

## SECOND DIVISION

[ G.R. NO. 161309, February 23, 2005 ]

**DOUGLAS LU YM, PETITIONER, VS. GERTRUDES NABUA, GEORGE N. LU, ALEX N. LU, CAYETANO N. LU, JR., JULIETA N. LU AND BERNADITA N. LU, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

One of the innovations introduced by the 1997 Rules of Civil Procedure is that the resolution of a motion to dismiss shall state clearly and distinctly the reasons therefor. In the case at bar, the Court is provided with the opportunity and task to elucidate on the meaning and application of the new requirement.

Before us is a *Petition for Review on Certiorari*<sup>[1]</sup> dated February 11, 2004 filed by Douglas Lu Ym assailing the Court of Appeals' *Decision*<sup>[2]</sup> and *Resolution*<sup>[3]</sup> respectively dated August 20, 2003 and December 16, 2003. The questioned Decision dismissed petitioner's *Petition*<sup>[4]</sup> and affirmed the trial court's orders dated September 16, 2002<sup>[5]</sup> and October 16, 2002<sup>[6]</sup> which respectively denied petitioner's *Omnibus Motion to Dismiss the Amended Complaint*<sup>[7]</sup> and *Motion for Reconsideration*.<sup>[8]</sup>

The facts<sup>[9]</sup> as succinctly summarized by the Court of Appeals are as follows:

The instant petition stemmed from an Amended Complaint filed by the private respondents against the petitioner, for Accounting with TRO and Injunction, on May 15, 2002.

On August 16, 2002, the petitioner filed an Omnibus Motion to Dismiss the Amended Complaint based on the following grounds:

- A. *Plaintiffs' claims are barred by a prior judgment or by the statute of limitations {Rule 16, Sec. 1 (f)}.*
- B. *Plaintiffs have no legal capacity to sue and/or do not have a cause of action {Rule 16, Sec. 1(d) and/or 1(g)}.*
- C. *Fraud and equity.*
- D. *Docket fees not deemed paid, therefore, a condition precedent for filing the claim has not been complied with {Rule 16, Sec. 1(j)}.*

On August 29, 2002, the private respondents filed their Opposition to the Omnibus Motion to Dismiss Amended Complaint alleging the following:

1. *Plaintiffs' claims are not barred by prior judgment nor by statute of limitations;*
2. *Plaintiffs have the legal capacity to sue and have valid cause of action;*
3. *Docket fees have been paid by plaintiffs.*

After the filing of petitioner's Reply to the Opposition to the Motion to Dismiss Amended Complaint, the incident was submitted for resolution pursuant to the August 30, 2002 Order of the court *a quo*.

In resolving the Omnibus Motion to Dismiss the Amended Complaint, the lower court ruled as follows:

*There are justiciable questions raised in the pleadings of the herein parties which are proper subject of a full blown trial. The Omnibus Motion to Dismiss Amended Complaint is hereby denied.*

*SO ORDERED.*

The Motion for Reconsideration filed by the petitioner was resolved by the trial court in this wise:

*An attempt to discuss on the merit of the case might be interpreted as prejudgment. It is the better part of discretion, for the Court to deny the Motion Reconsideration of the order denying the Motion to Dismiss.*

*WHEREFORE, the Motion for Reconsideration is hereby denied.*

*SO ORDERED.*

Petitioner filed a *Petition for Certiorari and Prohibition Under Rule 65 With Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction*, contending that the trial court committed grave abuse of discretion in denying his motion to dismiss. The appellate court dismissed the petition holding that the assailed orders may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. Thus, the proper recourse was for petitioner to have filed an answer and proceeded to trial since the issues raised in his motion to dismiss require presentation of evidence *aliunde*. An exception is when the trial court acts with grave abuse of discretion in denying the motion to dismiss, in which case a petition for certiorari under Rule 65 may be proper. This, the trial court did not commit. Moreover, the Court of Appeals declared that although the assailed orders were briefly phrased, the trial court complied with the requirements set forth under Rule 16 of the 1997 Rules of Civil Procedure (Rules) on the resolution of motions to dismiss.

