

MAYTAN ESTATE COMPANY REPRESENTED BY CORNELIO G. DE GUZMAN, PETITIONER, VS. REGIONAL TRIAL COURT OF PASIG CITY[], BRANCH 266 AND FERDINAND P. LOPEZ, RESPONDENTS.

Ponente: GARCIA, R.R., J.

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GARCIA, R.R., J.:

Before Us is a Petition for Certiorari and Mandamus[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Order[2] dated July 12, 2013, of the Regional Trial Court, Branch 266, Pasig City in Civil Case No. 73770-TG which denied petitioner Maytan Estate Company's motion for the dismissal of the complaint on the ground of lack of jurisdiction.

THE FACTS

The instant case stemmed from a Complaint[3] for Judicial Confirmation of Rescission of Contract, Accounting and Damages with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction filed by Ferdinand Lopez against Spouses Bonifacio and Gliceria Regalado. It was alleged that Lopez purchased four (4) parcels of land with an aggregate area of 8,046 square meters situated at Cubao, Quezon City from spouses Regalado through separate Deeds of Sale dated September 30, 1997[4], October 1, 1997[5] and October 3, 1997[6], respectively.

Thereafter, a Contract of Lease[7] dated March 25, 1998 was executed by the parties where it was agreed that spouses Regalado would lease the property for a period of sixteen (16) years for a monthly rental of P150,000.00. It was also provided that spouses Regalado would pay the real estate taxes thereon for the duration of the contract. It was further stipulated that the certificates of title to the property will remain in the names of spouses Regalado and that they will not mortgage or sell the same.

Sometime in December 2012, Lopez discovered that his property was sold by the local government of Quezon City to Quintessence Realty Corporation, represented by Cornelio de Guzman, in a public auction held on July 2, 2009 due to non-payment of real estate taxes from 1996-2009 in the total amount of P4,859,668.36.

Later, upon verification of the status of the property with the Office of the City Treasurer of Quezon City, Lopez found out that the property has already been redeemed by spouses Regalado on March 26, 2010, as shown by the four (4) separate Certificates of Redemption[8] all dated August 27, 2010.

On January 17, 2013, Lopez, through counsel, sent a letter[9] terminating the contract of lease with spouses Regalado and demanding the surrender of the transfer certificates of title of the property but to no avail. Consequently, Lopez executed a Special Power of Attorney[10] in favor of Marlon Martija, authorizing the latter to file a complaint against spouses Regalado on his behalf.

Hence, the instant complaint for rescission of contract, accounting and damages which prayed that: (a) the Contract of Lease dated March 25, 1998 be rescinded; (b) spouses Regalado be ordered to surrender the transfer certificates of title covering the property in his favor and to render an accounting of the monthly income of the

property; (c) the issuance of a temporary restraining order against spouses Regalado and/or other persons claiming rights under them; and (d) payment of moral and exemplary damages and attorney's fees of P200,000.00 each.

Gliceria Regalado, through counsel, filed a Motion to Dismiss[11] dated February 5, 2013 on the ground that the court a quo has no jurisdiction over the person of Bonifacio Regalado who died on April 17, 2009 as shown in his death certificate.

Meanwhile, on March 4, 2013, petitioner Maytan Estate Company filed its Motion to Intervene[12] attaching thereto an Answer-in-Intervention[13] alleging that it has ownership and possessory claims over the property. In a Contract of Lease[14] dated November 7, 2003, spouses Regalado leased the property to petitioner for a period of twenty-five (25) years until November 30, 2028. Almost three (3) years thereafter, spouses Regalado sold the property to petitioner for and in consideration of the amount of P10,000,000.00 through a Deed of Absolute Sale[15] dated August 18, 2006.

In an Order[16] dated June 20, 2013, the court a quo denied the Motion to Dismiss filed by spouses Regalado while it admitted the Answer-in-Intervention filed by petitioner. Lopez' application for a temporary restraining order was also granted thereby enjoining spouses Regalado and any of their heirs, assigns and those claiming rights under them from disposing the property. However, the issuance of the temporary restraining order was conditioned upon Lopez' posting of a bond in the amount of P500,000.00. The dispositive portion of the said Order is quoted:

WHEREFORE, the motion to dismiss of the defendants is hereby DENIED for lack of merit. The Motion to Intervene of Maytan Estate Company is GRANTED and its Answer-in-Intervention is ADMITTED. Further, the application for a temporary restraining order of plaintiff is GRANTED. The defendants and any of their heirs, assigns, agents, and those claiming rights under them are enjoined from disposing the subject properties, conditioned upon plaintiff's posting of a security in the form of a bond in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS, to answer for any damage that may be caused to the defendants and their privies by reason of the restraining order.

xxx

SO ORDERED.[17]

Petitioner filed a Motion for Preliminary Hearing on Affirmative Defenses[18] alleging that the suit is a real action, thus, the proper filing fees must be paid before the court can acquire jurisdiction. Also, the complaint was defective because the verification and certification against forum shopping was signed by Atty. Marlon Martija for himself and not as attorney-in-fact of Lopez, the real plaintiff.

In an Order[19] dated July 12, 2013, the court a quo denied petitioner's prayer for the dismissal of the action on the ground of lack of jurisdiction ratiocinating that the suit is a personal action since its primary objective is the rescission of the contract of lease. As a result, jurisdiction was properly laid within the competence of the court a quo. Further, Lopez failed to repudiate the alleged unauthorized act of his agent and even insisted that the act of Atty. Martija in signing the Verification and Certification against Forum Shopping was necessary to carry out the purpose of the agency. The pertinent portions of the said Order are quoted:

After a judicious scrutiny of the records and the arguments of intervenor and plaintiff, this Court is disinclined to yield to the prayer of the intervenor for the dismissal of this case.

A careful perusal of the Amended Complaint of plaintiff shows that his primary objective is for rescission of the lease contract. Thus, his case is a personal action, the jurisdiction and venue of which was properly laid within the competence of this Court. There is, thus, no basis to dismiss this case for failure to pay the correct docket fee for what intervenor mistakenly insisted to be a real action.

Moreover, while it is true that the non-compliance with or a defect in a certificate of non-forum shopping and verification is not curable by their subsequent submission or correction, the rule admits exceptions. There is a need to relax said Rule on the ground of “substantial compliance” or presence of “special circumstances or compelling reasons”. xxx

In the case at bar, the Special Power of Attorney executed by plaintiff Lopez as principal authorized Martija to act on his behalf by filing and submitting pleadings and documents in relation to the Complaint for Ejectment, Accounting and Damages against Spouses Bonifacio Castillo Regalado before the Metropolitan Trial Court of Quezon City xxx”. While it clearly shows that Martija's authority is limited to filing a complaint for ejectment, accounting and damages before the Metropolitan Trial Court of Quezon City, plaintiff Lopez had acquiesced and ratified Martija's act of filing the instant case for rescission of contract, accounting and damages before the Regional Trial Court as shown by his failure to repudiate the alleged unauthorized act of his agent, and by the fact that in his Comment/Opposition, he insisted that his agent's act of filing this case and signing the Verification and Certification Against Forum Shopping was conducive to the accomplishment of the purpose of the agency and was performed in a manner more advantageous to [the] him as principal. A relaxation of the rules is warranted as it appears that there was “substantial compliance” with the requirements of verification and certification against forum shopping.

WHEREFORE, the prayer for the dismissal of the case by intervenor Maytan Estate Company for lack of jurisdiction and defect of the Amended Complaint is DENIED for lack or merit .

SO ORDERED.[20]

Hence, the instant petition for certiorari, raising the following assignment of errors[21], to wit:

I.

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION WHEN IT DENIED THE MOTION TO DISMISS FILED BY DEFENDANT REGALADO ON THE GROUND OF LACK OF JURISDICTION OVER THE DECEASED DEFENDANT BONIFACIO REGALADO WHO HAS NO MORE CIVIL PERSONALITY TO SPEAK OF.

II.

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION WHEN IT REFUSED TO DISMISS THE AMENDED COMPLAINT WHEN THE SAME CLEARLY APPEARS TO HAVE BEEN FILED WITHOUT OR IN EXCESS OF THE WRITTEN AUTHORITY (SPA) AND THE ATTORNEY-IN-FACT HAS NO AUTHORITY TO EXECUTE A CERTIFICATE AGAINST FORUM SHOPPING.

THE ISSUE

The pivotal issue to be resolved is whether or not the court a quo committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion to dismiss filed by defendants spouses Regalado and in admitting the complaint filed by Lopez despite the alleged defective certification of non-forum shopping.

THE RULING

At the outset, it must be pointed out that the assailed orders of the court a quo, namely: the Order dated June 20, 2013 denying the motion to dismiss filed by respondent Gliceria Regalado and the Order dated July 12, 2013 denying petitioner's prayer for the dismissal of the complaint, are but resolutions on incidental matters which do not touch on the merits of the case or put an end to the proceedings. They are in the nature of interlocutory orders

since there leave something else to be done by the court a quo with respect to the merits of the case.

Ordinarily, the remedy against an interlocutory order is not to resort forthwith to certiorari, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. The special civil action of certiorari under Rule 65 may exceptionally be allowed as an appropriate remedy to assail an interlocutory order when (1) the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion, and (2) the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.[22] No such special circumstances are present in the instant case.

Even assuming that certiorari is the proper remedy, the court a quo did not commit grave abuse of discretion in issuing the Order dated June 20, 2013 and the Order dated July 12, 2013.

Petitioner contends that the complaint should have been dismissed on the ground of lack of jurisdiction over the person of Bonifacio Regalado, one of the impleaded defendants, considering that he was already dead more than four (4) years before the instant complaint was filed against him.

We do not agree.

Jurisdiction over a party is acquired by service of summons by the sheriff, his deputy or other proper court officer, either personally by handing a copy thereof to the defendant or by substituted service or by extra-territorial service thereof or by his voluntary personal appearance before the court or through counsel. On the other hand, summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court may acquire jurisdiction over his person.[23]

The issue of whether the complaint is dismissible on account of the death of one of the defendants even before the the complaint was filed has been resolved in the case of Sarsaba vs. Vda. De Te[24]. In that case, a complaint for recovery of motor vehicle and damages was filed against Sarsaba, Sereno, and the NLRC sheriff by the owner of the truck. Sarsaba filed a motion to dismiss on the ground of lack of jurisdiction over the person of Sereno since he was already dead when the complaint was filed. The Supreme Court ruled that failure to serve summons upon a deceased person will not be a cause for the dismissal of the complaint against the other defendants, considering that the latter have been served with copies of the summons and complaint. Further, the defense of lack of jurisdiction over the defendant is personal to the person claiming it. Sarsaba cannot invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. We quote:

In the case before Us, petitioner raises the issue of lack of jurisdiction over the person of Sereno, not in his Motion to Dismiss or in his Answer but only in his Omnibus Motion to Dismiss. Having failed to invoke this ground at the proper time, that is, in a motion to dismiss, petitioner cannot raise it now for the first time on appeal.

In fine, We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. The court's failure to acquire jurisdiction over one's person is a defense which is personal to the person claiming it. Obviously, it is now impossible for Sereno to invoke the same in view of his death. Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants in the complaint were given the chance to raise all possible defenses and objections personal to them in their respective motions to dismiss and their subsequent answers.

We agree with the RTC in its Order when it resolved the issue in this wise:

As correctly pointed by defendants, the Honorable Court has not acquired jurisdiction over the person of Patricio Sereno since there was indeed no valid service of summons insofar as Patricio Sereno is concerned. Patricio Sereno died before the summons, together with a copy of the complaint and its annexes, could be served upon him.

However, the failure to effect service of summons unto Patricio Sereno, one of the defendants herein does not render the action DISMISSIBLE, considering that the three (3) other defendants, namely, Atty. Rogelio E. Sarsaba, Fulgencio Lavares and the NLRC, were validly served with summons and the case with respect to the answering defendants may still proceed independently. xxx (emphasis supplied)

Similarly, in the recent case of *Boston Equity Resources, Inc. vs. Court of Appeals and Lolita Toledo*[25], a complaint for sum of money was filed by petitioner Boston against spouses Manuel Lolita Toledo. In an answer filed by respondent Lolita, it was alleged that her husband, Manuel Toledo, was already dead. Consequently, the heirs of Manuel was substituted as party-defendants. Later, a motion to dismiss was filed by respondent Lolita on the ground that the trial court did not acquire jurisdiction over the person of Manuel. It was also prayed that the complaint against Lolita be also dismissed. The Court reiterated the ruling in *Sarsaba*, that failure to acquire jurisdiction over the person of one of the defendants in view of his death does not render the case dismissible as to all the defendants. Consequently, only the case against Manuel should be dismissed. Further, the substitution of heirs was held not proper since the rules on substitution under Section 16, Rule of the Rules of Court applies only when the party to be substituted dies during the pendency of the case. We quote:

In the case at bar, the trial court did not acquire jurisdiction over the person of Manuel since there was no valid service of summons upon him, precisely because he was already dead even before the complaint against him and his wife was filed in the trial court. The issues presented in this case are similar to those in the case of *Sarsaba v. Vda. de Te*.

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xxx The petitioner in the *Sarsaba* Case claimed, as did respondent herein, that since one of the defendants died before summons was served on him, the trial court should have dismissed the complaint against all the defendants and the claim should be filed against the estate of the deceased defendant. The petitioner in *Sarsaba*, therefore, prayed that the complaint be dismissed, not only against Sereno, but as to all the defendants, considering that the RTC did not acquire jurisdiction over the person of Sereno. This is exactly the same prayer made by respondent herein in her motion to dismiss.

The Court, in the *Sarsaba* Case, resolved the issue in this wise:

. . . We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. The court's failure to acquire jurisdiction over one's person is a defense which is personal to the person claiming it. Obviously, it is now impossible for Sereno to invoke the same in view of his death. Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. xxx

XXX

Based on the foregoing pronouncements, there is no basis for dismissing the complaint against respondent herein. xxx.

xxx

Since the proper course of action against the wrongful inclusion of Manuel as party-defendant is the dismissal of the case as against him, thus did the trial court err when it ordered the substitution of Manuel by his heirs. Substitution is proper only where the party to be substituted died during the pendency of the case, as expressly provided for by Section 16, Rule 3 of the Rules of Court, which states:

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WHEREFORE, the petition is GRANTED. xxx The Regional Trial Court, Branch 24, Manila is hereby DIRECTED to proceed with the trial of Civil Case No. 97-86672 against respondent Lolita G. Toledo only, in accordance with the above pronouncements of the Court, and to decide the case with dispatch. (emphasis supplied)

In the case at bar, the failure to effect service of summons upon the person of Bonifacio Regalado who died on April 17, 2009 or more than four (4) years before the instant complaint was filed did not render the action dismissible as to the surviving spouse, Gliceria Regalado. Hence, the case should proceed against Gliceria Bonifacio. In addition, lack of jurisdiction over the person of the defendant is a defense personal to Bonifacio. However, in view of his death, it has become impossible for him to raise such defense. Being a personal defense, petitioner cannot properly invoke the defense of lack of jurisdiction over the person of the defendant, in behalf of Bonifacio, so as to reap the benefit of having the case dismissed.

Moreover, petitioner's contention that the complaint's verification and certification against non-forum shopping was defective as Martija, the attorney-in-fact, signed the same without such specific authority in the Special Power of Attorney, deserves scant consideration.

