

ASIA TRADERS INSURANCE CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

G.R. No. 152537. February 16, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

This petition for review on certiorari assails the decision[1] of the Court of Appeals in CA-G.R. SP No. 39433 and its subsequent resolution[2] denying the motion for reconsideration.

The antecedent facts are not disputed:

Sometime in July 1994, Cabever Realty Corporation (Cabever) filed an ejectment case against a certain Eduardo Cua before the Metropolitan Trial Court of Manila (MTC). On December 6, 1994, a decision was rendered ordering Cua to vacate the property of Cabever and to pay back rentals. Cua appealed the decision to the Regional Trial Court of Manila (RTC). As a condition for the appeal, Cua was required to deposit a supersedeas bond to cover for his rentals in arrears. He thus posted a bond in the amount of P62,600, undertaken by Asia Traders Insurance Corporation (Asia Traders), petitioner herein.

On June 26, 1995, the RTC affirmed the decision of the MTC. Hence, on August 4, 1995, Cabever filed a Motion to Withdraw Supersedeas Bond. The RTC granted the motion on August 9, 1995 and Cua was ordered to cause the release of the bond within 3 days from notice, otherwise a writ of execution shall be issued against the bond.

When Cua failed to comply with the said order, Cabever moved for the issuance of a writ of execution on September 8, 1995. The RTC granted the motion and a writ of execution was issued against Asia Traders.

Upon being served with the writ of execution, Asia Traders immediately filed a motion for reconsideration manifesting that it never issued the aforementioned bond, which it claimed to be fake and spurious. Thus, Asia Traders moved that the writ of execution be recalled and/or set aside for lack of factual or legal basis.

The RTC denied the motion for reconsideration. The RTC likewise denied the second motion for reconsideration filed by Asia Traders, paving the way for the notice of levy and sale of Asia Traders' property.

On January 10, 1996, Asia Traders filed with the Court of Appeals a petition for certiorari with application for preliminary injunction and restraining order.[3] Impleaded as respondents were the Presiding Judge of the RTC and the Branch Sheriff. In a resolution dated January 20, 1999, the Court of Appeals rendered a decision denying the petition, for the following reasons:[4]

- a) As to form, the petition failed to implead Cabever as one of the respondents; and
- b) As to substance, the material allegations and arguments contained in the petition were not substantiated.

On February 5, 1999, Asia Traders filed a Motion for Reconsideration. On February 21, 2002, the Court of Appeals denied the motion for reconsideration for lack of merit and the present petition was instituted.

In its petition, Asia Traders assigns three errors allegedly committed by the Court of Appeals, as follows:[5]

I. THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION WHEN IT FOUND THAT THE PETITIONER'S PETITION SUFFERS FROM BOTH FORMAL AND SUBSTANTIAL DEFECTS.

II. THE COURT OF APPEALS ERRED WHEN IT MADE A CONCLUSION UNSUPPORTED BY ANY EVIDENTIARY FACT.

III. THE COURT OF APPEALS ERRED WHEN IT FAILED TO FIND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF LOWER COURT JUDGE REGINO T. VERIDIANO.

On July 31, 2002, Cabever filed its comment contesting all of the assigned errors. In addition, it argued that the present petition ought to be dismissed because it failed to implead Cabever which is an indispensable party to the case. Apparently, petitioner only impleaded the Court of Appeals as respondent, thus failing to comply with the requirements of Section 4(a) of Rule 45 of the Rules of Court.

On February 27, 2003, Asia Traders filed a reply to the comment maintaining that the petition is not dismissible since Cabever is not an indispensable party without which no final determination can be had of the petition. Asia Traders asserted that the issues raised could very well be determined even without Cabever's participation inasmuch as they pertain solely to errors of law and rules committed by the Court of Appeals.

Subsequently, on March 28, 2003, Asia Traders filed a Motion to Admit Amended Petition, this time seeking to implead Cabever as respondent. In a sudden change of mind from its previous stand, Asia Traders now claims that Cabever is an indispensable party. It, however, insists that its failure to implead Cabever is a mere technical defect which can be cured at any stage of the proceedings.

In turn, Cabever filed on May 22, 2003 a motion to be dropped as respondent from the petition. Asia Traders filed an opposition to this motion on June 5, 2003.

The Court will first dispose of the issue of whether or not the present petition should be dismissed for its formal defects.

A look at the petition's title bears out that indeed only the Court of Appeals was impleaded as respondent. Also, in the portion of the petition under the heading "THE PARTIES," Asia Traders identified the Court of Appeals as the only respondent in the case. Section 4 (a) of Rule 45 of the Rules of Court requires the petition to state the full names of the appealing party as the petitioner and the adverse party as the respondent, without impleading the lower courts or judges thereof either as petitioners or respondents. Clearly, the petition is seen to suffer from two defects, for not only did it fail to implead the adverse party, it erroneously made the appellate court a party thereto.

Formal defects in petitions are not uncommon. The Court has encountered previous petitions for review that erroneously impleaded the Court of Appeals[6] or failed to implead the proper respondent.[7] In those cases, the Court merely called the petitioners' attention to the defects and proceeded to resolve the cases on their merits. The Court finds no reason why it should not to afford the same liberal treatment to herein petitioner. While the Court unquestionably has the discretion to dismiss the appeal for being defective, sound policy dictates that it is far better to dispose of cases on the merits, rather than on a technicality as the latter approach may result in injustice.[8] Moreover, no prejudice will be caused to Cabever as it was an original party before the lower courts and had been furnished all the pleadings and resolutions in this petition. In view thereof, the Court grants the Motion to Admit the Amended Petition and denies Cabever's motion to be dropped as respondent.

This notwithstanding, the Court admonishes the petitioner to be more circumspect in its pleadings. To recall, Asia Traders received an adverse decision from the Court of Appeals because its petition precisely failed to implead Cabever as one of the respondents. Asia Traders admits that this was a mistake but pleads that since this was a mistake only as to form, the Court of Appeals should have been less stringent with the application of the rules of procedure for the sake of substantial justice.[9]

The dismissal Asia Traders encountered before the Court of Appeals should have been enough to teach Asia Traders to be conscientious about impleading the proper parties in its petitions. Surprisingly, however, Asia Traders committed the very same omission before the Court when it again failed to implead the adverse party.

The Court also takes notice of the fact that after the comment was filed, wherein it was pointed out that the petition was defective because it failed to include an indispensable party, Asia Traders immediately filed a reply taking a stand that Cabever is not an indispensable party and that the petition may be decided without its inclusion. However, a month later, Asia Traders filed a Motion to Admit Amended Petition in order to implead Cabever which it now insists to be an indispensable party.

The Court now proceeds to review the assignment of errors.

Considering that the Court's previous pronouncements are likewise applicable to the issue regarding the formal defects of the petition before the Court of Appeals, the Court foregoes further discussion on this matter and moves on to the other issues on hand.

After carefully reviewing the pleadings and the evidence presented by Asia Traders, the Court finds that the Court of Appeals did not err in denying the petition for certiorari.

Asia Traders' claim that the Court of Appeals rendered judgment without stating clearly and distinctly the facts and the law on which it is based is bereft of merit. Quoted below is the pertinent portion of the Court of Appeals' decision that is in question:[10]

As to substance, the material allegations and arguments in the petition are not substantiated.

First. The bond filed in Court is in a printed form of petitioner. While petitioner submitted a sample copy of another bond, Bond No. 6 (16) -1442, it remains clear that both bonds are printed forms of petitioner.

Second. The alleged genuine bond of petitioner does not have the signature of General Manager Susana Fong, hence, no comparison can be made with the subject bond, which bears the signature of Ms. Fong. More importantly, there is no affidavit executed by Ms. Fong that her signature appearing on Bond No. 0062 is falsified.

Third. It is not denied that there is a Supreme Court clearance attached to Bond No. 0062 which lends credence to the presumption that the ordinary course of business has been followed. There is no evidence that such clearance or certification is spurious.

