

## SECOND DIVISION

[ **G.R. Nos. 175277 & 175285, September 11, 2013**  
]

**UNICAPITAL, INC., UNICAPITAL REALTY, INC., AND JAIME J. MARTIREZ, PETITIONERS, VS. RAFAEL JOSE CONSING, JR. AND THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 168, RESPONDENTS.**

[**G.R. No. 192073**]

**RAFAEL JOSE CONSING, JR., PETITIONER, VS. HON. MARISSA MACARAIG-GUILLEN, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 60 AND UNICAPITAL, INC., RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court are consolidated petitions for review on *certiorari*<sup>[1]</sup> assailing separate issuances of the Court of Appeals (CA) as follows:

(a) The petitions in G.R. Nos. 175277 and 175285 filed by Unicapital, Inc., (Unicapital), Unicapital Realty, Inc. (URI), and Unicapital Director and Treasurer Jaime J. Martirez (Martirez) assail the CA's Joint Decision<sup>[2]</sup> dated October 20, 2005 and Resolution<sup>[3]</sup> dated October 25, 2006 in CA-G.R. SP Nos. 64019 and 64451 which affirmed the Resolution<sup>[4]</sup> dated September 14, 1999 and Order<sup>[5]</sup> dated February 15, 2001 of the Regional Trial Court (RTC) of Pasig City, Branch 68 (RTC-Pasig City) in SCA No. 1759, upholding the denial of their motion to dismiss; and

(b) The petition in G.R. No. 192073 filed by Rafael Jose Consing, Jr. (Consing, Jr.) assails the CA's Decision<sup>[6]</sup> dated September 30, 2009 and Resolution<sup>[7]</sup> dated April 28, 2010 in CA-G.R. SP No. 101355 which affirmed the Orders dated July 16, 2007<sup>[8]</sup> and September 4, 2007<sup>[9]</sup> of the RTC of Makati City, Branch 60 (RTC-Makati City) in Civil Case No. 99-1418, upholding the denial of his motion for consolidation.

### The Facts

In 1997, Consing, Jr., an investment banker, and his mother, Cecilia Dela Cruz (Dela Cruz), obtained an P18,000,000.00 loan from Unicapital, P12,000,000.00 of which was acquired on July 24, 1997 and the remaining P6,000,000.00 on August 1, 1997. The said loan was secured by Promissory Notes<sup>[10]</sup> and a Real Estate Mortgage<sup>[11]</sup> over a 42,443 square meter-parcel of land located at Imus, Cavite, registered in the name of Dela Cruz as per Transfer Certificate of Title (TCT) No. T-687599 (subject property).<sup>[12]</sup> Prior to these transactions, Plus Builders, Inc. (PBI), a real estate

company, was already interested to develop the subject property into a residential subdivision.<sup>[13]</sup> In this regard, PBI entered into a joint venture agreement with Unicapital, through its real estate development arm, URI. In view of the foregoing, the loan and mortgage over the subject property was later on modified into an Option to Buy Real Property<sup>[14]</sup> and, after further negotiations, Dela Cruz decided to sell the same to Unicapital and PBI. For this purpose, Dela Cruz appointed Consing, Jr. as her attorney-in-fact.<sup>[15]</sup>

Eventually, Unicapital, through URI, purchased one-half of the subject property for a consideration of P21,221,500.00 (against which Dela Cruz's outstanding loan obligations were first offset), while PBI bought the remaining half for the price of P21,047,000.00.<sup>[16]</sup> In this relation, Dela Cruz caused TCT No. T-687599 to be divided into three separate titles as follows: (a) TCT No. T-851861 for URI;<sup>[17]</sup> (b) TCT No. T-851862 for PBI;<sup>[18]</sup> and (c) TCT No. T-851863 which was designated as a road lot.<sup>[19]</sup> However, even before URI and PBI were able to have the titles transferred to their names, Juanito Tan Teng (Teng) and Po Willie Yu (Yu) informed Unicapital that they are the lawful owners of the subject property as evidenced by TCT No. T-114708;<sup>[20]</sup> that they did not sell the subject property; and that Dela Cruz's title, i.e., TCT No. T-687599, thereto was a mere forgery.<sup>[21]</sup> Prompted by Teng and Yu's assertions, PBI conducted further investigations on the subject property which later revealed that Dela Cruz's title was actually of dubious origin. Based on this finding, PBI and Unicapital sent separate demand letters<sup>[22]</sup> to Dela Cruz and Consing, Jr., seeking the return of the purchase price they had paid for the subject property.

From the above-stated incidents stemmed the present controversies as detailed hereunder.

### **The Proceedings Antecedent to G.R. Nos. 175277 & 175285**

On May 3, 1999, Consing, Jr. filed a complaint, denominated as a Complex Action for Declaratory Relief<sup>[23]</sup> and later amended to Complex Action for Injunctive Relief<sup>[24]</sup> (Consing, Jr.'s complaint) before the RTC-Pasig City against Unicapital, URI, PBI, Martinez, PBI General Manager Mariano Martinez (Martinez), Dela Cruz and Does 1-20, docketed as SCA No. 1759. In his complaint, Consing, Jr. claimed that the incessant demands/recovery efforts made upon him by Unicapital and PBI to return to them the purchase price they had paid for the subject property constituted harassment and oppression which severely affected his personal and professional life.<sup>[25]</sup> He also averred that he was coerced to commit a violation of Batas Pambansa Blg. 22<sup>[26]</sup> as Unicapital and PBI, over threats of filing a case against him, kept on forcing him to issue a post-dated check in the amount sought to be recovered, notwithstanding their knowledge that he had no funds for the same.<sup>[27]</sup> He further alleged that Unicapital and URI required him to sign blank deeds of sale and transfers without cancelling the old ones in violation of the laws on land registration and real estate development.<sup>[28]</sup> Likewise, Consing, Jr. added that Unicapital and PBI's representatives were "speaking of him in a manner that [was] inappropriate and libelous,"<sup>[29]</sup> and that some John Does "deliberately engaged in a fraudulent scheme to compromise [Consing, Jr.'s] honor, integrity and fortune x x x

[consisting of] falsifying or causing to be falsified, or attempting to present as falsified certain transfers of Land Titles and Deeds for profit,"<sup>[30]</sup> classifying the foregoing as ultra vires acts which should warrant sanctions under the corporation law, Revised Securities Act and related laws.<sup>[31]</sup> Accordingly, Consing, Jr. prayed that: (a) he be declared as a mere agent of Dela Cruz, and as such, devoid of any obligation to Unicapital, URI, and PBI for the transactions entered into concerning the subject property; (b) Unicapital, URI, and PBI be enjoined from harassing or coercing him, and from speaking about him in a derogatory fashion; and (c) Unicapital, URI, and PBI pay him actual and consequential damages in the amount of P2,000,000.00, moral damages of at least P1,000,000.00, exemplary damages of P1,000,000.00, all per month, reckoned from May 1, 1999 and until the controversy is resolved, and attorney's fees and costs of suit.<sup>[32]</sup>

For their part, Unicapital, URI, and Martinez (Unicapital, et al.) filed separate Motions to Dismiss<sup>[33]</sup> Consing, Jr.'s complaint (Unicapital, et al.'s motion to dismiss) on the ground of failure to state a cause of action, considering that: (a) no document was attached against which Consing, Jr. supposedly derived his right and against which his rights may be ascertained; (b) the demands to pay against Consing, Jr. and for him to tender post-dated checks to cover the amount due were well within the rights of Unicapital as an unpaid creditor, as Consing, Jr. had already admitted his dealings with them; (c) the utterances purportedly constituting libel were not set out in the complaint; and (d) the laws supposedly violated were not properly identified. Moreover, Unicapital, et al. posited that the RTC-Pasig City did not acquire jurisdiction over the case given that Consing, Jr. failed to pay the proper amount of docket fees. In the same vein, they maintained that the RTC-Pasig City had no jurisdiction over their supposed violations of the Corporation Code and Revised Securities Act, which, discounting its merits, should have been supposedly lodged with the Securities and Exchange Commission. Finally, they pointed out that Consing, Jr.'s complaint suffers from a defective verification and, thus, dismissible.<sup>[34]</sup>

Similar to Unicapital et al.'s course of action, PBI and its General Manager, Martinez (Unicapital and PBI, et al.), sought the dismissal of Consing, Jr.'s complaint on the ground that it does not state a cause of action. They also denied having singled out Consing, Jr. because their collection efforts were directed at both Consing, Jr. and Dela Cruz, which should be deemed as valid and, therefore, should not be restrained.<sup>[35]</sup>

On September 14, 1999, the RTC-Pasig City issued a Resolution<sup>[36]</sup> denying the abovementioned motions to dismiss, holding that Consing, Jr.'s complaint sufficiently stated a cause of action for tort and damages pursuant to Article 19 of the Civil Code. It ruled that where there is abusive behavior, a complainant, like Consing, Jr., has the right to seek refuge from the courts. It also noted that the elements of libel in a criminal case are not the same as those for a civil action founded on the provisions of the Civil Code, and therefore, necessitates a different treatment. It equally refused to dismiss the action on the ground of non-payment of docket fees, despite Consing, Jr.'s escalated claims for damages therein, as jurisdiction was already vested in it upon the filing of the original complaint. Moreover, it resolved to apply the liberal construction rule as regards the subject complaint's verification and certification, despite its improper wording, considering further that such defect was not raised at the first opportunity. Consequently, it ordered Unicapital and PBI, et al.

to file their Answer and, in addition, to submit "any Comment or Reaction within five (5) days from receipt hereof on the allegations of [Consing, Jr.] in [his] rejoinder of September 9, 1999 regarding the supposed filing of an identical case in Makati City,"<sup>[37]</sup> i.e., Civil Case No. 99-1418. Unperturbed, Unicapital and PBI, et al. moved for reconsideration therefrom which was, however, denied by the RTC-Pasig City in an Order<sup>[38]</sup> dated February 15, 2001 for lack of merit. Aggrieved, they elevated the denial of their motions to dismiss before the CA via a petition for *certiorari* and prohibition,<sup>[39]</sup> docketed as **CA-G.R. SP Nos. 64019 and 64451**.

On October 20, 2005, the CA rendered a Joint Decision<sup>[40]</sup> holding that no grave abuse of discretion was committed by the RTC-Pasig City in refusing to dismiss Consing, Jr.'s complaint. At the outset, it ruled that while the payment of the prescribed docket fee is a jurisdictional requirement, its non-payment will not automatically cause the dismissal of the case. In this regard, it considered that should there be any deficiency in the payment of such fees, the same shall constitute a lien on the judgment award.<sup>[41]</sup> It also refused to dismiss the complaint for lack of proper verification upon a finding that the copy of the amended complaint submitted to the RTC-Pasig City was properly notarized.<sup>[42]</sup> Moreover, it upheld the order of the RTC-Pasig City for Unicapital and PBI, et al. to submit their comment due to the alleged existence of a similar case filed before the RTC-Makati City.<sup>[43]</sup>

Anent the substantive issues of the case, the CA concurred with the RTC-Pasig City that Consing Jr.'s complaint states a cause of action. It found that Unicapital and PBI, et al.'s purportedly abusive manner in enforcing their claims against Consing, Jr. was properly constitutive of a cause of action as the same, if sufficiently proven, would have subjected him to "defamation of his name in business circles, the threats and coercion against him to reimburse the purchase price, fraud and falsification and breach of fiduciary obligation." It also found that the fact that Consing Jr.'s complaint contains "nebulous" allegations will not warrant its dismissal as any vagueness therein can be clarified through a motion for a bill of particulars."<sup>[44]</sup> Furthermore, it noted that Consing, Jr. does not seek to recover his claims against any particular provision of the corporation code or the securities act but against the actions of Unicapital and PBI, et al.; hence, Consing, Jr.'s complaint was principally one for damages over which the RTC has jurisdiction, and, in turn, there lies no misjoinder of causes of action.<sup>[45]</sup>

Dissatisfied, only Unicapital, et al. sought reconsideration therefrom but the same was denied by the CA in a Resolution<sup>[46]</sup> dated October 25, 2006. Hence, the present petitions for review on *certiorari* in **G.R. Nos. 175277 and 175285**.

### **The Proceedings Antecedent to G.R. No. 192073**

On the other hand, on August 4, 1999, Unicapital filed a complaint<sup>[47]</sup> for sum of money with damages against Consing, Jr. and Dela Cruz before the RTC-Makati City, docketed as **Civil Case No. 99-1418**, seeking to recover (a) the amount of P42,195,397.16, representing the value of their indebtedness based on the Promissory Notes (subject promissory notes) plus interests; (b) P5,000,000.00 as exemplary damages; (c) attorney's fees; and (d) costs of suit.<sup>[48]</sup>

PBI also filed a complaint for damages and attachment against Consing, Jr. and Dela Cruz before the RTC of Manila, Branch 12, docketed as Civil Case No. 99-95381, also predicated on the same set of facts as above narrated.<sup>[49]</sup> In its complaint, PBI prayed that it be allowed to recover the following: (a) P13,369,641.79, representing the total amount of installment payments made as actual damages plus interests; (b) P200,000.00 as exemplary damages; (c) P200,000.00 as moral damages; (d) attorney's fees; and (e) costs of suit.<sup>[50]</sup> **Civil Case No. 99-95381** was subsequently consolidated with SCA No. 1759 pending before the RTC-Pasig City.<sup>[51]</sup>

For his part, Consing, Jr. filed a Motion to Dismiss Civil Case No. 99-1418 which was, however, denied by the RTC-Makati City in an Order<sup>[52]</sup> dated November 16, 1999. Thereafter, he filed a Motion for Consolidation<sup>[53]</sup> (motion for consolidation) of Civil Case No. 99-1418 with his own initiated SCA No. 1759 pending before the RTC-Pasig City.

In an Order<sup>[54]</sup> dated July 16, 2007, the RTC-Makati City dismissed Consing, Jr.'s motion for consolidation and, in so doing, ruled that the cases sought to be consolidated had no identity of rights or causes of action and the reliefs sought for by Consing, Jr. from the RTC-Pasig City will not bar Unicapital from pursuing its money claims against him. Moreover, the RTC-Makati City noted that Consing, Jr. filed his motion only as an afterthought as it was made after the mediation proceedings between him and Unicapital failed. Consing, Jr.'s motion for reconsideration therefrom was denied in an Order<sup>[55]</sup> dated September 4, 2007. Hence, he filed a petition for *certiorari* before the CA, docketed as **CA-G.R. SP No. 101355**, ascribing grave abuse of discretion on the part of the RTC-Makati City in refusing to consolidate Civil Case No. 99-1418 with SCA No. 1759 in Pasig City.

On September 30, 2009, the CA rendered a Decision<sup>[56]</sup> sustaining the Orders dated July 16, 2007 and September 4, 2007 of the RTC-Makati City which denied Consing, Jr.'s motion for consolidation. It held that consolidation is a matter of sound discretion on the part of the trial court which could be gleaned from the use of the word "may" in Section 1, Rule 38 of the Rules of Court. Considering that preliminary steps (such as mediation) have already been undertaken by the parties in Civil Case No. 99-1418 pending before the RTC-Makati City, its consolidation with SCA No. 1759 pending before the RTC-Pasig City "would merely result in complications in the work of the latter court or squander the resources or remedies already utilized in the Makati case."<sup>[57]</sup> Moreover, it noted that the records of the consolidated Pasig and Manila cases, *i.e.*, SCA No. 1759 and Civil Case No. 99-95381, respectively, had already been elevated to the Court, that joint proceedings have been conducted in those cases and that the pre-trial therein had been terminated as early as October 23, 2007. Therefore, due to these reasons, the consolidation prayed for would be impracticable and would only cause a procedural *faux pas*.

Undaunted, Consing, Jr. filed a motion for reconsideration therefrom but was denied by the CA in a Resolution<sup>[58]</sup> dated April 28, 2010. Hence, the present petition for review on *certiorari* in G.R. No. 192073.

### **The Proceedings Before the Court**

After the filing of the foregoing cases, the parties were required to file their