



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

BDO LEASING & FINANCE, INC.
(formerly PCI Leasing & Finance,
Inc.),

G.R. No. 205286

Present:

Petitioner,

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

- versus -

GREAT DOMESTIC INSURANCE
COMPANY OF THE PHILIPPINES,
INC., and SPOUSES KIDDY LIM
CHAO and EMILY ROSE GO KO,
Respondents.

Promulgated:

19 JUN 2019

Handwritten signature: M. Cabalag

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RESOLUTION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by petitioner BDO Leasing & Finance, Inc. (petitioner BDO), formerly known as PCI Leasing and Finance, Inc., assailing the Resolution² dated February 10, 2011 (first assailed Resolution) and Resolution³ dated December 13, 2012 (second assailed Resolution) (collectively, the assailed Resolutions) of the Court of Appeals – Cebu City Special 18th Division (CA Special 18th Division) in CA-G.R. SP. No. 04753.

¹ Rollo, pp. 7-45, including attachments.
² Id. at 46-50. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Pampio A. Abarintos and Socorro B. Inting concurring.
³ Id. at 51. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Gabriel T. Ingles and Socorro B. Inting concurring.

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The Facts and Antecedent Proceedings

As culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

On November 27, 1998, respondents spouses Kiddy Lim Chao and Emily Rose Go Ko (respondents Sps. Chao) obtained from petitioner BDO loans evidenced by two promissory notes for the amounts of ₱5,900,000.00 and ₱3,288,570.00. Both loans were payable starting in December 1998 in 60 equal monthly amortization payments with an interest rate of 22.5% per annum. As security for the payment of these loans, respondents Sps. Chao executed in favor of petitioner BDO a Chattel Mortgage covering 40 motor vehicles and personal properties.

Starting August 1999 until December 1999, respondents Sps. Chao failed to fully pay their monthly amortization payments. As shown in a Statement of Account as of January 2000, respondents Sps. Chao's account amounted to ₱10,565,165.70. Despite demands made, respondents Sps. Chao failed to settle their obligation. Hence, on January 18, 2000, a Complaint for Recovery of Possession of Personal Property, with an application for the issuance of a writ of *replevin* (Complaint) was filed by petitioner BDO before the Regional Trial Court of Cebu City, Branch 21 (RTC) against respondents Sps. Chao. The case was docketed as Civil Case No. CEB-24769.

On November 13, 2000, the RTC issued an Order allowing the issuance of a writ of *replevin* on the properties of respondents Sps. Chao upon the posting of a bond by petitioner BDO in the amount of ₱10,000,000.00. On November 27, 2000, petitioner BDO posted the said bond and the writ of *replevin* was issued against respondents Sps. Chao. On November 29, 2000, respondents Sps. Chao posted a counter-*replevin* bond (counter-bond) also in the amount of ₱10,000,000.00 issued by respondent Great Domestic Insurance Company of the Philippines, Inc. (respondent Great Domestic).

On January 9, 2004, petitioner BDO filed a motion to declare respondents Sps. Chao in default for failing to file an answer within the allowable period. The RTC granted this motion and declared respondents Sps. Chao in default, allowing the *ex parte* presentation of petitioner BDO's evidence.

Trial then ensued. On October 18, 2004, the RTC rendered its Decision⁴ granting the Complaint. The dispositive portion of the said Decision reads:

⁴ Id. at 53-58. Penned by Acting Presiding Judge Gabriel T. Ingles.



Foregoing considered, judgment is hereby rendered ordering the defendants to deliver to plaintiff the properties subject of the Chattel Mortgage as enumerated in paragraph 4 of the Complaint or in the alternative, to pay jointly and severally the latter the sum of Php10,565,165.70 representing the principal amount due if delivery cannot be made.

Defendants are further ordered to pay plaintiff, attorney's fees equivalent to 10% of the amount due and cost of suit.

