BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. HON. COURT OF APPEALS, HON. ROMEO BARZA, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BR. 6...

G.R. No. 168313. October 06, 2010

Ponente: BRION, J.

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BRION, J.:

Through the present petition for review on certiorari,[1] petitioner Bank of the Philippine Islands (BPI) seeks the reversal of: (1) the Court of Appeals (CA) decision of November 2, 2004,[2] in "Bank of the Philippine Islands v. Hon. Romeo Barza, et al." docketed as CA-G.R. SP No. 75350 and (2) the CA resolution of May 25, 2005[3] denying BPI's Motion for Reconsideration. The assailed CA ruling affirmed the Order of the Regional Trial Court (RTC) of Makati City, Branch 61 dated August 26, 2002,[4] granting First Union Group Enterprises (First Union) and Linda Wu Hu's (Linda) Motion to Dismiss dated March 26, 2002. A subsequent Motion for Reconsideration was likewise denied.[5]

THE FACTUAL ANTECEDENTS

First Union borrowed from BPI the sums of Five Million Pesos (PhP5,000,000.00) and One Hundred Twenty Thousand U.S. Dollars and 32 cents (USD123,218.32), evidenced by separate promissory notes.[6]

As partial security for the loan obligations of First Union, defendant Linda and her spouse (Eddy Tien) executed a Real Estate Mortgage Agreement dated August 29, 1997,[7] covering two (2) condominium units. Linda executed a Comprehensive Surety Agreement dated April 14, 1997[8] where she agreed to be solidarily liable with First Union for its obligations to BPI.

Despite repeated demands to satisfy the loan obligations upon maturity, First Union failed to pay BPI the amounts due.

On October 16, 2000, BPI initiated with the Office of the Sheriff of the RTC of Pasig extra-judicial foreclosure proceedings against the two (2) mortgaged condominium units to satisfy First Union and Linda's solidary obligations.

After due notice and publication, the properties were sold at public auction on June 29, 2001.[9] BPI was the highest bidder, having submitted a bid of Five Million Seven Hundred Ninety Eight Thousand Four Hundred Pesos (PhP5,798,400.00). The proceeds of the auction sale were applied to the costs and expenses of foreclosure, and thereafter, to First Union's obligation of Five Million Peso (PhP5,000,000.00). After so applying the proceeds, First Union still owed BPI a balance of Four Million Seven Hundred Forty Two Thousand Nine Hundred Forty Nine & 32/100 Pesos (PhP4,742,949.32), inclusive of interests and penalty charges, as of December 21, 2001.[10] Additionally, First Union's foreign currency loan obligation remained unpaid and, as of December 21, 2001,

amounted to One Hundred Seventy Five Thousand Three Hundred Twenty Four Thousand & 35/100 US Dollars (USD175,324.35), inclusive of interest and penalty charges.

The Complaint for Collection
of Sum of Money

First Union's and Linda's continued failure to settle their outstanding obligations prompted BPI to file, on January 3, 2002, a complaint for collection of sum of money with the RTC of Makati City, Branch 61.[11] The complaint's verification and certificate of non-forum shopping were signed by Ma. Cristina F. Asis (Asis) and Kristine L. Ong (Ong). However, no Secretary's Certificate or Board Resolution was attached to evidence Asis' and Ong's authority to file the complaint.

On April 1, 2002, First Union and Linda filed a motion to dismiss[12] on the ground that BPI violated Rule 7, Section 5 of the Rules of Civil Procedure (Rules); BPI failed to attach to the complaint the necessary board resolution authorizing Asis and Ong to institute the collection action against First Union and Linda.[13]

On August 7, 2002, BPI filed an "Opposition to the Motion to Dismiss,"[14] arguing that the verification and certificate of non-forum shopping sufficiently established Asis' and Ong's authority to file the complaint and proof of their authority could be presented during the trial. Further, BPI alleged that a complaint "can only be dismissed under Section 5, Rule 7 of the 1997 Rules of Civil Procedure if there was no certification against forum shopping." The provision, according to BPI, "does not even require that the person certifying should show proof of his authority to do so."[15]

Instead of submitting a board resolution, BPI attached a "Special Power of Attorney" (SPA) dated December 20, 2001 executed by Zosimo A. Kabigting (Zosimo), Vice-President of BPI.[16] The SPA authorized Asis and Ong or any lawyer from the Benedicto Versoza Gealogo and Burkley Law Offices to initiate any legal action against First Union and Linda.

In their Comment[17] to BPI's Opposition, First Union and Linda challenged BPI's reading of the law, charging that it lacked jurisprudential support.[18] First Union and Linda argued, invoking Public Estates Authority v. Elpidio Uy,[19] that "an initiatory pleading which does not contain a board resolution authorizing the person to show proof of his authority is equally guilty (sic) of not satisfying the requirements in the Certification against Non-Forum Shopping. It is as if though (sic) no certification has been filed."[20] Thus, according to First Union and Linda, BPI's failure to attach a board resolution "shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice x x x."[21] First Union and Linda likewise questioned the belated submission of the SPA, which in any case, "is not the board resolution envisioned by the rules since the plaintiff herein is a juridical person."[22]

BPI's Reply[23] to the Comment argued that the cited Public Estates Authority case is not authoritative since "what is proscribed is the absence of authority from the board of directors, not the failure to attach the board resolution to the initiatory pleading."[24] BPI contended that the "primary consideration is whether Asis and Ong were authorized by BPI, not the failure to attach the proof of authority to the complaint."[25] BPI also begged the "kind indulgence of the Honorable Court as it inadvertently failed to submit with the Special Power of Attorney the Corporate Secretary's Certificate which authorized Mr. Zosimo Kabigting to appoint his substitutes."[26]

On August 22, 2002, the RTC issued its assailed Order[27] granting First Union's and Linda's Motion to Dismiss.[28] The trial court denied BPI's Motion for Reconsideration[29] on November 13, 2002.[30]

Proceedings before the CA

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BPI, on February 5, 2003, filed a petition for certiorari[31] under Rule 65 of the Rules of Court before the CA. It alleged that that lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint despite the submission of the SPA and the Corporate Secretary's Certificate.[32]

In their Comment to the petition,[33] First Union and Linda submitted that the petition is an improper remedy since an order granting a motion to dismiss is not interlocutory. They contended that the dismissal is final in nature; hence, an appeal, not a petition for certiorari under Rule 65, is the proper recourse.

The CA disagreed with First Union and Linda's contention. The assailed order, according to the CA, categorically stated that the dismissal of the complaint was without prejudice.[34] As a dismissal without prejudice, the order is interlocutory in nature and is not a final order.[35]

The CA, however, found that BPI failed to comply with the procedural requirements on non-forum shopping.[36] Citing Sec. 5, Rule 7 of the Rules of Court, the CA ruled that the requirement that a petition should sign the certificate of non-forum shopping applies even to corporations since the Rules of Court do not distinguish between natural and civil persons.[37] Digital Microwave Corp. v. Court of Appeals, et al.[38] holds that "where a petitioner is corporation, the certification against forum shopping should be signed by its duly authorized director or representative."

While the CA did not question the authority of Asis and Ong as bank representatives, the Bank however failed to show - through an appropriate board resolution - proof of their authority as representatives. To the CA, this failure warranted the dismissal of the complaint.[39]

The CA lastly refused to accord merit to BPI's argument that it substantially complied with the requirements of verification and certification; BPI only submitted the SPA and the Board Resolution after it had filed the complaint.[40]

THE PETITIONER'S ARGUMENTS

BPI maintains in the present petition that it attached a verification and certificate of non-forum shopping to its complaint. Contesting the CA's interpretation of Shipside v. Court of Appeals,[41] it argues that the Supreme Court actually excused Shipside's belated submission of its Secretary's Certificate and held that it substantially complied with the rule requiring the submission of a verification and certificate of non-forum shopping as it did, in fact, make a submission. From this starting point, it now asks the Court to excuse its belated submission.[42]

BPI likewise contends that it is in a better position than the petitioner in Shipside because the latter only submitted a secretary's certificate while it submitted a special power attorney signed by Zosimo. On this same point, BPI also cites General Milling Corporation v. National Labor Relations Commission[43] where the Court held that General Milling's belated submission of a document to prove the authority of the signatories to the verification and certificate of non-forum shopping was substantial compliance with Rules of Court.

BPI finally urges the Court to reverse and set aside the Decision of the CA and to remand the case to the RTC of Makati City for further proceedings under the principle that "technicality should not defeat substantial justice."[44]

THE RESPONDENT'S ARGUMENTS

In their Memorandum dated September 25, 2009,[45] First Union and Linda allege that BPI's "position on the submission of the Board Resolution has been one of defiance."[46] BPI's failure to submit the required board resolution is not an inadvertence but a wilful disregard of the Rules and a blatant refusal to heed the order of the

RTC. First Union and Linda point to BPI's opposition to the Motion to Dismiss as proof of BPI's wilful disregard. BPI argued in this opposition that (1) the Rules do not require the presentation of a board resolution, and (2) proof of such authority need not be attached to the initiatory pleading but can be presented during trial.[47]

Further, instead of submitting a board resolution, BPI submitted a special power of attorney.[48] It was only after First Union and Linda pointed out that the submitted special power of attorney cannot bind a juridical entity did BPI change its position. Only then did BPI claim that it merely inadvertently failed to submit the required secretary's certificate.[49]

This belated change of position, according to First Union and Linda, does not entitle BPI to the jurisprudential exception established by the Court in Shipside where the Court held that the relaxation of the rule requiring verification and certification of non-forum shopping is only for "special circumstances or compelling reasons."[50]

THE COURT'S RULING

We rule in the respondents' favor.

