

SECOND DIVISION

[G.R. No. 205286, June 19, 2019]

BDO LEASING & FINANCE, INC. (FORMERLY PCI LEASING & FINANCE, INC.), PETITIONER, V. GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES, INC., AND SPOUSES KIDDY LIM CHAO AND EMILY ROSE GO KO, RESPONDENTS.

R E S O L U T I O N

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner BDO Leasing & Finance, Inc. (petitioner BDO), formerly known as PCI Leasing and Finance, Inc., assailing the Resolution^[2] dated February 10, 2011 (first assailed Resolution) and Resolution^[3] dated December 13, 2012 (second assailed Resolution) (collectively, the assailed Resolutions) of the Court of Appeals - Cebu City Special 18th Division (CA Special 18th Division) in CA-G.R. SP. No. 04753.

The Facts and Antecedent Proceedings

As culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

On November 27, 1998, respondents spouses Kiddy Lim Chao and Emily Rose Go Ko (respondents Sps. Chao) obtained from petitioner BDO loans evidenced by two promissory notes for the amounts of P5,900,000.00 and P3,288,570.00. Both loans were payable starting in December 1998 in 60 equal monthly amortization payments with an interest rate of 22.5% per annum. As security for the payment of these loans, respondents Sps. Chao executed in favor of petitioner BDO a Chattel Mortgage covering 40 motor vehicles and personal properties.

Starting August 1999 until December 1999, respondents Sps. Chao failed to fully pay their monthly amortization payments. As shown in a Statement of Account as of January 2000, respondents Sps. Chao's account amounted to P10,565,165.70. Despite demands made, respondents Sps. Chao failed to settle their obligation. Hence, on January 18, 2000, a Complaint for Recovery of Possession of Personal Property, with an application for the issuance of a writ of *replevin* (Complaint) was filed by petitioner BDO before the Regional Trial Court of Cebu City, Branch 21 (RTC) against respondents Sps. Chao. The case was docketed as Civil Case No. CEB-24769.

On November 13, 2000, the RTC issued an Order allowing the issuance of a writ of *replevin* on the properties of respondents Sps. Chao upon the posting of a bond by petitioner BDO in the amount of P10,000,000.00. On November 27, 2000, petitioner BDO posted the said bond and the writ of *replevin* was issued against respondents Sps. Chao. On November 29, 2000, respondents Sps. Chao posted a counter-

replevin bond (counter-bond) also in the amount of P10,000,000.00 issued by respondent Great Domestic Insurance Company of the Philippines, Inc. (respondent Great Domestic).

On January 9, 2004, petitioner BDO filed a motion to declare respondents Sps. Chao in default for failing to file an answer within the allowable period. The RTC granted this motion and declared respondents Sps. Chao in default, allowing the *ex parte* presentation of petitioner BDO's evidence.

Trial then ensued. On October 18, 2004, the RTC rendered its Decision^[4] granting the Complaint. The dispositive portion of the said Decision reads:

Foregoing considered, judgment is hereby rendered ordering the defendants to deliver to plaintiff the properties subject of the Chattel Mortgage as enumerated in paragraph 4 of the Complaint or in the alternative, to pay jointly and severally the latter the sum of Php10,565,165.70 representing the principal amount due if delivery cannot be made.

Defendants are further ordered to pay plaintiff, attorney's fees equivalent to 10% of the amount due and cost of suit.

SO ORDERED.^[5]

On appeal before the CA Special 20th Division, the latter rendered its Decision^[6] dated December 21, 2006 denying respondents Sps. Chao's appeal for lack of merit. The appeal was docketed as CA-G.R. CV No. 00551.

The case was further appealed before the Court's First Division in G.R. No. 178005. The appeal was denied by the Court in its Resolution^[7] dated September 3, 2007. Acting on respondents Sps. Chao's Motion for Reconsideration, the Court denied the latter in its Resolution^[8] dated October 10, 2007. In an Entry of Judgment dated May 6, 2008, it was indicated that on February 4, 2008, the Court's Resolution^[9] dated September 3, 2007 in G.R. No. 178005 has attained finality.

Hence, on July 16, 2008, petitioner BDO filed a Motion for Writ of Execution before the RTC, which was granted by the latter in its Order dated July 18, 2008. Pursuant to the said Order, the Clerk of Court and Ex-Officio Sheriff of the RTC issued a writ of execution^[10] on August 5, 2008. The Sheriff's Progress Report^[11] dated March 2, 2009 indicated that the writ of execution was not satisfied.

Hence, on April 20, 2009, petitioner BDO filed a Motion to Order Sheriff to Serve Writ of Execution on the Counter Bond.^[12] This Motion was opposed by respondent Great Domestic in its Opposition^[13] dated May 6, 2009.

In its Order^[14] dated June 24, 2009, the RTC granted petitioner BDO's Motion and ordered the serving of the writ of execution. Respondent Great Domestic filed a Motion for Reconsideration of the said Order.

