

VICTRONICS COMPUTERS, INC., PETITIONER, VS. REGIONAL TRIAL COURT, BRANCH 63, MAKATI, PRESIDED BY JUDGE JULIO R. LOGARTA, PANORAMA ENTERPRISES, INC., PASIG TOURIST DEVELOPMENT CO...

G.R. No. 104019. January 25, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner seeks to set aside, for being inconsistent with law and jurisprudence, the 22 January 1992 Order of respondent Branch 63 of the Regional Trial Court (RTC) of Makati, Metro Manila which, among others, denied a motion for reconsideration of its earlier dismissal, on the ground of lis pendens, of a collection suit docketed as Civil Case No. 91-2069 filed against private respondents Karl C. Velhagen and Archimedes R. King, alleged operators of a business under the names VICTORIA COURT, GMT CONSOLIDATED COMPANY and VICTORIA GROUP OF COMPANIES. Petitioner further asks this Court, in the exercise of its supervisory power over lower courts, to direct the respondent Court to issue alias summonses to the respondent corporations which were impleaded as additional defendants in the amended complaint filed in said Civil Case No. 91-2069, and to order the consolidation of this case in Branch 63 with Civil Case No. 91-2192 pending before Branch 150 of the said court.

The records disclose the following antecedents:

Petitioner Victronics Computers, Inc., a domestic corporation engaged in the sale of computer systems and peripherals, submitted a quotation for office systems to service the networking requirements of various Victoria Court branches.

Satisfied with the said quotations, private respondents Velhagen and King placed an order with the petitioner in a Purchase Order[1] form on which is written "GMT CONSOLIDATED" above the printed word COMPANY, and the address 2129 Pasong Tamo St., Makati, Metro Manila below it. The private respondents ordered six (6) sets of 80 DATA 386 computer system with peripherals for the net consideration, after deducting a P7,000.00 discount, of P767,000.00, subject to the following terms:

- a) Payment -50% down, 50% COD upon completion of delivery.
- b) Delivery -within 30 calendar days upon receipt of P.O. and 50% down payment.
- c) Penalty -1% of total P.O. amount per day of delay.

These systems were to be delivered to the parties therein indicated, namely: VCAD, VCCU, VCHI, VCNE, VCMA and VCES. Per the delivery receipts, these acronyms stand for Victoria Court drive-in motels located in different places.

The fifty per cent (50%) downpayment agreed upon was duly paid. Thereupon, petitioner delivered on 22 May 1991 three (3) of the six (6) sets to Victoria Court/North EDSA, Victoria Court/Adriatico and Victoria

Court/Cuneta.[2] The remaining sets were delivered on 20 June 1991 to Victoria Court/Hillcrest, Victoria Court/Panorama and Victoria Court/McArthur.[3]

As revealed in the complaint in Civil Case No. 91-2192, each of the aforementioned establishments is owned by the herein six (6) respondent corporations which, however, decided sometime in 1986 "to band together for their mutual interest and benefit, under the trade name and style of the Victoria Court Group of Companies." [4]

As further revealed in the Comment of these corporations, they operate under a common management team wherein respondents Velhagen and King are the General Manager and Chief Executive Officer, respectively.[5]

Only fifty per cent (50%) of the purchase price of each of the sets delivered to the different establishments was paid by the said corporations.[6] The outstanding balance not having been paid within and even after the period stipulated in the Purchase Order despite, demands for its payment made on Velhagen and King, the petitioner filed, on 26 July 1991, with the RTC of Makati a Complaint[7] for a sum of money and damages against:

"KARL C. VELHAGEN and ARCHIE R. KING, who operate business under the names VICTORIA COURT, GMT CONSOLIDATED COMPANY, and VICTORIA GROUP OF COMPANIES."

The case was docketed as Civil Case No. 91-2069 and was raffled off to Branch 63 of the said court, presided over by herein respondent Judge Julio R. Logarta.

Defendants Velhagen and King, herein private respondents, were each served with a summons and a copy of the complaint on 8 August 1991.[8]

The following day, 9 August 1991, the six (6) respondent corporations[9] filed with the RTC of Makati a Complaint, dated 7 August 1991,[10] for the nullification of the abovementioned Purchase Order and for damages against the herein petitioner and one Teodorico B. Kabigting. It is prayed for in the complaint that:

"x x x judgment be rendered for the plaintiffs and against the defendants declaring the contract to purchase the aforementioned computer equipment null and void for fraud and undue influence, and ordering defendants, jointly or severally, to pay plaintiffs:

1. The sum of P383,500.00 plus reasonable interest of at least 2% per month from the month of May 1991 until the amount is actually paid, as compensatory (sic) or actual damages;
2. The sum of P500,000.00 as exemplary damages;
3. The sum of P100,000.00 and a per appearance fee of P1,000.00 as and by way of attorney's fees;
4. The cost of the suit."

