

RE: DECISION DATED AUGUST 19, 2008, 3RD DIVISION, COURT OF APPEALS IN CA-G.R. SP NO. 79904 [HON. DIONISIO DONATO T. GARCIANO, ET AL. V. HON. PATERNO G. TIAMSON, ETC., ET AL.], P...

A.C. No. 8037. February 17, 2016

Ponente: LEONEN, J.

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LEONEN, J.:

This administrative complaint[1] originated from the Court of Appeals Decision[2] dated August 19, 2008, which summarily dismissed the Petition for Certiorari with prejudice and found petitioners[3] in CA-G.R. SP No. 79904, as well as their counsel, Atty. Jose De G. Ferrer (Atty. Ferrer), guilty of direct contempt of court.[4] They were further imposed a fine of P2,000.00.[5] The Court of Appeals then ordered that a copy of its Decision be furnished to the Integrated Bar of the Philippines for investigation and appropriate disciplinary action against Atty. Ferrer, respondent in the present case.[6]

On July 27, 2001, Dionisio Donato T. Garciano (Garciano), then Mayor of Baras, Rizal, sought to appoint Rolando Pilapil Lacayan (Lacayan) as Sangguniang Bayan Secretary, replacing Nolasco Vallesterio (Vallesterio).[7] The appointment was opposed by Wilfredo Robles (Robles), then Vice Mayor of Baras, Rizal. He said that the position is not vacant and that it is the vice mayor, not the mayor, who has the authority[8] to appoint the Sangguniang Bayan Secretary.

Garciano insisted and removed Vallesterio's name from the payroll.[9] Vallesterio sued Garciano before the Sandiganbayan.[10] Vallesterio, Robles, and other Sangguniang Bayan members also filed a "complaint for mandamus and damages with preliminary mandatory injunction"[11] against Garciano and other municipal officials[12] (Garciano, et al.) before the Regional Trial Court of Morong, Rizal. They sought for the payment of their respective salaries.[13]

On June 24, 2003, the Regional Trial Court[14] ordered Garciano, et al. to release the funds and pay Vallesterio's salaries and other benefits.[15] Garciano, et al. did not heed the Regional Trial Court's order;[16] hence, they were found liable for indirect contempt.[17]

Appealing the trial court's ruling, Garciano, et al., through their counsel, Atty. Ferrer, filed a Petition for Certiorari (First Petition) on October 9, 2003 before the Court of Appeals.[18] This was raffled to the Eleventh Division[19] and was docketed as CA-G.R. SP No. 79752.[20]

On October 16, 2003, Garciano, et al., through Atty. Ferrer, filed another Petition for Certiorari with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order[21] (Second Petition) before the Court of Appeals. This was raffled to the Third Division[22] and was docketed as CA-G.R. SP No. 79904.[23]

On the same day, Garciano, et al. filed before the Court of Appeals Eleventh Division an Urgent Ex-Parte Motion to Withdraw Petition Under Rule 17 Section 1[24] of the Revised Rules of Court.[25] They allegedly moved to withdraw the First Petition to avail themselves of other remedies, especially since a comment had not yet been

filed.[26]

On October 17, 2003, the Court of Appeals Third Division[27] issued a temporary restraining order, effective for 60 days and conditioned upon the posting of a bond amounting to P100,000.00.[28]

Meanwhile, in its Resolution dated October 24, 2003, the Court of Appeals Eleventh Division granted Garciano, et al.'s Motion to withdraw the First Petition.[29]

In their Reply to the Comment on the Second Petition, Garciano, et al. admitted filing the First Petition docketed as CA-G.R. SP No. 79752, which was similar to the Second Petition.[30] However, they maintained that the withdrawal of the First Petition was made in good faith and in order to correct the technical defect of the First Petition, which was solely verified by Garciano.[31]

Garciano, et al. insisted that they did not commit perjury when they stated in the verification of their Second Petition that there was no pending petition filed involving the assailed Decision of the Regional Trial Court.[32] Garciano, et al. also argued that when they withdrew the First Petition, there was no adverse opinion yet issued by the Eleventh Division.[33] Finally, they claimed that the divisions of the Court of Appeals are not different courts in relation to the other divisions, and both divisions where the Petitions were filed are part and parcel of one court.[34] Hence, there was no forum shopping.

In the Decision dated August 19, 2008, the Court of Appeals Third Division dismissed the Second Petition with prejudice due to the deliberate violation of the rule against forum shopping.[35] The Court of Appeals found that Garciano, et al., through Atty. Ferrer, filed two (2) Petitions for Certiorari successively.[36] It also held that the withdrawal of the First Petition was "intended to camouflage the glaring and blatant irregularity committed"[37] by Garciano, et al. through their counsel.[38] If the withdrawal was, indeed, impelled by the lack of verification of the other petitioners in the First Petition, then Garciano, et al. should have called the attention of the Eleventh Division instead of filing the Second Petition.[39] The Court of Appeals held that when the Second Petition was filed (and the existence of the First Petition concealed), forum shopping had already been committed.[40]

The Court of Appeals further held that neither the adjudication of cases pending before courts nor the contents of these cases are taken judicial notice by the courts, notwithstanding that both cases may have been tried or are actually pending before the same judge.[41] Rather, it is the party and the counsel's duty to inform the court trying the case of any pendency of a similar case filed before any court.[42] Violation of this rule makes the parties and their counsel guilty of forum shopping.[43] The Court of Appeals reiterated that the rule against forum shopping seeks to avoid the issuance of conflicting decisions by two (2) or more courts upon the same issue.[44]

The Court of Appeals concluded:

WHEREFORE, the petition is summarily Dismissed with prejudice. Petitioners and Atty. Jose De G. Ferrer are hereby found guilty of direct contempt of court for which a maximum fine of P2,000.00 is imposed upon them, payable within 5 days from receipt of this decision.

Let a copy of this decision be furnished to the Integrated Bar of the Philippines for investigation and appropriate disciplinary action against Atty. Jose De G. Ferrer.[45] (Emphasis in the original)

In the Indorsement dated September 1, 2008, Alicia A. Risos-Vidal, Director for Bar Discipline of the Integrated Bar of the Philippines, forwarded the Notice of Judgment of the Court of Appeals in CA-GR S.P. No. 79904 to the Office of the Bar Confidant.[46]

On November 19, 2008, this court resolved to note the Indorsement and treat the Notice of Judgment as an administrative complaint against Atty. Ferrer.[47]

Atty. Ferrer was ordered to comment on the administrative complaint.[48] In his Comment, he states that he acted in good faith in the simultaneous filing of the Second Petition and the urgent ex-parte Motion to withdraw Garciano, et al.'s First Petition[49] He alleges that he withdrew the First Petition docketed as CA-G.R. SP No. 79752 on October 16, 2003, the same day he filed the Second Petition docketed as CA-GR. S.P No. 79904.[50]

Atty. Ferrer states that there was an urgent need to file the Second Petition as the First Petition was verified by only one petitioner instead of four.[51] He also claims that the technical defect may have hampered the immediate issuance of a temporary restraining order.[52] Thus, he deems that it was "more realistic and expedient" to file the Second Petition and simultaneously withdraw the First Petition rather than amend the First Petition.[53] He states that amending the First Petition would have required a hearing before it could be admitted as basis for the issuance of a temporary restraining order.[54]

Atty. Ferrer adds that by filing the Motion to withdraw the First Petition on the same day as the filing of the Second Petition, he substantially complied with the rule against forum shopping.[55] He asserts that he was acting in the best interest of his clients, whose "liberty [were] then at stake and time was of the essence." [56] As the withdrawal of the First Petition and the filing of the Second Petition were made simultaneously and not one day after another, Atty. Ferrer claims that it was unlikely to have conflicting decisions rendered by different courts on the same issue.[57]

Finally, Atty. Ferrer states that there was no violation of the rule against forum shopping because the First and Second Petitions were not filed before different tribunals, although the Eleventh and Third Divisions of the Court of Appeals are technically separate from each other.[58] He states that forum shopping takes place when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than appeal or certiorari) in another.[59] Atty. Ferrer further asserts that the filing of the case took place before only one forum—the Court of Appeals—and that no forum shopping could be considered to have taken place.[60]

In his Report and Recommendation dated November 17, 2009, Commissioner Salvador B. Hababag (Commissioner Hababag) of the Integrated Bar of the Philippines Commission on Bar Discipline adopted the findings of the Court of Appeals in toto.[61] He stated that the Court of Appeals Decision dated August 19, 2008 in CA-G.R. SP No. 79904 is "loud and clear." [62]

Based on the Court of Appeals' findings, Commissioner Hababag concluded that Atty. Ferrer clearly violated the rule on forum shopping.[63] Thus, he recommended that Atty. Ferrer be suspended for three (3) months from the practice of law with a stern warning that any similar infraction in the future would be dealt with more severely.[64]

On February 13, 2013, the Integrated Bar of the Philippines Board of Governors issued Resolution No. XX-2013-132,[65] which resolved to adopt and approve the Report and Recommendation of Commissioner Hababag. It recommended that the penalty of Atty. Ferrer be reprimand with a warning that a repetition of the same act shall be dealt with more severely.[66] The Integrated Bar of the Philippines Commission on Bar Discipline then transmitted the Notice of Resolution to this court through a letter dated October 7, 2013.[67]

The issue for resolution is whether respondent Atty. Jose De G. Ferrer should be held administratively liable for violating the rule against forum shopping.

We affirm the factual findings of the Court of Appeals and the Report and Recommendation of Commissioner Hababag. Respondent is guilty of violating the rule against forum shopping.

Rule 7, Section 5 of the Rules of Court provides the rule against forum shopping:

Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the

complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

In *Asia United Bank v. Goodland Company, Inc.*,^[68] this court enumerated the instances where forum shopping takes place:

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:

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 (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).^[69] (Citations omitted)

In *Dy v. Mandy Commodities Co, Inc.*,^[70] the court elaborated on the purpose of the rule against forum shopping:

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 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 strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.^[71]

Respondent filed multiple cases based on the same cause of action and with the same prayer. All the elements necessary for the commission of forum shopping are present.

The Court of Appeals correctly held that respondent could have easily filed a manifestation that the other petitioners had yet to verify the First Petition. Respondent's reason that the failure of other petitioners to verify the First Petition may imperil the issuance of a temporary restraining order cannot justify the willful violation of the rule against forum shopping.

Respondent must be reminded that the withdrawal of any case, when it has been duly filed and docketed with a court, rests upon the discretion of the court, and not at the behest of litigants.^[72] Once a case is filed before a court and the court accepts the case, the case is considered pending and is subject to that court's jurisdiction.

Thus, it was incumbent upon respondent to inform the court or division where he subsequently filed his Second Petition that he had already filed the First Petition. The Court of Appeals correctly held that courts cannot take judicial notice of actions that have been filed either before their courts or before other courts.

This court's Circular No. 28-91 is instructive on this point:

[I]n every petition filed with the Supreme Court or the Court of Appeals, the petitioner . . . must certify under oath all of the following facts or undertakings: (a) he has not theretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agencies; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency; (c) if there is such other action or proceeding pending, he must state the status of the same; and (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and such other tribunal or agency of that fact within five (5) days therefrom. (Emphasis supplied).[73]

As a lawyer, respondent is expected to anticipate the possibility of being held liable for forum shopping. He is expected to be aware of actions constituting forum shopping. Respondent's defense of substantial compliance and good faith cannot exonerate him. The elements of forum shopping are expected to be fundamentally understood by members of the bar, and a defense of good faith cannot counter an abject violation of the rule.

In *Alonso v. Relamida, Jr.*,^[74] the court elaborated on the liability of counsel who was complicit in violating the rule on forum shopping:

The essence of 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. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. Thus, the following requisites should concur:

... (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.

A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.^[75] (Emphasis supplied, citations omitted)

As we stated in *Alonso*, the incompetence of counsel in not knowing any better justifies the imposition of administrative liability. Respondent himself admitted that he was responsible for the withdrawal of the pending First Petition and the filing of the Second Petition, in the belief that it was in the best interest of his clients. This court cannot tolerate respondent's inability to realize that his actions would amount to forum shopping. Respondent had full knowledge that when he filed the Second Petition, it concerned the same parties and same

cause of action.

As for his administrative liability, this court deems it necessary to modify the penalty recommended in Resolution No. XX-2013-132 and impose on respondent the penalty of six (6) months' suspension from legal practice. In *Alonso*, this court suspended the lawyer for six (6) months and warned him not to repeat his infraction.[76]

The Lawyers' Oath that respondent took exhorts him not to "wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same." [77] Moreover, in *Teodoro v. Atty. Gonzales*: [78]

In engaging in forum shopping, Atty. Gonzales violated Canon 1 of the Code of Professional Responsibility which directs lawyers to obey the laws of the land and promote respect for the law and legal processes. He also disregarded his duty to assist in the speedy and efficient administration of justice, and the prohibition against unduly delaying a case by misusing court processes. [79]

WHEREFORE, respondent Atty. Jose De G. Ferrer is hereby **SUSPENDED** from the practice of law for six (6) months for engaging in forum shopping, effective upon receipt of this Resolution. He is **STERNLY WARNED** that a repetition of the same and similar acts will be dealt with more severely.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent as a member of the bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator, for circulation to all courts in the country for their information and guidance.

This Resolution shall be immediately executory.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and Mendoza, JJ., concur.

Brion, J., on leave.

[1] Rollo, p. 22, Supreme Court Resolution dated November 19, 2008.

[2] *Id.* at 4-20. The Decision was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Martin S. Villarama, Jr. (now retired Associate Justice of this court) and Arturo G. Tayag of the Third Division.

[3] Hon. Dionisio Donato T. Garciano, Corazon F. Endozo, Almario N. Matawaran, and Joan P. Ferrera.

[4] Rollo, p. 19.

[5] *Id.*

[6] *Id.* at 20.

[7] *Id.* at 5-6.

[8] *Id.* at 5. This was allegedly pursuant to Section 444 of the Local Government Code (*Id.*), as well as DILG Opinion No. 08-95 dated February 2, 1995 vis-a-vis the Civil Service Commission Resolution No. 92-1111 dated August 20, 1992 (*Id.* at 6).

[9] *Id.* at 6.

[10] *Id.* at 7. The case was docketed as SB Case No. 27195.

[11] *Id.*

[12] The municipal officials were Municipal Treasurer Corazon Endozo, Municipal Budget Officer Almario Matawaran, and Municipal Accountant Joan Ferrera.

[13] Rollo, p. 7.

[14] Id. at 9. The Decision was penned by Acting Presiding Judge Paterno G. Tiamson of Branch 80 of the Regional Trial Court (Id. at 4).

[15] Id. at 10.

[16] Id.

[17] Id. at 12. The Regional Trial Court ordered Garciano, et al.'s incarceration for a period not exceeding six (6) months until Vallesteros' salaries and benefits, as well as a fine of P30,000.00, were paid.

[18] Id. at 54-79.

[19] Id. at 14.

[20] Id. at 54.

[21] Id. at 80-105.

[22] Id. at 4.

[23] Id. at 80.

[24] RULES OF COURT, Rule 17, sec. 1 provides:

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.

[25] Rollo, pp. 52-53.

[26] Id. at 14.

[27] Id. at 147, Integrated Bar of the Philippines Report and Recommendation.

[28] Id. at 13.

[29] Id. at 14.

[30] Id.

[31] Id.

[32] Id.

[33] Id. at 15.

[34] Id.

[35] Id.

[36] Id. at 16.

[37] Id.

[38] Id. at 16-17.

[39] Id. at 17.

[40] Id. at 18.

[41] Id., citing T'Boli Agro-Industrial Development Inc. v. Atty. Sofilapsi, 442 Phil. 499 (2002) [Per J. Mendoza, Second Division].

[42] Id.

[43] Id. at 19.

[44] Id.

[45] Id. at 19-20.

[46] Id. at 22.

[47] Id.

[48] Id.

[49] Id. at 33.

[50] Id. at 34. Only Dionisio Donato T. Garciano signed the Petition. The others, Corazon F. Endozo, Almario N. Matawaran, and Joan P. Ferrera, were allegedly not immediately available at the time of filing of the Petition.

[51] Id.

[52] Id.

[53] Id.

[54] Id.

[55] Id.

[56] Id. at 48.

[57] Id.

[58] Id. at 49.

[59] Id.

[60] Id.

[61] Id. at 143-152.

[62] Id. at 151.

[63] Id. at 152.

[64] Id.

[65] Id. at 142.

[66] Id.

[67] Id. at 141.

[68] 660 Phil. 504 (2011) [Per J. Del Castillo, First Division].

[69] Id. at 514.

[70] 611 Phil. 74 (2009) [Per J. Mendoza, Third Division].

[71] Id. at 84.

[72] Rules of Court, Rule 17, sec. 2.

[73] Supreme Court Rev. Adm. Circ. No. 28-91 (1994), Additional Requisites for Petitions Filed with the Supreme Court to Prevent Forum Shopping or Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints.

[74] 640 Phil. 325 (2010) [Per J. Peralta, En Banc].

[75] Id. at 334.

[76] Id. at 335.

[77] Olivares v. Villalon, Jr., 549 Phil. 528, 531 [Per J. Corona, First Division].

[78] 702 Phil. 422 (2013) [Per J. Brion, Second Division].

[79] Id. at 431.

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