NEGROS MERCHANTS ENTERPRISES, INC., PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

G.R. No. 150918. August 17, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari[1] assails the September 7, 2001 Decision[2] of the Court of Appeals in CA-G.R. SP No. 65127, which annulled and set aside the September 22, 2000 and March 19, 2001 Orders[3] of the Regional Trial Court of Bacolod City, Branch 41 in Civil Case No. 99-10707, as well as the November 12, 2001 Resolution[4] denying the Motion for Reconsideration.

The facts of the case are as follows:

On August 23, 1993, petitioner Negros Merchants Enterprises, Inc. (NMEI), through its President and General Manager, Jacinto Y. Tan, Jr., applied for an P8 million Credit Accommodation with respondent China Banking Corporation (CBC), with terms "ONE YEAR LOAN LINE, RENEWABLE AND RE-AVAILABLE ANNUALLY THEREAFTER."[5] The loan was secured by a real estate mortgage[6] over its properties covered by Transfer Certificate of Title (TCT) Nos. T-139095[7] and T-139096.[8] On December 21, 1994, petitioner, through Tan, applied for an additional Case-to-Case Loan worth P1,500,000.00.[9] Both loans were respectively paid on January 31 and March 27, 1996.

Meanwhile, beginning March 19, 1996, petitioner allegedly re-availed the P8 million credit line under the original Credit Accommodation through promissory notes executed by Tan.[10] Petitioner failed to settle the obligation, hence respondent sent a demand letter[11] with warning to foreclose on the real estate mortgage. Petitioner, through its counsel Atty. Raphael A. Diaz, sent two letters[12] to respondent requesting a detailed statement of account and to hold in abeyance any legal action. The latter replied that said statement could not be released without proper board resolution or authorization.[13] Subsequently, petitioner's properties were extrajudicially foreclosed and sold in public auction, with respondent as the highest bidder. On March 6, 1998, the Ex-Officio Provincial Sheriff of Negros Occidental issued the corresponding Certificate of Sale[14] in favor of respondent.

On March 16, 1999, petitioner filed a Complaint for Annulment of Foreclosure Sale with Damages and Preliminary Injunction.[15] Respondent moved to dismiss[16] the same on the ground that petitioner failed to show by clear and convincing evidence that it is entitled to the relief sought in the complaint. Petitioner later filed an Amended Complaint[17] impleading Tan and his spouse, Corazon V. Tan, as well as respondent's Bacolod Branch Manager Ainalea Lim-Cortez. Respondent again sought to dismiss[18] the amended complaint for failure to state cause of action and for failure to comply with the rules on non-forum shopping.[19]

Meanwhile, title over TCT Nos. T-139095 and T-139096 were consolidated[20] in favor of respondent. On September 15, 1999, the Regional Trial Court of Bacolod City, Branch 46, granted respondent's Petition for Issuance of a Writ of Possession for the said properties.[21]

On September 22, 2000, the Regional Trial Court of Bacolod City, Branch 41, denied respondent's Motion to Dismiss. Respondent moved for reconsideration[22] but was likewise denied.

Thereafter, respondent filed a petition for certiorari before the Court of Appeals assailing the Orders of the trial court denying the motion to dismiss and the motion for reconsideration. On September 7, 2001, the Court of Appeals rendered the assailed Decision, the dispositive portion of which provides:

> WHEREFORE, premises considered, the present petition is GIVEN DUE COURSE and the writs prayed for, accordingly GRANTED. The Orders dated September 22, 2000 and March 19, 2001 which were both issued by respondent Judge RAY ALAN T. DRILON of Branch 41 of the Regional Trial court of Bacolod City in Civil Case No. 99-10707, entitled "Negros Merchants Enterprises, Inc. v. China Banking Corporation, Spouses Jacinto Y. Tan, Jr. and Corazon V. Tan and Ex-Officio Provincial Sheriff of Negros Occidental" are hereby ANNULLED and SET ASIDE. Respondent Judge, who is hereby permanently ENJOINED from enforcing the said Orders dated September 22, 2000 and March 19, 2001, is hereby ORDERED to dismiss Civil Case No. 99-10707 insofar as petitioner China Banking Corporation is concerned.
>
> Costs against private respondent.
>
> SO ORDERED.[23]

The Court of Appeals held that the Amended Complaint should have been dismissed because the accompanying certification against forum shopping which was signed by petitioner's corporate secretary, Amelito Lizares, was defective, for lack of authorization from the board of directors; that the allegations in the amended complaint were insufficient to establish a cause of action; that petitioner defaulted in paying the loan, thus respondent rightfully foreclosed the mortgaged properties; that petitioner cannot validly claim ignorance of the foreclosure proceedings; that the alleged collusion between Tan and respondent's Bacolod branch manager lacks basis because petitioner expressly authorized Tan to enter into loan transactions in its behalf with the latter; and that the trial judge acted with grave abuse of discretion in denying respondent's Motion to Dismiss.

The motion for reconsideration filed by petitioner was denied for lack of merit; hence, the present petition for review on certiorari.

Petitioner insists that the Court of Appeals departed from jurisprudential and procedural law when it entertained respondent's petition for certiorari questioning the two interlocutory orders issued by the trial court as the same shall be reviewed only when an appeal is taken from the judgment of the trial court; that since no actual hearing was yet conducted, there is no evidence which the appellate court could use as basis to resolve the case on the merits or to determine whether the trial judge acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

Petitioner also argues that trial courts have the authority to determine whether the allegations in a complaint are sufficient to support a cause of action and that they have the discretion to resolve a motion to dismiss on the ground of failure to state a cause of action based only on the complaint or based on other pleadings submitted by the parties. Thus, petitioner concludes that the trial judge acted within his discretion and authority in denying the motion to dismiss.

Petitioner likewise claims that the amended complaint cannot be considered an initiatory pleading which requires an accompanying certification against forum shopping. Since respondent's first motion to dismiss did not raise in issue the alleged defective certification, it is deemed to have waived any objection thereto, in accordance with Section 8, Rule 15 of the Rules of Court.[24] However, in the event the certification is found to be defective, petitioner maintains that it substantially complied with the rules and that the substance of the complaint should not be subordinated to procedural lapses.

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Finally, petitioner asserts that the full payment of the P8 million loan accommodation on January 31, 1996 rendered the mortgage contract and other documents connected thereto without force or effect. Accordingly, the mortgage contract should be deemed cancelled, and the properties subject thereto deemed released, instead of using them as security for the loans fraudulently obtained by Tan, and subsequently foreclosing them when the latter failed to pay. Petitioner, thus, prays for the reinstatement of the complaint against respondent for further proceedings.

The petition lacks merit.

In Español, Sr. v. Court of Appeals,[25] the Court held that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be the subject of a petition for review on certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.[26]

Thus, when the trial court denied respondent's motion to dismiss, its next course of action would have been to file an answer and proceed with the trial of the case. It therefore erred when it filed instead a petition for certiorari before the Court of Appeals.

Nevertheless, while indeed respondent erred in filing a petition for certiorari before the appellate court, we agree with the Court of Appeals that petitioner's Amended Complaint should have been dismissed due to its defective verification and certification against forum shopping.

It is settled that the requirement to file a certificate of non-forum shopping is mandatory and that the failure to comply with this requirement cannot be excused. The certification is a peculiar and personal responsibility of the 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.[27] In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents.[28]

In the present case, the Verification and Certification attached to the original and amended complaints of petitioner Negros Merchants Enterprises, Inc. reads as follows:

> I, AMELITO LIZARES, after being duly sworn, depose and state:
>
> - That I am the Corporate Secretary of Negros Merchants Enterprises, Inc. the plaintiff in the above-entitled case;
>
> - That I have caused the preparation of the foregoing complaint; and that all the allegations contained therein are true of my own personal knowledge;
>
> - That I hereby certify that I have not commenced any other actions or complaint involving the same issues in the Supreme Court, Court of Appeals, or different Division thereof or any court or tribunal or agency, and to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, Court of Appeals, or different Division thereof or any court or tribunal or agency; that in the event that a similar action or preceding [sic] has been filed or is pending before the Supreme Court, Court of Appeals, or different Division thereof, I hereby bind myself to notify the Court, tribunal, or agency within five (5) days from such notice.
>
> IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, 1999/12th day of October 1999, at Bacolod City, Philippines.

(Sgd.)
AMELITO LIZARES[29]

As can be gleaned from the foregoing, there was no allegation that petitioner Negros Merchants Enterprises, Inc., through a board resolution, authorized Lizares to execute the verification and certification of non-forum shopping. Moreover, no such board resolution was appended to the complaint or amended complaint.

In Tamondong v. Court of Appeals,[30] we held that if a complaint is filed for and in behalf of the plaintiff who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff.[31]

In the instant case, Lizares was not authorized to file the complaint for and in behalf of petitioner corporation. Thus, the complaint is not deemed filed by the proper party in interest and should be dismissed.

Indeed, there is jurisprudence where the Court allowed substantial compliance with the rule on certification of no-forum shopping; however, the exceptional circumstances and/or social justice considerations present in those cases are wanting in petitioner's Complaint or Amended Complaint. The words used in petitioner's verification and certification of no-forum shopping clearly state that Lizares solely caused the preparation of the present case, without even averring that he had done so in behalf of petitioner. There was no belated filing of a proper verification and certification, or even a copy of the board resolution or a secretary's certificate attesting that Lizares was authorized to file said complaint or the amendment thereto. Instead, petitioner merely declared without qualification or explanation in its Opposition to Motion to Dismiss that "there was sufficient compliance as could be gleaned from the complaint."[32]

There is likewise no merit in petitioner's assertion that the amended complaint was not an initiatory pleading. Section 8, Rule 10 of the Rules of Court clearly provides that an amended complaint supersedes the complaint that it amends.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated September 7, 2001 in CA-G.R. SP No. 65127, which annulled and set aside the Orders of the Regional Trial Court of Bacolod City, Branch 41 denying the motion to dismiss, and ordering the Regional Trial Court of Bacolod City, Branch 41, to dismiss Civil Case No. 99-10707, as well as the November 12, 2001 Resolution denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 9-44.

[2] Id. at 46-55; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. De Los Santos.

[3] Id. at 58-60 and 61-63; penned by Judge Ray Alan T. Drilon.

[4] CA rollo, p. 257.

[5] Id. at 69.

[6] Id. at 82-85.

[7] Id. at 86-87.

[8] Id.at 88-89.

[9] Id.at 91-92.

[10] Id.at 95-104 and (corresponding extension promissory notes) 105-112.

[11] Rollo, p. 142.

[12] Id. at 144-145.

[13]Id. at 146-147.

[14] Id. at 82-83.

[15] Id. at 64-68

[16] Id. at 84-113.

[17] Id. at 176-181.

[18] Id. at 199-241.

[19] Rules of Court, Rule 7, Sec. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[20] CA rollo, pp. 132-133.

[21] Id. at 134-138; in CAD. Case No. 99-983, penned by Judge Emma C. Labayen.

[22] Id.at 325-340.

[23] Id. at 55.

[24] Rules of Court, Rule 15, Sec. 8. Omnibus Motion - Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

[25] 335 Phil. 983 (1997).

[26] Id. at 987-988.

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[27] Expertravel & Tours, Inc. v. Court of Appeals, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157.

[28]Id.

[29] Rollo, pp. 68 and 180-181.

[30] G.R. No. 158397, November 26, 2004, 444 SCRA 509.

[31] Id. at 519.

[32] CA Id. p. 201.

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