HIKOI SUZUKI, RAMON DEL ROSARIO AND TAKAYUKI SATO, PETITIONERS, VS. DIANA DE GUZMAN, RESPONDENT.

G.R. NO. 146979. July 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated January 26, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 52030 which dismissed petitioners' petition for certiorari and prohibition, and the CA Resolution dated February 2, 2001 which denied petitioners' motion for reconsideration.

The procedural antecedents and factual background of the case are as follows:

On January 10, 1996, the Suzuki Beach Hotel, Inc. (SBHI) located at 1 Samar Street, Bo. Barretto, Olongapo City was registered with the Securities and Exchange Commission (SEC), with Diana de Guzman (respondent) and Editha Taborda (Taborda) as two of the incorporators. Respondent subscribed to 29,800 shares with a total par value of P2,980,000.00 and paid her subscription in the amount of P745,000.00. Taborda subscribed to 100 shares with a total par value of P10,000.00 and paid P2,500.00 on her subscription.

On December 12, 1997, Hikoi Suzuki, Ramon del Rosario, Takayuki Sato (petitioners), acting as Board of Directors of SBHI, issued a Resolution declaring due and demandable all unpaid shares of stock and gave the stockholders until December 30, 1997 to pay their unpaid subscription. Notice of the call for payment was sent to respondent and Taborda[2] but they failed to pay their respective unpaid subscriptions.

On January 9, 1998, petitioners scheduled a meeting of the Board on January 12, 1998 to discuss the sale of delinquent shares of stocks. On January 10, 1998, notice of the meeting was sent to respondent and Taborda.[3] On January 12, 1998, petitioners approved a Resolution to sell all delinquent shares of stock at a public auction set on January 30, 1998.

On January 30, 1998, the auction sale was conducted. Petitioner Ramon del Rosario and Agnes Rodriguez (Rodriguez) submitted the winning bids for the shares of stock of respondent and Taborda, respectively.[4] On the same day, respondent and Taborda filed an Affidavit of Protest on the auction sale of their shares of stock.[5]

On March 4, 1998, respondent and Taborda filed with the SEC a Petition for Calling Special Stockholders Meetings and for Election of Directors and Officers, Declaration of Nullity of the Call of Sale of Unpaid Stock Subscription with Writ of Preliminary Injunction and Temporary Restraining Order, docketed as SEC Case No. 03-98-5924.

On March 23, 1998, petitioners filed a Motion to Dismiss on the ground of lack of jurisdiction, alleging that jurisdiction over the case was lodged with the civil courts. On April 7, 1998, SEC Hearing Officer C.A. Gerard M. Lukban denied petitioners' Motion to Dismiss.[6] He held that the controversy involves intra-corporate matters which falls within the jurisdiction of the SEC, pursuant to Section 5 of Presidential Decree (P.D.) No. 902-A.

Respondent and Taborda filed an Amended Petition. Petitioners again filed a Motion to Dismiss, invoking the same ground of lack of jurisdiction raised in their first Motion to Dismiss. On May 22, 1998, the SEC denied petitioners' Motion to Dismiss. Thus, petitioners filed their Answer.

Meanwhile, on June 13, 1998, during the pendency of the case, petitioners issued another Resolution calling for payment of delinquent shares of stock, to give respondent and Taborda a second chance to pay their unpaid subscriptions.[7] Letters, dated June 16, 1998, were sent to respondent and Taborda informing them that, to obviate further legal questions on the validity of the call for payment, petitioners gave them a second chance, until June 30, 1998, to pay their unpaid subscriptions.[8] Respondent and Taborda again failed to heed the call for payment.

