CHANG IK JIN, REPRESENTED BY HIS ATTORNEY-IN-FACT KIMAN CHANG, AND KOREAN CHRISTIAN BUSINESSMEN ASSOCIATION, INC., PETITIONERS, VS. CHOI SUNG BONG, RESPONDENT.

G.R. No. 166358. September 08, 2010

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-166358/

PERALTA, J.:

Assailed in this petition for review on certiorari are the November 27, 2003 Decision[1] and the November 30, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78809.

The antecedent facts are as follows:

Petitioner Korean Christian Businessmen Association, Inc. is the publisher of Korea Post, a Korean language newspaper printing current events and business news about Korea and the Philippines which are of general interest to the Korean community in Metro Manila. Korea Post is published weekly and distributed free of charge at selected restaurants, offices and areas frequented by Korean nationals in Metro Manila. Petitioner Chang Ik Jin is one of the incorporators of the said association, while respondent Choi Sung Bong is a Pastor of Caraan Church based in Parañaque City whose members are mostly Korean residents of Metro Manila.

On July 12, 2003, the Korean Union Church of Manila, Inc., represented by Chung Geun Park, filed before the Regional Trial Court (RTC) of Parañaque City, a complaint for damages and injunction with prayer for a temporary restraining order (TRO) against petitioners, docketed as CV-03-0346, raffled off to Branch 196. The complaint alleged among others that petitioners have been publishing the Korea Post in violation of the constitutional provisions barring foreigners from engaging in mass media; that it was prohibited by its Articles of Incorporation from engaging in mass media; that on May 3, 2003, the Korea Post published a defamatory article against the Korean Union Church of Manila causing besmirched reputation on its entire membership, thus, it sought the issuance of a TRO and a writ of preliminary injunction to stop the publication of the Korea Post. A TRO was issued effective for seventy-two hours. Later, the RTC issued an Order[3] dated July 22, 2003 denying the application for the writ of preliminary injunction. Subsequently, the Korean Union Church of Manila filed on August 1, 2003 a notice of dismissal, which the RTC granted in its Order dated August 5, 2003.

On July 23, 2003, herein respondent Choi Sung Bong filed with the RTC of Pasay City, a complaint for injunction and damages against petitioners, docketed as Civil Case No. 03-0347-CFM and was raffled off to Branch 118. The complaint sought the issuance of a TRO and a Writ of Preliminary Injunction and alleged that: (1) petitioners have been publishing the Korea Post in violation of the constitutional provisions barring foreigners from engaging in mass media; and (2) the Korea Post published defamatory articles against respondent Choi in its April 25 and May 9, 1998 issues, thus respondent Choi sought to stop the publication of the Korea Post.

On July 28, 2003, the RTC issued[4] a TRO directing petitioners to refrain, cease and desist from further publishing, distributing locally the Korea Post; and set the hearing on respondent's application for a writ of preliminary injunction on August 12, 2003.

On August 1, 2003, petitioners filed a Motion to Dismiss on the following grounds: (1) respondent Choi had validly waived his right to file action;(2) respondent Choi was guilty of laches; (3) the action had prescribed; and (4) respondent Choi had no cause of action. On August 6, 2003, petitioners filed a Supplement to the Motion to Dismiss on the ground of improper venue as respondent was not a resident of Pasay City.

During the August 12, 2003 hearing for the application of the Writ of Preliminary Injunction, respondent presented his evidence and after which the RTC ordered the parties to submit their Position Papers.

On August 15, 2003, respondent filed his Position Paper in support of his prayer for the issuance of a writ of preliminary injunction and petitioners filed a Position Paper (with Omnibus Motion to Dismiss and To Cite for Direct Contempt For Forum Shopping).

On August 18, 2003, the RTC issued an Order[5] granting the issuance of a Writ of Preliminary Injunction as follows:

> WHEREFORE, let a Writ of Preliminary Injunction be forthwith issued enjoining the defendants, their employees, or agents, and/or any individual, partnership or corporation acting for and in their behalf, to refrain, cease and desist from publishing, printing, [distributing] and circulating locally the Korea Post.
>
> Let the Branch Sheriff of RTC, Branch 119, and the Sheriff[,] Virgilio Villar[,] of the Office of the Clerk of Court, RTC, Pasay City, as they are hereby designated as Custodians of the equipments and machines located at 2750 South Avenue, Barangay Sta. Cruz, Makati City, used in the publication of the Korea Post, including but not limited to the computers, scanners, cameras, photocopying machines, typewriters, and or similar paraphernalia, such Custodians' authority being to see to it that the equipment so placed under their custody be not used for the purpose of publishing the Korea Post while the Preliminary Injunction is in force and effect. In this connection, plaintiff is hereby ordered to post injunction bond in the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) in favor of the defendants to answer for damages that may be sustained by the latter should it be found that plaintiff is not entitled to the relief prayed for.[6]

A writ of preliminary injunction was subsequently issued on the same day.[7]

On August 20, 2003, petitioners filed an Urgent Ex-Parte Motion to Resolve their Motion to Dismiss, Supplement to the Motion to Dismiss and the Omnibus Motion to Dismiss dated August 15, 2003. At the hearing held on August 21, 2003, the RTC ordered the parties to submit the appropriate pleadings, after which the Motion to Dismiss, shall be deemed submitted for resolution.

On August 27, 2003, petitioners filed with the CA a petition for certiorari and prohibition with urgent application for issuance of a TRO and or writ of preliminary injunction seeking to nullify and set aside for having been issued with grave abuse of discretion the following: (1) Order dated July 28, 2003, issuing the TRO directing petitioners to refrain from further publishing and circulating locally the Korea Post; (2) Order dated August 18, 2003, granting the issuance of the writ of preliminary injunction enjoining petitioners from publishing and circulating locally the Korea Post; and (3) the writ of preliminary injunction issued.

In a Resolution[8] dated September 4, 2003, the CA issued a TRO enjoining the RTC from implementing its Order dated August 18, 2003 as well as the issuance of the Writ of Preliminary Injunction.

On September 3, 2003, respondent filed before the CA a Manifestation that per sheriff's return dated August 29, 2003, the subject writ of preliminary injunction had already been served and implemented on August 19, 2003. On the same date, private respondent filed an Urgent Motion to Lift the TRO. The CA set the hearing of these incidents together with petitioners' prayer for the issuance of a writ of preliminary injunction. A hearing was conducted on September 23, 2003.

On November 27, 2003, the CA issued its assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the foregoing considered, the assailed Orders dated July 28, 2003 and August 18, 2003 are hereby REVERSED and SET ASIDE. The Writ of Preliminary Injunction in Civil Case No.03-0347-CM is hereby dissolved. Let this case be remanded to the Regional Trial Court of Pasay City, Branch 118, for further proceedings.[9]

The CA said that the issue to be resolved was whether the RTC properly issued the writ of preliminary injunction and found that it did not. The CA found that the RTC's action in deferring the resolution of petitioners' Motion to Dismiss and the subsequent pleadings relative thereto after the filing of the parties' Reply and Rejoinder but in the meantime granted respondent's application for a writ of preliminary injunction was not sanctioned by Section 3, Rule 16 of the Rules of Court; that under the Rules, the court, upon hearing a Motion to Dismiss, may dismiss the action or claim, deny the motion or order the amendment of the pleading but it is prohibited from deferring the resolution of the Motion to Dismiss for the reason that the ground relied upon is not indubitable; that the RTC was mandated to have first resolved the Motion to Dismiss before it issued the assailed writ of preliminary injunction, since the Motion to Dismiss raised the grounds of forum shopping and prescription among others, which, if found to be meritorious, would have resulted in the dismissal of the complaint and the preliminary injunction could not have been issued.

The CA found that the requisites for the issuance of injunction, to wit: (1) the complainant has a clear legal right; (2) that his right has been violated and the invasion is material and substantial; and (3) that there is an urgent and permanent necessity for the writ to prevent serious damage, were wanting in respondent's case. The CA said that the alleged articles being complained of by respondent were published on the April 25 and May 9, 1998 issues of Korea Post, thus, respondent failed to show that he was in imminent danger of sustaining an injury by reason of the continued publication of the Korea Post, as the articles being complained of were published in 1998; and there was no urgency or any irreparable injury which necessitated the issuance of a TRO/preliminary injunction, since there was no damage to prevent anymore as the alleged defamatory story was published in 1998. Thus, the RTC concluded that the issuance of the preliminary injunction was without basis and was tainted with grave abuse of discretion.

The CA did not rule on the other issues raised by petitioners in their petition, i.e, whether the RTC committed grave abuse of discretion by not dismissing the complaint based on its failure to state a cause of action, prescription of action for oral defamation and improper venue, as the CA believed that it would result in the pre-judgment of the main case when the question raised before the CA was the question of the propriety of the issuance of the writ of preliminary injunction.

