

FIRST DIVISION

[G.R. NO. 153481, August 10, 2007]

HARRY M. TANINGCO, CECILIA TANINGCO, ROSEMARIE ABORKA, FULGENCIA LIPAR, FE VILLAREAL-REPIEDAD, AGUINALDO REPIEDAD, MARY LOU REPIEDAD AND COMOPHI REPIEDAD, PETITIONERS, VS. LILIA M. TANINGCO, DENNIS M. TANINGCO, JOSE M. TANINGCO, JR., ANDREW M. TANINGCO AND JAMES M. TANINGCO, RESPONDENTS.

D E C I S I O N

GARCIA, J.:

Sought to be reversed and set aside via this petition for review on *certiorari* is the Decision^[1] dated 30 April 2002 of the Court of Appeals (CA) in *CA-G.R. SP No. 65282* which **ANNULLED** the following Orders of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 8 (*Kalibo court*, for brevity), in its (SEC) Civil Case No. 6262, to wit:

- a) **Order** dated **14 March 2001**, issuing an ex-parte Urgent Temporary Restraining Order (TRO) against respondents;
- b) **Order** dated **2 April 2001**, insofar as it denied respondents' motion to dismiss;
- c) **Order** dated **6 April 2001**, reiterating the denial of respondents' motion to dismiss; and
- d) **Order** dated **30 April 2001**, insofar as it denied respondents' motion for reconsideration,

and **DISMISSED** said Civil Case No. 6262 for forum shopping.

The pertinent undisputed facts follow:

On 22 January 2001, on the occasion of the annual stockholders' meeting of the Rural Bank of Banga (Aklan) (*hereinafter simply referred to as the bank*), respondents Dennis M. Taningco, Jose M. Taningco, Jr., Andrew M. Taningco and James M. Taningco got involved in an altercation with their brother, herein petitioner Harry M. Taningco (*Harry*, for brevity) relative to the fifty-one percent (51%) majority shares of stocks of the bank, which were transferred to Harry by virtue of Deeds of Sale and Memorandum of Agreement between Harry and their parents, namely, respondent Lilia M. Taningco and the latter's husband, Jose M. Taningco. The said deeds of sale are now subject of a case filed by the parents on 31 January 2001 before the RTC of Quezon City (*QC court*, for brevity), thereat docketed as **Civil Case No. Q-01-43250**, entitled "*Spouses Jose M. Taningco and Lilia M.*

Taningco v. Spouses Harry and Cecilia Taningco," seeking the declaration of nullity of the aforesaid deeds of sale and the return of the disputed shares of stock of the bank and in another bank owned by the parents, the Rural Bank of Sta. Barbara (Iloilo).

Harry immediately left, even before the said annual stockholders' meeting could start on that day. Respondents, however, proceeded with the election of a new board of directors of the bank, voting themselves as the new corporate directors and officers thereof. Respondents, thereafter, placed Harry on preventive suspension and required him to explain why he should not be dismissed as manager of the bank.

On 28 February 2001, upon orders of respondent Lilia M. Taningco, Harry was dismissed as bank manager. Respondents then seized control of the corporation by relieving the bank's security guards. Respondents, thereafter, took physical possession and control of the bank's premises and properties.

On 5 March 2001, in Civil Case No. Q-01-43250, petitioners-spouses Harry and Cecilia Taningco filed a *Manifestation with Urgent Ex-Parte Motion for Temporary Restraining and Protective Order*. They alleged that the corporate take-over of the bank by the respondents was occasioned by violence due to the presence of respondents' armed guards.

On 12 March 2001, while their application for a TRO in Civil Case No. Q-01-43250 was still pending, petitioners-spouses Harry and Cecilia Taningco, together with their co-petitioners herein, filed with the RTC of Kalibo, Aklan (**Kalibo court**, for brevity), sitting as a corporate court, a *Petition for Declaratory Relief, Mandamus, Prohibition, Preliminary Injunction with Temporary Restraining Order and Damages*, thereat docketed as (**SEC**) **Civil Case No. 6262**, entitled "*Harry Taningco, Cecilia Taningco, Rosemarie Aborka, Fulgencia Lipar, Fe Villareal-Repieded, Aguinaldo Repieded, Mary Lou Repiedad and Comophi Repiedad v. Lilia Taningco, Dennis Taningco, Jose Taningco, Jr. and James Taningco.*"

In an **Order** dated **14 March 2001**, the Kalibo court, in (SEC) Civil Case No. 6262, issued an Urgent TRO, ordering the respondents, as defendants in that case, and any and all persons acting for and in their behalves, "to cease and desist from exercising corporate functions and from occupying the bank's premises, maintaining a *status quo*, by restoring the operation of the bank to the petitioners for a duration of seventy-two (72) hours from date hereof until all the parties are heard on notice in a summary hearing to be conducted for that purpose."

On 19 March 2001, respondents filed before the QC court their Opposition to petitioners' application of 05 March 2001 for the issuance of a TRO, arguing that the four (4) Deeds of Absolute Sale dated 19 August 2000 were simulated and falsified, hence, null and void *ab initio*. Such being the case, respondents argued that petitioners have not acquired ownership over the fifty-one percent (51%) controlling shares of stock of the two (2) rural banks, the same having been feloniously acquired and transferred. Respondents likewise contended before the QC court that the application for a TRO is unsubstantiated as it was based on Harry's pure hallucinations and fraudulent scheme. Respondents further denied that they used armed guards when they took over the operations of the bank (Rural Bank of Banga [Aklan]), but instead, there was only a peaceful change of the security guards under the respondents' direct supervision.

On 30 March 2001, this time before the Kalibo court, respondents, as defendants thereat, filed a motion to dismiss (SEC) Civil Case No. 6262 on grounds of forum shopping, *litis pendentia*, lack of jurisdiction and lack of cause of action.

In the meantime, the Kalibo court heard the application for TRO in the main case ([SEC] Civil Case No. 6262). It was during the said hearing that the Kalibo court discovered that a similar application for TRO was filed in the QC court by Harry, based on the same facts and seeking the same relief asked of the Kalibo court. Thus, in an **Order** dated **2 April 2001**, the Kalibo court refused to extend the initial 72-hour TRO earlier issued per its Order of 14 March 2001, citing, as ground therefor, the pendency of a similar application before the QC court. In the same Order of 2 April 2001, the Kalibo court likewise denied respondents' motion to dismiss of 30 March 2001, with reservation of further discussing the reasons for the denial in an extended resolution to be subsequently issued.

Petitioners filed their *Motion for Reconsideration* on the Order dated 2 April 2001 insofar as it denied the extension of the 72-hour TRO.

On 6 April 2001, with the Kalibo court's refusal to extend the 72-hour TRO, respondents on their part filed a *Motion for Restoration* averring that with the expiration of the 72-hour TRO granted by virtue of the Order dated 14 March 2001, and the denial of the extension thereof, they (respondents) should be restored as corporate directors/officers of the bank.

Also, on the same date, the Kalibo court issued its **Order of 6 April 2001**, which is the extended resolution it reserved to issue in its earlier Order of 2 April 2001, expounding on the reasons for the denial of respondents' motion to dismiss, ruling that there was no forum shopping because the issues raised in the two (2) pending cases were unrelated to each other: the case before the **Kalibo court**, (SEC) Civil Case No. 6262, relates to the **illegal exercise of corporate acts** by the respondents; while the other case before the **QC court**, Civil Case No. Q-01-43250, involves the issue of **nullity of sale** of the shares of stocks of Jose M. Taningco and his wife, herein respondent Lilia M. Taningco, to petitioners-spouses.

On 19 April 2001, respondent Dennis M. Taningco filed before the Kalibo court, in (SEC) Civil Case No. 6262, a *Motion for Reconsideration* of the Order dated 2 April 2001 insofar as said order also denied respondents' earlier motion to dismiss. Upon receipt of the subsequent 6 April 2001 Order expounding on the 2 April 2001 Order, Dennis also filed a *Supplemental Motion for Reconsideration*.

With three incidents now pending before the Kalibo court, namely, (1) petitioners' motion for reconsideration of the 2 April 2001 Order insofar as it denied to extend the 72-hour TRO; (2) respondent Dennis's motion for reconsideration and the supplement thereto; and (3) respondents' motion for restoration, the Kalibo court issued the **Order** dated **30 April 2001**: (1) denying petitioners' motion for reconsideration for having become moot and academic by virtue of the lapse of the period within which a TRO may be extended; (2) denying respondent Dennis's motion and supplemental motion for reconsideration of the order denying the motion for the dismissal of (SEC) Civil Case No. 6262, considering that a motion to dismiss is a prohibited pleading under Section 8 of Rule 1 of the Interim Rules on Intracorporate Controversies; and (3) concerning the motion for restoration,

deeming it wise and beneficial for the bank itself and for the public in general, to create a Management Committee pursuant to Rule 9 of the Interim Rules pending final determination of the issues in the main case.

The aforesaid **Order of 30 April 2001** also reiterated that there was no violation of the rule on forum shopping considering that the petition itself in (SEC) Civil Case No. 6262 alleged and stated the pendency of Civil Case No. Q-01-43250 before the QC court, and pursuant to the ruling of this Court in *Gabionza v. Court of Appeals*,^[2] such disclosure in the pleading itself is substantial compliance of the Rule.

Petitioners, in the meantime, also filed with the Kalibo court a motion to declare the herein respondents, as defendants in (SEC) Civil Case No. 6262, as in default.

On 4 June 2001, the Kalibo court issued an Order declaring respondents Lilia M. Taningco, Jose M. Taningco, Jr. and James M. Taningco as in default, and requiring respondents Dennis M. Taningco and Andrew M. Taningco to file their respective answers within five (5) days from receipt of the order.

Respondents forthwith elevated the matter to the CA *via* a petition for *certiorari*, prohibition, mandamus and injunction with prayer for preliminary injunction and TRO under Rule 65, thereat docketed as *CA-G.R. SP No. 65282*. In the herein assailed decision dated 30 April 2002, the appellate court granted the petition, thus:

WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Orders dated 14 March 2001, 2 April 2001, 6 April 2001 and 30 April 2001 are hereby nullified and set aside. Civil Case No. 6262 pending before the Regional Trial Court of Kalibo, Aklan is hereby DISMISSED on the ground of forum shopping.

SO ORDERED.

Aggrieved, it was petitioners' turn to elevate the matter to this Court via the present recourse on their submission that the CA erred:

I.

XXX IN FINDING THAT THE ELEMENTS OF LITIS PENDENTIA ARE PRESENT IN CIVIL CASE NO. Q-01-43250 PENDING BEFORE THE REGIONAL TRIAL COURT OF QUEZON CITY IN RELATION TO CIVIL CASE NO. 6262 PENDING BEFORE THE REGIONAL TRIAL COURT OF KALIBO, AKLAN.

II.

XXX IN DISMISSING CIVIL CASE NO. 6262 ON THE GROUND OF FORUM-SHOPPING.

III.

XXX IN FINDING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE TEMPORARY RESTRAINING ORDER (TRO)