

THIRD DIVISION

[G.R. No. 171842, July 22, 2009]

**GLORIA S. DY, PETITIONER, VS. MANDY COMMODITIES CO.,
INC., RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

This Petition for Review on *Certiorari* filed by petitioner Gloria S. Dy seeks to reverse and set aside the 15 September 2005 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 86478 dismissing petitioner's appeal on the ground of forum shopping and its Resolution^[2] dated 3 March 2006, denying the petitioner's motion for reconsideration.

This case has its origin in the contract entered into by the National Government with the Philippine National Bank (PNB) on 9 June 1978, wherein the former leased in favor of the latter the 21,727-square meter government-owned land located at Numancia Street, corner Urbiztondo, Binondo, Manila. The lease was good for 25 years which commenced on 1 August 1978 and was to expire on 31 July 2003, renewable for the same period upon agreement of both parties.

On 17 October 1994, PNB sublet a portion of the subject land consisting of 8,530.16 square meters to respondent Mandy Commodities Co., Inc. (Mandy Commodities), for a period corresponding to PNB's contract with the National Government. Respondent constructed on the subleased portion a two-storey warehouse which was leased out to its tenants.

When the expiration of the subject lease contract was approaching, then Department of Environment and Natural Resources (DENR) Secretary Heherson Alvarez (Secretary Alvarez), on behalf of the government, issued a Memorandum Order dated 6 May 2002 initially approving the renewal of PNB's lease for another 25 years. In another Memorandum dated 6 August 2002, Secretary Alvarez, however, recalled the earlier 6 May 2002 Memorandum and revoked the renewal of the said lease contract for the purpose of clarifying the terms thereof and re-evaluating the role, qualifications and capability of the subject realty's sub-lessees. Later, in a Final Endorsement dated 29 November 2002, Secretary Alvarez had a change of heart and approved the renewal of the lease in favor of PNB and included respondent as one of the sub-lessees. This Final Endorsement, though, did not last long as the then new DENR Secretary, Elisea Gozun, issued a Memorandum dated 27 May 2003, withdrawing the lease contract with PNB and, consequently calling off the sub-lease contract with the respondent.

Since the subject lease was about to expire, the Land Management Bureau (LMB), on behalf of the National Government, in a letter dated 25 July 2003, informed PNB that a take over team was created to effect repossession of the subject property and

requested the PNB to turn it over to the DENR upon the termination of the lease contract.

On 30 July 2003, in order to avert the eventual take over, PNB commenced a complaint for Injunction (PNB Injunction Case) with prayer for the issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction and damages docketed as Civil Case No. 03-0368-CFM before the Regional Trial Court (RTC) of Pasay, Branch 118. The PNB alleged that the contract of lease between it and the National Government had already been renewed by virtue of the 29 November 2002 Final Endorsement of then Secretary Alvarez; hence, PNB's possession of the disputed property must be respected by the LMB. The PNB Injunction Case prompted Secretary Gozun to issue a Memorandum dated 31 July 2003 directing the LMB to observe the *status quo* until further advice from her office or from the Pasay RTC.

In an Order dated 28 August 2003, the Pasay RTC in the PNB Injunction Case denied PNB's application for TRO and/or Writ of Preliminary Injunction. The Pasay RTC also ordered the LMB to secure and take over the subject land. PNB questioned this order before the Court of Appeals in CA-G.R. SP No. 78980. Although the 28 August 2003 Order of the Pasay RTC had yet to be decided by the Court of Appeals, the LMB was able to implement said order and gain possession of the subject property on 29 August 2003.

On 18 September 2003, the Court of Appeals, in the PNB Injunction Case, nullified the said RTC Order and granted PNB's application for TRO.

Since the LMB had already taken possession of the questioned property, thereby rendering the 18 September 2003 TRO issued by the Court of Appeals moot, the LMB sought the legal advice of the Office of the Solicitor General (OSG). In its Opinion dated 23 September 2003, the OSG opined, among other things, that the TRO issued by the Court of Appeals against it was indeed moot, and that provisional permits for occupancy of the same property could be issued to qualified applicants, subject to the outcome of the main PNB Injunction Case involving the property before the RTC.

In a letter dated 6 October 2003, PNB demanded the pull-out of the guards posted by the LMB in the premises of the property. This demand letter was ignored by the LMB on the strength of the Solicitor General's opinion.

In the meantime, banking on the same OSG opinion, LMB granted petitioner Gloria Dy a provisional permit to occupy the subject realty. Equipped with the provisional permit from the LMB, petitioner was able to enter and install her own guards in the premises of the property on 10 October 2003. Petitioner also posted notices announcing that all the tenants therein should secure from her an authorization to enter the same.

On 15 October 2003, respondent Mandy Commodities, being the sub-lessee, reacted to petitioner's intrusion on the subject property by filing a complaint for Damages with prayer for injunction (Respondent's Injunction Case) and TRO docketed as Civil Case No. 03108128 before the Manila RTC, Branch 25. On 21 October 2003, through the aid of its own security personnel, respondent regained possession of the same property.

Meanwhile, in the PNB Injunction Case, the Court of Appeals in its 30 October 2003 Decision, affirmed the 28 August 2003 Order of the Pasay RTC denying PNB's application for TRO on the ground that PNB failed to establish its right to the disputed property. Although the Court of Appeals affirmed the 28 August 2003 Order of the Pasay RTC, it nonetheless declared void the take over order, since the subject matter of the PNB Injunction Case was limited to whether the grant of the provisional remedy of TRO was warranted or not; hence, the RTC Pasay went beyond the matter submitted for adjudication when it ordered the take over of the property. The Court of Appeals went on by declaring that the take over by LMB of the property was void, and that any action affecting PNB and its lease was also condemned as lacking any legal basis, since such order to take over amounted to a disposition of the main case of injunction. PNB elevated this adverse decision to this Court, which case was docketed as G.R. No. 164786.

On 7 November 2003, petitioner was able to wrest from respondent possession of the property in question.

On 4 December 2003, respondent commenced the instant case with the Metropolitan Trial Court (MeTC) of Manila, Branch 20, for Forcible Entry (Respondent's Forcible Entry Case), with prayer for mandatory injunction, docketed as Civil Case No. 176953-CV.

On 6 April 2004, in Respondent's Forcible Entry Case, the MeTC Manila ruled against respondent, opining that, by virtue of the expiration of PNB's lease contract, respondent lost its right to possess said property. Concomitantly, as respondent's right thereto was intertwined with that of PNB, the same right also vanished.

Respondent appealed to the RTC Manila, Branch 30, for the dismissal of its forcible entry complaint.

On 12 July 2004, the RTC Manila, in Respondent's Forcible Entry Case, reversed the MeTC decision and ordered petitioner to vacate the subject property. It ruled that despite the take over by the LMB, respondent was allowed to continue its business and possession of the disputed landholding. Hence, it was respondent who had prior, actual and physical possession of the property and had a better right over it. This favorable decision prompted respondent to file a motion for immediate execution which was granted by the RTC Manila and, accordingly, a Writ of Execution dated 7 September 2004 was issued in favor of the respondent. Conversely, petitioner's motion for reconsideration of the RTC decision was denied. Undaunted, petitioner elevated the case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 86478.

Meanwhile, the OSG filed an Omnibus Motion seeking intervention in Respondent's Forcible Entry Case, as well as the admission of its motion for reconsideration-in-intervention of the RTC decision and opposition-in-intervention to respondent's motion for immediate execution. The RTC Manila denied the Omnibus Motion filed by the OSG. This adverse ruling was questioned by the OSG before the Court of Appeals, where it was docketed as CA-G.R. SP No. 86307 (OSG *Certiorari*).

On 8 November 2004, petitioner moved for the consolidation of CA-G.R. SP No. 86307 and CA-G.R. SP No. 86478, a motion that was granted by the Court of

Appeals, subject to the conformity of the *ponente* in the former case.

On 21 April 2005, the OSG *Certiorari* (CA-G.R. SP No. 86307) was dismissed by the Court of Appeals upon a motion filed by respondent. The Court of Appeals said that the OSG should address its motion to intervene in CA-G.R. SP No. 86478. No further action was taken by the OSG in CA-G.R. SP No. 86307.

In the meantime, on 15 May 2005, without waiting for the result of Respondent's Forcible Entry Case (CA-G.R. SP No. 86478) pending before the Court of Appeals, petitioner filed an Unlawful Detainer case (Petitioner's Unlawful Detainer Case) against respondent before the MeTC Manila, Branch 15, where it was docketed as Civil Case No. 00000004-CV. In her complaint, petitioner made use of the same facts as in CA-G.R. SP No. 86478.

On account of the foregoing fact, respondent moved for the dismissal of CA-G.R. SP No. 86478 on the ground of forum shopping. Calling the Court of Appeals' attention to the 10 November 2004 and 2 February 2005 Resolutions of this Court in G.R. No. 164786 (PNB's Injunction Case) denying PNB's application for TRO, petitioner opposed the motion to dismiss on the ground that, among other things, her Unlawful Detainer Case was now premised on the settled termination of PNB's contract of lease with the National Government as implied by said Resolutions.

In a Decision dated 15 September 2005, the Court of Appeals dismissed CA-G.R. SP No. 86478 on the ground of forum shopping and for lack of merit. The Court of Appeals stated that petitioner's filing of the Unlawful Detainer Case during the pendency of the Respondent's Forcible Entry Case (CA-G.R. SP No. 86478) in the Court of Appeals constituted forum shopping. The dispositive portion thereof reads:

WHEREFORE, the petition is DISMISSED on account of forum shopping and for lack of merit^[3].

On 6 October 2005, petitioner filed a Motion for Reconsideration. For its part, respondent filed an *Urgent Motion to Include in the Decision an Order Dismissing the Case Simultaneously Commenced by the Petitioner Together with the Instant Petition*. The Court of Appeals was also apprised that petitioner's Unlawful Detainer Case had already been decided by the MeTC Manila in petitioner's favor and was now pending appeal before the Manila RTC, Branch 9.

In its 3 March 2006 Resolution, the Court of Appeals denied petitioner's motion for reconsideration. The Court of Appeals, on the other hand, granted respondent's urgent motion to dismiss Petitioner's Unlawful Detainer Case, which is now on appeal before the RTC Manila.

Hence, the instant petition.

Petitioner maintains that she did not commit forum shopping, since there is no identity of the cause of action or of the issue between Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case.

The petition is not meritorious.