The case was docketed as Civil Case No. 91-2192 and was raffled off to Branch 150 of the said court.

Four (4) causes of action are alleged in this complaint. In the first, the corporations claim that defendant Kabigting, then the Manager of the Management Information Services of the Victoria Court Group of Companies who was instructed to canvass or conduct a price survey of computer equipment supplied by different companies, connived with Victor Mariano, the petitioner's General Manager and the latter's old and close friend, in consideration of an alleged promise of a substantial commission, to falsify the price survey report and recommend the purchase of the computer equipment from the petitioner corporation. A routine check of the transaction likewise disclosed an overpricing of the equipment by at least P200,000.00 while an audit revealed that the equipment sold was among the surplus stock of the petitioner. In the second cause of action, they allege that they forthwith informed the petitioner's Mr. Mariano about the fraud and sought an audience with him for an amicable solution to the controversy, but that the petitioner failed to respond and instead referred the matter to its attorney

who in turn wrote a letter of demand for the payment of the balance of the purchase price. Reacting, they also referred the matter to their lawyer who wrote the petitioner a letter informing it that the contract was being voided due to fraud and undue influence and demanding that the fifty per cent (50%) downpayment be returned with a reasonable interest at the rate of two per cent (2%) per month in exchange for the return of "all computer equipment purchased from defendant (herein petitioner) in the same condition as they were received." [11] Upon the petitioner's failure to respond positively to this offer, they filed the complaint. In the third cause of action, they allege bad faith and a fraudulent intent on the part of the defendants and ask for P500,000.00 as exemplary damages. The fourth cause of action is for attorney's and appearance fees.

No copy of any document whatsoever is attached to the complaint in said Civil Case No. 91-2192.

On 22 August 1991, private respondents Velhagen and King, represented by counsel of record for the six (6) corporations in Civil Case No. 91-2192 -- the law firm of ANG, CADIZ and ASSOCIATES -- filed in Civil Case No. 91-2069 a Motion To Dismiss and/or To Suspend Proceedings based on the following grounds: (a) plaintiff (petitioner herein) failed to verify the complaint, (b) plaintiff failed to sue the proper parties and (c) there is a prejudicial question or a pending incident before another court. In support of these grounds, they allege that (a) verification is a formal requirement under Section 6, Rule 7 of the Rules of Court; (b) the transaction in question was not entered into by them in their personal capacities -- they acted for and on behalf of the corporations they represent; hence, the latter, who chose not to honor the contract, are the real parties in interest; moreover, "Victoria Court, GMT Consolidated Company and Victoria Group of Companies x x x are mere tradenames" [12] -- none of these named companies really exist; and (c) Civil Case No. 91-2192 (erroneously written as 91-2191) for the nullification of the subject purchase order has been filed against the petitioner and is pending before Branch 150 of the trial court; accordingly, "[A]t the very least, the Honorable Court (Branch 63) should suspend all proceedings in this case because of the existence of a prejudicial question or a pending incident before another court." Elaborating thereon, said movants state:

"There is a situation wherein two suits were filed for different causes of action but involving the same transaction or contract. One case, the one pending before this Honorable Court, is for the enforcement of the contract, or more specifically, for the collection of the balance or sum of money as provided for in the contract. In the other case before another court, what is being sought is the nullification or the voiding of the same contract for alleged fraud and undue influence. There is no debate that the more basic question is before the other court, as the very validity of the contract sought to be enforced is at issue there.

It is clear therefore that the second case is prejudicial to the determination of the first case. Whether or not the suit pending before this Honorable Court will prosper depends entirely on how the case in the other court will fare. If for example the other court should determine that there is (sic) sufficient grounds to nullify the contract, then the collection suit before this Honorable Court must necessarily fail. It is only after the other court should determined (sic) that the questioned contract is valid can this Honorable Court proceed with the collection case.

Suspension of the proceedings before this Honorable Court is therefore the prudent thing to do. This will avoid the absurd situation wherein one court will find for one party in one case, and the other court will find for the adverse party in the second case. It is also an act of courtesy to a co-equal branch of the same court." [13]

They then end with an alternative prayer, thus:

"WHEREFORE, premises considered, it is respectfully prayed that the instant Complaint be dismissed for all or any of the grounds aforecited. On the alternative, it is prayed that the proceedings before the Honorable Court be at least suspended until the final resolution of the other case before Branch 150 of the Regional Trial Court of Makati." [14]

Meanwhile, on 5 September 1991, the herein petitioner filed in Civil Case No. 91-2192 a Special Appearance and Motion To Dismiss^[15] asking the trial court to dismiss the said case on grounds of improper service of summons and lack of jurisdiction over it as defendant therein.

