LEONARDO M. ANDRES, LEONARDO C. ANDRES, FLORENTINO SANTOS, DOMITILA MARCELO, ERLINDA ANDRES, ELVIRA SANTOS, RAFAEL AGRA AND CORAZON GAVINA AGRA, PETITIONERS, VS. JUSTICE SECRETA...

G.R. NO. 150869. June 09, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to nullify the November 14, 2001 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57958 which denied the petition for certiorari[2] filed by Leonardo M. Andres, Leonardo C. Andres, Florentino Santos, Domitila Marcelo, Erlinda Andres, Elvira Santos, Rafael Agra and Corazon Gavina Agra (petitioners).

Petitioners likewise pray for the issuance of a writ of preliminary injunction to enjoin the City Prosecutor of Mandaluyong City from refiling the information for perjury against them or, in the alternative, if an information for perjury has already been filed before the Metropolitan Trial Court of Mandaluyong City, to order the withdrawal thereof.

The antecedents of the case are as follows:

On June 11, 1992, petitioners, along with Julita Andres, Jesus Andres, Rolando Andres and Alicia Agra, as majority stockholders of the Rural Bank of Pandi, Bulacan, filed a Petition for Injunction, Mandamus, Nullification of Transfer of Shares, Call for Special Election, Accounting, Damages, Production of Corporate Records with prayer for Appointment of Management Committee pendente lite, and Issuance of Writs of Attachment and Temporary Restraining Order[3] before the Securities and Exchange Commission (SEC) against private respondents Mercedes Coloma, Belen Santos and Jesus Santos (private respondents), together with Cecilia Andres, Ricaredo Andres, Richelle Marie Andres, Pia Marie Andres, Diane Angeli Andres and Ricaredo Andres II, who were minority stockholders of said bank. The case was docketed as SEC Case No. 4246.

In the petition before the SEC, petitioners alleged, inter alia, that respondents-minority stockholders committed acts of mismanagement, fraud and conflict of interest as directors and officers of the bank.

On account of the following specific allegations of petitioners in their petition before the SEC, to wit:

> 5.0 Since respondents, particularly respondent Mercedes Coloma (who was manager of the bank for 18 years) assumed their position, there has been no declaration of cash dividend to the stockholders despite the big income of the bank as shown in its latest financial statement hereto attached as Annex “X”. In effect, petitioners are unlawfully deprived of income from their investment. When asked to account for the undistributed profit, respondent Mercedes Coloma however, finds her excuse by claiming that stock dividends were instead distributed. Sad to say however, as far as petitioners can remember, no notice of such alleged declaration of stock dividends was ever given to them. x x x

> x x x
>
> 6.1 For having committed the aforesaid fraudulent acts, respondents are liable in their personal capacity for whatever amount petitioners and the rural bank may have been unlawfully deprived of. Unfortunately however, they are leaving the country anytime now and are about to dispose of their property with intent to defraud herein petitioners, the Rural Bank of Pandi and the innocent stockholders, depositors and borrowers thereof. x x x,[4]
>
> private respondents filed a Complaint-Affidavit[5] dated September 15, 1992, docketed as I.S. No. 95-674 before the Office of the City Prosecutor of Mandaluyong City, charging petitioners with perjury for making willful and corrupt assertions of falsehood on material matters.

Private respondents likewise faulted petitioner Leonardo M. Andres for stating in the Affidavit of Merit for a Writ of Attachment attached to the SEC Petition that "respondents are about to dispose of their properties with intent to defraud the petitioners and their other creditors,"[6] on account of which affidavit, a writ of attachment was issued in SEC Case No. 4246, allegedly causing damage to private respondents Mercedes S. Coloma and Jesus Santos in the amount of P30 million and to private respondent Belen G. Santos in the amount of P20 million.

