

FIRST DIVISION

[G.R. No. 207376, August 06, 2014]

AIDA PADILLA, PETITIONER, VS. GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, FILMAL REALTY CORPORATION, DELFIN S. LEE AND DEXTER L. LEE, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

Assailed in this petition for review under Rule 45 are the Orders^[1] dated November 12, 2012 denying the motion to set the counterclaim for pre-trial and May 8, 2013 denying petitioner's motion for reconsideration, issued by the Regional Trial Court (RTC) of Pasig City, Branch 155 in Civil Case No. 73132.

Factual Antecedents

From the years 2005 to 2008, Philippine National Bank (PNB) entered into several Contracts to Sell (CTS) Facility Agreements^[2] with respondents Globe Asiatique Realty Holdings Corporation (Globe Asiatique) and Filmal Realty Corporation (Filmal) represented by Delfin S. Lee and Dexter L. Lee, President and Vice-President, respectively, of the two corporations. PNB thereby agreed to make available to Globe Asiatique and Filmal CTS Facility in the amount not exceeding Two Hundred Million Pesos (P200,000,000.00) to finance the purchase of certain Accounts Receivables or the in-house installment receivables of respondents arising from the sale of subdivision houses in their real estate/housing projects as evidenced by contracts to sell. These availments were later increased to a total amount of One Billion Two Hundred Million Pesos (P1,200,000,000.00).^[3]

Pursuant to and as a condition for the CTS Facility availments, respondents executed in favor of PNB several Deeds of Assignment^[4] covering accounts receivables in the aggregate amount of One Billion One Hundred Ninety-Five Million Nine Hundred Twenty-Six Thousand Three Hundred Ninety Pesos and Seventy-two centavos (P1,195,926,390.72). In the said instruments, respondents acknowledged the total amount of One Billion Three Hundred Ninety Five Million Six Hundred Sixty-Five Thousand Five Hundred Sixty-Four Pesos and Sixty-nine centavos (P1,395,665,564.69) released to them by PNB in consideration of the aforesaid accounts receivables.^[5]

Sometime in the first quarter of 2010, respondents defaulted in the payment of their outstanding balance and delivery to PNB of transfer certificates of title corresponding to the assigned accounts receivables, for which PNB declared them in default under the CTS Facility Agreements. Subsequently, respondents made partial payments and made proposals for paying in full its obligation to PNB as shown in the exchange of correspondence between respondents and PNB.

In a letter dated August 5, 2010,^[6] PNB made a formal and final demand upon respondents to pay/settle the total amount of P974,377,159.10 representing their outstanding obligation. In the course of credit monitoring and verification, PNB claimed it discovered 231 out of 240 Contracts to Sell to have either inexistent addresses of buyers or the names of the buyers are non-existent or both.

Thereafter, PNB instituted Civil Case No. R-PSY-10-04228-CV (*Philippine National Bank v. Globe Asiatique Realty Holdings Corporation, Filmal Realty Corporation, Delfin S. Lee and Dexter L. Lee*) for recovery of sum of money and damages with prayer for writ of preliminary attachment before the RTC of Pasay City.

In their complaint, PNB alleged in detail the fraudulent acts and misrepresentations committed by respondents in obtaining PNB's conformity to the CTS Facility Agreements and the release of various sums to respondents in the total amount of P974,377,159.10. PNB accused respondents of falsely representing that they have valid and subsisting contracts to sell, which evidently showed they had no intention to pay their loan obligations. The Verification and Certification of Non-Forum Shopping attached to the complaint was signed by PNB's Senior Vice-president of the Remedial Management Group, Aida Padilla, who likewise executed an "Affidavit in Support of the Application for the Issuance of the Writ of Preliminary Attachment."

**Proceedings in the Pasay
City RTC (Civil Case No.
R-PSY-10-04228-CV)**

On August 25, 2010, the Pasay City RTC issued an Order^[7] granting PNB's application for issuance of preliminary attachment after finding that defendants Globe Asiatique and Filmal "through the active participation or connivance/conspiracy of defendants Delfin and Dexter Lee from the revealing evidence presented by plaintiff are guilty of fraud in contracting their outstanding loan applications to plaintiff Philippine National Bank (PNB)."^[8] The writ of preliminary attachment was accordingly issued on August 27, 2010 after PNB complied with the posting of attachment bond as ordered by the court.^[9]

Defendants Delfin Lee and Dexter Lee filed their Answer with Counterclaim with motion to dismiss, arguing that PNB has no cause of action against them as there is nothing in the CTS Facility Agreements that suggest they are personally liable or serve as guarantors for Globe Asiatique and Filmal, and that they were just sued as signatories of the CTS Facility Agreements. They likewise filed a motion to discharge preliminary attachment.^[10]

Defendants Globe Asiatique and Filmal also filed their Answer with Counterclaim denying PNB's allegations of fraud and misrepresentation particularly after PNB had accepted payments from the corporations. In their motion to discharge preliminary attachment, Globe Asiatique and Filmal asserted that the allegations of fraud in the complaint are without basis and no proof was presented by plaintiff on the existence of preconceived fraud and lack of intention to pay their obligations, citing their timely payments made to PNB. They further assailed the affidavit executed by Aida Padilla who they claimed has no personal knowledge of the subject transactions and there being no allegation of threat or possibility that defendant corporations will

dispose of their properties in fraud of their creditors.^[11]

In its Order^[12] dated April 29, 2011, the Pasay City RTC denied defendants' motion to dismiss, motions to discharge preliminary attachment and to expunge or suspend proceedings, as well as PNB's motion to expunge.

In succession, the parties in Civil Case No. R-PSY-10-04228-CV filed the following motions:

- 1) Defendants' Motion for Reconsideration of the Order dated April 29, 2011 filed on May 27, 2011;
- 2) Plaintiff's Motion to Set Case for Pre-trial Conference filed on June 8, 2011;
- 3) Plaintiff's Motion for Summary Judgment filed on June 28, 2011;
- 4) Defendants' Motion for Leave to Admit Attached Amended Answer with Compulsory Counterclaim filed on July 12, 2011;
- 5) Defendants' Omnibus Motion (a) to discharge the writ of attachment on the ground of newly discovered evidence; (b) set preliminary hearing on affirmative defenses pleaded in the amended answer; (c) issue preliminary attachment against plaintiff on account of fraud in incurring the obligation as alleged in the amended answer; and (d) render partial summary judgment on the compulsory counterclaim, filed on July 26, 2011;
- 6) Defendants' Motion for Reconsideration of the Order dated July 29, 2011, with Motion to Continue with the Proceedings Involving Defendants' Omnibus Motion, filed on August 31, 2011;
- 7) Defendants' Motion to Set for Hearing their earlier motion to discharge the writ of attachment filed on January 24, 2012; and
- 8) Plaintiff's Motion to Expunge defendants' Reply (on defendants' motion to set hearing) filed on April 30, 2012.

Meanwhile, and before the Pasay City RTC could act upon the foregoing motions, defendants Globe Asiatique, Filmal, Delfin S. Lee and Dexter L. Lee filed on August 10, 2011 a complaint^[13] for Damages in the RTC of Pasig City, Branch 155 docketed as Civil Case No. 73132.

On May 18, 2012, the Pasay City RTC issued an Order^[14] resolving the pending motions, as follows:

WHEREFORE, the motion for reconsideration of the Order dated 27 May 2011 is denied insofar as the prayer to reconsider denial of the motion to dismiss. However, the prayer to expunge the Manifestation filed on 26 November 2010 is granted thus, the Manifestation is expunged.

The motion for leave and to admit amended answer is denied. The motion for reconsideration of the Order dated 29 July 2011 is likewise

denied. The other prayers in the omnibus motion to set preliminary hearing of affirmative defenses in the amended answer, issuance of preliminary attachment based thereon and for partial summary judgment on the compulsory counterclaims in the amended answer are denied. Plaintiff's motion to expunge defendants' reply is likewise denied.

Hearing on plaintiff's motion for summary judgment is set on 19 June 2012 at 8:30 a.m., while hearing on defendants' motion to discharge the writ of preliminary attachment is set on 26 June 2012 at 8:30 a.m.

Action on plaintiff's motion to set the case for pre-trial is deferred until after resolution of the motion for summary judgment.

SO ORDERED.^[15]

Pasig City RTC Case
(Civil Case No. 73132)

In their Complaint against Judge Pedro De Leon Gutierrez and Aida Padilla (both sued in their personal capacity), respondents claimed that Globe Asiatique and Filmal are well-known and successful real estate developers whose projects were "being continuously supported by various banks and other financial institutions prior to the malicious and devastating unfounded civil action" filed by Aida Padilla (petitioner) which wrought havoc to their businesses and lives. As to the CTS Facility Agreements with PNB, respondents alleged that these were already novated by the parties who agreed upon a term loan starting May 31, 2010 and to expire on April 30, 2012. But despite her knowledge of such novation and that the obligation was not yet due and demandable, petitioner with malice and evident bad faith still executed a "perjured" Affidavit in support of the application for writ of preliminary attachment before the Pasay City RTC.

