SUPREME COURT
THIRD DIVISION

PERLA S. ZULUETA,
***Petitioner*,**

-versus-

G.R. No. 138137
March 8, 2001

ASIA BREWERY, Inc.,
***Respondent*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

When two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved. Consolidation, when appropriate, also contributes to the declogging of court dockets.

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, questioning the August 4, 1998 Decision[1] of the Court of Appeals (CA) in CA-GR SP No. 45020; as well as the February 23, 1999 Resolution[2] denying petitioner's Motion for

Reconsideration. The decretal portion of the CA Decision reads as follows:

> "WHEREFORE, the instant petition is given due course. The assailed orders of the Regional Trial Court, Makati City, Branch 142 dated 13 February 1997 and 19 May 1997 are hereby ANNULLED and SET ASIDE.
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> SO ORDERED."

The Facts

Respondent Asia Brewery, Inc. is engaged in the manufacture, distribution and sale of beer; while Petitioner Perla Zulueta is a dealer and an operator of an outlet selling the former's beer products. A Dealership Agreement governed their contractual relations.

On March 30, 1992, petitioner filed before the Regional Trial Court (RTC) of Iloilo, Branch 22, a Complaint against respondent for Breach of Contract, Specific Performance and Damages. The Complaint, docketed as Civil Case No. 20341 (hereafter referred to as the "Iloilo case"), was grounded on the alleged violation of the Dealership Agreement.

On July 7, 1994, during the pendency of the Iloilo case, respondent filed with the Makati Regional Trial Court, Branch 66, a Complaint docketed as Civil Case No. 94-2110 (hereafter referred to as the "Makati case"). The Complaint was for the collection of a sum of money in the amount of P463,107.75 representing the value of beer products, which respondent had delivered to petitioner.

In view of the pendency of the Iloilo case, petitioner moved to dismiss the Makati case on the ground that it had split the cause of action and violated the rule against the multiplicity of suits. The Motion was denied by the Makati RTC through Judge Eriberto U. Rosario.

Upon petitioner's Motion, however, Judge Rosario inhibited himself. The case was raffled again and thereafter assigned to Branch 142 of the Makati RTC, presided by Judge Jose Parentala Jr.

On January 3, 1997, petitioner moved for the consolidation of the Makati case with the Iloilo case. Granting the Motion, Judge Parentala ordered on February 13, 1997, the consolidation of the two cases. Respondent filed a Motion for Reconsideration, which was denied in an Order dated May 19, 1997.

On August 18,1997, respondent filed before the Court of Appeals a Petition for Certiorari assailing Judge Parentala's February 13, 1997 and May 19, 1997 Orders.

Ruling of the Court of Appeals

Setting aside the trial court's assailed Orders which consolidated the Iloilo and the Makati cases, the CA ruled in this wise:

> "There is no common issue of law or fact between the two cases. The issue in Civil Case No. 94-2110 is private respondent's indebtedness for unpaid beer products; while in Civil Case No. 20341, it is whether or not petitioner (therein defendant) breached its dealership contract with private respondent.
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> "Private respondent in her complaint aforequoted attempts to project a commonality between the two civil cases, but it cannot be denied that her obligation to pay for the beer deliveries can exist regardless of any "stop payment" order she made with regard to the checks. Thus, the rationale for consolidation, which is to avoid the possibility of conflicting decisions being rendered, (Active Wood products, Co. vs. Court of Appeals, 181 SCRA 774, Benguet Corporation, Inc. vs. Court of Appeals, 165 SCRA 27; Vallacar Transit, Inc. vs. Yap, 126 SCRA 503) does not exist."[3]

Hence, this Petition.[4]

The Issues

In her Memorandum,[5] petitioner interposes the following issues for the consideration of this Court:

"a. Were the Orders of February 13, 1997 and May 19, 1997 of the Regional Trial Court, Branch 142 in Makati City (ordering consolidation of Makati Civil Case No. 94-2110 with the Iloilo Civil Case No. 20341) already final and executory when respondent filed its petition for certiorari with the Hon. Court of Appeals such that said Court could no longer acquire jurisdiction over the case and should have dismissed it outright (as it originally did), instead of due giving course to the petition?; and

"b. Independent of the first issue, did the Makati RTC, Branch 142, correctly order the consolidation of the Makati case (which was filed later) with the Iloilo Case (which was filed earlier) for the reason that the obligation sought to be collected in the Makati case is the same obligation that is also one of the subject matters of the Iloilo case?"[6]

The Court's Ruling

The Petition is meritorious.

First Issue: Propriety of Petition with the CA

Petitioner avers that the Makati RTC's February 13, 1997 and May 19, 1997 Orders consolidating the two cases could no longer be assailed. Allegedly, respondent's Petition for Certiorari was filed with the CA beyond the reglementary sixty-day period prescribed in the 1997 Revised Rules of Civil Procedure, which took effect on July 1, 1997. Hence, the CA should have dismissed it outright.

The records show that respondent received on May 23, 1997, the Order denying its Motion for Reconsideration. It had, according to petitioner, only sixty days or until July 22, 1997, within which to file the Petition for Certiorari. It did so, however, only on August 21, 1997.

On the other hand, respondent insists that its Petition was filed on time, because the reglementary period before the effectivity of the 1997 Rules was ninety days. It theorizes that the sixty-day period under the 1997 Rules does not apply.

As a general rule, laws have no retroactive effect. But there are certain recognized exceptions, such as when they are remedial or procedural in nature. This Court explained this exception in the following language:

> "It is true that under the Civil Code of the Philippines, "(l)aws shall have no retroactive effect, unless the contrary is provided.' But there are settled exceptions to this general rule, such as when the statute is CURATIVE or REMEDIAL in nature or when it CREATES NEW RIGHTS.
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> x x x
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> "On the other hand, remedial or procedural laws, i.e., those statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights, ordinarily do not come within the legal meaning of a retrospective law, nor within the general rule against the retrospective operation of statutes."[7] (Emphasis supplied)

Thus, procedural laws may operate retroactively as to pending proceedings even without express provision to that effect.[8] Accordingly, rules of procedure can apply to cases pending at the time of their enactment.[9] In fact, statutes regulating the procedure of the courts will be applied on actions undetermined at the time of their effectivity. Procedural laws are retrospective in that sense and to that extent.[10]

Clearly, the designation of a specific period of sixty days for the filing of an original action for certiorari under Rule 65 is purely remedial or procedural in nature. It does not alter or modify any substantive right of respondent, particularly with respect to the filing of petitions for certiorari. Although the period for filing the same may have been effectively shortened, respondent had not been unduly prejudiced thereby, considering that he was not at all deprived of that right.

It is a well-established doctrine that rules of procedure may be modified at any time to become effective at once, so long as the change does not affect vested rights.[11] Moreover, it is equally

axiomatic that there are no vested rights to rules of procedure.[12]

It also bears noting that the ninety-day limit established by jurisprudence cannot be deemed a vested right. It is merely a discretionary prerogative of the courts that may be exercised depending on the peculiar circumstances of each case. Hence, respondent was not entitled, as a matter of right, to the 90-day period for filing a petition for certiorari; neither can it imperiously demand that the same period be extended to it.

Upon the effectivity of the 1997 Revised Rules of Civil Procedure on July 1, 1997, respondent's lawyers still had 21 days or until July 22, 1997 to file a petition for certiorari and to comply with the sixty-day reglementary period. Had they been more prudent and circumspect in regard to the implications of these procedural changes, respondent's right of action would not have been foreclosed. After all, the 1997 amendments to the Rules of Court were well-publicized prior to their date of effectivity. At the very least, counsel should have asked for an extension of time to file the petition.

Certification of Non-forum Shopping Defective

Petitioner likewise assails the validity of the sworn certification against forum-shopping, arguing that the same was signed by counsel and not by petitioner as required by Supreme Court Circular No. 28-91. For his part, respondent claims that even if it was its counsel who signed the certification, there was still substantial compliance with Circular No. 28-91 because a corporation acts through its authorized officers or agents, and its counsel is an agent having personal knowledge of other pending cases.

The requirement that the petitioner should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Circular and the Rules of Court make no distinction between natural and juridical persons. In this case, the Certification should have been signed "by a duly authorized director or officer of the corporation,"[13] who has knowledge of the matter being certified.[14] In Robern Development Corporation vs. Quitain,[15] in which the Certification was signed by Atty. Nemesio S. Cañete who was the acting regional legal counsel of the National Power

Corporation in Mindanao, the Court held that "he was not merely a retained lawyer, but an NPC in-house counsel and officer, whose basic function was to prepare legal pleadings and to represent NPC-Mindanao in legal cases. As regional legal counsel for the Mindanao area, he was the officer who was in the best position to verify the truthfulness and the correctness of the allegations in the Complaint for expropriation in Davao City. As internal legal counsel, he was also in the best position to know and to certify if an action for expropriation had already been filed and pending with the courts."

Verily, the signatory in the Certification of the Petition before the CA should not have been respondent's retained counsel, who would not know whether there were other similar cases of the corporation.[16] Otherwise, this requirement would easily be circumvented by the signature of every counsel representing corporate parties.

No Explanation for Non-Filing by Personal Service

Citing Section 11 of Rule 13 of the 1997 Rules, petitioner also faults respondent for the absence of a written explanation why the Petition with the Court of Appeals was served on her counsel by registered mail. In reply, respondent points out that such explanation was not necessary, because its counsel held office in Makati City while petitioner and her counsel were in Iloilo City.

We agree with petitioner. Under Section 11, Rule 13 of the 1997 Rules, personal service of petitions and other pleadings is the general rule, while a resort to other modes of service and filing is the exception. Where recourse is made to the exception, a written explanation why the service and the filing were not done personally is indispensable, even when such explanation by its nature is acceptable and manifest. Where no explanation is offered to justify the resort to other modes, the discretionary power of the court to expunge the pleading becomes mandatory.[17] Thus, the CA should have considered the Petition as not having been filed, in view of the failure of respondent to present a written explanation of its failure to effect personal service.

In sum, the Petition for Certiorari filed with the CA by herein respondent, questioning the orders of consolidation by the Makati RTC, should not have been given due course. Not only was the

Petition filed beyond the sixty-day reglementary period; it likewise failed to observe the requirements of non-forum shopping and personal service or filing. All or any of these acts ought to have been sufficient cause for its outright denial.

Second Issue: Propriety of Consolidation

Apart from procedural problems, respondent's cause is also afflicted with substantial defects. The CA ruled that there was no common issue in law or in fact between the Makati case and the Iloilo case. The former involved petitioner's indebtedness to respondent for unpaid beer products, while the latter pertained to an alleged breach of the Dealership Agreement between the parties. We disagree.

True, petitioner's obligation to pay for the beer products delivered by respondent can exist regardless of an alleged breach in the Dealership Agreement. Undeniably, however, this obligation and the relationship between respondent and petitioner, as supplier and distributor respectively, arose from the Dealership Agreement which is now the subject of inquiry in the Iloilo case. In fact, petitioner herself claims that her obligation to pay was negated by respondent's contractual breach. In other words, the non-payment — the res of the Makati case — is an incident of the Iloilo case.

Inasmuch as the binding force of the Dealership Agreement was put in question, it would be more practical and convenient to submit to the Iloilo court all the incidents and their consequences. The issues in both civil cases pertain to the respective obligations of the same parties under the Dealership Agreement. Thus, every transaction as well as liability arising from it must be resolved in the judicial forum where it is put in issue. The consolidation of the two cases then becomes imperative to a complete, comprehensive and consistent determination of all these related issues.

Two cases involving the same parties and affecting closely related subject matters must be ordered consolidated and jointly tried in court, where the earlier case was filed.[18] The consolidation of cases is proper when they involve the resolution of common questions of law or facts.[19]

Indeed, upon the consolidation of the cases, the interests of both parties in the two civil cases will best be served and the issues involved therein expeditiously settled. After all, there is no question on the propriety of the venue in the Iloilo case.

WHEREFORE, the Petition is hereby **GRANTED** and the assailed Decision **REVERSED** and **SET ASIDE**. The Orders of the Makati RTC (Br. 142) dated February 13, 1997 and May 19, 1997 are hereby **REINSTATED**. No costs.

SO ORDERED.

Melo, Vitug, Gonzaga-Reyes and Sandoval-Gutierrez, *JJ.*, concur.

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[1] Rollo, pp. 34-44; penned by Justice Portia Aliño-Hormachuelos, with the concurrence of Justices Buenaventura J. Guerrero (Division chairman) and Renato C. Dacudao.
[2] Rollo, pp. 159-160.
[3] Ibid., pp. 3-4; rollo, pp. 143-144.
[4] The case was deemed submitted for resolution on May 2, 2000, upon receipt by this Court of petitioner's Memorandum, signed by Atty. Rex M. Salas. Respondent's Memorandum, signed by Atty. Ericio M. Arcilla, was received on April 11, 2000.
[5] Rollo, pp. 227-248.
[6] Ibid. at p. 232.
[7] Frivaldo vs. Commission on Elections, 257 SCRA 727, at pp. 754-755, June 28, 1996.
[8] Hosana vs. Diomano, 56 Phil. 741; Guevarra vs. Laico, 64 Phil. 144; China Ins. & Surety Co. vs. Far Eastern Surety Ins. Co., 63 Phil. 320; Sevilla vs. Tolentino, 66 Phil. 196; Tolentino vs. Alzate, 98 Phil. 781; Gregorio vs. CA, 135 Phil. 224.
[9] Del Rosario vs. Court of Appeals, 241 SCRA 519, at p. 526, February 21, 1995.
[10] MRCA, Inc. vs. Court of Appeals, 180 SCRA 344, December 19, 1989, citing People vs. Sumilang, 77 Phil. 764.
[11] Aguillon vs. Director of Lands, 17 Phil, 506; Laurel vs. Misa, 76 Phil. 372.
[12] Alindao vs. Joson, 264 SCRA 211, November 14, 1996.
[13] Digital Microwave Corporation vs. CA, GR No. 128550, March 16, 2000, per Quisumbing, J.
[14] Robern Development Corporation vs. Quitain, 315 SCRA 150, September 23, 1999, per Panganiban, J.

[15] Ibid.
[16] Far Eastern Shipping Company vs. CA, 297 SCRA 30, October 1, 1998.
[17] Solar Team Entertainment, Inc. vs. Ricafort, 293 SCRA 661, August 5, 1998.
[18] Syndicated Media Access Corporation vs. CA, 219 SCRA 794, March 11, 1993.
[19] Active Wood Products Co., Inc vs. CA, 181 SCRA 774, February 5, 1990.