction No. RBR-99-002 mandates that no identification certificate shall be issued before the date of confirmation by the Secretary of Justice. Logically, therefore, the affirmation or confirmation of Rebecca's recognition as a Filipino citizen through the 1st Indorsement issued only on June 8, 2000 by Secretary of Justice Tuquero corresponds to the eventual issuance of Rebecca's passport a few days later, or on June 13, 2000 to be exact.

When Divorce Was Granted Rebecca, She Was not a Filipino Citizen and Was not Yet Recognized as One

The Court can assume hypothetically that Rebecca is now a Filipino citizen. But from the foregoing disquisition, it is indubitable that Rebecca did not have that status of, or at least was not yet recognized as, a Filipino citizen when she secured the February 22, 1996 judgment of divorce from the Dominican Republic.

The Court notes and at this juncture wishes to point out that Rebecca voluntarily withdrew her original petition for declaration of nullity (Civil Case No. 96-378 of the Makati City RTC) obviously because she could not show proof of her alleged Filipino citizenship then. In fact, a perusal of that petition shows that, while bearing the date January 26, 1996, it was only filed with the RTC on March 14, 1996 or less than a month after Rebecca secured, on February 22, 1996, the foreign divorce decree in question. Consequently, there was no mention about said divorce in the petition. Significantly, the only documents appended as annexes to said original petition were: the Vicente-Rebecca Marriage Contract (Annex "A") and Birth Certificate of Alix (Annex "B"). If indeed ID Certificate No. RC 9778 from the Bureau was truly issued on October 11, 1995, is it not but logical to expect that this piece of document be appended to form part of the petition, the question of her citizenship being crucial to her case?

As may be noted, the petition for declaration of absolute nullity of marriage under Civil Case No. 01-094, like the withdrawn first petition, also did not have the ID Certificate from the Bureau as attachment. What were attached consisted of the following material documents: Marriage Contract (Annex "A") and Divorce Decree. It was only through her Opposition (To Respondent's Motion to Dismiss dated 31 May 2001)^[36] did Rebecca attach as Annex "C" ID Certificate No. RC 9778.

At any rate, the CA was correct in holding that the RTC had sufficient basis to dismiss the petition for declaration of absolute nullity of marriage as said petition, taken together with Vicente's motion to dismiss and Rebecca's opposition to motion, with their respective attachments, clearly made out a case of lack of cause of action, which we will expound later.

Validity of Divorce Decree

Going to the second core issue, we find Civil Decree Nos. 362/96 and 406/97 valid.

First, at the time of the divorce, as above elucidated, Rebecca was still to be recognized, assuming for argument that she was in fact later recognized, as a Filipino citizen, but represented herself in public documents as an American citizen. At the very least, she chose, before, during, and shortly after her divorce, her American citizenship to govern her marital relationship. *Second*, she secured personally said divorce as an American citizen, as is evident in the text of the Civil Decrees, which pertinently declared:

IN THIS ACTION FOR DIVORCE in which the parties expressly submit to the jurisdiction of this court, by reason of the existing incompatibility of temperaments x x x. The parties MARIA REBECCA M. BAYOT, **of United States nationality**, 42 years of age, married, domiciled and residing at 502 Acacia Ave., Ayala Alabang, Muntin Lupa, Philippines, x x x, who **personally appeared before this court**, accompanied by DR. JUAN ESTEBAN OLIVERO, attorney, x x x and VICENTE MADRIGAL BAYOT, of Philippine nationality, of 43 years of age, married and domiciled and residing at 502 Acacia Ave., Ayala Alabang, Muntin Lupa, Filipino, appeared before this court represented by DR. ALEJANDRO TORRENS, attorney, x x x, revalidated by special power of attorney given the 19th of February of 1996, signed before the Notary Public Enrico L. Espanol of the City of Manila, duly legalized and authorizing him to subscribe all the acts concerning this case.^[37] (Emphasis ours.)

Third, being an American citizen, Rebecca was bound by the national laws of the United States of America, a country which allows divorce. *Fourth*, the property relations of Vicente and Rebecca were properly adjudicated through their Agreement^[38] executed on December 14, 1996 after Civil Decree No. 362/96 was rendered on February 22, 1996, and duly affirmed by Civil Decree No. 406/97 issued on March 4, 1997. Veritably, the foreign divorce secured by Rebecca was valid.

To be sure, the Court has taken stock of the holding in *Garcia v. Recio* that a foreign divorce can be recognized here, provided the divorce decree is proven as a fact and as valid under the national law of the alien spouse.^[39] Be this as it may, the fact that Rebecca was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union,^[40] the presentation of a copy of foreign divorce decree **duly authenticated** by the foreign court issuing said decree is, as here, sufficient.

It bears to stress that the existence of the divorce decree has not been denied, but in fact admitted by both parties. And neither did they impeach the jurisdiction of the divorce court nor challenge the validity of its proceedings on the ground of collusion, fraud, or clear mistake of fact or law, albeit both appeared to have the opportunity to do so. The same holds true with respect to the decree of partition of their conjugal property. As this Court explained in *Roehr v. Rodriguez*:

Before our courts can give the effect of *res judicata* to a foreign judgment [of divorce] x x x, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court (now Rule 39, Section 48, 1997 Rules of Civil Procedure), to wit:

SEC. 50. *Effect of foreign judgments.*—The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

(a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;

(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy. In this jurisdiction, our Rules of Court clearly provide that with respect to actions *in personam*, as distinguished from actions *in rem*, a foreign judgment merely constitutes *prima facie* evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary.^[41]

As the records show, Rebecca, assisted by counsel, personally secured the foreign divorce while Vicente was duly represented by his counsel, a certain Dr. Alejandro Torrens, in said proceedings. As things stand, the foreign divorce decrees rendered and issued by the Dominican Republic court are valid and, consequently, bind both Rebecca and Vicente.

Finally, the fact that Rebecca may have been duly recognized as a Filipino citizen by

force of the June 8, 2000 affirmation by Secretary of Justice Tuquero of the October 6, 1995 Bureau Order of Recognition will not, standing alone, work to nullify or invalidate the foreign divorce secured by Rebecca as an American citizen on February 22, 1996. For as we stressed at the outset, in determining whether or not a divorce secured abroad would come within the pale of the country's policy against absolute divorce, the reckoning point is the citizenship of the parties at the time a valid divorce is obtained.
[42]

Legal Effects of the Valid Divorce

Given the validity and efficacy of divorce secured by Rebecca, the same shall be given a *res judicata* effect in this jurisdiction. As an obvious result of the divorce decree obtained, the marital *vinculum* between Rebecca and Vicente is considered severed; they are both freed from the bond of matrimony. In plain language, Vicente and Rebecca are no longer husband and wife to each other. As the divorce court formally pronounced: "[T]hat the marriage between MARIA REBECCA M. BAYOT and VICENTE MADRIGAL BAYOT is hereby **dissolved x x x leaving them free to remarry after completing the legal requirements.**"[43]

Consequent to the dissolution of the marriage, Vicente could no longer be subject to a husband's obligation under the Civil Code. He cannot, for instance, be obliged to live with, observe respect and fidelity, and render support to Rebecca.[44]

The divorce decree in question also brings into play the second paragraph of Art. 26 of the Family Code, providing as follows:

Art. 26. x x x x

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. (*As amended by E.O. 227*)

In *Republic v. Orbecido III*, we spelled out the twin elements for the applicability of the second paragraph of Art. 26, thus:

x x x [W]e state the twin elements for the application of Paragraph 2 of Article 26 as follows:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.[45]

Both elements obtain in the instant case. We need not belabor further the fact of marriage of Vicente and Rebecca, their citizenship when they wed, and their professed citizenship during the valid divorce proceedings.

Not to be overlooked of course is the fact that Civil Decree No. 406/97 and the Agreement executed on December 14, 1996 bind both Rebecca and Vicente as regards their property relations. The Agreement provided that the ex-couple's conjugal property consisted only their family home, thus:

9. That the parties stipulate that the **conjugal property which they acquired during their marriage consists only of the real property** and all the improvements and personal properties therein contained at 502 Acacia Avenue, Ayala Alabang, Muntinlupa, covered by TCT No. 168301 dated Feb. 7, 1990 issued by the Register of Deeds of Makati, Metro Manila registered in the name of Vicente M. Bayot, married to Rebecca M. Bayot, x x x.^[46] (Emphasis ours.)

This property settlement embodied in the Agreement was affirmed by the divorce court which, per its second divorce decree, Civil Decree No. 406/97 dated March 4, 1997, ordered that, "THIRD: That the agreement entered into between the parties dated 14th day of December 1996 in Makati City, Philippines shall survive in this Judgment of divorce by reference but not merged and that the parties are hereby ordered and directed to **comply with each and every provision of said agreement.**"^[47]

Rebecca has not repudiated the property settlement contained in the Agreement. She is thus estopped by her representation before the divorce court from asserting that her and Vicente's conjugal property was not limited to their family home in Ayala Alabang.^[48]

No Cause of Action in the Petition for Nullity of Marriage

Upon the foregoing disquisitions, it is abundantly clear to the Court that Rebecca lacks, under the premises, cause of action. *Philippine Bank of Communications v. Trazo* explains the concept and elements of a cause of action, thus:

A cause of action is an act or omission of one party in violation of the legal right of the other. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following **elements** are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.^[49]

One thing is clear from a perusal of Rebecca's underlying petition before the RTC, Vicente's motion to dismiss and Rebecca's opposition thereof, with the documentary evidence attached therein: The petitioner lacks a cause of action for declaration of nullity of marriage, a suit which presupposes the existence of a marriage.

To sustain a motion to dismiss for lack of cause of action, the movant must show that the claim for relief does not exist rather than that a claim has been defectively stated or is ambiguous, indefinite, or uncertain.^[50] With the valid foreign divorce secured by Rebecca, there is no more marital tie binding her to Vicente. There is in fine no more marriage to be dissolved or nullified.

The Court to be sure does not lose sight of the legal obligation of Vicente and Rebecca to support the needs of their daughter, Alix. The records do not clearly show how he had discharged his duty, albeit Rebecca alleged that the support given had been insufficient. At any rate, we do note that Alix, having been born on November 27, 1982, reached the majority age on November 27, 2000, or four months before her mother initiated her petition for declaration of nullity. She would now be 26 years old. Hence, the issue of back support, which allegedly had been partly shouldered by Rebecca, is best litigated in a separate civil action for reimbursement. In this way, the actual figure for the support of Alix can be proved as well as the earning capacity of both Vicente and Rebecca. The trial court can thus determine what Vicente owes, if any, considering that support includes provisions until the child concerned shall have finished her education.

Upon the foregoing considerations, the Court no longer need to delve into the issue tendered in G.R. No. 155635, that is, Rebecca's right to support *pendente lite*. As it were, her entitlement to that kind of support hinges on the tenability of her petition under Civil Case No. 01-094 for declaration of nullity of marriage. The dismissal of Civil Case No. 01-094 by the CA veritably removed any legal anchorage for, and effectively mooted, the claim for support *pendente lite*.

WHEREFORE, the petition for certiorari in **G.R. No. 155635** is hereby **DISMISSED** on the ground of mootness, while the petition for review in **G.R. No. 163979** is hereby **DENIED** for lack of merit. Accordingly, the March 25, 2004 Decision and June 4, 2004 Resolution of the CA in CA-G.R. SP No. 68187 are hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Brion, JJ., concur.

[1] *Rollo* (G.R. No. 155635), pp. 3-34.

[2] *Id.* at 36-38. Penned by Associate, now Presiding, Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Mario L. Guariña III.

[3] Id. at 40-41.

[4] *Rollo* (G.R. No. 163979), pp. 10-43.

[5] Id. at 575-583.

[6] Id. at 145.

[7] See Certification of Birth from the Government of Guam issued on June 1, 2000; *rollo* (G.R. No. 155635), p. 213.

[8] *Rollo* (G.R. No. 163979), pp. 146-150.

[9] Id. at 214-217.

[10] *Rollo* (G.R. No. 155635), pp. 151-158.

[11] Id. at 154.

[12] *Rollo* (G.R. No. 163979), pp. 206-212.

[13] Id. at 305-306. Per a motion to withdraw dated November 8, 1996.

[14] Id. at 213. Per Order of Judge Josefina Guevara Salonga dated November 14, 1996.

[15] Id. at 236-237.

[16] Id. at 126-144.

[17] Id. at 156-204.

[18] Id. at 123-124. Penned by Presiding Judge Alberto L. Lerma.

[19] Id. at 338.

[20] Id. at 125. Per Order dated November 20, 2001.

[21] *Rollo* (G.R. No. 155635), pp. 512-590.

[22] Id. at 592-593.

[23] Id. at 38.

[24] Id. at 852-869.

[25] Id. at 850-851.

[26] Supra note 5, at 583.

[27] G.R. No. 137898, December 15, 2000, 348 SCRA 401, 409.

[28] Enumerated in *San Lorenzo Village Association, Inc. v. Court of Appeals*, G.R. No. 116825 March 26, 1998, 288 SCRA 115, 125: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.

[29] *Rollo* (G.R. No. 163979), p. 597.

[30] Id. at 22-23.

[31] *Garcia v. Recio*, G.R. No. 138322, October 2, 2001, 366 SCRA 437, 447.

[32] *Llorente v. Court of Appeals*, G.R. No. 124371, November 23, 2000, 345 SCRA 592, 600.

[33] *Rollo* (G.R. No. 155635), pp. 388-389, issued on January 18, 1995 with expiration date on January 17, 2005.

[34] Supra note 15.

[35] Adopted on April 15, 1999.

[36] *Rollo* (G.R. No. 163979), pp. 268-292.

[37] Id. at 147, 214-215.

[38] Supra note 10.

[39] Supra note 31.

[40] *Van Dorn v. Romillo, Jr.*, No. L-68470, October 8, 1985, 139 SCRA 139, 143.

[41] G.R. No. 142820, June 20, 2003, 404 SCRA 495, 502-503.

[42] Id. at 501-502.

[43] *Rollo* (G.R. No. 163979), pp. 148, 216.

[44] *Van Dorn*, supra note 40, at 144.

[45] G.R. No. 154380, October 5, 2005, 472 SCRA 114, 122.

[46] *Rollo* (G.R. No. 155635), p. 154.

[47] *Rollo* (G.R. No. 163979), p. 215.

[48] *Van Dorn*, supra note 44.

[49] G.R. No. 165500, August 30, 2006, 500 SCRA 242, 251-252; citations omitted.

[50] *Azur v. Provincial Board*, No. L-22333, February 27, 1969, 27 SCRA 50, 57-58.



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