Fourth. Petitioner's bare allegation that the series number in Bond No. 0062 is not the series used by them is unsupported by any proof. A sworn statement by the Bond Manager or responsible officer could have been more credible.

In short, We fail to see any grave abuse of discretion committed by respondent judge in ruling against petitioner re the subject bond.

For certiorari to lie there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of judicial prerogative in accordance with centuries of both civil law and common law traditions.

The Court is unable to see how the assailed decision failed to state clearly and distinctly the facts and the law of

the case. As can be plainly read, the Court of Appeals decision was well organized and structured. It recited point by point its findings of fact, followed by the applicable legal conclusion. Moreover, Asia Traders itself was able to point out and discuss in its petition each of the four findings of the Court of Appeals.[11] This refutes the contention that the decision was devoid of any statement of fact or law.

Asia Traders further argues that the trial court failed to recognize its right to present evidence on its behalf in order to dispute the validity of the bond. It explains that the factual submission made in the motion for reconsideration should have, at the very least, invited the trial court to hear its evidence instead of denying the motion outright merely on the basis of the pleadings. Thus, the failure of the trial court to give Asia Traders the opportunity to present evidence in its defense effectively deprived it of its rightful day in court in violation of its right to due process.[12]

This claim is not tenable.

First, proving that the subject bond is spurious rests with the petitioner. This is based on the principle that he who alleges a fact has the burden of proving it.[13] It must also be stressed that the evidence to prove this fact must be clear, positive and convincing.[14] If Asia Traders fails to overcome this burden then the allegation of fraud remains unsubstantiated.

After going over the documents before it, the trial court found the evidence insufficient to prove that the subject bond was fake or falsified. Thus, it correctly denied petitioner's motion for reconsideration.

By its failure to ask for an evidentiary hearing, Asia Traders was deemed to have agreed to submit the motion for resolution based only on the pleadings laid before the court. If it turned out that the allegations and annexes submitted were insufficient, Asia Traders cannot fault the trial court.

In fact, the plea to reopen the case appears to be an afterthought. The Court notes that during the certiorari proceedings before the Court of Appeals, Asia Traders was convinced that it had sufficient proof of the spurious nature of the bond. Thus, its prayer before the Court of Appeals was for an order to release it from any responsibility and/or liability under the subject bond.[15] It was only before this Court that petitioner decided to adopt a different position and claim that it was not given a chance to present evidence. Thus, its prayer became a plea for the reopening of the case for the sole purpose of the presentation of Asia Traders' evidence.

It is much too late in the day for Asia Traders to ask for the reopening of the case. It is bound by its decision to submit the motion for reconsideration without moving for an evidentiary hearing. It cannot now be permitted, after having lost its case for insufficiency of evidence, to seek to litigate the matter anew with more evidence. Piecemeal presentation of evidence is not in accord with orderly justice.[16]

WHEREFORE, the petition for review is DENIED. The assailed decision and resolution of the Court of Appeals are hereby AFFIRMED. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Carpio, JJ., concur.

[1] Rollo, pp. 34-40.

[2] Id., p. 42.

[3] CA-G.R. SP No. 39433.

[4] Rollo, p. 14.

[5] Id., p. 26.

[6] Metropolitan Waterworks and Sewerage System v. Court of Appeals, 143 SCRA 623 (1986); Philippine Global Communications, Inc. v. Relova, 145 SCRA 385 (1986).

[7] Edano v. Court of Appeals, 213 SCRA 585 (1992).

[8] AFP Mutual Benefit Association v. Court of Appeals, 311 SCRA 143 (1999).

[9] Rollo, p. 27.

[10] Id., pp. 38-40.

[11] Id., pp. 29-31.

[12] Id., p. 134.

[13] P.T. Cerna Corporation v. Court of Appeals, 221 SCRA 19 (1993).

[14] R.F. Navarro & Co., v. Vailoces, 361 SCRA 139 (2001).

[15] Court of Appeals Rollo, pp. 8 & 15.

[16] Cansino and De Jesus v. Court of Appeals, G.R. No. 125799, August 21, 2003.

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