DAYTONA SPV-AMC (ASSET MANAGEMENT COMPANY), INC. AND BEACON HILL RESOURCES MANAGEMENT INC., PETITIONERS, VS. HON. DANILO P. GALVEZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, SIXTH ...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a petition for certiorari[1] under Rule 65 of the Rules of Court seeking the annulment of the Orders dated November 15, 2011[2] and January 9, 2012[3] (“assailed Orders”), rendered by Hon. Danilo P. Galvez, Presiding Judge of Regional Trial Court, Branch 24, Iloilo City (“public respondent”) in Civil Case No. 11-31075, for being tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction. The November 15, 2011 Order denied herein petitioner's Motion for Summary Dismissal, while the January 9, 2012 Order denied petitioner's Motion for Reconsideration.

On July 12, 2011, herein private respondent filed a complaint[4] for Specific Performance, Accounting and Damages with Prayer for Temporary Restraining Order and Preliminary Mandatory Injunction against herein petitioners and Export and Industry Bank before the public respondent, which was docketed as Civil Case No. 11-31075 (“present case”).

On August 15, 2011, petitioners moved for a summary dismissal[5] (“Motion”) of the present case on the ground of forum-shopping. Petitioners, in their Motion, argued that the Certificate of Non-Forum Shopping accompanying private respondent's Complaint is false. Petitioners invited public respondent's attention to the fact that private respondent previously initiated a similar case with the Regional Trial Court, Branch 38, of Iloilo on July 23, 2010, which was docketed as Civil Case No. 10-30608 (“previous case”) and was dismissed on June 6, 2011.

As a backgrounder, this case stemmed from Export and Industry Bank's foreclosure of the properties previously owned by spouses Jarantilla (co-plaintiffs of private respondent in the previous case). Because of such foreclosure, the certificates of title covering the said properties were transferred under the name of the said bank. In order to retain possession of the properties, private respondent, being the sister of the wife of Benjamin Jarantilla, offered to buy the foreclosed properties from the bank. After payment of substantial amounts, however, the contract to sell has not been executed in favor of private respondent, and the latter was declared in default and was informed that she was not entitled to any refund. Hence, the previous case was instituted but was later on dismissed for failure of the private respondent and the spouses Jarantilla or their counsel to appear in the pre-trial conference.

Petitioners explained in their Motion that the complaint in the previous case contained a Motion for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order seeking for an injunctive relief, which stated, “xxx restraining all defendants from ejecting the plaintiffs from the properties xxx.” Meanwhile, the complaint in the present case prays for the issuance of a Writ of Preliminary Mandatory Injunction which prays for the trial

court “to restore the plaintiff (herein private respondent) through Spouses Jarantilla in possession of the properties xxx”. Petitioners then explained that the motion for injunctive relief sought in the previous case was denied by the trial court, and private respondent committed forum-shopping when she again filed the present case with a similar injunctive relief prayed for.

Petitioners concluded that the private respondent's filing of the present case after the previous case was dismissed and her failure to reveal such fact in the Certificate of Non-Forum Shopping constituted blatant forum-shopping, which is a sufficient ground for the summary dismissal of the present case.

In its assailed Order[6] dated November 15, 2011, the public respondent disposed of petitioners' Motion in this wise:

> “A perusal of the Complaint shows that the previous case between the parties was dismissed without prejudice as shown by “Annex 6” of the movant. In Benedicto vs. Lacson xxxx, the Supreme Court has ruled:
>
> 'There is no need to state in the Certificate of non-forum shopping in a subsequent re-filed Complaint the fact of prior filing or dismissal of the former Complaint.'
>
> Hence, the first Motion is without merit and the court deems to deny the same.
>
> xxxx xxxx
>
> Wherefore, parties are directed to file their respective pleadings to the Complaint upon notice of this Order.
>
> SO ORDERED.”

Petitioners moved for the reconsideration[7] of the above Order, but the same was denied per public respondent's assailed Order[8] dated January 9, 2012 which read:

> “Wherefore, the motion for reconsideration is deemed Denied.
>
> SO ORDERED.”

Hence, petitioners filed the instant petition alleging that the public respondent gravely abused its discretion amounting to lack or in excess of jurisdiction when he denied their Motion, notwithstanding the fact that private respondent committed a clear and deliberate forum-shopping.

Petitioners raised this sole issue:

> “(WHETHER) RESPONDENT JUDGE ACTED WITH PATENT GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S (SIC) MOTION FOR SUMMARY DISMISSAL AND REFUSING TO DISMISS THE COMPLAINT.”[9]

Petitioners principally argue that private respondent committed forum-shopping because there was a previous case already dismissed by the Regional Trial Court of Iloilo which involved substantially the same parties, facts, and issues also involve in the present case. Concealing this fact in the Certificate of Non-Forum shopping attached to her complaint, private respondent, as petitioners argue, engaged in a wilfull and deliberate forum-shopping in order to obtain a favorable judgment. Hence, petitioners contend that there is no other recourse for the public respondent but to order the summary dismissal of the present case pending before him.

We find the petition unmeritorious.

We hold that private respondent did not commit forum-shopping, thus, herein public respondent cannot be declared to have gravely abused its discretion when it denied petitioners' Motion.

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Forum-shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different fora, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another.[10]

In the case of Ao-As v. Court of Appeals,[11] the Supreme Court noted the three ways how forum-shopping could be committed, thus:

> "Forum shopping can be committed in three ways:
>
> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (litis pendentia);
>
> (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (res judicata); and
>
> (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either litis pendentia or res judicata)."

Petitioners apparently anchor their allegation of forum-shopping on the second mode cited above, that is, private respondent filed the present case based on the same cause of action and the same prayer as that of the previous case which have been finally resolved, simply put, on the ground of res judicata.

The records disclose, however, and petitioners are very much aware of it, that the Order[12] dismissing private respondent's complaint in the previous case was without prejudice to the filing of the same complaint against the same defendants.

The Order[13] dated June 6, 2011 dismissing the previous case reads:

> "For failure of the plaintiffs and counsel to appear in today's pre-trial conference, this case is hereby dismissed without prejudice.
>
> xxxx
>
> SO ORDERED."[14]

The above dismissal of the complaint in the previous case is pursuant to Section 5, Rule 18 of the Rules of Court, which states:

> "SEC. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice unless otherwise ordered by the court. xxxx."[15]

The above-quoted Rule sanctions the dismissal of the complaint when the plaintiff fails to appear in the scheduled pre-trial, and such dismissal is with prejudice unless the court states otherwise. Accordingly, it is within the sound discretion of the trial court whether to dismiss the complaint with prejudice or without. As in this case, the trial court that dismissed the complaint in the previous case clearly stated that the dismissal for failure to appear in pre-trial conference was without prejudice.

Considering that the Order dismissing the previous case expressly stated that the dismissal is "without prejudice", private respondent then could not be faulted in following such Order and in filing the present case with a similar cause of action against herein petitioners.

More importantly, the previous case filed by private respondent was not adjudicated on the merits, so the dismissal of the complaint was without prejudice. Accordingly, the plaintiff can file the complaint anew as her claims in her previous complaint were not considered abandoned.

It has been ruled that “for res judicata, to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter, and causes of action.”[16]

Considering that the previous case was not tried on the merits, even if the present case and previous case arose from the same set of events and calls for the determination of the same issues and reliefs, there is no forum-shopping on the basis of res judicata to speak of.

Because the dismissal is without prejudice as no adjudication on the merits was held, then it is logical and expected that private respondent, in her present complaint, would basically seek for substantially the same reliefs against the same defendants under the same set of facts as that of the previous case.

Petitioners also try to impress that private respondent knew that her failure to appear during a pre-trial conference would result in the dismissal of her case without prejudice, and such dismissal without prejudice would give her the opportunity to file a new case and again seek the same injunctive relief that she failed to obtain in the previous case; hence, she deliberately absented herself from the pre-trial conference.

Clearly, the above argument is speculative.

To reiterate, the dismissal of a case under Section 5, Rule 18 of the Rules of Court could either be with or without prejudice. The decision is left to the sound discretion of the trial court and not to the party. Thus, petitioners have no basis to argue that private respondent knew that her case would be dismissed without prejudice as she did not have any control on how her case would be treated for her failure to appear in the pre-trial conference.

Hence, when the previous case was dismissed without prejudice, private respondent has all the right to re-institute the same.

Going further, We find no merit on petitioners' argument that private respondent filed the present case in order to seek the same injunctive relief that was denied from her in the previous case.

It can be gleaned from the previous complaint[17] that what was sought to be enjoined in the application for preliminary injunction was the implementation of the writ of possession in favor of Export and Industry Bank and the pending eviction of the spouses Jarantilla from the foreclosed properties. This is supported by the Order[18] dated September 13, 2010 denying the injunctive relief sought by private respondent and spouses Jarantilla, to wit:

> “xxxx, defendant Export and Industry Bank sought from the court the issuance of a writ of possession to place them in possession of the premises still in possession of the plaintiffs Jarantilla and a writ of possession was issued by Branch 37 of this Court. Defendant sheriff then issued on February 15, 2005 a “Last and Final Notice to Vacate” to the plaintiffs Jarantilla. This is the status quo.
>
> xxxx
>
> xxxx
>
> The prevailing condition is that plaintiffs Jarantilla are staying/occupying the properties now owned by defendant Export and Industry Bank which they refused to vacate despite the last and final notice to vacate on February 15, 2006. Such acts of usurpation by the plaintiffs Jarantilla, which acts are clearly established in the

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> pleadings, would amount to a perpetuation of the injurious effects of such acts of usurpation if a restraining order is issued by the court in their favor. Such things cannot be allowed for the office of a writ of injunction is to restrain the wrongdoer, not to protect him.
>
> xxxx
>
> xxxx"[19]

On the other hand, while the complaint[20] in the present case indeed prays for the issuance of a preliminary injunction, what is sought to be enjoined or restrained is the selling of the foreclosed properties. In addition, private respondent in the present case prays for a writ of preliminary mandatory injunction ordering the petitioners to restore the possession of the foreclosed properties to the spouses Jarantilla. Apparently, these cannot be said to be the same injunctive reliefs which were already prayed for, albeit denied, in the previous case. The present complaint prayed, thus:

> "WHEREFORE, premises considered, it is respectfully prayed on this Honorable Court that a temporary restraining order be issued immediately upon the filing thereof restraining all defendants from selling the foreclosed properties, and thereafter after hearing a Writ of Preliminary Mandatory Injunction be issued ordering the defendant Bank to restore the Plaintiff through Spouses Jarantilla in possession of the foreclosed properties and ordering herein defendants not to dispose or alienate the subject properties xxxx."[21]

The tenor of the prayer above clearly implies that the spouses Jarantilla were not anymore in possession of the foreclosed properties as they have been effectively evicted, so private respondent prays that they be restored to the possession of the said properties. Since spouses Jarantilla were already evicted from the foreclosed properties, there is no more reason for private respondent to pray for the enjoinment of their eviction, which she prayed for in the previous case. As such, there is no basis to conclude that the injunctive relief denied in the previous case is being prayed for again in the present case.

Anent the failure of private respondent to reveal in her Certificate of Non-Forum shopping the fact that she previously filed a case involving the same issues, substantial justice dictates that We should apply the rules liberally considering that there was no actual forum-shopping to speak of.

Indeed, private respondent inaccurately or falsely stated in her Certification of Non-Forum shopping that, "(she has) not commenced any other action involving the same issues xxxx".[22] Nonetheless, We liberally construe the rules to allow the resolution of this case on the merits.

