

HEIRS OF JUAN VALDEZ, SPS. POTENCIANO MALVAR AND LOURDES MALVAR, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND L.C. LOPEZ RESOURCES, INC., RESPONDENTS.

G.R. No. 163208. August 13, 2008

Ponente: BRION, J.

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BRION, J.:

Two conflicting resolutions were issued on the same date in the same case. The first resolution dismissed the case without prejudice for violation of the provision against forum shopping. The other required the respondent (petitioner herein) to comment. What is the effect, under the unique circumstances of this case, of these twin resolutions?

This is the question that the petitioners Heirs of Juan Valdez, Spouses Potenciano Malvar and Lourdes Malvar (heirs and spouses Malvar) pose for our consideration in this Petition for Review on certiorari under Rule 45 of the Rules of Court after the Court of Appeals (CA) ruled that CA-G.R. SP No. 76286 that the private respondent (petitioner at the CA, and referred to herein as "Lopez Resources") filed, was not effectively dismissed.

The heirs and spouses Malvar seek to reverse the following resolutions in the following cases filed by Lopez Resources before the CA:

(a) In CA-G.R. SP No. 76286 -

(1)

Resolution dated May 5, 2003[1](first May 5, 2003 Resolution) which dismissed without prejudice the petition for certiorari and prohibition on the ground that the verification and certification against forum shopping was not signed by a duly authorized representative of L.C. Lopez Resources;

(2)

Resolution dated May 5, 2003[2] (second May 5, 2003 Resolution) which required the heirs and spouses Malvar to file their comment to CA-G.R. SP No. 76286 and Lopez Resources to rectify the deficiency in its non-forum shopping certification;

(3)

Resolution dated August 1, 2003[3] (August 1, 2003 Resolution) which clarified the conflicting May 5, 2003 resolutions, directing the heirs and spouses Malvar to file their comment on CA-G.R. SP No. 76286 within ten days, and Lopez Resources to file its reply to the comment.

(4)

Resolution dated April 2, 2004[4](April 2, 2004 Resolution) which denied the motion for reconsideration filed by the heirs and spouses Malvar of the Resolution dated December 12, 2003 that granted them 10 days from notice to file their comment; and

(b) In CA-G.R. SP No. 77615 -

(5)

Resolution dated July 15, 2003[5] (July 15, 2003 Resolution) requiring the heirs and spouses Malvar to comment on the petition for certiorari and prohibition and Lopez Resources to file its reply to the comment. This resolution ordered Lopez Resources to submit a true copy of the May 5, 2003 Resolution dismissing its petition in CA-G.R. SP No. 76286.

THE ANTECEDENTS

The controversy has its roots in Civil Case No. 00-6015 (civil case) entitled, "Manila Construction Development Corporation of the Philippines v. Spouses Dela Rosa, et al."- an action for quieting of title and declaration of nullity of transfer certificates of title before the Regional Trial Court (RTC), Branch 71 of Antipolo City.[6] The heirs and spouses Malvar were among the plaintiffs[7] in the civil case. The RTC granted them an injunction order (order) dated December 16, 2002 and, subsequently, a writ of preliminary mandatory injunction (writ) dated March 6, 2003 to place them in possession of the parcel of land disputed in the case.[8] On March 24, 2003, the sheriff of the RTC together with several armed men implemented the order and writ in Lopez Resources property; they tore down the fence that enclosed the Lopez property although Lopez Resources succeeded in maintaining possession.

Lopez Resources went to the CA to question the application of the order and writ that the RTC issued in the civil case. Its petition for certiorari and prohibition was docketed as CA-G.R. SP No. 76286 (first petition) and was assigned to the Ninth Division.[9] For the reasons detailed below, Lopez Resources filed another similar petition (re-filed petition) - docketed as CA-G.R. SP No. 77615 and assigned to the Seventh Division[10] - after the first petition was dismissed without prejudice.

