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FIRST DIVISION

[G.R. No. 164153, June 13, 2011]

JOHN ANTHONY B. ESPIRITU, FOR HIMSELF AND AS ATTORNEY-IN-FACT FOR WESTMONT INVESTMENT CORPORATION, STA. LUCIA REALTY AND DEVELOPMENT CORPORATION, GOLDEN ERA HOLDINGS, INC., AND EXCHANGE EQUITY CORPORATION, PETITIONERS, VS. MANUEL N. TANKIANSEE AND JUANITA U. TAN, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

There is forum shopping when two or more actions or proceedings, founded on the same cause, are instituted by a party on the supposition that one or the other court would make a favorable disposition. Where a party's petition for *certiorari* and subsequent appeal seek to achieve one and the same purpose, there is forum shopping which is a sufficient ground for the dismissal of the *certiorari* petition.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's February 27, 2004 Decision [1] in CA-G.R. SP No. 76518 which affirmed the February 4, [2] February 17, [3] and February 26, [4] 2003 Orders of the Regional Trial Court of Manila, Branch 46 in Civil Case No. 02-103160, and the June 22, 2004 Resolution [5] denying petitioners' motion for reconsideration.

Factual Antecedents

On March 25, 2002, John Anthony B. Espiritu, for himself and as attorney-in-fact of Westmont Investment Corporation, Sta. Lucia Realty and Development Corporation, Golden Era Holdings, Inc., and Exchange Equity Corporation (Espiritu Group) and Tony Tan Caktiong and William Tan Untiong (Tan Group) filed a Petition for Issuance of Shares of Stock and/or Return of Management and Control [6] with the Regional Trial Court of Manila against United Overseas Bank Limited, United Overseas Bank Philippines, Manta Ray Holdings, Inc., Wee Cho Chaw, Wee Ee Cheong, Samuel Poon Hon Thang, Ong Sea Eng, Chua Ten Hui, Wang Lian Khee and Marianne Malate-Guerrero (UOBP Group). The case was docketed as Civil Case No. 02-103160 and raffled to Branch 46.

On June 27, 2002, Manuel N. Tankiansee and Juanita U. Tan, joined by Farmix Fertilizer Corp., and Pearlbank Securities, Inc. (intervenors), filed a Motion for Leave to Intervene and to Admit Attached Petition-In-Intervention. [7]

On July 26, 2002, the UOBP Group filed their Answer *Ad Cautelam* with Counterclaim against intervenors, and Cross-claim against the Espiritu and Tan Groups.

On September 16, 2002, the Espiritu and Tan Groups filed their *Ex Abundanti Ad Cautelam* Answer to the cross-claim of the UOBP Group.

On October 4, 2002, the intervenors filed a Motion for Production, Inspection and Copying of Documents against the UOBP Group.

On October 14, 2002, the intervenors filed a Notice to Take Deposition Upon Oral Examination of John Anthony B. Espiritu, Tony Tan Caktiong and Chua Teng Hui. A similar notice was sent to Wee Cho Yaw. All the aforementioned parties opposed the taking of their depositions *via* separate Motions for Protective Order and/or Objection to Resort to Discoveries on the ground that resort to discovery procedure was already time-barred.

In an Order dated October 29, 2002, the trial court denied the motion for production of documents and notice to take depositions because, as modes of discovery, the same were filed beyond the 15-day reglementary period.

Subsequently, the intervenors filed a Motion for Clarification. On November 25, 2002, the trial court reversed its previous ruling and granted the intervenors' motion for production of documents and notice to take depositions. Thereafter, the Espiritu, Tan and UOBP Groups sought reconsideration of this order. However, on December 18, 2002, the trial court denied the same and maintained that resort to discovery is permissible under the premises.

Following suit, the Espiritu and Tan Groups attempted to resort to discovery procedure. On January 31, 2003, they filed a Notice to Take Depositions Upon Oral Examination of Manuel Tankiansee and Juanita U. Tan. [8]

Regional Trial Court's Ruling

On February 4, 2003, the trial court issued the first questioned order which, among others, disallowed the taking of the depositions of Manuel Tankiansee and Juanita U. Tan. [9] It held that the taking of the subject depositions is time-barred. Meanwhile, in view of the November 25 and December 18, 2002 Orders of the trial court allowing the deposition-taking of John Anthony B. Espiritu and Tony Tan Caktiong, on February 7, 2003, the Espiritu and Tan Groups filed a Motion for the Issuance of Protective Orders. [10] On February 17, 2003, the trial court issued the second questioned order which denied the said motion. [11] Upon motion, on February 26, 2003, the trial court issued the third questioned order which modified the February 17, 2003 Order by canceling the deposition of John Anthony B. Espiritu until further notice and resetting the deposition of Tony Tan Caktiong to a later date. [12]

On April 14, 2003, the Espiritu and Tan Groups filed a petition for *certiorari* [13] before the Court of Appeals challenging the validity of the February 4, 17, and 26, 2003 Orders for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Court of Appeal's Ruling

On February 27, 2004, the Court of Appeals rendered the assailed Decision

denying the petition for *certiorari*. It ruled that the Espiritu and Tan Groups failed to adduce evidence to establish that they filed the notice of deposition within the period provided under Section 1, Rule 3 of the Interim Rules of Procedure on Intra-Corporate Controversies. Moreover, the failure of a party to avail himself of modes of discovery does not operate to deprive him of the right to present his case because evidentiary matters may be presented before the court through pleadings and testimonies of the parties.

From this adverse decision, only the Espiritu Group (petitioners) appealed to this Court.

Meanwhile, while this case was pending resolution before the appellate court or on February 2, 2004, the trial court rendered a Decision [14] in the main case (*i.e.*, Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. [15] This case was docketed as CA-G.R. CV No. 83161 and is pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an *Ex Abundanti Ad Cautelam* Notice Of Appeal [16] and a Petition for *Certiorari* and *Mandamus*. [17] On December 15, 2010, this Court issued a Resolution requiring the Court of Appeals to elevate the complete records of CA-G.R. CV No. 83161 to this Court.

Issues

1. Whether the disallowance of the deposition-taking of Manuel Tankiansee and Juanita U. Tan (Tankiansee Group) is contrary to the mandate of liberality in the availment and interpretation of the Rules on Discovery. [18]

2. Whether petitioners were deprived due process when they were denied resort to the modes of discovery. [19]

3. Whether petitioners are guilty of forum shopping. [20]

Petitioners' Arguments

Petitioners contend that, in disallowing the deposition of Manuel N. Tankiansee and Juanita U. Tan, the trial court violated the liberality in the availment and interpretation of the Rules on Discovery. Moreover, the trial court failed to consider that the allowance of the deposition would not prejudice any party because, at the time the notices of deposition were served, no party had yet actually availed himself of and/or conducted any discovery proceeding. They emphasize that the testimonies of the intended deponents are crucial to establish their just claims in the main case.

Petitioners further argue that the Tankiansee Group was allowed to avail itself of the modes of discovery despite the fact that the latter filed their pleadings beyond the period allowed under the Interim Rules Governing Intra-Corporate Controversies. They claim that the trial court erroneously counted the 15-day period. In truth, both petitioners and the Tankiansee Group availed themselves of the modes of discovery beyond the 15-day period. In effect, the trial court denied petitioners the very same right it granted the Tankiansee Group.

Petitioners also note that after the submission of the respective pre-trial briefs in the

main case, the trial court rendered judgment without conducting hearings. Hence, they were denied the right to fully present their case because they were unable to make use of the testimonies of the intended deponents. Petitioners plead that it is not yet too late to rectify this injustice by allowing the subject depositions because the aforesaid summary judgment has been challenged in the meantime in various proceedings.

Respondents' Arguments

Respondents claim that petitioners are guilty of forum shopping. On February 2, 2004, the trial court rendered a summary judgment in the main case, *i.e.*, Civil Case No. 02-103160. Petitioners, except petitioner Westmont Investment Corporation, thereafter filed a notice of appeal. Petitioner Westmont Investment Corporation chose to file an *ex abundanti ad cautelam* notice of appeal and a petition for *certiorari* and *mandamus*. All three cases seek to annul the February 2, 2004 Decision of the trial court.

According to respondents, the present recourse has the same objective, that is, to reopen the trial court's February 2, 2004 Decision which is pending review before the Court of Appeals. Considering that petitioners have a commonality of interest, the splitting of the causes of action on the same cause is tantamount to forum shopping.

Moreover, respondents argue that the notices of deposition filed by petitioners are time-barred. Section 1, Rule 3 of the Interim Rules Governing Intra-Corporate Controversies provides that a party can only avail himself of any of the modes of discovery not later than 15 days from the joinder of issues. According to the respondents, the joinder of issues occurred on September 29, 2002 after the lapse of the period for the filing of the last responsive pleading of the parties to this case. However, petitioners filed their notices of deposition only on January 31, 2003. Hence, the trial court did not err in denying their resort to modes of discovery.

Our Ruling

The petition lacks merit.

Petitioners' appeal before the Court of Appeals is the appropriate and adequate remedy, and the certiorari petition, subject matter of this case, constitutes forum shopping.

As stated earlier, while this case was pending review before the Court of Appeals or on February 2, 2004, the trial court rendered a Decision in the main case (*i.e.*, Civil Case No. 02-103160). From this judgment, petitioners, except petitioner Westmont Investment Corporation, filed a notice of appeal. This case was docketed as CA-G.R. CV No. 83161 and is now pending resolution before the appellate court. For its part, petitioner Westmont Investment Corporation filed an *Ex Abundanti Ad Cautelam* Notice Of Appeal and a Petition for *Certiorari* and *Mandamus*.

With these developments, the instant petition should be denied because (1) petitioners' appeal before the appellate court is the appropriate and adequate remedy, and (2) the *certiorari* petition, subject matter of this case, constitutes