

SECOND DIVISION

[G.R. No. 189532, June 11, 2014]

**VIRGINIA S. DIO AND H.S. EQUITIES, LTD., PETITIONERS, VS.
SUBIC BAY MARINE EXPLORATORIUM, INC., REPRESENTED BY
ITS CHAIRMAN AND CHIEF EXECUTIVE OFFICER, TIMOTHY
DESMOND, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

This is a Petition for Review on *Certiorari*^[1] pursuant to Rule 45 of the Revised Rules of Court, assailing the 3 April 2009 Order^[2] of the Regional Trial Court (RTC) of Balanga City, Bataan, on pure question of law. In its assailed Order, the RTC denied the motion filed by petitioners to set their counterclaims for hearing on the ground that the main case was already dismissed with finality by the Court of Appeals in CA-G.R. CV No. 87117.

In an Order^[3] dated 26 August 2009, the RTC refused to reconsider its earlier disposition.

The Facts

Petitioner M.S. Equities, Ltd., (HSE) is a foreign corporation duly organized and existing under the laws of the British Virgin Islands, with registered address at Akara Building, 24 De Castro Street, Wickhams Cay I, Road Town, Tortola, British Virgin Islands. It entered into an isolated transaction subject of the instant case. It is represented in this action by petitioner Virginia S. Dio (Dio).

Respondent Subic Bay Marine Exploratorium, Inc. (SBME) is a domestic corporation, duly organized and existing under the Philippine laws and is represented in this action by its Chief Executive Officer, respondent Timothy Desmond (Desmond).

In 2002, SBME decided to expand its business by operating a beach resort inside the property administered by the Subic Bay Metropolitan Authority (SBMA). For the business venture to take off, SBME needed to solicit investors who are willing to infuse funds for the construction and operation of the beach resort project. HSE (formerly known as Westdale Assets Limited) thru its authorized director, Dio, agreed to invest the amount of US\$2,500,000.00 with SBME by purchasing 750,000 common shares with a par value of PI 00 per share from the increase in its authorized capital stock. The agreement was reduced into writing wherein HSE, in order to protect its interest in the company, was afforded minority protection rights such as the right to appoint a member of the board of directors and the right to veto certain board resolutions. After HSE initially paid US\$200,000.00 for its subscription, it refused to further lay out money for the expansion project of the SBME due to the alleged mismanagement in the handling of corporate funds.

Consequently, SBME initiated an intra-corporate dispute before the RTC of Balanga City, Bataan against petitioners HSE and Dio.^[4] Before petitioners could file their answer to the complaint, respondents impleaded its Corporate Secretary, Atty. Winston Gincz, as additional defendant. In their Amended Complaint^[5] docketed as Civil Case No. 7572, SBME essentially alleged that LISP" unjustly refused to pay the balance of its unpaid subscription effectively jeopardizing the company's expansion project. Apart from their refusal to honor their obligation under the subscription contract, it was further alleged by SBME that Dio tried to dissuade local investors and financial institutions from putting in capital to SBME by imputing defamatory acts against Desmond. To protect the interest of the corporation and its stockholders, SBME sought that petitioners be enjoined from committing acts inimical to the interest of the company.

To refute the claims of respondents, petitioners maintained in their Answer with Compulsory Counterclaim^[6] that it would be highly preposterous for them to dissuade investors and banks from putting in money to SBME considering that HSE and Dio are stakeholders of the company with substantial investments therein. In turn, petitioners countered that their reputation and good name in the business community were tarnished as a result of the filing of the instant complaint, and thus prayed that they be indemnified in the amount of US\$2,000,000.00 as moral damages. Constrained to litigate to protect their rights, petitioners asked that they be indemnified in the amount of P1,000,000.00 in litigation expenses. Petitioners likewise sought to recover their investment of US\$1,500,000.00 since they were purportedly inveigled by Desmond into putting in money to SBME under the pretext that they will be accorded with minority protection rights. It was alleged that after the filing of the instant complaint, Desmond, in collusion with other Board of Directors of SBME, managed to unjustly deny HSE and Dio their rights under the Subscription Agreement. To curb similar socially abhorrent actions, petitioners prayed that SBME and its Board of Directors, namely, Desmond, John Corcoran, Gaile Laule and Gregorio Magdaraog, be jointly and severally held liable to pay exemplary damages in the amount of US\$2,000,000.00.

After petitioners filed their Answer with Compulsory Counterclaim, the RTC, instead of setting the case for pre-trial, issued an Order^[7] dated 15 August 2005 *motu proprio* dismissing Civil Case No. 7572. The dismissal was grounded on the defective certificate of non-forum shopping which was signed by Desmond without specific authority from the Board of Directors of SBME.

Armed with a board resolution specifically authorizing Desmond to sign the certificate of non-forum shopping on behalf of SBME, respondents moved that Civil Case No. 7572 be reinstated and further proceedings thereon be conducted. A copy of such authority was attached by respondents to their Motion for Reconsideration.

