

VIRGINIA GOCHAN, LOUISE GOCHAN, LAPU-LAPU REAL ESTATE CORPORATION, FELIX GOCHAN AND SONS REALTY CORPORATION, MACTAN REALTY DEVELOPMENT CORPORATION, PETITIONERS, VS. MERCEDES GOC...

G.R. No. 146089. December 13, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review seeking to set aside the decision of the Court of Appeals dated September 10, 1999 in CA-G.R. SP No. 49084,[1] as well as its Resolution[2] dated November 22, 2000, denying the Motion for Reconsideration.

Respondents were stockholders of the Felix Gochan and Sons Realty Corporation and the Mactan Realty Development Corporation. Sometime in 1996, respondents offered to sell their shares in the two corporations to the individual petitioners, the heirs of the late Ambassador Esteban Gochan, for and in consideration of the sum of P200,000,000.00. Petitioners accepted and paid the said amount to respondents. Accordingly, respondents issued to petitioners the necessary "Receipts." [3] In addition, respondents executed their respective "Release, Waiver and Quitclaim," [4] wherein they undertook that they would not initiate any suit, action or complaint against petitioners for whatever reason or purpose.

In turn, respondents, through Crispo Gochan, Jr., required individual petitioners to execute a "promissory note," [5] undertaking not to divulge the actual consideration they paid for the shares of stock. For this purpose, Crispo Gochan, Jr. drafted a document entitled "promissory note" in his own handwriting and had the same signed by Felix Gochan, III, Louise Gochan and Esteban Gochan, Jr.

Unbeknown to petitioners, Crispo Gochan, Jr. inserted in the "promissory note" a phrase that says, "Said amount is in partial consideration of the sale." [6]

On April 3, 1998, respondents filed a complaint against petitioners for specific performance and damages with the Regional Trial Court of Cebu City, Branch 11, docketed as Civil Case No. CEB-21854. Respondents alleged that sometime in November 1996, petitioner Louise Gochan, on behalf of all the petitioners, offered to buy their shares of stock, consisting of 254 shares in the Felix Gochan and Sons Realty Corporation and 1,624 shares of stock in the Mactan Realty Development Corporation; and that they executed a Provisional Memorandum of Agreement, wherein they enumerated the following as consideration for the sale:

- Pesos: Two Hundred Million Pesos (P200M)
- Two (2) hectares more or less of the fishpond in Gochan compound, Mabolo, Lot 4F-2-B
- Lot 2, Block 9 with an area of 999 square meters in Gochan Compound, Mabolo, Cebu
- Three Thousand (3,000) square meters of Villas Magallanes in Mactan, Cebu

- Lot 423 New Gem Building with an area of 605 square meters.[7]

Accordingly, respondents claimed that they are entitled to the conveyance of the aforementioned properties, in addition to the amount of P200,000,000.00, which they acknowledge to have received from petitioners. Further, respondents prayed for moral damages of P15,000,000.00, exemplary damages of P2,000,000.00, attorney's fees of P14,000,000.00, and litigation expenses of P2,000,000.00.

Petitioners filed their answer, raising the following affirmative defenses: (a) lack of jurisdiction by the trial court for non-payment of the correct docket fees; (b) unenforceability of the obligation to convey real properties due to lack of a written memorandum thereof, pursuant to the Statute of Frauds; (c) extinguishment of the obligation by payment; (d) waiver, abandonment and renunciation by respondent of all their claims against petitioners; and (e) non-joinder of indispensable parties.

On August 7, 1998, petitioners filed with the trial court a motion for a preliminary hearing on the affirmative defenses. In an Order dated August 11, 1998, the trial court denied the motion, ruling as follows:

As the grant of said motion lies in the discretion of the court under Section 6 of Rule 16 of the 1997 Rules of Civil Procedure, this Court in the exercise of its discretion, hereby denies the said motion because the matters sought to be preliminarily heard do not appear to be tenable. For one, the statute of frauds does not apply in this case because the contract which is the subject matter of this case is already an executed contract. The statute of frauds applies only to executory contracts. According to Dr. Arturo M. Tolentino, a leading authority in civil law, since the statute of frauds was enacted for the purpose of preventing frauds, it should not be made the instrument to further them. Thus, where one party has performed his obligation under a contract, equity would agree that all evidence should be admitted to prove the alleged agreement (PNB vs. Philippine Vegetable Oil Company, 49 Phil. 897). For another, the contention of the defendants that the claims of the plaintiffs are already extinguished by full payment thereof does not appear to be indubitable because the plaintiffs denied under oath the due execution and genuineness of the receipts which are attached as Annexes 1-A, 1-B and 1-C of defendants' answer. This issue therefore has to be determined on the basis of preponderance of evidence to be adduced by both parties. Then, still for another, the contention that the complaint is defective because it allegedly has failed to implead indispensable parties appears to be wanting in merit because the parties to the memorandum of agreement adverted to in the complaint are all parties in this case. Then the matter of payment of docketing and filing fees is not a fatal issue in this case because the record shows that the plaintiffs had paid at least P165,000.00 plus in the form of filing and docketing fees. Finally, regarding exerting earnest efforts toward a compromise by the plaintiffs, the defendants cannot say that there is an absence of an allegation to this effect in the complaint because paragraph 11 of the complaint precisely states that "before filing this case, earnest efforts toward a compromise have been made."

Petitioners' motion for reconsideration of the above Order was denied by the trial court on September 11, 1998.

Petitioners thus filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 49084. On September 10, 1999, the Court of Appeals rendered the appealed decision dismissing the petition on the ground that respondent court did not commit grave abuse of discretion, tantamount to lack or in excess of jurisdiction in denying the motion to hear the affirmative defenses.[8]

Again, petitioners filed a motion for reconsideration, but the same was denied by the Court of Appeals in its assailed Resolution of November 22, 2000.[9]

Petitioners, thus, brought the present petition for review anchored on the following grounds:

I.

THE COURT OF APPEALS COMMITTED GRAVE AND PALPABLE ERROR IN FINDING THAT THE

CORRECT DOCKET FEES HAVE BEEN PAID.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN RULING THAT THE PMOA WAS A PARTIALLY EXECUTED CONTRACT AND HENCE NOT COVERED BY THE STATUTE OF FRAUDS.

III.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DECIDING THAT THE CLAIMS OF PRIVATE RESPONDENTS HAVE NOT BEEN EXTINGUISHED BY PAYMENT OR FULL SETTLEMENT DESPITE THE PRESENCE OF RECEIPTS SIGNED BY THE PRIVATE RESPONDENTS SHOWING THE CONTRARY.

IV.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN RESOLVING THAT FELIX GOCHAN III AND ESTEBAN GOCHAN, JR. ARE NOT INDISPENSABLE PARTIES AND THEREFORE NEED NOT BE IMPLEADED AS PARTIES.[10]

Respondents filed their Comment,[11] arguing, in fine, that petitioners are guilty of forum-shopping when they filed two petitions for certiorari with the Court of Appeals; and that the Court of Appeals did not err in dismissing the petition for certiorari.

The instant petition has merit.

The rule is well-settled that the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees. In the case of Sun Insurance Office, Ltd. (SIOL) v. Asuncion,[12] this Court held that it is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action.

Respondents maintain that they paid the correct docket fees in the amount of P165,000.00 when they filed the complaint with the trial court. Petitioners, on the other hand, contend that the complaint is in the nature of a real action which affects title to real properties; hence, respondents should have alleged therein the value of the real properties which shall be the basis for the assessment of the correct docket fees.

The Court of Appeals found that the complaint was one for specific performance and incapable of pecuniary estimation. We do not agree.

It is necessary to determine the true nature of the complaint in order to resolve the issue of whether or not respondents paid the correct amount of docket fees therefor. In this jurisdiction, the dictum adhered to is that the nature of an action is determined by the allegations in the body of the pleading or complaint itself, rather than by its title or heading.[13] The caption of the complaint below was denominated as one for "specific performance and damages." The relief sought, however, is the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance in their favor of the real properties enumerated in the provisional memorandum of agreement. Under these circumstances, the case below was actually a real action, affecting as it does title to or possession of real property.

In the case of Hernandez v. Rural Bank of Lucena,[14] this Court held that a real action is one where the plaintiff seeks the recovery of real property or, as indicated in section 2(a) of Rule 4 (now Section 1, Rule 4 of the 1997 Rules of Civil Procedure), a real action is an action affecting title to or recovery of possession of real property.

It has also been held that where a complaint is entitled as one for specific performance but nonetheless prays for

the issuance of a deed of sale for a parcel of land, its primary objective and nature is one to recover the parcel of land itself and, thus, is deemed a real action. In such a case, the action must be filed in the proper court where the property is located:

In this Court, the appellant insists that her action is one for specific performance, and, therefore, personal and transitory in nature.

This very issue was considered and decided by this Court in the case of Manuel B. Ruiz vs. J.M. Tuason & Co., Inc. et al., L-18692, promulgated 31 January 1963. There the Court, by unanimous vote of all the Justices, held as follows:

“This contention has no merit. Although appellant's complaint is entitled to be one for specific performance, yet the fact that he asked that a deed of sale of a parcel of land situated in Quezon City be issued in his favor and that a transfer certificate of title covering said parcel of land be issued to him shows that the primary objective and nature of the action is to recover the parcel of land itself because to execute in favor of appellant the conveyance requested there is need to make a finding that he is the owner of the land which in the last analysis resolves itself into an issue of ownership. Hence, the action must be commenced in the province where the property is situated pursuant to Section 3, Rule 5, of the Rules of Court, which provides that actions affecting title to or recovery of possession of real property shall be commenced and tried in the province where the property or any part thereof lies.”[15]

In the case at bar, therefore, the complaint filed with the trial court was in the nature of a real action, although ostensibly denominated as one for specific performance. Consequently, the basis for determining the correct docket fees shall be the assessed value of the property, or the estimated value thereof as alleged by the claimant. Rule 141, Section 7, of the Rules of Court, as amended by A.M. No. 00-2-01-SC, provides:

Section 7. Clerks of Regional Trial Courts. - x x x

(b) xxx

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

We are not unmindful of our pronouncement in the case of Sun Insurance,[16] to the effect that in case the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive period. However, the liberal interpretation of the rules relating to the payment of docket fees as applied in the case of Sun Insurance cannot apply to the instant case as respondents have never demonstrated any willingness to abide by the rules and to pay the correct docket fees. Instead, respondents have stubbornly insisted that the case they filed was one for specific performance and damages and that they actually paid the correct docket fees therefor at the time of the filing of the complaint. Thus, it was stated in the case of Sun Insurance:[17]

The principle in Manchester could very well be applied in the present case. The pattern and the intent to defraud the government of the docket fee due it is obvious not only in the filing of the original complaint but also in the filing of the second amended complaint.

However, in Manchester, petitioner did not pay any additional docket fee until the case was decided by this Court on May 7, 1987. Thus, in Manchester, due to the fraud committed on the government, this Court held that the court a quo did not acquire jurisdiction over the case and that the amended complaint could not have been admitted inasmuch as the original complaint was null and void.

In the present case, a more liberal interpretation of the rules is called for considering that, unlike Manchester,

private respondent demonstrated his willingness to abide by the rules by paying the additional docket fees as required. The promulgation of the decision in Manchester must have had that sobering influence on private respondent who thus paid the additional docket fee as ordered by the respondent court. It triggered his change of stance by manifesting his willingness to pay such additional docket fee as may be ordered.

Respondents accuse petitioners of forum-shopping when they filed two petitions before the Court of Appeals. Petitioners, on the other hand, contend that there was no forum-shopping as there was no identity of issues or identity of reliefs sought in the two petitions.

We agree with petitioners that they are not guilty of forum-shopping. The deplorable practice of forum-shopping is resorted to by litigants who, for the purpose of obtaining the same relief, resort to two different fora to increase his or her chances of obtaining a favorable judgment in either one. In the case of *Golangco v. Court of Appeals*,^[18] we laid down the following test to determine whether there is forum-shopping:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and the parties-litigant by a person who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.

In sum, two different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought; thus, forum shopping cannot be said to exist in the case at bar.

Likewise, we do not find that there is forum-shopping in the case at bar. The first petition, docketed as CA-G.R. SP. No. 49084, which is now the subject of the instant petition, involved the propriety of the affirmative defenses relied upon by petitioners in Civil Case No. CEB-21854. The second petition, docketed as CA-G.R. SP No. 54985, raised the issue of whether or not public respondent Judge Dicdican was guilty of manifest partiality warranting his inhibition from further hearing Civil Case No. CEB-21854.

More importantly, the two petitions did not seek the same relief from the Court of Appeals. In CA- G.R. SP. No. 49084, petitioners prayed, among others, for the annulment of the orders of the trial court denying their motion for preliminary hearing on the affirmative defenses in Civil Case No. CEB-21854. No such reliefs are involved in the second petition, where petitioners merely prayed for the issuance of an order enjoining public respondent Judge Dicdican from further trying the case and to assign a new judge in his stead.

True, the trial court has the discretion to conduct a preliminary hearing on affirmative defenses. In the case at bar, however, the trial court committed a grave abuse of its discretion when it denied the motion for preliminary hearing. As we have discussed above, some of these defenses, which petitioners invoked as grounds for the dismissal of the action, appeared to be indubitable, contrary to the pronouncement of the trial court. Indeed, the abuse of discretion it committed amounted to an evasion of positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law,^[19] which would have warranted the extraordinary writ of certiorari. Hence, the Court of Appeals erred when it dismissed the petition for certiorari filed by petitioners.

WHEREFORE, in view of the foregoing, the instant petition is GRANTED. This case is REMANDED to the Regional Trial Court of Cebu City, Branch 11, which is directed to forthwith conduct the preliminary hearing on the affirmative defenses in Civil Case No. CEB-21854.

SO ORDERED.

Kapunan, and Pardo, JJ., concur.

Davide, Jr., C.J., (Chairman), see dissenting opinion.

Puno, J., joins the dissent of C.J., Davide, Jr.

[1] Rollo, pp. 56-65; penned by Associate Justice Artemon D. Luna; concurred in by Associate Justices Conchita Carpio Morales and Bernardo P. Abesamis.

[2] Ibid., pp. 67-69; penned by Associate Justice Conchita Carpio Morales; concurred in by Associate Justices Bernardo P. Abesamis and Jose L. Sabio, Jr.

[3] Petition, Annexes "C", "D" and "E", Rollo pp. 70-72.

[4] Ibid., Annexes "F", "G", "H", "I", "J" and "K", Rollo pp. 73-84.

[5] Id., Annex "L", Rollo, p. 85.

[6] Id., Annex "M", Rollo, p. 86.

[7] Id., Annex "N", Rollo, pp. 87-88.

[8] Op. cit., note 1.

[9] Op. cit., note 2.

[10] Rollo, p. 25.

[11] Ibid., pp. 123-143.

[12] 170 SCRA 274 (1989).

[13] David v. Malay, 318 SCRA 711 (1999).

[14] 81 SCRA 75 (1978).

[15] Torres v. J.M. Tuason & Co., Inc., 12 SCRA 174 (1964).

[16] Supra.

[17] Ibid.

[18] 283 SCRA 493 (1997).

[19] People v. Chavez, G.R. No. 140690, June 19, 2001.

DISSENTING OPINION**DAVIDE, JR., C.J.:**

I respectfully make of record my dissent to both drafts of the decision penned by Mme. Justice Consuelo Y. Santiago.

I. The first draft

The first draft (1) sets aside the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 49084 and the Orders of the Regional Trial Court of Cebu City, Branch 11, in Civil Case No. CEB-21854; and (2) orders of the dismissal of said civil case.

I seriously doubt the propriety of this action, even if it is principally based on the non-payment of the deficiency of the docket fee. *Sun Life Insurance Office Ltd. v. Asuncion* (170 SCRA 274 [1989]) is not the final word on deficiency of docket fees. *Tacay v. Regional Trial Court of Tagum, Davao del Norte*, (180 SCRA 433, 443 [1989]) further liberalized the rule. Thus:

Two situations may arise. One is where the complaint or similar pleading sets out a claim purely for money or damages and there is no precise statement of the amounts being claimed. In this event the rule is that the pleading will 'not be accepted nor admitted, or shall otherwise be expunged from the record.' In other words, the complaint or pleading may be dismissed, or the claims as to which the amounts are unspecified may be expunged, although as aforesaid the Court may, on motion, permit amendment of the complaint and payment of the fees provided the claim has not in the meantime become time-barred. The other is where the pleading does specify the amount of every claim, but the fees paid are insufficient; and here again, the rule now is that the court may allow reasonable time for the payment of the prescribed fees, or the balance thereof, and upon such payment, the defect is cured and the court may properly take cognizance of the action, unless in the meantime prescription has set in and consequently barred the right of action.

Where the action involves real property and a related claim for damages as well, the legal fees shall be assessed on the basis of both (a) the value of the property and (b) the total amount of related damages sought. The Court acquires jurisdiction over the action if the filing of the initiatory pleading is accompanied by the payment of the requisite fees, or, if the fees are not paid at the time of the filing of the pleading, as of the time of full payment of the fees within such reasonable time as the court may grant, unless, of course, prescription has set in in the meantime. But where - as in the case at bar - the fees prescribed for an action involving real property have been paid, but the amounts of certain of the related damages (actual, moral and nominal) being demanded are unspecified, the action may not be dismissed. The Court undeniably has jurisdiction over the action involving the real property, acquiring it upon the filing of the complaint or similar pleading and payment of the prescribed fee. And it is not divested of that authority by the circumstance that it may not have acquired jurisdiction over the accompanying claims for damages because of lack of specification thereof. What should be done is simply to expunge those claims for damages as to which no amounts are stated, which is what the respondent Courts did, or allow, on motion, a reasonable time for the amendment of the complaints so as to allege the precise amount of each item of damages and accept payment of the requisite fees therefor within the relevant prescriptive period.

Even if we would still cling to *Sun life*, the rule therein laid down would still be applicable to this case, contrary to the assertion in the ponencia in question. The evil contemplated in *Manchester* case which prompted the pronouncement therein does not exist in the instant case.

Verily, there is good faith on the part of the private respondents in insisting on what their cause of action is. Even the Court of Appeals sustained their position in this issue.

Therefor, private respondents should only be required to pay the deficiency in docket fees.

II. The second draft

The second draft ponencia declares the trial court and the Court of Appeals as having acted with grave abuse of discretion in denying the motion for a preliminary hearing on the affirmative defenses. The order of the trial court denying the motion is an interlocutory order. There can be no appeal from such order of denial. A special civil action of certiorari under Rule 65 of the Rules of Court may be resorted to, but there must be a clear showing that the court had acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of or in

excess of jurisdiction. Grave abuse of discretion means arbitrary and despotic action.

I submit that the trial court did not commit any grave abuse of discretion in denying the motion for a preliminary hearing on the affirmative defenses on the ground that such defenses do not appear to be indubitable. The ponencia itself admits that only some of the defenses appeared indubitable. The last paragraph of page 10 of the latest draft of the ponencia reads:

True, the trial court has the discretion to conduct a preliminary hearing on affirmative defenses. In the case at bar, however, the trial court committed a grave abuse of its discretion when it denied the motion for preliminary hearing. As we have discussed above, some of these defenses, which petitioners invoked as grounds for the dismissal of the action, appeared to be indubitable, contrary to the pronouncement of the trial court. Indeed, the abuse of discretion it committed amounted to an evasion of positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, which would have warranted the extraordinary writ of certiorari. Hence, the Court of Appeals erred when it dismissed the petition for certiorari filed by petitioners. (underscoring supplied for emphasis.)

Accordingly, since the orders of the trial court are not tainted with grave abuse of discretion, the Court of Appeals committed no error in dismissing the petition for certiorari against said orders.

I then vote to deny due course to the petition.

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