

THIRD DIVISION

[G.R. No. 168313, October 06, 2010]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. HON. COURT OF APPEALS, HON. ROMEO BARZA, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BR. 61, FIRST UNION GROUP ENTERPRISES AND LINDA WU HU, RESPONDENTS.

DECISION

BRION, J.:

Through the present petition for review on *certiorari*,^[1] petitioner Bank of the Philippine Islands (*BPI*) seeks the reversal of: (1) the Court of Appeals (*CA*) decision of November 2, 2004,^[2] in "*Bank of the Philippine Islands v. Hon. Romeo Barza, et al.*" docketed as CA-G.R. SP No. 75350 and (2) the *CA* resolution of May 25, 2005^[3] denying *BPI*'s Motion for Reconsideration. The assailed *CA* ruling affirmed the Order of the Regional Trial Court (*RTC*) of Makati City, Branch 61 dated August 26, 2002,^[4] granting First Union Group Enterprises (*First Union*) and Linda Wu Hu's (*Linda*) Motion to Dismiss dated March 26, 2002. A subsequent Motion for Reconsideration was likewise denied.^[5]

THE FACTUAL ANTECEDENTS

First Union borrowed from *BPI* the sums of Five Million Pesos (PhP5,000,000.00) and One Hundred Twenty Thousand U.S. Dollars and 32 cents (USD123,218.32), evidenced by separate promissory notes.^[6]

As partial security for the loan obligations of First Union, defendant Linda and her spouse (Eddy Tien) executed a Real Estate Mortgage Agreement dated August 29, 1997,^[7] covering two (2) condominium units. Linda executed a Comprehensive Surety Agreement dated April 14, 1997^[8] where she agreed to be solidarily liable with First Union for its obligations to *BPI*.

Despite repeated demands to satisfy the loan obligations upon maturity, First Union failed to pay *BPI* the amounts due.

On October 16, 2000, *BPI* initiated with the Office of the Sheriff of the *RTC* of Pasig extra-judicial foreclosure proceedings against the two (2) mortgaged condominium units to satisfy First Union and Linda's solidary obligations.

After due notice and publication, the properties were sold at public auction on June 29, 2001.^[9] *BPI* was the highest bidder, having submitted a bid of Five Million Seven Hundred Ninety Eight Thousand Four Hundred Pesos (PhP5,798,400.00). The proceeds of the auction sale were applied to the costs and expenses of foreclosure,

and thereafter, to First Union's obligation of Five Million Peso (PhP5,000,000.00). After so applying the proceeds, First Union still owed BPI a balance of Four Million Seven Hundred Forty Two Thousand Nine Hundred Forty Nine & 32/100 Pesos (PhP4,742,949.32), inclusive of interests and penalty charges, as of December 21, 2001.^[10] Additionally, First Union's foreign currency loan obligation remained unpaid and, as of December 21, 2001, amounted to One Hundred Seventy Five Thousand Three Hundred Twenty Four Thousand & 35/100 US Dollars (USD175,324.35), inclusive of interest and penalty charges.

The Complaint for Collection of Sum of Money

First Union's and Linda's continued failure to settle their outstanding obligations prompted BPI to file, on January 3, 2002, a complaint for collection of sum of money with the RTC of Makati City, Branch 61.^[11] The complaint's verification and certificate of non-forum shopping were signed by Ma. Cristina F. Asis (*Asis*) and Kristine L. Ong (*Ong*). **However, no Secretary's Certificate or Board Resolution was attached to evidence Asis' and Ong's authority to file the complaint.**

On April 1, 2002, First Union and Linda filed a motion to dismiss^[12] on the ground that BPI violated Rule 7, Section 5 of the Rules of Civil Procedure (*Rules*); BPI failed to attach to the complaint the necessary board resolution authorizing Asis and Ong to institute the collection action against First Union and Linda.^[13]

