

INTESTATE ESTATE OF GEORGE D. REMPERAS, BEATRIZ DOMINGO REMPERAS, FOR THE MINOR GENZEL LEONARD T. REMPERAS, PETITIONER, VS. CHINA BANKING CORPORATION, C.J. FERNANDEZ ENTERPRISES...

Ponente: COSICO, J.

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COSICO, J.:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the Order[1] dated December 18, 2003 of the Regional Trial Court, Branch 30 of Cabanatuan City in Sp. Proc. No. 890 and Sp. Proc No. 937 entitled Intestate Estate of George D. Remperas, Beatriz Domingo Remperas for the Minor Genzel Leonard T. Remperas, Petitioner, and Partition of the Estate of the Late Maria Cecilia Tenorio Remperas, Beatriz Domingo Remperas for the Minor Genzel Leonard T. Remperas, Petitioner, respectively.

The Facts

Herein petitioner Beatriz Domingo Vda. De Remperas (Beatriz) is the administratrix of the estate of the late George D. Remperas (George) and Maria Cecilia (Maricel) Tenorio. Maricel died on January 1, 1997 while George died on July 8, 2001, leaving behind their only child Genzel Leonard T. Remperas (Genzel), a minor.

Among the purported creditors of the estate of decedent George D. Remperas which filed their respective notices of claims with public respondent Regional Trial Court, Branch 30 of Cabanatuan City, were herein private respondents China Banking Corporation[2] (China Bank), C.J. Fernandez Enterprises, Incorporated[3], and Totalfinaelf Philippines Corporation[4]. China Bank averred in its notice of claim that George had previously obtained loan accommodations from China Bank in the principal amount of P3 Million Pesos, secured by a real estate mortgage covering TCT No. T-72178 issued by the Registry of Deeds of Cabanatuan City in the names of George and Ma. Cecilia Remperas. Considering that the loan accommodations were past due, China Bank filed the claim in the event of a deficiency claim after the foreclosure of the real estate mortgage.

Petitioner Beatriz then filed a motion to dismiss China Bank's notice of claim on the grounds of auter action pendant, prescription, lack of verification and lack of certification against forum shopping. The motion to dismiss reads in part –

“AUTER ACTION PENDANT

- THAT, there is another action substantially similar with the case at bar, pending before branch 50, Regional Trial Court of Manila for the annulment of a contract of mortgage, docketed thereat as Civil Case No. 02-104961, which is the purported source of cause of action of the claimant China Banking Corporation. x x x
- THAT, the said case is between the same parties.
- THAT, the said case is determinative of the cause of action of the claimant in this case, being that, if the said contract of mortgage is annulled, the claimant will consequently have no claim at all (Nortcott & Co. vs.

Villa-Abrille, 41 Phil. 462; Arceo vs. Oliveros, et al., L-38251, Jan. 31, 1985).

“PRESCRIPTION

- THAT, since the time that this proceeding was opened for the filing of claim, this alleged claimant did not lift a finger. The Order of the Hon. Court dated January 13, 2003, which was published in a [newspaper] of general circulation is very clear that, claimants must file their claims within six (6) months from the date of the last publication (February 12, 2003) [Sections 2 and 5 of Rule 86 of the Rules of Court].

“Lack of Verification

- THAT, the claim is violative of Section 9 of Rule 86 of the Rules of court. The said rule requires that the claim must be under oath or at least supported with a document that is under oath.

“Lack of Certification of Forum Shopping

- THAT, the claim is indubitably an initiatory pleading, thus, pursuant to section 5 of Rule 7 of the Rules of Court, a certification against non-forum shopping must be attached thereto.”[5]

The Ruling of the Trial Court

On December 18, 2003, the RTC issued the assailed Order⁶ denying petitioner’s motion to dismiss. The RTC held –

“China Bank’s Notices of Claim were filed purposely to inform this court that there is a pending case for Annulment of Mortgage pending before Regional Trial Court of Manila Branch 50 and alleged that most likely when finally judicially foreclosed, the value of the mortgaged property will not be sufficient, resulting in a deficiency claim.

“Under the Rules, all claims for money against a decedent, arising from contract, express or implied, whether the same be due, not due or contingent must be filed against the estate within the time limited in the notice, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice.

“The order requiring publication of the notice was issued on January 13, 2003, hence, the filing of China Bank’s Notices of Claim on October 30, 2003 has not yet prescribed and is still within the 12-month period provided by the Rules.

“Being just Notices of Claim, the Rules on verification and certification of forum shopping applicable to a complaint or any initiatory pleading, [may be] dispensed with.

“Wherefore, China Bank’s Notices of Claim are hereby Acknowledged and given Due Course subject to the outcome of the judicial foreclosure of TCT No. T-72178 issued by the Registry of Deeds for Cabanatuan City.

“SO ORDERED.”

Petitioner filed a motion for reconsideration on the grounds that: the provisions of Section 9, Rule 86 of the 1997 Rules of Civil Procedure state that an affidavit must support a contingent claim, there was no showing that the claim of China Bank was authorized by the bank, and a certification against forum shopping was not attached to the notice. The motion was denied via an Order^[7] dated August 10, 2004. In the said order, the trial court noted that to prevent any controversy on technicalities and a delay in the resolution of the claim, China Bank had subsequently submitted a secretary’s certificate showing the authority given to Camilo [Cape], the branch manager of its Maharlika Branch, to file the notice of claim, the sworn statement of Cape on the particulars of the claim, and a certification against forum shopping.

Hence, the instant petition for certiorari.

The Issues

The issues for this Court's consideration are:

- Whether or not the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's motion to dismiss on the ground that the requirement on certification of non-forum shopping may be dispensed with;
- Whether or not the trial court committed grave abuse of discretion when it denied petitioner's motion to dismiss even if the notice of claim did not indicate that its filing was authorized by the bank; and
- Whether or not the trial court committed grave abuse of discretion when it denied petitioner's motion to dismiss even if private respondent China Bank's notice of claim was not supported by an affidavit stating the particulars of the contingent claim.

Among the private respondents, only China Bank filed a comment on the petition and a memorandum. Thus, private respondents C.J. Fernandez Enterprises, Inc. and Totalfinaelf Philippines Corporation were deemed to have waived the filing of such pleadings.

This Court's Ruling

After due study, this Court finds no grave abuse of discretion committed by the trial court. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess, or a lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[8] Herein public respondent does not appear to have acted in such manner.

First Issue:

Certification of Non-Forum Shopping

Section 5, Rule 7 of the 1997 Rules of Civil Procedure provides that every party filing a complaint or other initiatory pleading is required to swear under oath that he has not committed nor will he commit forum shopping. This Court holds that the requirement is not applicable to a 'notice of claim' inasmuch as such pleading could hardly be classified as an initiatory pleading which pertains to original civil complaints, counterclaims, cross-claim, third (fourth, etc.) party complaint, or complaint-in-intervention, petition, or application wherein a party asserts his claim for relief. The notice of claim filed by private respondent China Bank even referred to a mere contingent claim, such that its demandability still depended upon the condition that a deficiency claim results from the foreclosure of the real estate mortgage executed by the decedent during his lifetime. Its filing of the notice was only necessary and in deference to the order of the trial court duly published and addressed to all creditors of the estate because otherwise, its claim could be barred forever. In any event, private respondent China Bank later filed with the trial court a certification against forum shopping. Such filing, while being a mere surplusage as this Court has ruled that the notice of claim is not an initiatory pleading, nonetheless rectified the defect, if at all, in the notice of claim which herein petitioner claims. Thus, granting *arguendo* that a certification should have been attached to the notice, the subsequent filing thereof can be deemed a substantial compliance with the requirement because contrary to the averments of the petitioner, jurisprudence maintains the rule on substantial compliance relative to the filing of certifications against forum shopping.

In the case of *Barcelona v. Court of Appeals*[9], the Supreme Court stressed that the requirement under Circular

No. 04-94, now Section 5, Rule 7 of the Rules, must be interpreted and applied to achieve its purpose. The Supreme Court promulgated the Circular to promote and facilitate the orderly administration of justice. The Circular should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure – which is to achieve substantial justice as expeditiously as possible.

The foregoing considered, this Court finds no grave abuse of discretion committed by the trial court in denying petitioner's motion to dismiss, and the motion for reconsideration of the order of such denial.

Second and Third Issues:

Authority to File the Notice of Claim and
Affidavits to Support the Contingent Claim

The second and third issues shall be discussed jointly.

We find no grave abuse of discretion committed by the trial court in maintaining the validity of the notice of claim despite the alleged absence of affidavits to support the contingent claim and a document showing that the filing of the claim was authorized by the bank. In denying petitioner's motions, the trial court noted that these supposed defects in the notice of claim were rectified by the subsequent filing by China Bank of a secretary's certificate showing the authority given to Camilo S. Cape to prepare and file the notice of claim, as well as a sworn statement stating the particulars of the bank's claim. The court further noted that the issues raised by the petitioner referred to purely technical matters, and reiterated the policy and principle that Rules of Procedure ought not to be applied in a very rigid, technical sense. It should rather be used to help secure and not override substantial justice.

We fully agree with the public respondent.

Section 9, Rule 86 of the 1997 Rules of Civil Procedure, which petitioner invokes, reads –

“Section 9. How to file a claim. Contents thereof. Notice to executor or administrator. – A claim may be filed by delivering the same with the necessary vouchers to the clerk of court and by serving a copy thereof on the executor or administrator. If the claim be founded on a bond, bill, note, or any other instrument, the original need not be filed, but a copy thereof with all indorsements shall be attached to the claim and filed therewith. On demand, however, of the executor or administrator, or by order of the court or judge, the original shall be exhibited, unless it be lost or destroyed, in which case the claimant must accompany his claim with affidavit or affidavits containing a copy or particular description of the instrument and stating its loss or destruction. When the claim is due, it must be supported by affidavit stating the amount justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim is not due, or is contingent, when filed, it must also be supported by affidavit stating the particulars thereof. When the affidavit is made by a person other than the claimant, he must set forth therein the reason why it is not made by the claimant. The claim once filed shall be attached to the record of the case in which the letters testamentary or of administration were issued, although the court, in its discretion, and as a matter of convenience, may order all the claims to be collected in a separate folder.” (Emphasis ours)

The failure of private respondent China Bank to attach to its notice of claim an affidavit stating the particulars of its claim is not fatal to its cause. Needless to stress, “a litigation is not a game of technicalities.” When technicality deserts its function of being an aid to justice, the Court is justified in exempting from its operations a particular case. Technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal.[10]

In the instant case, there was a substantial compliance with the requirements of Section 9, Rule 86 of the 1997 Rules of Civil Procedure inasmuch as the notice of claim, together with the documents annexed thereto, was

sufficient to fully notify and acquaint the petitioner of the nature and basis of its claim. This was effected through the presentation of the documents evidencing the supposed contractual obligations incurred by decedent George Remperas during his lifetime, which documents consisted of promissory notes, a real estate mortgage and the amendments to the mortgage. We emphasize that the requirements under the aforequoted provision are intended primarily to notify the administrator of the estate of the claim, so as to afford him the opportunity to dispute the claim. A perusal of the notice of claim and its annexes readily shows that this purpose of the law was sufficiently satisfied as the contents thereof already embodied the matters that had to be enumerated in the required affidavit. There was thus a substantial compliance with the requirements under Section 9, Rule 86 of the Rules, and the trial court was justified in denying petitioner's motion to dismiss the notice of claim, in the interest of substantial justice.

Notably, the bank subsequently filed a sworn statement embodying the particulars of its claim against the estate. The admission of such sworn statement is not prejudicial to the interests of the petitioner because as correctly held by the trial court, it did not, as yet, rule on the validity of the claim. The adjudication and final determination of the claim against the estate would still have to require an introduction of evidence by the claimant, which evidence petitioner would have the opportunity to rebut. The principle of substantial compliance is equally applicable to the subsequent filing by the bank of the secretary's certificate showing the authority of Camilo Cape, Branch Manager of its Cabanatuan-Maharlika Branch, to file the notice of claim for and on its behalf.

As emphasized by the Supreme Court in the case of *Donato v. Court of Appeals*[11]-

"The Court's pronouncement in *Republic vs. Court of Appeals* is worth echoing: 'cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be better served. Thus, what should guide judicial action is that a party litigant is given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor or property on mere technicalities. This guideline is especially true when the petition has satisfactorily explained the lapse and fulfilled the requirement in his motion for reconsideration, as in this case.'"

WHEREFORE, in view of the foregoing, the instant petition is hereby **DISMISSED**. The assailed decision of the public respondent is hereby **AFFIRMED**.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Rollo, p. 15.

[2] Id. at 29.

[3] Id. at 18.

[4] Id. at 25.

[5] Rollo, pp. 47-48.

[6] Supra.

[7] Rollo, p. 56.

[8] *Duero v. Court of Appeals*, 373 SCRA 11 (2002).

[9] 412 SCRA 41 (2003).

[10] Donato v. Court of Appeals, 417 SCRA 216 (2003).

[11] Supra.

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