

**CEFERINA ARGALLON-JOCSON AND RODOLFO TUISING,
PETITIONERS, VS. COURT OF APPEALS, HON. BONIFACIO T. ONG, IN
HIS CAPACITY AS THE ACTING PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT...**

G.R. No. 162836. July 30, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 16 January 2004 and the Resolution dated 25 March 2004 of the Court of Appeals in CA-G.R. SP No. 79179. The Court of Appeals affirmed the Order dated 14 April 2003 of the Regional Trial Court of Roxas, Isabela, Branch 23 (trial court), in Civil Case No. Br. 23-377.

The Facts

On 10 August 1992, petitioner Ceferina Argallon-Jocson (Jocson) filed a complaint for Reconveyance and Damages against Marcelo Steel Corporation and Maria Cristina Fertilizer Corporation (MCFC), which were represented by Jose Marcelo as president of both companies.

On 24 February 1999, the trial court rendered a decision, the dispositive portion of which reads:

AS A CONSEQUENCE OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff [Jocson] and against the defendants [Marcelo Steel Corporation and MCFC]: (1) Ordering the defendants to pay the plaintiff the balance of P2,004,810.42, with legal interest from 1976 up to the present; (2) attorney's fees in the amount of P20,000.00; and (3) to pay the costs.[3]

Marcelo Steel Corporation and MCFC (private respondents) appealed to the Court of Appeals, which affirmed the trial court's decision. Private respondents did not appeal the Court of Appeals' decision, which became final and executory. Jocson then filed a Motion for Issuance of a Writ of Execution. On 9 December 2002, the trial court issued an order for the issuance of a writ of execution in accordance with the tenor of the decision.

On 20 December 2002, a Writ of Execution[4] (writ) was issued to the Sheriff of the Office of the Clerk of Court of Manila, commanding the Sheriff to implement the writ upon private respondents in accordance with the tenor of the decision. The writ was indorsed to Sheriffs Levy Duka, Luis Alina, Andreil Garcia, and Nathaniel Abaya, who levied upon the properties of Marcelo Steel Corporation in full satisfaction of the judgment debt. The execution sale was then scheduled on 17 February 2003. On 14 February 2003, Midas International Development Corporation (Midas Corp.) filed a third-party claim, alleging that some of the levied properties were previously mortgaged to Midas Corp. The execution sale was postponed to 21 February 2003. On 20 February 2003, Jocson posted a P36 million indemnity bond[5] so that the levied properties would not be released to claimant Midas Corp. The Sheriffs then proceeded with the execution sale on 21 February 2003 and sold the properties of Marcelo Steel Corporation for the full satisfaction of the judgment against private respondents. A certificate of

sale[6] was issued to petitioner Rodolfo Tuising (Tuising), who was the highest bidder at the auction sale for P9.9 million.

On 28 February 2003, Jocson filed with the trial court a Very Urgent Ex-Parte Motion for Issuance of a Break-Open Order and Petition for Contempt of Court.[7] On 3 March 2003, Marcelo Steel Corporation filed an Extremely Urgent Omnibus Motion,[8] praying for the annulment of the execution sale and for the issuance of an order directing the Sheriffs not to deliver the properties sold to Tuising pending resolution of Marcelo Steel Corporation's motion. Marcelo Steel Corporation alleged that its obligation was merely joint with MCFC and that the total price of the properties sold on execution was unconscionably inadequate.

On 14 April 2003, the trial court issued an order, the dispositive portion of which reads:

WHEREFORE, premises considered, the execution sale of the properties of the defendant Marcelo Steel Corporation, namely: Seven (7) dilapidated warehouses, detachable metal structural steel with scattered machineries, metal scraps, metal G.I. Pipes, wires and post, held on February 21, 2003, is hereby declared null and void and the Certificate of Sale dated February 21, 2003 issued pursuant thereto is hereby set aside and cancelled.

The motion for the issuance of a break-open order is hereby denied for lack of merit and basis.[9]

Jocson moved for reconsideration of the trial court's order, claiming that the nature of the obligation to pay the balance of the purchase price was solidary. Tuising filed a Motion for Intervention with Leave of Court with Motion for Reconsideration and Entry of Appearance. On the other hand, Marcelo Steel Corporation filed, on 7 May 2003, a Manifestation and Motion on Satisfaction of Judgment, depositing with the trial court a Manager's Check in the amount of P4,260,198.11 representing full satisfaction of Marcelo Steel Corporation's obligation to Jocson. On 14 July 2003, the trial court denied Jocson's motion for reconsideration and Tuising's motion for intervention and reconsideration, and granted Marcelo Steel Corporation's prayer for entry of satisfaction of judgment on its behalf.[10]

On 18 August 2003, Jocson filed with the trial court a Notice of Appeal, which she later withdrew on 4 September 2003, and in lieu thereof, petitioners Jocson and Tuising filed a Petition for Certiorari with the Court of Appeals.[11] The Court of Appeals dismissed the petition for lack of merit. Jocson and Tuising filed a motion for reconsideration,[12] which the Court of Appeals denied on 25 March 2004. Hence, this petition.