On August 7, 2002, BPI filed an "Opposition to the Motion to Dismiss,"^[14] arguing that the verification and certificate of non-forum shopping sufficiently established Asis' and Ong's authority to file the complaint and proof of *their authority could be presented during the trial*. Further, BPI alleged that a *complaint "can only be dismissed under Section 5, Rule 7 of the 1997 Rules of Civil Procedure if there was no certification against forum shopping."* The provision, according to BPI, "does not even require that the person certifying should show proof of his authority to do so."^[15]

Instead of submitting a board resolution, BPI attached a "Special Power of Attorney" (*SPA*) dated December 20, 2001 executed by Zosimo A. Kabigting (*Zosimo*), Vice-President of BPI.^[16] The SPA authorized Asis and Ong or any lawyer from the Benedicto Versoza Gealogo and Burkley Law Offices to initiate any legal action against First Union and Linda.

In their Comment^[17] to BPI's Opposition, First Union and Linda challenged BPI's reading of the law, charging that it lacked jurisprudential support.^[18] First Union and Linda argued, invoking *Public Estates Authority v. Elpidio Uy*,^[19] that "an initiatory pleading which does not contain a board resolution authorizing the person to show proof of his authority is equally guilty (*sic*) of not satisfying the requirements in the Certification against Non-Forum Shopping. It is as if though (*sic*) no certification has been filed."^[20] Thus, according to First Union and Linda, BPI's failure to attach a board resolution "shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice x x x."^[21] First Union and Linda likewise questioned the

belated submission of the SPA, which in any case, "is not the board resolution envisioned by the rules since the plaintiff herein is a juridical person."^[22]

BPI's Reply^[23] to the Comment argued that the cited *Public Estates Authority* case is not authoritative since "what is proscribed is the absence of authority from the board of directors, not the failure to attach the board resolution to the initiatory pleading."^[24] BPI contended that the "primary consideration is whether Asis and Ong were authorized by BPI, not the failure to attach the proof of authority to the complaint."^[25] BPI also begged the "kind indulgence of the Honorable Court as it *inadvertently failed to submit* with the Special Power of Attorney the Corporate Secretary's Certificate which authorized Mr. Zosimo Kabigting to appoint his substitutes."^[26]

On August 22, 2002, the RTC issued its assailed Order^[27] granting First Union's and Linda's Motion to Dismiss.^[28] The trial court denied BPI's Motion for Reconsideration^[29] on November 13, 2002.^[30]

Proceedings before the CA

BPI, on February 5, 2003, filed a petition for *certiorari*^[31] under Rule 65 of the Rules of Court before the CA. It alleged that that lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint despite the submission of the SPA and the Corporate Secretary's Certificate.^[32]

In their Comment to the petition,^[33] First Union and Linda submitted that the petition is an improper remedy since an order granting a motion to dismiss is not interlocutory. They contended that the dismissal is final in nature; hence, an appeal, not a petition for *certiorari* under Rule 65, is the proper recourse.

The CA disagreed with First Union and Linda's contention. The assailed order, according to the CA, categorically stated that the dismissal of the complaint was without prejudice.^[34] As a dismissal without prejudice, the order is interlocutory in nature and is not a final order.^[35]

The CA, however, found that BPI failed to comply with the procedural requirements on non-forum shopping.^[36] Citing Sec. 5, Rule 7 of the Rules of Court, the CA ruled that the requirement that a petitioner should sign the certificate of non-forum shopping applies even to corporations since the Rules of Court do not distinguish between natural and civil persons.^[37] *Digital Microwave Corp. v. Court of Appeals, et al.*^[38] holds that "where a petitioner is corporation, the certification against forum shopping should be signed by its duly authorized director or representative."