On 16 September 1991, Branch 63 of the Makati RTC, through respondent Judge Julio Logarta, issued an order dismissing Civil Case No. 91-2069 because of *litis pendentia*.^[16] The court gave the following reasons, quoted verbatim, in support of its ruling:

"x x x Clearly, the elements of *litis pendentia*, as a ground for a motion to dismiss is present, to wit:

- '1. Identity of parties or at least such as representing the same interests in both actions;
2. Identity of rights asserted and prayed for, the reliefs being founded on the same facts;
3. The identity of the presiding particulars should be such that any judgment which may be rendered on the other action will regardless of which party is successful amount to *res judicata* in the action under consideration (FEU - Dr. Nicanor Reyes Medical Foundation vs. Trajano 152 SCRA, 453 (1987); Lopez vs. Villaruel, G.R. No. 54323, 1988).'

Further, it was held that the 'Rule does not require as a ground for dismissal of a complaint that there is a prior action, but only pending action (Teodoro vs. Mirasol 53 O.G., 8088 99 Phil. 150).' Thus, the contention of plaintiff that the case before this branch is 123 days older than Civil Case No. 91-2192 before Branch 150, hence, the one lodged with Branch 150 should be the one dismissed by *litis pendentia* is untenable. Moreover, 'inclusion of additional parties in second case is no obstacle to its dismissal on the ground of *litis pendentia*' (Investors Finance Corp. vs. Judge Ebarle, G.R. No. 70640, June 29, 1988)."^[17]

On 19 September 1991, petitioner filed in Civil Case No. 91-2069 a contempt charge against respondents Velhagen and King for forum-shopping,^[18] claiming that after having respectively received the summons and a copy of the complaint, both respondents did not file an answer with compulsory counterclaim. Instead, "using the names of certain corporations that represent the same interests they advance, [they] filed a separate action one day later -- before Branch 150 of the Makati Regional Trial Court in Civil Case No. 91-2192"^[19] -- which arose from the same transaction or occurrence as that obtaining in Civil Case No. 91-2069; as a matter of fact, the complaint in the former reads like an answer with compulsory counterclaim to the complaint in the latter. Hence, both are guilty of forum-shopping, double dealing, trifling with the court and abusing its processes.^[20]

Meanwhile, acting on the petitioner's motion to dismiss Civil Case No. 91-2192, Branch 150 of the court below, per Judge Zeus Abrogar, handed down an order, on 25 September 1991, directing -- in order to remove any doubt on the propriety of the service of summons -- the re-service of summons on the petitioner.^[21]

On 4 October 1991, after allegedly accidentally learning of the 16 September 1991 Order of dismissal of Civil Case No. 91-2069, petitioner requested, and thereafter obtained, a photocopy of the said order which was not, unfortunately, served on the petitioner's counsel until then.^[22]

On 9 October 1991, petitioner filed in Civil Case No. 91-2069 an Ex Abundante Cautela Motion To Refer Forum-Shopping Charge to Executive Judge.^[23] On the same date, petitioner filed a Motion For Reconsideration^[24] of the said order of dismissal.

On 14 October 1991, after proper service of summons to it, petitioner filed a Motion To Dismiss^[25] Civil Case No. 91-2192 on the grounds of *litis pendentia* and forum shopping.

Thereupon, on 11 December 1991, petitioner filed in Civil Case No. 91-2069 a motion for the consolidation^[26] of the two (2) cases before Branch 63 where the prior case was filed; on 6 January 1992, it also filed in the same

case a Manifestation Pro Hac Vice[27] wherein it stated that "there was technically no pending action before" Branch 150 as it had not yet acquired jurisdiction over the person of the petitioner (due to improper service of summons) as evidenced by the 25 September 1991 Order of Judge Abrogar himself.

In the meantime, however, petitioner filed in Civil Case No. 91-2192 an Answer with Compulsory Counterclaim[28] dated 20 January 1992. One of the Special and Affirmative Defenses averred therein is the pendency in Branch 63 of Civil Case No. 91-2069. Also on 20 January 1992, petitioner filed in Civil Case No. 91-2069 an Amended Complaint impleading therein, as additional defendants, the six (6) corporations which sued as plaintiffs in Civil Case No. 91-2192.[29]

On 7 February 1992, the Clerk of Court of Branch 63 sent the petitioner, by registered mail,[30] a copy of the 22 January 1992 Order in Civil Case No. 91-2069[31] which resolved the various motions filed by the latter. The said order reads:

"Consequently, the Motion for Consolidation filed by plaintiff on December 11, 1991, perforce, should also be DENIED for being moot and academic.

WHEREFORE, premises considered, the Motion for Reconsideration dated October 7, 1991; the Contempt Charge for Forum-Shopping; the Motion to Refer the Contempt Charge to the Executive Judge; the Motion for Consolidation; and, Manifestation Pro Hac Vice are hereby DENIED, and the order dated September 16, 1991, dismissing the above-entitled case is hereby REITERATED."

Anent the particular issue of forum shopping, the lower court held that the same "is negated by the move of defendants (private respondents Velhagen and King) to dismiss the case filed before this court [Civil Case No. 91-2069], to give way to that which pends before Branch 150 [Civil Case No. 91-2192]." And, on the matter of *litis pendentia*, it reiterated its ruling that the filing of one action ahead of another is not decisive on the issue of which of the two (2) identical actions in two (2) separate courts of concurrent jurisdiction should be dismissed.

As a consequence of this 22 January 1992 Order, respondent Court, in Civil Case No. 91-2069, issued on 20 February 1992 an order denying the petitioner's motion for the issuance of an alias summons.[32]

Hence, the instant petition wherein the petitioner claims that the respondent Court erred:

"(1) in equating respondents' ground of 'pending incident before another court' to ask for suspension of proceedings with *litis pendentia* under Rule 16 when respondents' grounds to ask for dismissal were only (a) lack of verification; and (b) not having initially impleaded respondent corporations as proper parties -- grounds not found in Rule 16;

(2) in ruling, with precipitate haste, and in insisting, despite a chance to reconsider, that there was another pending action at the time of dismissal when technically there was none since Branch 150 was still trying to acquire jurisdiction over petitioner's person and to notify petitioner by new summons some 2 weeks later about the filing of the second;

(3) in preferring to maintain the second action over the first, which (a) was 123 cases (sic) older than the second; (b) was the one pending when the second one was just filed; and (c) was meant to collect the unpaid balance of close to half a million pesos that respondents still owe and which in substantial justice was entitled to be heard if not preferentially over the second, at least jointly with the second upon consolidation;

(4) in disregarding the Supreme Court's rulings in *vda. de Tolentino v. de Guzman*, *Pambusco v. Ocfemia*, *Ramos v. CIR*, and other applicable decisions;

(5) in not finding, by itself or through the executive judge, that the institution of the second action was a specie of forum shopping, in the light of *DBP v. IAC*, given that (a) the second action came 2 weeks later after the

first complaint; (b) the second complaint was filed after respondents had already received a copy of the first; (c) respondents' complaint reads like an answer with compulsory counterclaim to petitioner's complaint; and (d) the second action arose from the same transaction, facts, and circumstances identical to those in an already pending proceeding;

(6) in totally ignoring the existence of the amended complaint; and

(7) in releasing an order on February 7, 1992 that did not conform with the prevailing state of affairs of the action as of that time and with applicable Supreme Court decisions since (a) the amended complaint had already rendered the first complaint functus officio along with resolutions that attached to it; (b) the motion for alias summons should have been granted as a matter of course; and (c) consolidation should have afterwards been granted to promote the Supreme Court's avowed preference for consolidation as expressed in *Active Wood Products v. CA* because it is a 'beneficial and desirable' practice."^[33]

On 10 June 1992,^[34] after the private respondents filed their Comment^[35] to the petition (on 20 April 1992) and the petitioner filed its Reply^[36] thereto (on 28 May 1992), We resolved to give due course to the petition and required the parties to submit their respective Memoranda, which they subsequently complied with.

The pivotal issues raised in the instant petition are: (1) whether or not the respondent Court erred in dismissing, on the ground of *litis pendentia*, Civil Case No. 91-2069 which has priority with respect to the time of filing, and (2) whether or not the private respondents are guilty of forum-shopping.

It is a rule that for *litis pendentia* to be invoked as a ground for the abatement or dismissal of an action, the concurrence of the following requisites is necessary: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two (2) cases should be such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other.^[37]

The presence of all the foregoing requisites with respect to Civil Case No. 91-2069 and Civil Case No. 91-2192 is not controverted by the parties. As a matter of fact, both invoked these identities in their respective motions to dismiss.

