

SECOND DIVISION

[G. R. NO. 151170, May 29, 2007]

**VICTORY LINER, INC., PETITIONER, VS. MICHAEL MALINIAS,
RESPONDENT.**

D E C I S I O N

TINGA, J.:

The matter began as a simple civil suit for damages arising from an unremarkable traffic accident. However, the procedural aspect of the case has since taken on a life of its own, transforming what should be a molehill into a mountain built on sediments of compounded errors.

This case finds its origin from a vehicular collision that occurred in La Union on 19 March 1996 between a bus owned by petitioner Victory Liner, Inc. and an Isuzu Truck used by respondent Michael Malinias.^[1] Nobody died, but both vehicles were damaged from the accident. A complaint for sum of money and damages was instituted by respondent against petitioner and the bus driver, Leoncio Bulaong, alleging pecuniary damage to the truck in the amount of P47,180.00, representing lost income for the non-use of the truck as it underwent repairs in the amount of P15,000.00. Claims for exemplary damages and attorney's fees were also lodged in the complaint,^[2] which was filed with the Municipal Trial Court (MTC) of La Trinidad, Benguet. After pre-trial, the bus driver was dropped as defendant in the case after summons could not be served on him and respondent agreed to waive his cause of action against said driver.^[3]

In the course of trial, respondent finished presenting his evidence and rested his case. In the meantime, counsel for petitioner filed a motion to withdraw as counsel, but the same was denied by the MTC in an Order dated 15 September 1997 as the motion did not bear any signature of conformity from the petitioner. When the case was called for the reception of petitioner's evidence on the previous scheduled date of 27 October 1997, no appearance was made for the bus company. Respondent thus immediately moved that petitioner be declared to have waived its right to adduce evidence in its favor and that the case be deemed submitted for judgment. The MTC found merit in respondent's contention, and ordered the case be deemed submitted for decision as of 27 October 1997. On 13 January 1998, the MTC rendered judgment in favor of respondent, awarding him the sum of P82,180.00.

Through its new counsel, petitioner filed a Motion for Reconsideration. The Notice of Hearing therein stated: "Please submit the foregoing Motion for Reconsideration for hearing before the Honorable Court at a schedule and time convenient to this Honorable Court and the parties."^[4] The MTC ruled in an Order^[5] dated 23 February 1998 that the notice did not conform with the mandatory requirements of Section 5, Rule 15 of the 1997 Rules of Civil Procedure, and that the motion was thus a mere

scrap of paper which did not suspend the period to appeal. Accordingly, the MTC declared that its earlier judgment dated 13 January 1998 had become final and executory. In the same order and upon the same predicates, the MTC also granted the Motion for Issuance of Writ of Execution filed by respondent.

Petitioner responded to the foregoing developments by filing a Notice of Appeal, as well as a motion for the inhibition by the MTC judge which motion was immediately granted. The case was assigned to a new MTC judge, who was then tasked with ruling on the Notice of Appeal. It was only on 28 September 1999, or eighteen (18) months after the Notice of Appeal was filed, that the MTC acted on the same and ruled that it had been filed beyond the reglementary period. Again, the MTC reiterated that the Judgment dated 13 January 1998 had long become final and executory since the fatally defective Motion for Reconsideration did not toll the reglementary period for appeal.^[6]

What then followed was a series of unsuccessful attempts by petitioner to have the lower courts set aside or stay the now-final judgment against it. *First*, petitioner filed a Petition for Relief from Judgment with the MTC on 25 October 1999.^[7] This was denied by the MTC in an Order^[8] dated 13 March 2000 on the ground that it had been filed out of time. The MTC explained that the petition for relief from judgment must have been filed either within sixty (60) days from the date petitioner's new counsel learned of the judgment, or sixty (60) days after learning that the Motion for Reconsideration had been denied for having been filed out of time. Neither circumstance was met by petitioner. Subsequently, the MTC likewise denied a Motion for Reconsideration filed by petitioner.^[9]

Second, petitioner filed on 26 June 2000 a petition for certiorari^[10] under Rule 65 with the Regional Trial Court (RTC) of La Trinidad, Benguet, imputing grave abuse of discretion to the MTC, and seeking to annul four (4) of the MTC's rulings, namely: the original 1998 judgment against petitioner; the 1999 order which declared that the Notice of Appeal was filed out of time; and the two orders dismissing the Petition for Relief from Judgment. The petition for certiorari was dismissed by the RTC in an Order^[11] dated 21 November 2000. The RTC agreed with the MTC that the Petition for Relief from Judgment had been belatedly filed. The RTC also reiterated the consistent ruling that the judgment in question had already become final in February of 1998. Thus, the RTC could not ascribe grave abuse of discretion to the MTC.^[12]

Petitioner filed a motion for reconsideration of the RTC ruling, while respondent filed with the same court a motion for execution. On 3 July 2001, at a point when petitioner had allegedly not yet received any order acting on its motion for reconsideration, petitioner received instead an Order dated 21 June 2001^[13] where the RTC directed the issuance of a writ of execution in favor of respondent, the MTC judgment having already become final and executory.