This Court has repeatedly emphasized the need to abide by the Rules of Court and the procedural requirements it imposes. The verification of a complaint and the attachment of a certificate of non-forum shopping are requirements that - as pointed out by the Court, time and again - are basic, necessary and mandatory for procedural orderliness.

Thus, we cannot simply and in a general way apply - given the factual circumstances of this case - the liberal jurisprudential exception in Shipside and its line of cases to excuse BPI's failure to submit a board resolution. While we may have excused strict compliance in the past, we did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping. In other words, the rule for the submission of a certificate of non-forum shopping, proper in form and substance, remains to be a strict and mandatory rule; any liberal application has to be justified by ample and sufficient reasons that maintain the integrity of, and do not detract from, the mandatory character of the rule.

The rule, its relaxation and their rationale were discussed by the Court at length in Tible & Tible Company, Inc. v. Royal Savings and Loan Association[51] where we said:

> Much reliance is placed on the rule that "Courts are not slaves or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on balance, technicalities take a backseat against substantive rights, and not the other way around." This rule must always be used in the right context, lest injustice, rather than justice would be its end result.
>
> It must never be forgotten that, generally, the application of the rules must be upheld, and the suspension or even mere relaxation of its application, is the exception. This Court previously explained:
>
> The Court is not impervious to the frustration that litigants and lawyers alike would at times encounter in procedural bureaucracy but imperative justice requires correct observance of indispensable technicalities precisely designed to ensure its proper dispensation. It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.
>
> Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form

> and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.
>
> It cannot be overemphasized that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality. We have been cautioned and reminded in Limpot v. Court of Appeals, et al., that:
>
> Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to propose that substantive law and adjective law are contradictory to each other or, as often suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.
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> x x x x
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> x x x (T)hey are required to be followed except only when for the most persuasive of reasons them may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy.

In particular, on the matter of the certificate of non-forum shopping that was similarly at issue, Tible[52] pointedly said:

> x x x the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of said Circular clearly unjustified or inequitable. x x x [Emphasis supplied.]

This same rule was echoed in Mediserv v. Court of Appeals[53] where we said in the course of allowing a liberal justification:

> It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and connotes at least a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical sense; they are used only to help secure substantial justice. [Emphasis supplied.]

To be sure, BPI's cited Shipside case also involved the absence of proof - attached to the petition - that the filing officer was authorized to sign the verification and non-forum shopping certification. In the Motion for Reconsideration that followed the dismissal of the case, the movant attached a certificate issued by its board secretary stating that ten (10) days prior to the filing of the petition, the filing officer had been authorized by petitioner's board of directors to file said petition. Thus, proper authority existed but was simply not attached to the petition. On this submission, the petitioner sought and the Court positively granted relief.

In the present case, we do not see a situation comparable to the cited Shipside. BPI did not submit any proof of authority in the first instance because it did not believe that a board resolution evidencing such authority was necessary. We note that instead of immediately submitting an appropriate board resolution - after the First Union

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and Linda filed their motion to dismiss - BPI argued that it was not required to submit one and even argued that:

> The Complaint can only be dismissed under Section 5, Rule 7 of the 1997 Rules of Civil Procedure if there was no certification against forum shopping. The Complaint has. The provision cited does not even require that the person certifying show proof of his authority to do so x x x.[54]

In fact, BPI merely attached to its opposition a special power of attorney issued by Mr. Kabigting, a bank vice-president, granting Asis and Ong the authority to file the complaint. Thus, no direct authority to file a complaint was initially ever given by BPI - the corporate entity in whose name and behalf the complaint was filed. Only in its Reply to the Comment to plaintiff's Opposition to the Motion to Dismiss did BPI "beg the kind indulgence of the Honorable Court as it inadvertently failed to submit with the Special Power of Attorney the Corporate Secretary's Certificate which authorized Mr. Zosimo Kabigting to appoint his substitutes."[55] Even this submission, however, was a roundabout way of authorizing the filing officers to file the complaint.

BPI, interestingly, never elaborated nor explained its belatedly claimed inadvertence in failing to submit a corporate secretary's certificate directly authorizing its representatives to file the complaint; it particularly failed to specify the circumstances that led to the claimed inadvertence. Under the given facts, we cannot but conclude that, rather than an inadvertence, there was an initial unwavering stance that the submission of a specific authority from the board was not necessary. In blunter terms, the omission of the required board resolution in the complaint was neither an excusable deficiency nor an omission that occurred through inadvertence. In the usual course in the handling of a case, the failure was a mistake of counsel that BPI never cared to admit but which nevertheless bound it as a client. From this perspective, BPI's case is different from Shipside so that the ruling in this cited case cannot apply.

Under the circumstances, what applies to the present case is the second paragraph of Section 5, Rule 7 of the Rules of Court which states:

> 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 after hearing.

We thus hold that the dismissal of the case is the appropriate ruling from this Court, without prejudice to its refiling as the Rules allow.

We end this Decision by quoting our parting words in Melo v. Court of Appeals:[56]

> We are not unmindful of the adverse consequence to private respondent of a dismissal of her complaint, nor of the time, effort, and money spent litigating up to this Court solely on a so-called technical ground. Nonetheless, we hold that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined.

WHEREFORE, we DENY the petitioner's petition for review on certiorari, and AFFIRM the decision dated November 2, 2004 of the Court of Appeals, in Bank of the Philippine Islands v. Hon. Romeo Barza, et al. (CA-G.R. SP No. 75350), and the subsequent resolution dated May 25, 2005[57] denying BPI's Motion for Reconsideration. The complaint filed against the respondents is DISMISSED without prejudice. Costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), [*]Del Castillo, Villarama, Jr., and Sereno, JJ., cocnur.

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[*] Designated Additional Member per Raffle dated October 4, 2010 vice Associate Justice Lucas P. Bersamin who concurred in the assailed CA decision.

[1] Filed under Rule 45 of the Rules of Court, rollo p. 9

[2] Id. at 40; penned by Associate Justice Josefina Guevara-Salonga; concurred in by Associate Justices Roberto A. Barrios and Lucas P. Bersamin, now a member of the Court.

[3] Id. at 48.

[4] Id. at 131.

[5] The RTC denied the subsequent Motion for Reconsideration on November 13, 2002, id. at 162.

[6] Id. at 78-91.

[7] Id. at 186.

[8] Id. at 182.

[9] Id. at 192-194.

[10] According to the Complaint, id. at 74.

[11] Id. at 72-77.

[12] Id. at 108-110.

[13] Id.

[14] Id. at 113-116.

[15] Id. at 113-114.

[16] Id. at 117.

[17] Dated August 14, 2002, id. at 208.

[18] Id. at 119.

[19] G.R. Nos. 147933-34, December 12, 2001, 372 SCRA 180.

[20] Rollo, p. 120.

[21] Id. at 121.

[22] Id.

[23] Dated August 20, 2002, id. at 124.

[24] Id.

[25] Id.

[26] Id. at 125.

[27] Id. at 131-133.

[28] Id. at 133.

[29] Dated September 23, 2002, id. at 134-137.

[30] Id. at 141.

[31] Id. at 142-154.

[32] Id. at 147-152.

[33] Id. at 233-241.

[34] Id. at 42.

[35] Id. at 42-43, citing Sec. 1, Rule 41, Rules of Court and Casapunan v. Laroya, G.R. No. 145391, August 26, 2002, 388 SCRA 28.

[36] Id. at 43.

[37] Id. at 44, citing Zulueta v. Asia Brewery, G.R. No. 138137, March 8, 2001, 354 SCRA 100.

[38] G.R. No. 128550, March 16, 2000, 328 SCRA 286.

[39] Rollo, p. 45.

[40] Id.

[41] February 20, 2001, G.R. No. 143377, 352 SCRA 334.

[42] Rollo, p. 22.

[43] G. R. No. 153199, December 17, 2002, 394 SCRA 207.

[44] Rollo, pp. 28-29.

[45] Id. at 401-409.

[46] Id. at 403.

[47] Id. at 404.

[48] Id.

[49] Id. at 405.

[50] Id.

[51] G.R. No. 155806, April 08, 2008, 550 SCRA 562, 580-581.

[52] Id. at 579.

[53] G.R. No. 161368, April 5, 2010.

[54] Rollo, pp. 203-204.

[55] Id. at 214.

[56] G.R. No. 123686, November 16, 1999, 318 SCRA 94, 105.

[57] Rollo, p. 48.

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