

## **BETTY T. CHUA, JENNIFER T. CHUA-LOCSIN, BENISON T. CHUA, AND BALDWIN T. CHUA, PETITIONERS, V. ABSOLUTE MANAGEMENT CORPORATION AND COURT OF APPEALS, RESPONDENTS.**

*G.R. No. 144881. October 16, 2003*

Ponente: CARPIO, J.

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### **CARPIO, J.:**

#### The Case

This is a petition for review on certiorari[1] to annul the Decision[2] dated 9 May 2000 of the Court of Appeals in CA-G.R. SP No. 57421, as well as the Resolution dated 5 September 2000 denying the motion for reconsideration. The Court of Appeals set aside the Order[3] dated 7 February 2000 issued by Branch 112 of the Regional Trial Court of Pasay City which denied the petitioners' "Motion for the Examination of the Administratrix and Others" ("Motion").

#### Antecedent Facts

The facts are not in dispute. As found by the Court of Appeals, the essential antecedents are as follows:

Sometime in 1999, upon a petition for letters of administration filed by [herein petitioners] Jennifer T. Chua-Locsin, Benison T. Chua, and Baldwin T. Chua with the Regional Trial Court, Branch 112, Pasay City, presided by [Judge Manuel P. Dumatol], xxx Betty T. Chua was appointed as administratrix of the intestate estate of the deceased Jose L. Chua. Thereafter, she submitted to the trial court an inventory of all the real and personal properties of the deceased.

One of the creditors of the deceased, [herein respondent] Absolute Management Corporation, filed a claim on [sic] the estate in the amount of P63,699,437.74. As administratrix, Betty T. Chua tentatively accepted said amount as correct, with a statement that it shall be reduced or adjusted as additional evidences [sic] may warrant.

In the interim, Absolute Management Corporation noticed that the deceased's shares of stocks with Ayala Sales Corporation and Ayala Construction Supply, Inc. were not included in the inventory of assets. As a consequence, it filed a motion to require Betty T. Chua to explain why she did not report these shares of stocks in the inventory. Through a reply, Betty T. Chua alleged that these shares had already been assigned and transferred to other parties prior to the death of her husband, Jose L. Chua. She attached to her reply the deeds of assignment which allegedly constituted proofs of transfer. Judge Dumatol accepted the explanation as meritorious.

Absolute Management Corporation, suspecting that the documents attached to Betty T. Chua's reply were spurious and simulated, filed a motion for the examination of the supposed transferees. xxx It premised its motion on Section 6, Rule 87, Revised Rules of Court, *infra*, which states that when a person is suspected of having concealed, embezzled, or conveyed away any of the properties of the deceased, a creditor may file a complaint with the trial court and the trial court may cite the suspected person to appear before it and be

examined under oath on the matter of such complaint. Private respondents opposed the motion on the ground that this provision bears no application to the case. On February 7, 2000, Judge Dumatol issued the assailed order.[4]

### The Ruling of the Trial Court

The trial court's order denying Absolute Management Corporation's ("Absolute") Motion reads:

This resolves the undated Motion for the Examination of the Administratrix and Others, filed on January 11, 2000 by claimant Absolute Management Corporation, to which petitioners, through counsel filed their opposition, and claimant Absolute Management Corporation in turn filed its reply.

Finding no merit in the motion filed by claimant Absolute Management Corporation, as it in effect seeks to engage in a fishing expedition for evidence to be used against the administratrix and others whom it seeks to examine, it being the consensus of the Court that the Rules of Procedure does [sic] not allow the fishing of evidence to use [sic] against the adverse party, claimant Absolute Management Corporation's motion is hereby DENIED.

SO ORDERED.[5]

Aggrieved, Absolute filed a petition for certiorari and mandamus with the Court of Appeals.

### The Ruling of the Court of Appeals

In its petition for certiorari and mandamus before the Court of Appeals, Absolute claimed that the trial court committed grave abuse of discretion in denying its Motion and in failing to act on its claim. Absolute alleged that the trial court deprived it of the right to show that the documents presented by petitioners were fictitious to the prejudice of Absolute.

During the hearing[6] conducted on 9 August 2000 before the members of the Special Sixth Division of the Court of Appeals, counsel for Absolute presented the following evidence to support its assertion that the transfers of the shares were spurious:

- Exhibit "A"[7] - Certification from the Office of the Clerk of Court of the Regional Trial Court of Pasay City that Atty. Hilarion A.D. Maagad (the notary public who notarized the questioned Secretary's Certificate[8] and Deeds of Assignment of Shares of Stock[9]) is not listed in the Roll of Notaries Public for the City of Pasay particularly for the period of 1993-1994, 1994-1995, 1998-1999 and 1999-2000.

- Exhibit "B"[10] - Certification from the Clerk of Court of the Regional Trial Court of Makati City that the questioned Secretary's Certificate[11] was not included in the Notarial Report of Atty. Lope M. Velasco for the years 1998-1999.

- Exhibits "B-1," "B-2," and "B-3"[12] - Certification from the Clerk of Court of the Regional Trial Court of Makati City that the questioned Deeds of Assignment of Shares of Stock[13] were not included in the Notarial Report of Atty. Lope M. Velasco for the years 1998-1999.

In setting aside the trial court's order, the Court of Appeals pointed out that the presentation of the deeds of assignment executed by the decedent in petitioners' favor does not automatically negate the existence of concealment. The appellate court stated that it is a common occurrence in estate proceedings for heirs to execute simulated deeds of transfer which conceal and place properties of the decedent beyond the reach of creditors.

The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the petition is GRANTED. The order dated February 7, 2000 of respondent Judge Manuel P. Dumatol is hereby SET ASIDE. He is hereby ORDERED to give due course to petitioner's "Motion for the Examination of the Administratrix and Others" and thereafter, to dispose of the claim accordingly.

SO ORDERED.[14]

Hence, this petition.

Issue

Petitioners would like this Court to rule whether Section 6, Rule 87 of the Rules of Court, which is the principal basis of Absolute's Motion, is mandatory or merely directory on the trial court. This perspective misses the point. The issue in this case is whether the Court of Appeals correctly ordered the trial court to give due course to the Motion for Examination.

Petitioners also point out that the Court of Appeals should have dismissed Absolute's petition because of these procedural infirmities:

- Counsel for Absolute, not the proper officers of Absolute, filed the Certification against Forum Shopping;
- Absolute attached only a duplicate original copy of the challenged order of the trial court to the petition submitted to the Court of Appeals; and
- No proper proof of service accompanied the petition submitted to the Court of Appeals.[15]

The Ruling of the Court

The petition has no merit.

Whether the Court of Appeals correctly ordered the Trial Court

to give due course to Absolute's Motion for Examination

Section 6, Rule 87 of the Rules of Court provides:

SEC. 6. Proceedings when property concealed, embezzled, or fraudulently conveyed. -- If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased, the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint; and if the person so cited refuses to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and may commit him to prison until he submits to the order of the court. The interrogatories put to any such person, and his answers thereto, shall be in writing and shall be filed in the clerk's office.

Section 6 of Rule 87 seeks to secure evidence from persons suspected of having possession or knowledge of the properties left by a deceased person, or of having concealed, embezzled or conveyed any of the properties of the deceased.[16]

The court which acquires jurisdiction over the properties of a deceased person through the filing of the corresponding proceedings has supervision and control over these properties. The trial court has the inherent duty to see to it that the inventory of the administrator lists all the properties, rights and credits which the law requires the administrator to include in his inventory. In compliance with this duty, the court also has the inherent power to

determine what properties, rights and credits of the deceased the administrator should include or exclude in the inventory. An heir or person interested in the properties of a deceased may call the court's attention that certain properties, rights or credits are left out from the inventory. In such a case, it is likewise the court's duty to hear the observations of such party. The court has the power to determine if such observations deserve attention and if such properties belong prima facie to the estate.[17]

However, in such proceedings the trial court has no authority to decide whether the properties, real or personal, belong to the estate or to the persons examined. If after such examination there is good reason to believe that the person examined is keeping properties belonging to the estate, then the administrator should file an ordinary action in court to recover the same.[18] Inclusion of certain shares of stock by the administrator in the inventory does not automatically deprive the assignees of their shares. They have a right to be heard on the question of ownership, when that property is properly presented to the court.[19]

In the present case, some of the transferees of the shares of stock do not appear to be heirs of the decedent. Neither do they appear to be parties to the intestate proceedings.[20] Third persons to whom the decedent's assets had been conveyed may be cited to appear in court and examined under oath as to how they came into possession of the decedent's assets. In case of fraudulent conveyances, a separate action is necessary to recover these assets.[21]

Taken in this light, there is no reason why the trial court should disallow the examination of the alleged transferees of the shares of stocks. This is only for purposes of eliciting information or securing evidence from persons suspected of concealing or conveying some of the decedent's properties to the prejudice of creditors. Petitioners' admission that these persons are the decedent's assignees does not automatically negate concealment of the decedent's assets on their part. The assignment might be simulated so as to place the shares beyond the reach of creditors. In case the shares are eventually included in the estate, this inventory is merely provisional and is not determinative of the issue of ownership. A separate action is necessary for determination of ownership and recovery of possession. [22]

Whether the Petition submitted to the Court of Appeals suffered from procedural infirmities which merit its dismissal

The petition filed before the Court of Appeals contained a certificate of non-forum shopping executed by counsel and not by the authorized officer of Absolute. However, the subsequent filing of an affidavit of non-forum shopping signed by the corporate director cured this defect. In *Maricalum Mining Corp. v. National Labor Relations Commission*, [23] the Court held that a slight delay in the filing of an affidavit of non-forum shopping should not defeat the action. A liberal interpretation of the rules is more in keeping with the objective to "secure a just, speedy and inexpensive disposition of every action and proceeding." As held in *Loyola v. Court of Appeals*, [24] substantial compliance is sufficient. While submission of the certificate of non-forum shopping is mandatory, nonetheless we must not interpret the requirement too literally to defeat the objective of preventing the undesirable practice of forum shopping. [25] Technical rules of procedure should be used to promote, not frustrate, justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal. [26]

Petitioners claim that the attachment of a mere duplicate original copy of the assailed order violates the express mandate of Section 1, Rule 65, of the 1997 Rules of Civil Procedure. This rule states that "the petition shall be accompanied by a certified true copy of the judgment, order, or resolution subject thereof." However, under Section 3, Rule 46 of the 1997 Rules of Civil Procedure, as amended by Circular No. 39-98, either a certified true copy or a duplicate original copy may be attached to the petition.

The affidavit of service executed by petitioners' counsel stating that he served a copy of the petition by registered mail to respondents with the corresponding registry receipts constitutes sufficient proof of service.[27] This complies with Section 13, Rule 13 of the 1997 Rules of Civil Procedure.

Lastly, petitioners quote *Arcega and Miranda v. Pecson and Arcega*[28] to question the propriety of filing a petition for certiorari before the Court of Appeals:

Without deciding whether the proceeding thus conducted complies with the provision of Section 6 of Rule 88 [Section 6, Rule 87 under the 1997 Rules of Civil Procedure], which says that "the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint," and without deciding whether the duty of the judge to make the examination is or not mandatory, we are satisfied that certiorari is not an appropriate remedy under the aforecited rule. (Emphasis supplied)

The facts in *Arcega* are not on all fours with the facts in the instant case. In *Arcega*, the judge granted the examination but only with respect to three of the several lots involved. In the present case, there was an absolute refusal by the trial court to conduct an examination on the ground that it would constitute a "fishing expedition" of evidence that could be used against the administratrix. In *Arcega*, the trial court issued an order in favor of the person suspected of having concealed properties of the estate and against the special administratrix and the judicial receiver. The special administratrix had the remedy of filing another case to recover such properties in the name of the state.[29]

In the present case, Absolute as a creditor of the decedent filed the petition after the trial court denied its Motion for examination. Absolute questioned the ruling in favor of the administratrix and heirs of the decedent. Although as a creditor, Absolute does have the remedy of filing another case to recover such properties,[30] its Motion for examination was intended merely to investigate and take testimony in preparation for an independent action.[31] Aside from the administratrix and the heirs of the decedent, Absolute also sought to examine the supposed assignees of the decedent's shares, who are third persons with respect to the probate proceedings. The Motion was a preparatory move sanctioned by the Rules of Court. The denial of Absolute's Motion was an interlocutory order not subject to appeal. The order of denial may, however, be challenged before a superior court through a petition for certiorari under Rule 65.

WHEREFORE, we DENY the petition for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 57421 dated 9 May 2000 as well as the Resolution dated 5 September 2000 denying the motion for reconsideration is AFFIRMED.

### **SO ORDERED.**

Davide, Jr., C.J. (Chairman), Vitug, and Azcuna, JJ., concur.  
Ynares-Santiago, J., on leave.

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

[2] Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Martin S. Villarama, Jr. and Wenceslao I. Agnir, Jr., concurring.

[3] Penned by Judge Manuel P. Dumatol.

[4] Rollo, pp. 21-23.

[5] *Ibid.*, p. 83.

- [6] CA Rollo, pp. 116-129.
- [7] Ibid., p. 111.
- [8] Ibid., p. 18.
- [9] Ibid., pp. 19-21.
- [10] Ibid., p. 112.
- [11] Ibid., p. 22.
- [12] Ibid., pp. 113-115.
- [13] Ibid., pp. 23-25.
- [14] Rollo, p. 30.
- [15] Ibid., pp. 15-16.
- [16] *Modesto v. Modesto, et al.*, 105 Phil. 1067 (1959). See also *Valera v. Inserto*, No. L -56504, 7 May 1987, 149 SCRA 533.
- [17] *Garcia v. Garcia*, 67 Phil. 353 (1939). See also *Bolisay v. Alcid*, No. L-45494, 31 August 1978, 85 SCRA 213.
- [18] *Modesto v. Modesto, et al.*, supra note 16.
- [19] *Alafriz v. Mina*, 28 Phil. 137 (1914).
- [20] CA Rollo, pp. 18-21. The decedent's shares in Ayala Sales Corporation were allegedly transferred to Betty C. Chua, Rosita C. Tin, and Jerry C. Tin.
- [21] *Sebial v. Sebial*, No. L-23419, 27 June 1975, 64 SCRA 385.
- [22] *Valera v. Inserto*, supra note 16.
- [23] 358 Phil. 864 (1998).
- [24] 315 Phil. 529 (1995).
- [25] *Bernardo v. NLRC*, 325 Phil. 371 (1996).
- [26] *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, 20 February 2001, 352 SCRA 334.
- [27] Rollo, pp. 29-30.
- [28] 78 Phil. 743 (1947).
- [29] *Modesto v. Modesto, et al.*, supra note 16.
- [30] Section 10, Rule 87 states:

SEC. 10. When creditor may bring action. Lien for costs. -- When there is such a deficiency of assets, and the deceased in his lifetime had made or attempted such a conveyance, as is stated in the last preceding section, and the executor or administrator has not commenced the action therein provided for, any creditor of the estate may, with the permission of the court, commence and prosecute to final judgment, in the name of the executor or administrator, a like action for the recovery of the subject of the conveyance or attempted conveyance for the benefit of the creditors. But the action shall not be commenced until the creditor has filed in a court a bond

executed to the executor or administrator, in an amount approved by the judge, conditioned to indemnify the executor or administrator against the costs and expenses incurred by reason of such action. Such creditor shall have a lien upon any judgment recovered by him in the action for such costs and other expenses incurred therein as the court deems equitable. Where the conveyance or attempted conveyance has been made by the deceased in his lifetime in favor of the executor or administrator, the action which a creditor may bring shall be in the name of all the creditors, and permission of the court and filing of bond as above prescribed, are not necessary.

[31] *Mallari v. Mallari*, 92 Phil. 694 (1952). See OSCAR M. HERRERA, 3-A REMEDIAL LAW 141 (1996).

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