532 Phil. 222

FIRST DIVISION

[G.R. NO. 154132, August 31, 2006]

HIYAS SAVINGS AND LOAN BANK, INC. PETITIONER, VS. HON. EDMUNDO T. ACUÑA, IN HIS CAPACITY AS PAIRING JUDGE OF REGIONAL TRIAL COURT, BRANCH 122, CALOOCAN CITY, AND ALBERTO MORENO, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify the Orders[1] of the Regional Trial Court (RTC) of Caloocan City, Branch 122, dated November 8, 2001[2] and May 7, 2002[3] denying herein petitioner's Motion to Dismiss and Motion for Partial Reconsideration, respectively.

The antecedent facts are as follows:

On November 24, 2000, Alberto Moreno (private respondent) filed with the RTC of Caloocan City a complaint against Hiyas Savings and Loan Bank, Inc. (petitioner), his wife Remedios, the spouses Felipe and Maria Owe and the Register of Deeds of Caloocan City for cancellation of mortgage contending that he did not secure any loan from petitioner, nor did he sign or execute any contract of mortgage in its favor; that his wife, acting in conspiracy with Hiyas and the spouses Owe, who were the ones that benefited from the loan, made it appear that he signed the contract of mortgage; that he could not have executed the said contract because he was then working abroad.[4]

On May 17, 2001, petitioner filed a Motion to Dismiss on the ground that private respondent failed to comply with Article 151 of the Family Code wherein it is provided that no suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. Petitioner contends that since the complaint does not contain any fact or averment that earnest efforts toward a compromise had been made prior to its institution, then the complaint should be dismissed for lack of cause of action.[5]

Private respondent filed his Comment on the Motion to Dismiss with Motion to Strike Out and to Declare Defendants in Default. He argues that in cases where one of the parties is not a member of the same family as contemplated under Article 150 of the Family Code, failure to allege in the complaint that earnest efforts toward a compromise had been made by the plaintiff before filing the complaint is not a ground for a motion to dismiss. Alberto asserts that since three of the party-defendants are not members of his family the ground relied upon by Hiyas in its Motion to Dismiss is inapplicable and unavailable. Alberto also prayed that

defendants be declared in default for their failure to file their answer on time.[6]

Petitioner filed its Reply to the Comment with Opposition to the Motion to Strike and to Declare Defendants in Default.[7] Private respondent, in turn, filed his Rejoinder.[8]

On November 8, 2001, the RTC issued the first of its assailed Orders denying the Motion to Dismiss, thus:

> The court agrees with plaintiff that earnest efforts towards a compromise is not required before the filing of the instant case considering that the above-entitled case involves parties who are strangers to the family. As aptly pointed out in the cases cited by plaintiff, Magbaleta v. G[o]nong, L-44903, April 25, 1977 and Mendez v. [B]iangon, L-32159, October 28, 1977, if one of the parties is a stranger, failure to allege in the complaint that earnest efforts towards a compromise had been made by plaintiff before filing the complaint, is not a ground for motion to dismiss.
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> Insofar as plaintiff's prayer for declaration of default against defendants, the same is meritorious only with respect to defendants Remedios Moreno and the Register of Deeds of Kaloocan City. A declaration of default against defendant bank is not proper considering that the filing of the Motion to Dismiss by said defendant operates to stop the running of the period within which to file the required Answer.[9]

Petitioner filed a Motion for Partial Reconsideration.[10] Private respondent filed his Comment,[11] after which petitioner filed its Reply.[12] Thereafter, private respondent filed his Rejoinder.[13]

On May 7, 2002, the RTC issued the second assailed Order denying petitioner's Motion for Partial Reconsideration. The trial court ruled:

> Reiterating the resolution of the court, dated November 8, 2001, considering that the above-entitled case involves parties who are strangers to the family, failure to allege in the complaint that earnest efforts towards a compromise were made by plaintiff, is not a ground for a Motion to Dismiss.
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> Additionally, the court agrees with plaintiff that inasmuch as it is defendant Remedios Moreno who stands to be benefited by Art. 151 of the Family Code, being a member of the same family as that of plaintiff, only she may invoke said Art. 151.[14]
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> x x x

Hence, the instant Petition for *Certiorari* on the following grounds:

> I. Public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he ruled that lack of earnest efforts toward a compromise is not a ground for a motion to dismiss in suits between husband and wife when other parties who are strangers to the family are involved in the suit. Corollarily,

public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he applied the decision in the case of *Magbaleta v. Gonong* instead of the ruling in the case of *De Guzman v. Genato*.

II. Public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he ruled that a party who is a stranger to the family of the litigants could not invoke lack of earnest efforts toward a compromise as a ground for the dismissal of the complaint.[15]

At the outset, the Court notes that the instant Petition for *Certiorari* should have been filed with the Court of Appeals (CA) and not with this Court pursuant to the doctrine of hierarchy of courts. Reiterating the established policy for the strict observance of this doctrine, this Court held in Heirs of *Bertuldo Hinog v. Melicor*[16] that:

> Although the Supreme Court, Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. As we stated in *People v. Cuaresma*:
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> > This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.
>
> The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.

> Thus, this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari, calling for the exercise of its primary jurisdiction. Exceptional and compelling circumstances were held present in the following cases: (a) *Chavez vs. Romulo* on citizens' right to bear arms; (b) *Government of the United States of America vs. Purganan* on bail in extradition proceedings; (c) *Commission on Elections vs. Quijano-Padilla* on government contract involving modernization and computerization of voters' registration list; (d) *Buklod ng Kawaning EIIB vs. Zamora* on status and existence of a public office; and (e) *Fortich vs. Corona* on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.[17]

In the present case, petitioner failed to advance a satisfactory explanation as to its failure to comply with the principle of judicial hierarchy. There is no reason why the instant petition could not have been brought before the CA. On this basis, the instant petition should be dismissed.

And even if this Court passes upon the substantial issues raised by petitioner, the instant petition likewise fails for lack of merit.

Restating its arguments in its Motion for Partial Reconsideration, petitioner argues that what is applicable to the present case is the Court's decision in *De Guzman v. Genato*[18] and not in *Magbaleta v. Gonong*,[19] the former being a case involving a husband and wife while the latter is between brothers.

The Court is not persuaded.

Article 151 of the Family Code provides as follows:

> No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
>
> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Article 222 of the Civil Code from which Article 151 of the Family Code was taken, essentially contains the same provisions, to wit:

> No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035.[20]

The Code Commission that drafted Article 222 of the Civil Code from which Article 151 of the Family Code was taken explains: