

## FIRST DIVISION

[ G.R. NO. 147143, March 10, 2006 ]

**HYATT INDUSTRIAL MANUFACTURING CORP., AND YU HE CHING, PETITIONERS, VS. LEY CONSTRUCTION AND DEVELOPMENT CORP., AND PRINCETON DEVELOPMENT CORP., RESPONDENTS**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a petition for review on *certiorari* seeking the nullification of the Decision dated May 4, 2000 of the Court of Appeals' (CA) then Seventh Division in CA-G.R. CV No. 57119, which remanded Civil Case No. 94-1429 to the trial court and directed the latter to allow the deposition-taking without delay;<sup>[1]</sup> and the CA Resolution dated February 13, 2001 which denied petitioners' motion for reconsideration.<sup>[2]</sup>

The facts are as follows:

On April 8, 1994, respondent Ley Construction and Development Corporation (LCDC) filed a complaint for specific performance and damages with the Regional Trial Court of Makati, Branch 62 (RTC), docketed as Civil Case No. 94-1429, against petitioner Hyatt Industrial Manufacturing Corporation (Hyatt) claiming that Hyatt reneged in its obligation to transfer 40% of the *pro indiviso* share of a real property in Makati in favor of LCDC despite LCDC's full payment of the purchase price of P2,634,000.00; and that Hyatt failed to develop the said property in a joint venture, despite LCDC's payment of 40% of the pre-construction cost.<sup>[3]</sup> On April 12, 1994, LCDC filed an amended complaint impleading Princeton Development Corporation (Princeton) as additional defendant claiming that Hyatt sold the subject property to Princeton on March 30, 1994 in fraud of LCDC.<sup>[4]</sup> On September 21, 1994, LCDC filed a second amended complaint adding as defendant, Yu He Ching (Yu), President of Hyatt, alleging that LCDC paid the purchase price of P2,634,000.00 to Hyatt through Yu.<sup>[5]</sup>

Responsive pleadings were filed and LCDC filed notices to take the depositions of Yu; Pacita Tan Go, Account Officer of Rizal Commercial Banking Corporation (RCBC); and Elena Sy, Finance Officer of Hyatt. Hyatt also filed notice to take deposition of Manuel Ley, President of LCDC, while Princeton filed notice to take the depositions of Manuel and Janet Ley.<sup>[6]</sup>

On July 17, 1996, the RTC ordered the deposition-taking to proceed.<sup>[7]</sup>

At the scheduled deposition of Elena Sy on September 17, 1996, Hyatt and Yu prayed that all settings for depositions be disregarded and pre-trial be set instead, contending that the taking of depositions only delay the resolution of the case. The RTC agreed and on the same day ordered all depositions cancelled and pre-trial to take place on November 14, 1996.<sup>[8]</sup>

LCDC moved for reconsideration<sup>[9]</sup> which the RTC denied in its October 14, 1996 Order, portion of which reads:

This Court has to deny the motion, because: 1) as already pointed out by this Court in the questioned Order said depositions will only delay the early termination of this case; 2) had this Court set this case for pre-trial conference and trial thereafter, this case would have been terminated by this time; 3) after all, what the parties would like to elicit from their deponents would probably be elicited at the pre-trial conference; 4) no substantial rights of the parties would be prejudiced, if pre-trial conference is held, instead of deposition.<sup>[10]</sup>

On November 14, 1996, the scheduled date of the pre-trial, LCDC filed an Urgent Motion to Suspend Proceedings Due to Pendency of Petition for *Certiorari* in the Court of Appeals.<sup>[11]</sup> The petition, which sought to annul the Orders of the RTC dated September 17, 1996 and October 14, 1996, was docketed as CA-G.R. SP No. 42512<sup>[12]</sup> and assigned to the then Twelfth Division of the CA.

Meanwhile, pre-trial proceeded at the RTC as scheduled<sup>[13]</sup> and with the refusal of LCDC to enter into pre-trial, Hyatt, Yu and Princeton moved to declare LCDC non-suited which the RTC granted in its Order dated December 3, 1996, thus:

On September 17, 1996, this Court noticing that this case was filed as early (as) April 4, 1994<sup>[14]</sup> and has not reached the pre-trial stage because of several depositions applied for by the parties, not to mention that the records of this case has reached two (2) volumes, to avoid delay, upon motion, ordered the cancellation of the depositions.

On September 24, 1996, plaintiff filed a motion for reconsideration, seeking to reconsider and set aside the order dated September 17, 1996, which motion for reconsideration was denied in an order dated October 14, 1996, ruling among others that "after all, what the parties would like to elicit from these deponents would probably be elicited at the pre-trial conference", and, reiterated the order setting this case for pre-trial conference on November 14, 1996.

On the scheduled pre-trial conference on November 14, 1996,

a petition for *certiorari* was filed with the Court of Appeals, seeking to annul the Order of this Court dated September 17, 1996 and October 14, 1996, furnishing this Court with a copy on the same date.

At the scheduled pre-trial conference on November 14, 1996, plaintiff orally moved the Court to suspend pre-trial conference alleging pendency of a petition with the Court of Appeals and made it plain that it cannot proceed with the pre-trial because the issue on whether or not plaintiff may apply for depositions before the pre-trial conference is a prejudicial question. Defendants objected, alleging that even if the petition is granted, pre-trial should proceed and that plaintiff could take deposition after the pre-trial conference, insisting that defendants are ready to enter into a pre-trial conference.

This Court denied plaintiff's motion to suspend proceedings and ordered plaintiff to enter into pre-trial conference. Plaintiff refused. Before this Court denied plaintiff's motion to suspend, this Court gave Plaintiff two (2) options: enter into a pre-trial conference, advising plaintiff that what it would like to obtain at the deposition may be obtained at the pre-trial conference, thus expediting early termination of this case; and, terminate the pre-trial conference and apply for deposition later on. Plaintiff insisted on suspension of the pre-trial conference alleging that it is not ready to enter into pre-trial conference in view of the petition for certiorari with the Court of Appeals. Defendants insisted that pre-trial conference proceed as scheduled, manifesting their readiness to enter into a pre-trial conference.

When plaintiff made it clear that it is not entering into the pre-trial conference, defendants prayed that plaintiff be declared non-suited. x x x

x x x x

In the light of the foregoing circumstances, this Court is compelled to dismiss plaintiff's complaint.

WHEREFORE, for failure of plaintiff to enter into pre-trial conference without any valid reason, plaintiff's complaint is dismissed. Defendants' counterclaims are likewise dismissed.

SO ORDERED.<sup>[15]</sup>

LCDC filed a motion for reconsideration<sup>[16]</sup> which was denied however by the trial court in its Order dated April 21, 1997.<sup>[17]</sup> LCDC went to the CA on appeal which was docketed as CA-G.R. CV No. 57119 and assigned to the then Seventh Division of the CA.<sup>[18]</sup>

On July 24, 1997, the CA's then Twelfth Division,<sup>[19]</sup> in CA-G.R. SP No. 42512 denied LCDC's petition for *certiorari* declaring that the granting of the petition and setting aside of the September 17, 1996 and October 14, 1996 Orders are manifestly pointless considering that the complaint itself had already been dismissed and subject of the appeal docketed as CA-G.R. CV No. 57119; that the reversal of the said Orders would have practical effect only if the dismissal were also set aside and the complaint reinstated; and that the dismissal of the complaint rendered the petition for *certiorari* devoid of any practical value.<sup>[20]</sup> LCDC's motion for reconsideration of the CA-G.R. SP No. 42512 decision was denied on March 4, 1998.<sup>[21]</sup> LCDC then filed with this Court, a petition for *certiorari*, docketed as G.R. No. 133145 which this Court dismissed on August 29, 2000.<sup>[22]</sup>

On May 4, 2000, the CA's then Seventh Division issued in CA-G.R. CV No. 57119 the herein assailed decision, the fallo of which reads:

WHEREFORE, premises considered, finding the appeal meritorious, this case is remanded to the court a quo for further hearing and directing the latter to allow the deposition taking without delay.

SO ORDERED.<sup>[23]</sup>

The CA reasoned that: LCDC complied with Section 1, Rule 23 of the 1997 Rules of Civil Procedure which expressly sanctions depositions as a mode of discovery without leave of court after the answer has been served; to unduly restrict the modes of discovery during trial would defeat the very purpose for which it is intended which is a pre-trial device, and at the time of the trial, the issues would already be confined to matters defined during pre-trial; the alleged intention of expediting the resolution of the case is not sufficient justification to recall the order to take deposition as records show that the delay was brought about by postponement interposed by both parties and other legal antecedents that are in no way imputable to LCDC alone; deposition-taking, together with the other modes of discovery are devised by the rules as a means to attain the objective of having all the facts presented to the court; the trial court also erred in dismissing the complaint as LCDC appeared during the pre-trial conference and notified it of the filing of a petition before the CA; such is a legitimate justification to stall the pre-trial conference, as the filing of the petition was made in good faith in their belief that the court *a quo* erred in canceling the deposition scheduled for no apparent purpose.<sup>[24]</sup>

Hyatt and Princeton filed their respective motions for reconsideration which the CA denied on February 13, 2001.<sup>[25]</sup>

Hyatt and Yu now come before the Court via a petition for review on *certiorari*, on the following grounds:

I

THE COURT OF APPEALS, SEVENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION, ACTUALLY AMOUNTING TO LACK OF JURISDICTION, IN HOLDING IN EFFECT INVALID THE ORDERS OF THE LOWER COURT DATED SEPTEMBER 17, 1996 AND OCTOBER 14, 1996 WHICH ARE NOT RAISED OR PENDING BEFORE IT, BUT IN ANOTHER

CASE (CA-G.R. SP. No. 42512) PENDING BEFORE ANOTHER DIVISION OF THE COURT OF APPEALS, TWELFTH DIVISION, AND WHICH CASE WAS DISMISSED BY THE SAID DIVISION OF THE COURT OF APPEALS AND FINALLY BY THE HONORABLE SUPREME COURT IN G.R. NO. 133145.

## II

THE COURT OF APPEALS, SEVENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERRORS OF LAW IN REVERSING THE LOWER COURT'S ORDER DATED DECEMBER 3, 1996 AND APRIL 21, 1997 HOLDING RESPONDENT NON-SUITED FOR FAILURE TO ENTER INTO PRE-TRIAL. [26]

Anent the first issue, petitioners claim that: the validity of the RTC Order dated September 17, 1996 which set the case for pre-trial, as well as its Order dated October 14, 1996 denying LCDC's motion for partial reconsideration are not involved in CA-G.R. CV No. 57119 but were the subject of CA-G.R. SP No. 42512, assigned to the then Twelfth Division, which dismissed the same on July 24, 1997 and which dismissal was affirmed by this Court in G.R. No. 133145; in passing upon the validity of the Orders dated September 17, 1996 and October 14, 1996, the CA's then Seventh Division in CA-G.R. CV No. 57119 exceeded its authority and encroached on issues taken cognizance of by another Division. [27]

On the second issue, petitioners claim that: the CA's then Seventh Division should have outrightly dismissed the appeal of LCDC as the same did not involve any error of fact or law but pertains to a matter of discretion which is properly a subject of *certiorari* under Rule 65 of the Revised Rules of Court; conducting discovery thru deposition is not a condition *sine qua non* to the holding of a pre-trial and the fact that LCDC wanted to take the deposition of certain persons is not a valid ground to suspend the holding of pre-trial and subsequently the trial on the merits; the persons whose depositions were to be taken were listed as witnesses during the trial; to take their depositions before the lower court and to present them as witnesses during the trial on the merits would result in unnecessary duplicity; the fact that LCDC has a pending petition for *certiorari* with the CA's then Twelfth Division docketed as CA-G.R. SP No. 42512 is not a ground to cancel or suspend the scheduled pre-trial on November 14, 1996 as there was no restraining order issued; LCDC's avilment of the discovery procedure is causing the undue delay of the case; it is only after LCDC has filed its complaint that it started looking for evidence to support its allegations thru modes of discovery and more than two years has already passed after the filing of the complaint yet LCDC still has no documentary evidence to present before the lower court to prove its allegations in the complaint. [28]

Petitioners then pray that the Decision dated May 4, 2000 and the Resolution dated February 13, 2001 of the CA's then Seventh Division in CA-G.R. CV No. 57119 be annulled and set aside and the validity of the Orders dated December 3, 1996 and April 21, 1997 of the RTC of Makati, Branch 62 in Civil Case No. 94-1429 be sustained. [29]

In its Comment, LCDC argues that the petitioners erred in claiming that the CA's then Seventh Division overstepped its authority as this Court has ruled in G.R. No. 133145 that the issue of whether LCDC has been denied its right to discovery is