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REPORT OF CASES

DECIDED BY THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 192901; February 1, 2023]

CEZAR QUIAMBAO and OWEN S. CARSI-CRUZ, *Petitioners*, *v.* **BONIFACIO C. SUMBILLA and ADERITO Z. YUJUICO,** *Respondents*.

[G.R. No. 192903; February 1, 2023]

ANTHONY K. QUIAMBAO, *Petitioner*, *v.* **BONIFACIO C. SUMBILLA and ADERITO Z. YUJUICO,** *Respondents*.

D E C I S I O N

GAERLAN, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] dated August 2, 2010, assailing the Decision[2] dated January 27, 2010 and the Resolution[3] dated July 6, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 109312.

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1 *Rollo* (G.R. No. 192901), pp. 3-20.

2 Id. at 22-31. Penned by Associate Justice Estela M. Perlas-Bernabe (former Member of this Court), with Associate Justices Rebecca De Guia-Salvador and Jane Aurora C. Lantion, concurring.

3 Id. at 33-34.

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Factual Antecedents

The instant case arose from the filing of three separate complaints by Bonifacio C. Sumbilla and Aderito Z. Yujuico (collectively, respondents), members of the Board of Directors of Pacifica, Inc. (Pacifica), namely:

(1) Securities and Exchange Commission (SEC) Case No. 07-95 in the Regional Trial Court (RTC) of Pasig City (Pasig Case);

(2) Civil Case No. 07-117901 in the RTC of Manila (Manila Case); and

(3) Civil Case No. 07-831 in the RTC of Makati City (Makati Case).

The three complaints were filed against Cesar T. Quiambao (Cesar), Owen Casi Cruz (Owen), and Anthony K. Quiambao (Anthony; collectively, petitioners), and Pacifica.

Institution of the Pasig Case

On August 21, 2007 respondents filed a Complaint[4] with application for the issuance of temporary restraining order and/or writ of preliminary injunction against petitioners and Pacifica, seeking to enjoin Pacifica's Annual Stockholders' Meeting (ASM) scheduled on August 23, 2007 on the ground that it was called in violation of Pacifica's by-laws and the Corporation Code.[5] However, for failure to serve summons and notices of hearing upon petitioners and Pacifica, the application for injunctive relief was denied. Thus, the ASM pushed through as scheduled.[6]

Subsequently, respondents filed an Amended Complaint,[7] where they additionally prayed that the ASM conducted be declared illegal, and that the election of the new set of Board of Directors of Pacifica be nullified.[8]

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4 Id. at 35-54.

5 Id. at 41-45.

6 Id. at 23.

7 Id. at 55-82.

8 Id. at 76.

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Institution of the Manila and Makati Cases

As the corporate records of Pacifica on file with the SEC have conflicting addresses with respect to Pacifica's principal place of business, respondents sought clarification with the SEC through their Letter[9] dated August 30, 2007. In the letter, respondents explained that in Pacifica's General Information Sheet for 2004-2006, the principal place of business indicated therein was Pasig City, while Pacifica's Articles of Incorporation and Amended Articles of Incorporation indicated Manila and Makati City as Pacifica's principal place of business, respectively. Respondents, likewise, stated that they were seeking clarification for purposes of determining the proper venue where they could file an intra-corporate dispute case.

Without waiting for SEC's response, respondents simultaneously filed the Manila and Makati Cases on September 7, 2007, or within the 15-day period prescribed by Section 3, Rule 6 of A.M. No. 01-2-04-SC or the Interim Rules of Procedure for Intra-Corporate Controversies.[10]

In both the Manila and Makati Cases, respondents similarly prayed that the ASM conducted on August 23, 2007 be declared invalid, and that the election of the new set of Board of Directors of Pacifica be nullified.[11]

Notably, respondents, likewise, stated in their complaints[12] in the Manila and Makati Cases that they were constrained to file the three identical cases because there were doubts as to Pacifica's

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[9] Id. at 769-770.

[10] Section 3. *Complaint*. — In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

1. The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws; and

2. The plaintiff has exhausted all intra-corporate remedies in election cases as provided for in the by-laws of the corporation.

[11] *Rollo* (G.R. No. 192901), pp. 102, 129.

[12] Id. at 83-108, 109-135.

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principal place of business, and that they could not afford to wait for SEC's response to their letter to avoid the possibility of foreclosing their remedies. Nonetheless, respondents manifested that once the SEC clarifies Pacifica's principal place of business and which among their cases should be maintained, they would immediately withdraw the others. Such manifestation was, likewise, included in the Verification and Certification Against Forum Shopping attached to their complaints.

Withdrawal of the Pasig and Manila Cases

On November 19, 2007, the SEC finally issued its response and disclosed that per the latest amendment to Pacifica's Articles of Incorporation, its principal place of business is in Makati City.[13] Thus, respondents immediately filed their Notice of Withdrawal[14] in the Pasig and Manila Cases. Such withdrawal of the Complaints in the Pasig and Manila Cases were done even before any responsive pleading was filed therein.

Proceedings in the Makati Case

Being filed in the proper venue, the Makati Case proceeded.

Significantly, on September 1, 2008, Process Server Fernando Vinluan and Sheriff IV Robert V. Alejo submitted an Officer's Return before the RTC, which declared that summons have been duly served.[15] Because no answer was filed, respondents filed a Motion to Render Judgment by Default,[16] which was granted by the RTC in its Order[17] dated April 15, 2009.

Thereafter, petitioners filed an Urgent Motion,[18] where they argued that they were not adequately notified of the case and that service of summons was improperly made. As such, petitioners

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[13] Id. at 821.

[14] Id. at 818-820, 822-824.

[15] Id. at 24-25.

[16] Id. at 384-395.

[17] Id. at 135-136.

[18] Id. at 530-542.

prayed that the RTC Order granting the Motion to Render Judgment by Default be set aside.[19]

Petition for *Certiorari* before the Court of Appeals

Petitioners then filed a Petition for *Certiorari*[20] before the CA, raising the following issues:

I

THE RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN ISSUING THE QUESTIONED *ORDER*, INASMUCH AS THE TRIAL COURT HAS NOT VALIDLY ACQUIRED JURISDICTION OVER THE PERSONS OF THE PETITIONERS.

A. Both respondent Judge's questioned *Order* and respondent Vinluan's *Officer's Return* show that service of summons was not properly served upon petitioners.

B. In light of the patent defects in the supposed substituted service of summons upon petitioners, Respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in upholding Vinluan's supposed substituted service of summons and using the same as basis in issuing the questioned *Order*.

II

DESPITE BEING APPRISED OF PRIVATE RESPONDENTS' BRAZEN ACT OF FORUM SHOPPING AND ABUSE OF JUDICIAL PROCESS, RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO SUMMARILY DISMISS THE MAKATI CASE AS MANDATED BY THE RULES OF COURT AND BY RULING CASE LAW.[21]

On January 27, 2010, the CA rendered its Decision,[22] which partially granted the petition for *certiorari*, to wit:

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[19] Id. at 538.

[20] Id. at 137-172.

[21] Id. at 145.

[22] Id. at 22-32.

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WHEREFORE, premises considered, the instant petition for certiorari is **PARTIALLY GRANTED.** The assailed Order of the RTC is hereby **REVERSED AND SET ASIDE** for being null and void and all orders and/or proceedings emanating therefrom are vacated. The RTC is ordered to issue the corresponding summons upon petitioners.

SO ORDERED.[23]

The CA found that the summons were improperly served upon petitioners. However, as regards the issue on forum shopping, the CA stated that respondents' act of filing three separate cases was justified and that there was no willful or deliberate intent on the part of respondents to commit forum shopping, thus:

> On the issue of forum shopping, the Court finds adequate and justified the explanation of private respondents anent the simultaneous filing of the same complaint before three (3) different fora on account of the confusion in Pacifica, Inc.'s principal place of business and to avoid the possible foreclosure of their remedy to annul the August 23, 2007 annual stockholders meeting. Besides, to merit disciplinary action, forum shopping must be willful and deliberate. In this case, private respondents' admission in their Complaint Ad Cautelam of their subject recourse and the consequent withdrawal of the complaints before the RTC of Pasig City and Manila upon being advised by the Securities and Exchange Commission (SEC) that Pacifica, Inc.'s principal place of business is in Makati City sufficiently negated any deliberate intent on their part to engage in forum shopping.[24] (Citations omitted)

Petitioners moved for reconsideration, but the same was denied in the CA's Resolution[25] dated July 6, 2010.

