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SECOND DIVISION

[G.R. NO. 140777, April 08, 2005]

ANTONIO ABACAN, JR., RUFO C. VENUS, JR., ENRIQUETO I. MAGPANTAY AND MARIETA Y. PALANCA, PETITIONERS, VS. NORTHWESTERN UNIVERSITY, INC., RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* seeking the annulment of the Court of Appeals (CA's) Decision[1] dated July 22, 1999 and the Resolution[2] dated November 12, 1999, denying the motion for reconsideration.

The facts are as follows:

Two opposing factions within respondent Northwestern University, Inc. (NUI), the "Castro" and the "Nicolas" factions, seek control as the legitimate board thereof.[3] These two factions are parties to Securities and Exchange Commission (SEC) Case No. 12-96-5469[4] which is an action filed by the "Nicolas faction" to nullify the election of the directors of NUI belonging to the "Castro faction" and SEC Case No. 12-96-5511[5] which is a counter-suit initiated by the "Castro faction" seeking the nullification of several board resolutions passed by the "Nicolas faction."[6] On December 19, 1996, SEC Hearing Officer Rolando G. Andaya, Jr., pursuant to SEC Case No. 12-96-5511, issued an Order authorizing the "Castro faction" and the Metropolitan Bank (Metrobank) Laoag City branch to withdraw the amount of P2,555,274.99 from the account of NUI with said bank.[7] Metrobank complied and released P1.4 M[8] in favor of the "Castro faction." The "Nicolas faction" then initiated a criminal complaint for *estafa* against the "Castro faction" as well as the petitioners herein who are officers of Metrobank, to wit: Antonio Abacan, Jr., President; Rufo C. Venus, Jr. and Enriqueto I. Magpantay, legal officers; and Marieta Y. Palanca, assistant branch manager of its Laoag City branch. The criminal case was later dismissed insofar as petitioners are concerned.[9]

On July 16, 1997, NUI, through Roy A. Nicolas of the "Nicolas faction," filed a complaint, docketed as Civil Case No. 11296-14, before the Regional Trial Court (RTC) of Laoag, for damages with application for attachment against petitioners together with the employees of NUI belonging to the "Castro faction," namely: Jose G. Castro, Ernesto B. Asuncion, Gervacio A. Velasco, Mariel S. Hernando and Virginio C. Rasos as well as their counsel, Edgar S. Asuncion, and SEC Hearing Officer Rolando G. Andaya, Jr. NUI claims that between December 16 and December 20, 1996, defendants from the "Castro faction," acting together, and helping one another, with herein petitioners taking undue and unlawful advantage of their respective positions in Metrobank, withdrew and released to themselves, for their own personal gain and benefit, corporate funds of NUI deposited with said bank in

the sum of P1.4 M without the knowledge, consent or approval of NUI to the grave and serious damage and prejudice of the latter. NUI also claims that defendants have not accounted for the said amount despite several demands for them to do so. [10]

On September 15, 1997, defendant, herein petitioner, Marieta Y. Palanca filed a motion to dismiss alleging that: (1) the complaint fails to state a cause of action against her since she is not a real party in interest; (2) plaintiff has no legal capacity to sue; and (3) the complaint is dismissible under Section 5, Rule 7 of the New Rules of Civil Procedure on the certification against forum shopping.[11] She likewise pointed out that SEC Case No. 12-96-5469 must take precedence over the civil case since it is a logical antecedent to the issue of standing in said case.[12]

On April 28, 1998, the RTC issued an Order, denying Palanca's motion and ordering her and her co-defendants to file their respective answers.[13] Pertinent portions of the Order read as follows:

> At first impression, the controversy commenced by the complaint appears to be one involving an intra-corporate dispute. A closer scrutiny of the allegations in the complaint, however, shows otherwise. Considering the doctrine that a motion to dismiss hypothetically admits the allegations in the complaint, what is admitted is that the action is one for a sum of money. The Court examined Exhibit "C" of movant and found out that it refers to a case in the Securities and Exchange Commission docketed as Sec. Case No. 12-96-5511 where the petitioners in said SEC case (some are defendants in the instant case) were "authorized to withdraw from Metrobank (Laoag City Branch) the amount of P2,555,274.99 from the Bank account of Northwestern University, Inc. . . ." On the other hand, the herein complaint avers that plaintiff Northwestern University, Inc. seeks recovery of the amount of P1,600,000.00[14] allegedly withdrawn by the herein defendants during the period from December 16 to December 20, 1996 from the corporate funds of plaintiff deposited with Metrobank Laoag City Branch under Current Account No. 7-140-525096 and Savings Account No. 3-140-52509. The SEC Order (Exhibit "C") was issued December 19, 1996. There is, therefore, an inference that the withdrawal referred to in the complaint as having been effected between December 16 to 20, 1996, could possibly be the withdrawal in consequence of the SEC Order of December 19, 1996. However, the inference remains as such and cannot ripen to a legal conclusion because the evidence on hand does not sufficiently preponderate to warrant such a conclusion. In the first place, there is no evidence adduced that the purported withdrawal, if ever made, was drawn against the current/savings accounts mentioned in the complaint. In the second place, the amount authorized to be withdrawn was P2,555,274.99 while the amount sought to be recovered is P1,600,000.00.[15] The Court cannot rely on inference or speculation to cogently resolve a matter. **While it appears that movants are invoking the issue of forum-shopping, they cannot overcome the issues raised in the complaint, which as earlier stated, have been hypothetically admitted, and which issues have to be joined by the filing of the answer by the defendants. The Court notes that in**

the instant case, plaintiff is a corporation and is not a respondent in SEC Case No. 12-96-5511. Moreover, the issues raised therein and in the instant case are entirely different. There is also no showing that there is legal basis to pierce the veil of corporate fiction. In the other case (SEC Case No. 12-96-5469), while it appears that Northwestern University, Inc. is one of the plaintiffs therein, the complaint refers to a declaration of nullity of the special stockholders meeting of 3 October 1996 of the election of directors and of the October 3, 1996 amended by-laws, and is essentially an action for damages. The complaint in this case, for a sum of money, is also far removed from the nature of the action in the said SEC Case. Thus, it is clear that there are genuine issues to be tried in this case, which calls for a trial on the merits. The motion to dismiss must, perforce, be denied. (Emphasis supplied)

. . .

As above shown, the alleged fraud is stated in generalities. In this jurisdiction, fraud is never presumed (Benitez vs. IAC, 154 SCRA 41).

Instead of filing their answers or a motion for reconsideration of the said Order, herein petitioners Abacan, Magpantay, Venus and Palanca went to the CA on a petition for *certiorari* and prohibition raising the same issues.[16]

On July 22, 1999, the CA rendered the herein assailed decision which dismissed the petition explaining thus:

A careful review and consideration of the records of the case, reveal that petitioner failed to comply with a condition *sine qua non* for the filing of the Petition, which is to file a motion for reconsideration. In *Tan vs. CA, 275 SCRA 568* the Supreme Court specifically ruled that: The special civil action of *certiorari* will not lie unless a motion for reconsideration is first filed before the respondent court to allow it an opportunity to correct its errors.

In filing this instant petition before Us, petitioners in its petition, while admitting failure to file a Motion for Reconsideration, justified the same, when it alleged thus:

> 13.01 Under the circumstances, the filing of a motion for reconsideration may be dispensed with. All issues are essentially legal and have been squarely raised and passed upon by the lower court. [Klaveness Maritime Agency, Inc. vs. Palmos, 232 SCRA 448.]

Regrettably, however, the case relied upon by petitioner, a 1994 decision, is the exception to the rule, and not applicable to the case at Bench. In the said case the Supreme Court said and We quote "a prior Motion for Reconsideration is not indispensable for commencement of *certiorari* proceedings <u>if the errors sought to be corrected in said proceedings had been duly heard and passed upon</u> or were similar to the issue/s resolved by the tribunal or agency below." (underlining for emphasis) A reading of

the Order of public respondent clearly shows that no hearing on the issues was had. The penultimate paragraph of the Order of public respondent judge states:

> *WHEREFORE, in view of the foregoing, the Court hereby denies:*
>
> 1. *The motion to dismiss;*
>
> 2. *The application for a writ of preliminary attachment; and*
>
> 3. *The appointment of a special sheriff.*
>
> *Defendant Jose G. Castro is hereby given eleven (11) days from receipt of a copy of this denial within which to file his answer; defendant Marietta [sic] Young Palanca and the other defendants who have not filed their answer are given five (5) days from receipt of the Order to file their respective answers.*
>
> *SO ORDERED.*

As it was, the only thing resolved by the court a quo was in relation to the motion to dismiss the application for a writ of preliminary attachment and the appointment of a special sheriff. Petitioner has not filed any answer which would outline the issues that he would want the court a quo to resolve.

Under such situation, therefore, since no proceedings were done to hear and pass upon the issues to be raised by petitioner, then the general rule that a motion for reconsideration must first be filed before a petition under Sec. 1 of Rule 65 must be applied. Having failed to do so, petitioners' petition must be, as it is hereby DENIED.[17]

A motion for reconsideration was thereafter filed by petitioners but was denied by the CA on November 12, 1999.[18]

Hence the present petition.

Petitioners argue that: (1) following the case of *Klaveness Maritime Agency, Inc. vs. Palmos*,[19] prior resort to a motion for reconsideration before the filing of a petition for *certiorari* or prohibition is not a mandatory rule and may be dispensed with in this case since the issues involved herein are purely legal and have already been passed upon; (2) it is contrary to the policy against judicial delay and multiplicity of suits for a higher court to remand the case to the trial court when the former is in a position to resolve the dispute based on the records before it; (3) the impleaded bank officers are not real parties-in-interest since they are not privy to the contract of deposit between NUI and Metrobank, and they merely complied with the SEC Order authorizing the release of funds from the account of NUI with Metrobank; (4) the "Nicolas faction" has no legal capacity to sue in behalf of NUI not being the *de jure* board of trustees; and (5) intra-corporate case No. 12-96-5469, lodged before the SEC, must take precedence over the damage suit pending before the trial court.[20]

Petitioners then prayed for the dismissal of the complaint in Civil Case No. 11296-14 against them, or in the alternative, to hold in abeyance the proceedings therein until after the final determination of SEC Case No. 12-96-5469.[21]

NUI in its Comment contends that: the *Klaveness* case does not apply in the case at bar since the issues raised herein are dependent upon facts the proof of which have neither been entered into the records of the case nor admitted by the parties; petitioners cannot, on their bare and self-serving representation that reconsideration is unnecessary, unilaterally disregard what the law requires and deny the trial court its right to review its pronouncements before being hailed to a higher court to account therefor; and contrary to petitioners' assertion, no hearing for the presentation of evidence was had before the trial court on the factual matters raised in petitioners' motion to dismiss.[22]

NUI further argues: it did not fail to state a cause of action; the complaint alleged that petitioners acted in connivance with their co-defendants and as joint tortfeasors, are solidarily liable with their principal for the wrongful act; as officers and employees of the bank, they are also considered agents thereof who are liable for fraud and negligence; the complaint charged the perpetration of the unlawful and unjust deprivation by the petitioners of NUI's right to its property for which petitioners may be held liable for damages making them real parties-in-interest; petitioners, as officers and employees of Metrobank had an obligation to protect the funds of NUI and it was the petitioners' act of conniving to unlawfully withdraw NUI's funds which violated NUI's legal right, thus entitling the latter to sue for such tortuous act; it is also not true that petitioners could not be held liable for damages since they merely complied with the order of the SEC; as pointed out in the Order dated April 28, 1998, the amount allegedly authorized to be withdrawn was P2,555,274.99 while the amount sought to be recovered in the complaint was P1.6 M; it cannot be inferred conclusively therefore that the amount subject of the complaint refers to the same amount authorized by the SEC to be withdrawn; in any case, such argument is more a subject of defense rather than a proper ground for a motion to dismiss.[23]

NUI disagrees with the contention of petitioners that it has no legal capacity to sue, stating that NUI had already conducted subsequent elections wherein Roy A. Nicolas was elected as member of the board of directors and concurrently the administrator of NUI.[24]

NUI further avers that: there is no merit to the claim of petitioners that there exists a prejudicial question which should prompt the trial court to suspend its proceedings; the rule on prejudicial question finds no application between the civil complaint below and the case before the SEC as the rule presupposes the pendency of a civil action and a criminal action; and even assuming *arguendo* that the issues pending before the SEC bear a similarity to the cause of action below, the complaint of NUI can stand and proceed separately from the SEC case inasmuch as there is no identity in the reliefs prayed for.[25]

Evaluating the issues raised, it is clear that the only questions that need to be answered in order to resolve the present petition are the following: (1) Whether the complaint states a cause of action; (2) Whether a motion for reconsideration of the order of the RTC dismissing a motion to dismiss prior to the filing of a petition for