As to the first requirement, it is quite evident that the petitioner is a party in both cases. There is, however, an initial confusion as to the personalities of the defendants in Civil Case No. 91-2069 and the plaintiffs in Civil Case No. 91-2192, who are claimed to be natural persons doing business under the names of "Victoria Court, GMT Consolidated Company and Victoria Group of Companies" and juridical persons (the six (6) corporations), respectively. In the light of the admission by the six (6) corporations that they banded together for their mutual interest and benefit under the trade name and style of the Victoria Group of Companies; that they put up a common management team with respondents Velhagen and King as General Manager and Chief Executive Officer, respectively; that the purchase order in question is the official act of the said officers; and that the computer sets were in fact received by them for which they each paid a downpayment of fifty per cent (50%) of the purchase price thereof, there can be no doubt that the defendants in the first case and the plaintiffs in the second case represent the same interests.

As regards the second element, a careful reading of the allegations in the parties' respective complaints and motions to dismiss in the two (2) civil actions below reveals that both assert rights founded on an identical set of facts which give rise to one basic issue -- the validity of the contract in question, the purchase order for the computer equipment. Civil Case No. 91-2069 actually involves an action for specific performance; it thus upholds the contract and assumes its validity. Civil Case No. 91-2192, on the other hand, is for the nullification of the contract on the grounds of fraud and vitiated consent. While ostensibly the cause of action in one is opposite to

that in the other, in the final analysis, what is being determined is the validity of the contract. It would not have been unlikely that in its answer filed in Civil Case No. 91-2192, the petitioner would merely reiterate its allegations in the complaint in Civil Case No. 91-2069 sustaining and invoking the validity of the purchase order and setting up *lis pendens* as a defense. This is what it exactly did. It would not have been likewise unlikely that the defense of the private respondents in Civil Case No. 91-2069 would be one in pursuit of their theory, as plaintiffs, in Civil Case No. 91-2192. Thus, the identity of rights asserted cannot be disputed. Howsoever viewed, it is beyond cavil that regardless of the decision that would be promulgated in Civil Case No. 91-2069, the same would constitute *res judicata* on Civil Case No. 91-2192 and vice-versa. But which case should be abated? Squarely put, should it be the second, which was filed fourteen (14) days after the filing of the first, or should it be the first?

Like *res judicata* as a doctrine, *litis pendentia* as a principle is a sanction of public policy against multiplicity of suits.[38] Differently put, "[T]he principle upon which a 'plea of another action pending' is sustained is that the latter action is deemed unnecessary and vexatious." [39]

There is no hard and fast rule that governs the determination of which of the actions should be abated. A review of relevant cases decided by this Court discloses that generally, it is the second case which is abated. Indeed, it seems that the maxim *Qui prior est tempore, potior est jure*[40] controls.

To be sure, there are limitations to this rule. At common law, if it appears to the court that the second action was not brought to harass or vex the defendant, and is not in fact vexatious, it may refuse to abate the second action, allow it to stand, and order the first one to be discontinued on proper terms. The court may also permit the plaintiff to discontinue the first suit and thereby defeat the plea in abatement where the second suit is necessary in order to protect and secure the plaintiff's full rights, or where the abatement of the second suit is necessary in order to protect and secure the plaintiff's full rights, or where the abatement of the second would result in possible loss of substantial rights on the part of the plaintiff.[41]

In our jurisdiction, the law itself[42] does not specifically require that the pending action which would hold in abatement the other must be a pending prior action. Thus, in *Teodoro vs. Mirasol*,[43] this Court observed:

"It is to be noted that the Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action, not a pending prior action. The fact that the unlawful detainer suit was of a later date is no bar to the dismissal of the present action. We find, therefore no error in the ruling of the court a quo that plaintiff's action should be dismissed on the ground of the pendency of another more appropriate action between the same parties and for the same cause."

In *Roa-Magsaysay vs. Magsaysay*,[44] wherein it was the first case which was abated, this Court ruled:

"In any event, since We are not really dealing with jurisdiction but mainly with venue, considering both courts concerned do have jurisdiction over the causes of action of the parties herein against each other, the better rule in the event of conflict between two courts of concurrent jurisdiction as in the present case, is to allow the litigation to be tried and decided by the court which, under the circumstances obtaining in the controversy, would, in the mind of this Court, be in a better position to serve the interests of justice, considering the nature of the controversy, the comparative accessibility of the court to the parties, having in view their peculiar positions and capabilities, and other similar factors. Without in any manner casting doubt as to the capacity of the Court of First Instance of Zambales to adjudicate properly cases involving domestic relations, it is easy to see that the Juvenile and Domestic Relations Court of Quezon City which was created in order to give specialized attention to family problems, armed as it is with adequate and corresponding facilities not available to ordinary courts of first instance, would be able to attend to the matters here in dispute with a little more degree of expertise and experience, resulting in better service to the interests of justice. A reading of the causes

of action alleged by the contending spouses and a consideration of their nature, cannot but convince Us that, since anyway, there is an available Domestic Court that can legally take cognizance of such family issues, it is better that said Domestic Court be the one chosen to settle the same as the facts and the law may warrant."

