

NELLY BAUTISTA, PETITIONER, VS. SERAPH MANAGEMENT GROUP, INC. RESPONDENT.*G.R. No. 174039. June 29, 2010*

Ponente: CARPIO MORALES, J.

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Nelly Bautista (petitioner) is one of the incorporators of Seraph Management Group, Inc. (respondent), a domestic corporation developing and managing resorts. On June 20, 2003, she filed an intra-corporate suit denominated as a complaint[1] against respondent and its President/Chief Executive Officer Min Sung Cho (Cho) before the Regional Trial Court (RTC) in Kalibo, Aklan, praying that she be allowed to inspect the corporate books and records and that she be furnished the company's latest financial statement.

Petitioner alleged that since the incorporation of the company, there had been no meeting of the stockholders, contrary to the provision of its by-laws that there would be such a meeting every June, and no monthly directors' meeting had also been held; that she, through counsel, wrote[2] respondent to call for such meeting to determine the directors' salary, elect officers, declare dividends and discuss the possibility of charging Cho who had at the time a pending criminal case for frustrated murder; that she offered[3] for sale her 4,500 shares with par value of P100.00 per share, but respondent was only willing to buy it for P200,000.00; that as she did not receive any positive response to her requests, she wrote Cho on June 17, 2003[4] asking that she be allowed to inspect the books and be furnished a copy of the latest financial statements, but was refused, prompting her to file the complaint.

In its Answer,[5] respondent contended that petitioner had no right of inspection since at the time of the filing of the complaint on June 20, 2003, she was no longer a stockholder, she having executed in favor of Cho a Deed of Assignment[6] dated October 1, 2001 waiving and transferring her rights to her shares.

In her Reply and Counterclaim,[7] petitioner branded the Deed as a forgery, claiming that she could not have assigned her shares to Cho, a Korean national, without violating the [60]/40 Filipino ownership requirement for domestic corporations.

By Order[8] dated October 14, 2003, Branch 8 of the Kalibo RTC dismissed the complaint due to improper venue as petitioner failed to show that the principal address of respondent had indeed been changed from Makati City to Malay, Aklan.

Petitioner appealed to the Court of Appeals the trial court's dismissal of her complaint during the pendency of which she, by herself, filed before the trial court a manifestation with motion relieving her counsel, Atty. Mariano Pefianco (Atty. Pefianco), and asking that the appeal be dismissed because she had already entered into a Compromise Agreement[9] with respondents. The trial court denied petitioner's manifestation due to loss of jurisdiction.

Petitioner thus filed the Manifestation with motion[10] with the appellate court which, by Resolution[11] of

September 7, 2005, noted and granted the same. It accordingly dismissed her appeal. Petitioner, through Atty. Pefianco, filed a motion for reconsideration[12] of the said Resolution, averring that petitioner was a battered common law wife of Cho, was subjected to pressure and harassment and was forced to sign the compromise agreement; and that the compromise agreement should not have been relied upon by the appellate court in dismissing the appeal because it is contrary to law, morals and public policy as it resulted in the dismissal of ten cases involving petitioner and Cho.

By Resolution[13] of October 28, 2005, the appellate court required petitioner to personally comment on the motion for reconsideration to determine whether she conforms to it and if Atty. Pefianco remained to be her counsel.

As petitioner failed to submit her comment, the appellate court, by Resolution[14] of July 20, 2006, denied the motion for reconsideration with finality. Thus arose the present petition, petitioner's counsel Atty. Pefianco maintaining that the Manifestation was fictitious considering the differences in petitioner's signatures and community tax certificates (CTC) submitted, and that the compromise agreement used as basis for the dismissal of the appeal was entered into under duress by his client, herein petitioner.

The petition fails.

Section 3, Rule 50 of the 1997 Rules of Civil Procedure, provides:

Sec. 3. Withdrawal of appeal. - An appeal may be withdrawn as of right at any time before the filing of appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court. (underscoring supplied)

At the time petitioner moved to withdraw her appeal, respondents had not yet filed their brief, hence, the grant thereof by the appellate court was in order.

Respecting petitioner's relief of Atty. Pefianco as her counsel, the rule is that a client has the absolute right to terminate the attorney-client relation at anytime with or without cause.[15] Hence, the Court may not look into the propriety of petitioner's act of relieving her counsel.

On whether the Compromise Agreement was null and void for having been executed under duress, aside from Atty. Pefianco's allegations that his client had been harassed during the pendency of the cases, that the signature in the Manifestation was different from petitioner's signature in the original complaint, and that the CTC used in the Manifestation was the same one used in the Securities and Exchange Commission registration documents, no other proof was proffered by Atty. Pefianco to show that the said agreement should not be given weight. Absent such additional proof, the presumption that the Compromise Agreement is valid subsists.

It bears noting that the appellate court gave petitioner the chance to shed light on the matter of her withdrawing the appeal and relief of counsel when it ordered petitioner to personally comment on Atty. Pefianco's motion for reconsideration. Petitioner, however, failed to submit her comment.

Parenthetically, the present petition lacks petitioner's verification and certificate of non-forum shopping, which the Court takes to mean either lack of interest on her part to further prosecute the case or that Atty. Pefianco really no longer has the right to act on her behalf.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

[1] CA rollo, pp. 104-108.

[2] Id. at 126.

[3] See letter, id. at 125.

[4] Id. at 127.

[5] Id. at 128-132.

[6] Id. at 133-135.

[7] Id. at 136-140.

[8] Annex "D" of Petition, rollo, p. 60.

[9] CA rollo, pp. 23-30.

[10] Id. at 19-22.

[11] Id. at 45-46. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

[12] Id. at 50-57.

[13] Id. at 60-61. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

[14] Id. at 82-84. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

[15] Rinconanda Tel. Co., Inc. v. Buenviaje, G.R. Nos. 49241-42, April 27, 1990, 184 SCRA 701, 704.

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