SO ORDERED.⁵

On appeal before the CA Special 20th Division, the latter rendered its Decision⁶ dated December 21, 2006 denying respondents Sps. Chao's appeal for lack of merit. The appeal was docketed as CA-G.R. CV No. 00551.

The case was further appealed before the Court's First Division in G.R. No. 178005. The appeal was denied by the Court in its Resolution⁷ dated September 3, 2007. Acting on respondents Sps. Chao's Motion for Reconsideration, the Court denied the latter in its Resolution⁸ dated October 10, 2007. In an Entry of Judgment dated May 6, 2008, it was indicated that on February 4, 2008, the Court's Resolution⁹ dated September 3, 2007 in G.R. No. 178005 has attained finality.

Hence, on July 16, 2008, petitioner BDO filed a Motion for Writ of Execution before the RTC, which was granted by the latter in its Order dated July 18, 2008. Pursuant to the said Order, the Clerk of Court and Ex-Officio Sheriff of the RTC issued a writ of execution¹⁰ on August 5, 2008. The Sheriff's Progress Report¹¹ dated March 2, 2009 indicated that the writ of execution was not satisfied.

Hence, on April 20, 2009, petitioner BDO filed a Motion to Order Sheriff to Serve Writ of Execution on the Counter Bond.¹² This Motion was opposed by respondent Great Domestic in its Opposition¹³ dated May 6, 2009.

In its Order¹⁴ dated June 24, 2009, the RTC granted petitioner BDO's Motion and ordered the serving of the writ of execution. Respondent Great Domestic filed a Motion for Reconsideration of the said Order.

⁵ Id. at 58.

⁶ Id. at 59-68. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Isaias P. Dicedican and Agustin S. Dizon concurring.

⁷ Id. at 70-71. Issued by Enriqueta Esguerra-Vidal, Clerk of Court of the Court's First Division.

⁸ Id. at 72. Issued by Enriqueta Esguerra-Vidal, Clerk of Court of the Court's First Division.

⁹ Id. at 73-75.

¹⁰ Id. at 81-82.

¹¹ Id. at 83-84.

¹² Id. at 94-102.

¹³ Id. at 103-113.

¹⁴ Id. at 114-115. Issued by Presiding Judge Eric F. Menchavez.



On August 26, 2009, the RTC rendered an Order¹⁵ denying respondent Great Domestic's Motion for Reconsideration. However, the RTC clarified its earlier Order and stated that the liability of respondent Great Domestic is only ₱5,000,000.00. Citing Section 20, Rule 57 of the Rules of Court, the RTC held that the amount of the counter-bond is set at double the value of the property stated in the affidavit as the excess or difference will have to answer for claims for damages. In the instant case, the RTC found that the damages could not be recovered by petitioner BDO as the same was never proven. Thus, the award of damages was not included in the judgment of the RTC.

Petitioner BDO filed its Motion for Reconsideration of the RTC's Order dated August 26, 2009, which was denied by the RTC in its Order¹⁶ dated October 27, 2009.

Feeling aggrieved, on January 7, 2010, petitioner BDO, still as PCI Leasing & Finance, Inc., filed a Petition for *Certiorari*¹⁷ under Rule 65 of the Rules of Court (*Certiorari* Petition) before the CA Special 18th Division, arguing that the RTC committed grave abuse of discretion in finding that respondent Great Domestic's liability on the counter-bond is only ₱5,000,000.00. The case was docketed as CA-G.R. SP. No. 04753.

After the CA Special 18th Division issued its Resolution¹⁸ dated February 4, 2010 requiring respondents Great Domestic and Sps. Chao to submit their respective Comments to the *Certiorari* Petition, petitioner BDO was then ordered to file its Reply to the aforesaid Comments.

Respondent Great Domestic filed its Comment¹⁹ dated February 26, 2010, while respondents Sps. Chao filed their Comment with Motion to Dismiss²⁰ dated February 23, 2010. Subsequently, on March 15, 2010, respondent Great Domestic filed a Motion for Leave of Court to Admit Attached Motion to Dismiss²¹ dated March 11, 2010. Petitioner BDO failed to file any Reply.

The Ruling of the CA Special 18th Division

In the first assailed Resolution, the CA Special 18th Division dismissed the *Certiorari* Petition outright solely on procedural grounds.

First, in dismissing the *Certiorari* Petition outright, the CA Special 18th Division held that petitioner BDO failed to satisfy the rule on filing the

¹⁵ Id. at 116.

¹⁶ Id. at 117.

¹⁷ Id. at 118-144.

¹⁸ Id. at 221. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Edgardo L. delos Santos and Socorro B. Inting concurring.

¹⁹ Id. at 234-243.

²⁰ Id. at 222-233.

²¹ Id. at 244-258.



proper certification against forum shopping, as the latter failed to disclose and mention the pendency of another case involving petitioner BDO and respondents Sps. Chao, *i.e.*, Civil Case No. CEB-24675 pending before the RTC, Branch 51 for nullification of chattel mortgage with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

Second, the CA Special 18th Division found that petitioner BDO failed to attach vital pleadings and documents needed in deciding whether to grant the *Certiorari* Petition. Important pleadings and documents such as the Complaint, writ of *replevin*, writ of execution, and other issuances and orders of the RTC were not attached to the *Certiorari* Petition. This was in violation of Rule 65, Section 1, Paragraph 2 of the Rules of Court.

Lastly, the CA Special 18th Division held that petitioner BDO had no legal capacity to file the *Certiorari* Petition, considering that when PCI Leasing and Finance, Inc. changed its name to BDO Leasing and Finance, Inc. on June 13, 2008, petitioner BDO should have sued under its new name "in order to avoid confusion and open door to frauds and evasions and difficulties of administration and supervision."²² The CA Special 18th Division further held that:

the change of corporate name x x x renders ineffective the Board Resolution and Special Power of Attorney it issued long before the change of name took place authorizing its First Vice-President Mr. Vicente C. Rallos to initiate appropriate court action in its behalf, thus, the verification and certification against forum shopping Mr. Rallos has signed in connection with the instant case has no binding and legal effect. After June 13, 2008, the said documents can no longer vest or confer any authority upon Mr. Rallos to verify and certify any pleading of PCI [L]easing and [F]inance, Inc. After said date, the board of directors of [petitioner] BDO [L]easing and Finance, Inc. should have issued a new resolution and the instant petition filed in the name of [petitioner] BDO [L]easing and Finance, Incorporated.²³

Petitioner BDO filed its Motion for Reconsideration²⁴ dated March 3, 2011, which was denied by the CA Special 18th Division in the second assailed Resolution.

Hence, the instant Petition.

Respondent Great Domestic filed its Comment²⁵ to the Petition on September 6, 2013, while respondents Sps. Chao filed their Comment²⁶ on

²² Id. at 49.

²³ Id.

²⁴ Id. at 260-278.

²⁵ Id. at 298-305.

²⁶ Id. at 312-319.



September 16, 2013. Petitioner BDO filed its Consolidated Reply²⁷ on November 14, 2014.

Issues

The instant Petition identifies three issues for the Court's disposition: (1) petitioner BDO's failure to disclose Civil Case No. CEB-24675 in the Verification/Certification accompanying the *Certiorari* Petition does not merit the outright dismissal of the said Petition; (2) the change of name of petitioner BDO from PCI Leasing and Finance, Inc. to BDO Leasing and Finance, Inc. did not affect its capacity to sue and be sued, and the authority of its authorized signatory, Vicente C. Rallos (Rallos), to file the *Certiorari* Petition; and (3) the *Certiorari* Petition cannot be dismissed outright because of the failure of petitioner BDO to attach certain documents which are not even specifically required by the Rules of Court.

Petitioner BDO's sole prayer is for the Court to reverse and set aside the CA Special 18th Division's assailed Resolutions and that the case be remanded back to the CA Special 18th Division for decision on the merits.

The Court's Ruling

I. Defect in petitioner BDO's Verification/Certification

According to Section 5, Rule 7 of the Rules of Court, the plaintiff or principal party shall certify in a sworn certification: (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.

While it is not disputed that petitioner BDO failed to disclose the status of Civil Case No. CEB-24675 in its Verification/Certification, it must be stressed that, despite involving the same parties, the aforesaid case and the instant case involve two completely different issues. On the one hand, in Civil Case No. CEB-24675, the issue was on the validity of the chattel mortgage executed by petitioner BDO and respondents Sps. Chao that accompanied the loan transactions entered into by the parties. On the other hand, in the *Certiorari* Petition, the matter in focus is the execution upon the counter-bond filed in lieu of the final and executory Decision of

²⁷ Id. at 343-353.



the RTC in Civil Case No. CEB-24769. Either decision will not have any bearing as to the other.

In fact, in the CA Special 20th Division's Decision in CA-G.R. CV No. 00551, which was affirmed by the Court's First Division in G.R. No. 178005, it was unequivocally held by the CA Special 20th Division that the RTC was correct when it stated that there was an "absence of identity of causes of action and reliefs being sought between this case [referring to the instant case] and Civil Case [N]o. CEB-24675."²⁸

As correctly invoked by petitioner BDO, jurisprudence holds that "an omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* is not fatal as to merit the dismissal and nullification of the entire proceedings, given that the evils sought to be prevented by the said certification are not present."²⁹

Therefore, on this issue, the CA Special 18th Division committed an error.

II. Petitioner BDO's change of name from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc."

Another reason invoked by the CA Special 18th Division for dismissing outright the *Certiorari* Petition was petitioner BDO's lack of any "legal capacity to initiate or file the instant petition"³⁰ on account of the change of name of petitioner BDO from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc." The CA Special 18th Division opined that since the Board Resolution and Special Power of Attorney issued by petitioner BDO authorizing Rallos to initiate the appropriate court action on behalf of the company was still under the name of "PCI Leasing and Finance, Inc.," and considering that petitioner BDO has already changed its name, the aforesaid Board Resolution and Special Power of Attorney have no more binding effect.

The CA Special 18th Division's position is again incorrect.

The Court has held that

[t]he corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. **It is the same corporation with a different name, and its character is in no respect changed.** A change in the corporate name does not make a new corporation, and whether effected by special act or under a general law,

²⁸ Id. at 67.

²⁹ *Bondagiy v. Artadi*, 583 Phil. 629, 643 (2008); underscoring supplied.

³⁰ *Rollo*, p. 49.



has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred.³¹

Hence, with petitioner BDO's change of name from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc." having no effect on the identity of the corporation, on its property, rights, or liabilities, with its character remaining very much intact, the Board Resolution and Special Power of Attorney authorizing Rallos to institute the *Certiorari* Petition did not lose any binding effect whatsoever.

III. Petitioner BDO's failure to attach the pertinent records of the case

In dismissing outright the *Certiorari* Petition, the CA Special 18th Division also cited petitioner BDO's failure to attach copies of the Complaint, the writ of *replevin*, the writ of execution, and other issuances and orders of the RTC, which the CA Special 18th Division believed were crucial in making a determination as to the merits of the *Certiorari* Petition.

Section 1, Rule 65 of the Rules of Court states that a petition for *certiorari* must be accompanied with copies of all pleadings and documents relevant and pertinent thereto. Petitioner BDO argues that "[t]he above-quoted provision does not specify the precise documents, pleadings or parts of the records that should be appended to a petition for certiorari other than the judgment, final order, or resolution being assailed."³²

As held by the court in *Air Philippines Corp. v. Zamora*,³³ while it is a general rule that a petition lacking copies of essential pleadings and portions of the case record may be dismissed, such rule, however, is not petrified. As the exact nature of the pleadings and parts of the case record which must accompany a petition is not specified, much discretion is left to the appellate court to determine the necessity for copies of pleading and other documents. There are, however, guideposts it must follow.

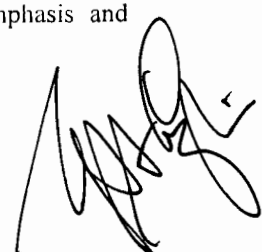
According to the aforementioned case,

x x x not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said

³¹ *Republic Planters Bank v. Court of Appeals*, 290-A Phil. 534, 542-543 (1992); emphasis and underscoring supplied.

³² *Rollo*, p. 31.

³³ 529 Phil. 718, 727-728 (2006).



document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.³⁴

Applying the foregoing in the instant case, the documents that petitioner BDO failed to attach in its *Certiorari* Petition, *i.e.*, the Complaint, the writ of *replevin*, and the writ of execution, are not documents that will make out a *prima facie* case of grave abuse of discretion. To stress, the instant case is centered solely on the alleged grave abuse of discretion committed by the RTC when it issued its Order dated August 26, 2009, which stated that the liability of respondent Great Domestic is only ₱5,000,000.00 citing Section 20, Rule 57 of the Rules of Court. Statements or details found in the Complaint, the writ of *replevin*, and the writ of execution will not determine whether grave abuse of discretion was attendant in the RTC's issuance of its Order dated August 26, 2009.

Air Philippines Corp. v. Zamora likewise holds that

x x x even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.³⁵

In the instant case, the Court notes that the relevant portions of the Complaint, the writ of *replevin*, the writ of execution, and other issuances of the RTC have been summarized and sufficiently detailed in the various pleadings filed by both parties in the RTC, in the CA Special 18th Division, as well as in the CA Special 20th Division. In fact, important details of the Complaint, the writ of *replevin*, and the writ of execution may also be found in the Decision³⁶ dated December 21, 2006 issued by the CA Special 20th Division in CA-G.R. CV No. 00551.

Therefore, the CA Special 18th Division was in error when it dismissed outright petitioner BDO's *Certiorari* Petition without holding any discussion as to the substantive merits of the said Petition.

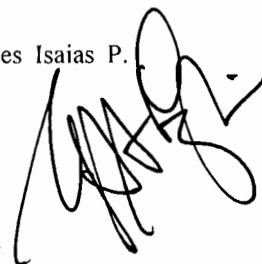
WHEREFORE, the instant appeal is hereby **GRANTED**. The Resolutions dated February 10, 2011 and December 13, 2012 rendered by the Court of Appeals – Cebu City Special 18th Division in CA-G.R. SP. No. 04753 are hereby **REVERSED AND SET ASIDE**.

The instant case is remanded back to the Court of Appeals – Cebu City Special 18th Division for decision on the merits.

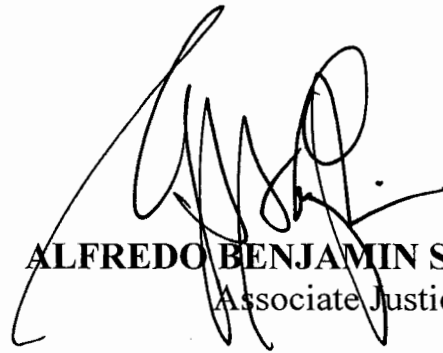
³⁴ Id. at 728.

³⁵ Id.

³⁶ Id. at 59-68. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Isaias P. Dicdican and Agustin S. Dizon concurring.

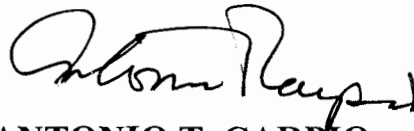


SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

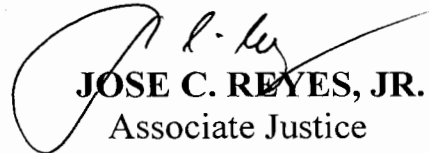
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

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



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division