

SECOND DIVISION

[G.R. No. 144581, July 05, 2002]

SPOUSES ELANIO C. ONG,[1]

**PETITIONERS, VS. COURT OF APPEALS AND EMMA A. GARAMAY
ONG, ASSISTED BY HER HUSBAND ROBERTO C. ONG,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This petition for review on *certiorari* stems from a complaint for ejectment and damages filed on 30 August 1994 by plaintiffs Emma A. Garamay Ong and her husband Roberto C. Ong (respondents herein) against Elanio C. Ong and spouse (petitioners herein) with the Municipal Trial Court in Cities (MTCC)-Br. 4, Olongapo City, docketed as Civil Case No. 3291. The complaint alleged that Emma A. Garamay was the registered owner of a parcel of land together with the building thereon located at No. 22 Barretto St., East Bajac-Bajac, Olongapo City, covered by TCT No. P-584; in the early part of 1975 she and her husband, brother of defendant Elanio C. Ong, allowed Elanio and his spouse (petitioners) to occupy the ground floor of the building for their glass service business on the condition that they would pay the realty taxes during the time that they would be using the property; and, in the early part of November 1993 when plaintiffs needed the property, Emma demanded the return of the premises but defendants sternly refused.

Defendant Elanio C. Ong, in his answer,^[2] denied that Emma A. Garamay was the true and registered owner of the land covered by TCT No. P-584. He claimed that the disputed lot and building were not merely his business address but also the residence of his family from the time they were bought by his father Ong Tiong in 1974. Since both he and his brother were Chinese citizens, the property was placed in trust under the name of Emma A. Garamay who was then the live-in partner, now wife, of his brother Roberto;^[3] hence, the land and improvements thereon belonged to him and his brother Roberto.

As affirmative defenses, Elanio alleged that his action for reconveyance and partition in the Regional Trial Court of Olongapo City, docketed as Civil Case No. 268-0-94, was filed on 25 July 1994, or even before the institution of the ejectment case involving the same property, against herein private respondents. He further argued that the pendency of this action constituted *litis pendentia* to warrant the dismissal of the ejectment complaint filed against him in the MTCC-Br. 4, Olongapo City. He also claims that the complaint did not allege earnest efforts to compromise among members of the family as required by Art. 151 of the *Family Code*, and as were no such earnest efforts actually exerted the complaint lacked cause of action. He finally asserted his right as co-owner of the property so that he should not be made to pay rentals. He included in

his *Answer* a counterclaim for damages, attorney's fees and costs as he claimed that the suit filed against him was baseless.

On 3 October 1994, after the preliminary conference, the trial court issued a pre-trial order which was later amended on 21 October 1994. Plaintiffs and defendants filed their position papers and affidavits on 18 and 24 October 1994, respectively. The position paper of defendants, significantly, objected to plaintiffs' evidence purportedly proving that earnest efforts had been exerted to settle the case although in vain, and for the first time called attention to the absence of a certification of non-forum shopping in the ejectment complaint in violation of *Administrative Circular No. 04-94*.

On 22 November 1994, apparently to obviate the objection of defendants, counsel for plaintiffs filed a motion with leave of court to admit certification of non-forum shopping alleging that his secretary had inadvertently overlooked the requirement and attaching a certification dated 17 October 1994 for compliance. On 7 December 1994 defendants opposed the admission of the certification and moved for the disqualification of Judge Cesar V. Bada of MTCC-Br. 4, Olongapo City.

On 8 December 1994 Judge Bada inhibited himself from further hearing the case, which was eventually transferred to MTCC-Br. 5 presided over by Judge Eduardo D. Alfonso, Jr. who on 13 March 1995 admitted the certification and condoned the omission on the ground that plaintiffs were not anyway guilty of actual forum shopping. The motion for reconsideration was denied.

On 24 August 1995 the MTCC decided the ejectment case in favor of plaintiff-spouses Emma A. Garamay Ong and Roberto C. Ong (private respondents). Despite objection from defendants, the MTCC considered evidence showing prior earnest but futile efforts among members of the same family to settle the case amicably. It rejected the argument of *litis pendentia* between the ejectment case and the action for reconveyance and partition on the ground that disparate causes of action were involved in these cases.

On the merits, the MTCC found preponderance of evidence in favor of plaintiffs and ordered defendants Elanio C. Ong and spouse to vacate the ground floor occupied by them and to restore possession thereof peacefully to plaintiffs in addition to monetary awards to them of ₱5,000.00 per month starting January 1994 as rent for the use and occupancy of the premises until defendants could vacate the premises, ₱20,000.00 for attorney's fees, and the costs of suit.

Defendants Elanio and his wife appealed to the Regional Trial Court, docketed as Civil Case No. 436-0-95. Upon their motion and to avoid conflicting decisions, the presiding judge of RTC-Br. 75 ordered the consolidation of Civil Case No. 436-0-95 with the action for reconveyance and partition (Civil Case No. 268-0-94) earlier filed by Elanio and assigned to RTC-Br. 72 presided over by Judge Eliodoro C. Ubiadas. There was no objection to the consolidation.

On 5 October 1998 the RTC rendered its *Decision* in Civil Case No. 268-0-94 ordering the reconveyance and partition of the property as well as the improvements thereon between the brothers Elanio and Roberto Ong, one-half each, and to pay the Spouses Elanio Ong as plaintiffs therein the amounts of ₱100,000.00 for moral damages, ₱20,000.00 for attorney's fees, and ₱10,000.00 as litigation expenses. The RTC found that respondent Emma Garamay in whose name the property was registered only held it in trust for brothers Elanio and Roberto Ong. The spouses Emma and Roberto appealed the decision to the Court of Appeals where the case still awaits disposition.

On 7 October 1998 the RTC-Br. 72, as appellate court in the ejectment case (Civil Case No. 436-0-95), ordered the parties to submit their respective memoranda. Only appellant-spouses Elanio Ong filed their memorandum. The spouses Emma and Roberto Ong did not file any memorandum despite receipt of the court's order directing them to do so.

On 8 December 1998, upon the rationale that the ejectment case on appeal must follow the *Decision* rendered in the case for reconveyance and partition on account of their consolidation, the appellate court (RTC - Br. 72) in the ejectment case reversed the *Decision* of the MTCC and declared Elanio C. Ong and spouse to be entitled to remain in possession of one-half (1/2) of the property subject of litigation and to recover from Emma Garamay Ong and her husband the amounts of ₱100,000.00 for moral damages and ₱50,000.00 for attorney's fees.^[4]

Their motion for reconsideration having been denied, spouses Emma and Roberto Ong filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 54992, assailing the *Decision* of the RTC in the ejectment case on appeal alleging that the trial court failed to anchor its *Decision* on the evidence presented before the MTCC; that the action for reconveyance had prescribed; and that the oral claim could not have defeated Emma's title over the property subject of litigation. On 31 May 2000 the Court of Appeals promulgated its *Decision* reversing that of the RTC and affirming *in toto* the MTCC *Decision* in the ejectment case. Reconsideration of the CA *Decision* was summarily denied. Hence this petition for review on certiorari where Elanio Ong and his wife pray for the reinstatement of the RTC *Decision* rendered in the ejectment case on appeal.

Petitioners Elanio C. Ong and spouse argue before us that the complaint for ejectment before the MTCC of Olongapo City should have been dismissed outright for violation of Art. 151 of the *Family Code* when the complaint failed to allege earnest efforts among members of the same family to compromise the suit and for non-compliance with *Administrative Circular No. 04-94* when the same complaint failed to include or attach a certification of non-forum shopping.^[5] They also assert that the *Decision* in the reconveyance and partition should have been followed by the Court of Appeals in disposing of the ejectment case as was done by the RTC in view of the consolidation of the two (2) cases and the evidence proving that respondent Emma Garamay Ong held title to the disputed property as mere trustee for the brothers Elanio and Roberto. Petitioners assail, finally, the standing of Atty. Isagani Jungco to file the petition for review with the Court of Appeals since he was not and still is not the counsel of record of respondent-spouses Emma Garamay Ong and Roberto C. Ong.

Initially, we note the failure of the courts *a quo* to require the parties to state the name of petitioner Elanio C. Ong's spouse, if not in the title of the complaint,^[6] then in any of their pleadings or in the evidence presented by them. Either the RTC or the MTCC could have ordered the amendment of the complaint for ejectment *motu proprio* or motion at any stage of the action to reflect the name of the wife.^[7] Unfortunately, because the lower courts disregarded this matter, the records are groping for the name of Elanio's spouse as if she were a non-entity in the instant proceedings when on the contrary the judgment herein could be enforceable also against her.

It is also important to point out that the MTCC did not err in admitting plaintiffs Emma and Roberto's evidence purportedly proving earnest efforts towards an amicable settlement among members of the same family despite the objections of defendants

Elanio Ong and spouse. Certainly, the court may admit evidence on a matter not alleged in the pleadings without amendment thereof and even against the objection of the adverse party where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits.^[8] In the instant case, while as a matter of formality the complaint could have been amended to conform to the evidence, we observe that defendants did not suffer impairment of their substantial rights as a result of these circumstances since they were nevertheless given full opportunity, although opting not to make use thereof, to meet and disprove the new situation created by the evidence.

After going through the initial assessments, we rule to grant the petition. It is a matter of record that the ejectment complaint lacks a certification of non-forum shopping and ought to have been dismissed outright for violation of *Administrative Circular No. 04-94*. The rule is crystal clear and plainly unambiguous that the certification is a mandatory part of an initiatory pleading,^[9] i.e., the complaint, and its omission, may be excused only upon manifest equitable grounds proving substantial compliance therewith.^[10] Verily, in those cases in which we tolerated the deficiency, special circumstances or compelling reasons made the strict application of the *Circular* distinctly unjustified.^[11]

In the instant case, however, we find no exceptional matters to justify withholding the rigid requirement of certification of non-forum shopping. For one thing, respondents gave no acceptable reason for their failure to submit the certificate in question. Their counsel of record even proffered the disgraceful and false reason that his hapless secretary had overlooked the certification and failed to attach it to the complaint.^[12] Indeed the unmistakable facts show that the certification could not have been inadvertently left out since it was executed only on 17 October 1994 or long after the filing of the ejectment complaint on 30 August 1994 and only after petitioners called the trial courts attention to the fatal omission. Furthermore, the certification was submitted to the MTCC on 22 November 1994 or more than one (1) year from the early part of November 1993 when respondents first demanded that petitioners vacate the disputed premises. Clearly, respondents' observance of *Administrative Circular No. 04-94* was consummated only after the expiration of the one (1)-year period to commence the ejectment suit counted from the first demand.^[13] Evidently, the reglementary period for filing the complaint for unlawful detainer had passed by then. In *Tomarong v. Lubguban*^[14] where we rejected the plea of "*substantial compliance*" for a certification submitted after the claim had prescribed, we stressed -

x x x x In the instant case, we cannot consider the subsequent filing of the required certification a substantial compliance with the requirements of the Circular, the same having been submitted only after the lapse of eighteen (18) days from the date of filing of the protests. Quite obviously, the reglementary period for filing the protest had, by then, already expired x x x x It should be emphasized that the mere submission of a certification under Administrative Circular No. 04-94 after the filing of a motion to dismiss on the ground of non-compliance thereof does not necessarily operate as a substantial compliance; otherwise, the Circular would lose its value or efficacy.

It bears stressing that the MTCC cannot admit the belated certification on the ground that plaintiffs (respondents) were not anyway guilty of actual forum shopping. The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate,