

THIRD DIVISION

[G.R. No. 139951, November 23, 2000]

**RAMON M. VELUZ, PETITIONER, VS. COURT OF APPEALS AND
RUDECON MANAGEMENT CORPORATION, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

This Petition for Review on *Certiorari* seeks the reversal of the Resolution of the Court of Appeals^[1] in CA G.R. SP No. 51492 entitled "Ramon M. Veluz vs. Rudecon Management Corporation" dismissing the Petition for *Certiorari*^[2] filed by herein petitioner, Ramon M. Veluz, from the Decision of the Regional Trial Court^[3], National Capital Judicial Region, Branch 78, Quezon City which affirmed the decision of the Metropolitan Trial Court, Branch 41, Quezon City ordering the herein petitioner to vacate Unit 4-D or Room 404 of Tempus Place I Condominium located at 21 Matalino Street, Diliman Quezon City; to pay herein respondent P20,000.00 a month as reasonable rental for the use of the subject unit until petitioner vacates the same; to pay the respondent P10,000.00 for and as attorney's fees and costs of the suit; and dismissing the petitioner's counterclaim.

The material facts are as follows:

On September 15, 1997, the respondent Rudecon Management Corporation (RUDECON) filed an action for unlawful detainer against the petitioner, Ramon M. Veluz (VELUZ) in the Metropolitan Trial Court, Branch 41, Quezon City.

On July 7, 1998, the MTC rendered its decision^[4] in favor of the plaintiff and ordered VELUZ to vacate the property subject of the action, as earlier cited.

VELUZ appealed to the RTC, National Capital Judicial Region, Branch 78, Quezon City. During the pendency of the appeal with the RTC, Sisenando Singson (SINGSON) through Attorney Manuel N. Camacho (ATTORNEY CAMACHO), filed a Motion for Intervention with an attached Answer in Intervention with affirmative defenses and compulsory counterclaim against RUDECON claiming that he is the real party in interest being the owner of the property subject of the ejectment case by virtue of a swapping agreement between him and Pablo Tolentino (TOLENTINO), the party to whom RUDECON allegedly sold the said property under an Absolute Deed of Sale, and that VELUZ is his lessee.^[5] RUDECON opposed the motion for intervention and also filed a Motion to Show Cause why intervenor SINGSON and his counsel should not be cited for contempt for forum shopping inasmuch as SINGSON earlier filed an action for damages and reconveyance of the subject property in Civil Case No. Q-98-35444 which is pending in Branch 79 of said court.^[6]

On November 5, 1998, the motion for intervention was denied on the ground that in

the exercise of its appellate jurisdiction, the RTC can decide the ejectment case based only on the records and the memoranda of the parties; that the RTC is not allowed to conduct a new trial or hearing on the merits; that a motion for intervention is no longer allowed after rendition of judgment by the trial court; and that the claim of ownership of the would-be intervenor has been raised by SINGSON as plaintiff in Civil Case No. Q-98-35444 wherein his rights can be fully protected.^[7]

On November 6, 1998, the RTC found RUDECON's Motion to Show Cause well taken and reprimanded both SINGSON and ATTORNEY CAMACHO for forum shopping without prejudice to administrative sanctions against ATTORNEY CAMACHO.^[8]

Meanwhile, RUDECON filed a Motion for Execution pending appeal and a Second Motion for Execution pending appeal, which were both granted by the RTC on October 15, 1998.^[9] The writ of execution ordered VELUZ and anyone claiming rights under him to vacate the subject property and restore possession thereof to RUDECON.^[10]

On December 1, 1998, the RTC rendered its decision against VELUZ affirming *in toto* the decision of the MTC.^[11]

Motion for reconsideration of the RTC decision was denied^[12] prompting VELUZ to file a Petition for *Certiorari* with prayer for injunctive relief with the Court of Appeals docketed as CA G.R. No. 51492 through his lawyer, ATTORNEY CAMACHO (also SINGSON's lawyer) on March 12, 1999.^[13]

On April 15, 1999, the Court of Appeals, without necessarily giving due course to the petition, required the respondent RUDECON to file comment within ten (10) days and also allowed the petitioner to file a reply within five (5) days from receipt of said comment.^[14]

On April 27, 1999, RUDECON filed comment to the petition praying for its outright dismissal. RUDECON further alleged that the petitioner and his counsel were guilty of forum shopping since another petition, CA-G.R SP No. 49648 (a petition for *certiorari* filed by SINGSON through his lawyer, ATTORNEY CAMACHO of the decision of the RTC in Civil Case No. Q-98-35326 and the orders issued by it which affirmed the order of ejectment issued by the MTC against VELUZ) was already pending in the Court of Appeals.^[15] Subsequently, on April 29, 1999, RUDECON filed a "MANIFESTATION AND MOTION"^[16] with "MOTION TO SHOW CAUSE WHY PETITIONER AND HIS COUNSEL SHOULD NOT BE CITED FOR CONTEMPT AND BE PENALIZED FOR FORUM-SHOPPING" (CA-G.R. SP No. 51492)^[17] and "SECOND MOTION TO SHOW CAUSE WHY PETITIONER AND HIS COUNSEL SHOULD NOT BE CITED FOR CONTEMPT AND BE PENALIZED FOR FORUM-SHOPPING" (CA-G.R. SP No. 49648)^[18]. Briefly, the motions alleged that ATTORNEY CAMACHO failed to inform the Court of Appeals that he filed two Petitions for *Certiorari* raising substantially the same facts, issues and relief sought by substantially the same parties docketed as CA-G.R. SP No. 49648 in favor of his client SINGSON, and CA-G.R. SP No. 51492 in favor of his other client VELUZ in violation of Supreme Court Circular No. 04-94 dated April 1, 1994 and Section 3, Rule 46 of the 1997 Rules of Civil Procedure proscribing forum-shopping.

On July 1, 1999, the Court of Appeals rendered its decision now subject of this present petition dismissing on the ground of forum shopping herein petitioner's Petition for *Certiorari* of the RTC decision.^[19] In dismissing the petition, the Court of Appeals ratiocinated that the allegations of RUDECON in its "Motion to Show Cause Why Petitioner and His Counsel Should Not Be Cited For Contempt And Be Penalized For Forum-Shopping" (CA-G.R. SP No. 51492) to the effect that the petitioners were guilty of forum-shopping remained unrebutted inasmuch as the petitioner did not file a Reply to the Comment filed by RUDECON.

Motion for reconsideration was denied^[20] hence this present petition where the petitioner raises the following issues:

"(1) Whether or not, there was violation of procedural due process in the dismissal of the Petition for Review/*Certiorari* in said CA-G.R. SP No. 51492 under Rule 42/65 by the Court of Appeals merely because of herein Petitioner's failure to file a Comment or Reply to private Respondent's `Motion to Show Cause' without having been required by the Court of Appeals to file the same as usually required of parties to conform with procedural due process of law.

(2) Whether or not a Petition for Review/*Certiorari* under Rule 42/65 filed with the Court of Appeals, docketed as CA-G.R. SP No. 51492, originating from an unlawful detainer case filed against therein petitioner and thereafter appealed by Petition for Review to the Regional Trial Court of Quezon City, may be dismissed for Forum Shopping on the ground that another Petition for *Certiorari* under Rule 65 has been filed with the Court of Appeals by an indispensable party (therein petitioner's lessor), albeit not impleaded in the unlawful detainer case and whose intervention was denied by the appellate Regional Trial Court, but nevertheless was the party against whom the adverse decisions were enforced and implemented."^[21]

In support of his petition, VELUZ argues that he was denied procedural due process when the Court of Appeals dismissed his petition for review for failure to file a reply to RUDECON's comment. Moreover, the Motion to Show Cause filed by RUDECON was resolved without giving him the opportunity to be heard on said motion. VELUZ maintains that his failure to file a reply should not have been construed by the Court of Appeals as an admission of the allegation of forum shopping for the allegation of forum shopping is a newly alleged matter. Under the Rules of Court, any new matter alleged in an answer is deemed controverted should the opposing party fail to file a reply.

VELUZ also contends that the claim of RUDECON that he is guilty of forum shopping is devoid of any legal and factual basis considering that he is not a party to the petition filed by SINGSON in CA-G.R. No. 49648. He claims that forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case would amount to *res judicata* in the other. Since he is not a party in CA-G.R. No. 49648, there can neither be *litis pendentia* or *res judicata*.

Finally, the petitioner prays that this Court resolve the petition on the merits inasmuch as the facts of the present case are undisputed and the pleadings of the

parties necessary for the final determination of the controversy are before this Court.

We find the petition partly meritorious.

First of all, the conclusion of the Court of Appeals that the allegation made by RUDECON that VELUZ was guilty of forum shopping was un rebutted since VELUZ failed to file a reply to the comment is erroneous.

Under Section 10, Rule 6 of the 1997 Rules of Civil Procedure, any new matter alleged by way of defense in the answer (or comment as in this case) is deemed controverted should a party fail to file a reply thereto. Except in cases where the answer alleges the defense of usury in which case a reply under oath is required otherwise the allegation of usury is deemed admitted, or is based on an actionable document in which case a verified reply is necessary otherwise the genuineness and due execution of said actionable document is generally deemed admitted, the filing of a reply is merely optional as the new matters raised in the answer are deemed controverted even without a reply.^[22] Considering that the allegation that VELUZ was guilty of forum-shopping is a new matter raised in RUDECON's comment, such allegation should have been deemed controverted when the petitioners did not file a reply thereto and it should not, as ruled by the Court of Appeals, have been deemed un rebutted.

Secondly, the Court of Appeals also erred in basing its dismissal of VELUZ's petition on RUDECON's Motion to Show Cause and not on RUDECON's comment.

RUDECON's Motion to Show Cause essentially prayed that the petitioner and his counsel ATTORNEY CAMACHO be ordered to show cause why they should not be found guilty of direct and indirect contempt on the ground of forum-shopping. Said motion was not filed as an answer to the petition for it was a distinct pleading from RUDECON's comment which, aside from the petition, should have been the basis for the Court of Appeal's order of dismissal pursuant to Section 4 of Rule 42 of the Rules of Court which provides that:

"SEC. 4. *Action on the Petition.* - The Court of Appeals may require the respondent to file a comment on the petition, **not a motion to dismiss**, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised are too unsubstantial to require consideration."
(emphasis supplied)

In basing its order of dismissal on RUDECON's motion to show cause, the Court of Appeals in effect treated the same as a motion to dismiss in contravention of the tenor of the above section.

We are however not persuaded by the assertion of the petitioner that he was denied procedural due process.

The petitioner's claim that the Court of Appeals never required him to file a reply to the comment is belied by the Resolution of the Court of Appeals dated April 15, 1999, which states: