

NELLIE VDA. DE FORMOSO AND HER CHILDREN, NAMELY, MA. THERESA FORMOSO-PESCADOR, ROGER FORMOSO, MARY JANE FORMOSO, BERNARD FORMOSO AND PRIMITIVO MALCABA, PETITIONERS, VS. PHILIPPI...

G.R. No. 154704. June 01, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

Assailed in this petition are the January 25, 2002 Resolution[1] and the August 8, 2002 Resolution[2] of the Court of Appeals (CA) which dismissed the petition for certiorari filed by the petitioners on the ground that the verification and certification of non-forum shopping was signed by only one of the petitioners in CA G.R. SP No. 67183, entitled "Nellie P. Vda. De Formoso, et al. v. Philippine National Bank, et al."

The Factual and
Procedural Antecedents

Records show that on October 14, 1989, Nellie Pabelo Vda. De Formoso (Nellie) and her children namely: Ma. Theresa Formoso-Pescador, Roger Formoso, Mary Jane Formoso, Bernard Formoso, and Benjamin Formoso, executed a special power of attorney in favor of Primitivo Malcaba (Malcaba) authorizing him, among others, to secure all papers and documents including the owner's copies of the titles of real properties pertaining to the loan with real estate mortgage originally secured by Nellie and her late husband, Benjamin S. Formoso, from Philippine National Bank, Vigan Branch (PNB) on September 4, 1980.

On April 20, 1990, the Formosos sold the subject mortgaged real properties to Malcaba through a Deed of Absolute Sale. Subsequently, on March 22, 1994, Malcaba and his lawyer went to PNB to fully pay the loan obligation including interests in the amount of ₱2,461,024.74.

PNB, however, allegedly refused to accept Malcaba's tender of payment and to release the mortgage or surrender the titles of the subject mortgaged real properties.

On March 24, 1994, the petitioners filed a Complaint for Specific Performance against PNB before the Regional Trial Court of Vigan, Ilocos Sur (RTC) praying, among others, that PNB be ordered to accept the amount of ₱2,461,024.74 as full settlement of the loan obligation of the Formosos.

After an exchange of several pleadings, the RTC finally rendered its decision[3] on October 27, 1999 favoring the petitioners. The petitioners' prayer for exemplary or corrective damages, attorney's fees, and annual interest and daily interest, however, were denied for lack of evidence.

PNB filed a motion for reconsideration but it was denied for failure to comply with Rule 15, Section 5 of the 1997 Rules of Civil Procedure. PNB then filed a Notice of Appeal but it was dismissed for being filed out of time.

The petitioners received their copy of the decision on November 26, 1999, and on January 25, 2001, they filed

their Petition for Relief from Judgment[4] questioning the RTC decision that there was no testimonial evidence presented to warrant the award for moral and exemplary damages. They reasoned out that they could not then file a motion for reconsideration because they could not get hold of a copy of the transcripts of stenographic notes. In its August 6, 2001 Order, the RTC denied the petition for lack of merit.[5]

On September 7, 2001, the petitioners moved for reconsideration but it was denied by the RTC in its Omnibus Order of September 26, 2001.[6]

Before the Court of Appeals

On November 29, 2001, the petitioners filed a petition for certiorari before the CA challenging the RTC Order of August 6, 2001 and its Omnibus Order dated September 26, 2001.

In its January 25, 2002 Resolution, the CA dismissed the petition stating that:

The verification and certification of non-forum shopping was signed by only one (Mr. Primitivo Macalba) of the many petitioners. In *Loquias v. Office of the Ombudsman*, G.R. No. 139396, August 15, 2000, it was ruled that all petitioners must be signatories to the certification of non-forum shopping unless the one who signed it is authorized by the other petitioners. In the case at bar, there was no showing that the one who signed was empowered to act for the rest. Therefore, it cannot be presumed that the one who signed knew to the best of his knowledge whether his co-petitioners had the same or similar claims or actions filed or pending. The ruling in *Loquias* further declared that substantial compliance will not suffice in the matter involving strict observance of the Rules. Likewise, the certification of non-forum shopping requires personal knowledge of the party who executed the same and that petitioners must show reasonable cause for failure to personally sign the certification. Utter disregard of the Rules cannot just be rationalized by harping on the policy of liberal construction.

Aggrieved, after the denial of their motion for reconsideration, the petitioners filed this petition for review anchored on the following

GROUND

THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT ALL THE PETITIONERS MUST SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING IN A PETITION FOR CERTIORARI WHEREIN ONLY QUESTIONS OF LAW ARE INVOLVED.

ALTERNATIVELY, THE COURT OF APPEALS PATENTLY ERRED IN DISMISSING THE WHOLE PETITION WHEN AT THE VERY LEAST THE PETITION INsofar AS PETITIONER MALCABA IS CONCERNED BEING THE SIGNATORY THEREOF SHOULD HAVE BEEN GIVEN DUE COURSE.

