

SECOND DIVISION

[G.R. NO. 152392, May 26, 2005]

EXPERTRAVEL & TOURS, INC., PETITIONER, VS. COURT OF APPEALS AND KOREAN AIRLINES, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 61000 dismissing the petition for *certiorari* and *mandamus* filed by Expertravel and Tours, Inc. (ETI).

The Antecedents

Korean Airlines (KAL) is a corporation established and registered in the Republic of South Korea and licensed to do business in the Philippines. Its general manager in the Philippines is Suk Kyoo Kim, while its appointed counsel was Atty. Mario Aguinaldo and his law firm.

On September 6, 1999, KAL, through Atty. Aguinaldo, filed a Complaint^[2] against ETI with the Regional Trial Court (RTC) of Manila, for the collection of the principal amount of P260,150.00, plus attorney's fees and exemplary damages. The verification and certification against forum shopping was signed by Atty. Aguinaldo, who indicated therein that he was the resident agent and legal counsel of KAL and had caused the preparation of the complaint.

ETI filed a motion to dismiss the complaint on the ground that Atty. Aguinaldo was not authorized to execute the verification and certificate of non-forum shopping as required by Section 5, Rule 7 of the Rules of Court. KAL opposed the motion, contending that Atty. Aguinaldo was its resident agent and was registered as such with the Securities and Exchange Commission (SEC) as required by the Corporation Code of the Philippines. It was further alleged that Atty. Aguinaldo was also the corporate secretary of KAL. Appended to the said opposition was the identification card of Atty. Aguinaldo, showing that he was the lawyer of KAL.

During the hearing of January 28, 2000, Atty. Aguinaldo claimed that he had been authorized to file the complaint through a resolution of the KAL Board of Directors approved during a special meeting held on June 25, 1999. Upon his motion, KAL was given a period of 10 days within which to submit a copy of the said resolution. The trial court granted the motion. Atty. Aguinaldo subsequently filed other similar motions, which the trial court granted.

Finally, KAL submitted on March 6, 2000 an Affidavit^[3] of even date, executed by its general manager Suk Kyoo Kim, alleging that the board of directors conducted a special teleconference on June 25, 1999, which he and Atty. Aguinaldo attended. It

was also averred that in that same teleconference, the board of directors approved a resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping and to file the complaint. Suk Kyoo Kim also alleged, however, that the corporation had no written copy of the aforesaid resolution.

On April 12, 2000, the trial court issued an Order^[4] denying the motion to dismiss, giving credence to the claims of Atty. Aguinaldo and Suk Kyoo Kim that the KAL Board of Directors indeed conducted a teleconference on June 25, 1999, during which it approved a resolution as quoted in the submitted affidavit.

ETI filed a motion for the reconsideration of the Order, contending that it was inappropriate for the court to take judicial notice of the said teleconference without any prior hearing. The trial court denied the motion in its Order^[5] dated August 8, 2000.

ETI then filed a petition for *certiorari* and *mandamus*, assailing the orders of the RTC. In its comment on the petition, KAL appended a certificate signed by Atty. Aguinaldo dated January 10, 2000, worded as follows:

SECRETARY'S/RESIDENT AGENT'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

I, Mario A. Aguinaldo, of legal age, Filipino, and duly elected and appointed Corporate Secretary and Resident Agent of KOREAN AIRLINES, a foreign corporation duly organized and existing under and by virtue of the laws of the Republic of Korea and also duly registered and authorized to do business in the Philippines, with office address at Ground Floor, LPL Plaza Building, 124 Alfaro St., Salcedo Village, Makati City, HEREBY CERTIFY that during a special meeting of the Board of Directors of the Corporation held on June 25, 1999 at which a quorum was present, the said Board unanimously passed, voted upon and approved the following resolution which is now in full force and effect, to wit:

RESOLVED, that Mario A. Aguinaldo and his law firm M.A. Aguinaldo & Associates or any of its lawyers are hereby appointed and authorized to take with whatever legal action necessary to effect the collection of the unpaid account of Expert Travel & Tours. They are hereby specifically authorized to prosecute, litigate, defend, sign and execute any document or paper necessary to the filing and prosecution of said claim in Court, attend the Pre-Trial Proceedings and enter into a compromise agreement relative to the above-mentioned claim.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 10th day of January, 1999, in the City of Manila, Philippines.

(Sgd.)
MARIO A. AGUINALDO
Resident Agent

SUBSCRIBED AND SWORN to before me this 10th day of January, 1999, Atty. Mario A. Aguinaldo exhibiting to me his Community Tax Certificate No. 14914545, issued on January 7, 2000 at Manila, Philippines.

Doc. No. 119;
Page No. 25;
Book No. XXIV
Series of 2000.

(Sgd.)
ATTY. HENRY D. ADASA
Notary Public
Until December 31, 2000
PTR #889583/MLA
1/3/2000^[6]

On December 18, 2001, the CA rendered judgment dismissing the petition, ruling that the verification and certificate of non-forum shopping executed by Atty. Aguinaldo was sufficient compliance with the Rules of Court. According to the appellate court, Atty. Aguinaldo had been duly authorized by the board resolution approved on June 25, 1999, and was the resident agent of KAL. As such, the RTC could not be faulted for taking judicial notice of the said teleconference of the KAL Board of Directors.

ETI filed a motion for reconsideration of the said decision, which the CA denied. Thus, ETI, now the petitioner, comes to the Court by way of petition for review on *certiorari* and raises the following issue:

DID PUBLIC RESPONDENT COURT OF APPEALS DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT RENDERED ITS QUESTIONED DECISION AND WHEN IT ISSUED ITS QUESTIONED RESOLUTION, ANNEXES A AND B OF THE INSTANT PETITION?^[7]

The petitioner asserts that compliance with Section 5, Rule 7, of the Rules of Court can be determined only from the contents of the complaint and not by documents or pleadings outside thereof. Hence, the trial court committed grave abuse of discretion amounting to excess of jurisdiction, and the CA erred in considering the affidavit of the respondent's general manager, as well as the Secretary's/Resident Agent's Certification and the resolution of the board of directors contained therein, as proof of compliance with the requirements of Section 5, Rule 7 of the Rules of Court. The petitioner also maintains that the RTC cannot take judicial notice of the said teleconference without prior hearing, nor any motion therefor. The petitioner reiterates its submission that the teleconference and the resolution adverted to by the respondent was a mere fabrication.

The respondent, for its part, avers that the issue of whether modern technology is used in the field of business is a factual issue; hence, cannot be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. On the merits of the petition, it insists that Atty. Aguinaldo, as the resident agent and corporate secretary, is authorized to sign and execute the certificate of non-forum shopping required by Section 5, Rule 7 of the Rules of Court, on top of the board resolution approved during the teleconference of June 25, 1999. The respondent insists that "technological advances in this time and age are as commonplace as daybreak." Hence, the courts may take judicial notice that the Philippine Long Distance Telephone Company, Inc. had provided a record of corporate conferences and meetings through FiberNet using fiber-optic transmission technology, and that such

technology facilitates voice and image transmission with ease; this makes constant communication between a foreign-based office and its Philippine-based branches faster and easier, allowing for cost-cutting in terms of travel concerns. It points out that even the E-Commerce Law has recognized this modern technology. The respondent posits that the courts are aware of this development in technology; hence, may take judicial notice thereof without need of hearings. Even if such hearing is required, the requirement is nevertheless satisfied if a party is allowed to file pleadings by way of comment or opposition thereto.

In its reply, the petitioner pointed out that there are no rulings on the matter of teleconferencing as a means of conducting meetings of board of directors for purposes of passing a resolution; until and after teleconferencing is recognized as a legitimate means of gathering a quorum of board of directors, such cannot be taken judicial notice of by the court. It asserts that safeguards must first be set up to prevent any mischief on the public or to protect the general public from any possible fraud. It further proposes possible amendments to the Corporation Code to give recognition to such manner of board meetings to transact business for the corporation, or other related corporate matters; until then, the petitioner asserts, teleconferencing cannot be the subject of judicial notice.

The petitioner further avers that the supposed holding of a special meeting on June 25, 1999 through teleconferencing where Atty. Aguinaldo was supposedly given such an authority is a farce, considering that there was no mention of where it was held, whether in this country or elsewhere. It insists that the Corporation Code requires board resolutions of corporations to be submitted to the SEC. Even assuming that there was such a teleconference, it would be against the provisions of the Corporation Code not to have any record thereof.

The petitioner insists that the teleconference and resolution adverted to by the respondent in its pleadings were mere fabrications foisted by the respondent and its counsel on the RTC, the CA and this Court.

The petition is meritorious.

Section 5, Rule 7 of the Rules of Court provides:

SEC. 5. *Certification against forum shopping.*— The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise

provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

It is settled that the requirement to file a certificate of non-forum shopping is mandatory^[8] and that the failure to comply with this requirement cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the certification must be accomplished by the party himself because he has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or tribunals. Even his counsel may be unaware of such facts.^[9] Hence, the requisite certification executed by the plaintiff's counsel will not suffice.^[10]

In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents. The reason was explained by the Court in *National Steel Corporation v. Court of Appeals*,^[11] as follows:

Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.

...

The corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly-authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly-authorized for the purpose by corporate by-laws or by specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

...

... For who else knows of the circumstances required in the Certificate