558 Phil. 90

THIRD DIVISION

[G.R. NO. 150089, August 28, 2007]

ERLINDA B. DANDOY, REPRESENTED BY HER ATTORNEY-IN-FACT, REY ANTHONY M. NARIA, PETITIONERS, VS. COURT OF APPEALS, HON. THELMA A. PONFERRADA, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 104, AND NERISSA LOPEZ, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) dated May 25, 2001 in CA-G.R. SP No. 59397, and its Resolution[2] dated September 19, 2001. The assailed decision dismissed the petition for *certiorari* filed by petitioner Erlinda Dandoy (Dandoy), seeking to nullify the Orders[3] issued by the Regional Trial Court (RTC), Quezon City, Branch 104, dated January 31, 2000 and May 11, 2000 in Civil Case No. 98-33895.

The facts of the case as found by the CA, are as follows:

> Herein petitioner Erlinda Dandoy-Barboni [also referred to as "Erlinda Dandoy" and "Barboni"], represented by her Attorney-in-Fact, Rey Anthony Naria, and the private respondent, Nerissa Lopez [Lopez], were high school classmates in Zamboanga del Sur from 1970 to 1975. The latter is now a businesswoman with various products as her stocks-in-trade which include jewelry. According to Lopez, the petitioner Dandoy on November 13, 1996, bought a set of jewelry with a total value of P35,000.00 from her on cash basis, but the latter pleaded that she be allowed to buy the items on credit, being a regular customer and friend of the former. Seller Lopez acceded to the request upon the representation of the buyer that she will settle her account before enplaning for France. On December 5 of the same year, buyer Dandoy-Barboni bought another set for P75,000.00. Sometime April, 1997, Lopez demanded payment for the sets of jewelry but the buyer countered that she still had to wait for the proceeds of the sale of her condominium in Pasig or her lot in Bicutan. To assuage Lopez, Barboni even appointed the former as one of her agents in selling her properties. On October 12, 1997, Barboni partially paid P30,000.00 and at the same time, bought two more sets of jewelry worth P230,000.00, which increased the latter's debt to P310,000.00. Four days after the partial payment, Lopez went to the house of Barboni and again demanded payment but was assured that the paper work for the sale of the Bicutan property was almost through and that the payment for $1,000,000.00 would be out soon. Barboni then inquired about other jewelry for sale and though apprehensive, Lopez

> showed the buyer a P1,000,000-worth diamond marquise which the former borrowed for appraisal. After several days, Lopez returned to retrieve the set but was told by the petitioner that she failed to have the jewelry appraised. At the same instance, the petitioner again bought two other pieces of jewelry valued at P60,000.00, representing that it would be given to her sister. On October 25, 1997, both parties met and again, the petitioner promised to settle her obligation within that day but she failed, compelling the private respondent to demand that the debtor-buyer just return the items she obtained. Thereafter, the petitioner began avoiding the jeweler, thus the latter made demands, both oral and written, for the former to settle her lawful obligations. Inspite of those demands, the petitioner continued and still continues to fail to settle her obligations. Hence, the private respondent was constrained to file the instant case for sum of money with preliminary attachment against the former.
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> In her Answer, the petitioner manifested that Lopez's complaint is malicious and done in bad faith. The truth is that the petitioner never intended to buy the jewelry but only wanted to help Lopez sell the goods. When not sold, the petitioner tried to return the merchandise but the seller refused to accept the same and insisted that the former pay for it upon the sale of her Bicutan property. Lopez obviously had the temerity to sue the petitioner inspite of the latter's benevolent assistance to the former for years. As counterclaim, the petitioner prayed that the amount of P5,000,000.00 as moral damages, P500,000.00 per month for lost interest as a result of the attachment of the Bicutan property, attorney's fees of P50,000.00 and a per appearance fee of P1,500.00 be adjudged in her favor.[4]

For failure of the parties to arrive at an amicable settlement during the preliminary conference, trial on the merits ensued.

After Lopez completed the presentation of her evidence, Dandoy, through counsel, moved for the dismissal of the complaint by way of a Demurrer to Evidence. [5] Dandoy relied on the alleged admission of Lopez that the payment for the jewelry will be made only after the sale of Dandoy's property situated at Bicutan. Since the property had not yet been sold at the time of the filing of the complaint (and even thereafter), the obligation was not yet due and demandable; thus, the dismissal of the case was warranted.

In its Order[6] dated January 31, 2000, the trial court denied the Demurrer to Evidence, and set the case for presentation of Dandoy's evidence. Dandoy filed a motion for reconsideration which was likewise denied on May 11, 2000.[7]

Aggrieved, Dandoy elevated the matter to the CA through a petition for *certiorari* under Rule 65, praying that the RTC Orders be annulled, and the case be dismissed.

On May 25, 2001, the CA dismissed the petition on a finding that the RTC committed no grave abuse of discretion.[8] Thereafter, on September 19, 2001, the CA denied Dandoy's motion for reconsideration.[9]

Petitioner Dandoy now comes before this Court on a petition for review on certiorari under Rule 45 raising the following issues:

> 7.1. WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE LOWER COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE CASE INSPITE OF THE GLARING EVIDENCE WHICH WARRANTS SUCH DISMISSAL;
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> 7.2. WHETHER OR NOT THE TRIAL COURT SHOULD HAVE ORDERED THE DISMISSAL OF THE CASE BEFORE IT BY WAY OF PETITIONER'S DEMURRER TO EVIDENCE;
>
> 7.3. WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE ORDER OF THE TRIAL COURT VIOLATED SECTION 14, ARTICLE VIII OF THE 1987 CONSTITUTION;
>
> 7.4. WHETHER OR NOT THE SPECIAL POWER OF ATTORNEY ISSUED BY THE PETITIONER IS SUFFICIENT TO CONFER THE POWER UNTO THE ATTORNEY-IN-FACT TO FILE THE INSTANT PETITION.[10]

We initially discuss the last of these issues and, thereafter the other three.

Dandoy avers that the special power of attorney (SPA) she executed in favor of her attorney-in-fact is sufficient authority for the latter to file the instant petition notwithstanding the absence of any specific reference to the present case.

We agree.

The SPA executed by Dandoy grants to her attorney/s-in-fact, Marie Anne B. Barboni, Atty. Julian R. Torcuator, Jr. and/or Mr. Rey Anthony M. Naria, the authority to do and perform the following:

> To file a petition for Certiorari and/or Appeal to the Court of Appeals or Supreme Court with respect to the Decisions, resolutions or orders issued or that may hereafter be issued x x x i) such other matters as may aid in the prompt disposition of the action; and to file and/or execute such pleadings, motions, papers, and agreements, petitions, appeal as may be necessary to prosecute the above cases and/or settle the same.[11]

Clearly, the authority granted to the attorney/s-in-fact is not limited to the filing of the petition with the CA but includes a pleading which may be subsequently filed before this Court. Dandoy's intention to endow her attorney/s-in-fact with such power is unmistakable from the language of the SPA. The use of *and/or* between *petition for certiorari* and *appeal* can only mean that either or both courses of action may be undertaken. Thus, after Dandoy, through her attorney-in-fact, filed a petition for *certiorari* before the CA which proved unsuccessful, the same attorney-in-fact could appeal the CA decision to this Court *via* a petition for review on *certiorari* under Rule 45. Besides, the last clause in the above-quoted portion of the SPA amply indicates that Dandoy intended for the authority to continue until the termination of the case.

Now, on to the other issues.

Petitioner anchored her demurrer to evidence on Lopez's alleged admission that payment of the obligation shall be made only upon the sale of Dandoy's property in Bicutan. With such admission, petitioner contends that her debt had become an obligation with a period. And since the property had not yet been sold, Lopez had no right to demand payment. Thus, petitioner posits that the filing of the collection suit by Lopez was premature, and the case should be dismissed.

We do not agree.

Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny. [12]

A demurrer to evidence may be issued when, upon the facts adduced and the applicable law, the plaintiff has shown no right to relief. Where the totality of plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom, does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery. [13]

Even with Lopez's admission, as claimed by the petitioner, the demurrer to evidence has to be denied. As correctly held by the CA, the respondent's testimony on cross-examination cannot be considered separately from her testimony on direct examination because the testimony of a witness is weighed as a whole.[14]

On direct examination,[15] the respondent testified that she went to Bicutan because petitioner wanted to pay her obligation from the proceeds of the sale of her Bicutan property. However, according to respondent, the transaction did not push through and the petitioner promised to return the items to the respondent. But the items were never returned. On the other hand, during her cross-examination,[16] respondent answered in the affirmative when asked whether she acceded to the request of the petitioner that the obligations be paid from the proceeds of the sale of the Bicutan property, which at that time was not yet effected.[17] From this testimony, it appears that while Lopez agreed that payment would come from the proceeds of the sale, she did not necessarily bind herself to the commitment that the payment of the obligation will be sourced solely from the sale of the Bicutan property. It is noteworthy that, responding to an earlier demand for payment, petitioner promised to pay out of the proceeds of the sale of her Ortigas condominium or Bicutan property. Yet, on October 12, 1997, petitioner made a partial payment in the amount of P30,000.00. Had the parties really intended that the payment of the obligation be sourced only from the proceeds of the sale of petitioner's properties, no partial payment would have been made by the petitioner.