

NUEVA MONTANA HOMEBUILDERS, INC., REPRESENTED BY BGEN. FELIX A. BRAWNER, JR. (RET.) AND/OR MARJORIE JANE P. BRAWNER, PLAINTIFFS-APPELLANTS, VS. DR. DOMINADOR VELASCO, DEFENDANT-...

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Assailed in this appeal is the Resolution dated September 25, 2012[1] in Civil Case No. TMCV-062-11 of Branch 23, Regional Trial Court, Trece Martires City granting defendant-appellee's motion to dismiss plaintiffs-appellants' complaint[2] for "Recovery of Possession of 50 Owner's Duplicate Certificates of Title with Damages" on the ground of improper venue. The dismissal of the complaint was expressly "without prejudice."

THE ANTECEDENTS

On September 21, 2011, plaintiffs-appellants Nueva Montana Homebuilders, Inc., represented by BGen. Felix A. Brawner, Jr. and/or Marjorie Brawner, filed a complaint[3] against defendant-appellee Dr. Dominador Velasco for "Recovery of Possession of 50 Owner's Duplicate Certificates of Title with Damages," alleging that: (i) plaintiff-appellant Nueva Montana Homebuilders, Inc. is a duly registered corporation and registered owner of real properties located at BMS Executive Village (now Jewel Homes), Barangay Buenavista II, General Trias, Cavite, and covered by TCTs Nos. T-1242137A to T-1242186; (ii) fifty (50) owner's duplicate copies of titles to said properties were discovered by plaintiffs-appellants BGen. Felix A. Brawner, Jr. and Marjorie Brawner to have been assigned by SSF Associates, Inc. to defendant-appellee through a memorandum of agreement executed between plaintiff-appellant Nueva Montana Homebuilders, Inc. and defendant-appellee; (iii) on June 6, 2011, plaintiffs-appellants sent a demand letter to defendant-appellee to return the fifty (50) titles, but defendant-appellee ignored the same; and, (iv) the refusal of defendant-appellee to return the titles delayed the development of the housing program of plaintiffs-appellants. Plaintiffs-appellants prayed for the return of the fifty (50) titles and payment of actual, moral and exemplary damages, attorney's fees and cost of suit.

Instead of filing his answer, defendant-appellee filed a motion to dismiss,[4] alleging that (i) the action which sought to compel defendant-appellee to return the fifty (50) titles in his possession is a personal action which must be filed in the court which has jurisdiction over the area where plaintiffs-appellants or defendant-appellee resides; (ii) the address of plaintiffs-appellants in the memorandum of agreement attached to the complaint is at Unit 2615, Cityland Condo 10, Tower I, HV dela Costa Street, Makati City, while defendant-appellee's address is at No. 65 Dona Juliana, Filinvest II, Batasan Hills, Quezon City; and, (iii) since the case was filed in Trece Martires City, Cavite the venue was improperly laid.

In their "Opposition to Motion to Dismiss,"[5] plaintiffs-appellants argued that their office address, as indicated in the Secretary's Certificate, is Block 11, Lot 6, BMS Executive Village (now Jewel Homes), Brgy. Buenavista III, General Trias, Cavite. Hence, the RTC in Trece Martires City, Cavite has proper venue.

In a Resolution dated September 25, 2012, the trial court granted the motion to dismiss by dismissing, without prejudice, the complaint on the ground of improper venue. Thus:

WHEREFORE, premises considered, the motion to dismiss is hereby granted on the ground of improper venue.

The instant complaint is hereby ordered dismissed without prejudice.

SO ORDERED.[6]

Plaintiffs-appellants filed a motion for reconsideration,[7] but the trial court denied the same in an Order dated April 3, 2013.[8]

Thus, plaintiffs-appellants filed the present appeal which is premised on the following assignment of errors:

(A)

WHETHER OR NOT THE COURT A QUO DISREGARDED THE CASE OF GOLDEN ARCHES WHEN IT RESOLVED THE MOTION FOR RECONSIDERATION.

(B)

WHETHER OR NOT THE PRESIDING JUDGE OF THE COURT A QUO BE PENALIZED FOR GROSS IGNORANCE OF THE LAW.[9]

THE ISSUE

Whether the present appeal is the proper remedy from the trial court's dismissal of the complaint without prejudice.

