



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

**BUTUAN DEVELOPMENT
CORPORATION (BDC),**

G.R. No. 197358

Petitioner, Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, JJ.

- versus -

**THE TWENTY-FIRST DIVISION
OF THE HONORABLE COURT
OF APPEALS (Mindanao Station),
MAX ARRIOLA, JR., DE ORO
RESOURCES, INC. (DORI) and
LOUIE A. LIBARIOS,**

Promulgated:

Respondents.

April 5, 2017

Edgardo T. Lloren

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DECISION

REYES, J.:

This is a petition for *certiorari*¹ under Rule 65 of the Rules of Court seeking to annul and set aside the Decision² dated January 14, 2011 and Resolution³ dated May 24, 2011 issued by the Court of Appeals (CA) in CA-G.R. SP No. 01473.

¹ *Rollo*, pp. 5-21.

² Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Ramon Paul L. Hernando concurring; *id.* at 219-226.

³ *Id.* at 270-271.

1

The Facts

On March 31, 1966, Butuan Development Corporation (BDC), which was then still in the process of incorporation, through its then President Edmundo Satorre (Satorre), purchased from the Spouses Jose and Socorro Sering (Spouses Sering) a 7.6923-hectare parcel of land situated in Butuan City (subject property).⁴ Thus, on January 28, 1969, the Registry of Deeds for Butuan City issued Transfer Certificate of Title (TCT) No. RT-4724⁵ in the name of BDC.⁶

On May 5, 1998, Max L. Arriola, Jr. (Max Jr.), representing himself as the Chairman of BDC and armed with a duly notarized Resolution⁷ of the BDC Board of Directors therefor, mortgaged the subject property to De Oro Resources, Inc. (DORI) and its President Louie A. Libarios (Libarios).⁸

On May 13, 2002, Satorre, together with Ma. Laurisse Satorre-Gabor, Liza Therese Satorre-Balansag, Edmundo C. Satorre II, and Leslie Mae Satorre-King, executed the Articles of Incorporation⁹ of BDC. The Securities and Exchange Commission approved the Articles of Incorporation and issued the Certificate of Incorporation¹⁰ of BDC on May 23, 2002.

On August 23, 2005, BDC filed a complaint for declaration of nullity of real estate mortgage¹¹ (REM) with the Regional Trial Court (RTC) of Agusan del Norte and Butuan City against Max Jr., Libarios, and DORI (collectively, the respondents), and Casilda L. Arriola, Rebecca J. Arriola, and Joseph L. Arriola. It alleged that, sometime in 2004, it discovered that the owner's duplicate copy of TCT No. RT-4724 was missing and efforts to locate the same proved futile. However, it subsequently discovered that the owner's duplicate copy of TCT No. RT-4724 was already in Libario's possession, pursuant to the REM executed by the Arriolas who misrepresented themselves as the owners and directors of BDC.¹² Accordingly, claiming that the said REM was a nullity, BDC prayed that the same be nullified.¹³

⁴ Id. at 7.

⁵ Id. at 45-46.

⁶ Id. at 291.

⁷ Id. at 50.

⁸ Id. at 48-49.

⁹ Id. at 52-56.

¹⁰ Id. at 57.

¹¹ Id. at 78-87.

¹² Id. at 81.

¹³ Id. at 85.

1

In their answer,¹⁴ Libarios and DORI denied that the Arriolas misrepresented themselves as the directors of BDC since, at the time of the execution of the REM, the Arriolas had possession of the subject property and the owner's duplicate copy of TCT No. RT-4724.¹⁵ Further, the tax declaration over the subject property filed with the Butuan City Assessor's Office indicated that Max Arriola, Sr. (Max Sr.) was the administrator of the subject property.¹⁶

As special and affirmative defense, Libarios and DORI claimed that the complaint filed by BDC should be dismissed outright for failing to state a cause of action since at the time of the execution of the REM on May 5, 1998, BDC did not yet exist, having been incorporated only on May 23, 2002, and, hence, could not have claimed ownership of the subject property.¹⁷

Max Jr., in his Answer,¹⁸ echoed the foregoing contentions set forth by Libarios and DORI and, additionally, claimed that the owner's duplicate copy of TCT No. RT-4724, from the time it was issued on January 28, 1969, had been in the possession of their family since it was his father Max Sr. who actually paid for the acquisition of the subject property.¹⁹

Ruling of the RTC

On February 22, 2006, the RTC heard the respondents' special and affirmative defense and, thereafter, directed the parties to submit their respective memoranda.²⁰

On August 11, 2006, the RTC issued an Order,²¹ the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the special/affirmative defenses put forward by the defendants cannot be given due consideration for lack of merit.

SO ORDERED.²²

¹⁴ Id. at 118-129.

¹⁵ Id. at 123.

¹⁶ Id.

¹⁷ Id. at 126.

¹⁸ Id. at 143-153.

¹⁹ Id. at 147.

²⁰ Id. at 29.

