

DEVELOPMENT BANK OF THE PHILIPPINES AND NILO C. GALORPORT, PETITIONERS, VS. THE COURT OF APPEALS (FORMER FIRST DIVISION), HON. ACHILLES L. MELICOR (AS PRESIDING JUDGE, REGIONAL ...*G.R. No. 147217. October 07, 2004*

Ponente: SANDOVAL-GUTIERREZ, J.

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Assailed in this petition for review on certiorari is the Resolution of the Court of Appeals dated September 26, 2000 in CA-G.R. SP No. 60838 dismissing the petition for certiorari filed by the Development Bank of the Philippines (DBP) and Atty. Nilo Galorport (DBP deputized special sheriff[1]), herein petitioners. The ground for the dismissal is that the certification against forum shopping was signed only by Atty. Demosthenes Demecillo, DBP Branch Manager at Tagbilaran City, the bank's representative. Atty. Galorport, DBP's co-petitioner did not sign the same.

Also assailed in the instant petition is the subsequent Resolution of the Court of Appeals dated January 29, 2001 denying petitioners' motion for reconsideration of the previous Resolution as there is no proof that DBP Branch Manager Atty. Demosthenes Demecillo, who alone signed the certification against forum shopping, is the duly authorized representative of the bank.

Records show that on February 11, 2000, the above-named private respondents filed with the Regional Trial Court (RTC) of Tagbilaran City Civil Case No. 6464 for annulment of contract and Transfer Certificates of Title (TCT) Nos. 42996 and 42997 with prayer for the issuance of a temporary restraining order (TRO) and preliminary injunction. Impleaded as defendants are the DBP, represented by Atty. Demosthenes Demecillo, DBP Branch Manager at Tagbilaran City, and Atty. Nilo Galorport, DBP deputized special sheriff.

During the hearing of the application for a preliminary injunction, it was established that the lots covered by TCT Nos. 42996 and 42997 were owned by Bibiana Guerra de Azarcon (one of the herein private respondents) and her late husband Inocentes Azarcon. They obtained a loan from the Philippine National Bank (PNB). As collateral, they mortgaged these two (2) lots with the bank. But they could not pay their loan. Asuncion Calceta, a close friend of private respondent Donalita Alonzo, told Bibiana that she is willing to pay their loan if she (Bibiana) would mortgage the lots to her. Private respondents agreed.

Asuncion Calceta then made an initial payment of P273,000.00 to the PNB. In turn, the bank extended the redemption period to allow Asuncion to apply with the DBP a loan of P3,500,000.00 to be paid to the PNB.

Upon Asuncion's persistence, private respondents executed a simulated deed of sale of their lots in her favor to enable her to mortgage the same with the DBP. Thus, TCT Nos. 42996 and 42997 were issued in her name by the Register of Deeds of Tagbilaran City.

Asuncion then mortgaged the two (2) lots with the DBP. When the proceeds of the loan were released, she paid

the PNB P900,000.00 representing the unpaid balance of respondents' loan.

However, Asuncion failed to pay her loan with the DBP, prompting the bank to foreclose the mortgage covering the two (2) lots.

After hearing private respondents' application for preliminary injunction, the RTC, on June 9, 2000, issued an Order enjoining the DBP and Atty. Nilo Galorport, the bank's deputized special sheriff, from proceeding with the auction sale of the lots pending the final determination of Civil Case No. 6464.

The DBP and Atty. Galorport filed a motion for reconsideration but was denied by the RTC. Hence, they filed with the Court of Appeals a petition for certiorari alleging that in granting the injunctive relief in favor of private respondents, the RTC acted with grave abuse of discretion. As stated in the outset, the Appellate Court issued a Resolution on September 26, 2000 dismissing the petition for certiorari for failure of one of the petitioners, Atty. Nilo Galorport (DBP's deputized special sheriff), to sign the certification against forum shopping. Subsequently, acting on petitioners' motion for reconsideration, the Appellate Court likewise denied the same in a Resolution dated January 29, 2001, holding that Atty. Demosthenes Demecillo, Branch Manager of the DBP at Tagbilaran City, failed to show that he is the bank's authorized representative to file the petition for certiorari.

The issue for our resolution is:

Whether the Court of Appeals acted with grave abuse of discretion in issuing the assailed twin Resolutions dismissing petitioners' petition for certiorari.

It bears reiterating that the petitioners before the Court of Appeals were the DBP, represented by Atty. Demosthenes Demecillo, the bank's Branch Manager at Tagbilaran City, and Atty. Nilo Galorport, DBP's deputized special sheriff. The certification against forum shopping was signed by Atty. Demosthenes Demecillo only. According to private respondents, Atty. Demecillo was not authorized by the DBP to represent it in filing with the Court of Appeals the petition for certiorari. Hence, Atty. Demecillo's signature appearing on the certification against forum shopping has no legal significance at all. It cannot bind DBP.

Petitioners explained in their motion for reconsideration that in the verification of the petition for certiorari in CA-G.R. SP No. 60838, Atty. Demecillo stated under oath that he is the DBP's incumbent Branch Head and its duly authorized officer. They submitted a copy of Resolution No. 0192 dated April 5, 2000 passed by the DBP Board of Governors. This Resolution authorizes Branch Heads of the DBP to sign the verification and certification against forum shopping of all initiatory pleadings of the bank.

What petitioners failed to explain, however, is their failure to attach a certified true copy of Resolution No. 0912 to their petition for certiorari in CA-G.R. SP No. 60838. Their omission is fatal to their case. Courts are not, after all, expected to take judicial notice of corporate board resolutions or a corporate officer's authority to represent a corporation. To be sure, petitioners' failure to submit proof that Atty. Demecillo has been authorized by the DBP to file the petition is a "sufficient ground for the dismissal thereof."^[2]

On the part of Atty. Galorport, he admits that he did not sign the certification against forum shopping in CA-G.R. SP No. 60838, contending that the signature of Atty. Demecillo, representing the DBP, is sufficient since he (Atty. Galorport) and the DBP are being sued jointly, they having a common interest in the lots under litigation. His contention lacks merit. DBP is being sued as a mortgagee, while he is impleaded as the bank's deputized special sheriff who conducted the extra-judicial foreclosure of the mortgage. Surely, their interests are not the same. He should have signed the certification. In *Docena vs. Lapesura*,^[3] we ruled that the certification against forum shopping should be signed by all the petitioners in a case, and that the signing by only one of them is insufficient.

In sum, we find that the certification against forum shopping in CA-G.R. SP No. 60838 is fatally defective, not having been duly signed by both petitioners. This procedural flaw warrants the dismissal of the petition for certiorari. We have consistently held that the certification against forum shopping must be signed by the principal parties.[4] With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.[5]

We, therefore, hold that in rendering the assailed twin Resolutions in CA-G.R. SP No. 60838, respondent Court of Appeals did not gravely abuse its discretion.

WHEREFORE, the instant petition is DENIED. Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman) and Corona, JJ., concur.
Carpio-Morales, J., on leave.

[1] Under the Charter of the DBP, Atty. Nilo Galorport was deputized as special sheriff.

[2] *Shipside Incorporated vs. Court of Appeals, et al.*, G.R. No. 143377, February 20, 2001, 352 SCRA 334.

[3] G.R. No. 140153, March 28, 2001, 355 SCRA 658.

[4] *Mendigorin vs. Cabantog*, G.R. No. 136449, August 22, 2002, 387 SCRA 655.

[5] *National Steel Corporation vs. Court of Appeals*, G.R. No. 134468, August 29, 2002, 388 SCRA 85.

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