479 Phil. 737

# FIRST DIVISION

# [ G.R. No. 147394, August 11, 2004 ]

## SPOUSES MANUEL AND ROSEMARIE WEE, PETITIONERS, VS. ROSARIO D. GALVEZ, RESPONDENT.

## DECISION

**QUISUMBING, J.:**

For review is the **Decision**[1] dated December 4, 2000 of the Court of Appeals in CA-G.R. SP No. 55415, which denied special civil action for certiorari, prohibition, and mandamus filed by petitioners Manuel and Rosemarie Wee. In said petition, the Wees sought to (1) annul and set aside the Order dated July 29, 1999 of the Regional Trial Court (RTC) of Quezon City, Branch 80, denying their prayer to dismiss Civil Case No. Q-99-37372, as well as the Order of September 20, 1999 denying their motion for reconsideration; (2) order the trial court to desist from further proceedings in Civil Case No. Q-99-37372; and (3) order the trial court to dismiss the said action. Also assailed by the Wees is the **Resolution**[2] of the Court of Appeals, promulgated March 7, 2001, denying their motion for reconsideration.

The antecedent facts in this case are not complicated.

Petitioner Rosemarie Wee and respondent Rosario D. Galvez are sisters.[3] Rosemarie lives with her husband, petitioner Manuel Wee, in Balanga, Bataan, while Rosario resides in New York, U.S.A. The present controversy stemmed from an investment agreement between the two sisters, which had gone sour along the way.

On April 20, 1999, Rosario, represented by Grace Galvez as her attorney-in-fact, filed a complaint before the RTC of Quezon City to collect a sum of money from Manuel and Rosemarie Wee. The amount for collection was US$20,000 at the exchange rate of P38.30 per dollar. The complaint, which was docketed as Civil Case No. Q-99-37372, alleged that Rosario and Rosemarie entered into an agreement whereby Rosario would send Rosemarie US$20,000, half of said amount to be deposited in a savings account while the balance could be invested in the money market. The interest to be earned therefrom would be given to Rosario's son, Manolito Galvez, as his allowance.

Rosario claimed that pursuant to their agreement, she sent to Rosemarie on various dates in 1993 and 1994, five (5) Chemical Bank checks, namely:

| CHECK No. | DATE | AMOUNT |
|---|---|---|
| CB No. 97 | 05-24-93 | US$1,550.00 |
| CB No. 101 | 06-11-93 | 10,000.00 |
| CB No. 104 | 11-12-93 | 5,500.00 |
| CB No. 105 | 02-01-94 | 2,000.00 |

| | | |
|---|---|---|
| CB No. 123 | 03-03-94 | 1,000.00 |
| **TOTAL** | | **US$20,050.00**[4] |

Rosario further alleged that all of the aforementioned checks were deposited and encashed by Rosemarie, except for the first check, Chemical Bank Check No. 97, which was issued to one Zenedes Mariano, who gave the cash equivalent of US$2,000 to Rosemarie.

In accordance with her agreement with Rosario, Rosemarie gave Manolito his monthly allowance ranging from P2,000 to P4,000 a month from 1993 to January 1999. However, sometime in 1995, Rosario asked for the return of the US$20,000 and for an accounting. Rosemarie promised to comply with the demand but failed to do so.

In January 1999, Rosario, through her attorney-in-fact, Grace Galvez, sent Rosemarie a written demand for her US$20,000 and an accounting. Again, Rosemarie ignored the demand, thus causing Rosario to file suit.

On May 18, 1999, the Wees moved to dismiss Civil Case No. Q-99-37372 on the following grounds: (1) the lack of allegation in the complaint that earnest efforts toward a compromise had been made in accordance with Article 151[5] of the Family Code; (2) failure to state a valid cause of action, the action being premature in the absence of previous earnest efforts toward a compromise; and (3) the certification against forum shopping was defective, having been executed by an attorney-in-fact and not the plaintiff, as required by Rule 7, Section 5[6] of the 1997 Rules of Civil Procedure.

Conformably with Rule 10, Sections 1[7] and 3[8] of the 1997 Rules of Civil Procedure, Rosario amended her complaint with the addition of the following paragraph:

> 9-A. Earnest efforts towards (sic) have been made but the same have failed. As a matter of fact, plaintiff thru her daughter as Attorney-In-Fact caused the sending of a Demand Letter dated January 4, 1999 and the last paragraph of which reads as follows:
>
> . . .
>
> > Trusting this will merit your utmost preferential attention and consideration in as much as you and our client are sisters and in order that [earnest] efforts toward a compromise could be obtained.[9]

The Wees opposed Rosario's motion to have the Amended Complaint admitted. They contended that said motion was a mere scrap of paper for being in violation of the three-day notice requirement of Rule 15, Section 4[10] of the 1997 Rules of Civil Procedure and for having the notice of hearing addressed to the Clerk of Court and not to the adverse party as required by Section 5[11] of the same Rule.

On July 29, 1999, the trial court came out with an Order denying the Wees' motion to dismiss for being "moot and academic," thus:

> WHEREFORE, premises considered, the amended complaint is hereby admitted. Defendant-spouses are hereby directed to file their Answer within the reglementary period provided by the Rules of Court.
>
> SO ORDERED.[12]

The Wees duly moved for reconsideration, but the motion was denied on September 20, 1999, for lack of merit.

On October 18, 1999, the Wee couple brought the matter to the Court of Appeals via a special civil action for certiorari, prohibition, and mandamus, docketed as CA-G.R. SP No. 55415. The petition assailed the trial court for having acted with grave abuse of discretion amounting to lack or excess of jurisdiction for issuing the interlocutory orders of July 29, 1999 and September 20, 1999, instead of dismissing Civil Case No. Q-99-37372 outright.

On December 4, 2000, the appellate court decided CA-G.R. SP No. 55415 in this wise:

> WHEREFORE, the instant petition for certiorari, prohibition and mandamus is DENIED.
>
> SO ORDERED.[13]

The Court of Appeals held that the complaint in Civil Case No. Q-99-37372, as amended, sufficiently stated a cause of action. It likewise held that the questioned certification against forum shopping appended thereto was not so defective as to warrant the dismissal of the complaint.

On January 9, 2001, the petitioners herein moved for reconsideration of the appellate court's decision, but this was denied on March 7, 2001.

Hence, the instant petition, raising the following issues:

1. WHETHER OR NOT THE INSTANT PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE REVISED RULES OF COURT IS THE PROPER REMEDY FOR PETITIONERS UPON THE DENIAL OF THEIR PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS BY THE COURT OF APPEALS;

2. WHETHER OR NOT THE CERTIFICATION OF NON-FORUM SHOPPING EXECUTED BY THE PLAINTIFF'S ATTORNEY-IN-FACT IS DEFECTIVE; AND

3. WHETHER OR NOT THE AMENDED COMPLAINT BEFORE THE REGIONAL TRIAL COURT SUFFICIENTLY STATES A CAUSE OF ACTION AGAINST THE DEFENDANTS.[14]

We shall now resolve these issues *seriatim*.

On the *first issue*, the petitioners argue that the present appeal by certiorari filed with this Court assailing the dismissal of their special civil action for certiorari, prohibition, and mandamus by the appellate court is meritorious. After all, according to petitioners, a petition for review under Rule 45, Section 1,[15] of the 1997 Rules

of Civil Procedure could be brought before us, regardless of whether the assailed decision of the appellate court involves an appeal on the merits from the trial court's judgment or the dismissal of a special civil action questioning an interlocutory order of the trial court. What is important under Rule 45, Section 1, is that the assailed decision of the appellate court is final and that the petition before this Court should raise only questions of law.

Respondent, in turn, point out that the dismissal by the Court of Appeals of herein petitioners' special civil action for certiorari, prohibition, and mandamus in CA-G.R. SP No. 55415 is not the final judgment or order, which could be the subject of an appeal by certiorari under Rule 45. This is because, according to respondent, certiorari as a mode of appeal involves the review of a judgment, final order, or award on the merits. Respondent contends that the appellate court's ruling in CA-G.R. SP No. 55415 did not dispose of the case on the merits, as the orders of the trial court subject of CA-G.R. SP No. 55415 were all interlocutory. In other words, the ruling of the appellate court did not put an end to Civil Case No. Q-99-37372, which is still pending before the trial court. Hence, a petition for review on certiorari will not lie to assail the judgment of the Court of Appeals in CA-G.R. SP No. 55415, according to respondent.

We find no basis for respondent's contention that the decision of the Court of Appeals in CA-G.R. SP No. 55415, dismissing the petitioners' special civil action for certiorari, prohibition, and mandamus is interlocutory in nature. The CA's decision on said petition is final for it disposes of the original action for certiorari, prohibition, and mandamus directed against the interlocutory orders of the trial court in Civil Case No. Q-99-37372. In other words, having dismissed the said action, there is nothing more left to be done in CA-G.R. SP No. 55415 as far as the appellate court is concerned.

