

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**SPOUSES ELANIO C. ONG,^[1]
*Petitioner,***

-versus-

**G.R. No. 144581
July 5, 2002**

**COURT OF APPEALS and EMMA A.
GARAMAY ONG, assisted by her
husband ROBERTO C. ONG,
*Respondents.***

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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-O-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 P5,000.00 per month starting January 1994 as rent for the use and occupancy of the premises until defendants could vacate the premises, P20,000.00 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 P100,000.00 for moral damages, P20,000.00 for attorney's fees, and P10,000.00 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 P100,000.00 for moral damages and P50,000.00 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 court's 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 vs. Lubguban*^[14] where we rejected the plea of “substantial compliance” for a certification submitted after the claim had prescribed, we stressed —

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. 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, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them.^[15] The former constitutes sufficient cause for the dismissal without prejudice of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt.^[16] The rule expressly requires that a certification against forum shopping should be attached to or filed simultaneously with the complaint or other initiatory pleading regardless of whether forum shopping had in fact been committed.^[17] Accordingly, in the instant case, the dismissal of the complaint for unlawful detainer must follow as a matter of course.

While not raised in the parties' pleadings, it is necessary to mention that the failure of petitioners' answer filed in the ejectment case to allege the lack of certification of non-forum shopping did not result in the waiver of their right to assert the defect. Our decision in *Kho vs. Court of Appeals*^[18] where this Court ruled that by virtue of Sec. 1, Rule 9, 1997 Rules of Civil Procedure, objections of this kind are forfeited when not raised in the answer/comment earlier tended to a petition for special civil action of certiorari, is not controlling. The instant case is governed by the 1991 Revised Rules on Summary Procedure where a motion to dismiss is generally proscribed except for lack of jurisdiction over the subject matter or failure to comply with conciliation proceedings^[19] and where the only matters deemed waived for failure to assert in the answer are negative and affirmative defenses.^[20]

Clearly, petitioners were excused from filing a motion to question the absence of the certification and, concomitantly, their failure to include the objection in their answer did not result in the waiver thereof since the objection is neither a negative nor an affirmative defense. To clarify, non-compliance with the requirement of certification does not give rise to an affirmative defense, i.e., the allegation of new matter by way of confession and avoidance, much less a negative defense since the undertaking has nothing to do with the operative facts required to be alleged in an initiatory pleading, such as allegations on the cause of action, but with a special pre-requisite for admission of the complaint for filing in court.

The rule on waiver of defenses and objections under Sec. 1, Rule 9, 1997 Rules of Civil Procedure^[21] does not also apply suppletorily^[22] to the instant case to bar the objection of lack of certification of non-forum shopping. What governs is Sec. 4 of the 1991 Revised Rules on Summary Procedure where the trial court is at liberty to take notice of the grounds for the dismissal of a civil action that are apparent from the case along with the evidence submitted therein. Under this provision and except for negative and affirmative defenses not raised in the answer where an answer has been filed, the trial court under summary procedure is empowered to dismiss the complaint upon grounds adduced in the respective position papers of the parties as was done in the instant case. In sum, there are no legal barriers for this Court, as should have been the case with the MTCC where the

ejectment case was originally tried, to dismiss the complaint in Civil Case No. 3291.

Ordinarily, the dismissal of a complaint for violation of Administrative Circular No. 04-94 and of its present counterpart in Sec. 5, Rule 7, 1997 Rules of Civil Procedure, is without prejudice. This means that the plaintiff may re-file the complaint in his discretion after making the necessary corrections. In the instant case, however, whether the dismissal is termed with or without prejudice would not matter anymore since the right to institute an unlawful detainer case for the same cause of action pleaded in the case at bar within the one (1)-year period from the demand to vacate has long elapsed.

Nonetheless, in the exercise of our discretion and to prevent clever and stubborn attempts to resurrect the dismissed complaint, we declare the dismissal herein adjudicated to be with prejudice. This is necessary to allow the action for reconveyance and partition originally docketed as Civil Case No. 268-0-94 and apparently still pending appeal with the Court of Appeals, where both petitioners and respondents have equal chances of winning the case, to take its legitimate and unfettered course. To reserve even a dint of possibility of another ejectment case notwithstanding the pending appeal from the decision in Civil Case No. 268-0-94 is to require needlessly not only the parties but the court as well to spend time, effort and money in what may turn out to be a sheer exercise in futility. In truth, due to the existence in the pending action of the identity of parties and issues, valuable considerations of economy of time and effort for the court, the counsel and the parties, along with the pressing need to resolve the issue of possession, justify our present resolution.

Although the adverse consequences of the dismissal of the ejectment complaint are fairly obvious to respondent-spouses Emma Garamay Ong and Roberto C. Ong, we must emphasize that they were the same opposing parties, unfortunately belonging to the same family, who spent time, effort and money litigating this case up to this Court. That the ejectment case should end on a technical ground is not a deplorable result by itself. For the parties have other things left to attend to, particularly the appeal in the action for reconveyance and partition. In another but perhaps more important light, by this

Decision we are able to uphold the basic rule that compliance with the requirement of certification of non-forum shopping ought not to be held hostage to a party's afterthought lest the policy of the law be undermined. With this ruling it is unnecessary to resolve the other issues raised herein.

WHEREFORE, the instant Petition for Review on Certiorari is **PARTIALLY GRANTED**. Civil Case No. 3291 entitled "Emma A. Garamay Ong, assisted by her husband Roberto C. Ong vs. Spouses Elanio C. Ong," is **DISMISSED WITH PREJUDICE**. Concomitantly, the Decision dated 24 August 1995 of the MTCC-Br. 4, Olongapo City, rendered in the same dismissed civil case ordering petitioners/defendants Elanio C. Ong and his spouse to vacate the ground floor of the building occupied by them (No. 22 Barretto St., East Bajac-Bajac, Olongapo City) and to restore possession thereof peacefully to respondents/plaintiffs, spouses Emma Garamay Ong and Roberto C. Ong, as well as to pay respondents/plaintiffs P5,000.00 per month starting January 1994 as rent for the use and occupancy of the premises until petitioners/defendants vacate the place, P20,000.00 for attorney's fees and the costs of suit, is **REVERSED** and **SET ASIDE**. Accordingly, the assailed Decision of the Court of Appeals dated 31 May 2000 in CA-G.R. SP No. 54992 and its Resolution dated 17 August 2000 affirming the same, which sustained and reinstated in toto the aforementioned Decision of 24 August 1995 of the MTCC-Br. 4, Olongapo City, in Civil Case No. 3291 is also **REVERSED** and **SET ASIDE**. In the same vein, there being no valid complaint for unlawful detainer upon which to render a valid judgment, the Decision of the Regional Trial Court-Br. 72 dated 8 December 1998 in Civil Case No. 436-0-95, i.e., ejectment case on appeal, declaring petitioners Elanio C. Ong and his spouse entitled to remain in possession of the one-half (1/2) portion of the property subject of litigation and ordering respondent-spouses Emma Garamay Ong and Roberto C. Ong, to pay petitioners P100,000.00 as moral damages and P50,000.00 as attorney's fees, is **REVERSED** and **SET ASIDE**. This Decision is without prejudice to whatever disposition is made in the action for reconveyance and partition (Civil Case No. 268-0-94) where basic issues between the parties herein are still disputed before the Court of Appeals.

SO ORDERED.

**Mendoza, and Corona, JJ., concur.
Quisumbing, J., on leave, abroad.**

- [1] Name of petitioner Elanio C. Ong's spouse, which should have been stated in the title of the complaint, does not appear in any of the pleadings filed before this Court and the court's a quo, nor in the evidence presented in the course of the proceedings; see Sec. 4, Rule 3, and Sec. 1, Rule 7, 1997 Rules of Civil Procedure.
- [2] Only petitioner Elanio C. Ong appears as answering defendant although his answer was presumptively filed also in behalf of his unnamed wife.
- [3] The parties admit that respondent Emma A. Garamay is the wife of respondent Roberto C. Ong; Preliminary Conference Order, Annex "G" of Petition for Review; Rollo, p. 61.
- [4] The amount awarded deviated from the P20,000.00 attorney's fees adjudged in Civil Case No. 268-0-94 without stating the basis for the determination.
- [5] Petitioners also initially argued that the petition for review filed by Spouses Emma Garamay Ong and Roberto C. Ong with the Court of Appeals, docketed as CA-G.R. SP No. 54992, did not contain a certification of non-forum shopping. The records however belie this claim. Petitioners later amended their argument to state that the certification of non-forum shopping attached to their CA petition for review was defective for failure to allege the appeal taken from the action for reconveyance and partition originally docketed as Civil Case No. 268-0-94.
- [6] See Note 1.
- [7] Sec. 4, Rule 10, 1997 Rules of Civil Procedure.
- [8] *Co Tiamco vs. Diaz*, 75 Phil. 672 (1946); Sec. 5, Rule 10, 1997 Rules of Civil Procedure.
- [9] *Melo vs. Court of Appeals*, G.R. No. 123686, 16 November 1999, 318 SCRA 764.
- [10] *Five Star Bus Company, Inc. vs. Torres*, G.R. No. 127064, 31 August 1999, 313 SCRA 367.
- [11] E.g., *Maricalum Mining Corporation vs. National Labor Relations Commission*, G.R. No. 124711, 3 November 1998, 298 SCRA 378; *Kavinta vs. Castillo*, G.R. No. 117083, 27 October 1985, 249 SCRA 604.
- [12] Motion with Leave of Court to Admit Certification, Annex "L" of Petition for Review; Rollo, p. 89.
- [13] See *Cruz vs. Torres*, G.R. No. 121939, 4 October 1999, 316 SCRA 193.
- [14] G.R. Nos. 117955-58, 13 March 1997, 269 SCRA 624, 629.
- [15] See Note 9.
- [16] *Ibid.*
- [17] *Ibid.*
- [18] G.R. No. 115758, 19 March 2002.
- [19] Sec. 19.

[20] Sec. 4.

[21] Sec. 1 reads in part: “Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.

[22] Under Sec. 22 of the 1991 Revised Rules on Summary Procedure: “The regular procedure prescribed in the Rules of Court shall apply to the special cases herein provided for in a suppletory capacity insofar as they are not inconsistent herewith.”

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