MARIBETH CORDOVA, PETITIONER, VS. HON. COURT OF APPEALS, EIGHTH DIVISION, AND HON. RICARDO F. TORNILLA (RETIRED), JUDGE, MTCC, BRANCH 6, BACOLOD CITY, AND THE SHERIFF AND HIS DE...

G.R. NO. 135711. August 02, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review[1] of the Decision and Resolution of the Court of Appeals, dated March 6, 1998 and August 25, 1998, respectively, in CA-G.R. CV No. 53979, entitled "Maribeth Cordova v. Sps. Romeo and Marietta Laguardia, et al."

The facts appear as follows: [2]

On April 27, 1994, petitioner filed a complaint for breach of contract and damages, praying for the issuance of a writ of preliminary injunction[3] with the Regional Trial Court (RTC), Bacolod City against private respondents, spouses Romeo and Marietta Laguardia, and Judge Ricardo F. Tornilla, along with the Sheriff and his deputies, as nominal parties.

In her complaint, petitioner denounced private respondents' filing of a Motion for the Issuance of a Writ of Demolition in Civil Case No. 18761[4] despite the parties' alleged compromise agreement to have the case dismissed. The case was presided by public respondent Judge Ricardo F. Tornilla who issued an Order of Demolition on April 6, 1994.[5]

The complaint, however, did not include the certification against forum shopping required under Administrative Circular No. 04-94 of the Supreme Court. It was only on May 3, 1994 that petitioner submitted the certification in compliance with the circular.

On May 18, 1994, private respondents filed a Motion to Dismiss based on the following grounds: 1) that the complaint states no cause of action or an insufficient cause of action; 2) that a similar action involving the same parties is pending in another court; 3) that the matter being resurrected is barred by res judicata; and 4) that petitioner is guilty of forum shopping.

Petitioner opposed the motion contending that in view of the withdrawal of Civil Case No. 94-8374 pending before Branch 43 of the Regional Trial Court of Bacolod City, the filing of the complaint for breach of contract would not amount to forum shopping.

On June 10, 1994, the trial court dismissed the case on the ground of forum shopping. Consequently, petitioner filed a motion for reconsideration claiming that Civil Case No. 94-8374 had been withdrawn before the case for breach of contract was filed. The aforesaid motion was referred to Branch 43 of the RTC which set the motion for hearing on November 24, 1994.

On October 6, 1995, an Order was issued by the trial court dismissing the complaint for petitioner's failure to prosecute. Upon the latter's motion, however, the Order was reconsidered and the case was set for pre-trial on February 2, 1996.

On January 31, 1996, public respondent Judge Ricardo F. Tornilla, on his behalf and on behalf of the Sheriff and his deputies, moved for the dismissal of the case for violation of Administrative Circular No. 04-94. This was followed by an Urgent Motion to Dismiss filed by private respondents.

In an Order dated February 15, 1996, the trial court granted private respondents' motion and dismissed the case. Petitioner's motion for reconsideration was denied; hence, she elevated her case to the Court of Appeals.

The Court of Appeals affirmed the findings of the trial court in a Decision dated March 6, 1998. The pertinent portions of the Decision read:

> It is to be noted, and it is herein emphasized, that the sworn certification is required to be annexed to the complaint and simultaneously filed therewith. In the case at bar, the certification was filed by the plaintiff on May 3, 1994, six (6) days after the complaint was filed on April 27, 1994. This is in clear violation of the provisions of the Circular afore-cited.
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> This Court finds that the Certification was filed late on purpose because at the time the complaint was filed on April 27, 1994, a similar complaint between the same parties had just been filed by the plaintiff before Branch 43 of the Regional Trial Court of Bacolod, docketed therein as Civil Case No. 94-8374. For reasons known only to the plaintiff (which defendants, however, claim was because she failed to get a temporary restraining order from Branch 43), plaintiff opted to file this case which was raffled to Branch 44 of the same court obviously to forum-shop.
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> Plaintiff maintains that at the time she filed this complaint, Civil Case No. 94-8374 had been withdrawn by her as a matter of right. This Court notes, however, that this complaint and the Ex-Parte Motion to Withdraw Case in Civil Case No. 94-8374 were both filed on the same date. As a matter of fact, this case (Civil Case No. 94-8389) was filed ahead or at 11:20 A.M., while the motion to withdraw (Civil Case No. 94-8374) was filed at 11:35 A.M. Plaintiff is, therefore, misleading the court when she states that the Civil Case No. 94-8374 had been withdrawn when Civil Case No. 94-8389 was filed.
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> . . .
>
> While the circular took effect on April 1, 1994, the same was promulgated on February 8, 1994 precisely to give the public, especially the practicing lawyers, advance notice and enough time to prepare and comply with the requirements thereof. There is, therefore, no excuse for non-compliance with the provisions thereof on April 27, 1994.
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> . . .
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> WHEREFORE, this appeal is hereby dismissed for lack of merit.
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> Costs against appellant.
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> SO ORDERED.[6]

The issues[7] are:

> I
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> WHETHER THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN SUSTAINING THE ORDER OF THE REGIONAL TRIAL COURT, BRANCH 43, BACOLOD CITY, IN DISMISSING THE COMPLAINT IN CIVIL CASE NO. 94-8389 FOR THE BELATED FILING OF THE

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> CERTIFICATION AGAINST FORUM SHOPPING AS REQUIRED UNDER ADMINISTRATIVE CIRCULAR NO. 04-94; AND
>
> II
>
> WHETHER THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FACT THAT THE MOTION TO DISMISS IS A MERE SCRAP OF PAPER IN VIOLATION OF RULE 15, SEC. 5 OF THE RULES OF COURT FOR FAILURE TO STATE THE DATE AND TIME IN THE NOTICE OF HEARING.

Petitioner argues that Administrative Circular No. 04-94 took effect on April 1, 1994 while the complaint was filed on April 27, 1994. At that time, the administrative circular was not yet fully disseminated. The Clerk of Court of the RTC, Bacolod City would not have accepted the complaint if the latter had been aware of the circular.

Furthermore, petitioner contends that she submitted the certification against forum shopping on May 3, 1994, barely a week from the time the complaint was filed. In Kavinta v. Castillo, Jr.,[8] this Court held that "[t]he proximity of the filing of the complaint to the date of the effectivity of Administrative Circular No. 04-94 may be pleaded as a justifying circumstance, and the belated filing of the certification required thereunder may be deemed a substantial compliance therewith."

Finally, petitioner submits that the Motion to Dismiss filed by Judge Ricardo F. Tornilla failed to state the Notice of Hearing to petitioner. In Provident International Resources, Inc. v. CA,[9] the Court held that a motion which does not contain a notice of hearing to the adverse party is nothing but a mere scrap of paper, so that the trial court, by giving the Order to cure the defect, clearly acted with grave abuse of discretion.

Petitioner cannot invoke the ruling in Kavinta v. Castillo, Jr.[10] because the same applies only to the specific circumstances of that case:

> ... [P]rivate respondent pointed out that the filing of the required certification was done with dispatch by his counsel upon realization of the existence of said circular. He thereby admits his unawareness or ignorance of the Circular at the time he filed his complaint. We are not unmindful of the fact that Administrative Circular No. 04-94 took effect only on 1 April 1994 and the complaint in Civil Case No. Q-94-20532 was filed on 11 May 1994. The proximity then of the filing of the complaint to the date of the effectivity of the Circular may be pleaded as a justifiable circumstance, and the belated filing of the certification required thereunder may be deemed a substantial compliance therewith. We thus rule pro hac vice, but not without a whit of reluctance, that this special circumstance in this case could sustain the action of the respondent Judge. This should not be taken, however, as a precedent. Elsewise stated, the mere submission of a certification under Administrative Circular No. 04-94 after the filing of a motion to dismiss on the ground of non-compliance thereof does not ipso facto operate as a substantial compliance; otherwise the Circular would lose its value or efficacy.[11]

The Court agrees with the finding of the Court of Appeals that there was a deliberate omission on the part of petitioner to attach the certification to the complaint in view of the pendency of Civil Case No. 94-8374 involving the same parties and subject matter. It was only after she filed an ex-parte motion to withdraw the latter case that the certification was submitted to the court.

Administrative Circular No. 04-94 has been incorporated in the 1997 Rules of Civil Procedure under Section 5, Rule 7. The second paragraph of the section provides:

> 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 ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.[12]

In Melo v. Court of Appeals,[13] this Court declared that the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The subsequent compliance with this requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where the Court excused non-compliance with the certificate requirement, special circumstances or compelling reasons existed, which made the strict application of the circular clearly inequitable.[14] In this case, however, petitioner's action hardly justifies a deviation from the mandatory nature of the afore-quoted provision. Hence, petitioner's complaint was clearly dismissible on the ground of forum shopping.

As regards the second issue, the Court finds it unnecessary to dwell on the matter as the Court of Appeals had succinctly ruled:

> Appellant harps on the fact that the motions to dismiss filed by the defendants did not comply strictly with the requirements for notice of hearing, and that they are, therefore, mere scraps of paper that should not have been considered at all by the court. A perusal of said motions reveal that both movants asked that the same be set for hearing on February 2, 1996 and copies thereof were furnished counsel for the plaintiff who accordingly filed an Objection/Comment to Motion to Dismiss. There is no showing from the records that the motions were actually heard by the court but the plaintiff did not raise that issue when she filed her Motion for Reconsideration. A procedural issue not brought on reconsideration is deemed waived (Manalo v. Roldan-Confesor, 220 SCRA 606). Any defect in procedural due process had been cured by the filing of a motion for reconsideration by the plaintiff (Medenilla v. Civil Service Commission, 194 SCRA 278, PNOC-Energy Development Corporation v. NLRC, 201 SCRA 487).

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated March 6, 1998 and August 25, 1998, respectively, in CA-G.R. CV No. 53979, are AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1]Under Rule 45 of the Rules of Court.

[2]Rollo, pp. 31-33.

[3]Docketed as Civil Case No. 94-8389.

[4] An action for Ejectment and Damages entitled, Sps. Romeo & Marietta Laguardia v. Luz Cordova, et al., before Branch 6 of the Municipal Trial Court in Cities (MTCC), Bacolod City, which had become final and executory on October 18, 1993.

[5]Rollo, p. 47.

[6]Id. at 34-36.

[7] Id. at 22.

[8]G.R. No. 117083, October 27, 1995, 249 SCRA 604.

[9]G.R. No. 119329, July 26, 1996, 259 SCRA 510.

[10]Supra note 8, at 609.

[11]Emphasis supplied.

[12] Emphasis supplied.

[13]G.R. No. 123686, November 16, 1999, 318 SCRA 94, 100-105.

[14] See Kavinta v. Castillo, Jr., supra note 8; MSF Tire and Rubber, Inc. v. Court of Appeals, G.R. No. 128632, August 5, 1999, 311 SCRA 784, 790-791; Loyola v. Court of Appeals, G.R. No. 117186, June 29, 1995, 245 SCRA 477.

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