Attached to the complaint for perjury were Minutes of Board Meetings and Stockholders' Meetings approving declaration of dividends and proof of payment through Schedules of Dividends, cashier's checks, and Planters Development Bank checks issued to stockholders covering the period from May 3, 1981 to March 6, 1990,[7] which documents, private respondents averred, indicated that from March 3, 1981 to July 27, 1990, a total of P1,960,564.00 in stock and cash dividends was declared and consequently received by all bank stockholders including petitioners.[8]

In their Counter-Affidavit,[9] petitioners stated that the questioned allegations in their SEC petition, prepared by their counsel and couched in legal language, hence, not their choice, were made in good faith in the course of an intracorporate controversy.

As adverted to above, an Information[10] for perjury was filed against petitioners before the Metropolitan Trial Court of Mandaluyong City, docketed as Criminal Case No. 57794. The inculpatory portion of the Information reads, quoted verbatim:

> That on or about the 11[th] day of June, 1992, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, did, then and there willfully, unlawfully and feloniously and knowingly make untruthful statements under oath upon a material matter before a competent person authorized to administer an oath which the law so requires, to with (sic) said accused subscribed and swore to a Petition before a Notary Public, Atty. Emiliano R. Espiritu authorized to administer oath as required by law, wherein they stated, among others, the following:
>
> "x x x
>
> 5.0 Since respondents, particularly respondent Mercedes Coloma (who was manager of the bank for 18 years) assumed their position, there has been no declaration of cash dividend to the stockholders despite the big income of the bank as shown in its latest financial statement hereto attached as Annex "X". In effect, petitioners are unlawfully deprived of income from their investment. When asked to account for the undistributed profit, respondent Mercedes Coloma however, finds her excuse by claiming that stock dividends were instead distributed. Sad to say however, as far as petitioners can remember, [no] notice of such alleged declaration of stock dividend was ever given to them..."
>
> "6.1 For having committed the aforesaid fraudulent acts, respondents are liable in their personal capacity for

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> whatever amount petitioners and the rural bank may have been unlawfully deprived of. Unfortunately however, they are leaving the country anytime now and are about to dispose of their property with intent to defraud herein petitioners, the Rural Bank of Pandi and the innocent stockholders, depositors and borrowers thereof..."
>
> In paragraph 3 of Annex B, Leonardo M. Andres stated the following:
>
> "x x x
>
> Respondents are about to dispose of their properties with intent to defraud the petitioners and their other creditors"
>
> the said accused knowing fully well that the said material allegations or statements are false because as established by evidence, said cash dividends and stocks were declared and consequently received by all stockholders of the Rural Bank of Pandi (Bulacan), Inc., thereby making a willful and deliberate assertion of falsehood.
>
> CONTRARY TO LAW.[11] (Underscoring in the original)

Petitioners appealed the Mandaluyong City Prosecutor's resolution finding probable cause against them for perjury, by Petition for Review dated November 13, 1995, before the Department of Justice (DOJ).

By Resolution[12] of August 16, 1996, the DOJ, through Assistant Chief State Prosecutor Apolinario G. Exevea, dismissed the Petition.

Petitioners appealed[13] to the Office of the Secretary of Justice.

In the meantime, in the SEC case, after receiving ex-parte evidence for petitioners following private respondents' declaration in default for failure to file their Answer within the reglementary period, the SEC, by Decision[14] of October 7, 1997, found in favor of petitioners.

By Resolution[15] of February 18, 1998, then Secretary of Justice Silvestre H. Bello III reversed the August 16, 1996 DOJ Resolution and directed the withdrawal of the Information for perjury against petitioners.

On private respondents' Motion for Reconsideration, then Justice Secretary Serafin R. Cuevas, by Resolution[16] of January 20, 1999, reversed the February 18, 1998 Resolution of then Secretary Bello and directed the refiling of the Information for perjury against the petitioners upon the following ratiocination:

> The sweeping allegation of respondents that there were no dividends distributed since Coloma took over the management of the bank cannot be explained by their allegation in their counter-affidavit where they claim that the previous statement is merely on account of what they can recall. This is not the way that they worded their fifth cause of action.
>
> We agree with the motion that the statement alleging no dividends w[ere] distributed was to make sure that the respondent's petition with the SEC will be acted on favorably. With the knowledge that this fact could be properly verified with the records at their disposal as majority stockholders, the intent to assert a falsehood becomes apparent.[17]

Petitioners moved for a reconsideration of then Secretary Cuevas' resolution which was, by Resolution[18] of January 26, 2000, denied. A copy of said Resolution was received by petitioners on February 1, 2000.

