

D.M. FERRER & ASSOCIATES CORPORATION, PETITIONER, VS. UNIVERSITY OF SANTO TOMAS, RESPONDENT.

G.R. No. 189496. February 01, 2012

Ponente: SERENO, J.

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SERENO, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court. Petitioner assails the Court of Appeals (CA) Resolution[1] promulgated on 26 June 2009 dismissing the former's Petition for Certiorari, and the Resolution[2] dated 3 September 2009 denying the subsequent Motion for Reconsideration.

The facts are undisputed:

On 25 November 2005, petitioner and University of Santo Tomas Hospital, Inc. (USTHI) entered into a Project Management Contract for the renovation of the 4[th] and 5[th] floors of the Clinical Division Building, Nurse Call Room and Medical Records, Medical Arts Tower, Diagnostic Treatment Building and Pay Division Building.

On various dates, petitioner demanded from USTHI the payment of the construction costs amounting to P17,558,479.39. However, on 16 April 2008, the University of Santo Tomas (UST), through its rector, Fr. Rolando V. Dela Rosa, wrote a letter informing petitioner that its claim for payment had been denied, because the Project Management Contract was without the required prior approval of the board of trustees. Thus, on 23 May 2008, petitioner filed a Complaint[3] for sum of money, breach of contract and damages against herein respondent UST and USTHI when the latter failed to pay petitioner despite repeated demands.

In impleading respondent UST, petitioner alleged that the former took complete control over the business and operation of USTHI, as well as the completion of the construction project.

It also pointed out that the Articles of Incorporation of USTHI provided that, upon dissolution, all of the latter's assets shall be transferred without any consideration and shall inure to the benefit of UST. It appears that USTHI passed a Resolution on 10 January 2008 dissolving the corporation by shortening its corporate term of existence from 16 March 2057 to 31 May 2008.

Finally, petitioner alleged that respondent, through its rector, Fr. Dela Rosa, O.P., verbally assured the former of the payment of USTHI's outstanding obligations.

Thus, petitioner posited in part that UST may be impleaded in the case under the doctrine of "piercing the corporate veil," wherein respondent UST and USTHI would be considered to be acting as one corporate entity, and UST may be held liable for the alleged obligations due to petitioner.

Subsequently, respondent filed its Motion to Dismiss dated 12 June 2008.[4] It alleged that the Complaint failed to state a cause of action, and that the claim was unenforceable under the provisions of the Statute of Frauds.

On 4 August 2008, Judge Bernelito R. Fernandez of Branch 97 of the Regional Trial Court (RTC) of Quezon City granted the motion and dismissed the Complaint insofar as respondent UST was concerned.[5]

First, basing its findings on the documents submitted in support of the Complaint, the RTC held that respondent was not a real party-in-interest, and that it was not privy to the contract executed between USTHI and petitioner. Second, the court pointed out that the alleged verbal assurances of Fr. Dela Rosa should have been in writing to make these assurances binding and demandable.

Petitioner sought a reconsideration of the RTC Order and asserted that only allegations of the Complaint, and not the attached documents, should have been the basis of the trial court's ruling, consistent with the rule that the cause of action can be determined only from the facts alleged in the Complaint. It also insisted that the Statute of Frauds was inapplicable, since USTHI's obligation had already been partially executed.[6]

On 5 October 2008, petitioner filed an Urgent Motion for Voluntary Inhibition[7] on the ground that Judge Fernandez was an alumnus of respondent UST.

Thereafter, Judge Fernandez issued an Order[8] inhibiting himself from the case, which was consequently re-raffled to Branch 76 presided by Judge Alexander S. Balut.

On 16 April 2009, Judge Balut dismissed the Motion for Reconsideration filed by petitioner,[9] upholding the initial findings of Judge Fernandez declaring that respondent UST was not a real party-in-interest, and that Fr. Dela Rosa's alleged assurances of payment were unenforceable.

Subsequently, petitioner filed a Petition for Certiorari under Rule 65 with the CA.[10] Petitioner alleged that the trial court committed grave abuse of discretion when it granted respondent's Motion to Dismiss on the basis of the documents submitted in support of the Complaint, and not solely on the allegations stated therein. Petitioner pointed out that the allegations raised questions of fact and law, which should have been threshed out during trial, when both parties would have been given the chance to present evidence supporting their respective allegations.

However, on 26 June 2009, the CA issued the assailed Resolution and dismissed the Petition on the ground that a petition under Rule 65 is the wrong remedy to question the RTC's Order that completely disposes of the case. Instead, petitioner should have availed itself of an appeal under Rule 41 of the Rules of Court.

Petitioner moved for a reconsideration of the Resolution.[11] It pointed out that the present case falls under the enumerated exceptions of Rule 41, in particular, while the main case is still pending, no appeal may be made from a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints.

On 3 September 2009, the CA denied the Motion for Reconsideration through its second assailed Resolution, holding that the motion raised no new issues or substantial grounds that would merit the reconsideration of the court.

Hence this Petition.

Petitioner raises two grounds in the present Petition: first, whether the CA erred in dismissing the Petition for Certiorari by failing to consider the exception in Sec. 1(g) of Rule 41 of the Rules of Court; second, whether the trial court committed grave abuse of discretion when it held that the Complaint stated no cause of action.

We rule for petitioner.

Respondent insists that petitioner should have first filed a notice of appeal before the RTC, and the appeal should have been subsequently denied before recourse to the CA was made. This contention holds no water.

In *Jan-Dec Construction Corp. v. Court of Appeals*,[12] we held that a petition for certiorari under Rule 65 is the proper remedy to question the dismissal of an action against one of the parties while the main case is still pending.

This is the general rule in accordance with Rule 41, Sec. 1(g). In that case, ruled thus:

Evidently, the CA erred in dismissing petitioner's petition for certiorari from the Order of the RTC dismissing the complaint against respondent. While Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case, it also provides several exceptions to the rule, to wit: (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; (g) a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and (h) an order dismissing an action without prejudice. In the foregoing instances, the aggrieved party may file an appropriate special civil action for certiorari under Rule 65.

In the present case, the Order of the RTC dismissing the complaint against respondent is a final order because it terminates the proceedings against respondent but it falls within exception (g) of the Rule since the case involves two defendants, Intermodal and herein respondent and the complaint against Intermodal is still pending. Thus, the remedy of a special civil action for certiorari availed of by petitioner before the CA was proper and the CA erred in dismissing the petition. (Emphasis supplied)

Clearly, in the case at bar, the CA also erred when it dismissed the Petition filed before it.

Anent the second issue, we also agree with petitioner that the Complaint states a cause of action against respondent UST. In *Abacan v. Northwestern University, Inc.*,^[13] we said:

It is settled that the existence of a cause of action is determined by the allegations in the complaint. In resolving a motion to dismiss based on the failure to state a cause of action, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Indeed, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test. (Emphasis supplied)

While it is admitted that respondent UST was not a party to the contract, petitioner posits that the former is nevertheless liable for the construction costs. In support of its position, petitioner alleged that (1) UST and USTHI are one and the same corporation; (2) UST stands to benefit from the assets of USTHI by virtue of the latter's Articles of Incorporation; (3) respondent controls the business of USTHI; and (4) UST's officials have performed acts that may be construed as an acknowledgement of respondent's liability to petitioner.

Obviously, these issues would have been best resolved during trial. The RTC therefore committed grave abuse of discretion when it dismissed the case against respondent for lack of cause of action. The trial court relied on the contract executed between petitioner and USTHI, when the court should have instead considered merely the allegations stated in the Complaint.

WHEREFORE, in view of the foregoing, the Petition is GRANTED. Branch 76 of the Regional Trial Court of Quezon City is hereby ordered to REINSTATE respondent University of Santo Tomas as a defendant in C.C. No. 0862635.

SO ORDERED.

Carpio, (Chairperson), Brion, Peralta,[*] and Perez, JJ., concur.

[*] Additional member in lieu of Associate Justice Bienvenido L. Reyes, who recused himself from the case due to prior action in the Court of Appeals, per Raffle dated 30 January 2012.

[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican concurring; rollo, pp. 34-36.

[2] Id. at 38-39.

[3] Id. at 40-51.

[4] Id. at 108-115.

[5] Id. at 145-147.

[6] Id. at 148-155

[7] Id. at 178-182.

[8] Id. at 183.

[9] Id. at 197-198.

[10] Id. at 199-217.

[11] Id. at 223-230.

[12] 517 Phil. 96, 105 (2006).

[13] 495 Phil. 123, 133 (2005).

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