

THIRD DIVISION

[G.R. No. 153886, January 14, 2004]

MEL V. VELARDE, PETITIONER, VS. LOPEZ, INC., RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court, which seeks to review the decision^[1] and resolution^[2] of the Court of Appeals, raises the issue of whether the defendant in a complaint for collection of sum of money can raise a counterclaim for retirement benefits, unpaid salaries and incentives, and other benefits arising from services rendered by him in a subsidiary of the plaintiff corporation.

On January 6, 1997, Eugenio Lopez Jr., then President of respondent Lopez, Inc., as LENDER, and petitioner Mel Velarde, then General Manager of Sky Vision Corporation (Sky Vision), a subsidiary of respondent, as BORROWER, forged a notarized loan agreement covering the amount of ten million (P10,000,000.00) pesos. The agreement expressly provided for, among other things, the manner of payment and the circumstances constituting default which would give the lender the right to declare the loan together with accrued interest immediately due and payable.^[3]

Sec. 6 of the agreement detailed what constituted an "event of default" as follows:

Section 6

Each of the following events and occurrences shall constitute an Event of Default ("Event of Default") under this Agreement:

- a) the BORROWER fails to make payment when due and payable of any amount he is obligated to pay under this Agreement;
- b) the BORROWER fails to mortgage in favor of the LENDER real property sufficient to cover the amount of the LOAN.^[4]

As petitioner failed to pay the installments as they became due, respondent, apparently in answer to a proposal of petitioner respecting the settlement of the loan, advised him by letter dated July 15, 1998 that he may use his retirement benefits in Sky Vision in partial settlement of his loan after he settles his accountabilities to the latter and gives his written instructions to it (Sky Vision).^[5]

Petitioner protested the computation indicated in the July 15, 1998 letter, he asserting that the imputed unliquidated advances from Sky Vision had already been

properly liquidated.^[6]

On August 18, 1998, respondent filed a complaint for collection of sum of money with damages at the Regional Trial Court (RTC) of Pasig City against petitioner, alleging that petitioner violated the above-quoted Section 6 of the loan agreement as he failed to put up the needed collateral for the loan and pay the installments as they became due, and that despite his receipt of letters of demand dated December 1, 1997^[7] and January 13, 1998,^[8] he refused to pay.

In his answer, petitioner alleged that the loan agreement did not reflect his true agreement with respondent, it being merely a "cover document" to evidence the reward to him of ten million pesos (P10,000,000.00) for his loyalty and excellent performance as General Manager of Sky Vision and that the payment, if any was expected, was in the form of continued service; and that it was when he was compelled by respondent to retire that the form of payment agreed upon was rendered impossible, prompting the late Eugenio Lopez, Jr. to agree that his retirement benefits from Sky Vision would instead be applied to the loan.^[9]

By way of compulsory counterclaim, petitioner claimed that he was entitled to retirement benefits from Sky Vision in the amount of P98,280,000.00, unpaid salaries in the amount of P2,740,000.00, unpaid incentives in the amount of P500,000, unpaid share from the "net income of Plaintiff corporation," equity in his service vehicle in the amount of P1,500,000, reasonable return on the stock ownership plan for services rendered as General Manager, and moral damages and attorney's fees.^[10]

Petitioner thus prayed for the dismissal of the complaint and the award of the following sums of money in the form of compulsory counterclaims:

1. P103,020,000.00, PLUS the value of Defendant's stock options and unpaid share from the net income with Plaintiff corporation (to be computed) as actual damages;
2. P15,000,000.00, as moral damages; and
3. P1,500,000.00, as attorney's fees plus appearance fees and the costs of suit.^[11]

Respondent filed a manifestation and a motion to dismiss the counterclaim for want of jurisdiction, which drew petitioner to assert in his comment and opposition thereto that the veil of corporate fiction must be pierced to hold respondent liable for his counterclaims.

By Order of January 3, 2000, Branch 155 of the RTC of Pasig denied respondent's motion to dismiss the counterclaim on the following premises: A counterclaim being essentially a complaint, the principle that a motion to dismiss hypothetically admits the allegations of the complaint is applicable; the counterclaim is compulsory, hence, within its jurisdiction; and there is identity of interest between respondent and Sky Vision to merit the piercing of the veil of corporate fiction.^[12]

Respondent's motion for reconsideration of the trial court's Order of January 3, 2000

having been denied, it filed a Petition for Certiorari at the Court of Appeals which held that respondent is not the real party-in-interest on the counterclaim and that there was failure to show the presence of any of the circumstances to justify the application of the principle of "piercing the veil of corporate fiction." The Orders of the trial court were thus set aside and the counterclaims of petitioner were accordingly dismissed.^[13]

The Court of Appeals having denied petitioner's motion for reconsideration, the instant Petition for Review was filed which assigns the following errors:

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RTC BRANCH 155 ALLEGEDLY ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING THE ORDERS DATED JANUARY 3, 2000 AND OCTOBER 9, 2000 CONSIDERING THAT THE GROUNDS RAISED BY RESPONDENT LOPEZ, INC. IN ITS PETITION FOR CERTIORARI INVOLVED MERE ERRORS OF JUDGMENT AND NOT ERRORS OF JURISDICTION.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT LOPEZ, INC. IS NOT THE REAL PARTY-IN-INTEREST AS PARTY-DEFENDANT ON THE COUNTERCLAIMS OF PETITIONER VELARDE CONSIDERING THAT THE FILING OF RESPONDENT LOPEZ, INC.'S MANIFESTATION AND MOTION TO DISMISS COUNTERCLAIM HAD THE EFFECT OF HYPOTHETICALLY ADMITTING THE TRUTH OF THE MATERIAL AVERMENTS OF THE ANSWER, WHICH MATERIAL AVERMENTS SUFFICIENTLY ALLEGED THAT RESPONDENT LOPEZ, INC. COMMITTED ACTS WHICH SHOW THAT ITS SUBSIDIARY, SKY VISION, WAS A MERE BUSINESS CONDUIT OR ALTER EGO OF THE FORMER, THUS, JUSTIFYING THE PIERCING OF THE VEIL OF CORPORATE FICTION.

III.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE COUNTERCLAIMS OF PETITIONER VELARDE ARE NOT COMPULSORY.^[14]

While petitioner correctly invokes the ruling in *Atienza v. Court of Appeals*^[15] to postulate that not every denial of a motion to dismiss can be corrected by certiorari under Rule 65 and that, as a general rule, the remedy from such denial is to appeal in due course after a decision has been rendered on the merits, there are exceptions thereto, as when the court in denying the motion to dismiss acted without or in excess of jurisdiction or with patent grave abuse of discretion,^[16] or when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief,^[17] or when the ground for the motion to dismiss is improper venue,^[18] res judicata,^[19] or lack of jurisdiction^[20] as in the case at bar.

Early on, it bears noting, when the case was still with the trial court, respondent filed a motion to dismiss the counterclaims to assail its jurisdiction, respondent

asserting that the counterclaims, being money claims arising from a labor relationship, are within the exclusive competence of the National Labor Relations Commission.^[21] On the other hand, petitioner alleged that due to the tortuous manner he was coerced into retirement, it is the Regional Trial Courts (RTCs) and not the National Labor Relations Commission which has exclusive jurisdiction over his counterclaims.

In determining which has jurisdiction over a case, the averments of the complaint/counterclaim, taken as a whole, are considered.^[22] In his counterclaim, petitioner alleged that:

X X X

29. It was only on July 15, 1998 that Lopez, Inc. submitted a computation of the retirement benefit due to the Defendant. (Copy attached as ANNEX 4). Immediately after receiving this computation, Defendant immediately informed Plaintiff of the erroneous figure used as salary in the computation of benefits. This was done in a telephone conversation with a certain Atty. Amina Amado of Lopez, Inc.

29.1 The Defendant also informed her that the so called "unliquidated advances amounting to P422,922.87 since 1995" had all been properly liquidated as reflected in all the reports of the company. The Defendant reminded Atty. Amado of unpaid incentives and salaries for 1997.

29.2 Defendant likewise informed Plaintiff that the one month for every year of service as a basis for the computation of the Defendant's retirement benefit is erroneous. This computation is even less than what the rank and file employees get. That CEO's, COO's and senior executives of the level of ABS-CBN, Sky Vision, Benpres, Meralco and other Lopez companies had and have received a lot more than the regular rank and file employees. All these retired executives and records can be summoned for verification.

29.3 The circumstances of the retirement of the Defendant are not those for a simple and ordinary rank and file employee. Mr. Lopez, III admitted that he and the Defendant have had problems which accumulated through time and that they chose to part ways in a manner that was dignified for both of them. Treating the Defendant as a rank and file employee is hardly dignified not just to the Defendant but also to the Lopezes whose existing executives serving them will draw lessons from the Defendant's experience.

29.4 These circumstances hardly reflect a simple retirement. The Defendant, who is known in the local and international media community, is hardly considered a rank and file employee. Defendant was a stockholder of the Corporation and a duly-elected member of the Board of Directors. Certain government officials can attest to the sensitivity of issues and matters the Defendant had