

ROLANDO CLAVECILLA, PETITIONER, VS. TERESITO QUITAIN AND RICO QUITAIN, ET AL., RESPONDENTS.

G.R. NO. 147989. February 20, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review on certiorari assailing the Resolution[1] of the Court of Appeals (CA) dated October 5, 2000 which dismissed Rolando Clavecilla's petition on the ground that the verification and certification of non-forum shopping was signed by counsel without the proper authority from petitioner, as well as the Resolution dated March 28, 2001[2] which denied petitioner's motion for reconsideration.

The facts are as follows:

Teresito and Rico Quitain (Quitains) filed on March 7, 1997, a complaint against Rolando Clavecilla (Clavecilla) before the Municipal Trial Court in Cities, Branch 6, Davao City (MTCC) for the enforcement of the amicable settlement entered into by them on August 19, 1996 before the Lupon Tagapamayapa, Barangay Talomo, Davao. Pertinent portions of said settlement reads:

- That the respondent (Clavecilla) agreed to purchase the property on October 15, 1996.
- Failure to pay the property on the said date the respondent will voluntarily vacate the place with the assistance of five thousand (P5,000.00) pesos only.
- The complainant (Rico Quitain) agreed to the demand of the respondent.[3]

The Quitains alleged that Clavecilla failed to pay the amount agreed upon and six months had already passed since the agreement was entered into and yet Clavecilla has still not left the premises.[4]

Clavecilla answered that the August 19, 1996 agreement was no longer enforceable since it was novated by an agreement dated October 29, 1996.[5] Said agreement reads:

X X X

- That both parties agreed to meet again on Nov. 5, 1996 at the Barangay for another round of talk (sic).
- That on Nov. 5, 1996 the respondent will pay the 50% total amount of the selling price of the said lot, 111 sq.m. more or less located at Lot 1989-A being a portion of Lot 1989 (T.C.T. # T-6615) at Talomo proper.
- Price per sq.m. P1,000.00 only.
- Failure to accomplished (sic) this Nov. 5, 1996 requirement, the respondent will voluntarily vacate the said lot with a P5,000.00 assistance for their effort.
- All agreement is final upon signing.[6]

X X X

Clavecilla claims that on November 5, 1996, he appeared at the barangay and was supposed to pay Quitains the 50% price of the lot in question but they were not present.[7] Rico Quitain asserts however that he was present that day as shown by a certification made by the office of the lupon of said barangay.[[8]]

On March 8, 2000, the MTCC rendered its Decision in favor of the Quitains finding that there was no novation, as the October 29, 1996 was not incompatible with the August 19, 1996 agreement but was only a reiteration of the earlier agreement.[9]

Clavecilla filed a notice of appeal.[10]

On June 20, 2000, the Regional Trial Court of Davao City, Branch 33 (RTC) dismissed the appeal for Clavecilla's failure to file the memorandum on appeal within the period prescribed by the Rules.[11]

Clavecilla filed a Motion for Reconsideration and For Leave of Court to Admit Appeal Memorandum claiming that his counsel was not able to file the memorandum on appeal on time since said counsel was diagnosed with pneumonia and had to rest for more than ten days.[12] Clavecilla then filed an Appeal Memorandum claiming that the MTCC erred in rendering judgment against him since he did not sign the agreement but it was his wife Erlinda who signed the same without authority from him.[13]

On July 5, 2000, the RTC denied Clavecilla's motion stating that the reason advanced by Clavecilla's counsel for his failure to file the appeal memorandum on time is not a compelling reason, and even if such memorandum was given due course, the arguments raised by Clavecilla therein are not sufficient to justify a reversal of the Decision of the lower court.[14]

Petitioner filed another motion for reconsideration dated July 21, 2000 which was denied by the RTC on the same day.[15]

On September 13, 2000, petitioner filed a petition for review under Rule 42 of the Rules of Court with the CA which rendered the herein assailed Resolution on October 5, 2000 thus:

The Verification and Certification of non-forum shopping, which accompanied the petition at bench, was executed and signed by petitioner's counsel Atty. Oswaldo A. Macadangdang, without the proper authority from petitioner, in violation of Sec. 5, Rule 7 and Sec. 2, Rule 42 of the 1997 Rules of Civil Procedure. The duty to certify under oath is strictly addressed to petitioner, Rolando Clavecilla. To allow delegation of said duty to anyone would render Revised Circular No. 28-91 inutile.[16]x x x

x x x x

Accordingly, the Court Resolves to DENY DUE COURSE and to DISMISS the petition.
SO ORDERED.[17]

Petitioner's motion for reconsideration was also denied on March 28, 2001 as follows:

Petitioner moves for the reconsideration of our Resolution dated 05 October 2000 dismissing the petition for the reason that the certificate of non-forum shopping was signed by petitioner's counsel and not by the petitioner.

Admitting that the duty to sign under oath the certificate is addressed to the petitioner, petitioner attached to his motion a Special Power of Attorney dated 09 August 2000 authorizing his counsel to sign the certificate. The court believes that this authorization was made after the petition had been filed, in a vain attempt to cure the fatal defect, for if Atty. Maca[d]angdang had such authority, he would have indicated that in the Verification and Certification he signed on 25 August 2000 attached to the petition.

In any event, it is a settled rule that the certificate against forum shopping must be executed by the petitioner

and not by counsel. xxx To merit the Court's Consideration, petitioner must show reasonable cause for failure to personally sign the certification. x x x This petitioner failed to show. (citations omitted)

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[18]

Hence, the present petition alleging that:

THE HONORABLE COURT OF APPEALS ERRED IN DEPARTING FROM THE ACCEPTED JURISPRUDENCE OF ALLOWING LIBERAL INTERPRETATION OF THE RULES OF COURT PROVIDED PETITIONER SUBSTANTIALLY COMPLIED WITH CIRCULAR NO. 28-91 AS SHOWN IN THE SPECIAL POWER OF ATTORNEY WHICH HE ATTACHED TO HIS MOTION FOR RECONSIDERATION.[19]

Petitioner avers that: his lawyer had the authority to sign the certification against forum shopping; the CA was hasty in concluding that the authorization of petitioner's lawyer was made after the petition had been filed; the CA should have granted petitioner the benefit of the doubt that he gave such authorization to his lawyer at the time that his lawyer signed the verification and certification against forum shopping; petitioner's failure to have a properly executed certification against forum shopping attached to his petition for review is not fatal; the rules of procedure are used only to help secure and not override substantial justice, and the CA departed from the established liberal interpretation of the rules despite petitioner's substantial compliance with the rule on non-forum shopping.[20]

Rico Quitain in his Comment countered that: the petition is not sufficient in form and substance and is utterly deficient in factual and procedural bases; petitioner named "Teresito Quitain, Rico Quitain, et al." as respondents without specifying who "et al." referred to; Teresito Quitain is already deceased and the MTCC as early as June 5, 1998 already ordered Teresito's substitution; the spouse and children of Teresito, to wit, Lolita, Rene, Ruel, Radi and Romy, all surnamed Quitain, have the right to be informed of the filing of the petition and the fact that they were not so specifically named as respondents but were referred to as "et al." makes the petition a sham pleading; petitioner failed to attach certified true copies of the MTCC Decision dated March 8, 2000 and the RTC Order dated July 5, 2000 which should have been included as annexes in the present petition as they are material to the case, and the petition does not allege a good and valid defense which, if appreciated, could probably cause the reversal of the July 5, 2000 and March 8, 2000 issuances.[21]

The parties filed their respective Memoranda reiterating their respective contentions.[22]

After evaluating the records of the case and the issues raised by the parties, the Court finds that the CA did not err in denying the petition and motion for reconsideration filed by Clavecilla before it. The Court however finds different grounds for denying Clavecilla's petition.

First, it must be determined whether there existed a special power of attorney in favor of petitioner's counsel when the petition before the CA was filed.

The CA in its Resolution dated March 28, 2001, stated that it believes that the special power of attorney in favor of the lawyer attached to petitioner's motion for reconsideration was only made after the petition had been filed reasoning that if the counsel had such authority from the beginning, he would have attached the same when the petition was first filed.

The Court disagrees.

The rule is that any suspicion on the authenticity and due execution of the special power of attorney which is a

notarized document, thus a public document, cannot stand against the presumption of regularity in their favor absent evidence that is clear, convincing and more than merely preponderant.[23]

In this case, the petition before the CA was filed on September 13, 2000.[24] The special power of attorney meanwhile was dated August 9, 2000.[25] Absent any proof that the special power of attorney was not actually in existence before the petition was filed, this Court has no recourse but to believe that it was indeed in existence at such time.

The next matter to be determined is whether the CA was correct in dismissing Clavecilla's petition and motion for reconsideration, notwithstanding the authority given by Clavecilla in favor of his lawyer to sign the verification and certification in his behalf.

The Court answers in the affirmative.

Obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[26] Time and again, this Court has strictly enforced the requirement of verification and certification of non-forum shopping under the Rules of Court.[27] This case is no exception.

Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.[28]

In this case, petitioner's counsel signed the verification alleging that he had read the petition and the contents thereof are true and correct of his own "knowledge and belief." [29]

On this ground alone, the petition should already be dismissed for as provided for in Section 4 Rule 7 of the Rules of Court, as amended by A.M. No. 00-2-10-SC dated May 1, 2000:

Sec. 4. Verification. ---xxx

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

While the Court has exercised leniency in cases where the lapse in observing the rules was committed when the rules have just recently taken effect,[30] the attendant circumstances in this case however do not warrant such leniency.

The certification against forum shopping in this case was signed by petitioner's counsel despite the clear requirement of the law that petitioners themselves must sign the certification. The certification must be made by petitioner himself and not by counsel, since it is petitioner who is in the best position to know whether he has previously commenced any similar action involving the same issues in any other tribunal or agency.[31] And the lack of a certification against forum shopping, unlike that of verification, is generally not cured by its submission after the filing of the petition.[32]

As explained by this Court in *Gutierrez v. Sec. of Dept. of Labor and Employment*: [33]

x x x [T]he certification (against forum shopping) must be signed by the plaintiff or any of the principal parties and not by the attorney. For such certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action.

x x x Obviously it is the petitioner, and not always 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. Hence, a certification against forum shopping by counsel is a defective certification.[34]

In *Mariveles Shipyard Corp. v. Court of Appeals*,[35] this Court further elucidated that:

x x x In the case of natural persons, the Rule requires the parties themselves to sign the certificate of non-forum shopping. x x x [I]n the case of the corporations, the physical act of signing may be performed, on behalf of the corporate entity, only by specifically authorized individuals for the simple reason that corporations, as artificial persons, cannot personally do the task themselves.[36] (emphasis supplied)

In the case of *Santos v. Court of Appeals*,[37] the Court further clarified, that even with a special power of attorney executed by the petitioners in favor of their counsel to sign the certification on their behalf, still the rule stands. Thus:

We are aware of our ruling in *BA Savings Bank v. Sia* that a certification against forum shopping may be signed by an authorized lawyer who has personal knowledge of the facts required to be disclosed in such document. However, *BA Savings Bank* must be distinguished from the case at bar because in the former, the complainant was a corporation, and hence, a juridical person. Therefore, that case made an exception to the general rule that the certification must be made by the petitioner himself since a corporation can only act through natural persons. In fact, physical actions, e.g., signing and delivery of documents, may be performed on behalf of the corporate entity only by specifically authorized individuals. In the instant case, petitioners are all natural persons and there is no showing of any reasonable cause to justify their failure to personally sign the certification. It is noteworthy that PEPSI in its Comment stated that it was petitioners themselves who executed the verification and certification requirements in all their previous pleadings. Counsel for petitioners argues that as a matter of policy, a Special Power of Attorney is executed to promptly and effectively meet any contingency relative to the handling of a case. This argument only weakens their position since it is clear that at the outset no justifiable reason yet existed for counsel to substitute petitioners in signing the certification. In fact, in the case of natural persons, this policy serves no legal purpose. Convenience cannot be made the basis for a circumvention of the Rules.[38] (emphasis supplied)

While there are cases when the Court has relaxed the rule requiring that in case of a natural person, he shall personally sign the non-forum shopping certification, in such cases the Court found compelling and justifiable reasons to relax observance of the rules.

In *Donato v. Court of Appeals*[39] and *Wee v. Galvez*[40] the Court noted that the petitioners were already in the United States, thus the signing of the certification by their authorized representatives was deemed sufficient compliance with the rules. In *Orbeta v. Sendiong*[[41]] the Court found that the annulment of judgment filed by the parties was meritorious thus the certification signed by the daughter of petitioner who had a general power of attorney in her favor was deemed sufficient. In *Sy Chin v. Court of Appeals*[42] the Court also upheld substantial justice and ruled that the failure of the parties to sign the certification may be overlooked as the parties' case was meritorious.

No such justifiable or compelling reasons exist in the case at bar.

In this case, petitioner did not present any cause for his failure to personally sign the certification against forum shopping at the time that the petition was filed at the CA. He merely acknowledged in his motion for reconsideration of the October 5, 2000 Resolution of the CA that he "has the duty to certify under oath." [43] He then asked for a reconsideration of the said Resolution and attached a Special Power of Attorney executed by him in favor of his lawyer.[44]

There is also no showing that there is substantial merit in petitioner's claims. In his petition before the CA and in

his Appeal Memorandum filed with the RTC, petitioner argues that he is not a party to the amicable settlement as it was his wife who signed the same without authority from him.[45] Petitioner in his Answer however admitted having entered into an agreement with the Quitains, before the lupon of their barangay on August 19, 1996.[46]

Petitioner also claims that the August 19, 1996 agreement was novated by the one dated October 29, 1996. The claim has no merit

Novation cannot be presumed but must be clearly shown either by the express assent of the parties or by the complete incompatibility between the old and the new agreements.[47] In this case, the October 29, 1996 agreement merely held that the parties shall meet again on November 5, 1996 at which time petitioner shall pay 50% of the purchase price or he will vacate the property. His obligation to pay the purchase price or to vacate the property in case of his failure to do so, still exists and was not extinguished by the October 29, 1996 agreement.

Records also show that Rico Quitain was ready to comply with his part of the agreement as he was present at the barangay on November 5, 1996 to receive the payment from Clavecilla.[48] Quitain also consigned the amount of P5,000.00 to the court, which is the amount he agreed to give Clavecilla to assist him and his family when they leave the property.[49]

As correctly pointed out by the RTC, even if petitioner's appeal was allowed to proceed, still the arguments raised are not sufficient to overturn the ruling of the MTCC.

It is also worth mentioning that the petitioner erred in including the name of Teresito in the caption of the petition and using only the phrase "et al." to refer to the heirs who substituted him after his death. As pointed out by respondent Rico Quitain, Teresito is already deceased and was already substituted by his heirs, namely: Lolita, widow of Teresito, Rene, Ruel, Radi, and Romy, sons of Teresito, in the Order of the MTCC dated June 5, 1998.[50] Consequently, the above-named heirs are deemed co-respondents in the present petition.

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

Panganiban, C.J., (Chairperson), J., in the result.

[1]Rollo, pp. 33-34, penned by Associate Justice Romeo Brawner (now retired) and concurred in by Associate Justices Cancio C. Garcia (now Associate Justice of this Court) and Andres P. Reyes, Jr.

[2] Id., pp. 42-43.

[3]Records, p. 8.

[4] Id., pp. 4-5.

[5] Id., pp. 14-15.

[6] Id., pp. 19-20.

[7] Supra, note 5.

[8] Id., p. 10.

[9] Id., pp. 154-156.

[10] Id., p. 159.

- [11]Id., p. 165.
- [12] Id., pp. 166-167.
- [13] Id., pp. 170-171.
- [14] Id., pp. 174-175.
- [15]Id., pp. 176-180.
- [16]Citing Carrara Marble Phils. Inc. v. Court of Appeals, G.R. No. 127059, January 22, 1997.
- [17] Rollo, pp. 33-34.
- [18] Id., pp. 42-43.
- [19] Id., p. 23.
- [20] Id., pp. 23-27.
- [21] Id., pp. 56-60.
- [22]Id., pp. 76-83, 86-100.
- [23] Ateneo de Naga University v. Manalo, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 335.
- [24] CA rollo, p. 9.
- [25] Id., pp. 63-64.
- [26]Mariveles Shipyard Corp. v. Court of Appeals, G.R. No. 144134, November 11, 2003, 415 SCRA 573, 584.
- [27] Pagtalunan v. Manlapig, G.R. No. 155738, August 9, 2005.
- [28]Torres v. Specialized Packaging Development Corp., G.R. No. 149634, July 6, 2004, 433 SCRA 455, 464.
- [29]CA rollo, p. 28.
- [30]Chan v. Regional Trial Court of Zamboanga del Norte in Dipolog City, Br. 9, G.R. No. 149253, April 15, 2004, 427 SCRA 796.
- [31]Mariveles Shipyard Corp. v. Court of Appeals, supra, at 584; Escorpizo v. University of Baguio, 366 Phil. 166, 175 (1999).
- [32]Id.
- [33] G.R. No. 142248, December 16, 2004, 447 SCRA 107.
- [34]Id., p. 117.
- [35] Supra, note 27.
- [36] Id., p. 584; Also cited in Hydro Resources Contractors Corp. v. National Irrigation Administration, G.R. No. 160215, November 10, 2004, 441 SCRA 614.
- [37] 413 Phil. 41 (2001).
- [38] Id., pp. 52-53.
- [39] G.R. No. 129638, December 8, 2003, 417 SCRA 216.

[40]G.R. No. 147394, August 11, 2004, 436 SCRA 96.

[41]G.R. No. 155236, July 8, 2005, 463 SCRA 180.

[42]G.R. No. 136233, 399 Phil. 442 (2000).

[43] Rollo, p. 35.

[44] Id., pp. 35-38.

[45] CA rollo, p. 24, Records, pp. 170-171.

[46] Records, p. 14.

[47]Garcia v. Llamas, G.R. No. 154127, December 8, 2003 417 SCRA 292, 294.

[48] Certification that Rico Quitain appeared before the barangay on November 5, 1996, records, p. 10.

[49] Records, p. 9, Official Receipt of the consignment deposit made by the Quitains in favor of Clavecilla.

[50] Records, p. 39.

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