

SECOND DIVISION

[G.R. No. 182153, April 07, 2014]

**TUNG HO STEEL ENTERPRISES CORPORATION, PETITIONER, VS.
TING GUAN TRADING CORPORATION, RESPONDENT.**

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by petitioner Tung Ho Steel Enterprises Corp. (*Tung Ho*) to challenge the July 5, 2006 decision^[2] and the March 12, 2008 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 92828.

The Factual Antecedents

Tung Ho is a foreign corporation organized under the laws of Taiwan, Republic of China.^[4] On the other hand, respondent Ting Guan Trading Corp. (*Ting Guan*) is a domestic corporation organized under the laws of the Philippines.^[5]

On January 9, 2002, Ting Guan obligated itself under a contract of sale to deliver heavy metal scrap iron and steel to Tung Ho. Subsequently, Tung Ho filed a request for arbitration before the ICC International Court of Arbitration (ICC) in Singapore after Ting Guan failed to deliver the full quantity of the promised heavy metal scrap iron and steel.^[6]

The ICC ruled in favor of Tung Ho on June 18, 2004 and ordered Ting Guan to pay Tung Ho the following: (1) actual damages in the amount of US\$ 659,646.15 with interest of 6% per annum from December 4, 2002 until final payment; (2) cost of arbitration in the amount of US \$ 47,000.00; and (3) legal costs and expenses in the amount of NT \$ 761,448.00 and US \$ 34,552.83.^[7]

On October 24, 2004, Tung Ho filed an action against Ting Guan for the recognition and enforcement of the arbitral award before the Regional Trial Court (RTC) of Makati, Branch 145. Ting Guan moved to dismiss the case based on Tung Ho's lack of capacity to sue and for prematurity. Ting Guan subsequently filed a supplemental motion to dismiss based on improper venue. Ting Guan argued that the complaint should have been filed in Cebu where its principal place of business was located.^[8]

The Proceedings before the RTC

The RTC denied Ting Guan's motion to dismiss in an order dated May 11, 2005. Ting Guan moved to reconsider the order and raised the RTC's alleged lack of jurisdiction over its person as additional ground for the dismissal of the complaint. Ting Guan insisted that Ms. Fe Tejero, on whom personal service was served, was not its corporate secretary and was not a person allowed under Section 11, Rule 14 of the

Rules of Court to receive a summons. It also asserted that Tung Ho cannot enforce the award in the Philippines without violating public policy as Taiwan is not a signatory to the New York Convention.^[9]

The RTC denied the motion in an order dated November 21, 2005 and ruled that Ting Guan had voluntarily submitted to the court's jurisdiction when it raised other arguments apart from lack of jurisdiction in its motion to dismiss.

The Proceedings before the CA

Ting Guan responded to the denials by filing a petition for *certiorari* before the CA with an application for the issuance of a temporary restraining order and a writ of preliminary injunction.^[10]

In its *Memorandum*, Tung Ho argued that a Rule 65 petition is not the proper remedy to assail the denial of a motion to dismiss. It pointed out that the proper recourse for Ting Guan was to file an answer and to subsequently appeal the case. It also posited that beyond the reglementary period for filing an answer, Ting Guan was barred from raising other grounds for the dismissal of the case. Tung Ho also claimed that the RTC acquired jurisdiction over the person of Ting Guan since the return of service of summons expressly stated that Tejero was a corporate secretary.^[11]

In its decision dated July 5, 2006, the CA **dismissed the complaint for lack of jurisdiction over the person of Ting Guan**. The CA held that Tung Ho failed to establish that Tejero was Ting Guan's corporate secretary. The CA also ruled that a petition for *certiorari* is the proper remedy to assail the denial of a motion to dismiss if the ground raised in the motion is lack of jurisdiction. Furthermore, any of the grounds for the dismissal of the case can be raised in a motion to dismiss provided that the grounds were raised before the filing of an answer. The CA likewise ruled that Tung Ho properly filed the complaint before the RTC-Makati.^[12]

Subsequently, **both parties moved to partially reconsider the CA decision**. Tung Ho reiterated that there was proper service of summons. On the other hand, Ting Guan sought to modify the CA decision with respect to the proper venue of the case. The CA denied Ting Guan's motion for partial reconsideration in an order dated December 5, 2006.^[13]

Ting Guan immediately proceeded to file a petition for review on *certiorari* before this Court to question the CA's rulings as discussed below. In the interim (on February 11, 2008), Tung Ho (whose motion for reconsideration of the CA decision was still pending with that court) filed a "Motion to Supplement and Resolve Motion for Reconsideration" before the CA. In this motion, Tung Ho prayed for the issuance of an alias summons if the service of summons had indeed been defective, but its motion proved unsuccessful.^[14]

It was not until March 12, 2008, after the developments described below, that the CA finally denied Tung Ho's partial motion for reconsideration for lack of merit.

Ting Guan's Petition before this Court **(G.R. No. 176110)**

Ting Guan's petition before this Court was docketed as G.R. No. 176110.

Ting Guan argued that the dismissal of the case should be based on the following additional grounds: *first*, the complaint was prematurely filed; *second*, the foreign arbitral award is null and void; *third*, the venue was improperly laid in Makati; and lastly, the enforcement of the arbitral award was against public policy.^[15]

On April 24, 2007, Tung Ho filed its Comment dated April 24, 2007 in G.R. No. 176110, touching on the issue of jurisdiction, albeit lightly. Tung Ho complained in its Comment that Ting Guan engaged in dilatory tactics when Ting Guan belatedly raised the issue of jurisdiction in the motion for reconsideration before the RTC. However, Tung Ho did not affirmatively seek the reversal of the July 5, 2006 decision. Instead, it merely stated that Ting Guan's petition "cannot be dismissed on the ground that the summons was wrongfully issued as the petitioner can always move for the issuance of an alias summons to be served". Furthermore, Tung Ho only prayed that Ting Guan's petition be denied in G.R. No. 176110 and for other just and equitable reliefs. In other words, Tung Ho failed to effectively argue its case on the merits before the Court in G.R. No. 176110.

