

HIYAS SAVINGS AND LOAN BANK, INC. PETITIONER, VS. HON. EDMUNDO T. ACUÑA, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 122, CALOOCAN CITY, AND ALBERTO MORENO,...

G.R. NO. 154132. August 31, 2006

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court seeking to nullify the Orders[1] of the Regional Trial Court (RTC) of Caloocan City, Branch 122, dated November 8, 2001[2] and May 7, 2002[3] denying herein petitioner's Motion to Dismiss and Motion for Partial Reconsideration, respectively.

The antecedent facts are as follows:

On November 24, 2000, Alberto Moreno (private respondent) filed with the RTC of Caloocan City a complaint against Hiyas Savings and Loan Bank, Inc. (petitioner), his wife Remedios, the spouses Felipe and Maria Owe and the Register of Deeds of Caloocan City for cancellation of mortgage contending that he did not secure any loan from petitioner, nor did he sign or execute any contract of mortgage in its favor; that his wife, acting in conspiracy with Hiyas and the spouses Owe, who were the ones that benefited from the loan, made it appear that he signed the contract of mortgage; that he could not have executed the said contract because he was then working abroad.[4]

On May 17, 2001, petitioner filed a Motion to Dismiss on the ground that private respondent failed to comply with Article 151 of the Family Code wherein it is provided that no suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. Petitioner contends that since the complaint does not contain any fact or averment that earnest efforts toward a compromise had been made prior to its institution, then the complaint should be dismissed for lack of cause of action.[5]

Private respondent filed his Comment on the Motion to Dismiss with Motion to Strike Out and to Declare Defendants in Default. He argues that in cases where one of the parties is not a member of the same family as contemplated under Article 150 of the Family Code, failure to allege in the complaint that earnest efforts toward a compromise had been made by the plaintiff before filing the complaint is not a ground for a motion to dismiss. Alberto asserts that since three of the party-defendants are not members of his family the ground relied upon by Hiyas in its Motion to Dismiss is inapplicable and unavailable. Alberto also prayed that defendants be declared in default for their failure to file their answer on time.[6]

Petitioner filed its Reply to the Comment with Opposition to the Motion to Strike and to Declare Defendants in Default.[7] Private respondent, in turn, filed his Rejoinder.[8]

On November 8, 2001, the RTC issued the first of its assailed Orders denying the Motion to Dismiss, thus:

The court agrees with plaintiff that earnest efforts towards a compromise is not required before the filing of the

instant case considering that the above-entitled case involves parties who are strangers to the family. As aptly pointed out in the cases cited by plaintiff, *Magbaleta v. G[o]nong*, L-44903, April 25, 1977 and *Mendez v. [B]iangon*, L-32159, October 28, 1977, if one of the parties is a stranger, failure to allege in the complaint that earnest efforts towards a compromise had been made by plaintiff before filing the complaint, is not a ground for motion to dismiss.

Insofar as plaintiff's prayer for declaration of default against defendants, the same is meritorious only with respect to defendants Remedios Moreno and the Register of Deeds of Kaloocan City. A declaration of default against defendant bank is not proper considering that the filing of the Motion to Dismiss by said defendant operates to stop the running of the period within which to file the required Answer.[9]

Petitioner filed a Motion for Partial Reconsideration.[10] Private respondent filed his Comment,[11] after which petitioner filed its Reply.[12] Thereafter, private respondent filed his Rejoinder.[13]

On May 7, 2002, the RTC issued the second assailed Order denying petitioner's Motion for Partial Reconsideration. The trial court ruled:

Reiterating the resolution of the court, dated November 8, 2001, considering that the above-entitled case involves parties who are strangers to the family, failure to allege in the complaint that earnest efforts towards a compromise were made by plaintiff, is not a ground for a Motion to Dismiss.

Additionally, the court agrees with plaintiff that inasmuch as it is defendant Remedios Moreno who stands to be benefited by Art. 151 of the Family Code, being a member of the same family as that of plaintiff, only she may invoke said Art. 151.[14]

x x x

Hence, the instant Petition for Certiorari on the following grounds:

- Public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he ruled that lack of earnest efforts toward a compromise is not a ground for a motion to dismiss in suits between husband and wife when other parties who are strangers to the family are involved in the suit. Corollarily, public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he applied the decision in the case of *Magbaleta v. Gonong* instead of the ruling in the case of *De Guzman v. Genato*.
- Public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he ruled that a party who is a stranger to the family of the litigants could not invoke lack of earnest efforts toward a compromise as a ground for the dismissal of the complaint.[15]

At the outset, the Court notes that the instant Petition for Certiorari should have been filed with the Court of Appeals (CA) and not with this Court pursuant to the doctrine of hierarchy of courts. Reiterating the established policy for the strict observance of this doctrine, this Court held in *Heirs of Bertuldo Hinog v. Melicor*[16] that:

Although the Supreme Court, Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. As we stated in *People v. Cuaresma*:

This Court's original jurisdiction to issue writs of certiorari is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that

petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.

The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.

Thus, this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari, calling for the exercise of its primary jurisdiction. Exceptional and compelling circumstances were held present in the following cases: (a) Chavez vs. Romulo on citizens' right to bear arms; (b) Government of the United States of America vs. Purganan on bail in extradition proceedings; (c) Commission on Elections vs. Quijano-Padilla on government contract involving modernization and computerization of voters' registration list; (d) Buklod ng Kawaning EIIB vs. Zamora on status and existence of a public office; and (e) Fortich vs. Corona on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.[17]

In the present case, petitioner failed to advance a satisfactory explanation as to its failure to comply with the principle of judicial hierarchy. There is no reason why the instant petition could not have been brought before the CA. On this basis, the instant petition should be dismissed.