Third, petitioner filed on 17 July 2001 with the Court of Appeals a "Petition for Certiorari to Annul Judgment" under the aegis of Rule 47 of the 1997 Rules of Civil Procedure. Interestingly, based on the first paragraph and the express relief prayed for in this petition, the "judgment" sought to be annulled was not the final and executory judgment of the MTC, but rather, the two orders of the RTC which successively dismissed the special civil action for certiorari, and directed the

issuance of a writ of execution in favor of respondent.^[14] However, in explaining the "nature of the petition," petitioner claimed that it was seeking to annul the judgment and orders of both the RTC and the MTC,^[15] although the issues identified in the petition pertain only to "serious errors" and "grave abuse of discretion" on the part of the RTC.^[16] There is a general allegation that the acts of the RTC in granting the motion for execution even before petitioner's motion for reconsideration was acted upon constituted an extrinsic fraud,^[17] but no particular arguments were offered to explain why that was so.

The petition for annulment of judgment was accompanied by a Verification and Certification Against Forum Shopping which was signed by counsel for petitioner. On that basis, the Court of Appeals dismissed the petition outright in a Resolution^[18] dated 26 July 2001, stressing the rule that it should be the petitioner, not its counsel, which should execute the verification and certification against forum shopping.

Petitioner filed a Motion for Reconsideration^[19] where it pointed out that it had simultaneously filed with its petition for annulment of judgment a Motion for Extension^[20] to submit the certificate of authority to file the petition. The day after the petition was filed, or on 18 July 2001, petitioner filed with the Court of Appeals the said Certificate of Authority.^[21] The Certificate of Authority prepared by petitioner's corporate secretary, dated 17 July 2001, certified that on 10 July 2001, petitioner's board of directors authorized counsel for petitioner to file "the necessary action, petition or any other pleadings necessary in any and all hierarchy of courts" with respect to the instant case.^[22]

Nonetheless, the Court of Appeals, on 5 December 2001, issued a Resolution^[23] denying the Motion for Reconsideration. The appellate court observed that in petitioner's Motion for Extension to submit the certification of authority, it was explained that petitioner's counsel was constrained to sign the verification and certification against forum shopping because "the certificate of authority granted to the petitioner's station manager in Baguio City has been misplaced."^[24] The Court of Appeals thus concluded that "the one really authorized to represent the petitioner is Operations Manager Rogelio Ortega stationed in Baguio City, but whose authority has been misplaced or lost, as in fact, the latter signed the certification on non-forum shopping in the petition filed before the [RTC]."^[25] The Court of Appeals also reiterated that subsequent compliance such as petitioner's counsel's subsequent submission of her authority to represent the petitioner, would not excuse petitioner's failure to comply with the required certification against forum-shopping in the first instance.

The Court of Appeals further held that upon a "judicious reading of the instant petition for the annulment of judgment and its annexes," it was clear that the ground of extrinsic fraud raised by petitioner had already been availed of in its earlier petition for relief from judgment before the MTC. Such circumstance contradicted Section 2 of Rule 47, which provides that "extrinsic fraud shall not be a valid ground (for annulment of judgment) if it was availed of, or could have been availed of, in a motion for new trial or petition for relief."^[26]

Hence this petition for review under Rule 45, seeking that the Court "annul and set aside the questioned Resolutions of the Court of Appeals x x x as well as the twin Orders of [the RTC] x x x and remand the case [to] the court of origin for further proceedings and give petitioner its right to present its case in the interest of due process and substantial errors."^[27]

Two sets of arguments are raised. The first concerns the errors ascribed to the Court of Appeals in dismissing outright the petition for annulment of judgment. The second concerns the alleged grave abuse of discretion on the part of the RTC in directing the issuance of the writ of execution even without resolving petitioner's motion for reconsideration.

The reasoning employed by the Court of Appeals in dismissing the petition for annulment of judgment is fraught with error and thus cannot be sustained. At the same time, however, the petition now before the Court cannot be granted.

