

**JOHN ANTHONY B. ESPIRITU, FOR HIMSELF AND AS
ATTORNEY-IN-FACT FOR WESTMONT INVESTMENT CORPORATION,
STA. LUCIA REALTY AND DEVELOPMENT CORPORATION, GOLDEN
ERA HOLDINGS, INC., AND ...**

G.R. No. 164153. June 13, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

There is forum shopping when two or more actions or proceedings, founded on the same cause, are instituted by a party on the supposition that one or the other court would make a favorable disposition. Where a party's petition for certiorari and subsequent appeal seek to achieve one and the same purpose, there is forum shopping which is a sufficient ground for the dismissal of the certiorari petition.

This Petition for Review on Certiorari seeks to reverse and set aside the Court of Appeal's February 27, 2004 Decision [1] in CA-G.R. SP No. 76518 which affirmed the February 4, [2] February 17, [3] and February 26, [4] 2003 Orders of the Regional Trial Court of Manila, Branch 46 in Civil Case No. 02-103160, and the June 22, 2004 Resolution [5] denying petitioners' motion for reconsideration.

Factual Antecedents

On March 25, 2002, John Anthony B. Espiritu, for himself and as attorney-in-fact of Westmont Investment Corporation, Sta. Lucia Realty and Development Corporation, Golden Era Holdings, Inc., and Exchange Equity Corporation (Espiritu Group) and Tony Tan Caktiong and William Tan Untiong (Tan Group) filed a Petition for Issuance of Shares of Stock and/or Return of Management and Control [6] with the Regional Trial Court of Manila against United Overseas Bank Limited, United Overseas Bank Philippines, Manta Ray Holdings, Inc., Wee Cho Chaw, Wee Ee Cheong, Samuel Poon Hon Thang, Ong Sea Eng, Chua Ten Hui, Wang Lian Khee and Marianne Malate-Guerrero (UOBP Group). The case was docketed as Civil Case No. 02-103160 and raffled to Branch 46.

On June 27, 2002, Manuel N. Tankiansee and Juanita U. Tan, joined by Farmix Fertilizer Corp., and Pearlbank Securities, Inc. (intervenors), filed a Motion for Leave to Intervene and to Admit Attached Petition-In-Intervention. [7]

On July 26, 2002, the UOBP Group filed their Answer Ad Cautelam with Counterclaim against intervenors, and Cross-claim against the Espiritu and Tan Groups.

On September 16, 2002, the Espiritu and Tan Groups filed their Ex Abundanti Ad Cautelam Answer to the cross-claim of the UOBP Group.

On October 4, 2002, the intervenors filed a Motion for Production, Inspection and Copying of Documents against the UOBP Group.

On October 14, 2002, the intervenors filed a Notice to Take Deposition Upon Oral Examination of John Anthony B. Espiritu, Tony Tan Caktiong and Chua Teng Hui. A similar notice was sent to Wee Cho Yaw. All the aforementioned parties opposed the taking of their depositions via separate Motions for Protective Order and/or Objection to Resort to Discoveries on the ground that resort to discovery procedure was already time-barred.

In an Order dated October 29, 2002, the trial court denied the motion for production of documents and notice to take depositions because, as modes of discovery, the same were filed beyond the 15-day reglementary period.

Subsequently, the intervenors filed a Motion for Clarification. On November 25, 2002, the trial court reversed its previous ruling and granted the intervenors' motion for production of documents and notice to take depositions. Thereafter, the Espiritu, Tan and UOBP Groups sought reconsideration of this order. However, on December 18, 2002, the trial court denied the same and maintained that resort to discovery is permissible under the premises.

Following suit, the Espiritu and Tan Groups attempted to resort to discovery procedure. On January 31, 2003, they filed a Notice to Take Depositions Upon Oral Examination of Manuel Tankiansee and Juanita U. Tan. [8]

Regional Trial Court's Ruling

On February 4, 2003, the trial court issued the first questioned order which, among others, disallowed the taking of the depositions of Manuel Tankiansee and Juanita U. Tan. [9] It held that the taking of the subject depositions is time-barred. Meanwhile, in view of the November 25 and December 18, 2002 Orders of the trial court allowing the deposition-taking of John Anthony B. Espiritu and Tony Tan Caktiong, on February 7, 2003, the Espiritu and Tan Groups filed a Motion for the Issuance of Protective Orders. [10] On February 17, 2003, the trial court issued the second questioned order which denied the said motion. [11] Upon motion, on February 26, 2003, the trial court issued the third questioned order which modified the February 17, 2003 Order by canceling the deposition of John Anthony B. Espiritu until further notice and resetting the deposition of Tony Tan Caktiong to a later date. [12]

On April 14, 2003, the Espiritu and Tan Groups filed a petition for certiorari [13] before the Court of Appeals challenging the validity of the February 4, 17, and 26, 2003 Orders for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Court of Appeal's Ruling

On February 27, 2004, the Court of Appeals rendered the assailed Decision denying the petition for certiorari. It ruled that the Espiritu and Tan Groups failed to adduce evidence to establish that they filed the notice of deposition within the period provided under Section 1, Rule 3 of the Interim Rules of Procedure on Intra-Corporate Controversies. Moreover, the failure of a party to avail himself of modes of discovery does not operate to deprive him of the right to present his case because evidentiary matters may be presented before the court through pleadings and testimonies of the parties.

From this adverse decision, only the Espiritu Group (petitioners) appealed to this Court.

Meanwhile, while this case was pending resolution before the appellate court or on February 2, 2004, the trial court rendered a Decision [14] in the main case (i.e., Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. [15] This case was docketed as CA-G.R. CV No. 83161 and is pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an Ex Abundanti Ad Cautelam Notice Of Appeal [16] and a Petition for Certiorari and Mandamus. [17] On December 15, 2010, this Court issued a Resolution requiring the Court of Appeals to elevate the complete records of CA-G.R. CV No. 83161 to this Court.

Issues

1. Whether the disallowance of the deposition-taking of Manuel Tankiansee and Juanita U. Tan (Tankiansee Group) is contrary to the mandate of liberality in the availment and interpretation of the Rules on Discovery. [18]
2. Whether petitioners were deprived due process when they were denied resort to the modes of discovery. [19]
3. Whether petitioners are guilty of forum shopping. [20]

Petitioners' Arguments

Petitioners contend that, in disallowing the deposition of Manuel N. Tankiansee and Juanita U. Tan, the trial court violated the liberality in the availment and interpretation of the Rules on Discovery. Moreover, the trial court failed to consider that the allowance of the deposition would not prejudice any party because, at the time the notices of deposition were served, no party had yet actually availed himself of and/or conducted any discovery proceeding. They emphasize that the testimonies of the intended deponents are crucial to establish their just claims in the main case.

Petitioners further argue that the Tankiansee Group was allowed to avail itself of the modes of discovery despite the fact that the latter filed their pleadings beyond the period allowed under the Interim Rules Governing Intra-Corporate Controversies. They claim that the trial court erroneously counted the 15-day period. In truth, both petitioners and the Tankiansee Group availed themselves of the modes of discovery beyond the 15-day period. In effect, the trial court denied petitioners the very same right it granted the Tankiansee Group.

Petitioners also note that after the submission of the respective pre-trial briefs in the main case, the trial court rendered judgment without conducting hearings. Hence, they were denied the right to fully present their case because they were unable to make use of the testimonies of the intended deponents. Petitioners plead that it is not yet too late to rectify this injustice by allowing the subject depositions because the aforesaid summary judgment has been challenged in the meantime in various proceedings.

Respondents' Arguments

Respondents claim that petitioners are guilty of forum shopping. On February 2, 2004, the trial court rendered a summary judgment in the main case, i.e., Civil Case No. 02-103160. Petitioners, except petitioner Westmont Investment Corporation, thereafter filed a notice of appeal. Petitioner Westmont Investment Corporation chose to file an *ex abundanti ad cautelam* notice of appeal and a petition for certiorari and mandamus. All three cases seek to annul the February 2, 2004 Decision of the trial court.

According to respondents, the present recourse has the same objective, that is, to reopen the trial court's February 2, 2004 Decision which is pending review before the Court of Appeals. Considering that petitioners have a commonality of interest, the splitting of the causes of action on the same cause is tantamount to forum shopping.

Moreover, respondents argue that the notices of deposition filed by petitioners are time-barred. Section 1, Rule 3 of the Interim Rules Governing Intra-Corporate Controversies provides that a party can only avail himself of any of the modes of discovery not later than 15 days from the joinder of issues. According to the respondents, the joinder of issues occurred on September 29, 2002 after the lapse of the period for the filing of the last responsive pleading of the parties to this case. However, petitioners filed their notices of deposition only on January 31, 2003. Hence, the trial court did not err in denying their resort to modes of discovery.

Our Ruling

The petition lacks merit.

Petitioners' appeal before the Court of Appeals is the appropriate and adequate remedy, and the certiorari petition, subject matter of this case, constitutes forum shopping.

As stated earlier, while this case was pending review before the Court of Appeals or on February 2, 2004, the trial court rendered a Decision in the main case (i.e., Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. This case was docketed as CA-G.R. CV No. 83161 and is now pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an Ex Abundanti Ad Cautelam Notice Of Appeal and a Petition for Certiorari and Mandamus.

With these developments, the instant petition should be denied because (1) petitioners' appeal before the appellate court is the appropriate and adequate remedy, and (2) the certiorari petition, subject matter of this case, constitutes forum shopping. This is in consonance with our ruling in *Ley Construction & Development Corporation v. Hyatt Industrial Manufacturing Corporation*. [21]

In *Ley Construction & Development Corporation*, petitioner filed a complaint for specific performance and damages against respondent. Subsequently, petitioner served notices to take the depositions of several individuals. Initially, the trial court issued an order allowing the petitioner to take the subject depositions. However, it later issued another order canceling all the depositions set for hearing in order not to delay the prompt disposition of the case. Petitioner filed a petition for certiorari before the Court of Appeals questioning the trial court's order canceling the deposition-taking which allegedly deprived it of its due process right to discovery. While this certiorari petition was pending before the appellate court, the trial court issued a resolution in the main case which dismissed the complaint for specific performance and damages. Subsequently, the Court of Appeals dismissed the certiorari petition. On appeal to this Court by petitioner from the dismissal of its certiorari petition, we ruled that -

Second, the Petition for Certiorari was superseded by the filing, before the Court of Appeals, of a subsequent appeal docketed as CA-GR CV No. 57119, questioning the Resolution and the two Orders. In this light, there was no more reason for the CA to resolve the Petition for Certiorari.

Section 1, Rule 65 of the Rules of Court, clearly provides that a petition for certiorari is available only when "there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law." A petition for certiorari cannot co-exist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for certiorari. As the Court has held, these two remedies are "mutually exclusive."

In this case, the subsequent appeal constitutes an adequate remedy. In fact it is the appropriate remedy because it assails not only the Resolution but also the two Orders.

It has been held that "what is determinative of the propriety of certiorari is the danger of failure of justice without the writ, not the mere absence of all other legal remedies." The Court is satisfied that the denial of the Petition for Certiorari by the Court of Appeals will not result in a failure of justice, for petitioner's rights are adequately and, in fact, more appropriately addressed in the appeal.

Third, petitioner's submission that the Petition for Certiorari has a practical legal effect is in fact an admission that the two actions are one and the same. Thus, in arguing that the reversal of the two interlocutory Orders "would likely result in the setting aside of the dismissal of petitioner's amended complaint," petitioner effectively contends that its Petition for Certiorari, like the appeal, seeks to set aside the Resolution and the two Orders.

Such argument unwittingly discloses a recourse to forum shopping, which has been held as "the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for Certiorari and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

Hence, even assuming that the Petition for Certiorari has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping. [22]

In the same vein, petitioners' certiorari petition, questioning the three interlocutory orders which denied their resort to discovery procedure, has been superseded by the filing of their subsequent appeal before the Court of Appeals (i.e., CA-G.R. CV No. 83161). As explained above, a certiorari petition may only be availed of if "there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law." [23] We find that petitioners' appeal from the February 2, 2004 Decision of the trial court in the main case is the appropriate and adequate remedy in this case as it challenges the aforesaid interlocutory orders and the decision in the main case.

Moreover, petitioners' appeal and certiorari petition effectively seek to annul the February 2, 2004 Decision of the trial court. In their pending appeal before the appellate court, petitioners argued, among others, that they were unduly deprived of their right to avail of modes of discovery, specifically, the deposition taking subject matter of this case. [24] This is one of their arguments in their appeal which prays for the annulment of the February 2, 2004 Decision on due process grounds. [25] On the other hand, petitioners argued in their certiorari petition that the disallowance of the taking of the subject depositions deprived them of the opportunity to bring to fore crucial evidence determinative of this case. According to petitioners, this brought about the erroneous February 2, 2004 Decision issued by the trial court. [26] In fine, the appeal and certiorari petition raise similar arguments and effectively seek to achieve the same purpose of annulling the

February 2, 2004 Decision which petitioners perceive to be in gross error. Thus, as in *Ley Construction & Development Corporation*, the certiorari petition must perforce be dismissed on the ground of forum shopping.

WHEREFORE, the petition is DENIED. The February 27, 2004 Decision and June 22, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 76518 are AFFIRMED.

The records of CA-G.R. CV No. 83161 are RETURNED to the Court of Appeals which is ORDERED to resolve the aforesaid case with reasonable dispatch.

Costs against petitioners.

SO ORDERED.

Velasco, Jr., (Acting Chairperson), Leonardo-De Castro, Bersamin,[*] and Perez, JJ., concur.

[*] In lieu of Chief Justice Renato C. Corona, per Special Order No. 1000 dated June 8, 2011.

[1] Rollo, pp. 57-69; penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang.

[2] CA rollo, pp. 58-60; penned by Judge Artemio S. Tipon.

[3] Id. at 61-64.

[4] Id. at 65-66.

[5] Rollo, p. 71; penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang.

[6] CA rollo, pp. 67-102.

[7] Id. at 322.

[8] Id. at 171-182.

[9] The dispositive portion thereof reads:

WHEREFORE, the petitioners-in-intervention, Farmix Fertilizer Corp. and Pearlbank Securities, Inc., are disallowed from availing or participating in all the discovery proceedings to be conducted by petitioners-in-intervention Manuel Tankiansee and Juanita Uy Tan.

Likewise, the Espiritu and Tan Caktiong Groups are disallowed from taking the depositions of Manuel Tankiansee and Juanita Uy Tan.

IT IS SO ORDERED. (Id. at 59.)

[10] Id. at 183-189.

[11] The dispositive portion thereof reads:

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court resolves the motion for the issuance of protective orders under Section 16, Rule 23, Rules of Civil Procedure as follows:

1. The deposition of Mr. Tony Tan Caktiong is here firmly set on February 28, 2003 at 2:00 P.M. at the Ateneo School of Law, Thesis Room, Ateneo Professional Schools Building, 20 Rockwell Drive, Rockwell Center, Makati City and to continue everyday at the same time and place until completed. The Espiritu and Tan Caktiong Groups are hereby directed to ensure the presence of Mr. Tan Caktiong at the scheduled deposition-taking. The Branch Clerk of Court shall be the official representative of the court in the deposition taking and shall record the proceedings in a video-tape device or any other voice and/or image reproducing machine at her discretion.

2. The deposition of Mr. John Anthony B. Espiritu shall be taken at San Francisco CA, U.S.A. on March 12, 2003 subject to the following conditions:

2.1. The Espiritu Group shall pay for the expenses of the deposition taking. For this purpose, it shall deposit in court the sum of not less than ONE HUNDRED THOUSAND U.S. DOLLARS (US\$100,000.00) not later than February 20, 2003 to pay for the traveling expenses and hotel accommodations of the following: The presiding judge, the branch clerk of court, a stenographer, Atty. Alejandro B. Saulog, Jr. or alternate (counsel for Manuel N. Tankiansee and Juanita U. Tan), and Atty. Roan Libarios or alternate (counsel for Farmix Fertilizer Corporation and Pearlbank Securities, Inc.). Counsels for respondents shall bear their own expense.

2.2. The Espiritu Group shall make arrangement for the deposition taking which shall be held at the Hyatt Hotel in downtown San Francisco starting at 2:00 P.M. and to continue everyday until completed.

2.3. The judge will preside at the taking of the deposition upon oral examination of Mr. Espiritu instead of being taken before a consul of the Philippine consulate.

In case the conditions above-set forth (Nos. 2.1. to 2.3) are not acceptable to the Espiritu Group, then the deposition upon oral examination on Mr. John Anthony B. Espiritu shall be taken not later than March 12, 2003 at 2:00 P.M. at the Ateneo School of Law, Thesis Room, Ateneo Professional Schools Building, 20 Rockwell Drive, Rockwell Center, Makati City and to continue everyday at the same time and place until completed. The Branch

Clerk of Court or in her absence, the Court Interpreter, shall be the official representative of the court in the deposition taking and shall record the proceedings in a video-tape device or any other voice and/or image reproducing machine at her discretion.

3. The deposition of Mr. Chua Ten Hui will proceeded (sic) as scheduled tomorrow.

IT IS SO ORDERED. (Id. at 62-63.)

[12] The dispositive portion thereof reads:

[T]he deposition scheduled on Friday, February 28, 2003, is hereby CANCELLED and reset to March 19, 2003 at the same time and place.

Mr. Tan Caktiong is warned that this will be the last time that the court grants a motion for the taking of his deposition. Should he fail to appear, he faces sanction from this court.

The taking of the deposition of Mr. John B. Espiritu in the United States is CANCELLED until further notice.

The pre-trial set on March 21, 2003 shall proceed as scheduled.

IT IS SO ORDERED. (Id. at 65-66.)

[13] Id. at 3-33.

[14] Records (Civil Case No. 02-103160) Vol. 17, pp. 226-246.

[15] Rollo, pp. 359-361.

[16] Id. at 362-364.

[17] Id. at 365-402.

[18] Id. at 35.

[19] Id. at 36.

[20] Id. at 343.

[21] 393 Phil. 633 (2000).

[22] Id. at 640-642.

[23] Rules of Court, Rule 65, Section 1.

[24] CA rollo (CA-G.R. CV No. 83161), p. 70.

[25] Id. at 95.

[26] Rollo, pp. 34-35, 41-42.

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