Respondents likewise sought to hold Judge Gutierrez personally liable for issuing the writ of preliminary attachment in favor of PNB notwithstanding that the obligation subject of PNB's complaint was sufficiently secured by the value of real properties sold to it by virtue of the CTS Facility Agreements and deeds of assignment of accounts receivables. They further contended that Judge Gutierrez blindly approved the attachment bond offered by PNB's sister company, PNB General Insurers Company, Inc. despite the fact that from its submitted documents, said insurer's authorized capital stock is only P400 million while its paid-up capital is only P312.6 million, which is way below the P974,377,159.10 attachment bond it issued.

Respondents thus prayed for a judgment ordering petitioner and Judge Gutierrez to pay moral damages, exemplary damages, litigation expenses, attorney's fees and cost of suit.

Judge Gutierrez moved to dismiss^[16] the complaint against him on the following grounds: (1) respondents have no cause of action against him; and (2) the Pasig City court has no jurisdiction over the case and his person, movant being of co-equal and concurrent jurisdiction.

Petitioner filed her Answer With Compulsory Counterclaims,^[17] praying for the dismissal of respondents' complaint on the following grounds: (1) submission of a false certification of non-forum shopping by respondents and their blatant commission of willful, deliberate and contumacious forum shopping (respondents failed to disclose a criminal complaint entitled "*Tbram Cuyugan v. Aida Padilla and Members of the Board of Directors of PNB*", docketed as I.S. No. XV-13-INV-11-H-01208 pending before the office of the City Prosecutor of Pasay City); (2) *litis pendentia*; (3) respondents' failure to attach the alleged actionable document, i.e. the supposed "new term loan", in violation of Section 7, Rule 8 of the Rules of Court; (4) failure to state a cause of action against petitioner; and (5) petitioner cannot be held personally liable for her official acts done for and in behalf of PNB.

On January 5, 2012, petitioner filed a motion for preliminary hearing on affirmative defenses, contending that respondents are parroting the very same arguments raised and relying on the same evidence they presented before the Pasay City RTC to establish the alleged novation and purported insufficiency of the attachment bond, which issues are still pending in the said court. It was thus stressed that respondents are evidently guilty of forum shopping.^[18]

Respondents filed their Comment/Opposition,^[19] arguing that there is nothing in their complaint that would slightly suggest they are asking the Pasig City RTC to issue any injunction or otherwise issue an order setting aside the writ of preliminary attachment issued by the Pasay City RTC, and neither did they ask for a ruling on whether said writ is illegal or whether Judge Gutierrez committed a grave abuse of discretion. They asserted that what they seek from the Pasig City RTC is to allow them to recover damages from Judge De Leon for his tortious action in approving PNB's attachment bond. They also insisted that forum shopping and *litis pendentia* are absent in this case, contrary to petitioner's claims. Respondents likewise opposed^[20] the motion to dismiss filed by Judge Gutierrez, citing this Court's ruling in *J. King & Sons Company, Inc. v. Judge Agapito L. Hontanosas, Jr.*^[21] in support of their position that the separate complaint before another forum against the judge for his actionable wrong in a pending case before him can proceed independently without necessarily interfering with the court's jurisdiction, as what happened in the said case where the judge was merely penalized for gross misconduct and gross ignorance of the law without actually invalidating the judge's order approving the counter-bond without reviewing the documents presented.

In her Reply,^[22] petitioner reiterated her previous arguments and additionally contended that in any event, there is no basis for respondents' claim for damages arising from the issuance of the writ of preliminary attachment before the Pasay City RTC considering that PNBGEN Bond No. SU-JC14-HO-10-0000001-00 is valid and sufficient to secure and answer for whatever damages respondents may have suffered by reason of such issuance should it be finally decided that PNB was not entitled to the said bond.

On April 2, 2012, the RTC of Pasig City issued an Order^[23] dismissing Civil Case No. 73132 for lack of jurisdiction.

On May 7, 2012, petitioner filed a Motion to Set Counterclaims for Pre-Trial Conference.^[24]