

FIRST DIVISION

[G.R. No. 171137, June 05, 2009]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER,
VS. SPOUSES WILSON DY HONG PI AND LOLITA DY AND
SPOUSES PRIMO CHUYACO, JR. AND LILIA CHUYACO,
RESPONDENTS.**

D E C I S I O N

PUNO, J.:

Before the Court is a petition for review on certiorari assailing the Decision^[1] dated July 18, 2005 of the Court of Appeals in CA-G.R. SP. No. 85282, and its Resolution^[2] dated January 10, 2006, denying petitioner's motion for reconsideration.

Spouses Damian and Tessie Amadeo are indebted to petitioner Philippine Commercial International Bank, a domestic uni-banking corporation, as sureties for Streamline Cotton Development Corporation. The promissory notes became due and demandable, but the Amadeo spouses failed to pay their outstanding obligations despite repeated demands. As of February 15, 1994, these obligations stood at Ten Million, Six Hundred Seventy-One Thousand, Seven Hundred Twenty-Six Pesos and Sixty-One Centavos (P10,671,726.61).

Petitioner subsequently discovered that roughly a month before the due date of the promissory notes, the Amadeo spouses (i) sold three (3) or nearly all of their real properties to respondents, Spouses Wilson and Lolita Dy and Spouses Primo and Lilia Chuyaco, and (ii) immediately caused the transfer of the titles covering the parcels of land in favor of the latter. The consideration for these sales was further alleged to have been grossly insufficient or inadequate.

Believing that the transfers were done in fraud of creditors, petitioner instituted an action for rescission and damages on April 22, 1994. In its Complaint^[3] in Civil Case No. 94-1585 against Spouses Amadeo, Dy and Chuyaco, petitioner asked the Regional Trial Court of Makati City for the following reliefs:

1. Annulling the Deeds of Absolute Sale both dated September 16, 1993 and thereafter, direct the Registries of Deeds of Sultan Kudarat and Davao City to cancel the Transfer Certificates of Title Nos. (*sic*) T-27628, T-202868, and T-202869 issued in the name of Wilson Dy Hong Pi and Lolita G. Dy AND Primo Chuyaco, Jr. and Lilia O. Chuyaco, respectively, and in lieu thereof, issue new ones under the name of Damian and Tessie Amadeo.
2. Ordering the defendants to pay the plaintiff moral damages in the sum of P200,000.00; exemplary damages in the sum of P200,000.00; and P100,000.00 as[,] and for[,] attorney's fees.^[4]

The case was then raffled to Branch 133, presided over by Judge Napoleon E. Inoturan.

Upon service of summons on the Amadeo spouses, the latter filed a Motion to Dismiss^[5] on the ground that the Complaint violated the explicit terms of Supreme Court Circular No. 04-94, as the Verification was executed by petitioner's legal counsel. ^[6] Petitioner filed its Opposition to the Motion to Dismiss,^[7] where it argued that (i) the rule cited by the Amadeo spouses should not be applied literally, and (ii) at any rate, petitioner's legal counsel was authorized by petitioner to institute the Complaint.^[8] On February 4, 1995, the trial court issued an Order^[9] denying the Motion to Dismiss.

The Amadeo spouses subsequently filed an Answer^[10] where they alleged that petitioner failed to release the loans to Streamline Cotton Development Corporation on the agreed date, thereby constraining them to incur loans from third parties at high interest rates to keep the company afloat. These loans were covered by postdated checks which had to be funded once the obligations fell due, lest the Amadeo spouses face criminal prosecution. In order to pay the said loans, they thus had to sell the properties subject of this case. The Amadeo spouses further claimed that the purchase price for the three (3) parcels of land was the fair market value, and that they had other personal and real properties which may be availed of to answer for their obligations. In their Counterclaim, they prayed for moral damages of P200,000.00, attorney's fees and expenses of litigation.

Petitioner filed its Reply and Answer to Counterclaim^[11] on March 8, 1995.

On September 13, 1995, petitioner filed an Ex Parte Motion for Leave to Serve Summons by Publication^[12] on Spouses Dy and Chuyaco. However, this was denied in an Order^[13] dated September 14, 1995 on the ground that summons by publication cannot be availed of in an action *in personam*.

Accordingly, on March 4, 1996, petitioner filed an Amended Complaint^[14] to include allegations in support of, and a prayer for, a writ of preliminary attachment. Petitioner then presented evidence in relation thereto, and on February 25, 1997, the trial court issued an Order^[15] for the issuance of the writ. Upon petitioner's ex-parte motion, the trial court likewise directed the Clerk of Court of the Regional Trial Court of Davao City to designate a Special Sheriff to implement the writ of preliminary attachment.^[16]

In Orders^[17] dated January 12, 1998 and February 20, 1998, respectively, petitioner was directed to inform the court whether it still intended to pursue the case. This appears to have been motivated by the fact that no property of the defendants had been attached as of yet. Petitioner did not comply with the said Orders; consequently, the case was dismissed without prejudice on June 26, 1998 for failure to prosecute.^[18] By this time, petitioner had already caused the annotation of a notice of *lis pendens* at the back of the titles of the properties subject of this case (*i.e.*, TCT Nos. T-27628, T-202868, and T-202869).

On August 3, 1998, petitioner filed a Motion for Reconsideration of the June 26,

1998 Order, alleging that its failure to notify the trial court of its intention to pursue the case was prompted solely by the difficulty of locating properties against which the writ of attachment could be enforced. In the interest of justice, the trial court granted the motion.^[19]

Defendant Spouses Amadeo, Dy and Chuyaco then filed an "Omnibus Motion to Dismiss and to Annul All the Proceedings Taken Against the Defendants"^[20] on December 11, 1998, in which motion they questioned the jurisdiction of the trial court over their persons. Petitioner filed its Opposition^[21] thereto on February 15, 1999. Defendants filed their Reply^[22] on March 10, 1999, while petitioner filed its Rejoinder^[23] on June 9, 1999. Said motion, however, was merely noted without action in an August 2, 2001 Order^[24] since its notice of hearing was addressed only to the Clerk of Court, viz.:

It appears from the Motion that its Notice of Hearing is not addressed to any of the parties concerned as otherwise required by Rule 15[,] Section 5 of the 1997 Rules of Civil Procedure. Such being the case, the Motion is deemed a mere scrap of paper as held in Provident International Resources Corporation vs. Court of Appeals, 259 SCRA 510.

In any event, the record shows that defendants Sps. Amadeo have been duly served with summons as early as November 11, 1994 per Sheriff's Return of Service dated November 14, 1994, and they are therefore within the jurisdiction of the Court. However, defendants Spouses Dy and Chuyaco have not been served with summons as evidenced by Officer's Return dated May 24, 1994 and Return of Service dated June 10, 1994, respectively, and so the Court has not yet acquired jurisdiction over them. Since aforesaid Motion is deemed a scrap of paper, it cannot be construed to manifest a (*sic*) voluntary appearance on their part.

Wherefore, the Omnibus Motion is noted without action. Let alias summons be issued to defendants-spouses Dy and Chuyaco. For plaintiff's guidance, it may avail itself of Rule 14[,] Section 14 on summons by publication if it so desires, upon proper motion.

SO ORDERED. (underscoring in the original)

Spouses Dy and Chuyaco subsequently filed a "Motion to Dismiss (for Lack of Jurisdiction)"^[25] on February 18, 2002, in which motion they essentially accused petitioner of not causing summons to be served upon them and losing interest in the case. Petitioner filed its Opposition^[26] thereto, and in an April 23, 2002 Order,^[27] the trial court denied the Motion to Dismiss on account of (i) petitioner's Compliance and Manifestation^[28] that it had not lost interest in pursuing the case, and (ii) the Motion for Leave of Court to Serve Summons by Publication that petitioner filed simultaneously with its Opposition. On April 24, 2002, the Motion for Leave of Court to Serve Summons by Publication was submitted for resolution.^[29]

Respondent Spouses Dy and Chuyaco next filed a "Motion to Dismiss for Failure to Prosecute"^[30] on June 17, 2003. The significant portions of the motion state:

2. That based on the order of this Honorable Court dated April 23, 2003 (*sic*), the Motion for Leave of Court to Serve Summons by Publication was submitted for resolution, but the movants-defendants would like to remind the Honorable Court that a Motion of the same nature was already filed on September 13, 1995 and was DENIED on September 14, 1995. xxx;

3. That therefore, the order dated August 21, 2001 of this Honorable Court which advised the complainant to avail of Rule 14 Section 14 of the Rules is contrary to its order dated September 14, 1995;

4. That up to this date, the complainant has not lifted a finger to pursue this case against movants-defendants, hence, this Motion to Dismiss.

WHEREFORE, premises considered, it is most respectfully prayed that this case be dismissed against the movants-defendants and to order the deletion of the Notice of *Lis Pendens* at the back of the subject title (*sic*).

This was opposed by petitioner, arguing that it had already filed a motion for the service of summons by publication, but the trial court had yet to act on it.^[31] On July 25, 2003, this Motion was submitted for resolution.^[32]

On November 4, 2003, Spouses Dy and Chuyaco personally, and not through their counsel, filed a "Motion for Inhibition without submitting themselves to the jurisdiction of this Honorable Court,"^[33] the relevant portions of which state:

1. That since 1998, the defendants-movants have been moving for the dismissal of this case as far as the movants are concerned and to nullify the proceedings taken against them since the Honorable Court has not yet acquired jurisdiction over their persons when the plaintiff presented its evidence against defendants (*sic*) Sps. Damian and Tessie Amadeo and even thereafter;

2. That, however only on (*sic*) August 2, 2001 or after more than three (3) years, that this Honorable Court denied the said Motion to Dismiss due to technicality (*sic*) and merely require (*sic*) the plaintiff to serve the summons either personally or thru publication;

3. That, however in the order of this Honorable Court dated September 14, 1995, it already denied the Ex-Parte Motion for Leave to Serve Summons by Publication "considering that the action herein is in personam", hence, this order is contrary to its latest order dated August 2, 2001;

4. That another Motion to Dismiss was filed last June 11, 2003^[34] on the ground of lack of interest to pursue the case but up to this date, the Honorable Court has done nothing that delays (*sic*) the proceedings to the prejudice of the defendants-movants;

5. That this continuous delay in the proceedings shows that the Honorable Court may not be competent enough to further hear this case.

WHEREFORE, premises considered, it is most respectfully prayed for the inhibition of this Honorable Court (*sic*) from further hearing this case.

This was submitted for resolution on November 13, 2003.

The motion for inhibition was adopted by their counsel on record, Clarissa Castro, through a "Motion to Adopt Motion for Inhibition and Manifestation," which was filed on February 11, 2004^[35] and noted by the trial court in a February 20, 2004 Order. ^[36] On June 23, 2004, however, the trial court (i) denied the motion for inhibition for lack of merit, (ii) ruled that Spouses Dy and Chuyaco have voluntarily submitted themselves to the jurisdiction of the trial court, and (iii) gave them fifteen (15) days from receipt of the Order within which to file their respective answers, as follows:

Acting on the Motion for Inhibition, the Court hereby denies the same for lack of legal basis.

In any event, the fact that defendants Wilson Dy and Primo Chuyaco, Jr. signed said Motion themselves and in behalf of their respective spouses undoubtedly indicates their voluntary appearance in this case and their submission to the jurisdiction of this Court. The phrase "without submitting themselves to the jurisdiction of this Honorable Court" in the heading of said Motion can not qualify the clear import of Rule 14 section 20 which states:

Voluntary appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (23a)

It may be noted that subject Motion for Inhibition is not a Motion to Dismiss.

Wherefore, defendants-spouses Dy and Chuyaco are given fifteen (15) days from receipt hereof within which to file their respective answers.

All pending incidents are deemed resolved.^[37]

Unsatisfied with the Order, respondent Spouses Dy and Chuyaco filed a Petition for Certiorari under Rule 65^[38] before the CA, alleging that "the public respondent committed grave abuse of discretion when he considered the Motion to Inhibit (without submitting to the jurisdiction of the Honorable Court) which they had filed to question his impartiality and competence due to the delay in resolving the Motion to Dismiss based on lack of jurisdiction, as voluntary appearance, and wherein he required the respondents to file their Answer within the required period." The CA granted the petition in this wise:

The old provision under Section 23, Rule 14 of the Revised Rules of Court provided that:

Section 23. *What is equivalent to service.* The defendant's voluntary appearance in the action shall be equivalent to service.