Proceedings in CA-G.R. SP No. 76286

Lopez Resources filed this petition for certiorari and prohibition before the CA on April 3, 2003, alleging grave abuse of discretion and the commission of acts without or in excess of jurisdiction by the RTC when it deprived Lopez Resources of its property without due process of law; Lopez Resources was not a party in Civil Case No. 00-6015 where the assailed order and writ were granted; also, the writ was enforced against Lopez Resources' property although this property was not a part of the land disputed in the civil case.[11]

In its first action on the first petition, the CA issued on May 5, 2003 the disputed conflicting resolutions. As previously mentioned, one resolution dismissed the petition without prejudice for violation of the provision against forum shopping, while the other required the heirs and spouses Malvar and other respondents to file their comments to the petition while also requiring Lopez Resources to rectify the deficiency in its non-forum shopping certification.

Lopez Resources and the heirs and spouses Malvar received the resolution of dismissal but the heirs and spouses Malvar's co-respondents did not. Lopez Resources received the resolution on May 9, 2003 and re-filed the same petition with appropriate correction of the non-forum shopping deficiency on May 23, 2003. The re-filed petition was docketed as CA-G.R. SP No. 77615 and was raffled to the Seventh Division of the CA.

CA records show that the spouses Malvar's co-respondents who did not receive the first May 5, 2003 resolution, received the second May 5, 2003 Resolution requiring them to comment on the Lopez Resources petition.

Because of the conflict in the contents of the two May 5, 2003 resolutions, the CA issued on August 1, 2003 (or 86 days after the issuance of the conflicting resolutions) a Resolution clarifying its action in CA-G.R. SP No.

76286 and rectifying what it labeled as a 'clerical error'. This resolution states:

It was also brought to Our attention by the Division Clerk, after scrutiny of the records, that there has been a clerical error in what was supposed to be delivered as thin copies for the three (3) thick copies of the Resolution We actually promulgated on May 5, 2003 x x x The inadvertently delivered thin copy of the said resolution received by the petitioner's counsel was the one dismissing the petition without prejudice, and the same copy pertained to the draft resolution which We did not approve. The copy of the resolution received by private respondent Cristeta dela Rosa's counsel is the one requiring comment and which corresponds to Our actual Resolution dated May 5, 2003.

The foregoing explains why there is a re-filing of the petition with this Court, because of the inadvertently delivered copy of the draft resolution received by the petitioner, dismissing the case without prejudice. As such, the error needs to be rectified since the petition docketed as CA-G.R. SP No. 77615 is actually the same as the case at bar.[12]

The Ninth Division duly furnished the ponente of the re-filed petition (from the Seventh Division) a copy of its August 1, 2003 resolution.

The heirs and spouses Malvar subsequently sought a reconsideration of another resolution from the Ninth Division dated December 12, 2003 that, among others, granted them 10 days to file their comment. The CA denied the motion in its April 2, 2004 Resolution in light of its August 1, 2003 Resolution.

Proceedings in CA-G.R. SP No. 77615

In response to the first May 5, 2003 Resolution dismissing its petition without prejudice, Lopez Resources opted to re-file on May 23, 2003 a similar petition with corrections duly made for the non-forum shopping deficiency in the first petition. The Seventh Division, to which the re-filed petition was raffled, required the heirs and spouses Malvar and the other respondents to file their comment to the re-filed petition, while Lopez Resources was ordered to submit a copy of the first May 5, 2003 Resolution dismissing CA- G.R. SP No. 76286.

In lieu of comment,[13] the heirs and spouses Malvar moved for the dismissal of the petition on two grounds: first, the CA has no jurisdiction over the re-filed petition as an exact petition in CA-G.R. SP No. 76286 was earlier dismissed under the first May 5, 2003 Resolution and the dismissal had become final; and second, even if the CA had jurisdiction, the re-filed petition should be dismissed by reason of *litis pendentia* because the appellate court has not terminated the proceedings in the first petition.

Subsequently, the CA[14] resolved to cancel the raffle of CA-G.R. SP No. 77615[15] since the first petition and the re-filed petition are one and the same. The CA also ordered that the contents of the rollo of CA-G.R. SP No. 77615 to be incorporated with the rollo of CA-G.R. SP No. 76286.

THE ISSUES

Dissatisfied with the above CA resolutions and arguing that both cases should be dismissed, the petitioners raise the following issues:

- whether the CA committed grave abuse of discretion in CA-G.R.SP No. 76286 when it issued on the same date the two conflicting May 5, 2003 resolutions;
- whether the August 1, 2003 resolution is valid; and
- whether the refiling of the same petition before the CA constituted a palpable act of forum shopping justifying the dismissal of both petitions.

THE COURT'S RULING

We deny the petition for lack of merit.

The fact that the Ninth Division of the CA committed a monumental error cannot be erased. But the error was not in the court's intent on what to do with the forum shopping violation it found. In both resolutions, what is clear is that the court intended to allow a rectification of the deficiency in Lopez Resources' non-forum shopping certification in view perhaps of what it perceived to be the merits that the face of the petition showed. Thus, in the first May 5, 2003 resolution, the CA resolved to dismiss the petition but without prejudice to its re-filing. In the second resolution, it ordered the filing of comment by the respondents, with the obligation on the part of Lopez Resources to rectify the deficiency in its non-forum shopping certification.

We have no doubt that it was within the CA's power and prerogative to issue what either resolution decreed without committing an abuse of discretion amounting to lack or excess of jurisdiction. In the first May 5, 2003 Resolution, the CA correctly dismissed the petition for the deficiency it found in the non-forum shopping certification. Section 5, Rule 7 of the Revised Rules of Court provides that "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." On the other hand, the requirement specific to petitions filed with the appellate court simply provides as a penalty that the failure of the petitioner to comply with the listed requirements, among them the need for a certification against forum shopping, "shall be sufficient ground for the dismissal of the petition". Thus, the Ninth Division correctly dismissed the petition without prejudice.

That the CA could also require the respondents to comment, with the obligation on the part of the petitioner to undertake rectification, is not without support from established jurisprudence. In several cases,[16] we allowed initiatory pleadings or petitions with initially defective verifications and certifications of non-forum shopping on the ground of substantial compliance.[17] We reasoned that strict compliance with the requirement merely underscores its mandatory nature, in that, it cannot be dispensed with or its requirements altogether disregarded.[18] Thus, we have held that the subsequent submission of the required documents (such as the secretary's certificate) constituted substantial compliance with the procedural rules that justified relaxation of the requirements in the interest of justice.[19]

Thus, either way, the CA would have been correct. To our mind, it is important to make this determination to establish that other than the CA's mistake in releasing two conflicting resolutions in the same case and on the same date, the CA action was legally above board. This determination is particularly material for purposes of the grave abuse of discretion the petitioners impute against the Court of Appeals for issuing two conflicting resolutions in initially acting on the case. In the absence of any showing that the twin issuance was attended by partiality, or by hostility to one party as against another, or in open and patent disregard of the applicable laws, no grave abuse of discretion amounting to lack or excess of jurisdiction exists in the CA action. The twin issuance was, as the CA Ninth Division admitted, the result of a mistake. The exercise of discretion in the CA's action came into play in the consideration of what action to take in light of the deficiency in the petition's certification against forum shopping. That a resolution that was not intended to be issued, was issued, does not at all involve an exercise of discretion, much less its abuse.

Because the mistake was on the part of the court, it is axiomatic that none of the parties should suffer for the mistake. This is particularly true given that the parties all acted pursuant to the resolution they respectively received. To be sure, Lopez Resources could have filed a motion for reconsideration upon its receipt of the resolution of dismissal on May 9, 2003. The option it took, however, was well within the legitimate choices it had

and could not be legally faulted; it accepted the dismissal and chose to re-file its petition, this time supplying the deficiency that tainted its first petition. We note in this regard that the re-filing was done on May 23, 2003, i.e., prior to the finality of the resolution of dismissal. This prompt action indicates to us that while the order of dismissal technically lapsed to finality, such finality is in fact legally immaterial since Lopez Resources immediately acted on the condition that attended the dismissal, i.e. to re-file the petition because the dismissal was without prejudice. By this act, Lopez Resources effectively kept its petition legally alive.