Meanwhile, on 23 February 2004, Jocson filed with the trial court a Motion for Issuance of Alias Writ of Execution to implement the decision as against MCFC, stating that in view of the Court of Appeals' decision, there is a need to execute the decision as against the other defendant MCFC.[13]

The Trial Court's Ruling

In its Order dated 14 April 2003, the trial court ruled that the liability of Marcelo Steel Corporation was limited to its proportional share in the entire money judgment. Considering that the dispositive portion of the Decision dated 24 February 1999 in this case did not state that the obligation of private respondents was solidary, then their obligation was merely joint. Citing the case of *PH Credit Corporation v. Court of Appeals*,[14] the trial court held that "being made to pay for an obligation in its entirety when one's liability is merely for a portion is a sufficient ground to contest an execution sale. It would be the height of inequity if we allow judgment obligors to shoulder entire monetary judgments when their legal liabilities are limited only to their proportionate shares in the entire obligation."

The Court of Appeals' Ruling

The Court of Appeals held that in consonance with Section 1, Rule 65 of the Rules of Civil Procedure,[15] certiorari is not a substitute for lost appeal. Moreover, the Court of Appeals found that the assigned issues were factual issues not proper in a petition for certiorari, which is limited to the issues of jurisdiction and grave abuse of discretion.

The Court of Appeals found no grave abuse of discretion on the part of the respondent judge. On the merits of the case, the Court of Appeals held that the obligation of private respondents to Jocson was merely joint. The Court of Appeals noted that the trial court's Decision dated 24 February 1999 was silent as to the nature of the liability. Solidary obligations are not presumed in the absence of an express determination thereof in the judgment. When the judgment does not provide that the defendants are liable to pay jointly and severally a certain amount of money, none of them may be compelled to satisfy in full said judgment.

The Court of Appeals found that the Sheriffs disregarded the trial court's 24 February 1999 Decision, and deviated from the trial court's Order dated 9 December 2002 and the writ of execution dated 20 December 2002, which directed them to execute the writ in accordance with the tenor of the decision.

The Issues

Petitioners contend that:

- THE HONORABLE COURT OF APPEALS ERRED IN DECIDING THAT PETITIONERS' WITHDRAWAL OF THEIR NOTICE OF APPEAL AND SUBSTITUTING IT BY PETITION FOR CERTIORARI IS PROCEDURALLY IMPERMISSIBLE.
- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION WHEN HE DECLARED THE OBLIGATION OF THE DEFENDANTS IN CIVIL CASE NO. 23-377 AS JOINT AND NOT SOLIDARY.
- THE HONORABLE COURT OF APPEALS ERRED IN [NOT] DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING THE MOTION FOR A BREAK-OPEN AND DECLARING THE EXECUTION SALE CONDUCTED ON FEBRUARY 21, 2003 NULL AND VOID AND THE CERTIFICATE OF SALE AWARDED TO PETITIONER TUISING CANCELLED.
- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN GRANTING THE PRAYER FOR SATISFACTION OF JUDGMENT DESPITE RECEIPT OF PETITIONER JOCSON OF THE PROCEEDS OF THE SALE AS EVIDENCED BY THE ACKNOWLEDGMENT RECEIPT.
- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING THE MOTION FOR INTERVENTION AND IN NOT CONSIDERING THE SAME AS PRO INTERESSE SUO.[16]

The Ruling of the Court

We find the petition without merit.

At the outset, the Court notes that the petition supposedly filed by petitioners Jocson and Tusing was not signed by Jocson's counsel. It was Tusing's counsel who signed in behalf of Jocson's counsel. Tusing's counsel had no authority to sign the petition in behalf of Jocson. The records are bereft of any proof that Jocson ever authorized Tusing's counsel to be her counsel or to act in her behalf. Under Section 3, Rule 7 of the Rules of Civil Procedure,[17] every pleading must be signed by the party or counsel representing him, otherwise the pleading produces no legal effect.

Furthermore, only Tuising signed the Verification and Certification for Non-Forum Shopping. Jocson did not sign the Verification and Certification. Section 1, Rule 45 of the Rules of Civil Procedure requires the petition for review on certiorari to be verified.[18] A pleading required to be verified which lacks proper verification shall be treated as an unsigned pleading.[19] Although Tuising belatedly filed on 24 September 2004 a "Special Power of Attorney" allegedly signed by Jocson and authorizing Tuising to file the petition for review and to verify and to certify the petition, no explanation was given by Tuising why the Special Power of Attorney was belatedly filed four months after the petition for review was filed on 12 May 2004. The lack of a certification against forum shopping or a defective certification is generally not curable by its subsequent submission or correction, unless there is a need to relax the rule under special circumstances or for compelling reasons.[20] We find no compelling reason for a liberal application of the rules especially in this case where the petitioner who did not sign the verification and certification for non-forum shopping already filed with the trial court a Motion for Issuance of Alias Writ of Execution. By filing the Motion for Issuance of Alias Writ of Execution, Jocson was in effect abiding by the Court of Appeals' Decision dated 16 January 2004.

In *Athena Computers, Inc. v. Reyes*,[21] the Court held that the appellate court was correct in dismissing the petition where the verification and certification for non-forum shopping were signed by only one of the two petitioners. The Court held:

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 to 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.[22]

In this case, the flaw is fatal considering that Jocson, the co-petitioner who did not sign the verification and certification of non-forum shopping and whose counsel did not sign the petition, was the principal party in the original case. Jocson was the plaintiff in the trial court who sought reconveyance of her properties while her co-petitioner Tuising was not a party in the original case but was merely the highest bidder in the execution sale which was declared void by the trial court.

The certification of non-forum shopping is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different fora, such act being detrimental to an orderly judicial procedure.[23] The petition, signed only by Tuising's counsel, conveniently failed to mention the fact that on 23 February 2004, prior to the filing of the petition, Jocson already filed with the trial court a Motion for Issuance of Alias Writ of Execution which reads:

MOTION FOR ISSUANCE OF ALIAS WRIT OF EXECUTION

PLAINTIFF, by counsel, respectfully states:

1. The Court of Appeals had ruled finally that the DECISION can be implemented only as against defendant Marcelo Steel Corporation and the RTC Sheriff of Manila, in levying the properties of the two defendant corporations, violated the dispositive portion of the decision because there is no showing that their liability is

solidary. (CA-G.R. SP-No. 79179);

2. There is need, therefore, to execute the decision as against the other defendant MARIA CRISTINA FERTILIZER CORPORATION.

WHEREFORE, premises considered, it is respectfully prayed that an ALIAS WRIT OF EXECUTION be issued to implement the decision as against defendant MARIA CRISTINA FERTILIZER CORPORATION.[24]

Clearly, such an action is incompatible with this petition for review. Even at the appellate court's level, the Motion for Reconsideration[25] supposedly filed by petitioners Jocson and Tuising on 3 February 2004 was also signed by Tuising's counsel only.[26] Jocson's filing of a Motion for Issuance of Alias Writ of Execution to implement the decision as against MCFC clearly indicates that she already acceded to the Court of Appeals' Decision dated 16 January 2004 and no longer intended to move for its reconsideration, much less appeal to this Court. Besides, a party should not be allowed to abuse and make a mockery of the judicial process by pursuing simultaneous and incompatible remedies in different courts.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 16 January 2004 and the Resolution dated 25 March 2004 of the Court of Appeals in CA-G.R. SP No. 79179.

SO ORDERED.

Puno, C.J., Chairperson, Carpio, Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring.

[3] Rollo, p. 174.

[4] Id. at 62-63; CA rollo, pp. 32-33.

[5] Rollo, pp. 66-67.

[6] Id. at 69.

[7] Id. at 72-74.

[8] Id. at 77-89.

[9] Id. at 52.

[10] Id. at 233-235.

[11] Id. at 236.

[12] CA rollo, pp. 340-348. The Motion for Reconsideration was signed only by Tuising's counsel, who also signed the motion in behalf of Jocson's counsel.

[13] Rollo, p. 311.

[14] 421 Phil. 821 (2001).

[15] Section 1, Rule 65 of the 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, nor 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.

x x x

[16] Rollo, pp. 15-16.

[17] Section 3, Rule 7 of the Rules of Civil Procedure reads:

SEC. 3. Signature and address. - Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of the counsel constitutes a certificate by him that he has read the pleading, that to the best of his knowledge, information, and belief there is good ground to support it and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

[18] Section 1, Rule 45 of the Rules of Civil Procedure, as amended by A.M. No. 07-7-12-SC, reads:

SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied)

[19] Section 4, Rule 7 of the Rules of Civil Procedure, as amended by A.M. No. 00-2-10-SC, reads:

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

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 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 proper verification, shall be treated as an unsigned pleading.

[20] *Altres v. Empleo*, G.R. No. 180986, 10 December 2008; *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, 8 April 2008, 550 SCRA 562; *Clavecilla v. Quitain*, G.R. No. 147989, 20 February 2006, 482 SCRA 623.

[21] G.R. No. 156905, 5 September 2007, 532 SCRA 343.

[22] *Id.* at 350-351.

[23] People v. De Grano , G.R. No. 167710, 5 June 2009.

[24] Rollo, p. 311.

[25]CA rollo, pp. 340-348.

[26]Id. at 347.

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