

ANGELA CU, PETITIONER, VS. HON. CLETO R. VILLACORTA III, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 225, NATIONAL CAPITAL REGION, QUEZON CITY AND...

Ponente: BATO, JR., J.

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BATO, JR., J.:

Assailed in this Petition for Certiorari[1] under Rule 65 of the Rules of Court, with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order, are the 07 January 2013 and 08 April 2013 Orders of respondent Judge Cleto R. Villacorta III of the Regional Trial Court (RTC) of Quezon City, Branch 225, in Civil Case No. Q-00-40526. The first Order denied petitioner's Motion to Dismiss, while the second Order denied her Motion for Reconsideration.

On 07 April 2000, private respondent H.A. Octagon Builders Development Corporation filed a Complaint[2] for Sum of Money and Damages against petitioner Angela Cu. The verification and certification against forum shopping attached to the Complaint was signed by Alberto Co, alleged Chairman of the Board of the private respondent.

Private respondent alleged in its Complaint that it entered into a Construction Contract with the petitioner sometime in October 1997. Under the contract, private respondent undertook to construct for the petitioner a two (2)-storey residential building in Charbel Executive Village, Quezon City for a contract price of Php8,081,492.00. Despite the fact that said residential building has long been finished, petitioner still has an unpaid obligation amounting to Php572,679.89.

In her Answer[3] dated 21 June 2000, petitioner alleged that she has already paid the private respondent Php7,820,000.00 out of the Php8,081,492.00 contract price. However, private respondent failed to finish the construction within the period stated in the Construction Contract. As such, penalty charges as stated in the Construction Contract must be imposed against the private respondent. Such delay further constrained her to lease an apartment for six months at Php18,000.00/month. After she and her family began occupying the house, they discovered many defects in the construction that necessitated additional work by other contractors. Private respondent further overbilled her for Php345,508.70. After deducting the above-mentioned amounts from her unpaid obligation, it appears that private respondent is the one indebted to her for Php522,828.81.

Trial of the case subsequently ensued. Private respondent presented three witnesses, namely: Renato Dragon, Architect Jason Ang and Alberto Co. Thereafter, it formally offered its documentary evidence, which were duly objected or commented to by the petitioner. But before the respondent Judge could rule on private respondent's formal offer of documentary evidence, petitioner filed a Motion to Dismiss[4] dated 16 November 2012.

Petitioner alleged in her Motion to Dismiss that Alberto Co has no authority to sign the certification against forum shopping. When Alberto Co was confronted with the private respondent's incorporation papers during cross-examination, he admitted that although he signed the verification/certification of the Complaint as Chairman

of the private respondent, he is neither its chairman, stockholder or incorporator. Furthermore, the court records are bereft of any Board Resolution or Secretary's Certificate authorizing Alberto Co to represent and/or sign on behalf of the private respondent.

In the first assailed Order[5] dated 07 January 2013, respondent Judge denied petitioner's Motion to Dismiss. He ruled that Alberto Co's capacity to represent the private respondent has long been waived by the petitioner, since she failed to specifically deny this at the outset as required by Section 4,[6] Rule 8 of the Rules of Court. Respondent Judge further ruled that under Section 1,[7] Rule 9 of the Rules of Court, objections and defenses not raised in the answer or motion to dismiss are deemed waived. Thus, petitioner's contentions of lack of jurisdiction over the private respondent and Alberto Co's lack of capacity to sue in behalf of the private respondent can no longer be invoked by the petitioner several years after it had filed its Answer.

Petitioner then filed a Motion for Reconsideration,[8] contending that the respondent Judge erroneously appreciated the issue raised in her Motion to Dismiss. She pointed out that her Motion to Dismiss is based on Section 5,[9] Rule 7 of the Rules of Court or on the private respondent's submission of a faulty or falsified certificate of non-forum shopping. In accordance with the rulings of the Supreme Court in *Cosco Philippine Shipping, Inc. vs. Kemper Insurance Company*[10] and *Tamondong vs. Court of Appeals*,[11] private respondent's complaint should be dismissed due to lack of jurisdiction.