The Instant Petition

On August 2, 2010, Cezar and Owen filed a Petition for Review on *Certiorari*,[26] docketed as G.R. No. 192901, where they argued that the CA erred when it refused to dismiss the Makati Case notwithstanding respondents' admitted act of forum

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[23] Id. at 30.

[24] Id. at 29-30.

[25] Id. at 33-34.

[26] Id. at 3-20.

shopping.[27] Subsequently, Anthony also instituted a case before the Court, docketed as G.R. No. 192903.

On April 17, 2010, Anthony filed an Omnibus Motion,[28] where he: (1) explained that he was abroad when Cezar and Owen filed the petition, and as such, he was unable to join as a petitioner; (2) asked that he be allowed to adopt Cezar and Owen's petition as his petition in G.R. No. 192903; and (3) prayed that G.R. Nos. 192901 and 192903 be consolidated. Thereafter, on November 17, 2010, the Court issued a Resolution,[29] ordering the consolidation of the two cases.

On January 14, 2013, respondents filed their Comment,[30] emphasizing that there was no deliberate or willful intent on their part to commit forum shopping, considering that they exercised due diligence to prevent it when they: (1) asked the SEC for clarification as to Pacific's principal place of business; (2) declared all the cases in their certifications against forum shopping; and (3) immediately withdrew the Pasig and Manila Cases upon receipt of the SEC's response.[31]

Issue

The main issue the Court is tasked to resolve is whether the CA erred when it declared that respondents are not guilty of forum shopping.

The Court's Ruling

The petition is bereft of merit. The CA did not err when it found that respondents' act of filing three separate cases was justified and reasonable given the circumstances.

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27 Id. at 10.

28 *Rollo* (G.R. No. 192903), pp. 23-28.

29 *Rollo* (G.R. No. 192901), p. 573.

30 Id. at 605-614.

31 Id. at 612.

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The elements of forum shopping have been discussed by the Court in several cases. In *San Juan v. Arambulo, Sr.*,[32] the Court held:

> Forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. **A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other**.
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> There is forum shopping when the following elements are present: "(a) **identity of parties**, or at least such parties as represent the same interests in both actions; (b) **identity of rights asserted and relief prayed for**, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, is such that **any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration**; said requisites [are] also constitutive of the requisites for *auter action pendant* or *lis pendens*."[33] (Emphases supplied)

Meanwhile, in *Dy v. Mandy Commodities Co., Inc.*,[34] the Court discussed the purpose of the rule on forum shopping:

> Forum shopping is a deplorable practice of litigants consisting of resorting to two different *fora* for the purpose of obtaining the same relief, **to increase the chances of obtaining a favorable judgment**. What is pivotal to the determination of whether forum shopping exists or not is the **vexation caused to the courts and the party-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or *fora* upon the same issues**.
>
> The grave evil sought to be avoided by the rule against forum shopping is the **rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking**

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[32] 514 Phil. 112 (2005).

[33] Id. at 115-116.

[34] 611 Phil. 74 (2009).

advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. x x x[35] (Emphases supplied; citations omitted)

Moreover, in *Uematsu v. Balinon*,[36] the Court categorically stated that the rule on forum shopping aims to avoid the rendition of contradictory judgments of two competent courts or tribunals:

In fine, there is forum shopping when a party files two or more cases involving the *same parties, causes of action and reliefs*. Notably, forum shopping is one of the grounds for the dismissal of a case. **The rule against it aims to avoid the rendition of two competent courts of separate and opposing rulings which may arise because a party-litigant takes advantage and tries his or her luck into seeking relief until a result in one's favor is attained**.[37] (Emphasis supplied)

Thus, to constitute forum shopping, the filing of several suits in different *fora*, which involve the same parties, causes of action, or reliefs prayed for, must be for the purpose of increasing the chances of obtaining a favorable judgment.

Such is not the case here.

To recall, respondents filed three similar cases in three separate courts. However, as borne by the records, they did so not for the purpose of increasing their chance of obtaining a favorable judgment. Rather, respondents filed their cases in three different courts because of the uncertainty as to the proper venue of their action. As shown by the documents submitted before the Court, Pacific's corporate records indicate three different venues as regards its principal place of business. While respondents sought clarification with the SEC, the Court cannot fault them for failing to wait for SEC's response because waiting for the same could have resulted in the foreclosure of their available remedies. Moreover, immediately after their receipt of the SEC's response, respondents

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[35] Id. at 84.

[36] G.R. No. 234812, November 25, 2019.

[37] Id.

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withdrew the Manila and Pasig Cases. Undeniably, therefore, the danger which the rule on forum shopping seeks to prevent—that tribunals render contradictory decisions—is not attendant in this case because only the Makati Case remained.

In fact, there have already been instances when the Court ruled that no forum shopping exists upon a litigant's withdrawal of his or her other cases.

In *The Executive Secretary v. Gordon*,[38] Gordon filed a petition for prohibition before the Court. However, upon realizing that the proper forum for his case is the RTC, in accordance with the doctrine of hierarchy of courts, he withdrew his petition for prohibition before the Court, and refiled the same before the RTC. In declaring that Gordon did not commit forum shopping, the Court explained:

> In the case at bar, although respondent Richard J. Gordon filed a petition for prohibition before this Court and, after two days, filed substantially the same petition before the Regional Trial Court of Olongapo City, the fact remains that (1) before filing his petition in the Olongapo court he first filed a notice of withdrawal of his petition which this Court later granted and (2) he withdrew his petition in this Court for the following reason:
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> > Due, however, to the present policy of the Court requiring parties and their counsel to adhere strictly to the hierarchy of courts and in order to obviate any technical objection on this ground, petitioner has deemed it fit to withdraw, as he hereby withdraws, the instant petition so that it may be filed in the proper court where it can be ventilated on its merits.
>
> **No adverse decision had been rendered by this Court against respondent Gordon for which reason he thought it proper to institute the second action in the trial court**. The situation he found himself in is similar to that in which a party, **after filing a suit, realizes he made a mistake because the court in which he has brought the case has no jurisdiction. He, therefore, withdraws his action and refiles it in the proper forum**. For, indeed, the policy of this Court respecting the hierarchy of courts and consequently prohibiting the filing of a petition

[38] 359 Phil. 266 (1998).

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in this Court in view of the concurrent jurisdiction with the lower courts has been consistently observed in the absence of any compelling reason for departing from such policy. **It is clear from respondent's actions and explanation that they had no intention of disregarding court processes**. They in fact complied with Rule 7, §5 of the Rules of Civil Procedure.[39] (Emphases supplied)

Similarly, in *Benedicto v. Lacson*,[40] the Court elucidated that there can be no forum shopping when the danger of conflicting decisions is not present. In the said case, the plaintiffs filed for the dismissal of their Pasig Case in accordance with Section 1, Rule 17 of the Rules of Court.[41] The plaintiffs then subsequently filed the same case in Bacolod City.

In ruling that forum shopping did not exist in the said case, the Court held:

> There is no dispute that the dismissal of the complaint in the Pasig case, upon notice of the plaintiffs therein, was sanctioned by Section 1, Rule 17 of the Revised Rules of Court. Quite clearly, the Order declared that the dismissal of the complaint was without prejudice to the re-filing thereof. Moreover, even if the same were tested under the rules on *litis pendentia* and *res judicata*, **the danger of conflicting decisions cannot be present, since the Pasig case was dismissed even before a responsive pleading was filed by petitioner. Since a party resorts to forum shopping in order to increase his chances of obtaining a favorable decision or action, it has been held that a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has even been rendered against him in any of the cases he has brought before the courts**.

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[39] Id. at 272-273.

[40] 634 Phil. 154 (2010).

[41] Section 1. *Dismissal upon notice by plaintiff*. — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

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While the RTC may have been of the opinion that the Pasig Case was nevertheless "commenced" and, therefore, the same should have been stated by respondents in their certification of non-forum shopping in the Bacolod case, this Court does not share the same view.[42] (Emphasis supplied; citations omitted)

Further, in *Roxas v. Court of Appeals*,[43] the Court ruled that when the dismissal of a case is at the instance of the petitioner, such dismissal could not amount to *litis pendentia* or *res judicata*, and thus, there could be no forum shopping:

Since a party resorts to forum shopping in order to increase his chances of obtaining a favorable decision or action, it has been held **that a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has ever been rendered against him in any of the cases he has brought before the courts**. Forum shopping exists where the elements of *litis pendencia* are present, and where a final judgment in one case will amount to *res judicata* in the other. For the principle of *res judicata* to apply, the following must be present: (1) a decision on the merits; (2) by a court of competent jurisdiction; (3) the decision is final; and (4) the two actions involve identical parties, subject matter and causes of action.

In the case at bar, there was no adverse decision against the petitioner in Civil Case No. 97-0523 which was the first case filed and raffled to the sala (Branch 257) of Judge How. The dismissal without prejudice of the complaint in Civil Case No. 97-0523 at the instance of the petitioner was pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure considering that it was done before service of answer or any responsive pleading. **The dismissal does not amount to *litis pendencia* nor to *res judicata*. There is no *litis pendencia* since the first case before Judge How was dismissed or withdrawn by the plaintiff (herein petitioner), without prejudice, upon her filing of a notice of dismissal**, pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure. To use the wording of that rule, Judge How's order is one merely "confirming the dismissal" of the complaint by the plaintiff (herein petitioner). **Neither is there *res judicata* for the reason that the order of dismissal was not a decision on the merits but a dismissal "without prejudice."**

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[42] *Benedicto v. Lacson*, supra note 40 at 172-173.

[43] 415 Phil. 430 (2001).

Thus, private respondent's apprehension that the case was dismissed in order to be transferred to the sala of a judge who is allegedly more sympathetic to the petitioner's cause is baseless and not a valid reason to declare the petitioner guilty of forum shopping. First, the petitioner is not assured that the case would be raffled to a more sympathetic judge. There are five (5) RTC branches in Parañaque, namely, branch nos. 257, 258, 259, 260 and 274. Second, Judge Bautista-Ricafort of RTC of Parañaque, Branch 260, is presumed to be fair and impartial despite private respondent's claim that she is an alleged law school classmate of the petitioner's counsel. In any event, at the slightest doubt of the impartiality of the said trial judge, private respondent could have filed before the same judge a motion for her inhibition on that ground. But private respondent did not.[44] (Emphases supplied; citations omitted)

From the foregoing, it is clear that there is no forum shopping in this case. Again, the Pasig and Manila Cases were immediately withdrawn, even before the filing of any responsive pleadings therein. This means that such withdrawal, at the instance of respondents, could not have resulted to *litis pendentia* or *res judicata*. More compellingly, there is no possibility of conflicting decisions in this case, because only the Makati Case remained.

Undeniably, respondents did not commit any act of forum shopping because there is no deliberate or willful intent on their part to receive a more favorable judgment when they filed the Makati, Pasig, and Manila Cases. All things considered, the CA did not err when it found that respondents did not engage in forum shopping.

WHEREFORE, the Petition for Review on *Certiorari* dated August 2, 2010 is **DENIED**. The Decision dated January 27, 2010 and the Resolution dated July 6, 2010 of the Court of Appeals in CA-G.R. SP No. 109312 are **AFFIRMED**.

SO ORDERED.

Caguioa (Chairperson), Inting, Dimaampao, and *Singh JJ.*, concur.

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[44] Id. at 443-444.

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APPEARANCES OF COUNSEL

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