For lack of merit, RTC denied respondents' motion and affirmed the dismissal in an Order^[8] dated 22 September 2005. In refusing to reinstate respondents' complaint, the court *a quo* ruled that the belated submission of a board resolution evidencing Desmond's authority to bind the corporation did not cure the initial defect in the complaint and declared that strict compliance with procedural rules is enjoined for the orderly administration of justice.

Aggrieved by the lower court's refusal to reinstate their complaint, respondents elevated the matter before the Court of Appeals assailing the propriety of the 15 August 2005 and 22 September 2005 RTC Orders *via* Petition for Review which was docketed as CA-G.R. CV No. 87117.

For failure of the respondents to file their appellants' brief, the appellate court proceeded to dismiss CA-G.R.CV No. 871 17 and considered the case closed and terminated in its Resolution^[9] dated 2 January 2007.

After respondents failed to seasonably move for the reconsideration of the aforementioned Resolution, the dismissal of CA-G.R. CV No. 87117 became final and executory, as shown in the Entry of Judgment^[10] dated 3 May 2007.

The procedural incidents before the appellate court having been resolved with finality, petitioners went back to the RTC to file a motion to set their counterclaims for hearing^[11] which was opposed by the respondents on the ground that the filing of the compulsory counterclaims was not accompanied by payment of the required docket fees precluding the court from acquiring jurisdiction over the case.^[12]

Acting on the motions filed by the opposing parties, the RTC, in an Order^[13] dated 3 April 2009 granted the motion of the respondents, thereby directing the dismissal of petitioners' counterclaims but not on the ground of non-payment of docket fees. In disallowing petitioners' counterclaims to proceed independently of respondents' complaint, the lower court pointed out that in view of the dismissal of the main case, which has already been affirmed with finality by the appellate court, it has already lost its jurisdiction to act on petitioners' counterclaim, the compulsory counterclaim being merely ancillary to the principal controversy.

In an Order^[14] dated 26 August 2009, the RTC refused to reconsider its earlier disposition.

Petitioners filed this instant Petition for Review on *Certiorari*^[15] on pure question of law seeking the reversal of the 3 April 2009 and 26 August 2009 RTC Orders on the ground that:

THE TRIAL COURT COMMITTED AN ERROR OF LAW WHEN IT REFUSED TO SET [PETITIONERS'] COUNTERCLAIMS FOR HEARING ON THE GROUND THAT THE CASE WAS DEEMED "CLOSED AND TERMINATED" BY THE COURT OF APPEALS AFTER THE LATTER DISMISSED RESPONDENTS' APPEAL BECAUSE OF THEIR FAILURE TO FILE THEIR APPELLANTS' BRIEF.

^[16]

The Court's Ruling

Petitioners argue that despite the dismissal of the main case, the counterclaim may still remain for independent adjudication under Section 6, Rule 16 of the Revised Rules of Court.^[17] Petitioners pointed out that while the dismissal of respondents' complaint is a confirmation of Desmonds' lack of legal personality to file the case, this does not, however, mean that they also do not have the qualification to pursue their counterclaim. To fault petitioners for the fatal infirmity in the respondents' complaint would not only work injustice to the former but would result to an absurd

situation where the fate of their counterclaims is placed entirely in the hands of the respondents.

For their part, respondents posit that, in directly assailing the adverse RTC Orders before the Court, petitioners erroneously availed themselves of an erroneous remedy arguing that this petition should have been initially filed with the appellate court. By seeking relief directly from the Court, petitioners ignored the judicial hierarchy warranting the peremptory dismissal of their petition. Unless special and important reasons were clearly and specifically set out in the petition, and in this case it was not, a direct invocation of this Court's original jurisdiction may not be allowed.

The established policy of strict observance of the judicial hierarchy of courts, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. A regard for judicial hierarchy clearly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed in the RTC and those against the latter should be filed in the Court of Appeals. The rule is not iron-clad, however, as it admits of certain exceptions.^[18]

Thus, a strict application of the rule is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions.^[19] In fact, Rule 41, Section 2(c)^[20] of the Revised Rules of Court provides that a decision or order of the RTC may as it was done in the instant case, be appealed to the Supreme Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law.

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the whole situation.^[21] Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.^[22]

Petitioners here raise the solitary issue of the propriety of the dismissal of their counterclaim on the basis of the reasoning of the lower court that the counterclaim derives its jurisdictional support from the complaint which has already been dismissed. Petitioners maintain that the court *a quo* erred in arriving at the legal conclusion that the counterclaim can no longer stand for independent adjudication after the main case was already dismissed with finality. In order to resolve this issue, the Court need only to look into the pleadings, depositions, admissions, and affidavits submitted by the respective parties without going into the truth or falsity of such documents. Consequently, the petitioners' remedy for assailing the correctness of the dismissal of their counterclaims, involving as it does a pure