On August 26, 2009, the RTC rendered an Order^[15] denying respondent Great Domestic's Motion for Reconsideration. However, the RTC clarified its earlier Order and stated that the liability of respondent Great Domestic is only P5,000,000.00. Citing Section 20, Rule 57 of the Rules of Court, the RTC held that the amount of the

counter-bond is set at double the value of the property stated in the affidavit as the excess or difference will have to answer for claims for damages. In the instant case, the RTC found that the damages could not be recovered by petitioner BDO as the same was never proven. Thus, the award of damages was not included in the judgment of the RTC.

Petitioner BDO filed its Motion for Reconsideration of the RTC's Order dated August 26, 2009, which was denied by the RTC in its Order^[16] dated October 27, 2009.

Feeling aggrieved, on January 7, 2010, petitioner BDO, still as PCI Leasing & Finance, Inc., filed a Petition for *Certiorari*^[17] under Rule 65 of the Rules of Court (*Certiorari* Petition) before the CA Special 18th Division, arguing that the RTC committed grave abuse of discretion in finding that respondent Great Domestic's liability on the counter-bond is only P5,000,000.00. The case was docketed as CA-G.R. SP. No. 04753.

After the CA Special 18th Division issued its Resolution^[18] dated February 4, 2010 requiring respondents Great Domestic and Sps. Chao to submit their respective Comments to the *Certiorari* Petition, petitioner BDO was then ordered to file its Reply to the aforesaid Comments.

Respondent Great Domestic filed its Comment^[19] dated February 26, 2010, while respondents Sps. Chao filed their Comment with Motion to Dismiss^[20] dated February 23, 2010. Subsequently, on March 15, 2010, respondent Great Domestic filed a Motion for Leave of Court to Admit Attached Motion to Dismiss^[21] dated March 11, 2010. Petitioner BDO failed to file any Reply.

The Ruling of the CA Special 18th Division

In the first assailed Resolution, the CA Special 18th Division dismissed the *Certiorari* Petition outright solely on procedural grounds.

First, in dismissing the *Certiorari* Petition outright, the CA Special 18th Division held that petitioner BDO failed to satisfy the rule on filing the proper certification against forum shopping, as the latter failed to disclose and mention the pendency of another case involving petitioner BDO and respondents Sps. Chao, *i.e.*, Civil Case No. CEB-24675 pending before the RTC, Branch 51 for nullification of chattel mortgage with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

Second, the CA Special 18th Division found that petitioner BDO failed to attach vital pleadings and documents needed in deciding whether to grant the *Certiorari* Petition. Important pleadings and documents such as the Complaint, writ of *replevin*, writ of execution, and other issuances and orders of the RTC were not attached to the *Certiorari* Petition. This was in violation of Rule 65, Section 1, Paragraph 2 of the Rules of Court.

Lastly, the CA Special 18th Division held that petitioner BDO had no legal capacity to file the *Certiorari* Petition, considering that when PCI Leasing and Finance, Inc. changed its name to BDO Leasing and Finance, Inc. on June 13, 2008, petitioner BDO should have sued under its new name "in order to avoid confusion and open

door to frauds and evasions and difficulties of administration and supervision."^[22]
The CA Special 18th Division further held that:

the change of corporate name x x x renders ineffective the Board Resolution and Special Power of Attorney it issued long before the change of name took place authorizing its First Vice-President Mr. Vicente C. Rallos to initiate appropriate court action in its behalf, thus, the verification and certification against forum shopping Mr. Rallos has signed in connection with the instant case has no binding and legal effect. After June 13, 2008, the said documents can no longer vest or confer any authority upon Mr. Rallos to verify and certify any pleading of PCI [L]easing and [F]inance, Inc. After said date, the board of directors of [petitioner] BDO [L]easing and Finance, Inc. should have issued a new resolution and the instant petition filed in the name of [petitioner] BDO [L]easing and Finance, Incorporated.^[23]

Petitioner BDO filed its Motion for Reconsideration^[24] dated March 3, 2011, which was denied by the CA Special 18th Division in the second assailed Resolution.

Hence, the instant Petition.

Respondent Great Domestic filed its Comment^[25] to the Petition on September 6, 2013, while respondents Sps. Chao filed their Comment^[26] on September 16, 2013. Petitioner BDO filed its Consolidated Reply^[27] on November 14, 2014.

Issues

The instant Petition identifies three issues for the Court's disposition: (1) petitioner BDO's failure to disclose Civil Case No. CEB-24675 in the Verification/Certification accompanying the *Certiorari* Petition does not merit the outright dismissal of the said Petition; (2) the change of name of petitioner BDO from PCI Leasing and Finance, Inc. to BDO Leasing and Finance, Inc. did not affect its capacity to sue and be sued, and the authority of its authorized signatory, Vicente C. Rallos (Rallos), to file the *Certiorari* Petition; and (3) the *Certiorari* Petition cannot be dismissed outright because of the failure of petitioner BDO to attach certain documents which are not even specifically required by the Rules of Court.

Petitioner BDO's sole prayer is for the Court to reverse and set aside the CA Special 18th Division's assailed Resolutions and that the case be remanded back to the CA Special 18th Division for decision on the merits.

The Court's Ruling

I. Defect in petitioner BDO's Verification/Certification

According to Section 5, Rule 7 of the Rules of Court, the plaintiff or principal party shall certify in a sworn certification: (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