

SECOND DIVISION

[G.R. No. 173946, June 19, 2013]

BOSTON EQUITY RESOURCES, INC., PETITIONER, VS. COURT OF APPEALS AND LOLITA G. TOLEDO, RESPONDENTS.

DECISION

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside: (1) the Decision,^[1] dated 28 February 2006 and (2) the Resolution,^[2] dated 1 August 2006 of the Court of Appeals in CA-G.R. SP No. 88586. The challenged decision granted herein respondent's petition for *certiorari* upon a finding that the trial court committed grave abuse of discretion in denying respondent's motion to dismiss the complaint against her.^[3] Based on this finding, the Court of Appeals reversed and set aside the Orders, dated 8 November 2004^[4] and 22 December 2004,^[5] respectively, of the Regional Trial Court (RTC) of Manila, Branch 24.

The Facts

On 24 December 1997, petitioner filed a complaint for sum of money with a prayer for the issuance of a writ of preliminary attachment against the spouses Manuel and Lolita Toledo.^[6] Herein respondent filed an Answer dated 19 March 1998 but on 7 May 1998, she filed a Motion for Leave to Admit Amended Answer^[7] in which she alleged, among others, that her husband and co-defendant, Manuel Toledo (Manuel), is already dead.^[8] The death certificate^[9] of Manuel states "13 July 1995" as the date of death. As a result, petitioner filed a motion, dated 5 August 1999, to require respondent to disclose the heirs of Manuel.^[10] In compliance with the verbal order of the court during the 11 October 1999 hearing of the case, respondent submitted the required names and addresses of the heirs.^[11] Petitioner then filed a Motion for Substitution,^[12] dated 18 January 2000, praying that Manuel be substituted by his children as party-defendants. It appears that this motion was granted by the trial court in an Order dated 9 October 2000.^[13]

Pre-trial thereafter ensued and on 18 July 2001, the trial court issued its pre-trial order containing, among others, the dates of hearing of the case.^[14]

The trial of the case then proceeded. Herein petitioner, as plaintiff, presented its evidence and its exhibits were thereafter admitted.

On 26 May 2004, the reception of evidence for herein respondent was cancelled upon agreement of the parties. On 24 September 2004, counsel for herein respondent was given a period of fifteen days within which to file a demurrer to evidence.^[15] However, on 7 October 2004, respondent instead filed a motion to

dismiss the complaint, citing the following as grounds: (1) that the complaint failed to implead an indispensable party or a real party in interest; hence, the case must be dismissed for failure to state a cause of action; (2) that the trial court did not acquire jurisdiction over the person of Manuel pursuant to Section 5, Rule 86 of the Revised Rules of Court; (3) that the trial court erred in ordering the substitution of the deceased Manuel by his heirs; and (4) that the court must also dismiss the case against Lolita Toledo in accordance with Section 6, Rule 86 of the Rules of Court.^[16]

The trial court, in an Order dated 8 November 2004, denied the motion to dismiss for having been filed out of time, citing Section 1, Rule 16 of the 1997 Rules of Court which states that: "[W]ithin the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made x x x."

^[17] Respondent's motion for reconsideration of the order of denial was likewise denied on the ground that "defendants' attack on the jurisdiction of this Court is now barred by estoppel by laches" since respondent failed to raise the issue despite several chances to do so.^[18]

Aggrieved, respondent filed a petition for *certiorari* with the Court of Appeals alleging that the trial court seriously erred and gravely abused its discretion in denying her motion to dismiss despite discovery, during the trial of the case, of evidence that would constitute a ground for dismissal of the case.^[19]

The Court of Appeals granted the petition based on the following grounds:

It is elementary that courts acquire jurisdiction over the person of the defendant x x x only when the latter voluntarily appeared or submitted to the court or by coercive process issued by the court to him, x x x. In this case, it is undisputed that when [petitioner] Boston filed the complaint on **December 24, 1997**, defendant Manuel S. Toledo was already dead, x x x. Such being the case, the court **a quo** could not have acquired jurisdiction over the person of defendant Manuel S. Toledo.

x x x the court **a quo's** denial of [respondent's] motion to dismiss was based on its finding that [respondent's] attack on the jurisdiction of the court was already barred by **laches** as [respondent] failed to raise the said ground in its [sic] amended answer and during the pre-trial, despite her active participation in the proceedings.

However, x x x it is well-settled that issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal. By timely raising the issue on jurisdiction in her motion to dismiss x x x [respondent] is not **estopped** [from] raising the question on jurisdiction. Moreover, when issue on jurisdiction was raised by [respondent], the court **a quo** had not yet decided the case, hence, there is no basis for the court **a quo** to invoke estoppel to justify its denial of the motion for reconsideration;

It should be stressed that when the complaint was filed, defendant Manuel S. Toledo was already dead. The complaint should have impleaded the estate of Manuel S. Toledo as defendant, not only the wife,

considering that the **estate** of Manuel S. Toledo is an indispensable party, which stands to be benefited or be injured in the outcome of the case. x x x

x x x x

[Respondent's] motion to dismiss the complaint should have been granted by public respondent judge as the same was in order. Considering that the obligation of Manuel S. Toledo is solidary with another debtor, x x x, the claim x x x should be filed against the estate of Manuel S. Toledo, in conformity with the provision of Section 6, Rule 86 of the Rules of Court, x x x.^[20]

The Court of Appeals denied petitioner's motion for reconsideration. Hence, this petition.

The Issues

Petitioner claims that the Court of Appeals erred in not holding that:

1. Respondent is already estopped from questioning the trial court's jurisdiction;
2. Petitioner never failed to implead an indispensable party as the estate of Manuel is not an indispensable party;
3. The inclusion of Manuel as party-defendant is a mere misjoinder of party not warranting the dismissal of the case before the lower court; and
4. Since the estate of Manuel is not an indispensable party, it is not necessary that petitioner file its claim against the estate of Manuel.

In essence, what is at issue here is the correctness of the trial court's orders denying respondent's motion to dismiss.

The Ruling of the Court

We find merit in the petition.

Motion to dismiss filed out of time

To begin with, the Court of Appeals erred in granting the writ of *certiorari* in favor of respondent. Well settled is the rule that the special civil action for *certiorari* is not the proper remedy to assail the denial by the trial court of a motion to dismiss. The order of the trial court denying a motion to dismiss is merely interlocutory, as it neither terminates nor finally disposes of a case and still leaves something to be done by the court before a case is finally decided on the merits.^[21] Therefore, "the proper remedy in such a case is to appeal after a decision has been rendered."^[22]

As the Supreme Court held in *Indiana Aerospace University v. Comm. on Higher Education*:^[23]

A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts – acts which courts or judges have no power or authority in law to perform. **It is not designed to correct erroneous findings and conclusions made by the courts.** (Emphasis supplied)

Even assuming that *certiorari* is the proper remedy, the trial court did not commit grave abuse of discretion in denying respondent's motion to dismiss. It, in fact, acted correctly when it issued the questioned orders as respondent's motion to dismiss was filed SIX YEARS AND FIVE MONTHS AFTER SHE FILED HER AMENDED ANSWER. This circumstance alone already warranted the outright dismissal of the motion for having been filed in clear contravention of the express mandate of Section 1, Rule 16, of the Revised Rules of Court. Under this provision, a motion to dismiss shall be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim.^[24]

More importantly, respondent's motion to dismiss was filed after petitioner has completed the presentation of its evidence in the trial court,^[25] giving credence to petitioner's and the trial court's conclusion that the filing of the motion to dismiss was a mere ploy on the part of respondent to delay the prompt resolution of the case against her.

Also worth mentioning is the fact that respondent's motion to dismiss under consideration herein is not the first motion to dismiss she filed in the trial court. It appears that she had filed an earlier motion to dismiss^[26] on the sole ground of the unenforceability of petitioner's claim under the Statute of Frauds, which motion was denied by the trial court. More telling is the following narration of the trial court in its Order denying respondent's motion for reconsideration of the denial of her motion to dismiss:

As can be gleaned from the records, with the admission of plaintiff's exhibits, reception of defendants' evidence was set on March 31, and April 23, 2004 x x x . On motion of the defendant[s], the hearing on March 31, 2004 was cancelled.

On April 14, 2004, defendants sought the issuance of subpoena ad testificandum and duces tecum to one Gina M. Madulid, to appear and testify for the defendants on April 23, 2004. Reception of defendants' evidence was again deferred to May 26, June 2 and June 30, 2004, x x x.

On May 13, 2004, defendants sought again the issuance of a subpoena duces tecum and ad testificandum to the said Gina Madulid. On May 26,

2004, reception of defendants [sic] evidence was cancelled upon the agreement of the parties. On July 28, 2004, in the absence of defendants' witness, hearing was reset to September 24 and October 8, 2004 x x x.

On September 24, 2004, counsel for defendants was given a period of fifteen (15) days to file a demurrer to evidence. On October 7, 2004, defendants filed instead a Motion to Dismiss x x x.^[27]

Respondent's act of filing multiple motions, such as the first and earlier motion to dismiss and then the motion to dismiss at issue here, as well as several motions for postponement, lends credibility to the position taken by petitioner, which is shared by the trial court, that respondent is deliberately impeding the early disposition of this case. The filing of the second motion to dismiss was, therefore, "not only improper but also dilatory."^[28] Thus, the trial court, "far from deviating or straying off course from established jurisprudence on [the] matter, x x x had in fact faithfully observed the law and legal precedents in this case."^[29] The Court of Appeals, therefore, erred not only in entertaining respondent's petition for *certiorari*, it likewise erred in ruling that the trial court committed grave abuse of discretion when it denied respondent's motion to dismiss.

On whether or not respondent is estopped from questioning the jurisdiction of the trial court

At the outset, it must be here stated that, as the succeeding discussions will demonstrate, jurisdiction over the person of Manuel should not be an issue in this case. A protracted discourse on jurisdiction is, nevertheless, demanded by the fact that jurisdiction has been raised as an issue from the lower court, to the Court of Appeals and, finally, before this Court. For the sake of clarity, and in order to finally settle the controversy and fully dispose of all the issues in this case, it was deemed imperative to resolve the issue of jurisdiction.

1. Aspects of Jurisdiction

Petitioner calls attention to the fact that respondent's motion to dismiss questioning the trial court's jurisdiction was filed more than six years after her amended answer was filed. According to petitioner, respondent had several opportunities, at various stages of the proceedings, to assail the trial court's jurisdiction but never did so for six straight years. Citing the doctrine laid down in the case of *Tijam, et al. v. Sibonghanoy, et al.*^[30] petitioner claimed that respondent's failure to raise the question of jurisdiction at an earlier stage bars her from later questioning it, especially since she actively participated in the proceedings conducted by the trial court.

Petitioner's argument is misplaced, in that, it failed to consider that the concept of jurisdiction has several aspects, namely: (1) jurisdiction over the subject matter; (2) jurisdiction over the parties; (3) jurisdiction over the issues of the case; and (4) in cases involving property, jurisdiction over the res or the thing which is the subject of the litigation.^[31]