On July 6, 1998, petitioners set a meeting of the Board on July 12, 1998 to discuss the delinquent shares of stock. On July 8, 1998, notice of the meeting was sent to respondent and Taborda.[9] On July 12, 1998, petitioners approved a Resolution to sell all delinquent shares at a public auction set on August 12, 1998.[10]

Respondent and Taborda filed with the SEC an Urgent Ex-Parte Motion for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction but the SEC denied it in its Order dated July 30, 1998.[11] Thus, the auction sale proceeded on August 12, 1998. Again, petitioner del Rosario and Rodriguez submitted the winning bids for the shares of stock of respondent and Taborda, respectively.[12]

On August 31, 1998 respondents filed with the SEC a Supplemental Pleading seeking to nullify the August 12, 1998 auction sale.[13] On September 19, 1998, petitioners filed a Motion to Dismiss Supplemental Pleading on the ground of lack of jurisdiction, claiming once again that the case is cognizable by civil courts.

On November 13, 1998, the SEC issued its Order denying petitioners Motion to Dismiss the Supplemental Pleading.[14] The SEC held that the cause of action raised in the supplemental pleading is but an incident arising out of the original controversy between the parties over which it has jurisdiction; that the auction sale, subject of the supplemental petition, proceeds from the notice of delinquency which is the very same notice of delinquency based on the December 12, 1997 call for payment by the Board of Directors of SBHI, the validity of which is the issue raised in the original petition; that such a dispute, being an offshoot of an intra-corporate relationship existing between the parties, undisputedly falls within the jurisdiction of the SEC.

Petitioners filed a Motion for Reconsideration but the SEC denied it in its Order dated March 2, 1999.[15]

Thereafter, on March 29, 1999, the petitioners filed a petition for certiorari and prohibition with the CA, assailing Orders of the SEC dated November 13, 1998 and March 2, 1999.[16] They maintain that the case falls within the jurisdiction of civil courts, not the SEC, since respondent and Taborda are no longer stockholders of SBHI for failure to pay their delinquent shares of stock. They further allege that respondent and Taborda failed to comply with the condition precedent under Section 69 of the Corporation Code.[17]

On January 26, 2000, the CA rendered the assailed Decision dismissing the petition for being insufficient in form and substance. The CA held that the petition is procedurally deficient because: (a) it failed to indicate the date when the motion for reconsideration was filed with the SEC; (b) the attached material portions of the record are not certified copies; (c) the certification of non-forum shopping was signed by counsel, not by petitioners themselves; and, (d) there was no written explanation as to why personal service was not effected. As to the merits of the petition, the CA ruled that since the controversy arose out of an intra-corporate dispute, it is within the jurisdiction of the SEC; and the supplemental pleading did not raise a new cause of action to warrant dismissal.[18]

On March 14, 2000, petitioners filed a motion for reconsideration[19] but the CA denied it in its Resolution dated

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February 2, 2001.[20]

Hence, the present petition anchored on the following grounds:

> - THE PUBLIC RESPONDENT COURT OF APPEALS GRIEVOUSLY ERRED IN RESOLVING THE PETITION ON THE BASIS OF MERE TECHNICALITIES.
>
> - THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY AND GRAVELY ERRED IN RULING THAT SECTION 69 OF THE CORPORATION CODE IS NOT APPLICABLE TO THIS CASE.[21]

Following the submission of respondent's Comment,[22] the Court gave due course to the petition; and in compliance with the Court's order, both parties submitted their respective memoranda.[23]

Petitioners pose three issues for resolution, to wit: (1) whether petitioners failed to comply with the requirements provided by the Rules cited in the CA Decision; (2) whether Section 69 of the Corporation Law is applicable to the instant case; and (3) whether the SEC has jurisdiction over the case.[24]

Petitioners contend that the CA erred when it dismissed the petition on grounds of pure technicality. Regarding the failure to indicate the date when the motion for reconsideration was filed, they aver that the CA misquoted Section 3, par. 2, Rule 46 of the 1997 Rules of Civil Procedure; that the requirement to indicate said date is not found in said provision; that it is not necessary to indicate said date since what is important in determining the timeliness of the filing of the petition is the date of receipt of the order denying the motion for reconsideration.

As to the attached documents which are not certified copies, they allege that the attached documents need not be certified since they are not material portions of the records but mere documents of petitioners attached to substantiate the allegations.

With respect to the certification of non-forum shopping, they argue that the CA should have noted that there were three petitioners such that the signing of counsel substantially complies with the Rule.

As to the absence of a written explanation, they point out that the explanation is found in page 14 of the petition.

In any event, petitioners strongly assert that the CA's strict adherence to procedure undermines the oft-repeated doctrine by this Court that the rules of procedure are used only to help secure, not override, substantial justice.

Petitioners maintain that respondent failed to comply with the condition precedent set forth in Section 69 of the Corporation Code, in which the party seeking to maintain action to question the auction sale is required to pay the party holding the stock the sum for which the same was sold.

Petitioners also insist that the SEC has no jurisdiction over the dispute since Section 5 of P.D. 902-A has been repealed by Section 5.2 of Republic Act No. 8799 (RA 8799), the Securities Regulation Code, which transferred jurisdiction over intra-corporate disputes from the SEC to the Regional Trial Courts.

Respondent, for her part, staunchly maintains that petitioners' wanton disregard of the Rules of Court warrant the outright dismissal of their petition. As to the question of jurisdiction, P.D. 902-A vests upon the SEC jurisdiction to hear intra-corporate cases and not Section 69 of the Corporation Code.

The Court shall first dispose of the procedural issues raised in the petition.

Section 3[25] of Rule 46 of the 1997 Rules of Civil Procedure provides that there are three material dates that must be stated in a petition for certiorari brought under Rule 65: (a) the date when notice of the judgment or final order or resolution was received, (b) the date when a motion for new trial or for reconsideration when one such

was filed, and, (c) the date when notice of the denial thereof was received. This requirement is for the purpose of determining the timeliness of the petition, since the perfection of an appeal in the manner and within the period prescribed by law is jurisdictional and failure to perfect an appeal as required by law renders the judgment final and executory.[26]

Section 3 also requires the pleader to submit a certificate of non-forum shopping to be executed by the plaintiff or principal party. Obviously, it is the plaintiff or principal party, and not the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case.[27]

As a general rule, these requirements are mandatory, meaning, non-compliance therewith is a sufficient ground for the dismissal of the petition.[28] While the Court is not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain his failure to comply with the rules.[29] There must be at least a reasonable attempt at compliance with the Rules. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.[30]

In the present case, the petition was bereft of any persuasive explanation as to why petitioners failed to observe procedural rules properly. The date of filing of the motion for reconsideration cannot simply be ascertained from the attached documents. The Order dated March 2, 1999 of

the SEC even presents an impossible situation - the stated date of the Motion for Reconsideration (October 4, 1998) is one month ahead of the Order of the SEC it seeks to have reconsidered (November 13, 1998).[31]

The argument raised by petitioners' counsel that the CA misquoted the Rules is utterly bereft of merit. Supreme Court Circular No. 39-98[32] which amended Section 3, Rule 46 of the 1997 Rules of Civil Procedure added the paragraph requiring the statement of material dates. The Circular was published in several newspapers of general circulation in the country on July 26, 1998, and took effect on September 1, 1998. Thus, the amendments were introduced more than six months prior to the filing of the petition before the CA.

The Court also cannot accept the signature of petitioners' counsel as substantial compliance with the Rules. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. The fact that there are three petitioners is not valid excuse or exception to the requirement. A certification against forum shopping signed by counsel is a defective certification that is equivalent to non-compliance with the requirement and constitutes a valid cause for the dismissal of the petition.[33]

Thus, the CA was correct in dismissing the petition on grounds of non-compliance with rules on material date and certification of non-forum shopping.

The Court, however, takes exception from the other procedural grounds for dismissal. As to the failure to attach certified copies of material portions of the record, the Court held in Cadayona v. Court of Appeals,[34] that supporting documents to the petition are not required to be certified true copies, it being enough that the assailed judgment, order or resolution is a certified true copy.[35] With respect to the absence of a written explanation, a perusal of the petition reveals that the explanation is found in page 14 thereof.[36]

It is an elementary principle in law that negligence of counsel binds the client.[37] This is based on the rule that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of his client.[38] Thus, the invocation of "the interest of substantial justice" is not a magic wand that automatically compels courts to suspend procedural rules. Except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying

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with the procedure prescribed, procedural rules must be followed.[39]

To determine whether there is persuasive reason to relax the application of the rules, the Court shall now look into the substance of the petition.

Petitioners' argument that the supplemental pleading should be dismissed for non-compliance with the alleged condition precedent under Section 69 of the Corporation Code is unavailing. The Court notes that this issue was never alleged or raised in the proceedings before the SEC. It was raised for the first time in petitioners' petition for certiorari and prohibition in the CA. It is settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal.[40] Basic considerations of due process impel this rule.[41] This principle equally applies to special civil actions for certiorari under Rule 65.[42] Thus, petitioners are deemed to have waived such issue for their failure to raise the same before the SEC.

As to the question of jurisdiction, at the time the CA promulgated the assailed Decision on January 26, 2000, the SEC was still empowered, under Section 5 of P.D. 902-A, to hear and decide cases involving intra-corporate disputes, thus:

> SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of association registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
> ...
>
> b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are the stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; x x x (Emphasis supplied)

However, on August 9, 2000, during the pendency of petitioners' Motion for Reconsideration of the CA Decision, R.A. No. 8799 took effect. Section 5.2 of R.A. No. 8799, provides:

> 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Emphasis supplied)

Thus, original and exclusive jurisdiction to hear and decide cases involving intra-corporate controversies have been transferred to courts of general jurisdiction or the appropriate Regional Trial Court.[43] The case involving herein parties has not been submitted for final resolution on the merits in the SEC. Only the issue on jurisdiction was dealt with by the SEC which is the subject of herein petition. Thus, herein case does not fall within the exception adverted to in the aforequoted Section 5.2.

All the foregoing considered, the CA should have noted that R.A. No. 8799 was already in force and effect, for more than five months, and therefore applicable at the time of the promulgation of the herein assailed Resolution on February 2, 2001. Although the petition filed with the CA was procedurally deficient for non-compliance with the rules on material date and certification of non-forum shopping, the CA should have reconsidered its Decision

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on the question of jurisdiction in view of the advent of R.A. No. 8799 transferring cases originally cognizable by the SEC to the Regional Trial Courts. Technicalities must give way to the realities of the situation. It is elementary that jurisdiction over the subject matter, or the jurisdiction to hear and decide a case, is conferred by law[44] and it is not within the courts, let alone the parties, to themselves determine and conveniently set aside.[45]

Pursuant to Section 5.2 of R.A. No. 8799, this Court designated specific branches of the Regional Trial Courts to try and decide cases formerly cognizable by the SEC. For the Third Judicial Region, specifically in the Province of Zambales, the RTC of Olongapo City, Branch 72, is the designated court.[46]

WHEREFORE, the instant petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 52030 are REVERSED and SET ASIDE and SEC Case No. 03-98-5924 is ordered remanded to the Regional Trial Court of Olongapo City, Branch 72, for further proceedings and proper disposition.

No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur

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[1] Penned by Associate Justice Mariano M. Umali and concurred in by Associate Justices Salome A. Montoya and Bernardo Ll. Salas (all retired); rollo, pp. 22-29.

[2] Annexes "C" and "D" of the Petition, CA rollo, pp. 24-a, 25.

[3] Annexes "E" and "F" of the Petition, id. at 26, 27.

[4] Annex "I" of the Petition, id. at 30.

[5] Annex "H" of the Petition, id. at 29.

[6] Annex "J" of the Petition, id. at 32.

[7] Annex "L" of the Petition, id. at 35.

[8] Annexes "M" and "N" of the Petition, id. at 36, 38.

[9] Annexes "O" and "P" of the Petition, id. at 40, 41.

[10] Annex "Q" of the Petition, id. at 42.

[11] Annex "K" of the Petition, id. at 33.

[12] Annexes "R" and "S" of the Petition, id. at 44, 45.

[13] Annex "T" of the Petition, id. at 46.

[14] Annex "A" of the Petition, id. at 20.

[15] Annex "B" of the Petition, CA rollo, p. 22.

[16] Id. at 2.

[17] Id. at 10.

[18] Id. at 66.

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[19] Id. at 75.

[20] Id. at 84.

[21] Rollo, p. 13.

[22] Id. at 51.

[23] Id. at 57, 80.

[24] Id. at. 62.

[25] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements.-
x x x
In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or (final) order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
x x x
The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
x x x
The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (As amended by SC Circular No. 39-98)

[26] Great Southern Maritime Services Corporation v. Acuña, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 432-433; Lapid v. Laurea, 439 Phil. 887, 895-896 (2002); Santos v. Court of Appeals, 413 Phil. 41, 54 (2001).

[27] Great Southern Maritime Services Corporation v. Acuña, supra; Chan v. Regional Trial Court of Zamboanga del Norte in Dipolog City, Br. 9, G.R. No. 149253, April 15, 2004, 427 SCRA 796, 806; Mendigorin v. Cabantog, 436 Phil. 483, 491 (2002); Digital Microwave Corporation v. Court of Appeals, 384 Phil. 842, 846-847 (2000).

[28] Last paragraph, Section 3 of Rule 46 of the 1997 Rules of Civil Procedure.

[29] Lapid v. Laurea, supra; Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 389 Phil. 644, 656 (2000).

[30] Delgado v. Court of Appeals, G.R. No. 137881, August 19, 2005, 467 SCRA 418, 424; Chua vs. Santos, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 376.

[31] Annex "B" of the Petition, CA rollo, p. 22.

[32]Bar Matter No. 803 - Re: Correction Of Clerical Errors In And Adoption Of Amendments To The 1997 Rules Of Civil Procedure.

[33]Chan v. Regional Trial Court of Zamboanga del Norte in Dipolog City, Br. 9, supra at 807.

[34] 381 Phil. 619, 627 (2000).

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[35] See also Padilla, Jr. v. Alipio, G. R. No. 156800, November 25, 2004, 444 SCRA 322, 327; Van Melle Phils., Inc. v. Endaya, G.R. NO. 143132, September 23, 2003, 411 SCRA 528, 536.

[36]CA rollo, p. 15.

[37] Lapid v. Laurea, supra; Del Mar v. Court of Appeals, 429 Phil. 19, 28 (2002).

[38] STI Drivers Association v. Court of Appeals, 441 Phil. 166, 173 (2002); Salonga v. Court of Appeals, 336 Phil. 514, 526 (1997).

[39]Bacarra v. National Labor Relations Commission, G.R. No. 162445, October 20, 2005, 473 SCRA 581, 586.

[40] Eastern Assurance & Surety Corporation v. Land Transportation Franchising and Regulatory Board, 459 Phil. 395, 415 (2003); Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc., 445 Phil. 465, 478 (2003).

[41]Eastern Assurance & Surety Corporation v. Land Transportation Franchising and Regulatory Board, supra; Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc., supra.

[42] Corona International, Inc. v. Court of Appeals, 397 Phil. 575, 581 (2000); Buñag v. Court of Appeals, 363 Phil. 216, 221 (1999) .

[43] Sumndad v. Harrigan, 430 Phil. 612, 623 (2002); Intestate Estate of Alexander T. Ty v. Court of Appeals, G.R. Nos. 112872 & 114672, April 19, 2001, 356 SCRA 661, 668.

[44] Fernandez v. Court of Appeals, G.R. No. 131094, May 16, 2005, 458 SCRA 454, 461; Sumndad v. Harrigan, supra.

[45] Metromedia Times Corporation v. Pastorin, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 334-335; De Rossi v. National Labor Relations Commission, 373 Phil. 17, 26 (1999); La Naval Drug Corp. v. Court of Appeals, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 90.

[46] En Banc Resolution, A.M. No. 00-11-03-SC, promulgated November 21, 2000.

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