

FIRST DIVISION

[G.R. NO. 135711, August 02, 2007]

MARIBETH CORDOVA, PETITIONER, VS. HON. COURT OF APPEALS, EIGHTH DIVISION, AND HON. RICARDO F. TORNILLA (RETIRED), JUDGE, MTCC, BRANCH 6, BACOLOD CITY, AND THE SHERIFF AND HIS DEPUTIES, PUBLIC RESPONDENTS, AND SPS. ROMEO AND MARIETTA LAGUARDIA, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition for review^[1] of the Decision and Resolution of the Court of Appeals, dated March 6, 1998 and August 25, 1998, respectively, in CA-G.R. CV No. 53979, entitled "Maribeth Cordova v. Sps. Romeo and Marietta Laguardia, et al."

The facts appear as follows: ^[2]

On April 27, 1994, petitioner filed a complaint for breach of contract and damages, praying for the issuance of a writ of preliminary injunction^[3] with the Regional Trial Court (RTC), Bacolod City against private respondents, spouses Romeo and Marietta Laguardia, and Judge Ricardo F. Tornilla, along with the Sheriff and his deputies, as nominal parties.

In her complaint, petitioner denounced private respondents' filing of a Motion for the Issuance of a Writ of Demolition in Civil Case No. 18761^[4] despite the parties' alleged compromise agreement to have the case dismissed. The case was presided by public respondent Judge Ricardo F. Tornilla who issued an Order of Demolition on April 6, 1994.^[5]

The complaint, however, did not include the certification against forum shopping required under Administrative Circular No. 04-94 of the Supreme Court. It was only on May 3, 1994 that petitioner submitted the certification in compliance with the circular.

On May 18, 1994, private respondents filed a Motion to Dismiss based on the following grounds: 1) that the complaint states no cause of action or an insufficient cause of action; 2) that a similar action involving the same parties is pending in another court; 3) that the matter being resurrected is barred by *res judicata*; and 4) that petitioner is guilty of forum shopping.

Petitioner opposed the motion contending that in view of the withdrawal of Civil Case No. 94-8374 pending before Branch 43 of the Regional Trial Court of Bacolod City, the filing of the complaint for breach of contract would not amount to forum shopping.

On June 10, 1994, the trial court dismissed the case on the ground of forum shopping. Consequently, petitioner filed a motion for reconsideration claiming that Civil Case No. 94-8374 had been withdrawn before the case for breach of contract was filed. The aforesaid motion was referred to Branch 43 of the RTC which set the motion for hearing on November 24, 1994.

On October 6, 1995, an Order was issued by the trial court dismissing the complaint for petitioner's failure to prosecute. Upon the latter's motion, however, the Order was reconsidered and the case was set for pre-trial on February 2, 1996.

On January 31, 1996, public respondent Judge Ricardo F. Tornilla, on his behalf and on behalf of the Sheriff and his deputies, moved for the dismissal of the case for violation of Administrative Circular No. 04-94. This was followed by an Urgent Motion to Dismiss filed by private respondents.

In an Order dated February 15, 1996, the trial court granted private respondents' motion and dismissed the case. Petitioner's motion for reconsideration was denied; hence, she elevated her case to the Court of Appeals.

The Court of Appeals affirmed the findings of the trial court in a Decision dated March 6, 1998. The pertinent portions of the Decision read:

It is to be noted, and it is herein emphasized, that the sworn certification is required to be **annexed to the complaint** and **simultaneously filed therewith**. In the case at bar, the certification was filed by the plaintiff on May 3, 1994, six (6) days after the complaint was filed on April 27, 1994. This is in clear violation of the provisions of the Circular afore-cited.

This Court finds that the Certification was filed late on purpose because at the time the complaint was filed on April 27, 1994, a similar complaint between the same parties had just been filed by the plaintiff before Branch 43 of the Regional Trial Court of Bacolod, docketed therein as Civil Case No. 94-8374. For reasons known only to the plaintiff (which defendants, however, claim was because she failed to get a temporary restraining order from Branch 43), plaintiff opted to file this case which was raffled to Branch 44 of the same court obviously to forum-shop.

Plaintiff maintains that at the time she filed this complaint, Civil Case No. 94-8374 had been withdrawn by her as a matter of right. This Court notes, however, that this complaint and the *Ex-Parte* Motion to Withdraw Case in Civil Case No. 94-8374 were both filed on the same date. As a matter of fact, this case (Civil Case No. 94-8389) was filed ahead or at 11:20 A.M., while the motion to withdraw (Civil Case No. 94-8374) was filed at 11:35 A.M. Plaintiff is, therefore, misleading the court when she states that the Civil Case No. 94-8374 had been withdrawn when Civil Case No. 94-8389 was filed.

. . .

While the circular took effect on April 1, 1994, the same was

promulgated on February 8, 1994 precisely to give the public, especially the practicing lawyers, advance notice and enough time to prepare and comply with the requirements thereof. There is, therefore, no excuse for non-compliance with the provisions thereof on April 27, 1994.

. . .

WHEREFORE, this appeal is hereby dismissed for lack of merit.

Costs against appellant.

SO ORDERED.^[6]

The issues^[7] are:

I

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN SUSTAINING THE ORDER OF THE REGIONAL TRIAL COURT, BRANCH 43, BACOLOD CITY, IN DISMISSING THE COMPLAINT IN CIVIL CASE NO. 94-8389 FOR THE BELATED FILING OF THE CERTIFICATION AGAINST FORUM SHOPPING AS REQUIRED UNDER ADMINISTRATIVE CIRCULAR NO. 04-94; AND

II

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FACT THAT THE MOTION TO DISMISS IS A MERE SCRAP OF PAPER IN VIOLATION OF RULE 15, SEC. 5 OF THE RULES OF COURT FOR FAILURE TO STATE THE DATE AND TIME IN THE NOTICE OF HEARING.

Petitioner argues that Administrative Circular No. 04-94 took effect on April 1, 1994 while the complaint was filed on April 27, 1994. At that time, the administrative circular was not yet fully disseminated. The Clerk of Court of the RTC, Bacolod City would not have accepted the complaint if the latter had been aware of the circular.

Furthermore, petitioner contends that she submitted the certification against forum shopping on May 3, 1994, barely a week from the time the complaint was filed. In *Kavinta v. Castillo, Jr.*,^[8] this Court held that "[t]he proximity of the filing of the complaint to the date of the effectivity of Administrative Circular No. 04-94 may be pleaded as a justifying circumstance, and the belated filing of the certification required thereunder may be deemed a substantial compliance therewith."

Finally, petitioner submits that the Motion to Dismiss filed by Judge Ricardo F. Tornilla failed to state the Notice of Hearing to petitioner. In *Provident International Resources, Inc. v. CA*,^[9] the Court held that a motion which does not contain a notice of hearing to the adverse party is nothing but a mere scrap of paper, so that the trial court, by giving the Order to cure the defect, clearly acted with grave abuse of discretion.