

## FIRST DIVISION

[ G.R. No. 161368, April 05, 2010 ]

**MEDISERV, INC., PETITIONER, VS. COURT OF APPEALS (SPECIAL FORMER 13TH DIVISION) AND LANDHEIGHTS DEVELOPMENT CORPORATION, RESPONDENTS.**

### D E C I S I O N

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

Before the Court is a petition for certiorari to nullify the September 16, 2003 Resolution<sup>[1]</sup> of the Court of Appeals reinstating the Petition for Review of private respondent Landheights Development Corporation and the November 7, 2003 Resolution<sup>[2]</sup> denying the motion for reconsideration thereof.

The facts are as follows:

On September 20, 1994, petitioner Mediserv, Inc. executed a real estate mortgage in favor of China Banking Corporation as security for a loan. The mortgage was constituted on a 500-square meter lot with improvements located at 926 A.H. Lacson Street, Sampaloc, Manila and covered by Transfer Certificate of Title (TCT) No. 205824 of the Registry of Deeds for the City of Manila. Mediserv defaulted on its obligation with Chinabank and the real estate mortgage was foreclosed. At the public auction sale, private respondent Landheights Development Corporation emerged as the highest bidder with a bid price of P17,617,960.00 for the subject property.

Sometime in April 1998, Landheights filed with the Regional Trial Court (RTC) of Manila an "Application for Possession of Real Estate Property Purchased at an Auction Sale under Act No. 3135." <sup>[3]</sup> On September 21, 1999, the title of the property was consolidated in favor of Landheights and the Register of Deeds for the City of Manila issued TCT No. 242202 in its favor. On March 13, 2000, Landheights, seeking to recover possession of the subject property, filed a verified complaint for ejectment against Mediserv before the Metropolitan Trial Court of Manila (MeTC). The case was docketed as Civil Case No. 166637.

On October 12, 2000, the MeTC of Manila, Branch 15, rendered a decision <sup>[4]</sup> in favor of Landheights, the decretal portion of which states:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby entered in favor of plaintiff and against the defendant ordering the latter and all persons claiming rights under said entity to VACATE the premises situated at 926 A.H. Lacson Street, Sampaloc, Manila; and to PAY plaintiff the sum of P25,000.00 as attorney's fees.

Costs against defendant.

SO ORDERED.

Aggrieved, Mediserv appealed <sup>[5]</sup> the decision to the RTC of Manila docketed as Civil Case No. 00-99395. On June 14, 2002 the RTC rendered a Decision, <sup>[6]</sup> the *fallo* of which reads:

WHEREFORE, the Judgment of the Honorable Metropolitan Trial Court, Branch 15, Manila, dated October 26, 2000, is hereby reversed and set aside; and the Complaint for Ejectment is hereby ordered to be dismissed.

Further, on the Counterclaims, the plaintiff-appellee is hereby directed to pay the defendant-appellant, the sum of Php 50,000.00 for actual damages and another sum of Php 50,000.00 for and as attorney's fees.

With costs against plaintiff-appellee.

SO ORDERED.

On September 16, 2002, Landheights' motion for reconsideration <sup>[7]</sup> was likewise denied. <sup>[8]</sup>

Accordingly, Landheights filed a Petition for Review <sup>[9]</sup> with the Court of Appeals, which however dismissed the petition in a Resolution<sup>[10]</sup> dated December 12, 2002, to wit:

It appearing that the written authority of Dickson Tan to sign the verification and certification on non-forum shopping, as well as the copies of the complaint and answer, are not attached to the petition, the petition is DISMISSED.

SO ORDERED.

Landheights seasonably filed a motion for reconsideration <sup>[11]</sup> on December 26, 2002 and subsequently submitted a Secretary's Certificate <sup>[12]</sup> dated January 13, 2003 executed by its Corporate Secretary, Ms. Polly S. Tiu, stating that the Board of Directors affirms the authority of Mr. Dickson Tan to file the Petition for Review.

On March 19, 2003, the Court of Appeals issued a Resolution <sup>[13]</sup> granting Landheights a new period of ten (10) days within which to correct and rectify the deficiencies in the petition. On April 1, 2003, Mediserv filed a motion for reconsideration <sup>[14]</sup> praying that the March 19, 2003 Resolution be set aside and the December 12, 2002 Resolution, which dismissed the petition, be reinstated. On even date, Landheights filed its Manifestation of Compliance. <sup>[15]</sup>

On September 16, 2003, the appellate court issued the first assailed resolution reinstating the petition for review, the pertinent portion of which reads as follows:

With the subsequent compliance of the petitioner with the requirement of the rules and in the interest of substantial justice, We now consider the petition **reinstated**.

