

**INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., ET. AL.,
PETITIONERS, VS. COURT OF APPEALS, HON. ANGEL V. COLET,
MANILA PILOTS ASSOCIATION, ET. AL., RESPONDENTS.**

G.R. No. 116910. October 18, 1995

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Material hereto are the antecedents mostly taken from the decision of the respondent Court of Appeals in CA-G.R. No. SP 33177, (International Container Terminal Services, Inc., et. al. v. Hon. Angel V. Colet, et. al.),[1] subject of the present petition for review, viz:

On February 3, 1988, the Philippine Ports Authority issued Administrative Order No. 02-88 (A.O. No. 02-88) entitled "Implementing Guidelines on Open Pilotage Service". A.O. No. 02-88 opened pilotage services in the Philippines to all licensed and accredited harbor pilots regardless of their non-membership in existing harbor pilots association.[2]

The United Harbor Pilots Association of the Philippines, Inc. (hereinafter referred to as "United Harbor" for brevity) and private respondent Manila Pilots Association (hereinafter referred to as "Manila Pilots")[3] made representations with then Acting Secretary of Transportation and Communications, Hon. Rainerio O. Reyes and the Chairman of the Philippine Ports Authority to set aside the implementation of A.O. No. 02-88 claiming that it violated their exclusive right to provide pilotage services in the Philippines.

Failing in their efforts to obtain a reconsideration of the said administrative order, "United Harbor" and private respondent "Manila Pilots" sought to invalidate A.O. No. 02-88 by filing with the Regional Trial Court of Manila, a petition for certiorari and prohibition with prayer for a temporary restraining order against Secretary Reyes, the Philippine Ports Authority, its General Manager, Maximo S. Dumlao, Jr. and certain "John Does" (Civil Case No. 88-44726).

On October 26, 1989, the Regional Trial Court rendered its decision in Civil Case No. 88-44726 in favor of "United Harbor" and private respondent "Manila Pilots", the dispositive portion of which reads:

"WHEREFORE, for all of the foregoing, the petition is hereby granted:

1. Respondents are hereby declared to have acted in excess of jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction in approving Resolution No. 869 and in enacting Administrative Order No. 02-88, the subject of which is "Implementing Guidelines or (sic) Open Pilotage Service;
2. Philippine Ports Authority Administrative Order No. 02-88 is declared null and void;
3. The preliminary injunction issued on September 8, 1989 is made permanent; and
4. Without costs.

SO ORDERED."[4]

The above decision was appealed to the Court of Appeals via a petition for certiorari and prohibition which was dismissed for lack of jurisdiction, as it raised a purely legal question.[5] The dismissal was appealed to this court by way of a petition for review on certiorari which was denied with finality on June 8, 1992.[6] Notwithstanding the finality of the decision recognizing the exclusive right to pilotage of "United Harbor" and private respondent "Manila Pilots", petitioner "International Container" took over the pilotage services at the Manila International Port area[7] on October 28, 1992 by virtue of a Contract it entered into with the Philippine Ports Authority.

As a consequence, "United Harbor" and private respondent "Manila Pilots" filed a series of petitions in civil Case No. 88-44726 to hold then Philippine Ports Authority General Manager Rogelio A. Dayan and "International Container" officials and other persons in contempt of court. The contempt petitions, however, have not been resolved because the Office of the Solicitor General elevated to the Supreme Court (docketed as G.R. 107720) the question of whether or not the lower court still had jurisdiction to take cognizance of the petitions for contempt in view of the finality of the decision in Civil Case No. 88-44726.

Pending resolution of the contempt petitions, private respondent "Manila Pilots" filed another case against petitioner "International Container" before Branch 32 of the Regional Trial Court of Manila docketed as Civil Case No. 93-66024 for damages suffered by private respondent "Manila Pilots" between April 19, 1993 and April 29, 1993 as a result of petitioner's usurpation of its sole and exclusive exercise of harbor pilotage in the South and North Harbors of Manila and Limay, Bataan, except the Manila International Port area.[8]

Similarly, aggrieved by the unjust actuations of petitioner "International Container", and its continuing refusal to relinquish pilotage services in the Manila International Port area, private respondent "Manila Pilots" instituted a petition for mandamus, prohibition with preliminary mandatory injunction and damages against petitioner "International Container" before Branch 47 of the Regional Trial Court of Manila - docketed as Civil Case No. 66143.

In an Order dated January 20, 1994, the Regional Trial Court in Civil Case No. 93-66143 issued the writ prayed for, thereby "restoring and reinstating private respondent "Manila Pilots" to the exclusive exercise of harbor pilotage in the Manila International Port (MIP) area and commanding petitioner "international Container" to cease and desist from usurping or exercising the right to compulsory pilotage in the said Manila International Port (MIP) area."[9] Petitioner "International Container" assailed this order of the lower court by filing a petition for certiorari with respondent court contending, among others, that the filing of Civil Case No. 93-66143, pending:

- 1.) Contempt petitions incidents of Civil Case No. 88-44726- The contempt petitions filed by "United Harbor" and private respondent "Manila Pilots" against petitioner "International Container" and Philippine Ports Authority for defying the final judgment in Civil Case No. 88-44726;
- 2.) G.R. No. 107720 - The case filed by the Office of the Solicitor General with the Supreme Court raising the question of jurisdiction of the lower court to take cognizance of the contempt petitions in view of the finality of the decision in Civil Case No. 88-44726; and
- 3.) Civil Case No. 93-66024 - The action for damages filed by private respondent "Manila Pilots" against "International Container" to recover unearned income from the exercise of harbor pilotage in ports other than the Manila International Port (MIP) area from April 19, 1993 to April 29, 1993 was violative of the prohibition against forum shopping.[10] Respondent court found no merit in this contention, and affirmed the decision of the lower court.

Hence, the main inquiry posed before us: On the basis of the foregoing, is there forum shopping?

Petitioner "International Container" contends that there is forum shopping because "[t]he issue on (sic) the contempt petition before Judge Flojo[11] and before this Court and (sic) in G.R. No. 107720 is the very same issue involved in the case for mandamus and prohibition (Civil Case No. 93-66143)".[12] It further contends that private respondent "Manila Pilots" is guilty of forum shopping because "[a]t the time the contempt petitions were pending x x x and while these petitions were being challenged x x x (GR No. 107720), another case x x x was pending before RTC Manila, docketed as Civil Case No. 93-66024 x x x." [13]

We are not persuaded.

The assailed decision is in accordance with the established rule that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances.[14] Furthermore, the actions must also raise identical causes of action, subject matter, and issues.[15] We find no such similarity in the actions involved. Thus, as correctly observed by the respondent court:

"The facts which gave rise to the contempt petition is directed against what was perceived to be violative of the permanent injunction issued by Judge Flojo not to implement the open pilotage policy as provided for under PPA Administrative Order No. 02-88, x x x.

Upon the other hand the complaint in Civil Case No. 93-68143 (sic) is anchored on the alleged usurpation of the right of respondents on (sic) the sole and exclusive exercise of Harbor Pilotage only in the MIP area, from October 29, 1992 up to the present and the corresponding claim for damages." [16] (Italics provided)

Furthermore, G.R. No. 107720 was filed with the Supreme Court solely to question the jurisdiction of the lower court to take cognizance of the contempt petitions filed in Civil Case No. 88-44726, and the issue raised therein has no bearing on that raised in Civil Case No. 93-66143.

On the other hand, Civil Case No. 93-66024 sought the recovery of damages in the form of unearned income as a result of petitioner's usurpation of the right to pilotage of private respondent "Manila Pilots" in the South and North Harbors of Manila and Limay, Bataan except the Manila International Port area from April 19, 1993 to April 29, 1993 while Civil Case No. 93-66143 was brought to enjoin petitioner from further usurping the same right of private respondent "Manila Pilots" in the Manila International Port area only from, October 28, 1992 up to the present. Clearly, these two cases do not have the same facts nor do they raise identical causes of action.

Moreover, "[t]here is forum shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another".[17] Therefore, a party to a case resorts to forum shopping because "[b]y filing another petition involving the same essential facts and circumstances, x x x, respondents approached two different fora in order to increase their chances of obtaining a favorable decision or action".[18] It cannot be said that private respondent "Manila Pilots" sought to increase its chances of obtaining a favorable decision or action as a result of an adverse opinion in one forum, inasmuch as no unfavorable decision had ever been rendered against private respondent "Manila Pilots" in any of the cases brought before the courts below. On the contrary, private respondent "Manila Pilots" was one of the prevailing parties in Civil Case No. 88-44726 which established with finality its exclusive right together with "United Harbor" to provide pilotage services in the Philippines even prior to the institution of the other actions (G.R. 107720, Civil Case No. 93-66024 and Civil Case No. 93-66143.)

ACCORDINGLY, finding no reversible errors, the decision appealed from is hereby AFFIRMED and this petition is DENIED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

- [1] Decision dated May 31, 1994 in CA-G.R. SP No. 33177.
- [2] Administrative Order No. 02-88 was issued pursuant to the provision of Section 6-A(VIII) of Presidential Decree No. 857 (the charter of the PPA and PPA Board Resolution No. 860 (approved on June 15, 1987); Decision dated October 26, 1989 in Civil Case No. 88-44726, Rollo p. 107.
- [3] UHPAP is the sole umbrella organization for all member pilots in all pilotage districts of the country where they exercised pilotage service to the exclusion of any other individual pilot or pilotage association in consonance with government regulation. MPA is an exclusive organization of all pilots exercising pilotage service in the pilotage district of Manila, *supra*, Rollo p. 106.
- [4] *Supra*, Rollo p. 117.
- [5] Decision dated January 7, 1992 in CA-G.R. SP No. 19570, Rollo p. 120.
- [6] Resolution dated June 8, 1992 in G.R. No. 100109; Rollo p. 123.
- [7] Also known as the Manila International Container Terminal (MICT) area.
- [8] Comment to Petition in G.R. No. 116910, pp. 12-13; Rollo pp. 73-74.
- [9] *Supra*, Rollo, p. 23.
- [10] Petition in CA-G.R. SP No. 33177, pp. 10-12; Rollo pp. 97-99.
- [11] Presiding Judge in Civil Case No. 93-66143.
- [12] Petition in G.R. No. 116910, p. 7; Rollo p. 8.
- [13] *Id.*; Rollo pp. 10-11.
- [14] *GSIS v. Sandiganbayan* (citing *Palm Avenue Realty Development Corporation v. PCGG*, 153 SCRA 579 [1990]), 191 SCRA 655 (1990).
- [15] *Samad v. COMELEC, et. al.*; *Samad v. Executive Secretary*, 224 SCRA 631, 646 (1993).
- [16] *Supra*, p. 8; Rollo, p. 25.
- [17] *Villanueva v. Adre*, 172 SCRA 877, 882 [1989]; *GSIS v. Sandiganbayan*, 191 SCRA 655 [1990]; and *Silahis International Hotel, Inc. v. NLRC*, 225 SCRA 94 [1993].
- [18] *Silahis International Hotel, Inc. v. NLRC*, *supra* at 10, p. 100.

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