On June 18, 2007, we issued our Resolution denying Ting Guan's petition for lack of merit. On November 12, 2007, we also denied Ting Guan's motion for reconsideration. **On January 8, 2008, the Court issued an entry of judgment in Ting Guan's petition, G.R. No. 176110.**

After the entry of judgment, we referred the matter back to the RTC for further proceedings. On January 16, 2008, **the RTC declared the case closed and terminated.** Its order stated:

Upon examination of the entire records of this case, an answer with caution was actually filed by the respondent to which a reply was submitted by the petitioner. Since the answer was with the qualification that respondent is not waiving its claim of lack of jurisdiction over its person on the ground of improper service of summons upon it and that its petition to this effect filed before the Court of Appeals was acted favorably and this case was dismissed on the aforementioned ground and it appearing that the Decision as well as the Order denying the motion for reconsideration of the petitioner now final and executory, the Order of November 9, 2007 referring this petition to the Court Annexed Mediation for possible amicable settlement is recalled it being moot and academic. This case is now considered closed and terminated.

On February 6, 2008, Tung Ho moved to reconsider the RTC order. Nothing in the records shows whether the RTC granted or denied this motion for reconsideration.

Tung Ho's Petition before this Court
(G.R. No. 182153)

On May 7, 2008, Tung Ho seasonably filed a petition for review on *certiorari* to seek the reversal of the **July 5, 2006 decision** and the **March 12, 2008 resolution** of

the CA. **This is the present G.R. No. 182153 now before us.**

Tung Ho reiterates that the RTC acquired jurisdiction over the person of Ting Guan. It also claims that the return of service of summons is a *prima facie* evidence of the recited facts *i.e.*, that Tejero is a corporate secretary as stated therein and that the sheriff is presumed to have regularly performed his official duties in serving the summons. In the alternative, Tung Ho argues that Ting Guan's successive motions before the RTC are equivalent to voluntary appearance. Tung Ho also prays for the issuance of alias summons to cure the alleged defective service of summons.^[16]

Respondent Ting Guan's Position **(G.R. No. 182153)**

In its *Comment*, Ting Guan submits that the appeal is already barred by *res judicata*. It also stresses that the Court has already affirmed with finality the dismissal of the complaint.^[17] Ting Guan also argues that Tung Ho raises a factual issue that is beyond the scope of a petition for review on certiorari under Rule 45 of the Rules of Court.^[18]

The Issues

This case presents to us the following issues:

- 1) Whether the present petition is barred by *res judicata*; and
- 2) Whether the trial court acquired jurisdiction over the person of Ting Guan, specifically:
 - a) Whether Tejero was the proper person to receive the summons; and
 - b) Whether Ting Guan made a voluntary appearance before the trial court.

The Court's Ruling

We find the petition meritorious.

I. The Court is not precluded from ruling on the jurisdictional issue raised in the petition

A. The petition is not barred by res judicata

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive on the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.^[19] For *res judicata* to apply, the final judgment must be on the merits of the case which means that the court has unequivocally determined the parties' rights and obligations with respect to the causes of action and the subject matter of the case.^[20]

Contrary to Ting Guan's position, our ruling in G.R. No. 176110 does not operate as *res judicata* on Tung Ho's appeal; G.R. No. 176110 did not conclusively rule on all issues raised by the parties in this case so that this Court would now be barred from taking cognizance of Tung Ho's petition. Our disposition in G.R. No. 176110 only dwelt on technical or collateral aspects of the case, and not on its merits. Specifically, we did not rule on whether Tung Ho may enforce the foreign arbitral award against Ting Guan in that case.

B. The appellate court cannot be ousted of jurisdiction until it finally disposes of the case

The court's jurisdiction, once attached, cannot be ousted until it finally disposes of the case. When a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is retained.^[21] A judge is competent to act on the case while its incidents remain pending for his disposition.

The CA was not ousted of its jurisdiction with the promulgation of G.R. No. 176110. The July 5, 2006 decision has not yet become final and executory for the reason that there remained a pending incident before the CA – the resolution of Tung Ho's motion for reconsideration – when this Court promulgated G.R. No. 176110. In this latter case, on the other hand, we only resolved procedural issues that are divorced from the present jurisdictional question before us. Thus, what became immutable in G.R. No. 176110 was the ruling that Tung Ho's complaint is not dismissible on grounds of prematurity, nullity of the foreign arbitral award, improper venue, and the foreign arbitral award's repugnance to local public policy. This leads us to the conclusion that in the absence of any ruling on the merits on the issue of jurisdiction, *res judicata* on this point could not have set in.

C. Tung Ho's timely filing of a motion for reconsideration and of a petition for review on certiorari prevented the July 5, 2006 decision from attaining finality

Furthermore, under Section 2, Rule 45 of the Rules of Court, Tung Ho may file a petition for review on *certiorari* before the Court within (15) days from the denial of its motion for reconsideration filed in due time after notice of the judgment. Tung Ho's timely filing of a motion for reconsideration before the CA and of a Rule 45 petition before this Court prevented the July 5, 2006 CA decision from attaining finality. For this Court to deny Tung Ho's petition would result in an anomalous situation where a party litigant is penalized and deprived of his fair opportunity to appeal the case by faithfully complying with the Rules of Court.

II. The trial court acquired jurisdiction over the person of Ting Guan

A. Tejero was not the proper person to receive the summons