

THIRD DIVISION

[G.R. No. 159127, March 03, 2008]

RAMON GERARDO B. SAN LUIS, Petitioner, vs. HON. PABLITO M. ROJAS in his capacity as Presiding Judge, RTC. Br. 70, Pasig City and BERDEX INTERNATIONAL INC., Respondents.*

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court filed by Ramon Gerardo B. San Luis (petitioner) seeking to set aside the Resolutions dated September 11, 2002^[1] and May 20, 2003^[2] of the Court of Appeals (CA) in CA - G.R. SP No. 72596.

The factual background of herein petition is as follows:

On July 12, 2001, Berdex International, Inc. (private respondent) filed with the Regional Trial Court of Pasig City (RTC) a complaint^[3] for a sum of money against petitioner, docketed as Civil Case No. 68530 alleging that: it is a foreign corporation organized and existing under the laws of the United States of America with principal office in San Francisco, California, U.S.A.; it is maintaining the present action only to enforce its rights by virtue of an isolated transaction with petitioner; in June 1997, petitioner received from it certain amounts of money which were meant partly as advances or loan and partly for the purchase of 40% shares in both Seanet and Seabest Corporations, however, not a single share in those corporations was transferred to private respondent by petitioner and the shares were retained by the latter; the parties then agreed to treat all the payments/advances made by private respondent to petitioner as the latter's loan; petitioner proposed the payment of the loan within a period of three years, which proposal was accepted by private respondent with the agreement that in case of non- payment of any installment on their due dates, the entire amount shall become due and demandable; petitioner later refused to sign a formal contract of loan; petitioner confirmed such loan to private respondent's auditors on August 8, 2000; and he had only paid US\$20,000.00 and no further payment was made despite repeated demands. Private respondent prayed that petitioner be ordered to pay the amount of US\$150,335.75 plus interest until fully paid and attorney's fees.

Petitioner filed his Answer^[4] contending that: he is a businessman engaged in the trading of seafoods; he received from private respondent the total amount of US\$141,944.71 with instructions that petitioner first deduct therefrom the amount of US\$23,748.00 representing the latter's commission from private respondent in their other transaction; the money was intended to be used to buy 70% of the outstanding shares of Seanet Corporation on behalf of private respondent and the balance as private respondent's advances as Seanet's stockholder, which he complied with; in view, however, of subsequent substantial losses incurred by

Seanet and petitioner's desire to maintain good business with private respondent, petitioner offered that the amounts he received from private respondent be paid by Fuegomar Traders, Inc. (Fuegomar), a company which he subsequently put up and which he substantially owned and engaged in the same line of business as Seanet; Fuegomar will purchase at cost the stock investment of private respondent in Seanet; while the documentation of such agreement was being finalized, petitioner then gave US\$20,000.00 to private respondent on behalf of Fuegomar; however, private respondent then claimed that its investment in Seanet was petitioner's personal loan and the amount of US\$20,000.00 paid on behalf of Fuegomar was maliciously interpreted as petitioner's admission of personal liability.

The pre-trial conference was terminated on January 11, 2002 and the case was subsequently set for trial.

On April 4, 2002, private respondent filed a MOTION (To Authorize Deposition-Taking Through Written Interrogatories) ^[5] alleging that initial presentation of its evidence is set on May 3, 2002; that however, all of its witnesses are Americans who reside or hold office in the USA; that one of the witnesses is already of advanced age and travel to the Philippines may be extremely difficult if not dangerous; and there is a perceived danger to them in the aftermath of the terrorist attacks on September 11, 2002;^[6] that written interrogatories are ideal in this case since the factual issues are already very few; that such mode of deposition-taking will save precious judicial and government time and will prevent needless delays in the case.

In his Opposition and Comment,^[7] petitioner contends: If indeed there was an oral contract and petitioner was liable to private respondent for the amount he received from the latter, the documents attached to private respondent's complaint did not support its claim, but rather supported his position. There is a very strict standard in proving an oral contract. Taking the deposition through written interrogatories would deprive the court of the opportunity to observe the general bearing and demeanor of witnesses. Petitioner's right to cross-examine the witnesses will be prejudiced, since he will be limited to cross-interrogatories which will severely limit not only the scope but the spontaneity of his cross-examination. It is doubtful whether the witnesses will give their deposition under sanction of the penalties prescribed by Philippine law for perjury. It will not necessarily save precious judicial and government time but may in fact lengthen the trial, as both parties will have the right to review and to object to interrogatories submitted by the other party. The claim that travel to the Philippines would be dangerous for the witnesses who are all Americans is frivolous, since respondent has not presented evidence that the US government has prohibited its citizens from traveling to the Philippines; and if ever there was such prohibition, it was not binding on our own legal system. Old age was not a valid reason.

In an Order^[8] dated May 9, 2002, the RTC granted private respondent's Motion, as it found the same appropriate and sanctioned by the rules on deposition-taking.

Petitioner's Motion for Reconsideration was denied in an Order^[9] dated July 3, 2002.

Petitioner filed with the CA a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

In a Resolution dated September 11, 2002, the CA dismissed the petition, thus:

A perusal of the petition and its annexes indicates that:

1. no affidavit of service is attached;
2. the following Annexes are blurred:
 - Annex H
 - Annex J
3. the pleadings filed before the respondent court are not attached.

According to the last paragraph of Section 3, Rule 46 in relation to Section 1, Rule 65 of the 1994 Rules of Civil Procedure, non-compliance with the requirements is a sufficient ground for the dismissal of the petition.

WHEREFORE, let this case be, as it is hereby DISMISSED.^[10]

In a Resolution dated May 20, 2003, the CA denied petitioner's Motion for Reconsideration. In denying the motion, the CA found that non-compliance with the requirements as a result of misapprehension and unfamiliarity with the rules is not excusable; that in any case, SC Administrative Circular No. 3-96 dated June 1, 1996 states that subsequent compliance with the requirement shall not warrant a reconsideration.

Petitioner filed the instant petition for *certiorari*.

Petitioner raises the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED ON MERE TECHNICALITY THE PETITION FOR CERTIORARI OF THE PETITIONER EVEN IF THERE WAS SUBSTANTIAL COMPLIANCE WITH PROCEDURAL REQUIREMENTS.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE PETITION FOR CERTIORARI OF THE PETITIONER DESPITE THE UNIQUENESS OF THE LEGAL ISSUE RAISED BY THE PETITIONER AND THE GRAVE INJUSTICE THAT WILL BE VISITED UPON THE PETITIONER IF THE PRIVATE RESPONDENT, A NON-RESIDENT FOREIGN CORPORATION, WILL BE ALLOWED TO PROVE THE EXISTENCE OF AN ORAL CONTRACT THROUGH DEPOSITION BY WRITTEN INTERROGATORIES OF ALL ITS WITNESSES TAKEN OUTSIDE THE PHILIPPINES.^[11]

Petitioner argues that the CA focused on technicality rather than substantial justice, notwithstanding that he subsequently complied with all the requirements and attached them to his Motion for Reconsideration; that his failure to attach an affidavit of service was due to his belief that the affidavit can be dispensed with in case of personal service of the petition to the parties who received the same; that Annex "H," a letter dated July 12, 2000 sent by private respondent to Fuegomar and R.G. San Luis (herein petitioner) asking for confirmation of the note held by the former regarding the latter's outstanding obligation to it,^[12] which was attached to

the complaint filed with the RTC, was also blurred; that the blurred copy of Annex "J," the Seanet Corporation Loan Amortization Schedule,^[13] was due to inadvertence during the reproduction of the numerous annexes; and that he only attached pleadings to the petition filed in the CA which he believed to be important and relevant to the issue submitted in his petition.

Petitioner further alleges that the CA failed to appreciate that grave injustice would be done to him if private respondent, a non-resident foreign corporation, would have all its witnesses who are foreigners give their testimonies through deposition upon written interrogatories which would be taken outside of the Philippines and would seek to establish an oral contract not supported by any documentary evidence; that to allow such deposition will prevent the RTC from testing the credibility of the witnesses, and petitioner's right to cross-examine the witnesses would be curtailed if not denied, as he would be limited to cross-interrogatories and re-cross interrogatories based on written interrogatories.

