

FIRST DIVISION

[G.R. No. 243604. July 03, 2023]

BLOOMBERRY RESORTS AND HOTELS, INC., PETITIONER, VS. JOSEDELIO ELIZ MENESES ASISTIO AND ANTHONY NOVENO CLAVITO, RESPONDENTS.

DECISION

HERNANDO, J.:^[]**

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court which challenges two separate resolutions (collectively assailed resolutions) of the Court of Appeals (CA) in CA-G.R. SP No. 152867 on the ground that the appellate court erred in resolving a jurisdictional issue.

The first assailed Resolution^[2] dated July 13, 2018 dismissed the Petition for *Certiorari*^[3] (Petition for *Certiorari* or *Certiorari* Case) under Rule 65 of the Rules of Court filed by petitioner Bloomberry Resorts and Hotels, Inc. (petitioner) as against respondent Anthony Noveno Clavito (respondent Clavito) only. On the other hand, the second assailed Resolution^[4] dated November 28, 2018 denied the motion for reconsideration of petitioner.

Factual Antecedents

Petitioner is a corporation duly organized and existing under Philippine laws and operates Solaire Resort and Casino (Solaire).^[5] Solaire is an integrated destination casino resort located within the Entertainment City project of the Philippine Amusement Gaming Corporation at Parañaque City.^[6]

The case at bar stems from a Petition for *Certiorari*^[7] filed by petitioner against the trial court judge, Judge Brigido Artemon M. Luna III (Judge Luna III). In the *Certiorari* Case, petitioner alleged that Judge Luna III committed grave abuse of discretion amounting to lack or excess of jurisdiction when petitioner was deprived of the right to due process in connection with an Estafa Case (Estafa Case).^[8]

The records of the Estafa case reveal that petitioner filed a criminal action against respondent Josedelio Eliz A.M. Asistio (respondent Asistio), a dealer and employee, and

respondent Clavito, a guest and patron (collectively respondents) before the Regional Trial Court (RTC) of Parañaque City on February 14, 2016.^[9] Respondents were charged with Estafa under Article 315, paragraph 3 (b) of the Revised Penal Code for engaging in “past-posting” or “late-betting.”^[10]

“Past-posting” is a scheme whereby a player, in connivance with the casino dealer, places his or her bet at a time when the result of a certain game is already known, thereby ensuring success in the said gambling game.^[11] Thus, according to petitioner and the surveillance it had conducted, respondents fraudulently conspired and confederated into asporting winning bets from a baccarat game in Solaire by making it appear that respondent Clavito won, when in fact the deal was a “post-paid” scheme.^[12] This scheme allegedly resulted to petitioner’s damage and prejudice in the amount of P220,000.00.^[13]

The accusatory portion of the Information^[14] dated January 22, 2016 reads:

That on or about the 6th day of September 2015, in the City of Para[ñ]aque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [respondent Asistio], being then the dealer/employee of [petitioner], conspiring and confederating together with [respondent Clavito], who was then the guest/patron, and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously defraud **[PETITIONER]**, herein represented by **GERARDO R. PALERMO**, by resorting to some fraudulent practice to insure success in a gambling game of Baccarat, by surreptitiously placing bets on the winning results after the same were declared as such, and were made known to them, whereby [respondent Clavito] was able to win [P]220,000.00, but [respondents] once in possession, misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of **[PETITIONER]**, in the aforementioned amount of [P]220,000.00.

CONTRARY TO LAW.^[15]

According to petitioner, respondent Asistio remains at large to this day.^[16]

On the other hand, respondent Clavito was arrested^[17] but posted bail for his provisional liberty on March 4, 2016.^[18] During his arraignment, respondent Clavito pleaded not guilty

to the charge.^[19]

On May 2, 2016, pre-trial was terminated.^[20] On June 1, 2016, the Security Specialist Investigator of petitioner was presented as a witness for the prosecution.^[21]

Meanwhile, during the pendency of the Estafa Case, respondent Clavito jumped bail.^[22] His counsel conformably filed a Motion to Withdraw as Counsel for the Accused^[23] dated August 18, 2016, which stated that counsel could no longer contact respondent Clavito nor locate his whereabouts.^[24]

This prompted the RTC to issue an Order^[25] dated September 21, 2016 directing the issuance of a warrant of arrest against respondent Clavito. It also resulted in the confiscation of the cash bond posted by respondent Clavito in favor of the State.^[26]

From January 2017 to July 2017, the prosecution presented and offered its evidence.^[27]

Ruling of the Regional Trial Court

On July 19, 2017, the Order^[28] of the trial court was promulgated. The dispositive portion of the Order reads:

WHEREFORE, this Court finds the prosecution failed to prove the guilt of accused **[RESPONDENT CLAVITO]**, aforementioned accused is **ACQUITTED** of the crime charged in Criminal Case No. **2016-0232**.

SO ORDERED.^[29]

The trial court found that the prosecution failed to prove by proof beyond reasonable doubt all the elements of Estafa.^[30] The RTC did not give credence to the testimony of the lone prosecution witness.^[31] To the trial court, the deficiency of prosecution evidence is heightened by the “utter absence of any evidence to prove the card game undertaken by [respondent Clavito], and the consequential taking of money as unlawfully [asported] by means of deceptive means.”^[32]

Aggrieved, petitioner filed its Petition for *Certiorari*^[33] under Rule 65 of the Rules of Court assailing the Order of the RTC to the appellate court.^[34] In the Petition for *Certiorari*, petitioner alleged that Judge Luna III committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Decision.^[35]

Ruling of the Court of Appeals

On October 24, 2017, the appellate court issued a minute Resolution^[36] that states:

Without necessarily giving due course to the present petition, the Court RESOLVES to DIRECT private respondents, to file their comment thereon (not a motion to dismiss), within ten (10) days from notice. Petitioner is given five (5) days from receipt of the required comment to file a reply thereto.

x x x x^[37]

On February 22, 2018, another Resolution^[38] was issued by the appellate court that reads:

The unserved copy of the October 24, 2017 minute resolution which was caused to be furnished [respondent Clavito) at his address provided by petitioner in his petition which is Phase 5-A B18 L21, Package 1, Bagong Silang, 1400 Caloocan City, with postal notation "RTSender - Moved Out", is likewise NOTED. Thus, within ten (10) days from notice hereof, the petitioner is DIRECTED to FURNISH this Court the current complete and correct address of [respondent Clavito] where court process may be sent.

x x x x^[39] (Emphases removed)

In conformity with the directive of the appellate court, petitioner filed its Compliance^[40] dated March 12, 2018 and manifested that the last known address of respondent Clavito is Phase 5-A, Package 1, Blk 18, Lot 21, Bagong Silang, Caloocan City.^[41] Petitioner further manifested that respondent Clavito previously jumped bail and that his counsel withdrew from the Estafa case.^[42]

On July 13, 2018, the appellate court issued the first assailed Resolution^[43] stating that since the minute Resolution dated October 24, 2017 remained unserved, then the CA failed to acquire jurisdiction over the person of respondent Clavito.^[44] Consequently, the case was dismissed as against respondent Clavito only, but directed the remaining parties to submit their memoranda.^[45]

The salient portion of the first assailed Resolution states:

Records show that efforts have been duly made to serve a copy of this Court's October 24, 2017^[7] resolution to [respondent Clavito] which, however, failed. Consequently this Court failed to acquire jurisdiction over his person.

Thus, the instant case should be ordered dismissed as against [respondent Clavito].

x x x x^[46]

Petitioner moved for reconsideration of the first assailed Resolution.^[47] However, the same was denied in the second assailed Resolution^[48] dated November 28, 2018.^[49]

The salient portions of the second assailed Resolution read:

Considering that no valid service of the October 24, 2017, Resolution was made upon [respondent Clavito], this Court did not acquire jurisdiction over his person pursuant to Section 4, Rule 46 of the Revised Rules of Court. Hence, the July 13, 2018, Resolution dismissing the case as to [respondent Clavito] stands.

On the other hand, the Memorandum filed by petitioner on August 23, 2018 is NOTED. The instant petition for *certiorari* is now deemed submitted for decision.

SO ORDERED.^[50]

Petitioner filed its Memorandum (*Ad Cautelam*)^[51] dated August 23, 2018.

In the second assailed Resolution, the appellate court deemed the *Certiorari* Case submitted for decision.^[52] However, a judicious review of the voluminous records reveals that the decision of the CA on the *Certiorari* Case is nowhere to be found.

Instead, petitioner filed the present Petition^[53] before Us.

On November 18, 2020, this Court issued a Resolution^[54] resolving to, among others, exclude Judge Luna III, in his capacity as the Presiding Judge of the RTC, Branch 196, Parañaque City, as respondent in the case pursuant to Section 4(a), Rule 45 of the 1997 Rules of Civil Procedure, as amended.^[55]

On March 7, 2022, this Court likewise issued a Resolution.^[56] In this Resolution, We noted the returned and unserved copy of the Resolution dated November 18, 2020 sent to respondent Clavito at Phase 5-A, Package I, Blk. 18, Lot 21, Bagong Silang, Caloocan City with notation, “RTS, Deceased,” and dispensed with the service of the aforesaid resolution to respondent Clavito.^[57]

In the same Resolution^[58] dated March 7, 2022, the parties were required to manifest within 15 days from notice, whether they are willing to submit this matter for resolution on the basis of the pleadings filed.^[59]

Accordingly, petitioner filed its Manifestation^[60] dated April 20, 2022 stating its intention to submit a memorandum.^[61]

On January 16, 2023, this Court issued a Resolution^[62] noting petitioner’s Manifestation.

The records show that petitioner has not filed a Memorandum with covering motion for leave to file and admit the same. Thus, petitioner has not elaborated further on the relevant issues of the instant case.

Nevertheless, We proceed to resolve the case at bar.

Issue

The sole issue is whether the appellate court correctly dismissed the Petition on *Certiorari* on the ground of lack of jurisdiction over the person of respondent Clavito.

Our Ruling

We deny the Petition and affirm the assailed Resolutions of the appellate court. The CA correctly dismissed the Petition on *Certiorari* on the ground of lack of jurisdiction over the person of respondent Clavito.

Jurisdiction is the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies.^[63] Through the Judiciary Reorganization Act,^[64] the CA was conferred original jurisdiction over *certiorari* cases.^[65]

Thus, relevant sections of Rule 46 of the 1997 Rules of Civil Procedure^[66] as amended, state:

Section 2. *To what actions applicable.* – This Rule shall apply to original actions for *certiorari*, prohibition, *mandamus* and *quo warranto*.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for *certiorari*, prohibition, and *mandamus* by Rule 65, and for *quo warranto* by Rule 66.

x x x x

Section 4. *Jurisdiction over person of respondent, how acquired.* – The court shall acquire jurisdiction over the person of the respondent by the service on him [or her] of its order or resolution indicating its initial action on the petition or by his [or her] voluntary submission to such jurisdiction.

Section 5. *Action by the court.* – The court may dismiss the petition outright with specific reasons for such dismissal or require the respondent to file a comment on the same within ten (10) days from notice. Only pleadings required by the court shall be allowed. All other pleadings and papers may be filed only with leave of court.

x x x x

Section 7. *Effect of failure to file comment.* – When no comment is filed by any of the respondents, the case may be decided on the basis of the record, without prejudice to any disciplinary action which the court may take against the disobedient party.

In the case of *Guy v. Court of Appeals*,^[67] this Court explained that the CA acquires jurisdiction over the person of the respondent through service of its order or resolution or through the respondent's voluntary submission. The appellate court also has the prerogative to dismiss the case outright when jurisdiction over the person of respondent is not acquired. Accordingly:

It is thus clear that in cases covered by Rule 46, the Court of Appeals acquires jurisdiction over the persons of the respondents by the service upon them of its order or resolution indicating its initial action on the petitions or by their voluntary submission to such jurisdiction. **The reason for this is that, aside**

from the fact that no summons or other coercive process is served on respondents, their response to the petitions will depend on the initial action of the court thereon. Under Section 5, the court may dismiss the petitions outright, hence, **no reaction is expected from respondents and under the policy adopted by Rule 46, they are not deemed to have been brought within the court's jurisdiction until after service on them of the dismissal order or resolution.**^[68] (Emphases supplied, citations omitted)

Furthermore, Rule 46, Sec. 7 of the Rules of Court is clear that when no comment is filed by any of the respondents, then the appellate court may decide the case on the basis of the record.

Applying the foregoing to the case at bar, the CA correctly ruled that it never acquired jurisdiction over the person of respondent Clavito because its minute Resolution dated October 24, 2017 was returned and remained unserved.

Moreover, We have consistently held that “when a party was afforded an opportunity to participate in the proceedings but failed to do so, he [or she] cannot complain of deprivation of due process for by such failure, he [or she] is deemed to have waived or forfeited his [or her] right to be heard without violating the constitutional guarantee.”^[69]

Thus, the assailed Resolutions of the appellate court correctly dismissed the case as against respondent Clavito without violating petitioner's right to due process.

Furthermore, this Court already dispensed with the service of its own resolutions^[70] because respondent Clavito is deceased and its own resolutions were returned and remained unserved.^[71]

WHEREFORE, the petition is **DENIED**. The Resolutions dated July 13, 2018 and November 28, 2018, of the Court of Appeals in CA-G.R. SP No. 152867 are **AFFIRMED IN TOTO**.

SO ORDERED.

Zalameda, Rosario, and Marquez, JJ., concur.

Gesmundo, C.J., on official leave.

* On official leave.

^{**} Per Special Order No. 2998 dated July 3, 2023.

^[1] *Rollo*, pp. 16-40.

^[2] *Id.* at 42-43. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser.

^[3] *Id.* at 47-90.

^[4] *Id.* at 44-46. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser.

^[5] *Id.* at 310.

^[6] *Id.*

^[7] *Id.* at 47-90.

^[8] *Id.* at 48.

^[9] *Id.* at 92.

^[10] *Id.* at 312.

^[11] *Id.*

^[12] *Id.*

^[13] *Id.*

^[14] *Rollo*, pp. 92-93; *CA rollo*, pp. 57-58.

^[15] *Rollo*, pp. 92-93.

^[16] *Id.* at 312.

^[17] *Id.*

^[18] *Id.* at 93.

^[19] *Id.*

^[20] *Id.*

^[21] *Id.* at 313.

^[22] *Id.*

^[23] *Id.* at 306-307.

^[24] *Id.* at 306.

^[25] *Id.* at 308.

^[26] *Id.*

^[27] *Id.* at 95.

^[28] *Rollo*, pp. 92-97; *CA rollo*, pp. 47-53. Penned by Presiding Judge Brigido Artemon M. Luna II.

^[29] *CA rollo*, p. 53.

^[30] *Rollo*, p. 96.

^[31] *Id.*

^[32] *Id.*

^[33] *Id.* at 47-90.

^[34] *Id.* at 48.

^[35] *Id.*

^[36] *Id.* at 266. Signed by Division Clerk of Court Atty. Celedona M. Ogsimer.

^[37] *Id.*

^[38] *Id.* at 267-268. Signed by Division Clerk of Court Yola Dee G. De La Cruz Martinez.

^[39] *Id.* at 267.

^[40] *Id.* at 269-271.

^[41] *Id.* at 269.

^[42] *Id.*

^[43] *Id.* at 42-43. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser.

^[44] *Id.* at 42.

^[45] *Id.*

^[46] *Id.*

^[47] *Id.* at 44.

^[48] *Id.* at 44-46. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser.

^[49] *Id.* at 45-46.

^[50] *Id.* at 46.

^[51] *Id.* at 309-349.

^[52] *Id.* at 46.

^[53] *Id.* at 16-40.

^[54] *Id.* at. 371.

^[55] *Id.*

^[56] *Id.* at 379-380.

^[57] *Id.* at 379.

^[58] *Id.* at 379-380.

^[59] *Id.* at 379.

^[60] *Id.* at 382-386.

^[61] *Id.* at 382.

^[62] *Id.* at unpaginated.

^[63] **Guy v. Court of Appeals**, 564 Phil. 540, 560 (2007). Citations omitted.

^[64] Entitled “AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES [THE JUDICIARY REORGANIZATION ACT OF 1980] (1980)”. Approved: August 14, 1981.

^[65] See Sec. 9, par. 1 of Batas Pambansa Blg.129 which states:

Section 9. Jurisdiction. – The [Court of Appeals] shall Exercise:

1. Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

x x x x

[66] RULES OF COURT (1997).

^[67] *Id.* at 561.

^[68] *Id.* at 561. Citations omitted.

^[69] *Id.* at 562. Citations omitted.

^[70] *Rollo*, pp. 379-380.

^[71] *Id.* at 379.

Date created: November 06, 2023