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WHEREFORE, the assailed Decision is hereby *REVERSED* and *SET ASIDE*. On reasonable doubt, Appellant Joel Elloreg De los Santos is hereby *ACQUITTED*. The director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Melo (Chairman), Vitug, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 127370. September 14, 1999]

PNB - REPUBLIC BANK, *petitioner, vs.* **COURT OF APPEALS and PLANTERS DEVELOPMENT BANK**, *respondents.*

SYNOPSIS

Petitioner PNB-Republic Bank bought Treasury Bills from private respondent Planters Development Bank. The bills, however, were never delivered. Petitioner referred the matter to the National Bureau of Investigation (NBI) for investigation. The NBI found that three (3) officers of respondent bank conspired with one Romeo D. Macaranas, an officer of the PNB, in acquiring the proceeds of the T-Bills. A criminal case for estafa was filed before the Office of the Ombudsman and violation of the Anti-Graft Law against the four bank officers. Thereafter, petitioner filed with the Regional Trial Court a complaint for specific performance/sum of money against respondent PDB. The latter moved to dismiss the complaint on

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the grounds of forum shopping and that the complaint did not state a cause of action, since the same T-Bills are the subject of the criminal action pending before the Ombudsman. The trial court granted the motion to dismiss. When its motion for reconsideration was denied, petitioner elevated the case to the Court thru a petition for review which was, however, referred to the Court of Appeals. Thereafter, the appellate court rendered judgment affirming the trial court's order of dismissal. Hence, the present petition. The issue is whether the filing of the specific performance case before the RTC violates the rule on forum shopping in the light of the criminal cases for estafa and violation of the Anti-Graft Law pending before the Ombudsman.

The Supreme Court reversed and set aside the decision of the Court of Appeals affirming that of the Regional Trial Court granting the motion to dismiss. The Court ruled that no forum shopping was committed in the case at bar because petitioner did not avail of different forums to ventilate the same grievance. It did not file any case before the Ombudsman or before the Sandiganbayan. The Ombudsman has not yet released any resolution on the criminal case filed before it by the NBI involving the Treasury Bills. According to the Court, a case pending before the Ombudsman cannot be considered for purposes of determining if there was forum shopping.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; A CASE PENDING BEFORE THE OMBUDSMAN CANNOT BE CONSIDERED FOR PURPOSES OF DETERMINING IF THERE WAS FORUM SHOPPING; THE POWER OF THE OMBUDSMAN IS ONLY INVESTIGATORY IN CHARACTER AND ITS RESOLUTION CANNOT CONSTITUTE A VALID AND FINAL JUDGMENT BECAUSE ITS DUTY, ASSUMING IT DETERMINES THAT THERE IS AN ACTIONABLE CRIMINAL OR NON-CRIMINAL ACT OR OMISSION, IS TO FILE THE APPROPRIATE CASE BEFORE THE SANDIGANBAYAN.**— Forum shopping consists in the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or by special civil action

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of *certiorari*), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. In the case at bar, petitioner did not avail of different forums to ventilate the same grievance. It did not file any case before the Ombudsman or before the Sandiganbayan. The Ombudsman has not yet released any resolution on the criminal case filed before it by the NBI involving the T-Bills. A case pending before the Ombudsman cannot be considered for purposes of determining if there was forum shopping. The power of the Ombudsman is only investigatory in character and its resolution cannot constitute a valid and final judgment because its duty, assuming it determines that there is an actionable criminal or non-criminal act or omission, is to file the appropriate case before the Sandiganbayan. It is not yet known whether the Ombudsman would file a case against the four bank officers. In any event, should the Ombudsman decide to file a criminal case, the same would be instituted against the officers of the two banking corporations which are separate juridical entities from its officers. On the contrary, the specific performance case is against respondent corporation, considering that petitioner purchased the T-Bills as a corporate entity and dealt with respondent PDB as another corporate entity. On the assumption that a case will subsequently be filed before the Sandiganbayan, any judgment that it may render would be against the individual persons and not against the corporations to which they respectively belong.

2. **ID.; ID.; ID.; RESPONDENTS' ARGUMENT AND THE APPELLATE COURT'S RELIANCE ON THE PROVISIONS OF THE *SANDIGANBAYAN LAW (PRIOR* TO ITS AMENDMENTS) "THAT THE FILING OF THE CRIMINAL ACTION BEING DEEMED TO *NECESSARILY CARRY WITH IT THE* FILING OF THE CIVIL ACTION" AND THAT THE TWO CASES CANNOT BE SEPARATELY FILED, IS MISPLACED; REASONS.**— The fact that the subject of the specific performance case before the RTC pertains to the same T-Bills subject of the investigation in the Ombudsman does not bring the case within the purview of forum shopping. For forum shopping to exist, both actions must not only involve the same transactions, but also the same essential facts and circumstances and must raise identical causes of actions, subject matter, and issues. Respondents' argument

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and the appellate court's reliance on the provisions of the Sandiganbayan law (prior to its amendments) "that the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action" and that the two cases cannot be separately filed, is misplaced. First, no criminal action has yet been filed with the Sandiganbayan because the case is still with the Ombudsman. Second, the same law provides that "where the civil action has theretofore been filed separately with a regular court but judgment therein has not yet been rendered the criminal case is hereafter filed with the Sandiganbayan, its exclusive jurisdiction over the case notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction." In this case, there is only one pending action which is the civil case against respondent bank. There is no other action filed, because no case is pending with the Sandiganbayan involving the same T-Bills. Consequently, there is nothing to consolidate or to transfer from one court to another. It cannot even be said that the elements of *litis pendentia* are present or that a final judgment in one case will amount to *res judicata* in the other. Thus, no forum shopping will lie.

APPEARANCES OF COUNSEL

The Chief Legal Counsel for petitioner.

Romulo Mabanta Buenaventura Sayoc & De los Angeles for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Petitioner bought Treasury Bills (T-Bills) worth ₱56 million from private respondent PDB. After paying the purchase price and despite several demands, respondent PDB never delivered the T-Bills. An officer of petitioner referred the matter of the undelivered T-Bills to the National Bureau of Investigation (NBI) for investigation. The NBI found that Bernardo Ng, Jimmy Dumlao and Patricio Tagulinao, who are all officers of respondent PDB conspired with Romeo D. Macaranas, an officer of petitioner PNB, in acquiring the proceeds of the T-Bills. Thus, on October 10, 1994, the NBI filed before the Office of

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the Ombudsman a criminal case for estafa and violation of the Anti-Graft Law against the said four bank officers. Thereafter, petitioner filed with the Regional Trial Court (RTC) a complaint for specific performance/sum of money against respondent PDB. The latter moved to dismiss the complaint on the grounds of forum shopping and that the complaint states no cause of action, since the same T-Bills are the subject of the criminal action pending before the Ombudsman. The trial court granted the motion to dismiss.[1] When its motion for reconsideration was denied,[2] petitioner elevated the case to this Court thru a petition for review which was, however, referred to the Court of Appeals (CA). Thereafter, the CA rendered judgment affirming the trial court's order of dismissal.[3]

Hence, this petition where the issue is whether the filing of the specific performance case before the RTC violates the rule on forum shopping in the light of the criminal cases for estafa and violation of the Anti-Graft Law pending before the Ombudsman.

Forum shopping consists in the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or by special civil action of *certiorari*), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[4]

In the case at bar, petitioner did not avail of different forums to ventilate the same grievance. It did not file any case before

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[1] Regional Trial Court (RTC) Order dated August 29, 1995 penned by Judge Benjamin A.G. Vega.

[2] RTC Order dated January 4, 1996.

[3] Court of Appeals Decision promulgated July 31, 1996 penned by Justice Vasquez, Jr., with Justices Buena (now a member of this Court) and Dela Rama, concurring; *Rollo*, p. 26.

[4] *Washington Distillers, Inc. v. CA*, 260 SCRA 821; *Chemphil Export & Import Corporation v. CA*, 251 SCRA 257; *A' Prime Security Services, Inc. v. Drilon*, 246 SCRA 439; *Villanueva v. Adre*, 172 SCRA 876.

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the Ombudsman or before the Sandiganbayan. The Ombudsman has not yet released any resolution on the criminal case filed before it by the NBI involving the T-Bills. A case pending before the Ombudsman cannot be considered for purposes of determining if there was forum shopping. The power of the Ombudsman is only investigatory in character and its resolution cannot constitute a valid and final judgment because its duty, assuming it determines that there is an actionable criminal or non-criminal act or omission, is to file the appropriate case before the Sandiganbayan. It is not yet known whether the Ombudsman would file a case against the four bank officers. In any event, should the Ombudsman decide to file a criminal case, the same would be instituted against the officers of the two banking corporations which are separate juridical entities from its officers.[5] On the contrary, the specific performance case is against respondent corporation, considering that petitioner purchased the T-Bills as a corporate entity and dealt with respondent PDB as another corporate entity. On the assumption that a case will subsequently be filed before the Sandiganbayan, any judgment that it may render would be against the individual persons and not against the corporations to which they respectively belong.

Likewise, the fact that the subject of the specific performance case before the RTC pertains to the same T-Bills subject of the investigation in the Ombudsman does not bring the case within the purview of forum shopping. For forum shopping to exist, both actions must not only involve the same transactions, but also the same essential facts and circumstances and must raise identical causes of actions, subject matter, and issues.[6] Respondents' argument and the appellate court's reliance on the provisions of the Sandiganbayan law (prior to its amendments) "that the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action" and that the two cases cannot be separately filed, is misplaced. First, no criminal action has yet been filed with the

[5] See Section 19, Corporation Code; *Yu v. NLRC*, 245 SCRA 134.

[6] *Valencia v. CA*, 263 SCRA 275.

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Sandiganbayan because the case is still with the Ombudsman. Second, the same law provides that "where the civil action has theretofore been filed separately with a regular court but judgment therein has not yet been rendered the criminal case is hereafter filed with the Sandiganbayan, its exclusive jurisdiction over the case notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction."[7] In this case, there is only one pending action which is the civil case against respondent bank. There is no other action filed, because no case is pending with the Sandiganbayan involving the same T-Bills. Consequently, there is nothing to consolidate or to transfer from one court to another. It cannot even be said that the elements of *litis pendentia* are present or that a final judgment in one case will amount to *res judicata* in the other. Thus, no forum shopping will lie.[8]

ACCORDINGLY, the decision of the Court of Appeals affirming the RTC decision is *REVERSED* and set aside. The case is ordered *REMANDED* to the trial court for further proceedings.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and *Pardo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 128075. September 14, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO ABLANEDA *Y* PECONIA, *ALIAS* "KALAHUPAG,"** *accused-appellant.*

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[7] Section 4, P.D. 1606.

[8] *First Philippine International Bank v. CA*, 252 SCRA 259.