SOLID HOMES, INC., AS ATTORNEY-IN-FACT OF MEDINA FOODS INDUSTRIES, INC., PETITIONER, VS. MANUEL O. SANCHEZ AND FAR EAST BANK (NOW BANK OF THE PHILIPPINE ISLANDS) AND TRUST COMPA...

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

In view of respondents' Comment and Opposition with Prayer to Cite Petitioner and Counsel in Contempt of Court,[1] and apparent apathy of counsel for petitioner to the Resolution of September 30, 2013 and February 10, 2014,[2] an evaluation of the Petition for Review[3] under Rule 43 is now apt.

However, when assayed by formal requisites, the Petition for Review was vulnerable to outright rejection, viz:

1.

Although it appeared that the Petition for Review was filed in the nick of time, so to speak, when juxtaposed with the deadline as specified on the Motion for Extension of Time to File Petition for Review,[4] there was no favorable action thereon which materialized only on February 8, 2013.[5] Necessarily, absent any timely acquiescence to the subject Motion, it was deemed denied when tested by case law:[6]

'It is settled that parties and counsel should not assume that courts are bound to grant the time they pray for. After all, a motion that is not acted upon in due time is deemed denied...' [citation omitted]

2)

Even on the assumption that the Petition for Review was timely filed, We can hardly ignore that petitioner's annexes were deficient on some matters:

2a) there was no certified true copy of the Order dated August 24, 2010 from the HLURB since what was appended was only a photocopy of the alleged Order, unlike Section 6 (c), Rule 43;[7]

2b) Neither was there a certified true copy of the assailed Resolution dated December 28, 2012[8] from the Office of the President in OP Case No. 11-G-245 and there was only what appeared to be an illegible fax, nay, xerox copy of the subject Order;[9]

2c) While Manuel O. Sanchez and Far East Bank (now Bank of the Philippine Islands) and Trust Company and

> Magnus Phoenix Realty Corporation were impleaded as respondents,[10] there was no categorical assertion on the Affidavit of Service that Atty. Dennis A. Angeles was the counsel for all respondents.[11] Verily, from what We gathered from the available paper on file, particularly from the petitioner's Notice of Appeal,[12] Atty. Dennis A. Angeles was the counsel for Magnus Phoenix Realty Corporation as respondent-assignee only. As such, there was no proper foundation for the conclusion that there was proof of service of a copy of the Petition for Review to the other respondents herein.[13]

From the foregoing impediments, it ineluctably follows that the Petition for Review will not wash.

Neither can We entertain respondents' plea to cite counsel for petitioner in contempt of court precisely because both lawyers for the parties did not supply concrete documentation[14] relative to respondents' suggestion of forum shopping vis-à-vis proceedings before other legal fora.[15]

Accordingly, the Petition for Review is hereby DISMISSED[16] and respondents' request to cite counsel for petitioner in contempt is hereby DENIED.

SO ORDERED.

De Leon, (Chairperson) and Cruz, JJ., concur.

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[1]Dated April 30, 2013, Rollo, pp. 52-65

[2] Rollo, pp. 66-67.

[3] Dated February 13, 2013, filed on February 14, 2013, Rollo, pp. 6-20, initially raffled to Justice Dimagiba on January 31, 2013, re-raffled as Initial Caseload on August 13, 2013 to Justice Eduardo B. Peralta, Jr.

[4] Rollo, pp. 3-4.

[5] Resolution dated February 8, 2013 from the Fifth Division, Rollo, page 5.

[6] Orosa vs. Court of Appeals, G.R. No. 118696, September 3, 1996, 330 Phil. 67

[7] Annex A, Rollo, pp. 21-23.

[8] Pp. 1-2, Petition for Review, Rollo, pp. 6-7

[9] Annex F, Rollo, pp. 47-48,Section 6 (c), Rule 43, 1997 Rules of Civil Procedure.

[10] Page 1, Petition for Review, Rollo, page 6.

[11] Rollo, page 18.

[12] Annex B, Dated July 28, 2011, Rollo, pp. 24-25

[13] Section 5, Rule 43.

[14] Section 3, Rule 15, 1997 Rules of Civil Procedure – '... if required by these Rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers.'; cf. Section 7, Rule 133, Revised Rules on Evidence; 1 Feria and Noche, Civil Procedure Annotated, 2013, pp. 471-472.

[15] Pp. 5-7, Petition for Review, Rollo, pp. 10-12, pp. 2-5, Comment and Opposition... , Rollo, pp. 53-56.

[16] Sections 7-8, Rule 43, 1 Regalado, Remedial Law Compendium, 2010, 10th Edition, page 560.

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