With the denial of his *Motion for Reconsideration*, petitioner is now before this Court seeking a review of the appellate court's *Decision* and *Resolution* claiming that the denial of his motion to dismiss was a disguised deferment of the resolution of the said motion and that the trial court failed to discuss and address each of the

grounds cited therein contrary to the express mandate of Section 3, Rule 16 of the Rules. Petitioner further argues that the trial court committed grave abuse of discretion in refusing to address his grounds to dismiss and thereby postponing their proper ventilation until trial. According to him, Section 2 of the Rules provides that all available evidence on the question of fact involved in the motion to dismiss may be presented including evidence *aliunde*. Thus, the grounds for dismissal raised in his motion to dismiss could have been resolved in a hearing prior to a full-blown trial.

Even assuming that the presentation of evidence *aliunde* is not allowed, petitioner contends that the trial court and the Court of Appeals both erred in refusing to rule on the other grounds to dismiss which do not require presentation of evidence *aliunde* such as failure of the *Amended Complaint* to state a cause of action/the application of the “clean hands” doctrine, and the trial court’s lack of jurisdiction for failure of the respondents to pay the proper filing and docket fees.

Petitioner also avers that there are other grounds to dismiss the case such as *res judicata*, respondents’ lack of capacity to sue/waiver and prescription, all of which are allegedly supported by evidence on record. It is petitioner’s theory that the *Amended Complaint* is a collateral attack on the duly probated and fully implemented *Last Will and Testament of Cayetano Ludo*.<sup>[10]</sup> According to petitioner, Cayetano Ludo’s estate had been distributed by virtue of a *Project of Partition*<sup>[11]</sup> approved by the estate court in its *Order*<sup>[12]</sup> dated January 18, 1984 in Sp. Proc. No. 167-CEB. There are, between the estate case and Civil Case No. 27717, identity of parties, subject matter and cause of action. Hence, any further issue regarding the recovery of respondents’ supposed shares in Mr. Ludo’s estate through Civil Case No. 27717 is precluded by the estate court’s final and fully executed orders.

Petitioner moreover contends that respondents George, Alex, Cayetano, Jr., Julieta and Bernadita Lu have lost standing to sue as a result of the document entitled *Assignment of Rights and Interests to the Inheritance from Don Cayetano Ludo*<sup>[13]</sup> by which they supposedly conveyed their interest to their inheritance to Ludo and Lu Ym Corporation. As regards respondent Gertrudes Nabua, petitioner alleges that the *Amended Complaint* fails to plead his actual contribution to the properties acquired by Mr. Ludo as required by Article 148 of the Family Code. Hence, she too lacks capacity to sue.

Finally, petitioner claims that the case is already barred by prescription and laches. Petitioner asserts that nearly 20 years had passed since (i) Mr. Ludo passed away on April 14, 1983; (ii) petitioner and respondents George, Alex, Cayetano, Jr., Julieta and Bernadita Lu executed the *Project of Partition* dated November 25, 1983; (iii) respondents George, Alex, Cayetano, Jr., Julieta and Bernadita Lu executed the *Assignment of Rights and Interests to the Inheritance from Don Cayetano Ludo* dated February 22, 1984; and (iv) the estate court issued its (a) July 6, 1983 *Order*<sup>[14]</sup> admitting Mr. Ludo’s Will to probate; (b) January 18, 1984 *Order*<sup>[15]</sup> approving the *Project of Partition* and terminating the estate case; and (c) May 18, 1984 *Order*<sup>[16]</sup> discharging petitioner and Silvano Ludo from all their duties, liabilities and responsibilities as executors of Mr. Ludo’s estate.

In their *Comment*<sup>[17]</sup> dated May 28, 2004, respondents contend that the trial court

did not defer the resolution of petitioner's motion to dismiss. On the contrary, the trial court denied the motion considering that there are justiciable questions raised in the pleadings of the parties which require a full-blown trial. According to respondents, the appellate court properly considered this a sufficient disposition of the motion because the Rules do not require courts at all times to cite the law and the facts upon which a resolution is based, it being sufficient, in case of resolutions that do not finally dispose of a case such as the denial of a motion to dismiss, to cite the legal basis therefor.

Moreover, the estate proceedings allegedly do not bar the instant case. Having hypothetically admitted that Mr. Ludo's Will was simulated, respondents contend that petitioner cannot invoke the finality of the probate proceedings as a shield against the instant case because the simulation and fraud attendant in the execution of the Will are personal to petitioner. Besides, the properties included in Mr. Ludo's Will are not the same properties sought to be accounted in the instant case. Allegedly, the properties subject of this case are those which petitioner excluded from Mr. Ludo's Will during the probate proceedings, whose titles and evidence of ownership were earlier transferred to petitioner for him to hold in trust for respondents.

Respondents contend that the issue as to respondent Gertrudes Nabua's shares in Mr. Ludo's properties as the latter's common law wife, raised as a specific allegation in the *Amended Complaint*, has been joined by petitioner's denial. Hence, a hearing on this matter is necessary.

Moreover, respondents insist that the trial court correctly declared that there are justiciable questions necessitating trial on the merits because the *Assignment of Rights and Interests to the Inheritance from Don Cayetano Ludo* dated February 22, 1984, by which respondents George, Alex, Cayetano, Jr., Julieta and Bernadita Lu allegedly transferred their interest in Mr. Ludo's estate to Ludo and Lu Ym Corporation, was allegedly not offered and admitted in evidence. Hence, any conclusion drawn from this document would be unwarranted.

Finally, respondents contend that petitioner never raised the issues of prescription and laches in his motion to dismiss.

In his *Reply*<sup>[18]</sup> dated September 30, 2004, petitioner reiterates his submissions.

At issue is whether the Court of Appeals erred in dismissing the petition for certiorari and in holding that the trial court did not commit grave abuse of discretion in denying petitioner's motion to dismiss.

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess

of jurisdiction.<sup>[19]</sup>

At the core of the present petition is the question of whether the trial court's denial of petitioner's motion to dismiss on the ground that "[T]here are justiciable questions raised in the pleadings of the herein parties which are proper subject of a full blown trial"<sup>[20]</sup> contravenes Sec. 3, Rule 16 of the Rules and constitutes grave abuse of discretion on the part of the trial court.

Sec. 3, Rule 16 of the Rules provides:

*Sec. 3. Resolution of motion.*—After the hearing, the court may dismiss the action or claim, deny the motion or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor.

Under this provision, there are three (3) courses of action which the trial court may take in resolving a motion to dismiss, i.e., to grant, to deny, or to allow amendment of the pleading. Deferment of the resolution of a motion to dismiss if the ground relied upon is not indubitable is now disallowed in view of the provision<sup>[21]</sup> requiring presentation of all available arguments and evidence. Thus, there is no longer any need to defer action until the trial as the evidence presented, and such additional evidence as the trial court may require, would already enable the trial court to rule upon the dubitability of the ground alleged.<sup>[22]</sup>

Further, it is now specifically required that the resolution on the motion shall clearly and distinctly state the reasons therefor. This proscribes the common practice of perfunctorily dismissing the motion for "lack of merit." Such cavalier dispositions can often pose difficulty and misunderstanding on the part of the aggrieved party in taking recourse therefrom and likewise on the higher court called upon to resolve the same, usually on certiorari.<sup>[23]</sup>

The questioned order of the trial court denying the motion to dismiss with a mere statement that there are justiciable questions which require a full blown trial falls short of the requirement of Rule 16 set forth above. Owing to the terseness of its expressed justification, the challenged order ironically suffers from undefined breadth which is a hallmark of imprecision. With its unspecific and amorphous thrust, the issuance is inappropriate to the grounds detailed in the motion to dismiss.

While the requirement to state clearly and distinctly the reasons for the trial court's resolutive order under Sec. 3, Rule 16 of the Rules does call for a liberal interpretation, especially since jurisprudence dictates that it is decisions on cases submitted for decision that are subject to the stringent requirement of specificity of rulings under Sec. 1, Rule 36<sup>[24]</sup> of the Rules, the trial court's order in this case leaves too much to the imagination.