As indicated in the 5 December 2001 Resolution of the Court of Appeals, the two main grounds relied upon for dismissing the petition for annulment of judgment were petitioner's failure to comply with the requirements in the execution of the verification and certification against forum-shopping, and the petition's reliance on the ground of extrinsic fraud which could have been raised or availed of in a motion for new trial or petition for relief. We turn our attention to the first ground.

It is of importance that, as borne by the Certificate of Authority executed by petitioner's Corporate Secretary, counsel for petitioner had been authorized by petitioner's Board of Directors to prepare and file with the Court of Appeals the petition herself as of 10 July 2001, or seven (7) days before the petition was indeed filed. We fail to understand the significance attached by the Court of Appeals on the prior authority of the Baguio station manager to perform the same acts. The impression left by the disquisition of the appellate court is that such prior authority was beyond recall by petitioner's Board of Directors, and that no new person could be similarly authorized by the corporation to perform such acts.

The fact that the previous authority may have been misplaced or lost, thus causing petitioner to authorize a new person to file the necessary pleadings or petitions in the case involving the respondent, is of no consequence if the new authority is issued before the filing of the pleading that requires verification or certification against forum-shopping. The circumstance is similar to a situation where the previously authorized person had died or severed his or her connection with the corporate litigant. Juridical persons appearing before the courts are not perpetually bound to maintain the same authorized representatives in the preparation and certification of pleadings.

The appellate court cited the rule that substantial compliance could not cure the defect in the verification or certification requirements. Yet the bare fact remains that counsel for petitioner was authorized to prepare the petition and to execute the verification and certification requirements at the time the petition was filed with the Court of Appeals, a fact borne out by the Certificate of Authority itself. The error consisted in petitioner counsel's failure to attach such certificate to the petition, but she did submit said certificate to the Court of Appeals the very next day. Petitioner emphasizes that the certificate of authority submitted on 18 July 2001 was filed "on the 15th day of the 60-day reglementary period to file appeal," perhaps to stress

the point that if the petition itself was filed on the same day as the certificate of authority, the petition would have still been timely. However, petitioner seems to forget that under Rule 47, its petition for annulment of judgment based on extrinsic fraud^[28] actually had a term of four (4) years^[29] as "reglementary period."

In any event, the observation of the Court of Appeals that substantial compliance "will not suffice in the matter involving strict observance" of the certification requirement on non-forum shopping contradicts our recent jurisprudence which holds that "[t]he rule of substantial compliance may be availed of with respect to the contents of the certification [against forum shopping]."^[30] While the lack of certification against forum shopping is generally not cured by its submission after the filing of the petition, and the submission of a certificate against forum shopping is deemed obligatory, the requirement has been relaxed under justifiable circumstances under the rule on substantial compliance.^[31] The same characteristics hold true as to the verification requirement.^[32]

We hold and so rule that the appellate court's utilization on petitioner's belated submission of the complete verification and certification requirements as anchor for the dismissal of the petition for annulment of judgment does not merit affirmance.

The Court of Appeals did rely on another ground for the dismissal of the petition for annulment of judgment, the reliance on the ground of extrinsic fraud which could have been availed of in a motion for new trial or petition for relief. The formulation by the appellate court on that score cannot be fully adopted by the Court. However, to demonstrate why the Court of Appeals erred in that regard, it is necessary to discuss the more fundamental errors that have attended the facts of this case, errors for which petitioner is mostly to blame, errors which militate against the grant of this petition.

From the timeline, it appears that petitioner's woes began after the motion to withdraw as counsel filed by its former lawyer was not allowed by the MTC due to the absence of the written conformity thereto of the petitioner.^[33] At the next hearing date, when petitioner was to commence its presentation of evidence, nobody appeared in its behalf, causing the MTC, upon motion, to consider as waived petitioner's right to present its evidence. The subsequent rendition of the MTC Judgment without considering the evidence of petitioner would form its initial cause of distress.

But what proved to be the most crucial failure on the part of petitioner was to file a Motion for Reconsideration of the MTC Judgment which contained a defective Notice of Hearing, failing as it did to set a date for hearing. Under Sections 5 and 6 of Rule 15, the notice of hearing shall be addressed to the parties concerned and shall specify the time and date of the hearing of the motion; no motion shall be acted upon by the court without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party are not affected.^[34]

Not only did the defect render the motion for reconsideration itself unworthy of consideration, it more crucially failed to toll the period to appeal. A motion without a notice of hearing is *pro forma*, a mere scrap of paper that does not toll the period to appeal, and upon the expiration of the 15-day period, the questioned order or decision becomes final and executory. The rationale behind this rule is plain: unless