THE COURT'S RULING

At the outset, it must be stressed that the dismissal by the trial court of the subject for complaint for "Recovery of Possession of 50 Owner's Duplicate Certificates of Title with Damages," is "without prejudice." It is explicitly provided in Section 1, Rule 41, 1997 Rules of Civil Procedure that an order dismissing an action without prejudice is not appealable. Thus:

SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x

(g) An order dismissing an action without prejudice.

Apropos is *Casupanan vs. Laroya*,^[10] wherein the Supreme Court held that an order dismissing an action without prejudice is not appealable and the proper remedy of the aggrieved party is to file a special civil action under Rule 65. Thus:

Section 1 of Rule 41 provides that an order dismissing an action without prejudice is not appealable. The remedy of the aggrieved party is to file a special civil action under Rule 65. Section 1 of Rule 41 expressly states that "where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65."

Ineluctably, the present appeal filed by plaintiffs-appellants must be dismissed for being a wrong remedy. Plaintiffs-appellants should have filed a petition for certiorari under Rule 65 of the Rules of Court before this Court, since the assailed Resolution does not constitute a final determination of the rights of the parties. Section 1 of Rule 65 explicitly lays down the rule that a special civil action for certiorari is proper if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.^[11]

In any event, even if the present appeal is resolved on its merits, the Court finds no cogent basis to disturb the trial court's ruling on improper venue. As it explained:

The instant case involves a personal action. The complaint arose from the failure of defendant Dr. Dominador Velasco to surrender the Owner's Duplicate Copies of Fifty (50) Transfer Certificates of Title Nos. T-1232137A to T-1242186 despite demand. The venue of personal action of juridical entity or corporation is determined by the place where its principal office is located as stated in the Articles of Incorporation.

"Well established in our jurisprudence is the rule that the residence of a corporation is the place where its principal office is located, as stated in its Articles of Incorporation." (*Hyatt Elevators and Escalators Corporation, Petitioner vs. Goldstar Elevators, Phils., Inc., Respondent*, G.R. No. 161026, October 24, 2005)

As held in the aforementioned case, the principal place of business of a corporation determines its residence or domicile. Even if the Rules of Court do not provide that when the plaintiff is a corporation, the complaint should be filed in the location of its principal office as indicated in its articles of incorporation. Jurisprudence has, however, settled that the place where the principal office of a corporation is located, as stated in the articles, indeed establishes its residence. This ruling is important in determining the venue of an action by or against the corporation.

Likewise stated in the said case: x x x . "To insist that the proper venue is the actual principal office and not that stated in its Articles of Incorporation would indeed create confusion and work untold inconvenience.

Enterprising litigants may, out of some ulterior motives, easily circumvent the rules on venue by the simple expedient of closing old offices and opening new ones in another place that they may find well to suit their needs.”

In the present case, the principal office of Nueva Montana Home Builders, Inc. as stated in the Articles of Incorporation is located in Metro Manila (page 3 of the Articles of Incorporation). Thus, in determining the venue of an action by or against Nueva Montana Home Builders, Inc., Metro Manila is controlling vis a vis the office address at Block 11, Lot 6, BMS Executive Village, Brgy. Buenavista II, General Trias, Cavite. Notwithstanding that the latter office address is stated in the General Information Sheet (GIS) filed before the Securities and Exchange Commission (SEC) what prevails in determining the residence of the corporation which serves as the venue of legal action is the principal office address as stated in the Articles of Incorporation.

WHEREFORE, premises considered, the motion to dismiss is hereby granted on the ground of improper venue.

The instant complaint is hereby ordered dismissed without prejudice.

SO ORDERED.[12]

WHEREFORE, the present appeal is dismissed.

SO ORDERED.

Acosta and Garcia-Fernandez, JJ., concur.

[1] pp. 61-63, Records

[2] pp. 1-3, *ibid.*

[3] pp.1-3, *ibid.*

[4] pp. 16-18, *ibid.*

[5] pp. 26-27, *ibid.*

[6] p. 63, *ibid.*

[7] pp.64-67, *ibid.*

[8] p. 88, *ibid.*

[9] p. 16, Rollo

[10] 388 SCRA 28 (2002)

[11] GSIS vs. Court of Appeals, 651 SCRA 661 (2011)

[12] pp. 62-63, Records

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