The CA found no forum shopping as there was no identity of parties in the Parañaque case and the instant case; that the rights asserted in the two cases were different although the reliefs prayed for against petitioners were the same, since both cases prayed to permanently stop the publication and circulation of the Korea Post newspaper and to pay damages; that the judgment in one case would not amount to res judicata in the other case since the plaintiffs in both cases are different.

Petitioners filed a Motion for Partial Reconsideration and/or Supplemental Petition insofar as the CA did not order the dismissal of the case before the RTC but instead ordered the remand of the case for further proceedings. Petitioners alleged that while the Motion to Dismiss remained unresolved at the time of the filing of the petition for certiorari and prohibition with the CA, however, the RTC subsequently issued its Order on September 11, 2003 already denying petitioners' Motion to Dismiss; hence the filing of the Supplemental Petition with the CA.

On November 30, 2004, the CA issued a Resolution denying the Motion for Partial Reconsideration and/or

Supplemental Petition.

Hence, petitioners filed this petition for review on certiorari raising the issue of:

> WHETHER OR NOT THE COURT OF APPEALS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT BY DENYING PETITIONERS' MOTION FOR PARTIAL RECONSIDERATION AND/OR SUPPLEMENTAL PETITION AND HOLDING THAT TO TACKLE OTHER ISSUES RAISED BY PETITIONERS WOULD RESULT IN THE COURT OF APPEALS' ACTING ULTRA JURISDICTIO.[10]

The issue for resolution is whether the CA erred when it did not rule on the issues of prescription, failure to state a cause of action and improper venue which petitioners raised in their petition filed with the CA.

We find no merit in the petition.

In its assailed decision, the CA found that the RTC committed grave abuse of discretion when it issued the writ of preliminary injunction without first resolving petitioners' Motion to Dismiss and that there was also no basis for the issuance of the writ. While petitioners raised the issues on whether the RTC committed a grave abuse of discretion by not dismissing the complaint based on (a) the complaint's failure to state a cause of action, (b) prescription of action for oral defamation, and (c) improper venue, the CA did not tackle these issues for to do so would dispose of the main case without trial and would result in the pre-judgment of the main case when the Order sought by petitioners to be annulled in the CA pertained only to the propriety of the issuance of the writ of preliminary injunction. Petitioners then filed their Motion for Partial Reconsideration and/or Supplemental Petition, since the CA did not order the dismissal of the case but directed the remand of the same to the RTC for further proceedings. Petitioners then argued that the CA set aside the writ of preliminary injunction on the ground, among others, that the RTC's issuance of the writ was done without first resolving the Motion to Dismiss. However, the RTC had subsequently issued an Order dated September 11, 2003 denying petitioners' Motion to Dismiss; thus, the CA should have extended their certiorari proceedings to review whether the RTC gravely abused its discretion in denying petitioners' Motion to Dismiss. The CA denied petitioners' Motion for Partial Reconsideration and/or Supplemental Petition.

We found no reversible error committed by the CA.

Petitioners would like the CA to review the RTC Order dated September 11, 2003 denying their Motion to Dismiss by way of a Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA decision which found the impropriety of the issuance of the preliminary injunction. This cannot be done. The ordinary procedure, as a general rule, is that after the denial of a Motion to Dismiss, the defendant should file an Answer, go to trial and, if the decision is adverse, reiterate the issues on appeal. The exception is when the court denying the Motion to Dismiss acted without or in excess of jurisdiction or with grave abuse of discretion in which case certiorari under Rule 65 of the Rule of Court may be availed of.[11] Thus, if petitioners believe that the issuance of the Order denying their Motion to Dismiss was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, they could have filed a separate petition for certiorari and assailed such Order but not in the Motion for Partial Reconsideration.

Under Section 4, Rule 65[12] of the Rules of Court, petitioners have 60 days from receipt of the Order denying their Motion to Dismiss to file the petition. Here, petitioners received the Order dated September 11, 2003 on September 25, 2003; thus, the 60 days from receipt of the order would be on November 25, 2003. Petitioners did not file a petition for certiorari assailing the Order denying their Motion to Dismiss within the reglementary period, but instead waited until the CA, where petitioners filed a petition for certiorari assailing the RTC's issuance of the preliminary injunction, issued its assailed decision on November 27, 2003, a copy of which

petitioners received on December 4, 2003. Petitioners then filed their Motion for Partial Reconsideration and/or Supplemental Petition of the CA Decision on December 19, 2003 where they mentioned about the RTC Order denying their Motion to Dismiss and claimed that the CA's certiorari jurisdiction could be extended to review whether the RTC gravely abused its discretion or exceeded its jurisdiction in denying their Motion to Dismiss.

Petitioners' procedural shortcut cannot be countenanced. The period within which to file a petition for certiorari to assail the RTC's denial of petitioners' Motion to Dismiss had already lapsed on November 25, 2003, thus, petitioners' filing of their Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA Decision on December 19, 2003 and sought the resolution of whether the RTC gravely abused its discretion when it denied their Motion to Dismiss would indeed extend the period to assail such Order.

Petitioners argue that the RTC's issuance of the writ of preliminary injunction had already amounted to the denial of petitioners' Motion to Dismiss; that even during the August 21, 2003 hearing in the RTC, both parties through their respective counsels had confirmed that the issuance of the writ of preliminary injunction had effectively denied petitioners' Motion to Dismiss, thus the CA erred in its decision when it refused to tackle the issues of the complaint's failure to state a cause of action, prescription and forum shopping saying that it would result in the pre-judgment of the main case.

We do not agree.

Petitioners' assumption that the RTC's issuance of the writ of preliminary injunction had already amounted to the denial of petitioners' Motion to Dismiss has no basis, since at the time the writ was issued on August 18, 2003, there was still no Order resolving petitioners' Motion to Dismiss. In fact, after the issuance of the writ, petitioners had even filed an Urgent Motion to Resolve (petitioners' Motion to Dismiss dated August 1, 2003, Supplement to Motion to Dismiss dated August 6, 2003 and Omnibus Motion to Dismiss dated August 15, 2003). Moreover, in the hearing dated August 21, 2003, the RTC required petitioners to submit their Rejoinder to the Motion to Dismiss and for respondent to file a Reply thereto after which the Motion to Dismiss shall be deemed submitted for resolution.[13] Thus, it was clearly shown that the Motion to Dismiss was not yet decided upon by the RTC. The CA was correct when it did not rule on those issues even when petitioners raised them in their petition with the CA, since to do so would be overstepping its boundaries since the Motion to Dismiss was not yet decided at the time the petition was filed.

Petitioners contend that the CA's finding that the RTC should have first resolved the Motion to Dismiss before issuing the Order granting the writ of preliminary injunction had been mooted by the RTC's subsequent denial of the Motion to Dismiss, thus, the CA could determine the merits of petitioners' claim regarding prescription, failure to state a cause of action and improper venue.

We are not persuaded.

While the RTC subsequently issued an Order denying petitioners' Motion to Dismiss, such Order cannot be raised in petitioners' Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA Decision dated November 27, 2003 without violating procedural rules. Also, the CA's ruling on the impropriety of the RTC's issuance of the preliminary injunction was not solely based on the RTC's failure to first resolve the Motion to Dismiss but the CA also found the absence of the requisites for the issuance of the writ. More importantly, the Order dated September 11, 2003 denying petitioners' Motion to Dismiss was distinct from the RTC Order dated August 18, 2003 which directed the issuance of the writ of preliminary injunction and which latter Order was the only Order which petitioners sought to annul in their petition filed with the CA. Thus, we find no error committed by the CA for not ruling on the issues of prescription, failure to state a cause of action and improper venue.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

WHEREFORE, the Petition is DENIED. The Decision and Resolution of the Court of Appeals, dated November 27, 2003 and November 30, 2004, respectively, in CA-G.R. SP. No. 78809 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

---

[1]Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Salvador J. Valdez, Jr. and Arturo D. Brion (now a member of this Court), concurring; rollo, pp. 54-66.

[2] Id. at 68.

[3]Per Judge Brigido Artemon M. Luna II, the Presiding Judge of Branch 196, RTC, Parañaque City; rollo, pp. 109-110.

[4] CA rollo, pp. 48-49; Per Judge Pedro de Leon Gutierrez.

[5] Rollo, pp. 278-281.

[6] Id. at 281.

[7] Id. at 282-283.

[8][ ]Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr., concurring; id. at 367.

[9] Rollo, p. 66.

[10] Id. at 541-542.

[11] Drilon v. Court of Appeals, 336 Phil. 949, 962 (1997).

[12]Section 4, Rule 65 as amended by A.M. No. 00-2-03-SC, provides:

SEC. 4. When and where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

[13] TSN, August 21, 2003, pp. 21-22.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.