By way of an Opposition,[12] private respondent asserted that petitioner has waived her right to question the authority of Alberto Co to sign the Complaint's verification/certification. The Complaint was filed on 07 April 2000. Petitioner filed her Answer on 21 April 2000. For more than thirteen (13) years, petitioner never raised the alleged lack of capacity of Alberto Co to sign the Complaint's verification/certification. Private respondent further pointed out that while it may be true that the name of Alberto Co does not appear in its Articles of Incorporation, it is undisputed that he acted and discharged the functions of Chairman of the Board. Alberto Co explained on the witness stand that while Maria Victoria Co-Pilar, his daughter, was designated as Chairman of the Board in the corporation's records with the Securities and Exchange Commission, he is the one who discharges the functions of a Chairman because her daughter was elected as Barangay Chairman and could not anymore attend to her duties as Chairman of the Board.

By his Order[13] dated 08 April 2013, respondent Judge denied petitioner's Motion for Reconsideration. Respondent Judge ruled that in petitioner's cited cases, i.e., *Cosco Philippines* and *Tamondong*, the issue about the defective certification against forum shopping was raised at the earliest opportunity. In the instant case, petitioner raised the alleged lack of authority of Alberto Co to sign the certification against forum shopping only after the case has been pending for thirteen (13) years and it is now petitioner's turn to present her evidence.

Hence, petitioner is now before the Court contending that respondent Judge committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in:

"I. NOT APPLYING RULE 5 SECTION 7 OF THE RULES OF COURT

II. RULING THAT THE COSCO AND TAMONDONG CASES ARE INAPPLICABLE

III. RULING THAT OBJECTION TO JURISDICTION HAS ALREADY BEEN WAIVED

IV. DENYING THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION"[14]

In a Resolution[15] dated 13 December 2013, the Court denied petitioner's application for the issuance of a temporary restraining order and/or preliminary injunction.

Going now into the merits of the case.

Petitioner maintains that Alberto Co misrepresented himself to be the Chairman of the private respondent. Such is a clear violation of Section 5, Rule 7 of the Rules of Court. Hence, the court a quo has no jurisdiction over the private respondent's Complaint. A defective or false certification against forum shopping is not curable, nor is it lost by waiver or estoppel.

In its Comment,[16] private respondent reiterates that for more than thirteen (13) years, petitioner never questioned the alleged defect in the Certification attached to the Complaint. Thus, respondent Judge did not commit grave abuse of discretion when he denied petitioner's Motion to Dismiss.

Grave abuse of discretion means such capricious and arbitrary exercise of judgment as is equivalent, in the eyes of the law, to lack of jurisdiction.[17] There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[18] Through time, the meaning of grave abuse of discretion has been expanded to include any action done contrary to the constitution, the law or jurisprudence.[19]

Premised on the foregoing, the Court finds no grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the respondent Judge when he denied petitioner's motion to dismiss.

Estoppel by laches bars the petitioner from raising the alleged lack of board resolution and the alleged defective certification against forum shopping thirteen (13) years after the Complaint was filed. During the intervening time, the petitioner had filed her Answer, undergone the pre-trial stage, and the private respondent had presented all its witnesses and offered its documentary evidence. Considerable length of time had elapsed for laches to attach.

Laches is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[20] As ruled in *Tijam vs. Sibonghanoy*,[21] a party may be barred by laches from invoking lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea of lack of jurisdiction.

In *Young vs. John Keng Seng*,[22] the Supreme Court ruled that in general, violation of the rule on forum shopping should be raised at the earliest opportunity in a motion to dismiss or a similar pleading. Invoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action as an exception only if the violation arises from or will result in (1) the loss of jurisdiction over the subject matter, (2) the pendency of another action between the same parties for the same cause, (3) the barring of the action by a prior judgment, or (4) the crossing of the Statute of Limitations. None of the above-mentioned exceptions are present herein.

Although it may be true that Alberto Co's name does not appear in the private respondent's Articles of Incorporation, it is undisputed that he acted and discharged the functions of a Chairman of the Board. The Court notes that the Construction Contract[23] duly signed by the parties, as well as the Statement of Account[24] prepared by the petitioner's Architect, recognized him as the private respondent's Chairman. This places him in a sufficiently high and authoritative position to verify the truthfulness and correctness of the allegations in the Complaint.

The certification against forum shopping is required based on the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different fora.[25] While the certification requirement is obligatory, non-compliance or a defect in the certification could be cured by its subsequent correction or submission under

special circumstances or compelling reasons, or on the ground of "substantial compliance." [26] Considering that a dismissal contemplated under Rule 7, Section 5 of the Rules of Court is, as a rule, a dismissal without prejudice, and since there is no showing that the private respondent is guilty of forum shopping, to dismiss its complaint would entail a tedious process of re-filing the case, requiring the parties to re-submit the pleadings which they have already filed with the trial court, and conducting hearings again which have already been done, not to mention the expenses that will be incurred by the parties in the re-filing of pleadings and in the re-conduct of hearings. [27] These consequences would not be in keeping with the judicial policy of just, speedy and inexpensive disposition of every action and proceeding. [28]

The Court further agrees with the respondent Judge that the cases cited by the petitioner to support her Motion to Dismiss are inapplicable. In the Cosco case, [29] the question of the authority of the person who signed the certification against forum shopping was raised during the pre-trial stage. And in the Tamondong case, [30] the trial court motu proprio dismissed the complaint after summons and a copy of the complaint were served upon the defendant. In the present case, it is now too late in the day for the petitioner to claim that the Complaint filed thirteen (13) years ago has a defective certification against forum shopping.

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed 07 January 2013 and 08 April 2013 Orders of respondent Judge Cleto R. Villacorta III are hereby AFFIRMED.

SO ORDERED.

Zalameda, and [*]Galapate-Laguilles, JJ., concur.

[*] New Third Member vice J. Diy who inhibited herself per Raffle dated November 25, 2014.

[1] Rollo, pp. 3-18.

[2] Id., pp. 37-42.

[3] Rollo, pp. 52-61.

[4] Id., p. 25-28.

[5] Id., pp. 20-21.

[6] Section 4. Capacity. – Facts showing the capacity of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

[7] Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[8] Rollo, pp. 29-36.

[9] Section 5 of Rule 7 of the 1997 Rules of Civil Procedure provides: SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading

asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[10] G.R. No. 179488, 23 April 2012.

[11] G.R. No. 158397, 26 November 2004.

[12] Rollo, pp. 83-85.

[13] *Id.*, pp. 22-24.

[14] Petition, pp. 8-9; Rollo, pp. 10-11.

[15] Rollo, pp. 147-149.

[16] *Id.*, pp. 138-145.

[17] *Vda. De Bacaling vs. Laguna*, 54 SCRA 243, p. 251 [1973]; *Bacelonia vs. CA*, 397 SCRA 286, p. 291 [2003].

[18] *Cuison vs. CA*, 289 SCRA 159, p. 171 [1998]; *Benito vs. COMELEC*, 349 SCRA 705, p. 712 [2001].

[19] *Republic vs. Cocofed*, 372 SCRA 462, p. 493 [2001].

[20] *Figueroa vs. People*, G.R. No. 147406, July 14, 2008.

[21] 131 Phil 556 (1968).

[22] G.R. No. 143464, March 5, 2003.

[23] Rollo, pp. 43-48.

[24] *Id.*, pp. 63-64.

[25] *Spouses Lim vs. Court of Appeals*, G.R. No. 192615, January 30, 2013.

[26] *Id.*

[27] *Heirs of the Deceased Spouses Arcilla vs. Teodoro*, G.R. No. 162886, August 11, 2008.

[28] *Id.*

[29] *Supra*, at Note 10.

[30] *Supra*, at Note 11.

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