²¹ Rendered by Presiding Judge Augustus L. Calo; id. at 42-43.

²² Id. at 43.



The RTC opined that, taking into account BDC's allegation that it purchased the subject property while it was still in the process of incorporation and, thus, obtained title to the same in its name, any act which amounts to alienation of the subject property done by any person other than the corporation itself, through its Board of Directors, shall give rise to violation of BDC's rights. The respondents filed their respective motions for reconsideration²³ of the Order dated August 11, 2006, but it was denied by the RTC in its Order²⁴ dated November 24, 2006, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.²⁵

The respondents then filed a petition for *certiorari*²⁶ with the CA, claiming that the RTC gravely abused its discretion in brushing aside their special and affirmative defense. The respondents likewise prayed for the issuance of a temporary restraining order and/or a writ of preliminary injunction. The respondents maintained that BDC, at the time of the execution of the REM, was not yet incorporated and, hence, had no right to hold a property in its own name.

Ruling of the CA

Consequently, on January 14, 2011, the CA rendered the herein assailed Decision,²⁷ which declared:

WHEREFORE, the instant petition is GRANTED. The assailed Orders are SET ASIDE and a new one issued DISMISSING the Complaint for failure to state a cause of action.

SO ORDERED.²⁸

The CA opined that corporate existence begins only from the moment a certificate of incorporation is issued, and, thus, BDC had no corporate existence and juridical personality when it purchased the subject property. Thus, the CA held that, having no right over the subject property, no cause of action could have accrued in favor of

²³ Id. at 180-186; 187-188.

²⁴ Id. at 44.

²⁵ Id.

²⁶ Id. at 23-41.

²⁷ Id. at 219-226.

²⁸ Id. at 225.



BDC when the subject property was mortgaged to Libarios and DORI.²⁹

BDC sought a reconsideration³⁰ of the Decision dated January 14, 2011, but it was denied by the CA in its Resolution³¹ dated May 24, 2011, thus:

ACCORDINGLY, the motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.³²

Hence, this petition.

BDC maintains that it has a cause of action against the respondents notwithstanding that it was not yet incorporated at the time of the execution of the REM on May 5, 1998.³³ Further, BDC alleges that Libarios and DORI are estopped from questioning the legal personality of BDC; it claims that DORI and Libarios, at the time of the execution of the REM, treated BDC as a corporation and may no longer raise the fact that BDC was not yet incorporated at the time they entered into the mortgage.³⁴

On the other hand, the respondents, in their Comment,³⁵ maintain that this petition for *certiorari* is not the proper remedy to assail the CA's Decision dated January 14, 2011 and Resolution dated May 24, 2011. They aver that BDC should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court instead.³⁶ In any case, the respondents claim that the CA did not commit any abuse of discretion when it set aside the RTC's Orders dated August 11, 2006 and November 24, 2006.³⁷ They point out that BDC was not yet incorporated at the time of the execution of the REM and, hence, could not hold title to any property in its own name.³⁸

²⁹ Id. at 224-225.

³⁰ Id. at 227-238.

³¹ Id. at 270-271.

³² Id. at 271.

³³ Id. at 13.

³⁴ Id. at 14-15.

³⁵ Id. at 290-317.

³⁶ Id. at 311-312.

³⁷ Id. at 298.

³⁸ Id. at 299.



Issue

Essentially, the issue set forth for the Court's resolution is whether the CA gravely abused its discretion when it set aside the RTC's Orders dated August 11, 2006 and November 24, 2006, ruling that BDC's complaint failed to state a cause of action.

Ruling of the Court

The petition is granted.

Prefatorily, there is a need to address the respondents' claim that BDC should have filed an appeal under Rule 45 of the Rules of Court instead of filing this *certiorari* suit.

The CA's disposition is a final judgment, as distinguished from an interlocutory order, as the same finally disposed of the petition for *certiorari* filed by the respondents and left nothing more to be done by the CA in respect thereto. Sections 1 and 2 of Rule 45 essentially states that a party desiring to appeal by *certiorari* from a **judgment or a final order** of the CA may file with this Court a verified petition for review on *certiorari* within 15 days from notice of the judgment or final order.

BDC's counsel received a copy of the CA's Resolution dated May 24, 2011, denying reconsideration of the Decision dated January 14, 2011, on May 31, 2011.³⁹ Thus, BDC only had until June 15, 2011 within which to file with this Court a petition for review on *certiorari* assailing the CA's Decision dated January 14, 2011 and Resolution dated May 24, 2011.

However, BDC failed to file a petition for review on *certiorari* within the period to do so and, instead, opted to file a petition for *certiorari* under Rule 65 with this Court on July 4, 2011. Evidently, this petition for *certiorari* is merely being used by BDC as a substitute for the lost remedy of appeal under Rule 45.

³⁹ Id. at 7.



A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*.⁴⁰ Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.⁴¹

Nevertheless, the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, generally, addressed to the sound discretion of the court. The provisions of the Rules of Court, which are technical rules, may be relaxed in certain exceptional situations.⁴² While a petition for *certiorari* is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.⁴³

In view of the factual circumstances in this case, the dismissal of the petition for *certiorari* would result in the miscarriage of justice. On account of the CA's unwarranted dismissal of its complaint, as will be explained later, BDC was effectively denied due process as it was unduly prevented from presenting evidence to prove its claim. The CA arbitrarily directed the dismissal of BDC's complaint on the ground that the complaint failed to state a cause of action.

One of the grounds for the dismissal of a complaint is the failure of the pleading asserting the claim to state a cause of action.⁴⁴ The elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the

⁴⁰ *Heirs of Placido Miranda v. CA*, 325 Phil. 674, 685 (1996).

⁴¹ *Spouses Leynes v. Former Tenth Division of the Court of Appeals, et al.*, 655 Phil. 25, 43 (2011), citing *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 782-783 (2004).

⁴² See *Spouses Leynes v. Former Tenth Division of the Court of Appeals, et al.*, id. at 41.

⁴³ *Tanenglian v. Lorenzo, et al.*, 573 Phil. 472, 488 (2008).

⁴⁴ RULES OF COURT, Rule 16, Section 1(g).

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plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.⁴⁵

In resolving whether the complaint states a cause of action or not, only the facts alleged in the complaint are considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.⁴⁶

In this case, BDC's complaint, *inter alia*, alleged that:

5. Sometime on March 31, 1996, while the [BDC] was still in the process of incorporation, thru its then President and General Manager, [SATORRE], purchased a parcel of land from the [Spouses Sering], x x x as evidenced by a Deed of Absolute Sale, machine copy of which is hereto attached as Annex "B" hereof;

6. Subsequent to the execution of Annex "B" hereof, [TCT] bearing No. RT-4724 was issued unto and in favor of the [BDC] x x x;

7. [BDC], thru its legitimate officers, has been paying the real estate taxes due on the aforesaid parcel of land, and not the "[ARRIOLAs]" who are not in any way connected with the legitimate, genuine and authentic plaintiff x x x;

x x x x

10. Sometime in the year 2004, [BDC] discovered that the owner's copy of [TCT] bearing No. RT-4724 was missing and efforts to locate the same proved futile as it could nowhere be found, hence [BDC] through counsel filed a petition in Court for issuance of the owner's copy of said title;

11. To [BDC's] great surprise, it surfaced that the aforesaid certificate of title is now in the possession of [Libarios] as it appears that the land covered by said title was mortgaged to [DORI] by the defendant "ARRIOLAs" who misrepresented themselves as owners and directors of [BDC.]⁴⁷ (Emphasis ours)

Based on the foregoing allegations, BDC's complaint sufficiently stated a cause of action for declaration of nullity of the REM. Basically, BDC alleged in its complaint that it is the owner of the subject property as evidenced by TCT No. RT-4724, which was issued in its name after it purchased the subject property, through Satorre, from the Spouses Sering on

⁴⁵ *Philippine Daily Inquirer, et al. v. Judge Alameda, et al.*, 573 Phil. 338, 345-346 (2008).

⁴⁶ *Macaslant v. Spouses Zamora*, 664 Phil. 337, 351 (2011).

⁴⁷ *Rollo*, pp. 79-81.

March 31, 1966. It bears stressing that a certificate of title issued is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein.⁴⁸ BDC further alleged that the subject property was mortgaged to DORI and Libarios without their knowledge or consent and that the Arriolas were not in any way connected with BDC.

What is clear is that the issues of whether the REM constituted over the subject property is void and whether BDC has a right to the subject property at the time of the execution of the REM would have been best resolved during the trial.

The respondents' affirmative defense that BDC, at the time of the execution of the REM, had no right to hold the subject property in its name being merely an unincorporated association, if at all, amounts to an allegation that BDC has no cause of action against the respondents. However, failure to state a cause of action is different from lack of cause of action. Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading.⁴⁹ The remedy in the first is to move for the dismissal of the pleading, while the remedy in the second is to demur to the evidence.⁵⁰

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated January 14, 2011 and Resolution dated May 24, 2011 of the Court of Appeals in CA-G.R. SP No. 01473 are hereby **REVERSED** and **SET ASIDE**. The Orders dated August 11, 2006 and November 24, 2006 of the Regional Trial Court of Agusan del Norte and Butuan City, Branch 5, in SP Civil Case No. 1259 are **REINSTATED**. The case is remanded to the trial court for further proceedings.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

⁴⁸ *Serrano v. Spouses Gutierrez*, 537 Phil. 187, 197 (2006).


⁴⁹ *Macaslang v. Spouses Zamora*, supra note 46, at 353.

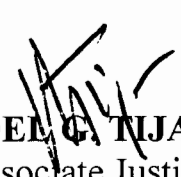
⁵⁰ See REGALADO, REMEDIAL LAW COMPENDIUM, Vol. 1, 9th Revised Ed. (2005), p. 182.

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


NOEL C. TIJAM
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

1