

FIRST DIVISION

[G.R. No. 152239, August 17, 2011]

**MAKING ENTERPRISES, INC. AND SPOUSES JOAQUIN TAMANO
AND ANGELITA TAMANO, PETITIONERS, VS. JOSE MARFORI AND
EMERENCIANA MARFORI, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari assailing the July 24, 2000 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 43076. The CA had ordered the issuance of writs of certiorari and prohibition permanently enjoining the prosecution of Jose Marfori in Criminal Case Nos. 170660 to 170676 before the Metropolitan Trial Court (MeTC) of Caloocan City, and ordered the appointment of a receiver in Civil Case No. 94-70092, pending before the Regional Trial Court (RTC) of Manila. Likewise assailed is the appellate court's Resolution^[2] dated February 12, 2002, denying petitioners' motion for reconsideration.

The antecedent facts follow:

On June 4, 1984, Jose F. Marfori acquired a five-storey commercial building, known as the Marsman Building, from the Development Bank of the Philippines. As the land on which the building stood was owned by the Philippine Ports Authority (PPA), Marfori entered into a contract of lease of the said lot with the PPA. The contract was for a period of twenty-five (25) years, renewable for a similar period, and was subject to the condition that upon the expiration of lease, the building and all other improvements found on the leased premises shall become the PPA's sole property. Marfori then incurred huge expenses for the rehabilitation of the building and leased some portions of the building to the PPA.

Thereafter, on April 10, 1987, Marfori executed a *dacion en pago* and assignment of rights transferring the ownership of the Marsman Building to Making Enterprises, Inc. (Making), on the condition that Making would assume all of Marfori's obligations.^[3] Making was represented by its General Manager, Cristina Lee, and Executive Vice-President, Angelita Ma. Tamano, in the said transaction.

Marfori's wife, Emerenciana, alleged that she did not consent to the transfer of the Marsman Building to Making. She claimed that the building is part of their conjugal property as it was acquired during their marriage.^[4] On April 12, 1994, she filed with the RTC of Manila a complaint against Making, the spouses Joaquin and Angelita Tamano, the spouses Lester and Cristina Lee, and the PPA for Recovery of Ownership, Annulment of Contract with Damages, Receivership, Accounting and Preliminary Injunction with Prayer for Restraining Order.^[5] She sought, among others, to annul the *dacion en pago* and assignment of rights and prayed for the

appointment of a receiver to preserve the rentals of the building. She also prayed for the issuance of a writ of preliminary injunction to enjoin the PPA from paying its rentals to Making and from approving the transfer of the Marsman Building.

In an Order^[6] dated October 18, 1995, Judge Catalino Castañeda, Jr. of the RTC, Branch 17, of Manila denied the prayer for the issuance of a writ of preliminary injunction and the application for receivership.

The RTC noted that in 1987, Emerenciana's complaint for the same cause of action was dismissed by the RTC, Branch 51, of Manila for improper venue.^[7] The RTC was not convinced that she would indeed suffer grave injustice and irreparable damages if a writ of injunction enjoining the PPA from paying rentals to Making and approving the transfer of the Marsman Building is not issued considering that she re-filed her complaint only on April 12, 1994, or more than six years after her first complaint was dismissed. As regards her prayer for the appointment of a receiver, the RTC held that the appointment of a receiver is an equitable relief and a court of equity will not ordinarily appoint a receiver where the rights of the parties depend on the determination of adverse claims of legal title to real property and one party is in possession.

Emerenciana moved for reconsideration of the order. However, the RTC denied the motion.^[8]

Not satisfied, Emerenciana filed before the CA a petition for certiorari and receivership with prayer for preliminary injunction, which was docketed as CA-G.R. SP No. 39161. On March 29, 1996, however, the CA dismissed the petition for being insufficient in form and substance.^[9] Reconsideration of the dismissal was likewise denied in a Resolution dated November 29, 1996.^[10]

Meanwhile, with regard to the criminal cases mentioned at the outset, records show that in 1987, Marfori issued twenty-two (22) checks in favor of Cristina Lee. Lee deposited the checks to her account with the Philippine Bank of Communications, but the same were dishonored for the reason of "Account Closed." Thus, she filed complaints against Marfori for estafa and violation of *Batas Pambansa Blg. 22* with the Prosecutor's Office of Caloocan City.^[11]

Before he could be arraigned, Marfori sought reinvestigation of the criminal cases against him, arguing that he was not given the opportunity to present controverting evidence to prove that the checks were already paid or liquidated.^[12] The RTC granted Marfori's motion and ordered the Office of the City Prosecutor to conduct a reinvestigation. Upon reinvestigation, Assistant City Prosecutor Afable E. Cajigal rendered a joint resolution,^[13] which was later approved by City Prosecutor Gabriel N. Dela Cruz, finding cause to dismiss the criminal complaints against Marfori. On August 11, 1995, Asst. City Prosecutor Cajigal filed a motion to dismiss before the RTC of Caloocan City, which motion was granted by Judge Emilio L. Leachon, Jr. on the same date.^[14]

Claiming that she was not notified of the order for reinvestigation, Angelita Ma. Tamano moved to set aside the joint resolution.^[15] Prosecutor Cajigal then reversed his previous findings and recommended the setting aside of the joint resolution and

dismissal order.^[16] Said resolution was approved by 1st Assistant City Prosecutor Rosauro Silverio. Thus, Asst. City Prosecutor Cajigal filed seventeen (17) informations for violation of B.P. 22 against Marfori before the MeTC of Caloocan City.^[17] Warrants for Marfori's arrest were also issued by Judge Marcelino L. Sayo.

Aggrieved, Marfori filed with the Caloocan City RTC a petition^[18] for certiorari and injunction with prayer for temporary restraining order against Judge Sayo; Asst. City Prosecutors Cajigal, Silverio and Dela Cruz; and Making, who was represented by Tamano. Marfori maintained that all the checks were drawn in favor of Cristina Lee, but the prosecutors deliberately made it appear in the new informations that the checks were drawn in favor of Making. He prayed that Judge Sayo be enjoined from proceeding with the trial of the criminal cases and that the informations for violation of B.P. 22, as well as the warrants of arrest, be declared void.

Making, represented by Tamano, filed a motion to dismiss arguing that the general rule is that a criminal prosecution may not be restrained by injunction.^[19]

In an Order dated April 18, 1997, the RTC granted Making's motion and dismissed Marfori's petition.^[20]

Meanwhile, on November 27, 1996, Marfori and his wife had filed with this Court a Consolidated Petition^[21] docketed as G.R. No. 126841 asking among others, for the appointment of a receiver to preserve the rentals collected from the Marsman Building and the issuance of an injunction to enjoin the implementation of the warrants of arrest issued against him. Respondents argued that the filing of the criminal cases against Marfori had no factual and legal justification and hence, should be enjoined.

The Court, after finding no special and important reasons for it to take cognizance of the case in the first instance, referred the petition to the CA for consideration and adjudication on the merits.^[22]

On February 16, 1998, respondents filed an Amended Consolidated Petition^[23] with the CA. They added that Judge Castañeda, Jr. likewise erred in denying in Civil Case No. 94-70092 their motion to present crucial documents wherein Tamano allegedly made a declaration against her interest. They likewise reiterated in their amended petition their prayer for the appointment of a receiver to take over, manage, and administer the Marsman Building.

In their Comment, petitioners countered that respondents had lost all their rights to the building after they ceded it to Making in 1987. Petitioners also charged respondents with forum shopping.^[24] They argued that when Emerenciana's application for a writ of preliminary injunction and receivership was denied by the RTC, she appealed the denial to the CA. When she failed to obtain a favorable action, she and her husband filed a petition with the Supreme Court involving the same subject matter and the same issues as in Emerenciana's earlier petition in CA-G.R. SP No. 39161. Petitioners alleged that respondents hid the real purpose of their action by cleverly lumping together the civil and the criminal cases in their Consolidated Petition.

On July 24, 2000, the CA rendered the assailed Decision, to wit:

WHEREFORE, premises considered, the petition filed by petitioners Jose and Emerenciana Marfori is hereby GRANTED, and judgment rendered as follows:

- 1) That writs of certiorari and prohibition be issued permanently enjoining the further prosecution of Criminal Case Nos. 170660 to 170676, inclusive, against petitioner Jose Marfori; and
- 2) That, after posting of a bond in an amount to be determined by the Trial Court, let a receiver be appointed in Civil Case No. 94-70092, to take custody, manage, and administer the Marsman Building and all rents collected therefrom, during the pendency of the proceedings.

SO ORDERED. ^[25]

The CA brushed aside petitioners' argument that respondents were guilty of forum shopping, holding that technical rules of procedure must be relaxed in the interest of substantial justice.

As to the order granting the prayer for the appointment of a receiver, the CA ruled that respondents have sufficiently proven their interest in the Marsman Building. The CA found that unless a receiver is appointed, there is a danger of loss or material injury considering that petitioners possess absolute control of the building.

Meanwhile, as to the criminal cases, the CA ruled that the public prosecutors gravely abused their discretion when they set aside the earlier resolution recommending the dismissal of the criminal cases against Marfori based solely on the ground that Tamano was not given the chance to comment on Marfori's motion for reinvestigation. The CA noted that in the joint resolution, the prosecutors thoroughly studied the case and concluded that the checks subject of the criminal cases were not issued with valuable consideration since it was impossible for Marfori to have been indebted or for petitioners to lend the amount of P4,051,518.08 stated in the checks because the complainants/Making Enterprises only earned P49,352.95 in 1987.

Petitioners filed motions for reconsideration questioning the appointment of a receiver ^[26] and the order permanently enjoining the further prosecution of Marfori in Criminal Case Nos. 170660 to 170676. ^[27] However, the CA denied both motions in its Resolution of February 12, 2002 as follows:

WHEREFORE, the motions are hereby DENIED. However, in order to ensure that the objectives of Sec. 1 (a) Rule 59, the basis of Our decision, will be carried out effectively, the trial court is DIRECTED to appoint [as] a receiver, after compliance of the bond requirement, a private banking institution which shall exercise...powers as such pursuant to Sec. 6, Rule 59 of the Rules of Court.