

## FIRST DIVISION

[ G.R. No. 190277, July 23, 2014 ]

### **ABSOLUTE MANAGEMENT CORPORATION, PETITIONER, VS. METROPOLITAN BANK AND TRUST COMPANY, RESPONDENT.**

#### **D E C I S I O N**

##### **VILLARAMA, JR., J.:**

At bar is a Petition for Review on Certiorari with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, of the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 101568 dated August 13, 2009 and November 13, 2009, respectively, reversing the Orders dated May 2, 2007<sup>[3]</sup> and September 3, 2007<sup>[4]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 80, and requiring the court *a quo* to allow respondent to participate in the proceedings of Civil Case No. Q-00-42105.

The following undisputed facts are stated in the opinion of the appellate court:

On October 5, 2000, Sherwood Holdings Corporation and Spouses Sandy Ang and Arlene Ang filed a case for sum of money against private respondent Absolute Management Corporation before the Regional Trial Court of Quezon City, Branch 80 and docketed as Civil Case No. Q-00-42105. Private respondent filed its answer and incorporated a third-party complaint against petitioner Metropolitan Bank and Trust Company.

In an Order dated January 30, 2004, the trial court set the case for pre-trial on February 7, 2004, but the same was cancelled on account of the filing by petitioner of a motion to admit fourth-party-complaint against the Estate of Jose L. Chua.

On September 5, 2005, the trial court issued an Order directing petitioner to produce and allow private respondent to copy, microfilm copies of several checks and the bank ledgers of Current Account Nos. 00719-250162-4 and 00700-250691-9. On November 20, 2006, the trial court set the case for pre-trial. When the counsels of the parties were asked by the trial court to produce their respective authorizations to appear at the said hearing, [counsel for petitioner] manifested that [her] authority to appear for petitioner was submitted by them at the first pre-trial hearing way back [in] 2004.

Petitioner's counsel was given the chance to go over the records to look for [the] Secretary's Certificate she allegedly submitted in 2004. Petitioner's counsel, however, failed to show any written authority. As a result thereof, the trial court, upon motion of the private respondent,

declared petitioner in default. Accordingly, the trial court allowed private respondent to present evidence ex-parte.

Without waiting for the written order of default, petitioner, on December 5, 2006, filed a Motion to Lift Order of Default seeking reconsideration of the Order dated November 20, 2006, attaching thereto an Affidavit of Merit together with the required Secretary's Certificate dated July 16, 2006 and Special Power of Attorney dated December 5, 2006.

On May 2, 2007, the trial court issued an Order denying petitioner's motion to lift the order of default, which reads:

x x x x

Petitioner filed a motion for reconsideration of the above-quoted Order but the same was denied by the trial court in its Order dated September 3, 2007.<sup>[5]</sup>

Respondent filed a petition for certiorari with the CA alleging that the RTC committed grave abuse of discretion in issuing the aforesaid Orders dated May 2 and September 3, 2007.

In its assailed decision, the CA reversed the trial court's ruling that respondent's counsel cannot validly represent respondent due to "the failure on the part of the representative of [respondent] to present a Secretary's Certificate and Special Power of Attorney authorizing her to represent [respondent] during the pre-trial stage."<sup>[6]</sup> The CA ruled that the RTC's determination holding that respondent's counsel cannot validly represent respondent due to lack of authorization lacks merit, viz.:

The presumption in favor of the counsel's authority to appear in behalf of a client is a strong one. A lawyer is not even required to present a written authorization from the client. In fact, the absence of a formal notice of entry of appearance will not invalidate the acts performed by the counsel in his client's name. However, the court, on its own initiative or on motion of the other party[,] [may] require a lawyer to adduce authorization from the client.

x x x x

It is evident therefore that the trial court gravely abused its discretion in denying [respondent's] counsel to represent it. In the same vein, it is a clear disregard of the oft repeated principle that courts should not resort to a rigid application of the rules where the end result would frustrate the just, speedy and inexpensive determination of the controversy.<sup>[7]</sup>

Petitioner's motion for reconsideration was denied in a Resolution dated November 13, 2009. Hence, this petition raising the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT A SPECIAL POWER OF ATTORNEY NEED NOT BE PRESENTED IN COURT DURING PRE-TRIAL HEARINGS SINCE THE AUTHORITY OF A LAWYER TO APPEAR IN BEHALF OF HIS CLIENT IS PRESUMED.

A) THE NON-APPEARANCE OF A PARTY IN PRE-TRIAL MAY BE EXCUSED ONLY IF A VALID CAUSE IS SHOWN THEREFORE OR IF A REPRESENTATIVE SHALL APPEAR IN HIS BEHALF FULLY [AUTHORIZED] IN WRITING.

B) THE CASES CITED BY THE HONORABLE COURT OF APPEALS, NAMELY: (1) *LANDBANK OF THE PHILIPPINES VS. [PAMINTUAN], CO.* AND (2) *CEBU STEVEDORING VS. RAMOLETE*, TO SUPPORT ITS RULING THAT THE AUTHORITY OF [A] LAWYER TO APPEAR IN BEHALF OF THE CLIENT IS PRESUMED, ARE INAPPLICABLE TO THE INSTANT CASE.

II. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE LOWER COURT, WHEN IN FACT THE LOWER COURT ONLY PROPERLY APPLIED THE PROVISIONS OF THE LAW REQUIRING THE PRESENTATION OF A SPECIAL POWER OF ATTORNEY DURING PRE-TRIAL.

III. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THE LIBERAL APPLICATION OF THE RULES SHOULD BE APPLIED IN THE CASE OF RESPONDENT.

IV. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ORDERED RESPONDENT TO PARTICIPATE IN THE TRIAL OF THE COLLECTION CASE FILED WITH THE REGIONAL TRIAL COURT.

A) RESPONDENT'S PARTICIPATION IN THE TRIAL WOULD ONLY CAUSE THE DELAY IN THE RESOLUTION OF THE CASE, CONSIDERING THAT IN ITS ANSWER, *THEY FAILED TO PRESENT A VALID DEFENSE.*<sup>[8]</sup>

We grant the petition.

A petition for certiorari may be filed if the trial court declared the defendant in default with grave abuse of discretion.<sup>[9]</sup> However, an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.<sup>[10]</sup>

The court *a quo* did not commit such grave abuse of discretion in the case at bar. The Order given by the RTC in open court dated November 20, 2006 stated, *viz.:*

When this case was called for pre-trial conference, co-plaintiff Sandy Ang failed to appear despite notice, thus, this case is hereby dismissed, insofar as he is concerned. Accordingly, defendant Absolute Management Corp. may now adduce evidence *ex parte* in support of its counterclaim against co-plaintiff Sandy Ang.

**With respect to the third-party complaint of Absolute Management Corp., against third-party defendant Metropolitan Bank and Trust Company whose counsel failed to present a Secretary's Certificate and Special Power of Attorney authorizing her to represent said bank in today's pre-trial, said third-party plaintiff is hereby allowed to present evidence *ex parte* pursuant to the provisions of Sec. 5, Rule 18 of the 1997 Rules of Civil Procedure.**

Meanwhile, let this case be referred to the Philippine Mediation Center for mediation proceedings on December 6, 2006 at 10:00 in the morning. Let the pre-trial conference between the remaining plaintiffs and defendant Absolute Management Corp. be set on January 29, 2007 at 1:30 in the afternoon.

SO ORDERED.

Given in Open Court on November 20, 2006<sup>[11]</sup>

When respondent tendered its explanation in a Motion to Lift Order of Default dated December 4, 2006, respondent clarified that:

2. The failure of the undersigned counsel to present the above-mentioned authorization at the said occasion was due to their impression that the same was already submitted by them during the initial pre-trial hearing of the case that was held on February 27, 2004. Because of such impression, undersigned counsel did not bring anymore the required authorization from [respondent]. Upon inspection of the records of the case after the said pre-trial hearing, undersigned counsel, however, discovered and realized that no such authorization was submitted by them at the said first pre-trial hearing.

3. The records of the instant case will show that the undersigned counsel has been representing [respondent] in all the proceedings of the present case from the very start, including the cases before the Court of Appeals (CA G.R. SP No. 86336) and the Supreme Court (SC G.R. SP No. 170498), involving the issue of whether or not the former has the right to file a fourth-party complaint against the Estate of Jose Chua.

4. Indubitably, the undersigned counsel's inability to provide the Honorable Court the proper authority to represent [respondent] at the pre-trial hearing on November 20, 2006 was not willful and deliberate, but simply due to their excusable negligence. Nevertheless, undersigned counsel[s] are attaching herewith the Secretary's Certificate and the

Special Power of Attorney, Annexes "A" and "B" hereof respectively, evidencing their authority to represent [respondent] in the instant case.  
[12]

Despite the explanation, the trial court denied the foregoing Motion to Lift Order of Default for lack of merit in its Order dated May 2, 2007.<sup>[13]</sup> It likewise found no compelling reason to grant reconsideration as stated in its Order dated September 3, 2007.<sup>[14]</sup>

We agree with petitioner that the court *a quo* merely applied the law in this case when it declared that respondent's counsel did not have the authority to act on behalf of respondent as its **representative** during the pre-trial on November 20, 2006. The applicable provision under Rule 18 of the 1997 Rules of Civil Procedure, as amended, states, *viz.*:

SEC. 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or **if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.**<sup>[15]</sup>

SEC. 5. *Effect of failure to appear.* - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

This Court has incisively explained the ratiocination of the foregoing rule on pre-trial in the case of *Development Bank of the Philippines v. Court of Appeals*<sup>[16]</sup>:

Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

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