

SECOND DIVISION

[G.R. No. 163208, August 13, 2008]

HEIRS OF JUAN VALDEZ, SPS. POTENCIANO MALVAR AND LOURDES MALVAR, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND L.C. LOPEZ RESOURCES, INC., RESPONDENTS.

DECISION

BRION, J.:

Two conflicting resolutions were issued on the same date in the same case. The first resolution dismissed the case without prejudice for violation of the provision against forum shopping. The other required the respondent (*petitioner* herein) to comment.

What is the effect, under the unique circumstances of this case, of these twin resolutions?

This is the question that the petitioners Heirs of Juan Valdez, Spouses Potenciano Malvar and Lourdes Malvar (*heirs and spouses Malvar*) pose for our consideration in this Petition for Review on *certiorari* under Rule 45 of the Rules of Court after the Court of Appeals (CA) ruled that CA-G.R. SP No. 76286 that the private respondent (petitioner at the CA, and referred to herein as "*Lopez Resources*") filed, was not effectively dismissed.

The heirs and spouses Malvar seek to reverse the following resolutions in the following cases filed by Lopez Resources before the CA:

(a) In CA-G.R. SP No. 76286 -

- (1) Resolution dated May 5, 2003^[1] (*first May 5, 2003 Resolution*) which dismissed without prejudice the petition for *certiorari* and prohibition on the ground that the verification and certification against forum shopping was not signed by a duly authorized representative of L.C. Lopez Resources;
- (2) Resolution dated May 5, 2003^[2] (*second May 5, 2003 Resolution*) which required the heirs and spouses Malvar to file their comment to CA-G.R. SP No. 76286 and Lopez Resources to rectify the deficiency in its non-forum shopping certification;
- (3) Resolution dated August 1, 2003^[3] (*August 1, 2003 Resolution*) which clarified the conflicting May 5, 2003 resolutions, directing the heirs and spouses Malvar to file their comment on CA-G.R. SP No. 76286 within ten days, and Lopez Resources to file its reply to the comment.
- (4) Resolution dated April 2, 2004^[4] (*April 2, 2004 Resolution*)

which denied the motion for reconsideration filed by the heirs and spouses Malvar of the Resolution dated December 12, 2003 that granted them 10 days from notice to file their comment; and

(b) In CA-G.R. SP No. 77615 -

- (5) Resolution dated July 15, 2003^[5] (*July 15, 2003 Resolution*) requiring the heirs and spouses Malvar to comment on the petition for *certiorari* and prohibition and Lopez Resources to file its reply to the comment. This resolution ordered Lopez Resources to submit a true copy of the May 5, 2003 Resolution dismissing its petition in CA-G.R. SP No. 76286.

THE ANTECEDENTS

The controversy has its roots in Civil Case No. 00-6015 (*civil case*) entitled, "*Manila Construction Development Corporation of the Philippines v. Spouses Dela Rosa, et al.*" - an action for quieting of title and declaration of nullity of transfer certificates of title before the Regional Trial Court (RTC), Branch 71 of Antipolo City.^[6] The heirs and spouses Malvar were among the plaintiffs^[7] in the civil case. The RTC granted them an injunction order (*order*) dated December 16, 2002 and, subsequently, a *writ* of preliminary mandatory injunction (*writ*) dated March 6, 2003 to place them in possession of the parcel of land disputed in the case.^[8] On March 24, 2003, the sheriff of the RTC together with several armed men implemented the order and *writ* in Lopez Resources property; they tore down the fence that enclosed the Lopez property although Lopez Resources succeeded in maintaining possession.

Lopez Resources went to the CA to question the application of the order and writ that the RTC issued in the civil case. Its petition for *certiorari* and prohibition was docketed as CA-G.R. SP No. 76286 (*first petition*) and was assigned to the Ninth Division.^[9] For the reasons detailed below, Lopez Resources filed another similar petition (*re-filed petition*) - docketed as CA-G.R. SP No. 77615 and assigned to the Seventh Division^[10] - after the first petition was dismissed without prejudice.

Proceedings in CA-G.R. SP No. 76286

Lopez Resources filed this petition for *certiorari* and prohibition before the CA on April 3, 2003, alleging grave abuse of discretion and the commission of acts without or in excess of jurisdiction by the RTC when it deprived Lopez Resources of its property without due process of law; Lopez Resources was not a party in Civil Case No. 00-6015 where the assailed order and *writ* were granted; also, the *writ* was enforced against Lopez Resources' property although this property was not a part of the land disputed in the civil case.^[11]

In its first action on the first petition, the CA issued on May 5, 2003 the disputed conflicting resolutions. As previously mentioned, one resolution dismissed the petition *without prejudice* for violation of the provision against forum shopping, while the other required the heirs and spouses Malvar and other respondents to file their comments to the petition while also requiring Lopez Resources to rectify the deficiency in its non-forum shopping certification.

Lopez Resources and the heirs and spouses Malvar received the resolution of dismissal but the heirs and spouses Malvar's co-respondents did not. Lopez Resources received the resolution on May 9, 2003 and re-filed the same petition with appropriate correction of the non-forum shopping deficiency on May 23, 2003. The re-filed petition was docketed as CA-G.R. SP No. 77615 and was raffled to the Seventh Division of the CA.

CA records show that the spouses Malvar's co-respondents who did not receive the first May 5, 2003 resolution, received the second May 5, 2003 Resolution requiring them to comment on the Lopez Resources petition.

Because of the conflict in the contents of the two May 5, 2003 resolutions, the CA issued on August 1, 2003 (or 86 days after the issuance of the conflicting resolutions) a Resolution clarifying its action in CA-G.R. SP No. 76286 and rectifying what it labeled as a 'clerical error'. This resolution states:

It was also brought to Our attention by the Division Clerk, after scrutiny of the records, that there has been a clerical error in what was supposed to be delivered as thin copies for the three (3) thick copies of the Resolution We actually promulgated on May 5, 2003 x x x The inadvertently delivered thin copy of the said resolution received by the petitioner's counsel was the one dismissing the petition without prejudice, and the same copy pertained to the draft resolution which We did not approve. The copy of the resolution received by private respondent Cristeta dela Rosa's counsel is the one requiring comment and which corresponds to Our actual Resolution dated May 5, 2003.

The foregoing explains why there is a re-filing of the petition with this Court, because of the inadvertently delivered copy of the draft resolution received by the petitioner, dismissing the case without prejudice. As such, the error needs to be rectified since the petition docketed as CA-G.R. SP No. 77615 is actually the same as the case at bar.^[12]

The Ninth Division duly furnished the *ponente* of the re-filed petition (from the Seventh Division) a copy of its August 1, 2003 resolution.

The heirs and spouses Malvar subsequently sought a reconsideration of another resolution from the Ninth Division dated December 12, 2003 that, among others, granted them 10 days to file their comment. The CA denied the motion in its April 2, 2004 Resolution in light of its August 1, 2003 Resolution.

Proceedings in CA-G.R. SP No. 77615

In response to the first May 5, 2003 Resolution dismissing its petition without prejudice, Lopez Resources opted to re-file on May 23, 2003 a similar petition with corrections duly made for the non-forum shopping deficiency in the first petition. The Seventh Division, to which the re-filed petition was raffled, required the heirs and spouses Malvar and the other respondents to file their comment to the re-filed petition, while Lopez Resources was ordered to submit a copy of the first May 5, 2003 Resolution dismissing CA- G.R. SP No. 76286.

In lieu of comment,^[13] the heirs and spouses Malvar moved for the dismissal of the

petition on two grounds: *first*, the CA has no jurisdiction over the re-filed petition as an exact petition in CA-G.R. SP No. 76286 was earlier dismissed under the first May 5, 2003 Resolution and the dismissal had become final; and *second*, even if the CA had jurisdiction, the re-filed petition should be dismissed by reason of *litis pendentia* because the appellate court has not terminated the proceedings in the first petition.

Subsequently, the CA^[14] resolved to cancel the raffle of CA-G.R. SP No. 77615^[15] since the first petition and the re-filed petition are one and the same. The CA also ordered that the contents of the *rollo* of CA-G.R. SP No. 77615 to be incorporated with the *rollo* of CA-G.R. SP No. 76286.

THE ISSUES

Dissatisfied with the above CA resolutions and arguing that both cases should be dismissed, the petitioners raise the following issues:

1. whether the CA committed grave abuse of discretion in CA-G.R.SP No. 76286 when it issued on the same date the two conflicting May 5, 2003 resolutions;
2. whether the August 1, 2003 resolution is valid; and
3. whether the re-filing of the same petition before the CA constituted a palpable act of forum shopping justifying the dismissal of both petitions.

THE COURT'S RULING

We deny the petition for lack of merit.

The fact that the Ninth Division of the CA committed a monumental error cannot be erased. But the error was not in the court's intent on what to do with the forum shopping violation it found. In both resolutions, what is clear is that the court intended to allow a rectification of the deficiency in Lopez Resources' non-forum shopping certification in view perhaps of what it perceived to be the merits that the face of the petition showed. Thus, in the first May 5, 2003 resolution, the CA resolved to dismiss the petition but without prejudice to its re-filing. In the second resolution, it ordered the filing of comment by the respondents, with the obligation on the part of Lopez Resources to rectify the deficiency in its non-forum shopping certification.

We have no doubt that it was within the CA's power and prerogative to issue what either resolution decreed without committing an abuse of discretion amounting to lack or excess of jurisdiction. In the first May 5, 2003 Resolution, the CA correctly dismissed the petition for the deficiency it found in the non-forum shopping certification. Section 5, Rule 7 of the Revised Rules of Court provides that "Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case *without prejudice*, unless otherwise provided, upon motion and after hearing." On the other hand, the requirement specific to petitions filed with the appellate court simply provides as a penalty that the failure of the petitioner to comply with the listed requirements, among them the need for a certification against forum