

**SPOUSES FRANCISCO DE GUZMAN, JR. AND AMPARO O. DE GUZMAN,
PETITIONERS, VS. CESAR OCHOA AND SYLVIA A. OCHOA,
REPRESENTED BY ARACELI S. AZORES, AS THEIR
ATTORNEY-IN-FACT, RESPONDE...**

G.R. No. 169292. April 13, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari assailing the August 11, 2005 Decision[1] of the Court of Appeals (CA), in CA-GR. SP No. 89329, filed by petitioners, Spouses Francisco De Guzman, Jr. and Amparo O. De Guzman (petitioners). In the assailed decision, the CA found no commission of grave abuse of discretion when the public respondent therein, Judge Amelia A. Fabros (Judge Fabros), Presiding Judge of the Regional Trial Court, Pasig City, Branch 160 (RTC), denied petitioners' second motion to dismiss, in Civil Case No. 68896, an action for annulment of contract and damages.

The facts of the case have been succinctly summarized by the CA as follows:

On March 25, 2002, respondent spouses Cesar Ochoa and Sylvia Ochoa, through respondent Araceli Azores, ostensibly acting as attorney-in-fact, commenced in the Regional Trial Court (RTC) in Pasig City an action seeking the annulment of contract of mortgage, foreclosure sale, certificate of sale and damages. The action, docketed as Civil Case No. 68896 and entitled Cesar Ochoa and Sylvia A. Ochoa, etc. v. Josefa M. Guevarra, et al., was raffled to Branch 160, presided by the respondent RTC Judge.

On May 22, 2002, the petitioners, as defendants in Civil Case No. 68896, filed a motion to dismiss, alleging the sole ground that the complaint did not state a cause of action. The petitioners' motion to dismiss was formally opposed by the private respondents.

On December 16, 2002, the respondent RTC Judge denied petitioners' motion to dismiss and at the same time set Civil Case No. 68896 for pre-trial conference, directing the parties to submit their respective pre-trial briefs.

On March 31, 2003, the petitioners filed a second motion to dismiss, alleging that the certification against forum shopping attached to the complaint was not executed by the principal parties (plaintiffs) in violation of Sec. 5, Rule 7, 1997 Rules of Civil Procedure, rendering the complaint fatally defective and thus dismissible.

The private respondents opposed the second motion to dismiss.

On February 12, 2004, the respondent RTC Judge issued her first assailed order, denying the second motion to dismiss, disposing thus:

xxx

Inasmuch as the records show that the pending incident is the second motion to dismiss filed by the defendants, the same is hereby Denied for lack of merit.

SO ORDERED.

On May 25, 2004, the petitioners filed their motion for reconsideration, but the respondent RTC Judge denied the motion through her second assailed order dated December 29, 2004, to wit:

Acting on the Motion for Reconsideration (of the Order dated February 12, 2004, filed by the defendant Spouses Francisco and Amparo De Guzman, through counsel, on May 25, 2004, and after considering the grounds stated therein in support of their motion, and finding no cogent reason to warrant the reconsideration sought for, the motion is DENIED.

SO ORDERED.[2]

Aggrieved, petitioners elevated the order of denial to the CA via a petition for certiorari contending that the RTC should have dismissed the complaint *motu proprio* since it was fatally defective. They pointed out that the Verification and Certification of Non-Forum Shopping attached to the complaint was not signed by Cesar Ochoa or Sylvia Ochoa but by Araceli S. Azores (Azores), who was acting as the attorney-in-fact of Cesar Ochoa only. They invited the attention of the RTC to the fact that the powers delegated to Azores did not include the authority to institute an action in court. Thus, according to the petitioners, the denial by the RTC of their motion to dismiss was capricious, whimsical and arbitrary, amounting to lack or excess of jurisdiction and should be struck down as null and void.

On August 11, 2005, the CA denied the petition for lack' of merit. The CA, in its decision, agreed with the RTC that following the omnibus motion rule, the defects of the complaint pointed out by the petitioners were deemed waived when they failed to raise it in their first motion to dismiss.

