

THIRD DIVISION

[G.R. NO. 135803, March 28, 2006]

O.B. JOVENIR CONSTRUCTION AND DEVELOPMENT CORPORATION, OSCAR B. JOVENIR AND GREGORIO LIONGSON, PETITIONERS, VS. MACAMIR REALTY AND DEVELOPMENT CORPORATION, SPOUSES ROSAURO AND GLORIA MIRANDA AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

DECISION

TINGA, J.:

In denying the present petition, the Court affirms the right of a plaintiff to cause the dismissal of the complaint at any time before service of the answer without need of affirmative action on the part of the trial court. It must be qualified though that the incidents for adjudication occurred a few months before the effectivity of the 1997 Rules of Civil Procedure^[1] which now requires that upon the filing of such notice, the court issue an order confirming the dismissal.^[2] The precedential value of this decision is thus qualified to instances occurring prior to the 1997 Rules of Civil Procedure.

On 3 February 1997,^[3] a complaint was filed before the Regional Trial Court (RTC) of Makati City, with private respondents Macamir Realty and Development Corp. (Macamir Realty) and spouses Rosauro and Gloria Miranda as plaintiffs, and petitioners O.B. Jovenir Construction and Development Corp. (Jovenir Construction), Oscar B. Jovenir, and Gregorio Liongson being among the defendants. The complaint, docketed as Civil Case No. 97-256, sought the annulment of certain agreements between private respondents and petitioners, as well as damages.^[4] It was alleged that Jovenir Construction was contracted to complete the construction of private respondents condominium project. Private respondents subsequently sought the termination of their agreements with petitioners after it was discovered that Jovenir Construction had misrepresented itself as a legitimate contractor.^[5] Respondents likewise prayed for the issuance of a writ of preliminary injunction. A hearing on the prayer appears to have been conducted on 6 February 1997.^[6]

It was also alleged in the complaint that Gloria Miranda was the principal stockholder and President of Macamir Realty while her husband Rosauro was the owner of the real properties on which the condominium project was being constructed.^[7]

Almost immediately, two of the impleaded defendants filed their respective motions to dismiss. Defendant Salud Madeja filed her motion on 6 February 1997, while Cesar Mangrobang, Sr. and Cesar Mangrobang, Jr. followed suit with their motion dated 13 February 1997. Madeja pertinently alleged that while the spouses Miranda had initiated the complaint on behalf of Macamir Realty, the real party-in-interest,

they failed to attach any Board Resolution authorizing them to file suit on behalf of the corporation. Oddly enough, Madeja was a member of the Board of Directors of Macamir Realty, and she averred as a fact that said Board of Directors had not authorized the spouses Miranda to initiate the complaint against Jovenir Realty.^[8]

On 13 February 1997, or 10 days after the filing of the complaint, private respondents filed a Motion to Withdraw Complaint, alleging that during the initial hearing on the prayer for preliminary injunction on 6 February 1997, counsel for plaintiffs "discovered a supposed technical defect in the complaint x x x that x x x may be a ground for the dismissal of this case."^[9] Thus, private respondents prayed that the plaintiffs be allowed to withdraw the complaint without prejudice.

Petitioners filed an opposition to the Motion to Withdraw Complaint on 18 February 1997, wherein they adopted Madeja's arguments as to the lack of authority on the part of the spouses Miranda to sue on behalf of Macamir Realty. However, just one day earlier, or on 17 February 1997, private respondents filed another complaint against the same defendants save for Madeja, and seeking the same reliefs as the first complaint. This time, a Board Resolution dated 10 February 1997 authorizing the spouses Miranda to file the Complaint on behalf of Macamir Realty was attached to the complaint. This second complaint was also filed with the Makati RTC and docketed as Civil Case No. 97-379. The Verification and Certification [of] Non-Forum Shopping in the second complaint was accomplished by Rosauo Miranda, who averred as follows:

3. That other than Civil Case No. 97-256 filed on February 3, 1997 before the Regional Trial Court of Makati City which was withdrawn on February 13, 1997, I further certify that we have not commenced any other action or proceedings involving the same issue in the Supreme Court, or Court of Appeals or any other tribunal or agency; x x x ^[10]

On 24 February 1997, 11 days after the filing of the Motion to Withdraw Complaint and seven days after the filing of the second Complaint, the Makati RTC, Branch 149, acting in Civil Case No. 97-256, granted the Motion to Withdraw Complaint. The RTC noted in its Order^[11] that "an action may be dismissed by the plaintiffs even without Order of the Court by filing a notice of dismissal at anytime before the service of the answer under Rule 17, Section 1 of the Rules of Court," and accordingly considered the complaint withdrawn without prejudice.^[12]

The battle then shifted to Civil Case No. 97-379, which had been raffled to Branch 136 of the Makati RTC. On 4 March 1997, petitioners filed a Motion to Dismiss the second complaint on the ground of forum-shopping. They pointed out that at the time of the filing of the second complaint on 17 February 1997, the first complaint was still pending. The Makati RTC denied the Motion to Dismiss in an Order^[13] dated 23 May 1997, observing that at the time the Motion to Withdraw Complaint was filed, none of the defendants had filed any answer or any responsive pleading. Thus, it was then within respondents' right to cause the dismissal of the complaint without having to await action of the court on their motion.^[14] This Order was affirmed by the Court of Appeals

Special Sixth Division in its Decision^[14] dated 23 June 1998 after petitioners had assailed the RTC's order via a special civil action for certiorari filed with the

appellate court.^[16] Hence, the present petition.

Petitioners now argue that under Section 1 of Rule 17 of the Rules of Civil Procedure in effect at the time of these antecedents, the plaintiff may obtain the dismissal of his own complaint before a responsive pleading has been filed through the filing of a notice of dismissal. However, respondents in this case did not file a notice of dismissal, but instead lodged a Motion to Withdraw Complaint, a motion which requires affirmative action from the court before the complaint may be deemed dismissed. Since the Makati RTC had granted the motion only on 24 February 1997, the first complaint had not yet been withdrawn as of 17 February 1997, when the second complaint was filed. It is thus posited that the Certification of Non-Forum Shopping attached to the second complaint was false, in that it averred that the first complaint "was withdrawn on February 13, 1997" when in fact the motion to withdraw complaint was granted only 11 days after. In sum, respondents had violated the procedural rules against forum-shopping, which at that time were incorporated in Administrative Circular No. 04-94 of the Supreme Court.

We find no error on the part of the lower courts since the denial of the motion to dismiss is wholly in accord with the Rules of Civil Procedure.

Section 1, Rule 17 of the 1964 Rules of Civil Procedure stated:

Dismissal by the plaintiff — An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without the approval of the court.^[17]

Indubitably, the provision ordained the dismissal of the complaint by the plaintiff as a matter of right at any time before service of the answer.^[17] The plaintiff was accorded the right to dismiss the complaint without the necessity of alleging in the notice of dismissal any ground nor of making any reservation.^[19]

In *Go v. Cruz*,^[20] the Court, through Chief Justice Narvasa, has recognized that "where the dismissal of an action rests exclusively on the will of a plaintiff or claimant, to prevent which the defending party and even the court itself is powerless, requiring in fact no action whatever on the part of the court except the acceptance and recording of the causative document."^[21] The facts in that case are well worth considering. Therein, the notice of dismissal was filed by the plaintiff on 12 November 1981. Respondent filed his answer three days earlier, or on 9 November, but plaintiff was served a copy of the answer by registered mail only on 16 November. Notwithstanding the fact that the answer was filed with the trial court three days prior to the filing of the notice of dismissal, the Court still affirmed the dismissal sought by the plaintiff. The Court declared that the right of the plaintiff to cause the dismissal of the complaint by mere notice is lost not by the filing of the answer with the trial court, but upon the actual service to the plaintiff of the answer.

^[22]