

THE EXECUTIVE SECRETARY AND ARTURO C. LOMIBAO, PETITIONERS, VS. RICHARD J. GORDON, ANACLETO M. DIAS, AND ORLANDO E. MENDIOLA, RESPONDENTS.

G.R. No. 134171. November 18, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition to declare respondents Richard J. Gordon, Anacleto M. Diaz, and Orlando E. Mendiola in contempt of court. Respondents Diaz and Mendiola are the counsels of respondent Gordon in G.R. No. 134071, entitled "Richard J. Gordon v. The Hon. Executive Secretary, Felicito Payumo and Senior Superintendent Arturo C. Lomibao." The petitioners in this case are the respondents in that case.

The aforesaid case was filed on June 29, 1998 because of respondent Gordon's apprehension that he would be removed and replaced as chairman of the Subic Bay Metropolitan Authority (SBMA) upon the change of administration from President Fidel V. Ramos to President Joseph Ejercito Estrada. The petition was for prohibition to prevent Gordon's ouster as chairman of the SBMA on the ground that he had a fixed term of office of six years which would not expire until February 10, 2004.

As respondent Gordon apprehended, upon assuming office on June 30, 1998, President Joseph Ejercito Estrada issued Administrative Order No. 1, "recalling, withdrawing, and canceling the appointment of Richard J. Gordon as Chairman of the Subic Bay Metropolitan Authority for a term of six (6) years, dated February 10, 1998, by former President Fidel V. Ramos."

On July 1, 1998, instead of pressing his motion for a temporary restraining order, respondent Gordon filed a "Notice of Withdrawal of [his] Petition." This was done at 9:21 in the morning. At 11:30 A.M. of that same day, he filed a petition for certiorari and prohibition in the Regional Trial Court of Olongapo City, where it was docketed as Civil Case No. 255-0-98.

The filing of the case in the Olongapo court gave rise to the present petition to declare respondents in contempt of court filed by Executive Secretary Ronaldo Zamora and Arturo C. Lomibao. The petition is filed against respondents Richard Gordon and his counsel Anacleto M. Diaz and Orlando E. Medina, the latter having filed the case in the Olongapo City Regional Trial Court after filing a notice of withdraw the case pending in this Court. Petitioners charge that, "the act of respondents in filing two (2) petitions involving the same issues before this Court and the Regional Trial Court at Olongapo City, both pending, constitutes forum-shopping and contempt of court."

Petitioners cite the following provision of Rule 7, §5 of the Rules of Civil Procedure as basis for their action:

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.

This provision applies to petitions for certiorari and prohibition.

In its resolution of July 7, 1998, this Court granted respondents' prayer for leave to withdraw their petition in G.R. No. 134071, without prejudice to the disposition of the present petition for contempt.

Respondents deny the charge against them. They contend that they in fact complied with Rule 7, §5 of the Rules of Court by disclosing, in the certification of non-forum shopping attached to their petition for certiorari and prohibition before the Regional Trial Court of Olongapo City, the existence and subsequent withdrawal of their petition for prohibition before this Court. They argue that, as held in *PCGG v. Sandiganbayan*,^[1] it is neither forum-shopping nor defiance of a court's authority for a party to file a case in the lower court, even after applying for a similar relief in the Supreme Court, where such party had first sought the withdrawal of the case before the Supreme Court in order to seek recourse before the lower court.

We find for respondents.

Forum-shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Thus, it has been held that there is forum-shopping $\frac{3}{4}$

- (1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or certiorari) in another,^[2] or
- (2) if, after he has filed a petition before the Supreme Court, a party files another before the Court of Appeals since in such case he deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open,"^[3] or
- (3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court.^[4]

In *Chemphil Export & Import Corp. v. Court of Appeals*,^[5] the Court, summarizing the rulings on the issue of what constitutes forum-shopping, stated:

Forum-shopping or the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of certiorari), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition, has been characterized as an act of malpractice that is prohibited and condemned as trifling with the Courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts.

Conversely, since a party resorts to forum-shopping in order to increase his chances of obtaining a favorable decision or action, a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has ever been rendered against him in any of the cases he has brought before the courts.[6]

In the case at bar, although respondent Richard J. Gordon filed a petition for prohibition before this Court and, after two days, filed substantially the same petition before the Regional Trial Court of Olongapo City, the fact remains that (1) before filing his petition in the Olongapo court he first filed a notice of withdrawal of his petition which this Court later granted and (2) he withdrew his petition in this Court for the following reason:

Due, however, to the present policy of the Court requiring parties and their counsel to adhere strictly to the hierarchy of courts and in order to obviate any technical objection on this ground, petitioner has deemed it fit to withdraw, as he hereby withdraws, the instant petition so that it may be filed in the proper court where it can be ventilated on its merits.

No adverse decision had been rendered by this Court against respondent Gordon for which reason he thought it proper to institute the second action in the trial court. The situation he found himself in is similar to that in which a party, after filing a suit, realizes he made a mistake because the court in which he has brought the case has no jurisdiction. He, therefore, withdraws his action and refiles it in the proper forum. For, indeed, the policy of this Court respecting the hierarchy of courts and consequently prohibiting the filing of a petition in this Court in view of the concurrent jurisdiction with the lower courts has been consistently observed in the absence of any compelling reason for departing from such policy. It is clear from respondents' actions and explanation that they had no intention of disregarding court processes. They in fact complied with Rule 7, §5 of the Rules of Civil Procedure.

This case is distinguishable from *E. Razon, Inc. v. The Philippine Port Authority*.^[7] In the *E. Razon* case, petitioners, after filing a petition for certiorari with prayer for the issuance of a temporary restraining order in the Supreme Court, filed an hour later a similar petition before the Regional Trial Court and, having been assured of a favorable action by the latter court, then sought the withdrawal of the petition in this Court. Petitioners were found guilty of forum-shopping. "The acts of petitioners constitute a clear case of forum-shopping, an act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes," it was held.

In contrast, in the case at bar, respondent Gordon filed a notice of withdrawal of his petition before this Court prior to the filing of his petition in the Regional Trial Court as the appropriate forum. While it is true he and his counsels did not wait for this Court to act on the "Notice of Withdrawal of Petition" filed by them before filing substantially the same petition in the Regional Trial Court, the Court understands their situation. They were faced with a predicament: Administrative Order 1 ousting respondent Gordon from the chairmanship of the SMBA had been issued and was in fact about to be enforced hence a writ of preliminary injunction had to be obtained if respondent Gordon was to remain in office.

A similar predicament confronted the parties in *PCGG v. Sandiganbayan* (Minute Resolution, G.R. Nos. 105808, 105809, and 109592, July 22, 1997), cited by respondents. There, as found by this Court ^¾

As regards TMEE's lawyers, they obviously believed that under this Court's dispositions just reviewed, it was their client, instead of the PCGG, that had the right to vote the sequestered shares, prior to the determination by the Sandiganbayan of whether or not there would be dissipation, loss or wastage of corporate assets if TMEE were permitted to vote said shares. They wished their client to exercise that right to vote at the stockholders' meeting of January 10, 1997; but PCIB was adamant in its position that it should be the PCGG which should be accorded the right to vote. Time being of the essence, said lawyers betook themselves to this Court; on December 23, 1996, they filed here an "Urgent Motion for Issuance of a Temporary Restraining Order."

A few days' reflection, however, apparently made them doubt that the Court would act on their motion because in its Resolution of December 3, 1996 it had said "that no further motion for reconsideration or clarification of the issues treated or, of the dispositions herein made, will be entertained." They thus decided that relief should properly be sought in the Securities & Exchange Commission which in their view had "jurisdiction to act on the subject matter (which) refers to the corporate acts of PCIB and its corporate officers (Garcia Jr. vs. Sandiganbayan 237 SCRA 552) (their cause) not being directly aimed at the PCGG as an entity, but at a private corporation (Holiday Inn [Phils.] vs. Sandiganbayan, et al. 186 SCRA 447)." But first they had to withdraw their motion for TRO before this Court. This they sought to do by filing on January 9, 1997, a "Notice of Withdrawal of 'Urgent Motion for Issuance of a Restraining Order.'" That done, they filed the corresponding petition with the Securities & Exchange Commission to stop the PCIB stockholders' meeting scheduled the following day, as above narrated.

This Court considered the parties' predicament with understanding and overlooked their lapse:

The Court sees no reason to reject this explanation of the TMEE lawyers, or to doubt their good faith. Their explanation is not on its face implausible; it is in truth consistent with the admitted facts on record. Considering that condemnation for contempt should not be made lightly, and that the power to punish for contempt should be exercised on the preservative and not on the vindictive principle, the Court finds no difficulty whatever in reaching the conclusion that there was no willful disregard or defiance of its orders, or forum-shopping, by the TMEE lawyers or, through his permissiveness, by the SEC Hearing Officer.

By no means does the Court by the present decision wish to convey the impression that it will tolerate any act of disrespect or discourtesy. To be sure, respondents could have apologized at the very least for the time of the Court which they had taken and made an effort to explain why they have to refile their case without awaiting the Court's resolution on their notice of withdrawal of the petition. But, exercising restraint lest a contrary action be seen as mere pique or petulance, and considering this case instead with compassion, bearing in mind that the purpose of contempt is preservative rather than punitive, this Court has chosen to overlook respondents' lapse.

WHEREFORE, the petition for contempt is DISMISSED.

SO ORDERED.

Narvasa, C.J., Davide Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Quisumbing, Purisima and Pardo, JJ., concur.

Panganiban, J., No part. Consistent with my inhibition in Gordon vs. Payumo G.R. No. 134071.

Martinez, J., on official leave.

[1] G.R. Nos. 105808, 105809, & 109592, Resolution of July 22, 1997.

[2] First Philippine International Bank v. Court of Appeals, 252 SCRA 256 (1996); Paredes, Jr. v. Sandiganbayan, 252 SCRA 641 (1996); Washington Distillers, Inc. v. Court of Appeals, 260 SCRA 821 (1996); A Prime Security Services, Inc. v. Drilon, 246 SCRA 439 (1995); Chemphil Export & Import Corp. v. Court of Appeals, 251 SCRA 257 (1995).

[3] Borromeo v. Intermediate Appellate Court, 255 SCRA 75 (1996).

[4] Fil-Estate Golf and Development, Inc. v. Court of Appeals, 265 SCRA 614 (1996).

[5] 251 SCRA 257, 291-292 (1995).

[6] International Container Terminal Services, Inc. v. Court of Appeals, 249 SCRA 389 (1995).

[7] 151 SCRA 233 (1987).

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