

## THIRD DIVISION

[ G.R. NO. 153785, August 03, 2006 ]

**VERONIQUE T. HUIBONHOA, PETITIONER, ANGEL D. CONCEPCION, AND HON. RAYMUNDO Z. ANNANG, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF CABANATUAN CITY, BRANCH 86, RESPONDENTS.**

### R E S O L U T I O N

#### **TINGA J.:**

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision of the Court of Appeals (CA) in CA-G.R. SP No. 65718 promulgated on March 12, 2002 and its Resolution dated May 27, 2002, denying petitioner's motion for reconsideration of said Decision. The CA Decision denied the petition for certiorari filed by Veronique T. Huibonhoa, herein petitioner, which assailed the Orders dated July 13, 2001 and July 17, 2001 issued by Judge Raymundo Annang in his capacity as Acting Executive Judge of the Regional Trial Court (RTC) of Cabanatuan City.

The instant petition stemmed from a complaint for accounting and damages filed by respondent Angel D. Concepcion, Sr. against petitioner Veronique T. Huibonhoa. The complaint was filed with the RTC of Cabanatuan City on July 13, 2001 and prayed for the issuance of a preliminary injunction and preliminary mandatory injunction to immediately restrain Huibonhoa from performing her job as manager of Poulex Supermarket, among others. On the same day the complaint was filed, Judge Annang issued a temporary restraining order (TRO) effective for seventy-two (72) hours. The pertinent portion of the July 13, 2001 Order reads:

WHEREFORE, premises considered, temporary restraining order is hereby issued effective for seventy two hours from this order restraining and prohibiting defendant Veronique T. Huibonhoa from occupying and performing her position as Manager of the Poulex Supermarket and from suppressing, concealing and falsifying the records; and, further, said defendant is hereby ordered to submit formal turn-over of all cash and other cash items and all management and accounting records accruing for the business operation of the [sic] Poulex Supermarket for the period of, from November, 2000 up to the present. Further, defendant Sphinx Security Agency is hereby ordered to allow the plaintiff or his authorized representative/s to enter the [sic] Poulex Supermarket as Director of the CHAS, Inc., among others, until further order from this Court. Likewise, Sphinx Security Agency is hereby restrained from interfering and/or preventing the implementation of the orders of Angel D. Concepcion, Sr. in his capacity as Chairman-President of CHAS, Inc.<sup>[1]</sup>

On July 16, 2001, Huibonhoa, along with fellow stockholders of CHAS, Inc., CHAS Enterprise Corporation and CHAS Realty and Development Corporation, filed an

intra-corporate and derivative suit and complaint for injunction with a prayer for temporary restraining order and/or writ of preliminary injunction to prevent respondent Concepcion, Sr. and his agents from interfering with the management and operations of the Poulex Supermarket. The complaint was docketed as Civil Case No. 4068-AF.

On July 17, 2001, Huibonhoa filed an Urgent Manifestation and Motion Ex Abundante Ad Cautelam, seeking the issuance of an order certifying the expiration of the TRO. Thus, Judge Annang issued on the same day an order declaring the expiration of the temporary restraining order but at the same time directing the continuous closure of the supermarket. The July 17, 2001 Order reads in part:

For being meritorious, it is hereby declared that the seventy-two (72) hour TRO effective for only seventy-two hours from its issuance has already expired on July 16, 2001 at 5:00 p.m.

Considering the fact that the [sic] Poulex Supermarket had already been padlocked on July 16, 2001 after 5:00 P.M. according to the said motion and manifestation of defendant Veronique T. Huibonhoa, the same should remain closed in the interest of justice and in order not to create further confusion. Anyway, this case will be raffled tomorrow, July 18, 2001 at 10:00 A.M. in accordance with the Rules.<sup>[2]</sup>

On July 18, 2001, respondent Concepcion's complaint for accounting and damages, docketed as Civil Case No. 4065, was raffled to Branch 28 of the RTC-Cabanatuan City, the branch designated to decide cases formerly cognizable by the Securities and Exchange Commission.