Nor can we sustain respondent's argument that the appellate court's decision in CA-G.R. SP No. 55415 is not on the merits. In special civil actions for certiorari, such as CA-G.R. SP No. 55415, the only issue before the appellate court is whether the lower court acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Stated differently, in a certiorari petition the appellate court is not tasked to adjudicate the merits of the respondent's claims before the trial court. Resolving such claims on the merits remains the proper province of the trial court in Civil Case No. Q-99-37372. The appellate court properly ruled in CA-G.R. SP No. 55415 that the trial court committed no grave abuse of discretion amounting to lack or excess of jurisdiction so as to warrant the issuance of writs of certiorari, prohibition, and mandamus that petitioners sought. In so limiting itself to and addressing squarely only the issue of grave abuse of discretion or lack or excess of jurisdiction, the Court of Appeals, in CA-G.R. SP No. 55415, precisely decided the matter on the merits. In other words, it found that the special civil action of petitioners before it had no merit.

Now, as to whether the Court of Appeals decided the matter in CA-G.R. SP No. 55415 in a manner contrary to law or established jurisprudence remains precisely for us to determine in this review on certiorari. Considering the factual and procedural circumstances of this case, the present petition is petitioners' proper remedy to challenge the appellate court's judgment in CA-G.R. SP No. 55415 now.

Anent the *second issue*, the petitioners aver that the Court of Appeals gravely erred

in finding that the certification against forum shopping in Civil Case No. Q-99-37372 was valid, notwithstanding that it was not the plaintiff below, Rosario D. Galvez, who executed and signed the same, but her attorney-in-fact, Grace Galvez. Petitioners insist that there was nothing in the special power of attorney executed by Rosario D. Galvez in favor of Grace Galvez, which expressly conferred upon the latter the authority to execute and sign, on behalf of the former, the certificate of non-forum shopping. Petitioners point out that under Rule 7, Section 5 of the 1997 Rules of Civil Procedure, it is the "plaintiff" or "principal party" who must sign the certification. They rely on our ruling in *BA Savings Bank v. Sia*,[16] that where the parties in an action are natural persons, the party himself is required to sign the certification, and where a representative is allowed in case of artificial persons, he must be specifically authorized to execute and sign the certification. The petitioners stress that Rosario D. Galvez failed to show any justifiable reason why her attorney-in-fact should be the one to sign the certification against forum shopping, instead of herself as the party, as required by *Santos v. Court of Appeals*.[17]

Respondent counters that petitioners' contention has no basis. The Special Power of Attorney executed by her in favor of Grace Galvez, if subjected to careful scrutiny would clearly show that the authority given to the latter is not only broad but also all encompassing, according to respondent. By virtue of said document, Grace Galvez is given the power and authority to institute both civil and criminal actions against any person, natural or juridical, who may be obliged or answerable to the respondent. Corollary with this power is the authority to sign all papers, documents, and pleadings necessary for the accomplishment of the said purpose. Respondent likewise stresses that since Grace Galvez is the one authorized to file any action in the Philippines on behalf of her principal, she is in the best position to know whether there are other cases involving the same parties and the same subject matter instituted with or pending before any other court or tribunal in this jurisdiction. Moreover, as an attorney-in-fact, Grace Galvez is deemed to be a party, pursuant to Rule 3, Section 3[18] of the 1997 Rules of Civil Procedure. Hence, petitioners' argument that Grace Galvez is not specifically authorized to execute and sign the certification of non-forum shopping deserves scant consideration.

We find for the respondent. Noteworthy, respondent in the instant case is already a resident of the United States, and not of the Philippines. Hence, it was proper for her to appoint her daughter, Grace Galvez, to act as her attorney-in-fact in the Philippines. The Special Power of Attorney granted by the respondent to her attorney-in-fact, Grace Galvez, categorically and clearly authorizes the latter to do the following:

1. To ask, demand and claim any sum of money that is duly [due] from any person natural, juridical and/or corporation in the Philippines;

2. To file criminal and/or civil complaints before the courts of justice in the Philippines to enforce my rights and interest[s];

3. To attend hearings and/or Preliminary Conference[s], to make stipulations, adjust claims, to settle and/or enter into Compromise Agreement[s], to litigate and to terminate such proceedings; [and]