

SIXTEENTH DIVISION

[CA-G.R. SP NO. 126094, June 03, 2014]

MERCEDES A. FAVIS, PETITIONER, VS. HON. RIZALINA T. CAPCO-UMALI IN HER CAPACITY AS THE PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 212, MANDALUYONG CITY AND EDGARDO S. ALDAY, RESPONDENTS.

DECISION

VILLON, J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the February 20, 2012^[1] Order of Branch 212, Regional Trial Court (RTC) of Mandaluyong City in Civil Case No. MC11-5452,^[2] which denied the Motion to Dismiss filed by petitioner Mercedes A. Favis. Likewise assailed is the Order dated May 22, 2012^[3] denying petitioner's motion for reconsideration of the first assailed order.

The instant petition stemmed from the complaint for specific performance and damages, with prayer for a temporary restraining order and preliminary mandatory injunction^[4] filed on June 1, 2011 with the RTC of Mandaluyong City by plaintiff Edgardo S. Alday, respondent herein, against therein defendants spouses Henry T.F. Guico and Vivien M. Guico, represented by Mercedes Favis, petitioner herein; Mercedes A. Favis, in her own personal capacity; Empire East Land Holdings, Inc., in its capacity as the seller of Dayton 2, Units 3-H and 3-G, California Gardens; and the Registry of Deeds of Mandaluyong City. The said complaint was docketed as Civil Case No. MC11-5452 and was raffled off to Branch 212 of the RTC, presided by respondent Judge Rizalina T. Capco-Umali. The material portions of the complaint alleges:

"0.7. Defendants EMPIRE EAST LAND HOLDINGS, INC. [Empire] and Sps. HENRY THEODORE F. GUICO and VIVIEN M. GUICO [Guico] entered into a CONTRACT TO BUY AND SELL of Dayton 2, Units 3-H of the California Gardens located at Mandaluyong City xxx. Specifically, the 'subject unit' is described as CLUSTER/TOWER: Dayton 2; FLOOR/UNITS NO: 3-H; AREA: 57.50 SQ. M.; PARKING SLOT/S: None; and, DESCRIPTION: 2BR. Defendants 'Guico' caused the notarization of the same document by LEO COFINCO, Notary Public, California, Los Angeles County, on October 07, 2001. The same document does not show any notarization by any Notary Public in the Philippines. However, the parties acquiesced and complied with the same contract.

08. Unit 3-G, which is the twin unit of Unit 3-H located at Cluster/Tower – Dayton 2 was likewise included in the contract between the afore-named parties. The same was fully paid eventually. Said payment were duly

acknowledged by defendant 'Empire'. And, the same unit was occupied and improved by the plaintiff, [Dr.] EDGARDO ALDAY.

09. In retrospect, defendant [Dr.] MERCEDES FAVIS in her letter of August 24, 2009 [via her e-mail thru one 'Ester Favis-Filart'] requested 'Eddie' [Plaintiff EDGARDO S. ALDAY], thus: 'So please check my balance in the joint each time you deposit your P20,000.00. Please make sure there is at least P85,000 balance to cover the more than P60,000 plus auto deductions from my PDC's with Empire East and the P25,000.00 minimum balance.' xxx Effectively, the deposits made by the plaintiff were payments for the subject units as per the agreement between defendants 'Guico', 'Favis' and plaintiff, [Dr.] E.S. ALDAY. The same agreement came in the form of e-mails, letters, bank deposits, payments in kind between the parties. The deposits made by the plaintiff are the vertical consequences of the offer of the same defendants to sell the subject units in issue to plaintiff, [Dr.] E.S. ALDAY. xxx

10. In the letter of defendant 'Favis' to the herein plaintiff dated Sept. 15, 2009, thru [Ms.] LALAIN VILLAFUERTE, defendant 'Favis' said: 'xxx Eddie xxx Medyo hard up ako ngayon because of all the expenses for my surgeries... fares, c0-pays, medicines, etc. etc. Can you please just deduct all legal expenses from the sale of the condo when we make cuenta? Do not worry, I will sell you the condo lower than the current market value of the units!!! I instructed Henry to give me an authenticated power of atty. to be able to sell the Dayton 3 G-H- units as the condo is in his and Binky's names. He is planning to go to LA to have the SPA authenticated.'

11. On Sept. 22, 2009, in another letter to 'hi eddie', thru 'Lalaine Villafuerte', defendant [Dr.] MERCEDES FAVIS said: 'xxx. Please give the checks to Mang Ester so she can have the September 28, '09 check deposited. I want to make sure I do not lack money in the joint for the October autodeductions of the Empire East. I worry about this as there is no income for the Dayton G-H units to help out with monthly amortizations, as I told Al not to get get (sic) the combination unit leased cause I have plans to upgrade it and hopefully sell it. I did not mention that you were the buyer.'

12. Plaintiff [Dr.] EDGARDO S. ALDAY filed with 'Empire' his BUYER'S INFORMATION SHEET after paying continuously considerable amounts of money for Dayton 2 Unit E-G & H to defendants 'Guico' and 'Favis'. xxx

13. On Dec. 23, 2009, defendant 'Favis' acknowledged her indebtedness in favor of herein plaintiff in the amount of EIGHTY EIGHT THOUSAND EIGHT HUNDRED EIGHTY ONE PESOS & SIXTY CENTS [Php.88,881.60] and her acknowledgment of ONE MILLION PESOS [Php 1,000,000.00] from the same plaintiff. Upon her suggestions, defendant 'Favis' asked the plaintiff to deduct the P88,881.60 representing her IOUs from the P1,000,000.00 advanced by the plaintiff. Since the deductions were never accomplished, it remains to reason that the P1,000,000.00 stands as advance payment for the 'subject units.' And, since the P88,881.60 were never paid to the plaintiff, the same shall be outstanding and must be added to P1,000,000.00 as advance payment of the plaintiff. These are

apart from the regular deposits made by the plaintiff to answer for the amortizations for the 'subject units'. The same payments acknowledged by defendant 'Favis' inevitably are converted as payments made by the plaintiff for the same 'subject units'. The monthly regular deposits of TWENTY THOUSAND PESOS [P20,000.00] were made by the plaintiff in payment of the condominium units in issue. xxx A summation of all the plaintiff's payments and deposits for the 'subject units' reveals full payment made by the plaintiff in favor of the defendants. The purchase price of Unit 3-H, per the Contract to Buy and Sell is P1,575,000.00, exclusive of other taxes and fees specified under the same contract. For the twin units, the total consideration must be a little more than P3,551,000.00. The same amount was paid by the plaintiff to defendants 'Guico' and 'Favis'.

14. On March 01, 2010, defendants 'Guico' informed defendant 'Empire' that they are assigning their rights over the condominium units in issue to plaintiff [Dr.] EDGARDO S. ALDAY. xxx And, that defendant 'Favis' shall coordinate with 'Empire' on the matter, per her alleged Special Power of Attorney.

15. On August 08, 2010, plaintiff, thru Atty APOLONIO A. PADUA, Jr. requested for the full consummation of the sale between defendants 'Guico', represented by defendant 'Favis', and plaintiff [Dr.] EDGARDO S. ALDAY. xxx

16. Atty. DONNA JANE M. ALAGAR responded on August 23, 2010 to the aforesaid letter xxx demanding for an accounting; but acknowledging plaintiff Dr. ALDAY as the transferee of the units in issue. Plaintiff, [Dr.] E.S. ALDAY explained in the letter in no uncertain terms the amounts which he already paid for the 'subject units' totaling to an amount of P3,551,000.00 xxx. It was received by Atty. DJ M ALAGAR on November 29, 2010.

17. In compliance with the Contract to Buy and Sell, Government Fees were duly paid for and in behalf of defendant 'Empire'. xxx

18. On February 10, 2011, plaintiff [Dr.] EDGARDO S. ALDAY in coordination with defendant 'Empire' paid the REAL ESTATE TAXES for the units in issue. xxx

19. On March 07, 2011, plaintiff [Dr.] E.S. ALDAY, thru Atty. APOLONIO A. PADUA, Jr. requested defendant 'Empire' to finalize the documents for the transfer of title over the two units in issue to Dr. E.S. ALDAY and to settle the issue as to who should pay the Capital Gains Tax. xxx

20. Meanwhile, plaintiff [Dr.] E.S. ALDAY took possession of the properties peacefully, openly, exclusively adversely, to the exclusion of third parties; and, as an owner. There was no objection from anyone, even from defendants 'Favis' and 'Empire'. The plaintiff did not only take possession of the properties; but, improved the same.

21. Unfortunately and in open violation of the express arrangements between the plaintiff and defendant 'Favis'; and, despite the full payment of the units by the same plaintiff, defendant 'Favis' demanded of the

plaintiff to make good his offer to purchase the condominium units within fifteen (15) days from plaintiff's receipt of Annex 'X' hereof/Letter of Demand of defendant 'Favis'. And, in case of default on the part of the plaintiff, defendant 'Favis', allegedly upon the instructions of HENRY GUICO, will revoke all documents executed about the sale of the properties. Defendant 'Favis' is now demanding for FIVE MILLION PESOS [P5,000,000.00] for the two units in exchange for the execution of the Deed of Assignment in favor of the plaintiff. The plaintiff finds this to be preposterous as he already paid in full the consideration for the condominium units.

22. On March 15, 2011, defendant 'Empire' advised the Sps. HENRY THEODORE GUICO to pay the EXPANDED TAX and the CAPITAL GAINS TAX on the transfer of the units to a third party, [Dr.] E.S. ALDAY xxx. Up to this writing, defendants 'Guico' and 'Favis' failed, refused, neglected and still refuse, fail, and neglect to pay the aforesaid tax obligations; thus, preventing defendant 'Empire' to finalize the document of transfer in favor of the plaintiff;

xxx xxx xxx

Prayer

WHEREFORE, plaintiff respectfully prays for judgment as follows:

01. Upon filing of this case, a TRO be issued against defendants 'Guico' and 'Favis' from the acts of collecting P5,000,000.00 for the 'subject units'; acts of revoking all documents and deeds about the 'subject units'; acts of disregarding full payments for the 'subject units' by the plaintiff in their favor; from taking possession of the 'subject units'; and, henceforth, from exercising rights of ownership over the 'subject unit'.
02. After trial, judgment shall be rendered as follows: [1] making the TRO permanent; [b] declaring that the rights of defendant 'Guico' transferred to the plaintiff herein; [c] ordering the Registry of Deeds to cancel the CCT for the units in issue in the name of defendant 'Empire', and a new one issued to the plaintiff; and, [d] ordering defendants 'Guico' and 'Favis' the amounts of damages mentioned above in favor of the plaintiff.
03. Plaintiff likewise prays for the other remedies just and equitable under the premises."

On June 7, 2011, petitioner was served with summons. Spouses Henry Guico and Vivien Guico, however, were not served with summons since they were staying in the United States of America.^[5]

On June 29, 2011, petitioner filed her Answer with Counterclaim^[6] denying the material allegations in the complaint and averred by way of affirmative defense, the following:

"18. Plaintiff has no cause of action against herein defendant since she is merely the (sic) acted as the broker of the property being purchased by the plaintiff from defendant Sps. Guico;

19. Plaintiff has no cause of action against herein defendant since defendant is not the owner of the property upon which the demand for specific performance can be complied with;

20. Plaintiff cannot demand fulfillment or compliance of any obligation considering that he has not paid the purchase price on the properties she claimed to have bought;

21. Before any demand for the execution of any contract, there should be accounting on the total amount plaintiff allegedly paid."

Subsequently, on August 8, 2011, respondent Alday filed a motion for leave to serve summons by publication (extra-territorial service of summons)^[7] upon defendants Spouses Guico. On September 6, 2011, respondent judge issued an order^[8] denying the said motion on the ground that the complaint in Civil Case No. MCII-5452 is an action *in personam*, hence the rules on extraterritorial service of summons or summons by publication do not apply.

On December 7, 2011, petitioner filed a Motion to Dismiss^[9] the complaint in Civil Case No. MCII-5452 alleging that:

1. Although defendant Spouses Guico had been impleaded as party defendants in this case, they were not served with summons hence the Court never validly acquired jurisdiction over their persons; and
2. Defendant Spouses Guico being indispensable parties to this case against whom the relief prayed for is addressed, and the court not having acquired jurisdiction over their persons, the subsequent proceedings therein would be a nullity.

Respondent Alday filed his comments/opposition^[10] to the said Motion to Dismiss.

On February 20, 2012, the RTC issued the assailed Order^[11] denying petitioner's Motion to Dismiss, ratiocinating:

"Under the present Rule, it is expressly provided that the Motion to dismiss must be filed within the time for, but before filing of, the answer to the complaint or pleading asserting a claim [Section 7, Rule 16 Revised Rules of Court].

From the records of this case, this Court noted that defendant Favis subject motion to dismiss the instant complaint was filed only on 07 December 2011 after she had filed her Answer with counterclaims on 30 June 2011, or six [6] months after defendant filed her answer to the complaint.

As held by the Supreme Court in *Heirs of Mariano Laguitan versus Icao* [224 SCRA 69 {1993}], it ruled that where a motion to dismiss was filed three [3] months after the defendants had filed their amended answer, the said motion was filed out of time. Similarly, in *Ruiz, Jr. versus Court*