We made the same pronouncement in *Ramos vs. Peralta*:^[45]

"Finally, the rule on *litis pendentia* does not require that the later case should yield to the earlier case. What is required merely is that there be another pending action, not a prior pending action. Considering the broader scope of inquiry involved in Civil Case No. 4102 and the location of the property involved, no error was committed by the lower court in deferring to the Bataan court's jurisdiction."

An analysis of these cases unravels the ratio for the rejection of the priority-in-time rule and establishes the criteria to determine which action should be upheld and which is to be abated. In *Teodoro*, this Court used the criterion of the more appropriate action. We ruled therein that the unlawful detainer case, which was filed later, was the more appropriate action because the earlier case -- for specific performance or declaratory relief -- filed by the lessee (*Teodoro*) in the Court of First Instance (CFI) to seek the extension of the lease for another two (2) years or the fixing of a longer term for it, was "prompted by a desire on plaintiff's part to anticipate the action for unlawful detainer, the probability of which was apparent from the letter of the defendant to the plaintiff advising the latter that the contract of lease expired on October 1, 1954."^[46] The real issue between the parties therein was whether or not the lessee should be allowed to continue occupying the leased premises under a contract the terms of which were also the subject matter of the unlawful detainer case. Consonant with the doctrine laid down in *Pue vs. Gonzales*^[47] and *Lim Si vs. Lim*,^[48] the right of the lessee to occupy the land leased against the lessor should be decided under Rule 70 of the Rules of Court; the fact that the unlawful detainer case was filed later was then of no moment. Thus, the latter was the more appropriate action.

The "more appropriate action" criterion was also applied in *Ramos vs. Peralta*.^[49] *Ramos*, the lessee of a fishpond located in Pilar, Bataan, sought to consign with the CFI of Manila the advance rentals for the fishpond for 15 March 1976 and 15 June 1976 after its tender was refused by the lessors (*Ortanez spouses*)^[50] and after he was informed by the vendee of the property, *P.R. Roman Inc.* -- in its letter of 1 May 1976 -- that it had acquired the property and would take possession thereof on 16 May 1976. *Ramos* filed the consignment case, docketed as Civil Case No. 103647, with the lower court on 2 August 1976. Meanwhile, on 13 August 1976, *P.R. Roman Inc.* filed with the CFI of Bataan a complaint for quieting of title against *Ramos*; this case was docketed as Civil Case No. 4102. Consequently, *P.R. Roman, Inc.* filed a motion to dismiss Civil Case No. 103647 on the ground of, *inter alia*, *lis pendens*. The motion was granted. On appeal, this Court affirmed the lower court's decision considering the "broader scope of inquiry involved in Civil Case No. 4102 and the location of the property involved."

In *Roa-Magsaysay*, the criterion used was the consideration of the interest of justice. In applying this standard, what was asked was which court would be "in a better position to serve the interests of justice,"^[51] taking into account (a) the nature of the controversy, (b) the comparative accessibility of the court to the parties and (c) other similar factors. While such a test was enunciated therein, this Court relied on its constitutional authority to change venue to avoid a miscarriage of justice.

It is interesting to note that in common law, as earlier adverted to, and pursuant to the *Teodoro vs. Mirasol*^[52] case, the *bona fides* or good faith of the parties is a crucial element. In the former, the second case shall not be abated if not brought to harass or vex; in the latter, the first case shall be abated if it is merely an anticipatory action or, more appropriately, an anticipatory defense against an expected suit -- a clever move to steal the march from the aggrieved party.

In the case at bar, We do not hesitate to rule that the second case, Civil Case No. 91-2192, was filed not so much upon the inspiration of unadulterated good faith to seek redress for a genuine wrong committed but more to vex or harass in another forum the plaintiff in the first case, the herein petitioner. What cannot escape Our attention is the undue, if not indecent, haste in the preparation of the complaint in Civil Case No. 91-2192 by the counsel for the defendants in Civil Case No. 91-2069. Civil Case No. 91-2192 is for the nullification of a contract -- the purchase order signed by no less than the authorized officers of the six (6) respondent corporations. It is, therefore, based upon a written document. Section 7, Rule 8 of the Rules of Court expressly provides that:

"SEC. 7. Action or defense based on document. -- Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit; which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading." (Emphasis supplied).

There was absolutely no compliance with this requisite as no copy of the purchase order was set forth in the body of the complaint or attached to the complaint itself. The non--observance of this simple yet basic rule cannot be attributed to the ignorance of the lawyers who, measured by their pleadings in this case, appear to be experienced and well-versed in the law, but to the frenzied efforts to file the complaint at the earliest possible time. To make it appear that the complaint was prepared before service of summons on the defendants in Civil Case No. 91-2069, it was dated 7 August 1991.[53] It was, however, filed only on 9 August 1991 although the office of the abovementioned lawyers is located at 2129 Pasong Tamo St.,[54] Makati, Metro Manila, within the same municipality wherein the court sits. Moreover, all six (6) corporations likewise have their principal office at the same Pasong Tamo address.[55] The private respondents' claim in their Comment that:

"x x x when undersigned counsel filed Civil Case No. 91-2192, neither he nor his clients had actual notice of the earlier suit filed by petitioner. Civil Case No. 91-2192 was filed in good faith."[56]

is clearly self-serving. Besides, counsel is careful enough to use "actual notice" thereby admitting, in effect, that some other form of notice was received.

Being merely vexatious, Civil Case No. 91-2192 is the abatable case.

Independently of the element of bona fides, the fact remains that under the peculiar circumstances attending the transaction in question, the first case -- for specific performance -- is the more appropriate action. In the first place, petitioner, the unpaid seller in the amount of fifty per cent (50%) of the purchase price, had completely delivered the six (6) computer sets to the establishments of the six (6) respondent corporations within the period stipulated in the purchase order. Despite their assertion in the complaint in Civil Case No. 91-2192 that the equipment was "outmoded and obsolete,"[57] they neither claim the inability to use the computer sets nor insinuate that they had, at any time, called upon the petitioner to account under its warranty against hidden defects.[58] They did not even offer to return the computer equipment. Thus, in reality, it is the petitioner who has been aggrieved; in availing of the remedy of specific performance allowed under Article 1191 of the Civil Code, it was acting well within its rights. The subsequent action for the annulment of the contract on grounds of fraud and vitiated consent is nothing but a mere defense thereto.

Respondents Velhagen and King very well acknowledged the weakness of the defense of *lis pendens*. In their Motion to Dismiss and/or Suspend Proceedings,[59] they did not categorically refer to Civil Case No. 91-2192 as a pending action. In lieu thereof, they chose the phrase "prejudicial question or a pending incident before another court;" in consonance therewith, they even prayed that if Civil Case No. 91-2069 may not be dismissed for any of the grounds therein invoked, it should be suspended until the final resolution of Civil Case No. 91-2192. Fortunately for them, respondent Court read the phrase "prejudicial question or a pending incident" as *lis pendens*

and thereafter decreed the dismissal of said Civil Case No. 91-2069. This clearly amounted to grave abuse of discretion.

And now on the issue of forum-shopping.

In its Order of 22 January 1992, respondent Court held:

"Likewise, the Court finds no basis to cite defendant in contempt of court, allegedly for engaging in forum-shopping as this allegation is negated by the move of defendants to dismiss the case filed before this Court, to give way to that which pends before Branch 150." [60]

Respondent Court does not seem to have a full grasp of the underpinnings of forum-shopping. In *People vs. Court of Appeals*, [61] We noted that forum-shopping has its roots in the rule that a party should not be allowed to pursue simultaneous remedies in two (2) different forums for it does havoc to the rule on orderly procedure. Later, in *E. Razon Inc. vs. Philippine Port Authority*, [62] We specifically declared that forum-shopping is an act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes; it is improper conduct that tends to degrade the administration of justice. Thus, the said rule has been formalized in Section 17 of the Interim Rules and Guidelines issued by this Court on 11 January 1983 in connection with the implementation of the Judiciary Reorganization Act (Batas Pambansa Blg. 129). A review of the cases on forum-shopping reveals, however, that they involve parties filing two (2) or more suits in different forums. [63] The rule has not been extended to a defendant who, for reasons known only to him, commences a new action against the plaintiff -- instead of filing a responsive pleading in the other case -- setting forth therein, as causes of action, specific denials, special and affirmative defenses or even counterclaims. Thus, Velhagen's and King's motion to dismiss Civil Case No. 91-2069 by no means negates the charge of forum-shopping as such did not exist in the first place.

IN VIEW OF THE FOREGOING, the instant petition is hereby GRANTED. The Order of respondent Court of 16 September 1991 dismissing Civil Case No. 91-2069 is SET ASIDE and a new one is entered DISMISSING instead, on ground of *lis pendens*, Civil Case No. 91-2192 of Branch 150 of the Regional Trial Court of Makati, with costs against the defendants therein. The Order of respondent Court of 22 January 1992 in Civil Case No. 91-2069 is hereby MODIFIED by setting aside that portion thereof denying the motion to reconsider its Order of 16 September 1991 and declaring that portion denying the motion for consolidation as moot and academic.