A plain reading of the Special Power of Attorney[26] reveals that the authority given to Martija, the attorney-in-fact, consists of two parts, namely: (1) to file a complaint against spouses Regalado, to represent, attend and appear in all scheduled hearings and conferences, preliminary investigation and mediation and (2) to file, sign, receive and submit any and all pleadings, papers, documents and writings necessary in relation to the Complaint for Ejectment, Accounting and Damages against Spouses Bonifacio C. Regalado and Glicerio Castillo Regalado before the Metropolitan Trial Court of Quezon City. The first part pertains to a suit yet to be filed against spouses Regaladio while the second part refers to an already existing ejectment case involving Lopez and spouses Regalado. The SPA is quoted as follows:

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

I, FERDINAND P. LOPEZ, of legal age, single and with residence xxx has named constituted and appointed MARLON R. MARTIJA, of legal age, Filipino, single xxx, to be my true and lawful attorney-in-fact, to do and perform in my name, place and stead the following acts and things, to wit:

To file a Complaint against Spouses Bonifacio C. Regalado and Gliceria Castillo Regalado, represent, attend and appear in all scheduled hearings, conferences, preliminary investigation, mediation and file, sign, receive and submit any and all pleadings, papers, documents and writings necessary in relation to [the] Complaint for Ejectment, Accounting and Damages against Spouses Bonifacio C. Regalado and Glicerio Castillo Regalado before the Metropolitan Trial Court of Quezon City, wherein I am directly involved.

That I hereby give and grant unto said attorney-in-fact full power and authority whatsoever requisite or necessary or proper to be done in and about the premises as fully to all intents or purposes.

While it may be true that the foregoing special power of attorney merely authorized Martija to institute a complaint against spouses Regalado and did not specifically authorized Martija to execute the verification and certification against forum shopping in behalf of Lopez, it stands to reason that the power to institute actions necessarily included the power to execute the verification and certification against forum shopping[27] Without the execution of the verification and certification against forum shopping, the act of filing of a complaint will not be completed.

It must be stressed that the verification requirement is simply intended to secure an assurance that the allegations in the pleading are true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[28] The technical rules of procedure should be used to promote, not frustrate, the cause of justice. While the swift unclogging of court dockets is a laudable aim, the just resolution of cases on their merits, however, cannot be sacrificed merely in order to achieve that objective. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal course.[29]

Based on the foregoing, We find no compelling reason to veer from the assailed orders of the court a quo.

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED.

SO ORDERED.

De Guia-Salvador (Chairperson) and Bueser, JJ., concur.

[*] Regional Trial Court of Taguig City, Branch 266 in all the pleadings submitted by the parties but referred to as Regional Trial Court, Pasig City, Branch 266 in all the Orders issued by the court a quo.

[1] Rollo, pp. 3-16.

[2] Rollo, pp. 24-26.

[3] Rollo, pp. 61-79; Amended Complaint dated February 1, 2013, Rollo, pp. 89-98.

[4] Rollo, pp. 109-110.

[5] Rollo, pp. 119-120.

[6] Rollo, pp. 129-130.

[7] Rollo, pp. 135-137.

[8] Rollo, pp. 138-141.

[9] Rollo, pp. 142-144.

[10] Rollo, pp. 145-146.

[11] Rollo, pp. 53-55.

[12] Rollo, pp. 162-165.

[13] Rollo, pp. 166-172.

[14] Rollo, pp. 174-176.

[15] Rollo, pp. 177-179.

[16] Rollo, pp. 18-23.

[17] Rollo, p. 23.

[18] Rollo, pp. 41-48.

[19] Rollo, pp. 24-26.

[20] Rollo, pp. 25-26.

[21] Rollo, pp. 8-9.

[22] In re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., et al. vs. Bureau of Internal revenue, G.R. No. 158261, December 18, 2006.

[23] Sarsaba vs. Fe Vda. de Te, G.R. No. 175910, July 30, 2009.

[24] G.R. No. 175910, July 30, 2009.

[25] G.R. No. 173046, June 19, 2013.

[26] Rollo, pp. 99-100.

[27] Pilipinas Shell Petroleum Corporation vs. John Bordman Ltd. of Iloilo, Inc., G.R. No. 159831, October 14, 2005.

[28] Elsa Merdado vs. Heirs of the Late Antonio Consing, G.R. No. 186720, February 8, 2012.

[29] Agapito Cruz, et al. vs. Kris Security Systems, Inc, et al., G.R. No. 155875, April 3, 2003.

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