Not in conformity, the petitioners filed this petition for review under Rule 45, anchored on this:

GROUND

THE COURT A QUO DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN IT REFUSED TO DISMISS, THE COMPLAINT DESPITE THE FACT THAT IT WAS INDUBITABLY SHOWN AND ESTABLISHED THAT THE ESSENTIAL REQUIREMENT OF CERTIFICATION OF NON-FORUM SHOPPING PURSUANT TO SECTION 5, RULE 7 OF THE RULES OF COURT WAS NOT OBSERVED AND COMPLIED WITH SINCE THE SAME WAS NOT ACCOMPLISHED PERSONALLY BY THE PURPORTED PLAINTIFFS THEREIN.

It is the position of the petitioners that the second motion to dismiss does not violate the Omnibus Motion Rule under Section 8, Rule 15 of the Rules of Court because the issue raised in the second motion was a question of jurisdiction. For said reason, the matter of the defective verification and certification cannot be considered to have been waived when it was not interposed at the first instance. Considering that the issue is jurisdictional, the RTC should have dismissed the complaint *motu proprio*.

The Court disagrees with the petitioners.

An order denying a motion to dismiss is an interlocutory order which neither terminates the case nor finally disposes of it, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[3]

Therefore, an order denying a motion to dismiss may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in such cases is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.[4]

Only in exceptional cases where the denial of the motion to dismiss is tainted with grave abuse of discretion that the Court allows the extraordinary remedy of certiorari. By "grave abuse of discretion," we mean such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[5][[]]

In this case, the petitioners failed to convincingly substantiate its charge of arbitrariness on the part of Judge Fabros. Absent such showing of arbitrariness, capriciousness, or ill motive, the Court cannot but sustain the ruling of the CA.

Section 8, Rule 15 of the Rules of Court defines an omnibus motion as a motion attacking a pleading, judgment or proceeding. A motion to dismiss is an omnibus motion because it attacks a pleading, that is, the complaint. For this reason, a motion to dismiss, like any other omnibus motion, must raise and include all objections available at the time of the filing of the motion because under Section 8, "all objections not so included shall be deemed waived." As inferred from the provision, only the following defenses under Section 1, Rule 9, are excepted from its application: [a] lack of jurisdiction over the subject matter; [b] there is another action pending between the same parties for the same cause (litis pendentia); [c] the action is barred by prior judgment (res judicata); and [d] the action is barred by the statute of limitations or prescription.

In the case at bench, the petitioners raised the ground of defective verification and certification of forum shopping only when they filed their second motion to dismiss, despite the fact that this ground was existent and available to them at the time of the filing of their first motion to dismiss. Absent any justifiable reason to explain this fatal omission, the ground of defective verification and certification of forum shopping was deemed waived and could no longer be questioned by the petitioners in their second motion to dismiss.

Moreover, contrary to petitioners' assertion, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, and non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. In fact, the court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[6]

Similarly, the rule requiring the submission of such certification of non-forum shopping, although obligatory, is not jurisdictional.[7] The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this Q practice is detrimental to an orderly judicial procedure.[8]

As to whether the trial court should have dismissed the complaint *motu proprio*, the Court rules in the negative. Section 5, Rule 7 of the Rules of Court is clear that failure to comply with the requirements on the rule against forum shopping shall be cause for the dismissal of the case "upon motion and after hearing."

WHEREFORE, the petition is DENIED.

SO ORDERED.

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

[1] Penned by Associate Justice Lucas P. Bersamin (now an Associate Justice of the Court), with Associate Justice Andres B. Reyes and Associate Justice Celia C. Librea-Leagogo. concurring; rollo, pp. 3S-43.

[2] Id. at 96-97.

[3] Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation, 507 Phil. 631, 645 (2005).

[4] Negros Merchants Enterprises, Inc. v. China Banking Corporation. G.R. No. 150918, August 17, 2007, 530 SCRA 478, 485.

[5] Supra note 3.

[6] Mediserve, Inc. v. Court of Appeals (Special Former 13[th] Division) and Landheights Development Corporation, 404 Phil. 981, 994-995 (2001). citing Shiptside Incorporated v. Court of Appeals.

[7] Ateneo de Naga University v. Manalo, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

[8] Torres v. Specialized Packaging Development Corporation, G.R. No. 149634, July 6, 2004. 433 SCRA 455,463.

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