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FIRST DIVISION

[G.R. No. 127683. August 7, 1998]

LETICIA P. LIGON, *petitioner, vs.* **COURT OF APPEALS and IGLESIA NI CRISTO,** *respondents.*

SYNOPSIS

Petitioner Ligon is the mortgagee in three deeds of mortgage covering two parcels of land in Quezon City belonging to the Islamic Directorate of the Philippines (IDP). These two parcels of land were sold to Iglesia ni Cristo (INC.). The INC then filed a complaint for the annulment of the deeds of mortgage over the two lots, impleading therein Ligon and the IDP. IDP interposed a cross-claim against Ligon while Ligon filed an answer with counterclaim, and cross-claim against IDP. Later, Ligon filed a motion to declare INC and IDP in default for their failure to file an answer to her counterclaim and cross-claim. Ligon was allowed to present evidence *ex-parte* to support her cross-claim against IDP. Then Ligon filed a motion for rendition of partial judgment against IDP in the cross-claim for the foreclosure of the mortgages. The trial court thus rendered a partial judgment ordering IDP to pay Ligon the various loans and directed the foreclosure sale of the mortgaged properties in case of non-payment. The INC filed a motion for reconsideration of the partial judgment but the same was denied; thus, INC went to the Court of Appeals with a petition for *certiorari*. When the Court of Appeals ruled in favor of INC and annulled the decision of the lower court, Ligon filed the instant petition.

The Court ruled that while a cross-claim must be answered, and the party who fails to file an answer thereto may be declared in default, the answer to the cross-claim is meant to join the subsidiary issues between the co-parties in relation to the opposing party's claim against the cross-claimant. Until the principal issue between the plaintiff and the defendant cross-claimant shall have been heard and determined, it would be premature to decide the cross-claim. In her cross-claim against IDP, Ligon alleged that IDP unjustly refused to pay the loans it contracted from her which had become due and demandable.

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IDP, as to the INC's charge in its Answer with cross-claim that Ligon should have known that the persons Ligon transacted with had no authority to bind IDP, hence, the subject loans and mortgages are null and void. The Court ruled that it is inevitable that IDP's cross-claim effectively joined the subsidiary issues between the co-parties. Requiring an answer to Ligon's cross-claim would be superfluous. Consequently, declaring IDP in default on the cross-claim was improper.

INC's principal cause of action was the annulment of the mortgages. The partial decision resolved this issue against INC through the backdoor and without INC having presented its evidence. The trial court disregarded the fact that Ligon's cross-claim was connected with, or dependent on, the subject of INC's original complaint.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTION; *CERTIORARI*; BASED ON THE ALLEGATION THAT THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND WITHOUT JURISDICTION.** — The remedies of appeal and *certiorari* are mutually exclusive and not alternative nor successive. It is settled that the averments in the complaint, and not the nomenclature given by the parties, determine the nature of the action. Considering that this petition primarily consists of allegations charging the Court of Appeals with having acted with grave abuse of discretion and without jurisdiction, this Court shall treat this petition as a special civil action for *certiorari* under Rule 65 of the Rules of Court.

2. **ID.; ID.; ID.; PARTIES; CASE AT BAR.** — At the time CA-G.R. SP No. 40258 was filed, the law on who should be parties in a special civil action for *certiorari* were Sections 1 and 5 of Rule 65 of the Rules of Court. There can be no dispute on the fact that insofar as the partial decision in Civil Case No. Q-91-10494, challenged in CA-G.R. SP No. 40258, is concerned, IDP can by no yardstick be considered as a party interested in sustaining the challenged partial decision pursuant to Section 5. In fact, IDP was also an aggrieved party in said partial decision. It could have challenged the partial decision and the previous order declaring it in default.

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3. **ID.; CIVIL PROCEDURE; PLEADINGS; CROSS-CLAIM; ELUCIDATED.** — Section 7 of Rule 6 of the Rules of Court defines a cross-claim as any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim. It may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. The answer then to the cross-claim is meant to join the subsidiary issues between the co-parties in relation to the opposing party's claim against the cross-claimant. Needless to state, until the principal issue between the plaintiff and the defendant cross-claimant shall have been heard and determined, it would be premature to decide the cross-claim.

4. **ID.; ID.; FORUM SHOPPING; WHEN PRESENT.** — There is forum-shopping when as a result of an adverse decision in one forum or, it may be added, in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari,* raising identical causes of action, subject matter, and issues. Forum shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Yet another indication is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other case. The test is whether in the two or more pending cases there is an identity of (a) parties, (b) rights or causes of action, and (c) reliefs sought.

APPEARANCES OF COUNSEL

Minerva Genovea for petitioner.
Cuevas Law Offices for private respondent.

D E C I S I O N

DAVIDE, JR., *J.*:

This petition, "as appeal under Rule 45 and at the same time as a special civil action for *certiorari* under Rule 65 of the

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Rules of Court," seeks to reverse the Decision[1] of the Court of Appeals of 11 September 1996 in CA-G.R. SP No. 40258 and its Resolution[2] of 3 January 1997 denying petitioner's motion for reconsideration of the Decision.

As far as could be gathered from the voluminous pleadings filed by the parties in this case and in CA-G.R. SP No. 40258, the factual antecedents are as follows:

Petitioner Leticia P. Ligon (hereafter LIGON) is the mortgagee in three deeds of mortgage covering two parcels of land located along Tandang Sora, *Barangay* Culiat, Quezon City, covered by Transfer Certificates of Title (TCT) Nos. 170567 (now RT-26521) and 176616 (now RT-26520) belonging to the Islamic Directorate of the Philippines (hereafter IDP). These deeds of mortgage were executed by certain Abdulrahman R.T. Linzag and Rowaida Busran-Sampaco on 21 March 1988, 25 April 1988, and 29 July 1988 as security for the loans of P3 million, P2 million, and P4 million, respectively, which IDP allegedly obtained from LIGON.[3]

It must be pointed out that two groups had earlier vied for control of the IDP, namely, (1) the Carpizo group headed by Engr. Farouk Carpizo and (2) the Abbas group led by Zorayda Tamano and Atty. Firdaussi Abbas. In its decision of 3 October 1986 in SEC Case No. 2687, the Securities and Exchange Commission (SEC) declared null and void the election of both groups to the IDP Board of Trustees. Nevertheless, on 20 April 1989, the Carpizo group caused the signing of an alleged Board Resolution authorizing the sale of the two parcels of land mentioned above to private respondent Iglesia ni Cristo (hereafter INC). The sale was evidenced by a Deed of Absolute

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[1] Per Luna, A., *J.*, with Barcelona and Valdez, *JJ.*, concurring. Annex "A" of Petition, *Rollo,* 65-91;

[2] Annex "C" of Petition, *Rollo,* 115-126.

[3] Partial Judgment in Civil Case No. Q-91-10494, 3-5; Original Record (OR), Vol. III, 1,169-1,171; Complaint, 6; OR, Vol. I, 8. The Complaint stated that copies of said mortgages were attached thereto as Annexes "D", "E", and "F", but said annexes were not in the record.

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Sale[4] dated 20 April 1989, wherein IDP and INC stipulated that the former would evict all squatters and illegal occupants in the two lots within forty-five (45) days from execution of the sale.

IDP failed to clear the lots of squatters; hence, on 19 October 1990 INC filed with the Regional Trial Court (RTC) of Quezon City a complaint for specific performance with damages, which was docketed as Civil Case No. Q-90-6937.