THE COURT OF APPEALS PATENTLY ERRED IN GIVING MORE WEIGHT ON TECHNICALITIES WHEN THE PETITION BEFORE IT WAS CLEARLY MERITORIOUS.[7]

The petitioners basically argue that they have substantially complied with the requirements provided under the 1997 Rules of Civil Procedure on Verification and Certification of Non-Forum Shopping. The petitioners are of the view that the rule on Verification and Certification of Non-Forum Shopping that all petitioners must sign should be liberally construed, since only questions of law are raised in a petition for certiorari and no factual issues that require personal knowledge of the petitioners.

The petitioners further claim that they have a meritorious petition because contrary to the ruling of the RTC, their Petition for Relief clearly showed that, based on the transcript of stenographic notes, there was enough testimonial evidence for the RTC to grant them damages and attorney's fees as prayed for.

On the other hand, PNB counters that the mandatory rule on the certification against forum shopping requires that all of the six (6) petitioners must sign, namely: Nellie Vda. De Formoso and her children Ma. Theresa Formoso-Pescador, Roger Formoso, Mary Jane Formoso, and Bernard Formoso, and Primitivo Malcaba. Therefore, the signature alone of Malcaba on the certification is insufficient.

PNB further argues that Malcaba was not even a party or signatory to the contract of loan entered into by his co-petitioners. Neither was there evidence that Malcaba is a relative or a co-owner of the subject properties. It likewise argues that, contrary to the stance of the petitioners, the issue raised before the CA, as to whether or not the petitioners were entitled to moral and exemplary damages as well as attorney's fees, is a factual one.

Finally, PNB asserts that the body of the complaint filed by the petitioners failed to show any allegation that Malcaba alone suffered damages for which he alone was entitled to reliefs as prayed for. PNB claims that the wordings of the complaint were clear that all the petitioners were asking for moral and exemplary damages and attorney's fees.

OUR RULING

The petition lacks merit.

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law.[8] Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:

SECTION 1. Petition for certiorari.- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. [Emphasis supplied]

Under Rule 46, Section 3, paragraph 3 of the 1997 Rules of Civil Procedure, as amended, petitions for certiorari must be verified and accompanied by a sworn certification of non-forum shopping.

SECTION 3. Contents and filing of petition; effect of non-compliance with requirements. - The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly

legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. [Emphases supplied]

The acceptance of a petition for certiorari as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the Court has absolute discretion to reject and dismiss a petition for certiorari, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars.[9] [Emphasis supplied]

In the case at bench, the petitioners claim that the petition for certiorari that they filed before the CA substantially complied with the requirements provided for under the 1997 Rules of Civil Procedure on Verification and Certification of Non-Forum Shopping.

The Court disagrees.

Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

SEC. 4. Verification. - Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

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. x x x.

In this regard, the case of *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*,^[10] is enlightening:

Respecting the appellate court's dismissal of petitioners' appeal due to the failure of some of them to sign the therein accompanying verification and certification against forum-shopping, the Court's guidelines for the bench and bar in *Altres v. Empleo*, which were culled "from jurisprudential pronouncements," are instructive:

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The Court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
- 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
- 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."
- 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
- 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

The petition for certiorari filed with the CA stated the following names as petitioners: Nellie Panelo Vda. De Formoso, Ma. Theresa Formoso-Pescador, Roger Formoso, Mary Jane Formoso, Bernard Formoso, Benjamin Formoso, and Primitivo Malcaba.

Admittedly, among the seven (7) petitioners mentioned, only Malcaba signed the verification and certification of non-forum shopping in the subject petition. There was no proof that Malcaba was authorized by his co-petitioners to sign for them. There was no special power of attorney shown by the Formosos authorizing Malcaba as their attorney-in-fact in filing a petition for review on certiorari. Neither could the petitioners give at least a reasonable explanation as to why only he signed the verification and certification of non-forum shopping. In *Athena Computers, Inc. and Joselito R. Jimenez v. Wesnu A. Reyes*, the Court explained that:

The verification of the petition and certification on non-forum shopping before the Court of Appeals were signed only by Jimenez. There is no showing that he was authorized to sign the same by Athena, his

co-petitioner.

Section 4, Rule 7 of the Rules states that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief. Consequently, the verification should have been signed not only by Jimenez but also by Athena's duly authorized representative.

In *Docena v. Lapesura*, we ruled 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. The attestation on non-forum shopping 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 similar to the current petition.

The certification against forum shopping in CA-G.R. SP No. 72284 is fatally defective, not having been duly signed by both petitioners and thus warrants the dismissal of the petition for certiorari. We have consistently held that the certification against forum shopping must be signed by the principal parties. With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.

While the Rules of Court may be relaxed for persuasive and weighty reasons to relieve a litigant from an injustice commensurate with his failure to comply with the prescribed procedures, nevertheless they must be faithfully followed. In the instant case, petitioners have not shown any reason which justifies relaxation of the Rules. We have held that procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except for the most persuasive of reasons when they may be relaxed. Not one of these persuasive reasons is present here.

In fine, we hold that the Court of Appeals did not err in dismissing the petition for certiorari in view of the procedural lapses committed by petitioners.[11] [Emphases supplied]

Furthermore, the petitioners argue that the CA should not have dismissed the whole petition but should have given it due course insofar as Malcaba is concerned because he signed the certification. The petitioners also contend that the CA should have been liberal in the application of the Rules because they have a meritorious case against PNB.

The Court, however, is not persuaded.

The petitioners were given a chance by the CA to comply with the Rules when they filed their motion for reconsideration, but they refused to do so. Despite the opportunity given to them to make all of them sign the verification and certification of non-forum shopping, they still failed to comply. Thus, the CA was constrained to deny their motion and affirm the earlier resolution.[12]

Indeed, liberality and leniency were accorded in some cases.[13] In these cases, however, those who did not sign were relatives of the lone signatory, so unlike in this case, where Malcaba is not a relative who is similarly situated with the other petitioners and who cannot speak for them. In the case of *Heirs of Domingo Hernandez, Sr. v. Plaridel Mingoa, Sr.*,[14] it was written:

In the instant case, petitioners share a common interest and defense inasmuch as they collectively claim a right not to be dispossessed of the subject lot by virtue of their and their deceased parents' construction of a family home and occupation thereof for more than 10 years. The commonality of their stance to defend their alleged right over the controverted lot thus gave petitioners xxx authority to inform the Court of Appeals in behalf of the other petitioners that they have not commenced any action or claim involving the same issues in another court or tribunal, and that there is no other pending action or claim in another court or tribunal involving the same issues.

Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules. [Emphasis supplied]

The same leniency was accorded to the petitioner in the case of *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*,^[15] where it was stated:

The same leniency was applied by the Court in *Cavile v. Heirs of Cavile*, because the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shares a common interest. x x x^[16]

Considering the above circumstances, the Court does not see any similarity at all in the case at bench to compel itself to relax the requirement of strict compliance with the rule regarding the certification against forum shopping.

At any rate, the Court cannot accommodate the petitioners' request to re-examine the testimony of Malcaba in the transcript of stenographic notes of the April 25, 1999 hearing concerning his alleged testimonial proof of damages for obvious reasons.

Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.^[17]

In this case, the petition clearly raises a factual issue. As correctly argued by PNB, the substantive issue of whether or not the petitioners are entitled to moral and exemplary damages as well as attorney's fees is a factual issue which is beyond the province of a petition for review on certiorari.

Secondly, even if the Court glosses over the technical defects, the petition for relief cannot be granted. A perusal of the Petition for Relief of Judgment discloses that there is no fact constituting fraud, accident, mistake or excusable negligence which are the grounds therefor. From the petition itself, it appears that the petitioners' counsel had a copy of the transcript of stenographic notes which was in his cabinet all along and only discovered it when he was disposing old and terminated cases.^[18] If he was only attentive to his records, he could have filed a motion for reconsideration or a notice of appeal in behalf of the petitioners.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1]Rollo, pp. 26-27; penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Justice) and concurred in by Associate Justice Ruben T. Reyes (former Supreme Court Justice) and Associate Justice Renato C. Dacudao.

[2] Id. at 29.

[3] Id. at 131-144.

[4] Id. at 158.

[5] Id. at 18.

[6] Id. at 14.

[7] Id. at 15.

[8] *Eagle Ridge Golf & Country Club v. Court of Appeals & Eagle Ridge Employees Union (EREU)*, G.R. No. 178989, March 18, 2010, 616 SCRA 116.

[9] *Athena Computers, Inc. and Joselito R. Jimenez v. Wesnu A. Reyes*, G.R. No. 156905, September 5, 2007, 532 SCRA 343, 350.

[10] G.R. No. 164205, September 3, 2009, 598 SCRA 27.

[11] *Supra* note 9.

[12] *Rollo*, p. 29.

[13] *Heirs of Domingo Hernandez, Sr. v. Plaridel Mingoa, Sr.*, G.R. No. 146548, December 18, 2009, 608 SCRA 394; and *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*, G.R. No. 164205, September 3, 2009, 598 SCRA 27.

[14] Id.

[15] *Supra* note 10.

[16] Id.

[17] *Cebu Bionic Builders Supply, Inc. vs. Development Bank of the Philippines*, G.R. No. 154366, November 17, 2010.

[18] *Petition for Relief of Judgment*, paragraph 7; *rollo*, p. 158.

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