While the CA did not question the authority of Asis and Ong as bank representatives, the Bank however failed to show - through an appropriate board resolution - proof of their authority as representatives. To the CA, this failure warranted the dismissal of the complaint.^[39]

The CA lastly refused to accord merit to BPI's argument that it substantially

complied with the requirements of verification and certification; BPI only submitted the SPA and the Board Resolution after it had filed the complaint.^[40]

THE PETITIONER'S ARGUMENTS

BPI maintains in the present petition that it attached a verification and certificate of non-forum shopping to its complaint. Contesting the CA's interpretation of *Shipside v. Court of Appeals*,^[41] it argues that the Supreme Court actually excused *Shipside's* belated submission of its Secretary's Certificate and held that it substantially complied with the rule requiring the submission of a verification and certificate of non-forum shopping as it did, in fact, make a submission. From this starting point, it now asks the Court to excuse its belated submission.^[42]

BPI likewise contends that it is in a better position than the petitioner in *Shipside* because the latter only submitted a secretary's certificate while it submitted a special power attorney signed by Zosimo. On this same point, BPI also cites *General Milling Corporation v. National Labor Relations Commission*^[43] where the Court held that General Milling's belated submission of a document to prove the authority of the signatories to the verification and certificate of non-forum shopping was substantial compliance with Rules of Court.

BPI finally urges the Court to reverse and set aside the Decision of the CA and to remand the case to the RTC of Makati City for further proceedings under the principle that "technicality should not defeat substantial justice."^[44]

THE RESPONDENT'S ARGUMENTS

In their Memorandum dated September 25, 2009,^[45] First Union and Linda allege that BPI's "position on the submission of the Board Resolution has been one of defiance."^[46] BPI's failure to submit the required board resolution is not an inadvertence but a wilful disregard of the Rules and a blatant refusal to heed the order of the RTC. First Union and Linda point to BPI's opposition to the Motion to Dismiss as proof of BPI's wilful disregard. BPI argued in this opposition that (1) the Rules do not require the presentation of a board resolution, and (2) proof of such authority need not be attached to the initiatory pleading but can be presented during trial.^[47]

Further, instead of submitting a board resolution, BPI submitted a special power of attorney.^[48] It was only after First Union and Linda pointed out that the submitted special power of attorney cannot bind a juridical entity did BPI change its position. Only then did BPI claim that it merely *inadvertently* failed to submit the required secretary's certificate.^[49]

This belated change of position, according to First Union and Linda, does not entitle BPI to the jurisprudential exception established by the Court in *Shipside* where the Court held that the relaxation of the rule requiring verification and certification of non-forum shopping is only for "special circumstances or compelling reasons."^[50]

THE COURT'S RULING

We rule in the respondents' favor.

This Court has repeatedly emphasized the need to abide by the Rules of Court and the procedural requirements it imposes. The verification of a complaint and the attachment of a certificate of non-forum shopping are requirements that - as pointed out by the Court, time and again - are basic, necessary and mandatory for procedural orderliness.

Thus, we cannot simply and in a general way apply - given the factual circumstances of this case - the liberal jurisprudential exception in *Shipside* and its line of cases to excuse BPI's failure to submit a board resolution. While we may have excused strict compliance in the past, we did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping. In other words, the rule for the submission of a certificate of non-forum shopping, *proper in form and substance*, remains to be a strict and mandatory rule; any liberal application has to be justified by ample and sufficient reasons that maintain the integrity of, and do not detract from, the mandatory character of the rule.

The rule, its relaxation and their rationale were discussed by the Court at length in *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*^[51] where we said:

Much reliance is placed on the rule that "*Courts are not slaves or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on balance, technicalities take a backseat against substantive rights, and not the other way around.*" This rule must always be used in the right context, lest injustice, rather than justice would be its end result.

It must never be forgotten that, generally, the application of the rules must be upheld, and the suspension or even mere relaxation of its application, is the exception. This Court previously explained:

The Court is not impervious to the frustration that litigants and lawyers alike would at times encounter in procedural bureaucracy but imperative justice requires **correct observance of indispensable technicalities precisely designed to ensure its proper dispensation**. It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.

Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice.