WESTMONT INVESTMENT CORPORATION, PETITIONER, VS. FARMIX FERTILIZER CORPORATION, PEARLBANK SECURITIES, INC., MANUEL N. TANKIANSEE AND JUANITA U. TAN, RESPONDENTS.

G.R. No. 165876. October 04, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the Decision[1] dated October 29, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 82198. The CA had dismissed petitioner Westmont Investment Corporation's petition for certiorari and mandamus assailing the Decision[2] dated February 2, 2004 of the Regional Trial Court (RTC) of Manila, Branch 46 in Civil Case No. 02-103160.

The facts are as follows:

Sometime in 1999, when Westmont Bank had to undergo rehabilitation and financial assistance under a plan approved by the Bangko Sentral ng Pilipinas (BSP) and Philippine Deposit Insurance Corporation (PDIC), United Overseas Bank Limited (UOBL) expressed interest in acquiring the controlling interest of Westmont or up to 67% of its voting stock.[3] At the time, the following were the controlling shareholders of Westmont (hereinafter "the former controlling shareholders"):

- The Espiritu Group, composed of petitioner Westmont Investment Corporation (petitioner WINCORP), John B. Espiritu,[4] Sta. Lucia Realty and Development Corporation, Golden Era Holdings, Inc. and Exchange Equity Corporation;

- The Cua Group, composed of Victor Say, Lory Cua, Santiago Cua, Sr., Santiago Cua, Jr., Simeon S. Cua, Henry T. Cua Loping, Vicente T. Cua Loping and ACL Development Corporation;

- The Farmix Group, composed of respondents Farmix Fertilizer Corporation and Pearlbank Securities, Inc.;

- The Tankiansee Group, composed of respondents Manuel N. Tankiansee and Juanita U. Tan; and

- The Tan Caktiong Group, composed of Tony Tan Caktiong and William Tan Untiong.[5]

Under the Transfer Agreement, the former controlling shareholders shall sell to UOBL, through a leveraged buy-out and quasi-reorganization of the bank, their interest in the amount of P1.4 billion.

Under the leveraged buy-out, UOBL and the former controlling stockholders agreed that the mode of payment to the latter would be done by an assignment of certain receivables from the bank's portfolio, which UOBL considered as "political loans," equivalent to P1.4 billion. Thereafter, their shares would be diluted to enable UOBL to acquire the controlling interest through a subscription of shares in the bank. The bank's trust department will act as collecting agent of the former controlling stockholders and all monies collected on the P1.4 billion receivables would be reinvested in the bank through the subscription of common shares of the bank. The intended result would be that 67% will be held by UOBL, and of the remaining 33%, 28% shall be held in trust by the Tan

Caktiong Group for the former controlling shareholders and the remaining 5% shall be held by the Tan Caktiong Group for its own account. To facilitate the buy-out, a trust agreement was executed by the former controlling stockholders in favor of the Tan Caktiong Group.

After the dilution of the interest of the former controlling shareholders, the paid-up capital of the bank was increased by P3.5 billion and new shares were issued by the bank, now named United Overseas Bank of the Philippines (UOBP).

On February 23, 2000, the BSP approved Board Resolution No. 305 directing the bank to reinstate the P1.4 billion receivables in its books within thirty (30) days from receipt of the said resolution and to take positive steps to recover the P1.4 billion assets transferred to the former controlling shareholders.

As a result of the BSP Resolution, UOBL did not pay the former controlling stockholders the consideration due them under the agreement and UOBP reinstated the P1.4 billion receivables in its books.

Because of this development, the Espiritu Group revoked its trust agreement with the Tan Caktiong Group. Then, on March 25, 2002, John B. Espiritu, representing the Espiritu and Tan Caktiong Groups, filed a petition[6] against UOBL, UOBP, Manta Ray Holdings, Inc., the UOBL Directors, and UOBP Corporate Secretary Marianne Malate-Guerrero (hereinafter the UOB Group) to compel the issuance of shares of stock and/or return of management and control. The petition was brought under the Interim Rules of Procedure for Intra-Corporate Controversies.[7] Answers[8] to the petition were filed by respondents on May 2, 2002.

