

GILBERT G. GUY, PETITIONER, VS. THE COURT OF APPEALS (8TH DIVISION), NORTHERN ISLANDS CO., INCORPORATED, SIMNY G. GUY, GERALDINE G. GUY, GLADYS G. YAO, AND EMILIA TABUGADIR, RES...*G.R. NO. 165849. December 10, 2007*

Ponente: SANDOVAL-GUTIERREZ, J.

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Before us are five (5) consolidated cases which stemmed from Civil Case No. 04-109444 filed with the Regional Trial Court (RTC), Branch 24, Manila, subsequently re-raffled to Branch 46[1] and eventually to Branch 25.[2]

The instant controversies arose from a family dispute. Gilbert Guy is the son of Francisco and Simny Guy. Geraldine, Gladys and Grace are his sisters. The family feud involves the ownership and control of 20,160 shares of stock of Northern Islands Co., Inc. (Northern Islands) engaged in the manufacture, distribution, and sales of various home appliances bearing the “3-D” trademark.

Simny and her daughters Geraldine, Gladys and Grace, as well as Northern Islands and Emilia Tabugadir, have been impleaded as respondents in the above-entitled cases. Northern Islands is a family-owned corporation organized in 1957 by spouses Francisco and respondent Simny Guy. In November 1986, they incorporated Lincoln Continental Development Corporation, Inc. (Lincoln Continental) as a holding company of the 50% shares of stock of Northern Islands in trust for their three (3) daughters, respondents Geraldine, Gladys and Grace. Sometime in December 1986, upon instruction of spouses Guy, Atty. Andres Gatmaitan, president of Lincoln Continental, indorsed in blank Stock Certificate No. 132 (covering 8,400 shares) and Stock Certificate No. 133 (covering 11,760 shares) and delivered them to Simny.

In 1984, spouses Guy found that their son Gilbert has been disposing of the assets of their corporations without authority. In order to protect the assets of Northern Islands, Simny surrendered Stock Certificate Nos. 132 and 133 to Emilia Tabugadir, an officer of Northern Islands. The 20,160 shares covered by the two Stock Certificates were then registered in the names of respondent sisters, thus enabling them to assume an active role in the management of Northern Islands.

On January 27, 2004, during a special meeting of the stockholders of Northern Islands, Simny was elected President; Grace as Vice-President for Finance; Geraldine as Corporate Treasurer; and Gladys as Corporate Secretary. Gilbert retained his position as Executive Vice President. This development started the warfare between Gilbert and his sisters.

On March 18, 2004, Lincoln Continental filed with the RTC, Branch 24, Manila a Complaint for Annulment of the Transfer of Shares of Stock against respondents, docketed as Civil Case No. 04-109444. The complaint basically alleges that Lincoln Continental owns 20,160 shares of stock of Northern Islands; and that respondents, in order to oust Gilbert from the management of Northern Islands, falsely transferred the said shares of stock in

respondent sisters' names. Lincoln Continental then prayed for an award of damages and that the management of Northern Islands be restored to Gilbert. Lincoln also prayed for the issuance of a temporary restraining order (TRO) and a writ of preliminary mandatory injunction to prohibit respondents from exercising any right of ownership over the shares.

On June 16, 2004, Lincoln Continental filed a Motion to Inhibit the Presiding Judge of Branch 24, RTC, Manila on the ground of partiality. In an Order dated June 22, 2004, the presiding judge granted the motion and inhibited himself from further hearing Civil Case No. 04-109444. It was then re-raffled to Branch 46 of the same court.

On July 12, 2004, Branch 46 set the continuation of the hearing on Lincoln Continental's application for a TRO.

On July 13, 2004, respondents filed with the Court of Appeals a Petition for Certiorari and Mandamus, docketed as CA-G.R. SP No. 85069, raffled off to the Tenth Division. Respondents alleged that the presiding judge of Branch 24, in issuing the Order dated June 22, 2004 inhibiting himself from further hearing Civil Case No. 04-109444, and the presiding judge of Branch 46, in issuing the Order dated July 12, 2004 setting the continuation of hearing on Lincoln Continental's application for a TRO, acted with grave abuse of discretion tantamount to lack or excess of jurisdiction.

Meanwhile, on July 15, 2004, the trial court issued the TRO prayed for by Lincoln Continental directing respondents to restore to Gilbert the shares of stock under controversy. In the same Order, the trial court set the hearing of Lincoln Continental's application for a writ of preliminary injunction on July 19, 20, and 22, 2004.

On July 16, 2004, the Court of Appeals (Tenth Division) issued a TRO enjoining Branch 46, RTC, Manila from enforcing, maintaining, or giving effect to its Order of July 12, 2004 setting the hearing of Lincoln Continental's application for a TRO.

Despite the TRO, the trial court proceeded to hear Lincoln Continental's application for a writ of preliminary injunction. This prompted respondents to file in the same CA-G.R. SP No. 85069 a Supplemental Petition for Certiorari, Prohibition, and Mandamus seeking to set aside the Orders of the trial court setting the hearing and actually hearing Lincoln Continental's application for a writ of preliminary injunction. They prayed for a TRO and a writ of preliminary injunction to enjoin the trial court (Branch 46) from further hearing Civil Case No. 04-109444.

On September 17, 2004, the TRO issued by the Court of Appeals (Tenth Division) in CA-G.R. SP No. 85069 expired.

On September 20, 2004, Gilbert filed a Motion for Leave to Intervene and Motion to Admit Complaint-in-Intervention in Civil Case No. 04-109444. In its Order dated October 4, 2004, the trial court granted the motions.

Meantime, on October 13, 2004, the trial court issued the writ of preliminary mandatory injunction prayed for by Lincoln Continental in Civil Case No. 04-109444.

On October 20, 2004, the Court of Appeals (Tenth Division) denied respondents' application for injunctive relief since the trial court had already issued a writ of preliminary injunction in favor of Lincoln Continental. Consequently, on October 22, 2004, respondents filed with the Tenth Division a Motion to Withdraw Petition and Supplemental Petition in CA-G.R. SP No. 85069.

On October 26, 2004, respondents filed a new Petition for Certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 87104, raffled off to the Eighth Division. They prayed that the TRO and writ of preliminary injunction issued by the RTC, Branch 46, Manila be nullified and that an injunctive relief be issued restoring to them the management of Northern Islands. They alleged that Gilbert has been dissipating the assets of the

corporation for his personal gain.

On October 28, 2004, the Court of Appeals Eighth Division issued a TRO enjoining the implementation of the writ of preliminary injunction dated October 13, 2004 issued by the trial court in Civil Case No. 04-109444; and directing Lincoln Continental to turn over the assets and records of Northern Islands to respondents.

On November 2, 2004, respondents filed with the appellate court (Eighth Division) an Urgent Omnibus Motion praying for the issuance of a break-open Order to implement its TRO.

On November 4, 2004, the Eighth Division issued a Resolution granting respondents' motion. Pursuant to this Resolution, respondents entered the Northern Islands premises at No. 3 Mercury Avenue, Libis, Quezon City.

On November 18, 2004, Gilbert filed with this Court a petition for certiorari, docketed as G.R. No. 165849, alleging that the Court of Appeals (Eighth Division), in granting an injunctive relief in favor of respondents, committed grave abuse of discretion tantamount to lack or in excess of jurisdiction. The petition also alleges that respondents resorted to forum shopping.

Meanwhile, on December 16, 2004, Smartnet Philippines, Inc. (Smartnet) filed with the Metropolitan Trial Court (MeTC), Branch 35, Quezon City a complaint for forcible entry against respondents, docketed as Civil Case No. 35-33937. The complaint alleges that in entering the Northern Islands premises, respondents took possession of the area being occupied by Smartnet and barred its officers and employees from occupying the same.

Likewise on December 16, 2004, Ignacio and Ignacio Law Offices also filed with Branch 37, same court, a complaint for forcible entry against respondents, docketed as Civil Case No. 34106. It alleges that respondents forcibly occupied its office space when they took over the premises of Northern Islands.

On December 22, 2004, the Eighth Division issued the writ of preliminary injunction prayed for by respondents in CA-G.R. SP No. 87104.

Subsequently, the presiding judge of the RTC, Branch 46, Manila retired. Civil Case No. 04-109444 was then re-raffled to Branch 25.

On January 20, 2005, respondents filed with the Eighth Division of the appellate court a Supplemental Petition for Certiorari with Urgent Motion for a Writ of Preliminary Injunction to Include Supervening Events. Named as additional respondents were 3-D Industries, Judge Celso D. Laviña, Presiding Judge, RTC, Branch 71, Pasig City and Sheriff Cresencio Rabello, Jr. This supplemental petition alleges that Gilbert, in an attempt to circumvent the injunctive writ issued by the Eighth Division of the appellate court, filed with the RTC, Branch 71, Pasig City a complaint for replevin on behalf of 3-D Industries, to enable it to take possession of the assets and records of Northern Islands. The complaint was docketed as Civil Case No. 70220. On January 18, 2005, the RTC issued the writ of replevin in favor of 3-D Industries.

On April 15, 2005, respondents filed with the Eighth Division a Second Supplemental Petition for Certiorari and Prohibition with Urgent Motion for the Issuance of an Expanded Writ of Preliminary Injunction. Impleaded therein as additional respondents were Ignacio and Ignacio Law Offices, Smartnet, Judge Maria Theresa De Guzman, Presiding Judge, MeTC, Branch 35, Quezon City, Judge Augustus C. Diaz, Presiding Judge, MeTC, Branch 37, Quezon City, Sun Fire Trading Incorporated, Zolt Corporation, Cellprime Distribution Corporation, Goodgold Realty and Development Corporation, John Does and John Doe Corporations. Respondents alleged in the main that the new corporations impleaded are alter egos of Gilbert; and that the filing of the forcible entry cases with the MeTC was intended to thwart the execution of the writ of preliminary injunction dated December 22, 2004 issued by the Court of Appeals (Eighth Division) in CA-G.R. SP No. 87104.

On April 26, 2005, the Eighth Division issued a Resolution admitting respondents' new pleading. On August 19, 2005, the Eighth Division (now Seventh Division) rendered its Decision in CA-G.R. SP No. 87104, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is hereby GRANTED and the October 13, 2004 Order and the October 13, 2004 Writ of Preliminary Mandatory Injunction issued by Branch 46 of the Regional Trial Court of Manila are hereby REVERSED and SET ASIDE. The December 17, 2004 Order and Writ of Preliminary Injunction issued by this Court of Appeals are hereby MADE PERMANENT against all respondents herein.

SO ORDERED.

Meanwhile, in a Decision[3] dated September 19, 2005, the RTC, Branch 25, Manila dismissed the complaint filed by Lincoln Continental and the complaint-in-intervention of Gilbert in Civil Case No. 04-109444, thus:

WHEREFORE, in view of the foregoing, the Complaint and the Complaint-in-Intervention are hereby DISMISSED. Plaintiff and plaintiff-intervenor are hereby ordered to jointly and severally pay defendants the following:

(a)

Moral damages in the amount of Php2,000,000.00 each for defendants Simny Guy, Geraldine Guy, Grace Guy-Cheu and Gladys Yao;

(b)

Moral damages in the amount of Php200,000.00 for defendant Emilia Tabugadir;

(c)

Exemplary damages in the amount of Php2,000,000.00 each for defendants Simny Guy, Geraldine Guy, Grace Guy- Cheu, and Gladys Yao;

(d)

Exemplary damages in the amount of Php200,000.00 for defendant Emilia Tabugadir;

(e)

Attorney's fees in the amount of Php2,000.000.00; and

(f)

Costs of suit.

SO ORDERED.

The trial court held that Civil Case No. 04-109444 is a baseless and an unwarranted suit among family members; that based on the evidence, Gilbert was only entrusted to hold the disputed shares of stock in his name for the benefit of the other family members; and that it was only when Gilbert started to dispose of the assets of the family's corporations without their knowledge that respondent sisters caused the registration of the shares in their respective names.

Both Lincoln Continental and Gilbert timely appealed the RTC Decision to the Court of Appeals, docketed therein as CA-G.R. CV No. 85937.

On September 15, 2005, 3-D Industries, Inc. filed a petition for certiorari, prohibition, and mandamus with this

Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 87104 setting aside the writ of preliminary injunction issued by the RTC, Branch 46. The petition was docketed as G.R. No. 169462 and raffled off to the Third Division of this Court.

On October 3, 2005, the Third Division of this Court issued a Resolution^[4] dismissing the petition of 3-D Industries in G.R. No. 169462. 3-D Industries timely filed its motion for reconsideration but this was denied by this Court in its Resolution^[5] dated December 14, 2005.

Meanwhile, on October 10, 2005, Gilbert, petitioner in G.R. No. 165849 for certiorari, filed with this Court a Supplemental Petition for Certiorari, Prohibition, and Mandamus with Urgent Application for a Writ of Preliminary Mandatory Injunction challenging the Decision of the Court of Appeals (Seventh Division), dated August 19, 2005, in CA-G.R. SP No. 87104. This Decision set aside the Order dated October 13, 2004 of the RTC, Branch 46 granting the writ of preliminary injunction in favor of Lincoln Continental.

On November 8, 2005, Ignacio and Ignacio Law Offices and Smartnet filed with this Court their petitions for certiorari, docketed as G.R. Nos. 170185 and 170186, respectively.

On February 27, 2006, Lincoln Continental filed with this Court a petition for review on certiorari challenging the Decision of the Court of Appeals (Seventh Division) in CA-G.R. CV No. 85937, docketed as G.R. No. 171066.

On March 20, 2006, we ordered the consolidation of G.R. No. 171066 with G.R. Nos. 165849, 170185, and 170186.

In the meantime, in a Decision dated November 27, 2006 in CA-G.R. CV No. 85937, the Court of Appeals (Special Second Division) affirmed the Decision in Civil Case No. 04-109444 of the RTC (Branch 25) dismissing Lincoln Continental's complaint and Gilbert's complaint-in-intervention, thus:

WHEREFORE, the appeals are dismissed and the assailed decision AFFIRMED with modifications that plaintiff and plaintiff-intervenor are ordered to pay each of the defendants-appellees Simny Guy, Geraldine Guy, Grace Guy-Cheu and Gladys Yao moral damages of P500,000.00, exemplary damages of P100,000.00 and attorney's fees of P500,000.00.

SO ORDERED.

Lincoln Continental and Gilbert filed their respective motions for reconsideration, but they were denied in a Resolution promulgated on February 12, 2007.

Lincoln Continental then filed with this Court a petition for review on certiorari assailing the Decision of the Court of Appeals (Former Special Second Division) in CA-G.R. CV No. 85937. This petition was docketed as G.R. No. 176650 and raffled off to the Third Division of this Court.

In our Resolution dated June 6, 2007, we ordered G.R. No. 176650 consolidated with G.R. Nos. 165849, 170185, 170186, and 171066.

THE ISSUES

In G.R. Nos. 165849 and 171066, petitioners Gilbert and Lincoln Continental raise the following issues: (1) whether respondents are guilty of forum shopping; and (2) whether they are entitled to the injunctive relief granted in CA-G.R. SP No. 87104.

In G.R. Nos. 170185 and 170186, the pivotal issue is whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that petitioners Ignacio and Ignacio Law Offices

and Smartnet are also covered by its Resolution granting the writ of preliminary injunction in favor of respondents.

In G.R. No. 176650, the core issue is whether the Court of Appeals (Special Second Division) erred in affirming the Decision of the RTC, Branch 25, Manila dated September 19, 2005 dismissing the complaint of Lincoln Continental and the complaint-in-intervention of Gilbert in Civil Case No. 04-109444.

THE COURT'S RULING

A. G.R. Nos. 165849 and 171066

On the question of forum shopping, petitioners Gilbert and Lincoln Continental contend that the acts of respondents in filing a petition for certiorari and mandamus in CA-G.R. SP No. 85069 and withdrawing the same and their subsequent filing of a petition for certiorari in CA-G.R. SP No. 87104 constitute forum shopping; that respondents withdrew their petition in CA-G.R. SP No. 85069 after the Tenth Division issued a Resolution dated October 20, 2004 denying their application for a writ of preliminary injunction; that they then filed an identical petition in CA-G.R. SP No. 87104 seeking the same relief alleged in their petition in CA-G.R. SP No. 85069; and that by taking cognizance of the petition in CA-G.R. SP No. 87104, instead of dismissing it outright on the ground of forum shopping, the Court of Appeals committed grave abuse of discretion tantamount to lack or excess of jurisdiction.

A party is guilty of forum shopping when he repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by some other court.[6] It is prohibited by Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, which provides:

SECTION 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 other 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 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 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.

Forum shopping is condemned because it unnecessarily burdens our courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary and trifles with and mocks judicial processes, thereby affecting the efficient administration of justice.[7] The primary evil sought to be proscribed by the prohibition against forum shopping is, however, the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[8]

Forum shopping may only exist where the elements of *litis pendentia* are present or where a final judgment in one

case will amount to res judicata in the other.[9] Litis pendentia as a ground for dismissing a civil action is that situation wherein another action is pending between the same parties for the same cause of action, such that the second action is unnecessary and vexatious. The elements of litis pendentia are as follows: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and the relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other.[10] From the foregoing, it is clear that sans litis pendentia or res judicata, there can be no forum shopping.

While the first element of litis pendentia – identity of parties – is present in both CA-G.R. SP No. 85069 and CA-G.R. SP No. 87104, however, the second element, does not exist. The petitioners in CA-G.R. SP No. 85069 prayed that the following Orders be set aside:

(1)

the Order of inhibition dated June 22, 2004 issued by the presiding judge of the RTC of Manila, Branch 24; and

(2)

the Order dated July 12, 2004 issued by Branch 46 setting Gilbert's application for preliminary injunction for hearing.

In their petition in CA-G.R. SP No. 87104, respondents prayed for the annulment of the writ of preliminary injunction issued by the RTC, Branch 46 after the expiration of the TRO issued by the Tenth Division of the Court of Appeals. Evidently, this relief is not identical with the relief sought by respondents in CA-G.R. SP No. 85069. Clearly, the second element of litis pendentia – the identity of reliefs sought - is lacking in the two petitions filed by respondents with the appellate court. Thus, we rule that no grave abuse of discretion amounting to lack or excess of jurisdiction may be attributed to the Court of Appeals (Eighth Division) for giving due course to respondents' petition in CA-G.R. SP No. 87104.

On the second issue, Section 3, Rule 58 of the 1997 Rules of Civil Procedure, as amended provides:

SECTION 3. Grounds for issuance of preliminary injunction. – A preliminary injunction may be granted when it is established:

(a)

That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b)

That the commission, continuance, or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c)

That a party, court, agency, or a person is doing, threatening, or is attempting to do, or is procuring or suffering

to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

For a party to be entitled to an injunctive writ, he must show that there exists a right to be protected and that the acts against which the injunction is directed are violative of this right.[11] In granting the respondents' application for injunctive relief and making the injunction permanent, the Court of Appeals (Seventh Division) found that they have shown their clear and established right to the disputed 20,160 shares of stock because: (1) they have physical possession of the two stock certificates equivalent to the said number of shares; (2) Lincoln Continental is a mere trustee of the Guy family; and (3) respondents constitute a majority of the board of directors of Northern Islands, and accordingly have management and control of the company at the inception of Civil Case No. 94-109444. The appellate court then ruled that the trial court committed grave abuse of discretion in issuing a writ of preliminary mandatory injunction in favor of Guy. The writ actually reduced the membership of Northern Islands board to just one member - Gilbert Guy. Moreover, he failed to establish by clear and convincing evidence his ownership of the shares of stock in question. The Court of Appeals then held there was an urgent necessity to issue an injunctive writ in order to prevent serious damage to the rights of respondents and Northern Islands.

We thus find no reason to depart from the findings of the Court of Appeals. Indeed, we cannot discern any taint of grave abuse of discretion on its part in issuing the assailed writ of preliminary injunction and making the injunction permanent.

B. G.R. Nos. 170185 & 170186

Ignacio and Ignacio Law Offices and Smartnet, petitioners, claim that the Court of Appeals never acquired jurisdiction over their respective persons as they were not served with summons, either by the MeTC or by the appellate court in CA-G.R. SP No. 87104. Thus, they submit that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it included them in the coverage of its injunctive writ.

Jurisdiction is the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies.[12] Jurisdiction over the subject matter of a case is conferred by law.

Section 9 (1) of Batas Pambansa Blg. 129,[13] as amended, provides:

SEC. 9. Jurisdiction. – The Court of Appeals shall exercise:

(1) Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction.

Rule 46 of the 1997 Rules of Civil Procedure, as amended, governs all cases originally filed with the Court of Appeals. The following provisions of the Rule state:

SEC. 2. To what actions applicable. – This Rule shall apply to original actions for certiorari, prohibition, mandamus and quo warranto.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for certiorari, prohibition, and mandamus by Rule 65, and for quo warranto by Rule 66.

x x x

SEC. 4. Jurisdiction over person of respondent, how acquired. – The court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction.

SEC. 5. Action by the court. – The court may dismiss the petition outright with specific reasons for such

dismissal or require the respondent to file a comment on the same within ten (10) days from notice. Only pleadings required by the court shall be allowed. All other pleadings and papers may be filed only with leave of court.

It is thus clear that in cases covered by Rule 46, the Court of Appeals acquires jurisdiction over the persons of the respondents by the service upon them of its order or resolution indicating its initial action on the petitions or by their voluntary submission to such jurisdiction.[14] The reason for this is that, aside from the fact that no summons or other coercive process is served on respondents, their response to the petitions will depend on the initial action of the court thereon. Under Section 5, the court may dismiss the petitions outright, hence, no reaction is expected from respondents and under the policy adopted by Rule 46, they are not deemed to have been brought within the court's jurisdiction until after service on them of the dismissal order or resolution.[15]

Records show that on April 27, 2005, petitioners in these two forcible entry cases, were served copies of the Resolution of the Court of Appeals (Seventh Division) dated April 26, 2005 in CA-G.R. SP No. 87104.[16] The Resolution states:

Private respondents SMARTNET PHILIPPINES, INC., IGNACIO & IGNACIO LAW OFFICE, SUNFIRE TRADING, INC., ZOLT CORPORATION, CELLPRIME DISTRIBUTION CORPO., GOODGOLD REALTY & DEVELOPMENT CORP., are hereby DIRECTED to file CONSOLIDATED COMMENT on the original Petition for Certiorari, the First Supplemental Petition for Certiorari, and the Second Supplemental Petition for Certiorari (not a Motion to Dismiss) within ten (10) days from receipt of a copy of the original, first and second Petitions for Certiorari.[17]

Pursuant to Rule 46, the Court of Appeals validly acquired jurisdiction over the persons of Ignacio and Ignacio Law Offices and Smartnet upon being served with the above Resolution.

But neither of the parties bothered to file the required comment. Their allegation that they have been deprived of due process is definitely without merit. We have consistently held that when a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process for by such failure, he is deemed to have waived or forfeited his right to be heard without violating the constitutional guarantee.[18]

On the question of whether the Court of Appeals could amend its Resolution directing the issuance of a writ of preliminary injunction so as to include petitioners, suffice to state that having acquired jurisdiction over their persons, the appellate court could do so pursuant to Section 5 (g), Rule 135 of the Revised Rules of Court, thus:

SEC. 5. Inherent powers of courts. – Every court shall have power:

x x x

(g) To amend and control its process and orders so as to make them conformable to law and justice.

In Villanueva v. CFI of Oriental Mindoro[19] and Eternal Gardens Memorial Parks Corp. v. Intermediate Appellate Court,[20] we held that under this Rule, a court has inherent power to amend its judgment so as to make it conformable to the law applicable, provided that said judgment has not yet acquired finality, as in these cases.

C. G.R. No. 176650

The fundamental issue is who owns the disputed shares of stock in Northern Islands.

We remind petitioner Lincoln Continental that what it filed with this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended. It is a rule in this jurisdiction that in petitions for review under Rule 45, only questions or errors of law may be raised.[21] There is a question of law when the

doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented. There is a question of fact when the doubt arises as to the truth or falsehood of facts or when there is a need to calibrate the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation. [22] Obviously, the issue raised by the instant petition for review on certiorari, involves a factual matter, hence, is outside the domain of this Court. However, in the interest of justice and in order to settle this controversy once and for all, a ruling from this Court is imperative.

One thing is clear. It was established before the trial court, affirmed by the Court of Appeals, that Lincoln Continental held the disputed shares of stock of Northern Islands merely in trust for the Guy sisters. In fact, the evidence proffered by Lincoln Continental itself supports this conclusion. It bears emphasis that this factual finding by the trial court was affirmed by the Court of Appeals, being supported by evidence, and is, therefore, final and conclusive upon this Court.

Article 1440 of the Civil Code provides that:

ART. 1440. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.