To look at the matter from another perspective, the issuance of two conflicting resolutions - one for dismissal, the other for the continuation of the case, with one canceling out the other - can only mean that no definite, specific determination was made by the court; at least, there was uncertainty on what the court really intended to do. Under this situation, we find it fallacious to conclude that one resolution lapsed to finality while the other did not. In legal effect, there was effectively no definite resolution that could have lapsed to finality because of the mistake the court committed. This status continued until a clarification was made by the issuing court.

Even granting that the first May 5, 2003 Resolution became final and executory, the rule on immutability of judgment does not apply in cases where what is to be modified or altered involves: (a) the correction of clerical errors; (b) the so-called nunc pro tunc entries which cause no prejudice to any party; (c) void judgments [such as a dismissal without prejudice that was not intended to be issued] and those where circumstances transpire after the finality that render the execution or enforcement, as in this case, of the judgment unjust or inequitable.[20] To be sure, the rule does not apply in cases where a supervening event - such as the mistake undisputably committed by the court (i.e., the unintended release of one of the resolutions, thus resulting in the conflict and confusion) - took place.[21]

Faced with the mistake it committed, the CA readily acknowledged its lapse and acted to rectify it through its August 1, 2003 order. That CA-G.R. No. SP 76286 remained the viable case is only to be expected because it is the "mother" case that inadvertently gave rise to the re-filed case. This can best be understood from the point of view of, and applying by analogy, the rules on consolidation which Rule 31 of the Revised Rules of Court provides. Under the Internal Rules of the Court of Appeals, there may be consolidation at the instance of the Justice to whom the case is assigned, and with the conformity of the Justice to whom the cases shall be consolidated, upon notice to the parties when the cases involve the same parties and/or related questions of fact and/or law. Consolidated cases shall pertain to the Justice to whom the case with the lowest docket number is assigned, if they are of the same kind.[22] Consolidation has to apply by analogy because of the unusual attendant circumstances that required that the re-filed case be collapsed, not merely consolidated, to form an integral part of the first petition.

For all the foregoing reasons and the fact the CA can issue such orders or resolutions necessary in the exercise of its jurisdiction, we hold that the Ninth Division's clarificatory resolution of August 1, 2003 is valid. The CA never lost jurisdiction over the case despite the re-filing of the petition; jurisdiction, once acquired, is not lost except for reasons that are not present in this case and need not be fully discussed here. The Sixth Division, to where the ponente of the re-filed petition was transferred, ultimately removed all uncertainties when it ordered the cancellation of the raffle of the case and ordered the incorporation of the contents of its rollo with the rollo of the first petition - CA-G.R. SP No. 76286. This move is likewise valid under the circumstances as the re-filing was a direct off-shoot of the CA's mistake; it carries the same justification attendant to the remedial measures addressing the mistake.

The question of whether Lopez Resources forum shopped when it re-filed its petition is largely rendered moot and academic by the terms of the assailed May 5, 2003 order which dismissed the case without prejudice. Lopez Resources, who cannot be blamed for the CA's mistake, only followed what the assailed order allowed. Thus, we

cannot say that it forum shopped by filing another petition while the first petition was pending. Insofar as it was concerned, its first petition had been dismissed without prejudice; hence, there was no bar, either by way of forum shopping, *litis pendentia* or *res adjudicata*, to the petition it re-filed.[23] We note that it has not been lacking in good faith in its dealing with the appellate court in this regard. After its re-filed petition and after receipt of the August 1, 2003 Resolution of the Ninth Division, it immediately filed on August 12, 2003 a Manifestation and Motion for Clarification to seek guidance on which of the two petitions should subsist. In an abundance of caution, it likewise filed on August 21, 2003 a Manifestation and Compliance in the first petition, attaching therewith the Secretary's Certificate that the second May 5, 2003 Resolution required. It cannot be blamed if it acted with utmost caution as the circumstances under which it found itself were highly unusual and were not at all within the direct contemplation of the Rules.

As a final note, we cannot help but be disturbed by the carelessness exhibited in the handling of the conflicting May 5, 2003 resolutions. Had the CA exercised due care and attention in the performance of their duties, the present petition would have been avoided. Truly, as public officers, we are bound by our oath to bring to the discharge of our duties the prudence, caution, and attention which careful men usually exercise in the management of their affairs.[24] To do less affects not only the substance of our actions, but the all-important perception of the public we serve of the kind of justice we dispense. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the people manning the courts - from the justices, judges, the clerks of court, to the lowest-ranked personnel. It is the duty of each one of us to maintain the judiciary's good name and standing as a true temple of justice.[25]

WHEREFORE, in light of the foregoing, we hereby DENY the petition and DIRECT the Court of Appeals to resolve the petition for certiorari and prohibition in CA-G.R. SP No. 76286 with utmost dispatch. No costs.

SO ORDERED.

Quisumbing, (Chairperson), Corona, Carpio Morales, and Velasco, Jr., concur.

[*]Designated Additional Member of the Second Division per Special Order No. 512 date July 16, 2008.

[1] Rollo, pp. 30-31.

[2] *Id.*, pp. 33-34.

[3] *Id.*, pp. 36-37.

[4] *Id.*, pp. 39.

[5] *Id.*, pp. 72-73.

[6] See pp.1-4 of herein private respondent's Petition for Certiorari and Prohibition (With Application for the Issuance of a Writ of Preliminary Injunction And/Or Temporary Restraining Order); rollo, pp. 47-67.

[7] The parties who filed complaints-in-intervention (with application for writ of preliminary mandatory injunction) were North East Property Ventures, Spouses Potenciano Malvar and Lourdes Malvar and Spouses Juan Valdez and Apolinaria Valdez. The spouses Valdez' are represented in this petition by the heirs of Juan Valdez.

[8] Rollo, p.48

[9] Comprised of Associate Justice Bernie Adefuin-de la Cruz, Associate Justice Perlita Tria-Tirona (both retired),

and Associate Justice Hakim Abdulwahid (as ponente).

[10] Comprised of Associate Justice Ruben T. Reyes (now a member of this Court), Associate Justice Elvi John Asuncion and Associate Justice Lucas Bersamin.

[11] Comment/Opposition (Re: Petition for Review dated 26 May 2004), pp. 3-4; rollo, pp. 101-102.

[12] August 1, 2003 Resolution; id., p. 37.

[13] Comment on the Petition; id., pp. 74-84.

[14] The Sixth Division to where the ponente, Justice Ruben T. Reyes (now of the Supreme Court) transferred.

[15] Resolution dated August 31, 2004; id., pp. 190-191.

[16] Vicar International Construction, Inc. v. FEB Leasing and Finance Corp., G.R. No. 157195, April 22, 2005, 456 SCRA 588, 596-597; Ateneo de Naga University v. Manalo, G.R. No. 160455, May 9, 2005, 455 SCRA 328, 337; Huntington Steel Products, Inc. v. NLRC, G.R. No. 158311, November 17, 2004, 442 SCRA 551, 559; General Milling Corp. v. NLRC, G.R. No. 153199, December 17, 2002, 394 SCRA 207, 209; Shipperside Incorporated v. Court of Appeals, G.R. No. 143377, February 20, 2001, 352 SCRA 334, 346; Loyola v. Court of Appeals, G.R. No. 117186, June 19, 1995, 245 SCRA 447, 483.

[17] Young v. Seng, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 641.

[18] Ibid, citing Loyola v. Court of Appeals, supra note 16, pp. 483-484.

[19] Wack-wack Golf & Country Club v. NLRC, G.R. No. 149793, April 15, 2005, 456 SCRA 280, 294, citing Jaro v. Court of Appeals, 277 SCRA 282 (2002).

[20] Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004, 428 SCRA 586,599.

[21] Natalia Realty Inc. v. Court of Appeals, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 387.

[22] See: Section 3, Rule 3 of the Internal Rules of the Court of Appeals.

[23] Times Transit Co., Inc. v. Sotelo, G.R. No. 163786, February 16, 2005, 451 SCRA 587, 598, and Development Bank of the Philippines v. La Campana Development Corp., G.R. No. 137694, January 17, 2005, 448 SCRA 384, 392.

[24] Ulat-Marrero v. Torio, Jr., A.M. No. P-01-1519, November 19, 2003, 416 SCRA 177, 183.

[25] Id.

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