

## SPECIAL SIXTH DIVISION

[ CA-G.R. SP NO. 125009, May 29, 2014 ]

**DANILO ANGELES, REPRESENTED BY MARIO L. MANUEL,  
PETITIONER, VS. HON. PRIMO G. SIO, JR., PRESIDING JUDGE OF  
REGIONAL TRIAL COURT (RTC), BRANCH 23, CABANATUAN CITY,  
SPOUSES EVANGELINE REGUYAL-LIWAG AND WINTHROP LIWAG  
AND CORAZON R. REGUYAL, RESPONDENTS.**

### DECISION

**CRUZ, R.A. J.:**

#### THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to reverse and set aside the (i) Order dated November 14, 2011<sup>[1]</sup> of the Regional Trial Court (RTC), Branch 23 of Cabanatuan City in Civil Case No. 5799-AF and the (ii) subsequent Order dated April 2, 2012,<sup>[2]</sup> which denied petitioner's motion for reconsideration. The dispositive portion of the Order dated November 14, 2011 reads:

" xxx xxx xx

**WHEREFORE**, defendants-movants "Motion to Set Case for Preliminary Hearing on the Special and Affirmative Defenses with Prayer for Dismissal dated May 22, 2011 is **GRANTED**. The Complaint dated March 27, 2009 is hereby ordered **DISMISSED**.

**SO ORDERED.**

xxx xxx xxx "

#### THE ANTECEDENTS

The case stemmed from a complaint for annulment of deed of sale, cancellation of title, reconveyance and damages filed by Danilo Angeles represented by Cecille Santos, as plaintiff, before the Regional Trial Court (RTC), Branch 23 of Cabanatuan City against Spouses Evangeline Reguyal-Liwag and Winthrop Liwag and Corazon Reguyal and the Registry of Deeds of Cabanatuan City, as defendants. The case was docketed as Civil Case No. 5799-AF.<sup>[3]</sup>

Subsequent to the filing of their answer, defendants filed a Motion to Set Case for Preliminary Hearing on the Special and Affirmative Defenses with Prayer for Dismissal<sup>[4]</sup> alleging that the complaint must be dismissed on the following grounds: failure of the plaintiff to implead his spouse as a party-plaintiff; the complaint is not supported by the required certification against forum-shopping, has prescribed, is barred by the statute of limitations and plaintiff has no cause of action against them.

Plaintiff opposed the motion arguing that misjoinder or non-joinder of parties is not a ground for dismissal; defendants' claim of prescription is without basis; there is a certification against forum shopping duly executed by his authorized representative which includes the authority to sign any and all necessary documents incidental to the filing the action. Moreover, he has ratified his representative's act of signing the certification against forum shopping as evidenced by the Special Power of Attorney (SPA) dated July 12, 2011.<sup>[5]</sup>

On November 14, 2011, the RTC issued an Order dismissing the complaint on the ground of non-compliance with the rules on certification against forum shopping. It ruled that the Special Power of Attorney dated March 10, 2009 issued by the plaintiff in favor of his representative, Cecille Santos, failed to include the authority to sign the verification and certification against forum shopping. Moreover, the submission of a second Special Power of Attorney dated July 12, 2011 did not cure the defect. Hence, the RTC decreed:

" xxx xxx xx

**WHEREFORE**, defendants-movants "Motion to Set Case for Preliminary Hearing on the Special and Affirmative Defenses with Prayer for Dismissal" dated May 22, 2011 is **GRANTED**. The Complaint dated March 27, 2009 is hereby ordered **DISMISSED**.

**SO ORDERED.**

xxx xxx xxx "

Plaintiff filed a motion for reconsideration<sup>[7]</sup> asserting that the Special Power of Attorney dated March 10, 2009 authorizing Cecille Santos to represent him necessarily includes or carries with it the authority to execute a certification against forum shopping, however, the same was denied by the RTC in the Order dated April 2, 2012.<sup>[8]</sup>

Hence, this petition.

### **THE ISSUE BEFORE US**

Plaintiff, as petitioner before Us, submits this lone but all-embracing issue, that:

PUBLIC RESPONDENT RTC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING THE DISMISSAL OF THE CIVIL CASE NO. 5799-AF ON THE GROUND THAT THE COMPLAINT WAS NOT SUPPORTED BY A CERTIFICATION AGAINST FORUM-SHOPPING BECAUSE HIS REPRESENTATIVE HAD NO AUTHORITY TO SIGN THE SAME.

Petitioner asserts that he has complied with the requirements for the execution of the verification and certification against forum shopping which accompanied the complaint. First, a verification and certification of non-pendency of similar suit duly executed by his authorized representative, Cecille Santos, was simultaneously filed with complaint. Second, Cecille Santos was clothed with a Special Power of Attorney dated March 10, 2009 authorizing her to represent him in the case. And finally, he subsequently ratified the acts of Cecille Santos which includes the authority to

execute and sign the certificate against forum shopping as shown in the Special Power of Attorney dated July 12, 2011.<sup>[9]</sup>

Even assuming the lapses he may have committed in compliance with the rules on certification against forum shopping, he cites several jurisprudence wherein the courts has allowed substantial compliance and relaxed the rules on certification against forum shopping, hence, the RTC should not have dismissed the complaint.<sup>[10]</sup>

Private respondents, on the other hand, argue that while the Special Power of Attorney dated March 10, 2009 authorizes Cecille Santos to represent petitioner in the case, she is not however authorized to execute and sign the required certification against forum shopping. A certification against forum shopping, which is mandatory under the rules, must be simultaneously filed with the complaint and non-compliance therewith is sufficient cause for its dismissal. Moreover, the submission of a second Special Power of Attorney dated July 12, 2011 does not in any way correct the defect and only shows that petitioner has impliedly acknowledged the defect in the Special Power of Attorney dated March 10, 2009.<sup>[11]</sup>

They further argue that petitioner availed of the wrong remedy. The dismissal of the complaint was due to the fault of the petitioner and shall have the effect of adjudication on the merits. Hence, the remedy is an appeal and not a Petition for Certiorari.<sup>[12]</sup>

### **OUR RULING**

Section 5, Rule 7 of the Rules of Court governs the rule on certification against forum shopping. It provides that:

" xxx xxx xxx

Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall specify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and, (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall

constitute direct contempt, as well as a cause for administrative sanctions.

xxx xxx xxx "

In a string cite of cases,xiii the certification of non-forum shopping should be executed and signed by the plaintiff or the principal. The reason for this rule is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.

Here, the Verification and Certification of Non-Pendency of Similar Suit<sup>[14]</sup> was signed by Cecille Santos by virtue of a Special Power of Attorney (SPA) dated March 10, 2009<sup>[15]</sup> attached to the complaint. The SPA dated March 10, 2009 signed by the petitioner reads:

" xxx xxx xxx

### **SPECIAL POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

I, DANILO A. ANGELES, of legal age, Filipino citizen, presently residing at Chicago, Illinois, U.S.A., do hereby name, constitute, and appoint CECILLE S. SANTOS, of legal age, Filipino, and with residence at 31 Kuala Lumpur Street, BF Homes, Parañaque City, to be my true and lawful attorney-in-fact for me and in my name, place and stead to represent me in the action to be filed in Court against Corazon R. Reguyal and the Spouses Evangeline Reguyal-Liwag and Winthrop Liwag for the vindication of my rights and protection of my interests as lawful buyer of that real property covered by T.C.T. No. 50045 which I bought from the late Damaso Gonzales on 22 January 1997.

HEREBY GIVING AND GRANTING unto said attorney-in-fact full powers and authority to do and perform all and every act requisite or necessary to effect the above action, as fully to all intents and purposes as I might or could lawfully do is personally present, including the authority represent me in the pre-trial of the action and enter into a compromise agreement with the defendants, and represent me in all stages of the proceedings in court, with full power of substitution and revocation, and hereby ratifying and confirming all that my attorney-in-fact or her substitute shall lawfully do or cause to be done by virtue hereof. (Underscoring ours)

xxx xxx xxx "

A perusal of the foregoing SPA reveals that petitioner, a resident of Chicago, Illinois, U.S.A, appointed Cecille Santos as his attorney-in-fact. He explicitly authorized Cecille Santos to vindicate his rights and protect his interests, represent him in all stages of the proceedings of the case, enter into compromise agreements and do and perform all and every act requisite or necessary for the accomplishment of the said purpose. Under Section 3, Rule 3 of the Rules of Court,<sup>[16]</sup> where the action is allowed to be prosecuted by a representative, s/he shall be deemed a party.