On 30 May 1991, IDP's original Board of Trustees headed by Senator Mamintal Tamano, or the Tamano group, filed a petition with SEC to annul the sale of the two lots to INC. The case was docketed as SEC Case No. 4012. On 5 July 1993, the SEC promulgated its decision in SEC Case No. 4012 annulling, *inter alia*, the sale of the two parcels of land to INC. Aggrieved, INC filed a special civil action for *certiorari* before the Court of Appeals, which was docketed as CA-G.R. SP No. 33295. In its decision of 28 October 1994, the Court of Appeals granted INC's petition and set aside the portion of the SEC decision declaring the sale null and void. Consequently, the Tamano group appealed to this Court in a petition for review in G.R. No. 117897 entitled *Islamic Directorate of the Philippines v. Court of Appeals*.

Meanwhile, on 12 September 1991, the RTC rendered a partial judgment in Civil Case No. Q-90-6937; and on 7 October 1991, it rendered an amended partial judgment granting the reliefs prayed for by INC except the prayer for damages, which was to be resolved later.

On 31 October 1991, the INC filed with the RTC of Quezon City a complaint[5] for the annulment of the deeds of mortgage over the two lots, impleading as defendants therein LIGON, Abdulrahman R.T. Linzag, Rowaida Busran-Sampaco, and the IDP. The case was docketed as Civil Case No. Q-91-10494.

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[4] Exhibit "A", Folder of Exhibits, Civil Case No. Q-91-10494.

[5] OR, Vol. I, 3-14.

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In its answer,[6] IDP interposed a cross-claim against LIGON. On the other hand, LIGON filed an answer[7] with counterclaim; a cross-claim against IDP; and a third-party complaint against Pablo de Leon, Guillermo Vina, and Aida Vina.

Later, LIGON filed a motion[8] in Civil Case No. Q-91-10494 to declare INC and IDP in default for their failure to file an answer to her counterclaim and cross-claim, respectively. She further prayed that she be allowed to present evidence *ex-parte*. INC opposed[9] the motion, saying that some of the grounds raised by LIGON in her counterclaim were sufficiently dealt with in INC's complaint, while the other grounds were in the nature of a compulsory counterclaim and did not therefore require an answer. On 30 September 1992, the trial court granted LIGON's motion and allowed LIGON to present evidence *ex-parte* to support her cross-claim against IDP.10

Then, on 2 August 1995, LIGON filed in Civil Case No. Q-91-10494, an urgent motion[11] for rendition of partial judgment against IDP in the cross-claim for the foreclosure of the mortgages. On 27 October 1995, the trial court rendered a partial judgment[12] (1) ordering IDP to pay LIGON the amounts of ₱3 million, ₱2 million, and ₱4 million "with interest at 36% per annum compounded annually" from the dates the loans became due and demandable; and (2) directing the foreclosure sale of the mortgaged properties in case of non-payment of said amounts.

On 21 November 1995, INC filed a Motion for Reconsideration[13] of the partial judgment, which was, however,

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[6] *Id.*, 128-137.

[7] *Id.*, 264-278.

[8] OR, Vol. II, 515-516.

[9] *Id.*, 518-519, 538-543.

[10] OR, Vol. II, 551-552.

[11] OR, Vol. III, 1162-1166.

[12] *Id.*, 1167-1173. Per Judge Eudarlio B. Valencia.

[13] *Id.*, 1174-1183.

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denied by the trial court in its Order[14] of 20 March 1996 on the following grounds:

> . . . [T]he INC has no personality to seek a reconsideration of the partial judgment.
>
> Firstly, the judgment involves a cross-claim in which INC is not a party; the right to appeal from a judgment or to move for a reconsideration thereof is a right inherent to the party in the cross-claim affected adversely by the judgment. Section 2, Rule 3 of the Rules of Court provides that a case shall be prosecuted and defended in the name of the real party-in-interest. INC is not a party to the mortgages hence it is not a real party-in-interest to the foreclosure thereof.
>
> . . . .
>
> Not being a party to the cross-claim, as indeed it cannot be being the plaintiff and cross-claim being a suit between co-parties, INC has no right to file the instant motion.
>
> Secondly, INC is the plaintiff in this case that sued IDP. Thus, the interests of INC as plaintiff are adverse to or in conflict with those of IDP, a defendant. The plaintiff cannot take up the cudgels for an adverse party, the defendant.
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> Thirdly, the right of the INC to file this motion rests on its being a subsequent purchaser of the property or its being the new owner; thus, it claims it steps into the shoes of IDP. The right of IDP as a party to a case should be distinguished from its rights as owner-seller of the property, especially in this case where not only did INC sue IDP but IDP also chose not to exercise its right to move for a reconsideration of the partial judgment or to appeal therefrom.
>
> More importantly, even assuming *arguendo* that INC is now the new owner of the mortgaged property, the fact remains that the sale to it on April 20, 1989, is admittedly after the execution of the real estate mortgages in 1988; the mortgages were registered in 1991 while the sale was never inscribed in the TCTs of the IDP. The INC is simply a subsequent buyer whose rights were explicitly defined in the case of Limpin *vs.* IAC (*supra*).

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[14] *Id.*, 1328-1335.

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Finally, this Court has already ruled that INC is not a party to the mortgages and may have no right to question the validity thereof ....

Consequently, INC filed with the Court of Appeals a petition[15] for *certiorari* with prayer for the issuance of a temporary restraining order to annul the aforementioned partial judgment and the order denying private respondent's motion for reconsideration. The case was docketed as CA-G.R. SP No. 40258.

In its decision[16] of 11 September 1996 in CA-G.R. SP No. 40258, the Court of Appeals ruled in favor of INC and justified its ruling in this wise:

Technically, while the IDP can be declared in default for failure to file its answer to Ligon's counterclaim, and that Ligon's motion to present her evidence *ex-parte* against the IDP is not irregular, the respondent court should not have rendered a partial judgment based on the evidence presented by Ligon, without giving the INC an opportunity to present its evidence *contra* as well as to substantiate its allegations in the complaint that the mortgage contracts are null and void and of no binding force and effect...

. . . . . .

Had respondent court, upon motion by respondent Ligon allowed her to introduce her evidence, and afterwards afforded the INC of the opportunity to be heard in its complaint to prove that the loans and the mortgages are invalid, such recourse could have prevented the most mischievous consequences in the administration of justice to suitors, that of depriving one of his day in court — the affording of an opportunity to be heard on the other.

. . . . . .

We find sufficient basis to hold that respondent court committed grave abuse of discretion tantamount to lack or in excess of jurisdiction in rendering a partial judgment at that stage of the proceedings, the

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[15] *Rollo,* CA-G.R. Sp. No. 40258 [CA *Rollo* 2-21].

[16] *Supra*, note 1.

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dispositive portion of which would even indicate that respondent Ligon was awarded more than what she prayed for...

We further find that respondent court exceeded its jurisdiction in rendering partial judgment in favor of respondent Ligon without first giving petitioner its day in court since the issues in the respective claims of the parties against each other are interrelated and inseparably intertwined with one another — one maintains that the mortgages are null and void, while the other asks for foreclosure of the same mortgage contracts — respondent court could have deferred disposition of one claim adverse to the claim of the other until the claim of both are heard and the parties afforded the opportunity to present their evidence in support of their opposing claim.

This decision prompted LIGON's "Urgent Motions to Vacate Null and Void Decision Dated September 11, 1996, Dismiss the Petition and/or for Reconsideration"[17] and "Motion to Recuse Associate Justices Artemon D. Luna, Ramon A. Barcelona, and Salvador J. Valdez, Jr.,"[18] which was accompanied by "Amended Urgent Motions to Vacate Null and Void Decision Dated September 11, 1996, Dismiss the Petition and/or for Reconsideration."[19] These were denied by the Court of Appeals in its Resolution[20] of 3 January 1997.

Undaunted by the foregoing adversities in CA-G.R. SP No. 40258, LIGON filed the instant petition on 27 February 1997. LIGON claims that respondent Court of Appeals (1) acted with grave abuse of discretion in refusing to order INC to implead or include IDP as an indispensable party in the petition for *certiorari*; (2) acted without jurisdiction in annulling the decision of the lower court; and (3) erred in not dismissing INC's petition because INC was not aggrieved by the trial court's decision and was guilty of forum-shopping.

LIGON asserts that IDP was an indispensable party in INC's action in CA-G.R. SP No. 40258 because IDP is "the mortgagor

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[17] Annex "B" of Petition, *Rollo,* 92-113.

[18] CA *Rollo,* 569-572.

[19] *Id.*, 573-594.

[20] *Supra*, note 2.

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and defendant in the foreclosure suit instituted by petitioner Ligon before the lower court"; it has "such interest in the controversy that a final decree would necessarily affect its rights and interests"; and, "an action to annul a contract cannot be maintained without joining both contracting parties as defendants or respondents." Since IDP was not impleaded in said case, the petition should have been dismissed pursuant to Section 7, Rule 3 of the Rules of Court.[21] The Court of Appeals, therefore, acquired no jurisdiction over the case; and its decision was a total nullity.

As to the second ground, LIGON claims that the Court of Appeals was powerless to annul the trial court's judgment because IDP was not a party in CA-G.R. SP No. 40258.

Regarding the third ground, LIGON asserts that INC was not aggrieved by the trial court's decision because at no time was it a party to the action for foreclosure of the mortgages; moreover, INC did not show that it would suffer substantial injury or manifest injustice in case of foreclosure of the mortgages. She asserts that IDP was the aggrieved party, then tirelessly reiterates her argument that IDP should have been joined as petitioner or respondent in the *certiorari* proceeding.

As to forum-shopping, LIGON maintains that "both *litis pendentia* and *res judicata* [were] irrepressibly present and attendant" in INC's action before the appellate court. INC filed three actions, in all of which there was identity of (1) parties or interests represented, (2) right or causes, and (3) reliefs sought. Civil Case No. Q-90-6937 was for the enforcement of the stipulation in the Deed of Absolute Sale between INC and IDP obliging IDP to clear the properties sold of squatters. In Civil Case No. Q-91-10494, INC sought to stop the foreclosure of the mortgages. The third case was CA-G.R. SP. No. 40258, wherein the same relief was being sought by INC, that is, to enjoin the foreclosure of the mortgages. LIGON claims that the issues in the three cases were so intertwined that the resolution of any one would constitute *res judicata* in the others.

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[21] This is reproduced in Sec. 7, Rule 3 of the 1997 Rules of Civil Procedure.

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For its part, INC argues that IDP was not an indispensable party in CA-G.R. SP No. 40258. LIGON's reliance on Section 7, Rule 3 of the Rules of Court on compulsory joinder of indispensable parties is misplaced. INC contends that the rules on ordinary civil actions, including said Section 7, apply only suppletorily to special civil actions. Section 5, Rule 65 of the Rules of Court declares that the defendants in a special civil action for *certiorari* shall be the person or persons interested in sustaining the proceeding in court to be joined with the court or judge whose act or omission is being contested. It is "illogical and absurd" to argue that IDP is interested in defending the validity of an adverse partial judgment.

As regards LIGON's second ground, INC counters that the special civil action for *certiorari* was an independent action and not a continuation of the proceedings before the trial court. Thus, not all the parties in the case at the trial court could be included in the independent action for *certiorari.*

Anent the third ground, INC maintains that it was aggrieved by the foreclosure judgment because, being the new owner of the subject lots, it would suffer substantial injury and manifest injustice from the foreclosure of the mortgages. INC relies on Article 1609 of the Civil Code, which subrogates the vendee to the rights and actions of the vendor.

INC claims it did not engage in forum-shopping, as the cases it filed involved different issues. Civil Case No. Q-90-6937 involved the validity of the sale of the IDP properties to INC; Civil Case No. Q-91-10494, the validity of the mortgages; and CA-G.R. SP No. 40258, the validity of the partial judgment rendered by the trial court. The judgment in one case was not determinative of the issues in the other cases.

As to the trial court's declaration that IDP was in default, INC contends that the same was illegal, since IDP did not have to file an answer to LIGON's cross-claim pursuant to Section 4, Rule 18 of the Rules of Court.[22]

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[22] Substantially reproduced in Section 3(c), Rule 9 of the 1997 Rules of Civil Procedure, which reads:

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INC further argues that LIGON'S cross-claim for foreclosure of the mortgages could not proceed ahead of the main action for annulment of said mortgages.

Meanwhile, on 14 May 1997, this Court promulgated its decision[23] in G.R. No. 117897 (*Islamic Directorate of the Philippines v. Court of Appeals*). It set aside the decision of the Court of Appeals of 28 October 1994 in CA-G.R. SP No. 33295 and upheld the decision of the SEC holding null and void the sale of the two lots to INC. This Court clarified and decided the issue therein as follows:

> The main question though in this petition is: Did the Court of Appeals commit reversible error in setting aside that portion of the SEC's Decision in SEC Case No. 4012 which declared the sale of two (2) parcels of land in Quezon City between the IDP-Carpizo Group and private respondent INC as null and void?
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> We rule in the affirmative.
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> There can be no question as to the authority of the SEC to pass upon the issue as to who among the different contending groups is the legitimate Board of Trustees of the IDP since this is a matter properly falling within the original and exclusive jurisdiction of the SEC by virtue of Sections 3 and 5 (c) of Presidential Decree No. 902-A:
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> . . . .
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> . . . If the SEC can declare who is the legitimate IDP Board, then by parity of reasoning, it can also declare who is not the legitimate IDP Board. This is precisely what the SEC did in SEC Case No. 4012 when it adjudged the election of the Carpizo Group to the IDP Board of Trustees to be null and void. By this ruling, the SEC in effect

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SEC. 3. *Default; declaration of.* —

. . . .

(c) *Effect of partial default.* When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

[23] 272 SCRA 454 [1997].

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made the unequivocal finding that the IDP-Carpizo Group is a bogus Board of Trustees. Consequently, the Carpizo Group is bereft of any authority whatsoever to bind IDP in any kind of transaction including the sale or disposition of IDP property.

. . . . . .

Nothing thus becomes more settled than that the IDP-Carpizo Group with whom private respondent INC contracted is a fake Board.

Premises considered, all acts carried out by the Carpizo Board, particularly the sale of the Tandang Sora property, allegedly in the name of the IDP, have to be struck down for having been done without the consent of the IDP thru a legitimate Board of Trustees.

. . . . . .

The Carpizo Group-INC sale is further deemed null and void *ab initio* because of the Carpizo Group's failure to comply with Section 40 of the Corporation Code pertaining to the disposition of all or substantially all assets of the corporation:

. . . . . .

The Tandang Sora property, it appears from the records, constitutes the only property of the IDP. Hence, its sale to a third-party is a sale or disposition of all the corporate property and assets of IDP falling squarely within the contemplation of the foregoing section. For the sale to be valid, the majority vote of the legitimate Board of Trustees, concurred in by the vote of at least 2/3 of the *bona fide* members of the corporation should have been obtained. These twin requirements were not met as the Carpizo Group which voted to sell the Tandang Sora property was a fake Board of Trustees, and those whose names and signatures were affixed by the Carpizo group together with the sham Board Resolution authorizing the negotiation for the sale were, from all indications, not *bona fide* members of the IDP as they were made to appear to be...

All told, the disputed Deed of Absolute Sale executed by the fake Carpizo Board and private respondent INC was intrinsically void *ab initio*.

Before addressing the issues raised in the present petition, it must be recalled that LIGON describes her petition as an "appeal under Rule 45 and at the same time as a special civil

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action of *certiorari* under Rule 65 of the Rules of Court." This Court cannot tolerate such a chimera. The remedies of appeal and *certiorari* are mutually exclusive and not alternative nor successive.[24] It is settled that the averments in the complaint, and not the nomenclature given by the parties, determine the nature of the action.[25] Considering that this petition primarily consists of allegations charging the Court of Appeals with having acted with grave abuse of discretion and without jurisdiction, this Court shall treat this petition as a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Returning to the instant petition, the first issue must be resolved against LIGON.

At the time CA-G.R. SP No. 40258 was filed, the law on who should be parties in a special civil action for *certiorari* were Sections 1 and 5 of Rule 65 of the Rules of Court,[26] which provided:

> Section 1. Petition for *certiorari*. — When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.
>
> Sec. 5. Defendants and costs in certain cases. — When the petition filed relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court...

There can be no dispute on the fact that insofar as the partial decision in Civil Case No. Q-91-10494, challenged in CA-G.R.

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[24] *Fajardo v. Bautista*, 232 SCRA 291, 298[1994].

[25] *Abad v. Court of First Instance of Pangasinan*, Br. VIII, 206 SCRA 567, 579[1992]; *Solid Homes, Inc. v. Court of Appeals*, 271 SCRA 157,164 [1997].

[26] These are retained, with modifications, in Sections 1 and 5, respectively, of Rule 65 of the 1997 Rules of Civil Procedure.

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SP No. 40258, is concerned, IDP can by no yardstick be considered as a party interested in sustaining the challenged partial decision pursuant to the aforequoted Section 5. In fact, IDP was also an aggrieved party in said partial decision. It could have challenged the partial decision and the previous order declaring it in default.

Neither is there merit in the second ground relied upon by LIGON. While LIGON may be correct in her argument that a cross-claim must be answered, and the party who fails to file an answer thereto may be declared in default,[27] one should not lose sight of the true nature of a cross-claim. Section 7[28] of Rule 6 of the Rules of Court defines a cross-claim as any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim. It may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. The answer then to the cross-claim is meant to join the subsidiary issues between the co-parties in relation to the opposing party's claim against the cross-claimant.[29] Needless to state, until the principal issue between the plaintiff and the defendant cross-claimant shall have been heard and determined, it would be premature to decide the cross-claim.

It may also be pointed out that in her cross-claim against IDP, LIGON alleged that IDP unjustly refused to pay the loans it contracted from her, which had become due and demandable. She thus prayed that the trial court render judgment.

1. Ordering IDP, INC, VINA and DE LEON to pay solidarily defendant, third party-plaintiff and cross-claimant LIGON the

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[27] Rule 6, Sec. 10. This is not reproduced in the 1997 Rules of Civil Procedure; however, the matter of default is covered by Sec. 3 of Rule 9 thereof.

[28] Now Sec. 8, Rule 6, 1997 Rules of Civil Procedure.

[29] I Vicente J. Francisco, The Revised Rules of Court In The Philippines (Civil Procedure) 492 (1973).

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sum of ₱9 Million plus stipulated interest of 36% per annum from the due dates of the obligations within ten (10) days from finality of the judgment and attorney's fees of ₱900,000.00 plus appearance fee of ₱1,000.00 per appearance in Court and conferences with adverse parties as attorney's fees;

2. Should they fail to pay the said sums within the abovementioned period of time, ordering the foreclosure of the real estate mortgages, the sale at public auction of the property subject matter of said mortgages... and the application of the proceeds thereof to the satisfaction of the sums due defendant and cross-claimant LIGON, including the taxes paid, attorney's fees and costs of foreclosure and litigation.

Earlier however, IDP charged in its Answer with Cross-claim[30] that LIGON should have known that the persons she transacted with had no authority to bind IDP to the loans and mortgages she was trying to enforce. Further, IDP alleged that it never benefited from the money loaned from LIGON. Thus, IDP argued that as far as it was concerned, the subject loans and mortgages were null and void. IDP prayed that judgment be rendered

1. Declaring that the mortgages executed by ATTY. ABDULRAHMAN LINZAG and MRS. ROWAIDA BUSHRAN SAMPACO and annotated in the Transfer Certificates of Title... are null and void as far as defendant IDP is concerned;

2. Ordering and directing the Register of Deeds of Quezon City to cancel the registered or annotated mortgages on the aforementioned Transfer Certificates of Title;

3. Ordering the cross-claim defendant Ligon to deliver the original of the reconstituted Transfer Certificates of Title...

From the foregoing, it is inevitable that IDP's cross-claim effectively joined the subsidiary issues between the co-parties. Requiring an answer to LIGON's cross-claim would be

[30] OR, Vol. I, 128-137.

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superfluous. Consequently, declaring IDP in default on the cross-claim was improper.

LIGON's contention that INC was not aggrieved by the trial court's order of foreclosure of mortgages cannot be taken seriously. INC's principal cause of action was the annulment of the mortgages. The partial decision resolved this issue against INC through the backdoor and without INC having presented its evidence. In short, the trial court disregarded the fact that LIGON's cross-claim was connected with, or dependent on, the subject of INC's original complaint.

As regards the final issue, we hold that INC did not engage in forum-shopping. There is forum-shopping when as a result of an adverse decision in one forum or, it may be added, in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*,[31] raising identical causes of action, subject matter, and issues.[32] Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues.[33] Yet another indication is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other case. The test is whether in the two or more pending cases there is an identity of (a) parties, (b) rights or causes of action, and (c) reliefs sought.[34]

INC instituted Civil Case No. Q-90-6937 to compel IDP to comply with its undertaking to clear of squatters the lots the latter sold to the former. On the other hand, in Civil Case No.

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[31] *Washington Distillers, Inc. v. Court of Appeals*, 260 SCRA 821, 835 [1996].

[32] *Laureano Investment & Development Corporation v. Court of Appeals*, 272 SCRA 253, 266 [1997], citing International Container Terminal Services, Inc. *v.* Court of Appeals, 249 SCRA 389 [1995].

[33] *Valencia v. Court of Appeals*, 263 SCRA 275, 286 [1996].

[34] *Employees' Compensation Commission v. Court of Appeals*, 257 SCRA 717, 722-723 [1996] citing *Buan v. Lopez*, 145 SCRA 34 [1986].

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Q-91-10494, INC sought to annul the mortgages and enjoin LIGON from foreclosing them. The two cases involved different transactions and sought different reliefs. Moreover, INC won in Civil Case No. Q-90-6937; hence, it cannot be said that the later Civil Case No. Q-91-10494 was filed as a result of an adverse decision in one forum. On the other hand, CA-G.R. SP No. 40258 was a special civil action for *certiorari*, which was instituted, and correctly so, in reaction to an adverse partial decision in Civil Case No. Q-91-10494.

Unfortunately, the dismissal of the instant petition cannot inure to the benefit of INC, since its opposition to LIGON's cause has been rendered moot and academic by the decision in G.R. No. 117897 declaring null and void the sale of the IDP properties to INC. Upon the other hand, the validity of the deeds of mortgage in favor of LIGON has yet to be settled in Civil Case No. Q-91-10494.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

Costs against petitioner LETICIA P. LIGON.

SO ORDERED.

Bellosillo, Vitug, Panganiban, and *Quisumbing, JJ.*, concur.

THIRD DIVISION

[G.R. No. 127997. August 7, 1998]

FELIX VILLANUEVA, *petitioner, vs.* **COURT OF APPEALS and ALMARIO GO MANUEL,** *respondents.*

SYNOPSIS

In a civil action for sum of money with damages filed by private respondent Almario Go Manuel against petitioner Felix