

THIRD DIVISION

[G.R. No. 153690, August 26, 2008]

DAVID LU, PETITIONER, VS. PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, ET. AL. & LUYM DEVELOPMENT CORP., RESPONDENTS.

[G.R. NO. 157381]

PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, AND LUDO & LUYM DEVELOPMENT CORP., PETITIONERS, VS. DAVID LU, RESPONDENT.

[G.R. NO. 170889]

JOHN LU YM AND LUDO & LUYM DEVELOPMENT CORPORATION, PETITIONERS, VS. THE HON. COURT OF APPEALS OF CEBU CITY (FORMER TWENTIETH DIVISION), DAVID LU, ROSA GO, SILVANO LUDO & CL CORPORATION, RESPONDENTS.

DECISION

NACHURA, J.:

Before us are three consolidated petitions assailing the decisions rendered and the resolutions issued by the Court of Appeals (CA) in CA-G.R. SP No. 64523, CA-G.R. SP No. 73383 and CA-G.R. CV No. 81163.

In **G.R. No. 153690**, David Lu (David) prays that this Court annul and set aside the Decision^[1] dated December 20, 2001 in CA-G.R. SP No. 64523 dismissing the initial complaint filed before the Regional Trial Court (RTC) of Cebu City, Branch 5^[2] in Civil Case No. CEB-25502,^[3] for non-compliance with the rules on non-forum shopping. Likewise assailed is the court's Resolution^[4] dated May 28, 2002 denying his motion for reconsideration.

In **G.R. No. 157381**, Paterno Lu Ym, Sr. (Paterno Sr.), Paterno Lu Ym, Jr. (Paterno Jr.), John Lu Ym (John), Kelly Lu Ym (Kelly) (collectively referred to as the Lu Ym father and sons), and Ludo and Luym Development Corp. (LLDC) assail the CA Decision^[5] dated February 27, 2003 ordering the RTC to desist from conducting any proceeding relating to the receivership over LLDC.

In **G.R. No. 170889**, John and LLDC question the CA Resolutions dated September 6, 2004^[6] denying their application for a writ of preliminary injunction; and dated December 8, 2005^[7] denying their motion for reconsideration and further deferring the resolution of the issue on docket fees.

Factual and Procedural Antecedents

LLDC is a family corporation founded by Paterno Sr. and his brothers (the fathers of Rosa, Silvano and David), primarily to hold real estate for the family.^[8] In 1997, LLDC's Board of Directors authorized the issuance of its 600,000 unsubscribed and unissued shares at par value of P100.00 per share. The Lu Ym father and sons subscribed to and paid most of such shares. David, et al., however, claimed that the 600,000 LLDC stocks were issued in favor of the Lu Ym father and sons for less than their real values. Hence, the complaint^[9] filed on August 14, 2000, by David, Rosa Go (Rosa), Silvano Ludo (Silvano) and CL Corporation (CL Corp.) against the Lu Ym father and sons, namely: Paterno Sr., Paterno Jr., Victor Lu Ym (Victor), John, Kelly, and LLDC, for *Declaration of Nullity of Share Issue, Receivership and Dissolution*, before the RTC of Cebu City. The case was raffled to Branch 5 and was docketed as Civil Case No. CEB-25502. In said complaint, David, et al. asked that the issuance of said shares be nullified.^[10] They further asserted that the Lu Ym father and sons gravely abused their powers as members of LLDC's Board of Directors by issuing such shares, to the prejudice of David, et al. They, therefore, asked for the dissolution of the corporation as their ultimate remedy to obtain redress for their grievances.^[11] To protect the interest of the corporation during the pendency of the case, David et al. asked that a receiver for the corporation be appointed.^[12]

On August 25, 2000, the Lu Ym father and sons moved to dismiss^[13] the complaint for non-compliance with the Rules of Court on the required certificate of non-forum shopping, since only one of the four plaintiffs signed the same, without any showing that he was authorized to sign on behalf of the other parties. They, likewise, contended that the case was dismissible because they did not exert earnest efforts toward a compromise.

In a Resolution^[14] dated December 4, 2000, the court denied the motion solely on the ground that the case was exempt from the observance of the *Katarungang Pambarangay Law*. In another Resolution^[15] dated March 2, 2001, the court held that the signature of only one of the plaintiffs was a substantial compliance with the rules on the certificate of non-forum shopping.

On February 16, 2001, the court, on motion of David, et al., placed LLDC under receivership *pendente lite*.^[16] Consequently, the court appointed Atty. Edward U. Du and Mr. Luis A Cañete as receivers.^[17]

Aggrieved, the Lu Ym father and sons elevated the matter to the Court of Appeals assailing the court's resolutions denying their motion to dismiss and their motion for reconsideration; and placing the corporation under receivership and appointing two persons as receivers. The case was docketed as CA-G.R. SP No. 64154, but the same was dismissed on the ground that the verification and certification against forum shopping were signed by only two petitioners.^[18] They later refiled the case. This time, it was docketed as **CA-G.R. SP No. 64523**.

The appellate court initially dismissed^[19] the petition, finding no grave abuse of discretion on the part of the RTC when it denied the Lu Ym father and sons' motion

to dismiss and because of the prematurity of the petition on the issue of receivership (since there was still a motion for reconsideration pending before the RTC).^[20] However, on motion of the Lu Ym father and sons, the court reconsidered its earlier ruling and, consequently, reinstated the earlier petition.^[21] The Lu Yms then filed a Supplement to their petition.

On December 20, 2001, the CA granted^[22] the Lu Ym father and sons' petition and, thus, dismissed the complaint filed by David Lu, et al. for the parties' (except David Lu) failure to sign the certificate of non-forum shopping. In ruling for the dismissal of the initiatory pleading, the court applied *Loquias v. Ombudsman*.^[23] As a consequence of the dismissal of the complaint, the appellate court likewise annulled the resolutions placing the corporation under receivership and appointing the receivers.^[24] On May 28, 2002, the CA denied the motion for reconsideration^[25] filed by David Lu, et al. Hence, the petition for review on *certiorari* before this Court filed by David Lu alone in **G.R. No. 153690**.

Meanwhile, the Lu Ym father and sons filed a Motion for Inhibition against the then RTC Judge Ireneo Gako, Jr., which was granted on October 1, 2002. Thus, the case was re-raffled to Branch 11, presided by Judge Isaias Dicdican, who directed the parties to amend their respective pleadings in order to conform with the requirements laid down in Sections 4(2) and 6(7), Rule 2 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act (R.A.) No. 8799.^[26] The case was re-docketed as SRC Case No. 021-CEB.

On October 8, 2002, the Lu Ym father and sons filed in SRC Case No. 021-CEB a Manifestation and Motion praying for the immediate lifting of the receivership order over LLDC which was immediately set for hearing.^[27] However, the hearing did not proceed as scheduled due to the repeated motions of David to stop it. It turned out later that David instituted a special civil action for *Certiorari* and Prohibition with the CA, with Urgent Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction, on the sole issue of whether or not the RTC should proceed to hear the Lu Ym father and sons' motion to lift the receivership. The case was docketed as **CA-G.R. SP No. 73383**.^[28]

On December 4, 2002, the CA issued a Resolution temporarily restraining the RTC from conducting any proceeding in SRC Case No. 021-CEB.^[29] On February 27, 2003, the appellate court finally resolved to grant the petition and ordered the RTC to desist from conducting any proceeding relating to the receivership over LLDC.^[30] The court concluded that the proceedings on receivership could not proceed without the parties complying first with the earlier court order which required the parties to amend their pleadings. The court ratiocinated that it could not rule on the propriety of the appointment of a receiver because it would have to base its decision on the pleadings that were yet to be amended. Besides, the pendency of **G.R. No. 153690** before this Court necessitated the deferment of any action on the lifting of receivership.

Aggrieved, the Lu Ym father and sons instituted the instant petition in **G.R. No. 157381**.

Meanwhile, Judge Dicdican inhibited himself, and the case was thus transferred from

Branch 11 to Branch 12.

On March 31, 2003, David filed a Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies, which the court admitted on July 18, 2003.^[31]

On January 23, 2004, the Lu Ym father and sons inquired from the Clerk of Court on the amount of docket fees paid by David, et al. John Lu Ym further inquired from the Office of the Court Administrator (OCA) as to the correctness of the amount paid by David, et al. After a series of letters sent to the OCA, the latter informed John that the matter of docket fees should be brought to the attention of the regular courts and not to the OCA which was not in the position to give an opinion.^[32]

On March 1, 2004, the RTC rendered a decision^[33] on the merits of the case, annulling the issuance of LLDC's 600,000 shares of stocks thereby divesting the Lu Ym father and sons of their shares and canceling their certificates of stocks. The court further ordered the dissolution of LLDC and the liquidation of its assets. Consequently, a management committee was created to take over LLDC, and the corporation's officers were stripped of their powers as such.^[34] The court further declared that the decision was "immediately executory." Aggrieved, the Lu Ym father and sons seasonably filed a Notice of Appeal. The case was docketed as **CA-G.R. CV No. 81163**.

In view of the court's declaration of the executory nature of the assailed decision, the Lu Ym father and sons applied for a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO),^[35] which was opposed^[36] by David.

On January 28, 2004, the appellate court issued a TRO valid for a period of sixty (60) days.^[37] However, in a Resolution^[38] dated September 6, 2004, the court denied the application for a writ of preliminary injunction. Since the original records had been transmitted to the appellate court, the RTC was divested of jurisdiction to resolve pending incidents therein. Thus, it ordered that all motions be filed with the CA.

In their motion for reconsideration,^[39] the Lu Ym father and sons assailed the denial of their application for preliminary injunction and, in addition thereto, they questioned the sufficiency of the docket fees paid by David, et al. in the RTC where the original complaint was filed.

On December 8, 2005, the appellate court did not reconsider its earlier resolution. As to the sufficiency of the docket fees, it ruled that the matter be raised in their appellants' brief and that the issue be threshed out in the appeal on the merits.^[40] Hence, this special civil action for *certiorari* and prohibition in **G.R. No. 170889**.

The Issues

G.R. No. 153690

David Lu raises the following issues for resolution.

[a] WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE NUMEROUS FATAL DEFECTS AND RULES OF COURT AND IRCA VIOLATIONS OF RESPONDENTS' APRIL 30, 2001 PETITION, MOTION AND SUPPLEMENT.

[b] WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE RTC CASE IN ITS ENTIRETY AND IN REFUSING TO PERMIT IT TO PROCEED AS TO PETITIONER DESPITE [I] PETITIONER'S EXECUTION OF A CERTIFICATION AGAINST FORUM SHOPPING FOR THE COMPLAINT AND [II] THE FACT [THAT] THE RTC CASE INVOLVES ONLY A PERMISSIVE JOINDER OF PARTIES.^[41]

On August 19, 2003, the Lu Ym father and sons filed an Urgent Motion with Prayer for a TRO and/or Writ of Preliminary Injunction^[42] before this Court questioning the RTC's admission of David Lu's amended complaint. They sought to enjoin said admission as it would render moot and academic the cases pending before this Court.

G.R. No. 157381

The Lu Ym father and sons base their petition on the following alleged errors:

I.

THE JUDGMENT OF THE COURT OF APPEALS IS NULL AND VOID ON ITS FACE FOR LACK OF JURISDICTION IN ENJOINING THE TRIAL COURT BECAUSE THE DISMISSAL OF THE CASE BELOW IS ALREADY PENDING APPEAL WITH THIS HONORABLE COURT AND IT IS, THEREFORE, THIS HONORABLE COURT THAT HAS EXCLUSIVE JURISDICTION OVER THE REMEDIES OF CERTIORARI, PROHIBITION AND INJUNCTION GRANTED BY THE COURT OF APPEALS.

II.

THE PETITION FOR CERTIORARI AND PROHIBITION WAS WRONGFULLY GRANTED BY THE COURT OF APPEALS BECAUSE ITS DECISION DID NOT CONTAIN THE BASIC FINDING THAT THE TRIAL COURT COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION, NOR DID IT EVEN DEFINE IT AS AN ISSUE IN THE CASE, NOR WAS THERE ANY GRAVE ABUSE OF DISCRETION.

III.

EVEN ASSUMING *IN GRATIA ARGUMENTI* THAT THE COURT OF APPEALS HAD JURISDICTION OVER THE CASE, IT HAD ABSOLUTELY NO LEGAL BASIS IN ENJOINING THE TRIAL COURT FROM ACTING ON THE URGENT MOTION OF THE PETITIONERS TO LIFT THE HIGHLY OPPRESSIVE ORDER OF RECEIVERSHIP.^[43]

On June 7, 2006, David filed a Manifestation^[44] that the cases pending before this Court are moot and academic - G.R. No. 153690 for the admission of the amended complaint which superseded the original complaint; and G.R. No. 157381 for the