

## THIRD DIVISION

[ G.R. No. 176141, December 16, 2008 ]

**GERTRUDES NABUA, ALEX N. LU, CAYETANO N. LU, JR. AND  
JULIETA N. LU, PETITIONERS, VS. DOUGLAS LU YM,  
RESPONDENT.**

### DECISION

**REYES, R.T., J.:**

LITIGANTS should not trifle with decisions of the highest court of the land, the final arbiter of legal controversies.

This is a petition for review on *certiorari* of the resolution<sup>[1]</sup> of the Court of Appeals (CA) denying petitioners' motion to dismiss appeal and motion to order the trial court to issue a writ of execution.

#### The Antecedents

Sometime in the 1940s, Cayetano Ludo took petitioner Gertrudes Nabua as his common law wife and had ten children with her, namely: George, Alex, Cayetano, Jr., Julieta, Crispin alias "Douglas," Evangeline, Marilyn, Bernardita, Edwin, and Cresencio, all surnamed Lu. Alex, Cayetano, Jr., and Julieta join Gertrudes as petitioners against respondent Douglas in this case.

Cayetano, together with his brothers Paterno and Cipriano, founded the now famous Ludo and Lu Ym Corporation which owns the biggest single crushing plant in the world. Aside from commercial endeavors in the Philippines and abroad, Cayetano acquired numerous real and personal properties, e.g., beach resorts, condominium units, agricultural and commercial lots, private jet, sports cars, and shares of stocks.

In the 1970s, respondent Douglas, also known as Crispin N. Lu, took active part in the management of all the properties owned by Cayetano. In the late '70s and early '80s when Cayetano was already old and sickly, his shares of stocks were transferred to respondent. When Cayetano's death was impending, respondent explained to his brothers and sisters the need to execute a simulated last will and testament to evade payment of excessive inheritance taxes.

Indeed, a simulated last will and testament was supposedly executed by Cayetano under respondent's supervision and guidance. At that time, Cayetano was already dependent on respondent's decision-making. After Cayetano's death, respondent informed petitioners of the need to have the simulated last will and testament of their father probated. Petitioners (plaintiffs) all signed without any opposition because they were made to believe that it was for the purpose of keeping the properties of their father intact for the benefit of the family.

Respondent managed the 50% share of petitioner Gertrudes Nabua in the estate of Cayetano. Likewise, respondent managed and held in trust the other 50% of the properties of Cayetano due his children. This included the properties of the unwilling co-plaintiffs, namely: Evangeline, Marilyn, Bernardita, Edwin, and Cresencia. In the course of administering and managing the properties entrusted to him, respondent abandoned his own mother, petitioner Gertrudes Nabua, and stopped giving support to her.

Petitioners demanded an accounting from respondent when they learned that their cousins, children of Paterno Lu Ym, were given a similar accounting of the sale of shares of stocks in Philippine Bank of Communications and Crown Oil Corporation. Their demand was, however, ignored by respondent.

### **RTC Proceedings**

Respondent's motion to dismiss was denied by the Regional Trial Court (RTC). On appeal, this Court remanded the motion to the RTC for further proceedings. Meanwhile, respondent was declared in default by the RTC for failure to file his answer.

Because of respondent's refusal to render an accounting, petitioners, as plaintiffs, were constrained to file a complaint for accounting with prayer for temporary restraining order and injunction with the RTC, Branch 24, in Cebu City.

On August 16, 2002, respondent, as defendant, filed an omnibus motion to dismiss the complaint on the following grounds: (a) plaintiffs' claims are barred by a prior judgment or by the statute of limitations; (b) plaintiffs have no legal capacity to sue and/or do not have a cause of action; (c) fraud and equity; and (d) docket fees were not paid, therefore, a condition precedent for filing the claim has not been complied with.<sup>[2]</sup>

Respondent's omnibus motion was denied by the RTC. His motion for reconsideration was rejected. Reparing to the CA, the appellate court on August 20, 2003 denied respondent's petition to reverse the order of the RTC denying his motion to dismiss.<sup>[3]</sup>

Undaunted, respondent went up to this Court in G.R. No. 161309 entitled *Lu Ym v. Nabua*,<sup>[4]</sup> seeking a review of the CA decision and resolution.<sup>[5]</sup> On February 23, 2005, this Court partly granted respondent's petition and ordered a remand to the RTC for further proceedings to resolve anew with deliberate dispatch the motion to dismiss, disposing thus:

WHEREFORE, the petition is GRANTED in part. The Decision of the Court of Appeals dated August 20, 2003 sustaining the trial court's denial of petitioner's motion to dismiss, as well as its resolution dated December 16, 2003 denying reconsideration, is REVERSED and SET ASIDE. *The case is REMANDED to the Regional Trial Court of Cebu City for further proceedings to resolve anew with deliberate dispatch the motion to dismiss* in accordance with Section 3, Rule 16 of the 1997 Rules of Civil Procedure as elucidated in this Decision.<sup>[6]</sup> (Emphasis supplied)

Meanwhile, respondent was declared in default by the RTC on May 28, 2003 for failure to file his answer. As a result, plaintiffs were allowed to present evidence *ex parte*.<sup>[7]</sup>

At the time petitioner Gertrudes testified during trial, she was already 86 years old. She related how she felt abandoned and betrayed by her son Douglas. She felt neglected when he cut off her monthly allowance of P10,000. Douglas lived in a property worth several millions of pesos while she lived in a modest house. She filed the complaint to compel him to render an accounting of all properties which she and her husband acquired jointly during their union.<sup>[8]</sup>

### **RTC Disposition**

On March 16, 2005, the RTC rendered a Decision<sup>[9]</sup> ordering respondent to account for the properties subject of the complaint. The *fallo* of the decision stated:

WHEREFORE, in view of the foregoing, *this Court finds for plaintiffs and hereby enters judgment ordering defendant Douglas Lu Ym to account the following real properties owned by the late Cayetano Ludo and held by him in trust and for the benefit of herein plaintiffs*, on the following properties, as follows: Tax Declaration No. 01616 under defendant's name covering Lot No. 1 (Exh. "H"); Tax Declaration No. 02207 under defendant's name covering Lot No. 3 (Exh. "I"); Tax Dec. No. 02143 under the name of Lu Ym Annabel (wife of defendant Douglas Lu Ym) (Exh. "J"); Tax Dec. No. 00024 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "K"); Tax Dec. No. 02827 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "L"); Tax Dec. No. 02826 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "M"); Tax Dec. No. 03157 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "N"); Transfer Certificate of Title No. 102557 under the name of defendant Douglas Lu Ym (Exh. "O-1"); Tax Dec. No. 02143 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "P"); Tax Dec. No. 0028 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "S"); Tax Dec. No. 01615 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "U"); Tax Dec. No. 01617 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "W"); Tax Dec. No. 02208 under the name of defendant Douglas covering Lot No. 3 (Exh. "Y"); the 1/3 share of the late Cayetano Ludo with the Ludo & Lu Ym Development Corporation, among which are the following: Transfer Certificate of Title Nos. 17029 (Exh. "AA"), 17032 (Exh. "BB"), 22325 (Exh. "CC"), 22323 (Exh. "DD"), 44057 (Exh. "EE"), 20514 (Exh. "FF"), 20515 (Exh. "GG"), and 20516 (Exh. "HH"), all registered under the Ludo and Lu Ym Development Corporation of which defendant Douglas is one of the major stockholders as shown in the Certification issued by the Corporate Secretary (Exh. "II") of the said corporation; the proceeds of the sale of the following properties of the late Cayetano Ludo sold by defendant as follows: (a) of the private jet plane amounting to P100 million pesos; shares of stocks with Crown Oil Corporation Communications amounting to P30 million dollars; shares of stocks with Philippine Bank of Communications amounting to P53 million pesos; luxurious cars amounting P50 million pesos; rent of ancestral house (the White House) located at F. Ramos St.

beside Robinson's Department Store, Cebu City; and proceeds of the sale of the Ranudo property; *and all other properties which defendant held and continue to hold in trust for all the heirs of the late Cayetano Ludo.*

The Bureau of Internal Revenue is specifically directed to compute and impose the estate taxes due on the above mentioned properties of the late Don Cayetano Ludo.

SO ORDERED.<sup>[10]</sup> (Emphasis supplied)

On April 12, 2005, respondent moved for reconsideration.<sup>[11]</sup> He contended that the February 23, 2005 ruling of the Supreme Court in G.R. No. 161309<sup>[12]</sup> invalidated or rendered moot the RTC decision.

In its Order of May 20, 2005,<sup>[13]</sup> the RTC denied respondent's motion for reconsideration. The RTC laid down its bases for denying the motion as follows:

The prayer to set aside herein judgment cannot be sustained for lack of legal basis. The record will show that proceedings in this case was conducted regularly:

1. Per Motion, defendant Douglas was given until June 15, 2002 to submit responsive pleading (May 30, 2002 order) on August 2, 2002, defendant Douglas was given 15 days to file answer to the amended complaint;
2. Another extension of 15 days or until November 8, 2002 was given as prayed for (October 28, 2002 order);
3. Another extension was requested on November 7, 2002 which was granted in the order dated November 12, 2002;
4. Due to the filing of the Petition for *Certiorari*, this Court on its own, suspended further proceedings for sixty (60) days (November 29, 2002 order);
5. On February 7, 2003, plaintiffs prayed that principal defendant be declared in default;
6. On February 10, 2003, said defendant was again reminded to submit answer;
7. Defendant Douglas was declared in default (May 25, 2003 order);
8. Plaintiff Gertrudes Nabua testified on June 27, 2003;
9. Temporary Restraining Order issued by the Court of Appeals was received on September 4, 2003;
10. On August 20, 2003, the Court of Appeals dismissed the *Certiorari* petition and affirmed the two assailed orders (received on

September 11, 2003);

11. Defendant Douglas appealed the Court of Appeals decision to the Supreme Court by way of Petition for Review on *Certiorari*.

Meanwhile, as there was no restraining order from the Supreme Court, plaintiffs continued to present evidence. Exhibit was formally offered on March 31, 2004 which was admitted in evidence in an Order dated April 30, 2004. Until this Court entered judgment in the main case.

In the light also of a recent Supreme Court Circular, wherein defendant in a civil case is directed to observe restraint in filing a Motion to Dismiss and instead allege the grounds thereof as defenses in the answer, this Court was confident that its ruling in the Motion to dismiss which was upheld by the Court of Appeals is in accord with the said rule. It has already reached a point of no return. Had the Honorable Supreme Court dismissed the main case, which is one of the reliefs in a Petition for *Certiorari*, it would have been different.<sup>[14]</sup>

### **CA Proceedings**

On May 25, 2005, respondent filed a notice of appeal<sup>[15]</sup> from the RTC order denying his motion for reconsideration. On May 26, 2005, the RTC gave due course to the notice of appeal.<sup>[16]</sup>

Petitioners filed a motion for reconsideration of the order giving due course to the notice of appeal with motion for entry of judgment and writ of execution,<sup>[17]</sup> emphasizing that the notice of appeal of respondent is not an appeal from the decision in Civil Case No. CEB 27717 dated March 16, 2005 but from the Order dated May 20, 2005.

The RTC resolved the motion for reconsideration of petitioners in the following manner:

Due to the fact that this Court recognizes the right of appeal, it failed to realize that what was the subject of the notice of appeal is the Order of this Court dated May 20, 2005 order denying the Motion for Reconsideration and not the decision rendered on March 16, 2005.

At any rate, transmit the records of this case to the Court of Appeals as directed in the May 26, 2005 Order and leave it to the higher court to determine whether or not the appeal was filed out of time.<sup>[18]</sup>

### **Supreme Court Proceedings**

While his appeal was pending before the CA, respondent filed a petition for contempt of court before this Court against the counsel of petitioners and the RTC presiding judge, entitled *Lu Ym v. Mahinay*, docketed as G.R. No. 164476.<sup>[19]</sup> Respondent contended that Atty. Mahinay and Judge Sarmiento defied this Court's decision in G.R. No. 161309<sup>[20]</sup> by refusing to vacate the RTC decision rendered.

On June 16, 2006, this Court dismissed respondent's petition, ruling that the