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SUPREME COURT OF THE UNITED STATES

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REPUBLIC OF PHILIPPINES ET AL. *v.* PIMENTEL,
TEMPORARY ADMINISTRATOR OF ESTATE OF
PIMENTEL, DECEASED, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 06–1204. Argued March 17, 2008—Decided June 12, 2008

A class action by and for human rights victims (Pimentel class) of Ferdinand Marcos, while he was President of the Republic of the Philippines (Republic), led to a nearly \$2 billion judgment in a United States District Court. The Pimentel class then sought to attach the assets of Arelma, S. A. (Arelma), a company incorporated by Marcos, held by a New York broker (Merrill Lynch). The Republic and a Philippine commission (Commission) established to recover property wrongfully taken by Marcos are also attempting to recover this and other Marcos property. The Philippine National Banc (PNB) holds some of the disputed assets in escrow, awaiting the outcome of pending litigation in the Sandiganbayan, a Philippine court determining whether Marcos' property should be forfeited to the Republic. Facing claims from various Marcos creditors, including the Pimentel class, Merrill Lynch filed this interpleader action under 28 U. S. C. §1335, naming, among the defendants, the Republic, the Commission, Arelma, PNB (all petitioners here), and the Pimentel class (respondents here). The Republic and the Commission asserted sovereign immunity under the Foreign Sovereign Immunities Act of 1976, and moved to dismiss pursuant to Federal Rule of Civil Procedure 19(b), arguing that the action could not proceed without them. Arelma and PNB also sought a Rule 19(b) dismissal. The District Court refused, but the Ninth Circuit reversed, holding that the Republic and the Commission are entitled to sovereign immunity and are required parties under Rule 19(a), and it entered a stay pending the Sandiganbayan litigation's outcome. Finding that that litigation could not determine entitlement to Arelma's assets, the District Court vacated

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the stay and ultimately awarded the assets to the Pimentel class. The Ninth Circuit affirmed, holding that dismissal was not warranted under Rule 19(b) because, though the Republic and the Commission were required parties, their claim had so little likelihood of success on the merits that the action could proceed without them. The court found it unnecessary to consider whether prejudice to those entities might be lessened by a judgment or interim decree in the interpleader action, found the entities' failure to obtain a judgment in the Sandiganbayan an equitable consideration counseling against dismissing the interpleader suit, and found that allowing the interpleader case to proceed would serve the Pimentel class' interests.

Held:

1. Because Arelma and PNB also seek review of the Ninth Circuit's decision, this Court need not rule on the question whether the Republic and the Commission, having been dismissed from the suit, had the right to seek review of the decision that the suit could proceed in their absence. As a general matter any party may move to dismiss an action under Rule 19(b). Arelma and PNB have not lost standing to have the judgment vacated in its entirety on procedural grounds simply because they did not appeal, or petition for certiorari on, the underlying merits ruling denying them the interpleaded assets. Pp. 7–9.

2. Rule 19 requires dismissal of the interpleader action. Pp. 9–20.

(a) Under Rule 19(a), nonjoinder even of a required person does not always result in dismissal. When joinder is not feasible, the question whether an action should proceed turns on nonexclusive considerations in Rule 19(b), which asks whether “in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” The joinder issue can be complex, and the case-specific determinations involve multiple factors, some “substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests,” *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U. S. 102, 119. Pp. 9–10.

(b) Here, Rule 19(a)'s application is not contested: The Republic and the Commission are required entities. And this Court need not decide the proper standard of review for Rule 19(b) decisions, because the Ninth Circuit's errors of law require reversal. Pp. 10–19.

(1) The first factor directs the court to consider, in determining whether the action may proceed, the prejudice to absent entities and present parties in the event judgment is rendered without joinder. Rule 19(b)(1). The Ninth Circuit gave insufficient weight to the sovereign status of the Republic and the Commission in considering whether they would be prejudiced if the case proceeded. Giving full effect to sovereign immunity promotes the comity and dignity inter-

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ests that contributed to the development of the immunity doctrine. See, e.g., *Verlinden B. V. v. Central Bank of Nigeria*, 461 U. S. 480, 486. These interests are concrete here. The entities' claims arise from historically and politically significant events for the Republic and its people, and the entities have a unique interest in resolving matters related to Arelma's assets. A foreign state has a comity interest in using its courts for a dispute if it has a right to do so. Its dignity is not enhanced if other nations bypass its courts without right or good cause. A more specific affront could result if property the Republic and the Commission claim is seized by a foreign court decree. This Court has not considered the precise question presented, but authorities involving the intersection of joinder and the United States' governmental immunity, see, e.g., *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371, 373–375, instruct that where sovereign immunity is asserted, and the sovereign's claims are not frivolous, dismissal must be ordered where there is a potential for injury to the absent sovereign's interests. The claims of the Republic and the Commission were not frivolous, and the Ninth Circuit thus erred in ruling on their merits. The privilege of sovereign immunity from suit is much diminished if an important and consequential ruling affecting the sovereign's substantial interest is determined, or at least assumed, by a federal court in its absence and over its objection. The Pimentel class' interest in recovering its damages is not discounted, but important comity concerns are implicated by assertion of foreign sovereign immunity. The error is not that the courts below gave too much weight to the Pimentel class' interests, but that they did not accord proper weight to the compelling sovereign immunity claim. Pp. 11–16.

(2) The second factor is the extent to which any prejudice could be lessened or avoided by relief or measures alternative to dismissal, Rule 19(b)(2), but no alternative remedies or forms of relief have been proposed or appear to be available. As to the third factor—whether a judgment rendered without the absent party would be adequate, Rule 19(b)(3)—“adequacy” refers not to satisfaction of the Pimentel class' claims, but to the “public stake in settling disputes by wholes, whenever possible,” *Provident Bank*, *supra*, at 111. Going forward with the action in the absence of the Republic and the Commission would not further this public interest because they could not be bound by a judgment to which they were not parties. As to the fourth factor—whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder, Rule 19(b)(4)—the Ninth Circuit made much of the tort victims' lack of an alternative forum. But Merrill Lynch, not the Pimentel class, is the plaintiff as the stakeholder in the interpleader action. See 28 U. S. C. §1335(a). The Pimentel

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class' interests are not irrelevant to Rule 19(b)'s equitable balance, but the Rule's other provisions are the relevant ones to consult. A dismissal on the ground of nonjoinder will not provide Merrill Lynch with a judgment determining entitlement to the assets so it could be done with the matter, but it likely would give Merrill Lynch an effective defense against piecemeal litigation by various claimants and inconsistent, conflicting judgments. Any prejudice to Merrill Lynch is outweighed by prejudice to the absent entities invoking sovereign immunity. In the usual course, the Ninth Circuit's failure to give sufficient weight to the likely prejudice to the Republic and the Commission would warrant reversal and remand for further determinations, but here, that error plus this Court's analysis under Rule 19(b)'s additional provisions require the action's dismissal. Pp. 17–20.

464 F. 3d 885, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined, in which SOUTER, J., joined as to all but Parts IV–B and V, and in which STEVENS, J., joined as to Part II. STEVENS, J., and SOUTER, J., filed opinions concurring in part and dissenting in part.