Respondent is hereby directed to file its comment on the petition within ten (10) days from notice and petitioner may file its reply within five (5) days from receipt of the comment.

SO ORDERED.

Mediserv filed a motion for reconsideration <sup>[16]</sup> on October 3, 2003, while Landheights filed its comment <sup>[17]</sup> thereto on October 14, 2003.

On November 7, 2003, the Court of Appeals issued the second assailed resolution, the significant portion of which states:

However, again, in the interest of justice, we shall consider the belatedly filed Secretary's Certificate as a subsequent compliance of our March 19, 2003 Resolution.

WHEREFORE, this Court's Resolution dated September 16, 2003 is hereby **REITERATED**. The petition is hereby **REINSTATED** and the respondent is directed to file its Comment on the petition within ten (10) days from notice.

SO ORDERED.

Its motion for reconsideration having been denied by the appellate court, petitioner is now before us *via* the present recourse. Petitioner faults the appellate court as follows:

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT AND/ OR IN EXCESS OF JURISDICTION IN REINSTATING THE PETITION DESPITE THE CLEAR MANDATE OF THE RULES AS WELL AS THE JURISPRUDENCE AS LAID DOWN BY THIS HONORABLE COURT CALLING FOR THE DISMISSAL OF THE SAID PETITION. <sup>[18]</sup>

Petitioner argues that from the beginning, the Court of Appeals found the petition filed before it to be defective for failure to comply with the rules. It points out that there is no showing that the respondent corporation, through its board of directors, had authorized Mr. Dickson Tan to file the petition for review in its behalf and to sign the verification and certification against forum-shopping. However, instead of

upholding the dismissal of the petition, the Court of Appeals allowed private respondent to rectify its deficiency, which is contrary to jurisprudence.

Petitioner also cites Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, which provides that failure to comply with the requirements on certification against forum shopping shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case. Petitioner thus asserts that the appellate court acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in reinstating the petition for review filed by respondent corporation.

We are not persuaded.

Under Rule 46, Section 3, paragraph 3 of the 1997 Rules of Civil Procedure, as amended, petitions for *certiorari* must be verified and accompanied by a sworn certification of non-forum shopping. [19] A pleading by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. [20] The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification. [21]

On the other hand, a **certification of non-forum shopping** is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. [22]

The requirement that a petitioner or principal party should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Rules of Court make no distinction between natural and juridical persons. [23] A corporation, however, exercises its powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. [24]

In the case of *Digital Microwave Corp. v. Court of Appeals*, [25] the certification of non-forum shopping was signed by the petitioner corporation's counsel; hence, the appellate court dismissed the petition for failure to comply with Revised Supreme Court Circular No. 28-91, as amended. [26] Petitioner corporation's motion for reconsideration was denied by the appellate court "absent any compelling reason for petitioner's failure to comply, at the first instance, with [the circular] ...." On appeal, this Court denied the petition in this wise:

In this case, petitioner **has not adequately** explained its failure to have the certification against forum shopping signed by one of its officers. **Neither has it shown any compelling reason** for us to disregard strict compliance with the rules. [27] (Emphasis supplied.)

In *Shipside Incorporated v. Court of Appeals*, [28] petitioner Shipside Incorporated filed a petition for *certiorari* and prohibition with the Court of Appeals, which was, however, dismissed for failure to attach proof that the one (1) who signed the verification and certification of non-forum shopping, its Manager Lorenzo Balbin, Jr., was authorized to institute the petition in petitioner's behalf. Shipside Incorporated filed a motion for reconsideration to which it attached a certificate issued by its board secretary stating that ten (10) days before the filing of the petition, its board of directors authorized Balbin, Jr. to file it. The Court of Appeals denied the motion for reconsideration, so the petitioner sought relief from this Court. In granting the petition, this Court explained:

It is undisputed that on October 21, 1999, the time petitioner's Resident Manager Balbin filed the petition, there was no proof attached thereto that Balbin was authorized to sign the verification and non-forum shopping certification therein, as a consequence of which the petition was dismissed by the Court of Appeals. However, subsequent to such dismissal, petitioner filed a motion for reconsideration, attaching to said motion a certificate issued by its board secretary stating that on October 11, 1999, or ten days prior to the filing of the petition, Balbin had been authorized by petitioner's board of directors to file said petition.

The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional (*Uy v. LandBank*, G.R. No. 136100, July 24, 2000, 336 SCRA 419). Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.