In the early case of *Gayondato v. Treasurer of the Philippine Islands*, [23] this Court defines trust, in its technical sense, as “a right of property, real or personal, held by one party for the benefit of another.” Differently stated, a trust is “a fiduciary relationship with respect to property, subjecting the person holding the same to the obligation of dealing with the property for the benefit of another person.” [24]

Both Lincoln Continental and Gilbert claim that the latter holds legal title to the shares in question. But record shows that there is no evidence to support their claim. Rather, the evidence on record clearly indicates that the stock certificates representing the contested shares are in respondents’ possession. Significantly, there is no proof to support his allegation that the transfer of the shares of stock to respondent sisters is fraudulent. As aptly held by the Court of Appeals, fraud is never presumed but must be established by clear and convincing evidence. [25] Gilbert failed to discharge this burden. We, agree with the Court of Appeals that respondent sisters own the shares of stocks, Gilbert being their mere trustee. Verily, we find no reversible error in the challenged Decision of the Court of Appeals (Special Second Division) in CA-G.R. CV No. 85937.

WHEREFORE, we DISMISS the petitions in G.R. Nos. 165849, 170185, 170186 and 176650; and DENY the petitions in G.R. Nos. 171066 and 176650. The Resolutions of the Court of Appeals (Eighth Division), dated October 28, 2004 and November 4, 2004, as well as the Decision dated October 10, 2005 of the Court of Appeals (Seventh Division) in CA-G.R. SP No. 87104 are AFFIRMED. We likewise AFFIRM IN TOTO the Decision of the Court of Appeals (Special Second Division), dated November 27, 2006 in CA-G.R. CV No. 85937. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), [*]Ynares-Santiago, Corona, and Azcuna, JJ., concur.

[*] Designated to sit as additional Member of the First Division under Special Order No. 474 dated October 19, 2007 issued pursuant to Administrative Circular No. 84-2007.

- [1] Due to the inhibition of the presiding judge of Branch 24.
- [2] Due to the retirement of the presiding judge of Branch 46.
- [3] Vol. III, Rollo, G.R. No. 165849, pp. 1381-1399.
- [4] Vol. IV, Rollo, G.R. No. 165489, p. 1901.
- [5] Id., p. 1902.
- [6] Equitable Philippine Commercial International Bank and Buenaventura v. Court of Appeals, G.R. No. 143556, March 16, 2004, 425 SCRA 544, 550, citing Tantay, Sr. v. Court of Appeals, 357 SCRA 329 (2001).
- [7] Guaranteed Hotels, Inc. v. Baltao, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 744.
- [8] Rudecon Management Corporation v. Singson, G.R. No. 150798, March 31, 2005, 454 SCRA 612, 632, citing Yupangco Cotton Mills, Inc. v. Court of Appeals, 383 SCRA 451 (2002).
- [9] Lugayan v. Spouses Tizon, G.R. No. 147958, March 31, 2005, 454 SCRA 488, citing Development Bank of the Philippines v. Pingol Land Transport System Co., Inc., 420 SCRA 652 (2004).
- [10] Arquiza v. Court of Appeals, G.R. No. 160479, June 8, 2005, 459 SCRA 753, 764, citing Panganiban v. Pilipinas Shell Petroleum Corp., 395 SCRA 624 (2003).
- [11] Rualo v. Pitargue, G.R. No. 140284, January 21, 2005, 449 SCRA 121, 137, citing Searth Commodities Corp. v. Court of Appeals, 207 SCRA 662 (1992).
- [12] Dela Cruz v. Court of Appeals, G.R. No. 139442. December 6, 2006, 510 SCRA 102, 114, citing People v. Mariano, 71 SCRA 600 (1976).
- [13] The Judiciary Reorganization Act of 1980.
- [14] FERIA AND NOCHE, II CIVIL PROCEDURE ANNOTATED (2001 Ed.) 216-217. See also HERRERA, VII REMEDIAL LAW (1997 Ed.) 542.
- [15] REGALADO, I REMEDIAL LAW COMPENDIUM (1997 Ed.) 553.
- [16] Vol. II, Rollo, G.R. No. 170185, pp. 1212-1213.
- [17] Id., p. 1211.
- [18] Bautista v. Court of Appeals, G.R. No. 157219, May 28, 2004, 430 SCRA 353, 357, citing Tiomico v. Court of Appeals, 304 SCRA 216 (1999).
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