On May 23, 2002, the Regional Trial Court (RTC) issued a Notice of Pre-Trial[9] ordering the parties to file their respective briefs and scheduling the pre-trial on June 26, 2002. On June 26, 2002, however, the pre-trial was cancelled and reset to July 19, 2002.[10]

On June 27, 2002, the Farmix and Tankiansee Groups filed a Motion for Leave to File and Admit Attached Petition in Intervention[11] for the purpose of enforcing their 10.36% share in the P1.4 billion receivables. Said petition was admitted by the trial court.[12]

In the meantime, the parties filed their respective pre-trial briefs and resorted to different modes of discovery.

On July 5, 2002, the Espiritu and Tan Caktiong Groups and the UOB Group executed a compromise agreement. Consequently, on July 17, 2002, said parties filed a Joint Motion to Dismiss with Prejudice on the ground that they have agreed to amicably settle the dispute which gave rise to the filing of the Petition and Answers with Counterclaims. The scheduled pre-trial on July 19, 2002 no longer pushed through because of this development.

After the parties were heard, the RTC by Order[13] dated August 19, 2002, granted the Joint Motion to Dismiss with Prejudice. The Farmix Group, however, claimed that the settlement was not disclosed to the Farmix and Tankiansee Groups.

Thus, on September 23, 2002, the RTC issued another Notice of Pre-trial[14] again directing the parties to file their respective briefs and setting the pre-trial on October 8, 2002. On October 8, 2002 however, on motion of the Farmix and Tankiansee Groups, the pre-trial was postponed until further notice.[15] The date of pre-trial was reset several times more until the parties agreed to hold it on January 31, 2003.[16]

In the meantime, on November 12, 2002, the Farmix Group had filed an amended petition-in-intervention. The same was admitted by the RTC on November 25, 2002.[17] Said amended pleading was also adopted by manifestation by the Tankiansee Group. But after a few months, the Tankiansee Group filed an omnibus motion for the withdrawal of said manifestation, for the issuance of protective orders to prevent the taking of deposition upon oral examination of its group and for the early setting of the pre-trial conference. Said motion was granted

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by the trial court, but, the pre-trial was ordered to proceed as scheduled.

On January 31, 2003, the pre-trial scheduled on the said day was again cancelled. It was reset seven (7) times more, the last date being November 14, 2003.

On November 12, 2003, the RTC issued an Order[18] cancelling the scheduled pre-trial on November 14, 2003. It ruled that "[a]fter careful evaluation of the pleadings, affidavits and documentary evidence presented by the parties, the Court believes that the issues in this case may [already] be resolved as warranted by Section 4, Rule 4 of the Interim Rules of Procedure [for] Intra-Corporate Controversies." The RTC ordered the parties to submit their respective memoranda without prejudice to the reception of additional evidence or conduct of clarificatory hearings as may be determined by the court. Thereafter, the case shall be deemed submitted for decision.

The UOB Group (except Manta Ray Holdings, Inc.) moved to reconsider[19] the November 12, 2003 Order, arguing that there were still issues of fact that could only be resolved through summary trial. The Tan Caktiong Group, through a Manifestation,[20] adopted the UOB Group's motion for reconsideration. The Espiritu Group through a Manifestation and Motion,[21] also adopted the UOB Group's motion for reconsideration but also raised additional arguments.

On December 3, 2003, the RTC issued an Order[22] denying the motion for reconsideration filed by the UOB Group. The RTC ruled:

> The Court once again carefully evaluated the voluminous pleadings, affidavits and documents submitted before it and is convinced that a decision may already be rendered by the Court, whether full or otherwise, after submission by the parties of their respective memoranda pursuant to Section 4, Rule 4 of the Interim Rules. The Court reiterates that this is without prejudice to the reception of additional evidence and/or the conduct of clarificatory hearing(s) as may be determined by the Court after the submission of the parties' memoranda.[23]

The RTC then reiterated its directive for the parties to file their respective memoranda. The parties complied.

On February 2, 2004, the RTC rendered a Decision after determining that there were only two (2) principal issues to be resolved, to wit:

> a) Is the proportionate share of intervenors in the Php 1.4 Billion receivables 7.66% or 10.36%?
>
> b) Are the intervenors entitled to their alleged proportional share in the thirty-three (33%) percent of the common shares (equivalent to 1,713,510 shares) issued in UOBP [and] registered in the name of the Tan Caktiong Group?[24]

The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering UOBL to pay intervenors the amount of Php 99, 870,400.00 representing their 10.36% collective interest in the Php 1.4 Billion receivables which is valued at Php 964 Million with 12% interest from the time of filing of the petition-in-intervention until full payment;
>
> 2. Ordering UOBL to pay intervenors the amount of Php 30,766,060.58 representing the value of intervenors' 10.36% [share] of the 28% share/equity in UOBP held in trust by the Tan Caktiong Group for and in behalf of former Westmont Bank Shareholders based on the Php 350 Million valuation stated in the settlement agreements, plus 12% interest from the time of filing of the petition-in-intervention until fully paid;
>
> 3. Ordering UOBL to pay intervenors the amount of P5,000,000.00 as and by way of attorney's fees;
>
> 4. Ordering UOBL to pay the costs of suit[;]

> 5. On the cross-claim, ordering the Espiritu Group to reimburse and indemnify UOBL of the total amount due to intervenors in excess of Php 62,776,040.00.
>
> All other cross-claim and counterclaims are hereby denied.
>
> IT IS SO ORDERED.[25]

On February 13, 2004, the Espiritu Group, except petitioner WINCORP, through its attorney-in-fact, John B. Espiritu, filed a Notice of Appeal[26] with the RTC alleging that the February 2, 2004 Decision was contrary to law and evidence on record. On the same day, petitioner WINCORP, through the same attorney-in-fact, John B. Espiritu and by the same counsel, Angara Abello Concepcion Regala and Cruz (ACCRA), filed an Ex Abundanti Ad Cautelam Notice of Appeal[27] assailing the RTC Decision for being contrary to law and evidence, but without waiving any of its remedies against the decision. True enough, also on February 13, 2004, WINCORP filed a petition for certiorari and mandamus with the CA seeking to annul the February 2, 2004 Decision of the RTC. WINCORP alleged that:

> A
>
> THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING THE ASSAILED DECISION, CONSIDERING THAT:
>
> - THE JUDGMENT BEFORE PRE-TRIAL IS PREMATURE BECAUSE OF THE MANY OUTSTANDING FACTUAL ISSUES IN THE CASE, WHICH CAN ONLY BE RESOLVED AFTER TRIAL ON THE MERITS.
>
> - THE PUBLIC RESPONDENT MADE FINDINGS OF FACTS IN ITS ASSAILED DECISION BASED ON THE SELF-SERVING ALLEGATIONS OF THE FARMIX AND TANKIANSEE GROUPS, WITHOUT GIVING PETITIONER THE RIGHT TO CROSS-EXAMINE THEM ON SUCH ALLEGATIONS, AND THUS, DEPRIVING THEM OF THEIR RIGHT TO DUE PROCESS.
>
> B
>
> THE PUBLIC RESPONDENT GRAVELY AND UNLAWFULLY NEGLECTED TO PERFORM HIS LEGAL DUTY TO PROCEED WITH THE TRIAL ON THE DISPUTE AND CONTROVERTED FACTS, THEREBY DEPRIVING PETITIONER DUE PROCESS OF LAW.[28]

WINCORP prayed that:

> 1. Upon filing of th[e] Petition, a Temporary Restraining Order/Writ of Preliminary Injunction be issued enjoining the Regional Trial Court of Manila, Branch 46, from implementing the Assailed Decision, including the issuance of any writ of execution in connection therewith;
>
> 2. The Petition be given due course and judgment be rendered for the issuance of a writ of certiorari annulling the Assailed Decision of the public respondent; and
>
> 3. A writ of mandamus be issued directing the public respondent to proceed with trial on the merits in Civil Case No. 02-103160.[29]

On February 19, 2004, WINCORP filed with the CA a Manifestation and Compliance with Undertaking.[30] WINCORP manifested that it filed a Notice of Appeal Ad Cautelam with the RTC simultaneous with the filing of the petition for certiorari and mandamus with the CA. WINCORP, on even date, also filed a similar Manifestation and Compliance with Undertaking[31] with the RTC, manifesting that on February 13, 2004, it filed a Petition for Certiorari and Mandamus with the CA docketed as CA-G.R. SP No. 82198 seeking the annulment of the February 2, 2004 RTC Decision.

On October 29, 2004, the CA dismissed WINCORP's petition for certiorari and mandamus on the ground of forum shopping. The CA noted that the main relief sought in the petition for certiorari is the annulment of the February 2, 2004 Decision of the RTC, which was the same decision subject of WINCORP's Ex Abundanti Ad Cautelam Notice of Appeal. Thus, the ultimate relief sought by the two (2) separate remedies simultaneously availed of by WINCORP is one and the same - the setting aside of the February 2, 2004 Decision of the RTC.

As to WINCORP's claim that the RTC's judgment was improper, the CA held that the RTC did not act prematurely because, there were no remaining genuine issues of fact which needed to be resolved. The CA noted that the supposed factual issues WINCORP enumerated could be determined through an inspection of the pleadings and documentary evidence submitted by the parties and given the abundance of materials in the hands of the RTC which surely conferred upon it a comprehensive review. Holding a formal trial would merely result in undue delay and expense for the parties, added the CA.

Regarding WINCORP's claim that it was deprived of due process, the CA found the argument without merit as the records show that WINCORP was given every opportunity to present its side. It was likewise evident in the assailed decision that the RTC fairly assessed the parties' arguments and its findings were supported by the evidence on record. Accordingly, no grave abuse of discretion could be ascribed to the RTC in rendering the assailed decision.

Aggrieved, WINCORP filed the present petition under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

WINCORP raises the following issues:

> A.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE 2 FEBRUARY 2004 ORDER OF THE RTC MANILA, WHICH, WITH GRAVE ABUSE OF DISCRETION, PREMATURELY RENDERED JUDGMENT BEFORE PRE-TRIAL; THUS, DEPRIVING PETITIONER OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS.
>
> B.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER VIOLATED THE PROCEDURAL RULE AGAINST FORUM SHOPPING.[32]

WINCORP argues that the CA overlooked the substantial issues of fact raised by all the parties. It claims that Section 4, Rule 4 of the Interim Rules of Procedure for Intra-Corporate Controversies does not give trial courts unbridled discretion to render judgment immediately based on the pre-trial briefs, pleadings, affidavits and other evidence. WINCORP cites Section 1, Rule 5 of the Interim Rules which provides that if the court deems necessary to hold hearings to determine specific factual matters before judgment, it shall set the case for trial. WINCORP says that judgment before pre-trial under the Interim Rules is akin to rendering summary judgment under Rule 35 of the Rules of Court which merely gives the court limited authority to render summary judgment if it clearly appears that there is no genuine issue of fact. From the pre-trial briefs of the parties alone, it can be seen that there were a number of substantial issues of fact, material to the claims and defenses of all parties, which needed to be resolved first. WINCORP further claims that the December 3, 2003 Order of the RTC denying the UOB Group's motion for reconsideration of the November 12, 2003 Order was silent as to the Espiritu Group's manifestation and motion assailing said order. It also contends that with the RTC's declaration in its order that the directive to submit memoranda was "without prejudice to the reception of additional evidence and/or the conduct of clarificatory hearing(s) as may be determined by the Court after the submission of the parties' memoranda," WINCORP was led to believe that the trial court will still receive additional evidence and conduct hearings since

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there were a number of factual issues to be resolved.

WINCORP adds that it did not engage in forum shopping. It claims that its appeal goes into the merits of the decision while the petition for certiorari delves into the propriety of and the manner by which the RTC issued said decision. WINCORP cites the case of Paradero v. Abragan[33] which held that the rule on forum shopping is not violated by the mere fact that both appeal and certiorari are resorted to by the same party at the same time. It also argues that appeal is a slow and tedious process and thus an inadequate remedy to protect its right.

The petition fails.

The petition before the CA was filed out of time. A perusal of the allegations in the subject petition reveals that though it sought the nullification of the February 2, 2004 Decision of the RTC, what it questioned was the RTC's resolve to render a judgment before trial pursuant to Section 4, Rule 4 of the Interim Rules of Procedure for Intra-Corporate Controversies. Said section provides,

> Sec. 4. Judgment before pre-trial. - If, after submission of the pre-trial briefs, the court determines that, upon consideration of the pleadings, the affidavits and other evidence submitted by the parties, a judgment may be rendered, the court may order the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda.

As correctly pointed out by the Farmix Group, it is very clear that the issues raised in the subject petition pertained to previous orders of the RTC - the November 12 and December 3, 2003 Orders - submitting the case for decision.

The November 12, 2003 Order was received by WINCORP on November 13, 2003. It then filed a Manifestation and Motion adopting the UOB Group's motion for reconsideration of said order and even raised additional arguments. Thereafter, the RTC issued the December 3, 2003 Order denying UOB Group's motion for reconsideration but there was no mention of WINCORP's manifestation and motion.

Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies specifically prohibits the filing of motions for reconsideration, to wit:

> Sec. 8. Prohibited pleadings. - The following pleadings are prohibited:
>
> (1) Motion to dismiss;
>
> (2) Motion for a bill of particulars;
>
> (3) Motion for new trial, or for reconsideration of judgment or order,
>
> or for re-opening of trial;
>
> (4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and
>
> (5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath. (Emphasis and underscoring supplied.)

With the above proscription, the RTC in the first place should not have issued the December 3, 2003 Order denying the UOB Group's motion for reconsideration, which WINCORP adopted. The remedy of an aggrieved party like WINCORP is to file a petition for certiorari within sixty (60) days from receipt of the assailed order and not to file a motion for reconsideration, the latter being a prohibited pleading. Here, WINCORP should have filed

the petition for certiorari before the CA on or before January 12, 2004. It was, however, filed only on February 13, 2004. With that, the CA should have dismissed the petition outright for being filed late.

Even if the sixty (60)-day period will be reckoned from WINCORP's receipt of the December 3, 2003 Order, the petition for certiorari was still filed out of time since it should have been filed on or before February 2, 2004.[34]

This Court can only conclude that WINCORP filed the petition for certiorari supposedly assailing the February 2, 2004 Decision as a subterfuge to make it appear that it was filed on time when in truth it was assailing an earlier order, the period for which to assail the same has long elapsed.

Indeed, even if we consider the petition to have been filed on time by reckoning the sixty (60)-day period from WINCORP's receipt of the February 2, 2004 Decision, the same is still dismissible for violating the rule against forum shopping. The petition for certiorari and the appeal simultaneously filed by WINCORP before the CA have the same prayer - the setting aside of the February 2, 2004 RTC Decision. Though WINCORP argues that the petition for certiorari assails the propriety and manner by which it was rendered while the appeal goes into the merits of the decision itself, still, both remedies have one ultimate goal. To give due course to both petitions will definitely pose an evil that the prohibition on forum shopping was seeking to prevent - the possibility of two (2) different tribunals rendering conflicting decisions.[35]

WINCORP cannot rely on our pronouncement in Paradero v. Abragan that the simultaneous filing of a petition for certiorari and appeal is allowed in certain cases. In Paradero, we stated that the simultaneous filing of the petition for certiorari and appeal may be allowed where they deal with different matters, as when the petition for certiorari questions an order granting execution pending appeal while the appeal deals with the merits of the decision which is being executed. The evil sought to be avoided by the proscription on forum shopping in such cases would not be present as any ruling on the legality of the execution pending appeal in the certiorari case would not amount to res judicata in the main case subject of the appeal. In the instant case, however, the certiorari case and appeal dealt with the same matter, the February 2, 2004 RTC Decision.

WHEREFORE, in view of the foregoing, the instant petition is DENIED for lack of merit.

With costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

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[1] Rollo, pp. 64-74. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] CA rollo, pp. 43-63. Penned by Judge Artemio S. Tipon.

[3] Id. at 45, 71.

[4] Also referred to as John Anthony B. Espiritu in some parts of the records.

[5] CA rollo, pp. 43-45, 64-65, 71.

[6] Records, Vol. I, pp. 1-36.

[7] Effective April 1, 2001.

[8] Records, Vol. II, pp. 10-57.

[9] Records, Vol. IV, pp. 301-302.

[10] Records, Vol. VI, p. 42.

[11] Id. at 43-53.

[12] CA rollo, p. 169.

[13] Records, Vol. VI, pp. 173-174.

[14] Id. at 211-212.

[15] Records, Vol. VIII, p. 61.

[16] Id. at 283.

[17] Id. at 225-232.

[18] CA rollo, pp. 274-275.

[19] Id. at 277-289.

[20] Id. at 302-305.

[21] Id. at 290-301.

[22] Id. at 306-310.

[23] Id. at 308-309.

[24] Id. at 49-50.

[25] Id. at 61-62.

[26] Records, Vol. XVII, pp. 269-273.

[27] Id. at 276-280.

[28] CA rollo, pp. 18-19.

[29] Id. at 35-36.

[30] Id. at 636-641.

[31] Records, Vol. XVII, pp. 283-285.

[32] Rollo, pp. 1374-1375.

[33] G.R. No. 158917, March 1, 2004, 424 SCRA 155, 161.

[34] The 60[th] day is February 1, 2004 which fell on a Sunday.

[35] Calinisan v. Court of Appeals, G.R. No. 158031, November 20, 2007, 537 SCRA 672, 678, citing Guaranteed Hotels, Inc. v. Baltao, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 746.

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