On July 20, 2001, Huibonhoa filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 65718. The petition sought to annul the July 13 and July 17 Orders of Judge Annang for having been issued with grave abuse of discretion amounting to lack and/or excess of jurisdiction. Huibonhoa's prayer for the issuance of a temporary restraining order was granted in a Resolution issued on July 23, 2001. The CA Resolution enjoined respondents from implementing and/or enforcing the assailed orders of Judge Annang, including but not limited to the prevention of the breaking of the padlock and reopening of Poulex Supermarket, and interference by respondent Concepcion and his agents with the operations of the supermarket.

On March 12, 2004, the Court of Appeals dismissed Huibonhoa's petition for certiorari assailing the twin orders of Judge Annang on the grounds of pre-maturity and forum shopping. Huibonhoa moved for its reconsideration but in the Resolution issued on May 27, 2002, the Court of Appeals denied her motion.

Hence, Huibonhoa filed the instant petition for review on certiorari imputing the following errors to the Court of Appeals:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE PETITION ON THE GROUNDS THAT: (A) PETITIONER FAILED TO MOVE FOR THE DISSOLUTION OF THE TEMPORARY RESTRAINING ORDER WITH THE TRIAL COURT UNDER SECTION 6, RULE 58 OF THE RULES OF

COURT; AND THAT (B) PETITIONER IS GUILTY OF FORUM SHOPPING, CONSIDERING THAT:

A. SECTION 6, RULE 58 OF THE RULES OF COURT IS NOT APPLICABLE TO THE CASE.

B. THE FILING OF THE COMPLAINT IN CIVIL CASE NO. 4068-AF COULD NOT, AS IT DID NOT, CONSTITUTE FORUM SHOPPING.

C. THE FILING OF THE PETITION FOR CERTIORARI COULD NOT, AND DID NOT CONSTITUTE FORUM SHOPPING.

## II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT ISSUING THE WRIT OF CERTIORARI TO ANNUL THE 13 JULY 2001 AND 17 JULY 2001 ORDERS OF THE TRIAL COURT.<sup>[3]</sup>

After respondent Concepcion and petitioner Huibonhoa filed a Comment and a Reply, respectively, the Court issued a Resolution on September 28, 2005, directing the former to show cause why the instant petition should not be dismissed for having become moot and academic. The resolution of the petition is ultimately hinged on the propriety of the issuance of the 72-hour restraining order, which should have expired *ipso jure* on the twentieth day, a judicial declaration to that effect not being necessary. Thus, the filing of the instant petition almost a year after the issuance of the TRO would be unnecessary.

Huibonhoa submitted a Compliance with Motion to Clarify dated October 25, 2005, conveying the following: (1) Huibonhoa had proposed a settlement for the parties to dismiss their respective claims against each other; (2) upon a Joint Motion to Dismiss by both petitioner Huibonhoa and respondent Concepcion, the trial court issued an order dismissing Civil Case No. 4065, the complaint for accounting and damages filed by respondent Concepcion; (3) notwithstanding the dismissal of the pending cases, the parties did not agree to cause the dismissal of the instant petition; (4) petitioner Huibonhoa is still seeking the reversal of the CA Decision insofar as it ruled that she was guilty of forum shopping and a clarification on whether her counsel will be exposed to administrative liability should the instant petition be dismissed.<sup>[4]</sup>

In dismissing the petition for certiorari, the Court of Appeals found petitioner Huibonhoa guilty of forum shopping when she filed Civil Case No. 4068-AF with the trial court and, thereafter, a petition for certiorari, docketed as CA-G.R. SP No. 65718, with the Court of Appeals. The appellate court believed that the two actions had the same object of nullifying the TRO issued by Judge Annang in Civil Case No. 4065. Petitioner Huibonhoa urges the Court to evaluate the Court of Appeals' finding that she engaged in forum shopping, especially that the appellate court characterized said act as "deliberate." She stresses that said finding and the accompanying characterization have exposed her and her counsel to sanctions.<sup>[5]</sup>

In her defense, Huibonhoa insists that Civil Case No. 4068-AF was filed not for the purpose of defeating the TRO issued by Judge Annang on July 13, 2001 but on account of the acts of disturbance and attempted forcible take-over by respondent