ERLINDA B. DANDOY, REPRESENTED BY HER ATTORNEY-IN-FACT, REY ANTHONY M. NARIA, PETITIONERS, VS. COURT OF APPEALS, HON. THELMA A. PONFERRADA, IN HER CAPACITY AS THE PRESIDING JUDG...

G.R. NO. 150089. August 28, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) dated May 25, 2001 in CA-G.R. SP No. 59397, and its Resolution[2] dated September 19, 2001. The assailed decision dismissed the petition for certiorari filed by petitioner Erlinda Dandoy (Dandoy), seeking to nullify the Orders[3] issued by the Regional Trial Court (RTC), Quezon City, Branch 104, dated January 31, 2000 and May 11, 2000 in Civil Case No. 98-33895.

The facts of the case as found by the CA, are as follows:

> Herein petitioner Erlinda Dandoy-Barboni [also referred to as "Erlinda Dandoy" and "Barboni"], represented by her Attorney-in-Fact, Rey Anthony Naria, and the private respondent, Nerissa Lopez [Lopez], were high school classmates in Zamboanga del Sur from 1970 to 1975. The latter is now a businesswoman with various products as her stocks-in-trade which include jewelry. According to Lopez, the petitioner Dandoy on November 13, 1996, bought a set of jewelry with a total value of P35,000.00 from her on cash basis, but the latter pleaded that she be allowed to buy the items on credit, being a regular customer and friend of the former. Seller Lopez acceded to the request upon the representation of the buyer that she will settle her account before enplaning for France. On December 5 of the same year, buyer Dandoy-Barboni bought another set for P75,000.00. Sometime April, 1997, Lopez demanded payment for the sets of jewelry but the buyer countered that she still had to wait for the proceeds of the sale of her condominium in Pasig or her lot in Bicutan. To assuage Lopez, Barboni even appointed the former as one of her agents in selling her properties. On October 12, 1997, Barboni partially paid P30,000.00 and at the same time, bought two more sets of jewelry worth P230,000.00, which increased the latter's debt to P310,000.00. Four days after the partial payment, Lopez went to the house of Barboni and again demanded payment but was assured that the paper work for the sale of the Bicutan property was almost through and that the payment for $1,000,000.00 would be out soon. Barboni then inquired about other jewelry for sale and though apprehensive, Lopez showed the buyer a P1,000,000-worth diamond marquise which the former borrowed for appraisal. After several days, Lopez returned to retrieve the set but was told by the petitioner that she failed to have the jewelry appraised. At the same instance, the petitioner again bought two other pieces of jewelry valued at P60,000.00, representing that it would be given to her sister. On October 25, 1997, both parties met and again, the petitioner promised to settle her obligation within that day but she failed, compelling the private respondent to demand that the debtor-buyer just return the items she obtained. Thereafter, the petitioner began avoiding the jeweler, thus the latter made demands, both oral and written, for the former to settle her lawful obligations. Inspite of those demands, the petitioner continued and still continues to fail to settle her obligations. Hence, the private respondent was constrained to file the instant case for sum of money with preliminary attachment against the former.

> In her Answer, the petitioner manifested that Lopez's complaint is malicious and done in bad faith. The truth is that the petitioner never intended to buy the jewelry but only wanted to help Lopez sell the goods. When not sold, the petitioner tried to return the merchandise but the seller refused to accept the same and insisted that the former pay for it upon the sale of her Bicutan property. Lopez obviously had the temerity to sue the petitioner inspite of the latter's benevolent assistance to the former for years. As counterclaim, the petitioner prayed that the amount of P5,000,000.00 as moral damages, P500,000.00 per month for lost interest as a result of the attachment of the Bicutan property, attorney's fees of P50,000.00 and a per appearance fee of P1,500.00 be adjudged in her favor.[4]

For failure of the parties to arrive at an amicable settlement during the preliminary conference, trial on the merits ensued.

After Lopez completed the presentation of her evidence, Dandoy, through counsel, moved for the dismissal of the complaint by way of a Demurrer to Evidence. [5] Dandoy relied on the alleged admission of Lopez that the payment for the jewelry will be made only after the sale of Dandoy's property situated at Bicutan. Since the property had not yet been sold at the time of the filing of the complaint (and even thereafter), the obligation was not yet due and demandable; thus, the dismissal of the case was warranted.

In its Order[6] dated January 31, 2000, the trial court denied the Demurrer to Evidence, and set the case for presentation of Dandoy's evidence. Dandoy filed a motion for reconsideration which was likewise denied on May 11, 2000.[7]

Aggrieved, Dandoy elevated the matter to the CA through a petition for certiorari under Rule 65, praying that the RTC Orders be annulled, and the case be dismissed.

On May 25, 2001, the CA dismissed the petition on a finding that the RTC committed no grave abuse of discretion.[8] Thereafter, on September 19, 2001, the CA denied Dandoy's motion for reconsideration.[9]

Petitioner Dandoy now comes before this Court on a petition for review on certiorari under Rule 45 raising the following issues:

> 7.1. WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE LOWER COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE CASE INSPITE OF THE GLARING EVIDENCE WHICH WARRANTS SUCH DISMISSAL;
>
> 7.2. WHETHER OR NOT THE TRIAL COURT SHOULD HAVE ORDERED THE DISMISSAL OF THE CASE BEFORE IT BY WAY OF PETITIONER'S DEMURRER TO EVIDENCE;
>
> 7.3. WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE ORDER OF THE TRIAL COURT VIOLATED SECTION 14, ARTICLE VIII OF THE 1987 CONSTITUTION;
>
> 7.4. WHETHER OR NOT THE SPECIAL POWER OF ATTORNEY ISSUED BY THE PETITIONER IS SUFFICIENT TO CONFER THE POWER UNTO THE ATTORNEY-IN-FACT TO FILE THE INSTANT PETITION.[10]

We initially discuss the last of these issues and, thereafter the other three.

Dandoy avers that the special power of attorney (SPA) she executed in favor of her attorney-in-fact is sufficient authority for the latter to file the instant petition notwithstanding the absence of any specific reference to the present case.

We agree.

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The SPA executed by Dandoy grants to her attorney/s-in-fact, Marie Anne B. Barboni, Atty. Julian R. Torcuator, Jr. and/or Mr. Rey Anthony M. Naria, the authority to do and perform the following:

> To file a petition for Certiorari and/or Appeal to the Court of Appeals or Supreme Court with respect to the Decisions, resolutions or orders issued or that may hereafter be issued x x x i) such other matters as may aid in the prompt disposition of the action; and to file and/or execute such pleadings, motions, papers, and agreements, petitions, appeal as may be necessary to prosecute the above cases and/or settle the same.[11]

Clearly, the authority granted to the attorney/s-in-fact is not limited to the filing of the petition with the CA but includes a pleading which may be subsequently filed before this Court. Dandoy's intention to endow her attorney/s-in-fact with such power is unmistakable from the language of the SPA. The use of and/or between petition for certiorari and appeal can only mean that either or both courses of action may be undertaken. Thus, after Dandoy, through her attorney-in-fact, filed a petition for certiorari before the CA which proved unsuccessful, the same attorney-in-fact could appeal the CA decision to this Court via a petition for review on certiorari under Rule 45. Besides, the last clause in the above-quoted portion of the SPA amply indicates that Dandoy intended for the authority to continue until the termination of the case.

Now, on to the other issues.

Petitioner anchored her demurrer to evidence on Lopez's alleged admission that payment of the obligation shall be made only upon the sale of Dandoy's property in Bicutan. With such admission, petitioner contends that her debt had become an obligation with a period. And since the property had not yet been sold, Lopez had no right to demand payment. Thus, petitioner posits that the filing of the collection suit by Lopez was premature, and the case should be dismissed.

We do not agree.

Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.[12]

A demurrer to evidence may be issued when, upon the facts adduced and the applicable law, the plaintiff has shown no right to relief. Where the totality of plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom, does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is prima facie insufficient for a recovery.[13]

Even with Lopez's admission, as claimed by the petitioner, the demurrer to evidence has to be denied. As correctly held by the CA, the respondent's testimony on cross-examination cannot be considered separately from her testimony on direct examination because the testimony of a witness is weighed as a whole.[14]

On direct examination,[15] the respondent testified that she went to Bicutan because petitioner wanted to pay her obligation from the proceeds of the sale of her Bicutan property. However, according to respondent, the transaction did not push through and the petitioner promised to return the items to the respondent. But the items were never returned. On the other hand, during her cross-examination,[16] respondent answered in the affirmative when asked whether she acceded to the request of the petitioner that the obligations be paid from the proceeds of

the sale of the Bicutan property, which at that time was not yet effected.[17] From this testimony, it appears that while Lopez agreed that payment would come from the proceeds of the sale, she did not necessarily bind herself to the commitment that the payment of the obligation will be sourced solely from the sale of the Bicutan property. It is noteworthy that, responding to an earlier demand for payment, petitioner promised to pay out of the proceeds of the sale of her Ortigas condominium or Bicutan property. Yet, on October 12, 1997, petitioner made a partial payment in the amount of P30,000.00. Had the parties really intended that the payment of the obligation be sourced only from the proceeds of the sale of petitioner's properties, no partial payment would have been made by the petitioner. Moreover, prior to the filing of the complaint, respondent demanded the payment of petitioner's obligation and the latter promised to pay within the day. Nowhere in the narration of facts is it shown that she protested that her obligation was not yet due and demandable because her Bicutan property was not yet sold. These acts of petitioner negate the claim that her obligation is not yet due and demandable.

We also cannot accept petitioner's argument that her obligation is one with a period, that is, her obligation arises only after the sale of the Bicutan property. An obligation with a period is one for the fulfillment of which a day certain has been fixed. A day certain is understood to be that which must necessarily come, although it may not be known when.[18] The sale of the Bicutan property cannot be characterized as a day certain because the event, though future, is not sure to happen. Notwithstanding the representation made by petitioner that there are many buyers, the fact remains that the property may not be bought at all. At best, the sale of the property may be considered a condition because it is a future and uncertain event as opposed to a period which is future and certain. But if such a condition indeed exists, to be sure, the same was not imposed upon the birth of the obligation. Neither was there any showing that there was novation. Thus, the obligation cannot even be denominated as one with a condition.

Accordingly, on the basis of the respondent's evidence alone, the existence of petitioner's obligation arising from the sale of the subject jewelry, was sufficiently established. The obligation, as already pointed out above, should be characterized as pure " as opposed to conditional or one with a period " which is demandable at once upon its constitution. At the time the jewelry were received by the petitioner, the contract of sale was consummated, and the corresponding obligation to pay had arisen. It is, therefore, gross error to attribute grave abuse of discretion to the trial court for denying the petitioner's demurrer to evidence.

Petitioner likewise raises the RTC's alleged violation of the Constitution due to the failure of the court to recite its findings of facts and conclusions of law in the questioned orders.

The Court disagrees with the petitioner.

Section 14, Article VIII of the Constitution provides: "No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based." Section 1, Rule 36 of the Rules of Court also requires that a judgment or final order determining the merits of the case "shall be in writing, personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court." This requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached. It is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[19]

In the case at bench, even only a cursory examination of the questioned Orders of the RTC will show that there was sufficient compliance with the above requirements. The Court notes that petitioner's demurrer to evidence is founded on the alleged admission made by the respondent from which an inference is sought to be drawn that the

latter's complaint was prematurely filed. In denying the demurrer to evidence, the trial court did not accept the petitioner's conclusion and held instead that "considering plaintiff's (respondent herein) evidence which, standing alone and in the absence of controverting evidence, affords sufficient basis for a judgment in her favor, the Court is inclined to deny the demurrer to evidence."[20] Moreover, in the later order denying the petitioner's motion for reconsideration, the court more than amply explained the factual and legal basis for the denial. It even quoted a portion of the transcript of stenographic notes as basis for its conclusion in overruling the petitioner's claim. Said discussion clearly complies with the constitutional and statutory requisites.

Besides, the requirement of specificity of rulings discussed above is stringently applied only to judgments and final orders. A liberal interpretation of this requirement,[21] on the other hand, may be given to an order dismissing a demurrer to evidence which has been consistently characterized by this Court as interlocutory.[22] The assailed Orders neither terminated nor finally disposed of the case as they still left something to be done by the court before the case is finally decided on the merits.[23]

WHEREFORE, the petition is hereby DENIED. The May 25, 2001 Decision of the Court of Appeals and its September 19, 2001 Resolution are AFFIRMED.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Teodoro P. Regino and Josefina Guevara-Salonga, concurring; rollo, pp. 106-110.

[2] Rollo, p. 118.

[3] Penned by Judge Thelma A. Ponferrada; rollo, pp. 69 and 76-78.

[4] Rollo, pp. 106-107.

[5] Id. at 55-59.

[6] Id. at 69.

[7] Id. at 76-78.

[8] The dispositive portion of which reads:

> WHEREFORE, the instant Petition is hereby denied and accordingly DISMISSED.
> SO ORDERED. (Rollo, p. 110.)

[9] Rollo, p. 118.

[10] Id. at 139.

[11] Id. at 29.

[12] Heirs of Emilio Santioque v. Heirs of Emilio Calma, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 679.

[13] Id. at 679-680.

[14] Rollo, p. 77.

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[15] The respondent's testimony during her direct examination reads:

> Q: What did she tell you, if any? When she called up your house what did she tell you?
>
> A: Please come to the house because I have to talk some important matters to you. The buyer will be coming today and once the property will be paid I'll pay you in cash with my other balance.
>
> x x x x
>
> Q: Why were you going to Bicutan?
>
> A: Because she told me she wants to pay me because the buyer of the house will be coming that afternoon.
>
> Q: x x x (W)hat did you do then when you arrived at the house of the defendant?
>
> A: She let us wait for the buyer of her house and then "pinakilala n'ya ako doon sa buyer niya, nag-usap sila. Sabi ng buyer niya, ang asawa niya hindi dumaan sa Pilipinas at dumeretso sa Germany" and she is the signatory of that check. So maghintay na lang.
>
> Q: After being told this by the buyer, what did the defendant say? Ms. Witness?
>
> A: If this transaction will not push through, I will return the item.
>
> Q: Did this transaction push through? The sale of the Bicutan property?
>
> A: No, it did not push through.
>
> Q: What happened to the items?
>
> A: She promised to return the items on October 28 because the item is not in her possession, it is in her wallet.
>
> Q: After committing to return the same on October 28, 1997, what did the defendant do?
>
> A: She evaded me and I cannot find her anymore. (Id. at 77-78.)

[16] Respondent's testimony during her cross-examination reads:

> Q: x x x And then, it appears here in your testimony on page 30 of the tsn that she was and I quote your answer: "She was assuring me that the property in Lower Bicutan will be sold because there are many buyers." And so, she was promising to pay you your jewelries with the proceeds of the sale of her house in Lower Bicutan so, not anymore to condominium because at that time the condominium was already sold. And, of course, you acceded to that promise by the defendant and so you gave her another jewelry which you said is worth P1 Million so that the same will be paid including her previous balance with you with the proceeds of [the] Bicutan property, am I correct? Is that right?
>
> A: Yes.
>
> Q: To your knowledge, Madam Witness, up to this time, was the Bicutan property sold?
>
> A: No, Excuse me. (Id. at 53-54.)

[17] Id. at 76-78.

[18] Article 1193, New Civil Code.

[19] Report on the Judicial Audit Conducted in the Municipal Trial Court of Tambulig, A.M. No. MTJ-05-1573, October 12, 2005, 472 SCRA 419, 429.

[20] Rollo, p. 69.

[21] Malicdem v. Flores, G.R. No. 151001, September 8, 2006, 501 SCRA 248, 258.

[22] Choa v. Choa, 441 Phil. 175, 182 (2000).

[23] Malicdem v. Flores, supra note 26, at 256.

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