

URETHANE TRADING SPECIALIST, INC., PETITIONER, VS. EDWIN ONG AND LETICIA ONG, RESPONDENTS.

G.R. No. 164632. October 29, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the February 12, 2004[1] and the July 26, 2004[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No 79251.

The dispute between the parties started in June 2000 when petitioner filed a Complaint[3] for sum of money against the respondents (docketed as Civil Case No. 8142) before the Metropolitan Trial Court (MeTC) of Pasig City. In the proceedings, respondents were declared in default, and petitioner presented evidence *ex parte*. [4] On October 30, 2001, the MeTC rendered its Decision[5] ordering respondents, jointly and severally, to pay the petitioner P295,026.01 with legal interest as actual damages, and 25% thereof as attorney's fees.

Following the finality of the said decision, petitioner moved for execution on January 10, 2002.[6] No opposition having been filed, the MeTC, on March 18, 2002, ordered the issuance of a writ of execution.[7]

On July 9, 2002, respondents filed a petition for annulment of judgment with damages and prayer for injunctive relief before the Regional Trial Court (RTC) of Pasig City. This was docketed as Civil Case No. 69034.[8] In their petition, they claimed that they did not receive the summons issued by the MeTC; that the sheriff's return of summons was manufactured; and that they were not furnished copies of the order of default. Thus, they prayed that the MeTC decision be annulled on grounds of extrinsic fraud and lack of jurisdiction over their persons.[9]

Petitioner moved for the dismissal of the petition on the following grounds: (1) that the cause of action is barred by the statute of limitation; and (2) that the claim or demand set forth in the petition has been waived, abandoned or otherwise extinguished. It contended that the summons was in fact served on respondents; that the MeTC Sheriff initially went to the business address of respondent Leticia Ong at Nos. 777-779 Rizal Avenue, Manila, but as the hardware store therein had already ceased its operation, he could not serve the summons at that given address; that he then proceeded to respondents' residence, but that on account of the absence of respondents and of their domestic helper's refusal to receive the summons, the Sheriff effected substituted service.[10] Petitioner further contended that respondent Edwin Ong, in the hearing on their application for an injunctive relief, admitted that he had attended one hearing in the proceedings before the MeTC.[11]

Petitioner argued that in light of these facts, respondents cannot validly invoke lack of jurisdiction over their persons as a ground in their petition; that only extrinsic fraud could be raised by them; and as they did not file a petition for relief, they were already barred by the statute of limitations and they could now be considered as having waived or abandoned their claims.[12]

Unconvinced by petitioner's arguments, the RTC denied the motion to dismiss in its April 4, 2003 Omnibus Order.[13] On August 8, 2003, it further denied petitioner's motion for reconsideration.[14]

Discontented, petitioner timely petitioned for the issuance of a writ of certiorari before the CA (docketed as CA-G.R. SP No. 79251). The appellate court, however, in the assailed February 12, 2004 Resolution,[15] dismissed the petition on the ground that an interlocutory order is not the proper subject of the special civil action of certiorari. In the further assailed July 26, 2004 Resolution,[16] it denied petitioner's motion for reconsideration.

Aggrieved, petitioner raised the following issues for the Court's resolution in the instant petition for review on certiorari:

I.

Whether or not, under existing laws, the Petition for Annulment of Judgment filed by Respondents should be dismissed on two (2) grounds, namely: (1) That the cause of action is barred by the statutes of limitation or by laches; and (2) The claim or demand set forth in the plaintiff's petition has been waived, abandoned, or otherwise extinguished.

II.

Whether or not the Petition for Review [should be "petition for certiorari"] filed by the Petitioner should be dismissed on the ground that an order denying a motion to dismiss is an interlocutory order which cannot be the subject of a petition for certiorari.[17]

The Court denies the petition and affirms the ruling of the CA.

Well-entrenched in our jurisdiction is the rule that the trial court's denial of a motion to dismiss cannot be questioned in a certiorari proceeding under Rule 65 of the Rules of Court. This is because a certiorari writ is a remedy designed to correct errors of jurisdiction and not errors of judgment.[18] The appropriate course of action of the movant in such event is to file an answer[19] and interpose as affirmative defenses the objections raised in the motion to dismiss.[20] If, later, the decision of the trial judge is adverse, the movant may then elevate on appeal the same issues raised in the motion.[21]

The only exception to this rule is when the trial court gravely abused its discretion in denying the motion.[22] This exception is, nevertheless, applied sparingly, and only in instances when there is a clear showing that the trial court exercised its judicial power in an arbitrary or despotic manner by reason of passion or personal hostility.[23] Further, the abuse of the court's discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law.[24]

Here, the denial by the RTC of petitioner's motion to dismiss is not tainted with grave abuse of discretion. The CA is, therefore, correct in dismissing the petition for certiorari.

To elucidate, the grounds raised in the motion are: (1) bar by the statute of limitations or by laches; and (2) waiver, abandonment or extinguishment of claim. These grounds are, however, based on petitioner's assertion that respondents cannot invoke "lack of jurisdiction over their persons" as a ground in the petition for annulment of judgment. This is a conclusion of law that cannot be used as the foundation of the motion to dismiss. The assertion still needs to be proven or disproven by the parties and resolved by the trial court. Indeed, petitioner's allegations in the motion that respondents actually received the summons and that one of them even voluntarily submitted to the jurisdiction of the MeTC, are matters of evidence that need to be threshed out in the trial. True or not, respondents must be given ample opportunity to prove their claim, and the petitioner to debunk the same.[25]

The same principle holds true on the issues of laches, abandonment and prescription alleged in the motion. These involve evidentiary matters requiring a full-blown trial on the merits and cannot be resolved in a mere motion to dismiss.[26] Furthermore, prescription will warrant the dismissal of the case only when the complaint on its face shows that indeed the action has already prescribed.[27]

WHEREFORE, the petition for review on certiorari is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio,[*] Azcuna,**] and Chico-Nazario, JJ., concur.

* Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 531 dated October 20, 2008.

** Additional member in lieu of Associate Justice Ruben T. Reyes per Special Order No. 521 dated September 29, 2008.

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Ruben T. Reyes (now a member of this Court) and Edgardo P. Cruz, concurring; CA rollo, pp. 229-230.

[2] Id. at 268-269.

[3] Id. at 63-65.

[4] Id. at 107.

[5] Id. at 69-70.

[6] Id. at 71-72.

[7] Id. at 77-79.

[8] Id. at 80.

[9] Id. at 82-87.

[10] Id. at 145-146.

[11] Id. at 122.

[12] Id. at 157-163.

[13] Id. at 40-56.

[14] Id. at 61.

[15] Supra note 1.

[16] Supra note 2.

[17] Rollo, p. 14.

[18] *Malicdem v. Flores*, G.R. No. 151001, September 8, 2006, 501 SCRA 248, 256-257.

[19] Section 4, Rule 16, of the Revised Rules of Court pertinently provides: "If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. x x x"

[20] *La Campana Development Corporation v. See*, G.R. No. 149195, June 26, 2006, 492 SCRA 584, 590.

[21] *David v. Rivera*, 464 Phil. 1006, 1014 (2004).

[22] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31 and G.R. Nos. 176010-11, February 11, 2008, 544 SCRA 324, 336; *David v. Rivera*, *id.*; *Choa v. Choa*, 441 Phil. 175, 182-183 (2002).

[23] *Malicdem v. Flores*, *supra* note 18, at 257.

[24] *Balo v. Court of Appeals*, G.R. No. 129704, September 30, 2005, 471 SCRA 227, 234.

[25] See *España, Sr. v. Court of Appeals*, 335 Phil. 983, 987 (1997).

[26] See *Pineda v. Heirs of Eliseo Guevarra*, G.R. No. 143188, February 14, 2007, 515 SCRA 627, 637; *España, Sr. v. Court of Appeals*, *id.*

[27] *Balo v. Court of Appeals*, *supra* note 24, at 240.

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