Private respondent counters that petitioner resorted to a wrong remedy by filing a petition for certiorari under Rule 65 instead of a petition for review under Rule 45; that petitioner can no longer question the CA Resolutions, as certiorari under Rule 65 is not a substitute for an appeal where the latter remedy is available; that the CA's dismissal of the petition was proper; that Circular 19-91 is quite clear that any petition under Rule 65 may be denied outright if there is no proof of service on the lower court; that no grave abuse of discretion was committed by the RTC in allowing deposition-taking as the same was consistent with the rules.

The Court's Ruling

Preliminarily, we find petitioner's resort to a petition for *certiorari* under Rule 65 proper considering that petitioner is assailing the Resolutions of the CA dismissing their petition outright.^[14]

In *Donato v. Court of Appeals*^[15], we held:

The proper recourse of an aggrieved party from a decision of the CA is a petition for review on certiorari under Rule 45 of the Rules of Court. However, if the error, subject of the recourse, is one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy available to the aggrieved party is a petition for certiorari under Rule 65 of the said Rules. As enunciated by the Court in *Fortich vs. Corona*:

Anent the first issue, in order to determine whether the recourse of petitioners is proper or not, it is necessary to draw a line between an error of judgment and an error of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. This error is correctible only by the extraordinary writ of *certiorari*.

Inasmuch as the present petition principally assails the dismissal of the petition on ground of procedural flaws involving the jurisdiction of the court a quo to entertain the petition, it falls within the ambit of a special civil action for *certiorari* under Rule 65 of the Rules of Court.^[16]

Anent petitioner's failure to attach the affidavit of service, we find the same not fatal to the petition since it showed that copies of the petition were personally served on the RTC and private respondent's counsel on September 3, 2002 as evidenced by the parties' official receiving stamps appearing opposite their names. By analogy, we have held^[17] that the non-attachment of the affidavit of service is not fatal to the petition when the registry receipts attached to the petition clearly show that respondents were served copies of the petition; that the demands of substantial justice were satisfied by the actual receipt of the petition.^[18]

We likewise find satisfactory the explanation advanced by petitioner with respect to the blurred copies of the annexes attached to the petition. Moreover, we find that Annexes "H" and "J" are not necessary for the resolution of the issue brought before the CA, i.e., whether the RTC acted with grave abuse of discretion in granting private respondent's MOTION (To Authorize Deposition-Taking Through Written Interrogatories).

As to the non-attachment to the petition of the pleadings filed in the RTC, we find that the documents attached to the petition -- to wit: private respondent's MOTION (To Authorize Deposition-Taking Through Written Interrogatories), petitioner's opposition, petitioner's Motion for Reconsideration and private respondent's opposition -- show that they contained the relevant facts of the case and the respective arguments of the parties on which the CA could have based its resolution on the merits of the issue brought before it. Thus, there was no need to attach all other pleadings filed in the RTC. Nonetheless, petitioner had submitted all the pleadings when he filed his motion for reconsideration.

The CA's reliance on Administrative Circular No. 3-96 dated June 1, 1996 in denying petitioner's motion for reconsideration is misplaced. Although the Circular provides that subsequent compliance with the requirement shall not warrant a reconsideration, it does not apply to the petition filed by petitioner before the CA. The subject of the said Circular deals with copies of the judgment or resolution sought to be reviewed and not to other pleadings filed in the RTC. The Circular clarified the meaning of "duplicate original copy" and "certified true copy" of decisions, judgments, resolutions or orders and not other documents to be attached.

As to the non-submission of the affidavit of service and other pleadings jurisprudence dictates that the subsequent and substantial compliance of a petitioner may call for the relaxation of the rules of procedure.^[19]

While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court dockets is a laudable objective, they nevertheless must not be met at the expense of substantial justice.^[20] Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would