

FIRST DIVISION

[G.R. No. 175730, July 05, 2010]

HERMINIO T. DISINI, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, THE REPUBLIC OF THE PHILIPPINES, AS REPRESENTED BY THE OFFICE OF THE SOLICITOR GENERAL (OSG), AND THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

The simultaneous availment of judicial remedies from different fora for exactly the same ultimate relief and involving the same issue constitutes forum-shopping. It is a prohibited malpractice, condemned for trifling with the courts and their processes.

The Case

The instant Petition for *Certiorari* and Prohibition^[1] under Rule 65 of the Rules of Court seeks to:

1. Annul the December 18, 2006 Resolution of the *Sandiganbayan* (respondent court), which denied petitioner's Motion to Lift Default Order and to Admit Answer, and consequently allowed respondent Republic to present evidence *ex-parte* in Civil Case No. 0013 entitled "*Republic of the Philippines v. Herminio T. Disini, et al.*;"
2. Annul the orders or declarations made by the *Sandiganbayan* in open court during the hearing of December 8, 2006, which prevented petitioner from commenting *ad cautelam* on the Republic's Urgent Manifestation and Motion (hereinafter the Urgent Manifestation and Motion) to Present Evidence *Ex-Parte*;^[2]
3. Prohibit the *Sandiganbayan* from continuing with the *ex-parte* proceedings and rendering a judgment by default;
4. Secure injunctive relief to enjoin the *Sandiganbayan* from conducting further proceedings in Civil Case No. 0013 and from rendering judgment on the basis of the *ex-parte* proceedings; and
5. Declare null and void all the proceedings conducted as against petitioner because of lack of jurisdiction over his person, violation of his Constitutional rights to due process and fair play, and the arbitrary acts of respondent court which effectively ousted it of jurisdiction to hear the case.^[3]

In sum, petitioner assails the *Sandiganbayan's* refusal to set aside its Order of Default against petitioner, as well as its acts which allegedly reveal its inclination to "railroad" the proceedings and render a precipitate judgment by default against petitioner.^[4]

Factual Antecedents

On July 23, 1987, the Republic (through the Presidential Commission on Good Government [PCGG]) filed with the *Sandiganbayan* a civil complaint for reconveyance, reversion, accounting, restitution, and damages against petitioner Herminio T. Disini (Disini), spouses Ferdinand and Imelda Marcos (Marcos spouses) and Rodolfo B. Jacob (Jacob).^[5] The same was docketed as Civil Case No. 0013 and assigned to the First Division of the *Sandiganbayan* (respondent court). Summons for Disini was issued on July 29, 1987.^[6] Per Sheriff's Return dated September 4, 1987,^[7] the summons^[8] was unserved on the ground that petitioner did not live at the given address, which was No. 92 Kennedy St., Greenhills, San Juan, Metro Manila. The occupants of said address were the Roman family.

On August 26, 1987,^[9] the Complaint was amended^[10] to include Rafael A. Sison (Sison) as a party-defendant.^[11]

The Amended Complaint alleged that Disini acted in unlawful concert with his co-defendants in acquiring and accumulating ill-gotten wealth through the misappropriation of public funds, plunder of the nation's wealth, extortion, embezzlement, and other acts of corruption.^[12]

The *Sandiganbayan* issued summons on the Amended Complaint on September 3, 1987.^[13] On September 15, 1987, the *Sandiganbayan* Deputy Sheriff proceeded to the same address, No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila. Again, the summons was returned unserved for the reason that the Roman family occupied the said residence.^[14]

In the meantime, petitioner's co-defendants, Sison^[15] and Jacob,^[16] filed their respective answers, while the Marcos spouses were declared in default^[17] for failure to file their responsive pleadings despite valid service of summons.^[18]

After the lapse of two years without any progress in the case, Jacob filed an Omnibus Motion for the *Sandiganbayan* to either set the case for pre-trial or to dismiss the same with respect to Jacob for failure to prosecute.^[19] Jacob argued that there was no excuse for the delay in prosecuting the case. He reasoned that, if summons could not be served on his co-defendant Disini within a reasonable time, the prosecution should have moved to exclude Disini from the complaint so that the case could be disposed of one way or another instead of being left pending indefinitely.

The *Sandiganbayan* denied Jacob's motion.^[20] It held that the Republic had not lacked in efforts to ascertain Disini's whereabouts; hence, there is no basis to rule that it failed to prosecute the case. Nevertheless, it ordered the Republic to furnish

the court with the correct address of petitioner or to file a motion to show the reasonability of expecting Disini to be summoned.

In response, the Republic filed a Manifestation that it is still in the process of securing alias summonses for the unserved defendants and will take steps to serve summons by publication.^[21]

On October 11, 1990, the Republic moved to drop Jacob as party-defendant considering that he will testify as a witness for the Republic in its ill-gotten wealth cases both here and abroad.^[22] It also sought several times to suspend the pre-trial on various grounds such as the PCGG's vacillation regarding the grant of immunity in favor of Jacob^[23] and the Republic's admission that it still could not ascertain Disini's whereabouts for purposes of service of summons. The Republic explained that it was still trying to exhaust all efforts to make a personal or substituted service of summons through the help of the Philippine consulate office in Austria, where Disini is believed to be residing.^[24]

On August 4, 1994, the *Sandiganbayan* resolved to grant the dismissal of the complaint against Jacob with prejudice and ordered him dropped as party-defendant.^[25]

When it appeared that pre-trial could finally continue in 1995, the Republic again moved for several resetting of pre-trial for reasons such as looking at the possibility of granting immunity to petitioner's other co-defendant, Sison, and the unavailability of the solicitor assigned to the case.^[26]

After displaying utmost liberality in the past as regards the postponement of the pre-trial, the *Sandiganbayan* issued a strongly-worded Order on January 17, 1997, on which date the Republic was still not ready to submit Sison's affidavit for the consideration of the court. The Order reads:

Over the year, the matter of the affidavit [of Sison] remains unresolved. In the end, this case is sought once more to be reset with no visible product for the effort.

Under the circumstances, should no action be taken thereon with finality on or before March 14, 1997, the Court will assume that the government is not disposed to prosecute this matter and will dismiss the case.^[27]

Heeding the *Sandiganbayan's* warning, the Office of the Solicitor General filed its Manifestation and Urgent Motion to Drop Rafael Sison as Party-Defendant on March 14, 1997.^[28]

A year later, on April 8, 1998, the Republic filed an *Ex Parte* Motion for Leave to Serve Summons by Publication.^[29] It stated that resort to service by publication was needed because they could not ascertain Disini's whereabouts despite diligent efforts to do so. While this motion was awaiting resolution five months later, the

Republic filed an Urgent *Ex Parte* Motion for Issuance of Alias Summons.^[30] It allegedly received information that Disini had returned to the Philippines and could be served with summons at No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila. Alias summons was issued but was returned unserved on the ground that Disini did not occupy the said house, which belonged to the Roman family.^[31] Receiving information that Disini was often seen at No. 35 Buchanan Street, Greenhills, San Juan, Metro Manila, the sheriff proceeded to the new address only to find that it belonged to petitioner's cousin, Jesus Disini.^[32]

Failing to serve summons personally on Disini, the Republic filed an Urgent Motion to Resolve Motion for Leave to Serve Summons by Publication on October 3, 2001.^[33] While awaiting the resolution of the Urgent Motion, the Republic again received information that petitioner has been regularly seen at the Wack Wack Golf and Country Club in Mandaluyong City and at No. 57 Flamingo Street, Greenmeadows Subdivision, Quezon City. Thus, the Republic sought again the issuance of alias summons, without prejudice to the resolution of its previous Motion for Leave for Issuance of Summons by Publication.^[34] The *Sandiganbayan* issued an alias summons for Disini, but it was returned unserved.

On February 6, 2002, the Republic filed a Motion to Resolve (*Ex Parte* Motion for Leave to Serve Summons by Publication).^[35] The same was granted^[36] and on April 23, 2002, the summons and the Amended Complaint were published in *People's Tonight*, with a copy sent by registered mail to Disini's last known address, No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila.^[37] By August 27, 2002, petitioner was declared in default for failure to file his responsive pleading within 60 days from the publication of the summons.^[38]

Since three of the party-defendants (Ferdinand Marcos, Imelda Marcos, and petitioner) had been declared in default, while one was dropped to become state witness (Jacob), Sison remained as the sole defendant who could participate in Civil Case No. 0013. Given that there was a pending motion to drop Sison also as party-defendant, the Republic asked the *Sandiganbayan* to resolve the said motion so that they could proceed with the *ex parte* presentation of evidence.^[39] The said motion was submitted for resolution on September 20, 2002.^[40]

On February 17, 2003, with the motion to drop Sison as party-defendant still pending, the Republic asked the *Sandiganbayan* to hold in abeyance the pre-trial until the said motion had been resolved.^[41] On February 27, 2003, the *Sandiganbayan* clerk of court sent notice of the cancellation of the pre-trial set for March 4, 2003.^[42]

The records of the *Sandiganbayan* became silent from the year 2003 to 2006, revealing an inaction that would only be broken by a foreign court that imposed a deadline on the freeze orders of the Disini Swiss accounts. This development began when petitioner Disini's wife and children filed a petition^[43] in a Swiss Federal Court to remove a previously issued freeze order on their Swiss accounts. On August 18, 2006, the Swiss Federal Court rendered a partial decision^[44] ordering the counsel for the Republic of the Philippines to submit a forfeiture order from a Philippine court with regard to the assets of Liliana and Herminio Disini not later than December 30,

2006; otherwise, the Swiss Federal Court would revoke the freeze order on the Disini Swiss accounts.^[45]

This deadline apparently spurred the Republic (through the PCGG) to file an Urgent Manifestation and Motion^[46] with the *Sandiganbayan* on November 30, 2006. The Republic prayed for the resolution of its Urgent Motion to Resolve (its motion to drop Rafael Sison as party-defendant).^[47] Should the resolution of this pending motion be favorable to the Republic, it likewise prayed for the setting of the *ex parte* presentation of evidence at an early date.

On December 7, 2006, petitioner Disini filed a Motion to Lift Order of Default and for Leave to File and Admit Attached Answer,^[48] together with an Answer to Amended Complaint with Compulsory Counterclaims.^[49] He maintained that he was unaware of the civil case pending against him because he never received summons or other processes from the court, nor any pleadings from the parties of the case. His only fault, he averred, was that he was ignorant of the proceedings in the case because of the absence of a proper notice. Petitioner asked the respondent court to look at his meritorious defenses. He then invoked the liberality of the courts in lifting default orders to give both parties every opportunity to defend their cases, and pointed out that the proceedings, being in their pre-trial stage, would not be delayed by petitioner's participation therein.

Petitioner's Answer contained affirmative defenses such as the respondent court's failure to acquire jurisdiction over his person through service by publication and the failure of the Amended Complaint to state a cause of action against him.

With the two motions pending before it, the *Sandiganbayan* heard the Republic on its Urgent Manifestation and Motion on December 8, 2006. Petitioner Disini's lawyers were present during the hearing but were not allowed to participate therein because of the prevailing default order against Disini. The *Sandiganbayan* issued the following Order at the end of the said hearing:

This morning, the Court heard the arguments of the counsel for [respondent] regarding the latter's "Urgent Manifestation and Motion" dated November 29, 2006. The Court also gave the [respondent] a non-extendible period of three days counted from today within which to file its comment on the Motion to Lift Order of Default filed by [petitioner] Disini, and the latter is given a non-extendible period of three days from December 11, 2006 or until December 14, 2006, within which to file his reply to the comment of the [respondent], after which the incident shall be considered submitted for resolution without need of oral arguments. The Court will act on the [respondent]'s "Urgent Manifestation and Motion" dated November 29, 2006 after the Court has resolved the Motion to Lift Order of Default.

x x x x^[50]

On December 11, 2006, the Republic filed its Comment/Opposition^[51] stating that it exhausted all efforts to ascertain the whereabouts of petitioner Disini. Failing to do