And in giving way to substantial justice, We cite as basis the ruling of the Supreme Court in Young v. Seng,[23] which involved this same issue of inaccurate certification of non-forum shopping, to wit:

> The foregoing certification is obviously inaccurate, if not downright false, because it does not disclose the filing of the First Case. Had this violation been appropriately brought up in the Motion to Dismiss, it could have resulted in the abatement of the Second Case.
>
> Nonetheless, strengthening our ruling on the First Issue, we hold that substantial justice requires the resolution of the present controversy on its merits. It must be noted that the verification requirement is a formal, not a jurisdictional, requirement. Moreover, the ground for the dismissal of the First Case was lack of cause of action, which means that essentially, no case was filed, because the Complaint was fatally defective on its face. Hence, its dismissal was not determinative of the Second Case.
>
> We repeat: the First Case was dismissed because of lack of cause of action. It was thus a dismissal without prejudice; respondent was not barred from filing a new suit against petitioner involving the same facts, but raising a cause of action arising therefrom. In fact, respondent actually filed the Second Case, even if he failed to disclose in his certification that he had commenced the First Case against the same defendant, herein

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> petitioner. Furthermore, we must bear in mind that, whenever possible and feasible, procedural rules should be liberally construed to ensure the just, speedy and inexpensive disposition of actions and proceedings on their merits.[24]
>
> In Loyola v. Court of Appeals, we said that the rule on non-forum shopping was designed to promote and facilitate the orderly administration of justice and, therefore, should not be interpreted literally at all times.
>
> "The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances."

In this light, We reiterate that there was no actual forum-shopping committed by private respondent. The dismissal of the previous case was without prejudice as there was no adjudication on the merits, hence, such dismissal does not amount to res judicata. Private respondent is, thus, not barred from filing the present case.

Considering the foregoing discussions, We, therefore, hold that herein public respondent did not commit any abuse of discretion, much less a grave one, when he denied the Motion of the petitioners. The public respondent correctly noted that the dismissal of the previous case was without prejudice, thus, he could not sustain the petitioners in arguing that private respondent committed forum-shopping.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. [25]

In allowing the present case to proceed and in denying the Motion for Summary Dismissal, the public respondent's basis was the Order in the previous case dismissing it “without prejudice”. Verily, there is nothing capricious and whimsical in his exercise of his discretion. And nothing in his assailed Orders can be considered as arbitrary and despotic exercise of power.

WHEREFORE, the instant petition is hereby DENIED. The Orders dated November 15, 2011 and January 9, 2012 rendered by Hon. Danilo P. Galvez, Presiding Judge of Regional Trial Court, Branch 24, Iloilo City, in Civil Case No. 11-31075 are AFFIRMED.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, J., concur.

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[1] Rollo, pp. 3-20.

[2] Rollo, pp. 28-29.

[3] Rollo, p. 37.

[4] Rollo, pp. 38-51.

[5] Rollo, pp.67-76.

[6] Supra, note 2.

[7] Rollo, pp. 30-36.

[8] Supra, note 3.

[9] Rollo, p. 9.

[10] Arevalo v. Planters Development Bank, G.R. No. 193415, April 18, 2012.

[11] G.R. No. 128464, June 20, 2006.

[12] Rollo, p. 166.

[13] Ibid.

[14] Emphasis supplied.

[15] Emphasis supplied.

[16] Uy v. Chua, G.R. No. 183965, September 18, 2009.

[17] Rollo, pp. 91-96.

[18] Rollo, pp. 156-162.

[19] Rollo, p. 161, underscoring supplied.

[20] Rollo, pp. 38-51.

[21] Rollo, p. 49.

[22] Rollo, p. 51.

[23] G.R. No. 143464, March 5, 2003.

[24] Underscoring supplied.

[25] Estrada v. Desierto, G.R. No. 156160, 9 December 2004.

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