On March 27, 2000, petitioners filed a petition for certiorari under Rule 65 of the Rules of Court before the CA. The verification and certification against non-forum shopping appended to the petition was signed only by petitioner Leonardo Andres.[19]

Petitioners subsequently filed, however, an Amended Petition[20] on March 31, 2000 to which was appended a

verification and certification against non-forum shopping signed by all of them.[21]

By Resolution[22] of April 7, 2000, the CA dismissed the original petition, ratiocinating that the verification and certification of non-forum shopping attached thereto was signed by petitioner Leonardo Andres only and that there was no showing that he was duly authorized by the other petitioners to execute the same in accordance with Section 1 of Rule 65 of the Rules of Court.

Petitioners filed a Motion for Reconsideration[23] dated April 17, 2000 which was denied for lack of merit by the CA by Resolution of November 14, 2001.

> Petitioners move to reconsider by submitting an amended petition embodying a new certification against forum-shopping signed by all of them.
>
> We have time and again ruled that subsequent compliance does not ipso facto warrant a reconsideration. This is especially true now in view of hundred (sic), nay, thousands of petitions filed with this Court, making it imperative for Us to enforce the Rules. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>
> Moreover, We have earnestly looked into the substance of the petition by going over the assailed Resolution of public respondent dated January 26, 2000, affirming the earlier Resolution dated January 20, 1999 and ordering the refiling of the information for perjury against petitioners. We find no grave abuse of discretion in both Resolutions.[24] (Underscoring in the original; emphasis supplied)

Petitioners thus come before this Court via petition for review on certiorari assigning to the CA the following errors:

> I
>
> THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT.
>
> II
>
> THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN ISSUING THE RESOLUTIONS DATED APRIL 7, 2000 AND NOVEMBER 14, 2001.[25]

Petitioners argue that they filed, as a matter of right pursuant to Section 2 of Rule 10 in relation to Section 2 of Rule 1 of the Rules of Court, their Amended Petition containing a new verification and certification of non-forum shopping signed by all of them within the reglementary period under Section 4 of Rule 65 of the Rules of Court.[26]

Petitioners' argument is well-taken.

Section 2 of Rule 10 of the Rules of Court provides:

> SEC. 2. Amendments as a matter of right. – A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served. (Underscoring supplied)

Under this provision, a party is given the right to file an amended pleading within the time and upon the conditions specified and without the necessity of obtaining leave of court since a party may amend his pleading once, whether a new cause of action or change in theory is introduced, as a matter of right at any time before a

responsive pleading is served.[27]

Moreover, amendment of pleadings is favored and should be liberally allowed in the furtherance of justice in order to determine every case as far as possible on its merits without regard to technicalities.[28] This principle is generally recognized in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay to prevent circuity of action and needless expense.[29]

No doubt this Court has held that the certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, and that the signing by only one of them is insufficient and constitutes a defect in the petition.[30] For the attestation requires personal knowledge by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as or similar to the current petition.[31]

In the case at bar, however, petitioners filed an Amended Petition filed within the 60-day reglementary period for the filing of a petition for certiorari under Rule 65 of the Rules of Court. As amended, the petition had complied with Sec. 1 of Rule 65. The CA maintained its dismissal of the petition, however, when it denied petitioner's motion for reconsideration.

In holding that petitioners merely substantially complied with the requirements for the verification and certification of non-forum shopping, the CA indeed erred. As petitioners contend,

> x x x the appellate court inaccurately ruled in its Resolution dated November 14, 2001 that "petitioners move(d) to reconsider [the April 7, 2000 Resolution] by embodying a new certification against forum-shopping signed by all of them." On the strength of such wrong premise, the Court of Appeals then dismissed the petition on the ground that "subsequent compliance does not ipso facto warrant a reconsideration." The error of the Court of Appeals at once becomes apparent in that: (i) the petitioners did not file a motion for reconsideration of the April 7, 2000 by embodying a new certification. The record clearly shows that the new certification had long been filed with and submitted to the Court of Appeals, as in fact, the same had been filed with the said Court even before the issuance of the April 7, 2000 Resolution; and hence, (ii) there was no "subsequent compliance" to speak of because the petitioners filed the Amended Petition as a matter of right, the same having been filed well within the 60-day period provided by the Rules.[32] (Underscoring supplied)

The appellate court's procedural faux pas notwithstanding, on the merits, the petition fails.

In support of their prayer for injunctive relief, petitioners argue that the CA erred in affirming the January 20, 1999 and January 26, 2000 Resolutions of then Secretary Cuevas ordering the refiling of the information for perjury against them.

As a general rule, the Court will not issue writs of prohibition or injunction, preliminary or final, to enjoin or restrain criminal prosecution.[33] In extreme cases though, the following exceptions to the rule have been recognized:

> (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused;
>
> (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
> (3) when there is a prejudicial question which is subjudice;
> (4) when the acts of the officer are without or in excess of authority;
> (5) where the prosecution is under an invalid law; ordinance or regulation;
> (6) when double jeopardy is clearly apparent;

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(7) where the Court has no jurisdiction over the offense;
(8) where it is a case of persecution rather than prosecution;
(9) where the charges are manifestly false and motivated by the lust for vengeance; and
(10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.[34]

Petitioners have not shown, however, that the case at bar falls within any of the recognized exceptions above set forth.

Consistent with its policy of non-interference in the conduct of preliminary investigations, and to leave to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for filing of an information against a supposed offender,[35] this Court finds no reason to disturb the finding of the appellate court that no grave abuse of discretion attended then Justice Cuevas' resolution finding probable cause for perjury against petitioners to hale them into court.

Notatu dignum is petitioners' ventilating before this Court the merits of their defenses. The issue of whether they acted in good faith is best determined, however, during the trial proper.[36] This is not the occasion for the full and exhaustive display of their evidence. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.[37]

In fine, the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[38]

As for petitioners' suggestion that the DOJ should have deferred to the primary and exclusive jurisdiction of the SEC as what was involved was a dispute among stockholders of the bank, a corporation duly registered with the SEC, and the allegedly perjurious statements were made by them in connection with that case, the same is unavailing. Suffice it to state that the fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the loop of jurisdiction of the SEC.[39]

Apart from the fact that perjury and intracorporate disputes are two entirely different matters with entirely different elements, the SEC has no jurisdiction over criminal cases like perjury.

At all events, under Section 5.2 of Republic Act No. 8799, [40] otherwise known as the Securities Regulation Code, which amended Section 5 of Presidential Decree 902-A,[41] whether the issue is intracorporate or not is no longer material, the SEC having been divested of its jurisdiction thereover.[42]

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Corona, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on official leave.

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[1] Rollo at 44-45.

[2] CA Rollo at 2-111.

[3] Rollo at 46-73.

[4] Id. at 74-75.

[5] Id. at 74-78.

[6] Id. at 75.

[7] Id. at 76.

[8]

Board/Stockholders Resolution Date Number % Common Amount % Preferred Amount Total

a.3-07-81 19-1981 stocks 100 P707,000.00 ... ... P707,000.00

b.5-03-81 6-1981 cash 14 154,980.00 2 1,826.00 156,806.00

c.1-24-82 13-1982 cash 14 154,980.00 2 1,826.00 156,806.00

d.2-28-82 26-1982 stock 40 442,600.00 ... ... 442,800.00

e.1-02-83 4-1983 cash 14 154,980.00 2 1,826.00 156,806.00

f. 7-27-90 4-1990

6-1990 cash 15 338,520.00 2 1,826.00 340,346.00

[9] Id. at 79-83.

[10] Id. at 84-87.

[11] Id. at 84-87.

[12] Id. at 88-92.

[13] Id. at 93-106.

[14] Id. at 123-129.

[15] Id. at 107-109.

[16] Id. at 110-114.

[17] Id. at 112-113.

[18] Id. at 115.

[19] CA Rollo at 22.

[20] Id. at 118-141.

[21] Id. at 138.

[22] Rollo at 41-42.

[23] CA Rollo at 143-148.

[24] Rollo at 44-45.

[25] Id. at 17.

[26] SEC. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice

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of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

x x x

[27] Radio Communications of the Philippines, Inc. v. Court of Appeals, 271 SCRA 286, 289 (1997) (citation omitted), Contech Construction Technology & Development Corporation v. Court of Appeals, 211 SCRA 692, 696 (1992).

[28] Remington Industrial Sales Corporation v. Court of Appeals, 382 SCRA 499, 506 (2002), Tirona v. Alejo, 367 SCRA 17, 30 (2001).

[29] Refugia v. Alejo, 334 SCRA 230, 239 (2000) (citation omitted), Siasoco v. Court of Appeals, 303 SCRA 186, 195 (1999) (citation omitted), Philippine National Bank v. Court of Appeals, 159 SCRA 433, 444 (1988).

[30] Docena v. Lapesura, 355 SCRA 658, 666 (2001).

[31] Id. at 666-667.

[32] Rollo at 20.

[33] Samson v. Guingona, 348 SCRA 32, 36 (2000) (citations omitted), Domingo v. Sandiganbayan, 322 SCRA 655, 669 (2000), Tirol, Jr. v. Del Rosario, 317 SCRA 779, 786 (1999) (citation omitted), Commissioner on Internal Revenue v. Court of Appeals, 257 SCRA 200, 227 (1996), Ocampo, IV v. Sandiganbayan, 225 SCRA 725, 729 (1993), Guingona, Jr. v. City Fiscal of Manila, 137 SCRA 597, 605 (1985) (citation omitted).

[34] Samson v. Guingona, 348 SCRA 32, 36 (2000) (citations omitted), Domondon v. Sandiganbayan, 328 SCRA 292, 298-299 (2000) (citation omitted), Camanag v. Guerrero, 268 SCRA 473, 496 (1997), Commissioner on Internal Revenue v. Court of Appeals, 257 SCRA 200, 227-228 (1996) (citation omitted), Ocampo, IV v. Ombudsman, 225 SCRA 725, 729 (1993) (citation omitted), Brocka v. Enrile, 192 SCRA 183, 188-189 (1990) (citation omitted).

[35] Samson v. Guingona, 348 SCRA 32, 37 (2000) (citation omitted), Camanag v. Guerrero, 268 SCRA 473, 494-495 (1997).

[36] Deloso v. Desierto, 314 SCRA 125, 134 (1999).

[37] Fabia v. Court of Appeals, 388 SCRA 574, 583 (2002), Dupasquier v. Court of Appeals, 350 SCRA 146, 154 (2001) (citation omitted), Deloso v. Desierto, 314 SCRA 125, 134 (1999), Olivarez v. Sandiganbayan, 248 SCRA 700, 711 (1995).

[38] Drilon v. Court of Appeals, 258 SCRA 280, 286 (1996) (citation omitted).

[39] Vesagas v. Court of Appeals, 371 SCRA 508, 517 (2001) (citation omitted).

[40] Section 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.

[41] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said

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Agency under the Administrative Supervision of the Office of the President.

[42] Lee v. People, 393 SCRA 397, 408 (2002), Sumndad v. Harrigan, 381 SCRA 8, 18-19 (2002) (citation omitted), Fabia v. Court of Appeals, 388 SCRA 574, 584 (2002), Nacpil v. Intercontinental Broadcasting Corporation, 379 SCRA 653, 661 (2002), Fabia v. Court of Appeals, 363 SCRA 427, 433 (2001), Intestate Estate of Alexander T. Ty v. Court of Appeals, 356 SCRA 661, 668 (2001).

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