And even if this Court passes upon the substantial issues raised by petitioner, the instant petition likewise fails for lack of merit.

Restating its arguments in its Motion for Partial Reconsideration, petitioner argues that what is applicable to the present case is the Court's decision in *De Guzman v. Genato*[18] and not in *Magbaleta v. Gonong*,[19] the former being a case involving a husband and wife while the latter is between brothers.

The Court is not persuaded.

Article 151 of the Family Code provides as follows:

No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Article 222 of the Civil Code from which Article 151 of the Family Code was taken, essentially contains the same provisions, to wit:

No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035.[20]

The Code Commission that drafted Article 222 of the Civil Code from which Article 151 of the Family Code was taken explains:

[I]t is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers.[21]

In *Magbaleta*, the case involved brothers and a stranger to the family, the alleged owner of the subject property. The Court, taking into consideration the explanation made by the Code Commission in its report, ruled that:

[T]hese considerations do not, however, weigh enough to make it imperative that such efforts to compromise should be a jurisdictional pre-requisite for the maintenance of an action whenever a stranger to the family is a party thereto, whether as a necessary or indispensable one. It is not always that one who is alien to the family would be willing to suffer the inconvenience of, much less relish, the delay and the complications that wranglings between or among relatives more often than not entail. Besides, it is neither practical nor fair that the determination of the rights of a stranger to the family who just happened to have innocently acquired some kind of interest in any right or property disputed among its members should be made to depend on the way the latter would settle their differences among themselves.[22] x x x.

Hence, once a stranger becomes a party to a suit involving members of the same family, the law no longer makes it a condition precedent that earnest efforts be made towards a compromise before the action can prosper.

In the subsequent case of *De Guzman*, the case involved spouses and the alleged paramour of the wife. The Court ruled that due to the efforts exerted by the husband, through the Philippine Constabulary, to confront the wife, there was substantial compliance with the law, thereby implying that even in the presence of a party who is not a family member, the requirements that earnest efforts towards a compromise have been exerted must be complied with, pursuant to Article 222 of the Civil Code, now Article 151 of the Family Code.

While *De Guzman* was decided after *Magbaleta*, the principle enunciated in the *Magbaleta* is the one that now prevails because it is reiterated in the subsequent cases of *Gonzales v. Lopez*,[23] *Esquivias v. Court of Appeals*,[24] *Spouses Hontiveros v. Regional Trial Court, Branch 25, Iloilo City*,[25] and the most recent case of *Martinez v. Martinez*. [26] Thus, Article 151 of the Family Code applies to cover when the suit is exclusively between or among family members.

The Court finds no cogent reason why the ruling in *Magbaleta* as well as in all of the aforementioned cases should not equally apply to suits involving husband and wife.

Petitioner makes much of the fact that the present case involves a husband and his wife while *Magbaleta* is a case between brothers. However, the Court finds no specific, unique, or special circumstance that would make the ruling in *Magbaleta* as well as in the abovementioned cases inapplicable to suits involving a husband and his wife, as in the present case. In the first place, Article 151 of the Family Code and Article 222 of the Civil Code are clear that the provisions therein apply to suits involving "members of the same family" as contemplated under Article 150 of the Family Code, to wit:

ART. 150. Family relations include those:

- (1) Between husband and wife;
- (2) Between parents and children;
- (3) Among other ascendants and descendants; and
- (4) Among brothers and sisters, whether of the full or half blood.

and Article 217 of the Civil Code, to wit:

ART. 217. Family relations shall include those:

- (1) Between husband and wife;
- (2) Between parent and child;
- (3) Among other ascendants and their descendants;
- (4) Among brothers and sisters.

Petitioner also contends that the trial court committed grave abuse of discretion when it ruled that petitioner, not being a member of the same family as respondent, may not invoke the provisions of Article 151 of the Family Code.

Suffice it to say that since the Court has ruled that the requirement under Article 151 of the Family Code is applicable only in cases which are exclusively between or among members of the same family, it necessarily follows that the same may be invoked only by a party who is a member of that same family.

WHEREFORE, the instant Petition for Certiorari is DISMISSED for lack of merit.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr. and Chico-Nazario, JJ., concur.

[1] Penned by Judge Edmundo T. Acuña.

[2] Records, p. 45.

[3] Id. at 73.

[4] Id. at 1.

[5] Id. at 16.

[6] Id. at 22.

[7] Id. at 28.

[8] Id. at 39.

[9] Id. at 45-46.

[10] Id. at 47.

[11] Id. at 61.

[12] Id. at 65.

[13] Id. at 70.

[14] Id. at 74.

[15] Rollo, p. 9.

[16] G.R. No. 140954, April 12, 2005, 455 SCRA 460.

[17] Id. at 470-472.

[18] G.R. No. L-42260, April 30, 1979, 89 SCRA 674.

[19] G.R. No. L-44903, April 22, 1977, 76 SCRA 511.

[20] ART. 2035. No compromise upon the following questions shall be valid:

- (1) The civil status of persons;
- (2) The validity of a marriage or a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts;
- (6) Future legitime.

[21] Report of the Code Commission, p. 18 cited in The Civil Code of the Philippines and Family Code, Vol. 1, 1990 ed., by Ramon C. Aquino and Carolina Griño-Aquino, p. 272.

[22] Supra note 19, at 513.

[23] G.R. No. L-48068, April 15, 1988, 160 SCRA 346.

[24] 339 Phil. 184 (1997).

[25] 368 Phil. 653 (1999).

[26] G.R. No. 162084, June 28, 2005, 461 SCRA 562.

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