Cost against private respondents.

SO ORDERED.

Gutierrez, Jr., Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 43-45.

[2] Rollo, 46-49.

[3] *Id.*, 52-54.

[4] *Id.*, 64.

[5] *Id.*, 157.

[6] Rollo, 38.

[7] *Id.*, 36-42.

[8] Sheriff's Return; Id., 170.

[9] Panorama Enterprises, Inc., Pasig Tourist Development Corp., Malate Tourist Development Corp., Caloocan Tourist Development Corp., Galactic Space Development Corp. and Barrientos & Co., Inc.

[10] Rollo, op. cit., 63-69.

[11] Rollo, 66.

[12] Rollo, 73.

[13] Rollo, 73-74.

[14] Id., 74.

[15] Id., 76-77.

[16] Rollo, 85-87.

[17] Id., 86.

[18] Rollo, 90.

[19] Id.

[20] Id.

[21] Id., 89.

[22] Petitioner's counsel received it on 11 October 1991. It was sent by registered mail only two (2) days earlier.

[23] Rollo, 112-114.

[24] Id., 97-103.

[25] Id., 104-110.

[26] Id., 124-126.

[27] Id., 136-137.

[28] Rollo, 191-203.

[29] Id., 138-147.

[30] Id., 151.

[31] Id., 148-150.

[32] Rollo, 185.

[33] Rollo, 11-13.

[34] Id., 241.

[35] Id., 156-169.

[36] Rollo, 210-222.

[37] Section 1(e), Rule 16, Rules of Court; Del Rosario vs. Jacinto, 15 SCRA 15 [1965]; Quimpo vs. De la

Victoria, 46 SCRA 139 [1972]; Surigao Development Bank vs. Buslon, 48 SCRA 308 [1972]; Lamis Enterprises vs. Lagamon, 108 SCRA 740 [1981]; Drilon vs. Guarana, 149 SCRA 342 [1987]; Investors' Finance Corp. vs. Ebarle, 163 SCRA 60 [1988]; Lopez vs. Villaruel, 164 SCRA 616 [1988]; Vda. de Tolentino vs. De Guzman, 172 SCRA 555 [1989]; Ramos vs. Ebarle, 182 SCRA 245 [1990].

[38] Investors' Finance Corp. vs. Ebarle, *supra*.

[39] Arceo vs. Oliveros, 134 SCRA 308, 315 [1985].

[40] He who is before in time is the better in right. Priority in time gives preference in law; Black's Law Dictionary, Fifth ed., 1125.

[41] 1 Am Jur 2nd 46.

[42] Section 1(e), Rule 16, Rules of Court.

[43] 99 Phil. 150, 153 [1956].

[44] 98 SCRA 592, 605-606 [1980].

[45] 203 SCRA 412, 419 [1991].

[46] Teodoro vs. Mirasol, *supra*., at page 153.

[47] 87 Phil. 81 [1950].

[48] 98 Phil. 868 [1956].

[49] *Supra*.

[50] Unknown to Ramos, the certificates of title to the property were in the name of Philippine International Surety Co., Inc., which was later renamed Mindanao Insurance Co. This company was placed under receivership and liquidation in a case in Quezon City upon application of the Insurance Commissioner. P.R. Roman, Inc. purchased the property from the Mindanao Insurance Co. with the approval of the liquidation court.

[51] Roa-Magsaysay vs. Magsaysay, *supra*., at page 605.

[52] *Supra*.

[53] Rollo, 68.

[54] Rollo, 68.

[55] *Id.*, 63.

[56] *Id.*, 159.

[57] Rollo, 65.

[58] Article 1561, et seq., Civil Code.

[59] Rollo, *op. cit.*, 70-75.

[60] Rollo, 149.

[61] 101 SCRA 450 [1980].

[62] G.R. No. 75197, Resolution of 31 July 1986, quoted in *Buan vs. Lopez, Jr.*, 145 SCRA 34, 38-39 [1986].

[63] See for instance *Buan vs. Lopez*, supra.; *Palm Avenue Realty Development Corp. vs. PCGG*, 153 SCRA 579 [1987]; *Limpin, Jr. vs. Intermediate Appellate Court*, 161 SCRA 83 [1988]; *Villanueva vs. Adre*, 172 SCRA 876 [1989]; *Alonto, Jr. vs. Board of Regents*, 185 SCRA 73 [1990]; *Development Bank of the Philippines vs. Intermediate Appellate Court*, 190 SCRA 653 [1990]; *Benguet Electric Coop., Inc. vs. NEA*, 193 SCRA 250 [1991]; *Tan vs. Court of Appeals*, 199 SCRA 212 [1991].

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