

**SPS. ANGEL L. SADANG AND MARITONI A. SADANG, PETITIONERS,
VS. HONORABLE COURT OF APPEALS AND CATHAY LAND, INC.,
RESPONDENTS.**

G.R. NO. 140138. October 11, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court questioning the Decision of the Court of Appeals which granted the petition for certiorari, prohibition and mandamus of private respondent which sought to annul the the following orders: An order of the Regional Trial Court of Pasig, Branch 160, denying private respondent's motion to dismiss petitioner's complaint for damages, revocation/annulment of development permit, barangay certification, MMDA certification, with prayer for temporary restraining order and a writ of preliminary injunction; and the order denying the motion for reconsideration.

The facts are as follows:

Petitioners filed a complaint with the Regional Trial Court of Pasig City, Branch 160, on July 21, 1997.[1] The complaint was denominated "For Damages, Revocation/Annulment of Development Permit, Barangay Certification, MMDA Certification With Prayer For Temporary Restraining Order and Later Writ of Preliminary Injunction."

The following were alleged in the complaint:

Plaintiffs, herein petitioners, Angel L. Sadang and his wife, Maritoni A. Sadang are registered owners of a house and lot located at No. 2 Gen. Malvar Street, San Antonio Village, Pasig City.

Sometime in 1986, defendant, herein private respondent Cathay Land, Inc. (Cathay) purchased four residential lots in the same San Antonio Village, which are adjacent to plaintiffs' residence, and located at the corner of Amber Avenue, Gen. Araneta and General Lukban Streets. After its purchase of the said four lots, Cathay made known its plans to construct two 35-storey residential condominium buildings to be known as the Astoria Plaza.

The residents of San Antonio Village, particularly plaintiffs immediately objected to the construction of the two 35-storey residential condominium buildings through letters of the president of the San Antonio Village Association, Inc. (AVA), Roy Eduardo T. Lucero to Gregorio R. Rupisan, Barangay Captain of their barangay, and Wilfredo I. Imperial, Regional Director of the HLURB. Despite the objections, Cathay proceeded to construct through its retained construction company, Golangco.

Regional Director of the HLURB Imperial initially denied Cathay's development permit on the ground that there was apparently an inadvertent misprint of the zoning map which caused the zoning map and the actual location of the streets to not conform. Imperial found that the subject properties are within a Light Intensity Residential Zone. Even assuming that the properties are within a commercial zone, the height of the structures cannot exceed four storeys since they are adjoining a residential area, pursuant to Sec. 10 of Metro Manila Zoning Ordinance series of

81-01. Allegedly, Imperial suddenly reversed the denial of the development permit by granting Cathay's motion for reconsideration.

According to plaintiffs, Barangay Captain Rupisan granted the locational clearance, through a certification dated September 11, 1995, misrepresenting therein that Barangay San Antonio had no objections to the project.

The City Development and Planning Officer of Pasig City, Luisa S. Soriano, issued a certification dated September 5, 1995 attesting that the four lots owned by Cathay are within a Medium Intensity Commercial Zone.

The Acting Metro Manila Zoning Administrator, or the Metro Manila Authority, issued a certification dated September 18, 1995 allowing Cathay and Golangco to proceed with the construction.

Questioning Cathay's continuing construction and the development permit, certification for construction and MMDA certification issued, plaintiffs filed the abovementioned complaint in the Regional Trial Court.[2] Plaintiffs prayed for the following:

(1) Immediately upon filing of this complaint, a temporary restraining order or a cease and desist order be issued enjoining defendants Cathay and Golangco from continuing with the construction of the 35-storey Astoria Plaza located at the corner of Amber Avenue, Gen. Araneta and Gen. Lukban Streets within the San Antonio Village, Pasig City adjacent to plaintiffs' residence;

(2) After notice and hearing, a writ of preliminary injunction issue enjoining defendants Cathay and Golangco from continuing with the construction of the 35-storey Astoria Plaza, located at the corner of Amber Avenue, Gen. Araneta and Gen. Lukban Streets, within the San Antonio Village, Pasig City adjacent to plaintiffs' residence;

(3) After hearing, judgment be rendered as follows:

(a)

Permanently enjoining defendants Cathay and Golangco from continuing the construction of the 35-storey Astoria Plaza located at the corner of Amber Avenue, Gen. Araneta, Gen. Lukban Streets, within the San Antonio Village, Pasig City adjacent to plaintiffs' residence;

(b)

Declaring null and void the following:

(1)

Development Permit dated 1 December 1995 issued by defendant Wilfredo I. Imperial, Regional Director, ENCRFO, HLURB;

(2)

Locational Clearance dated 11 September 1995 issued by Gregorio Rupisan, Barangay Captain, San Antonio Village;

(3)

Certification to Construct in a C-2 Zone issued by Luisa S. Soriano, City Development & Planning Officer, Pasig City;

(4)

MMDA Certification dated 18 September 1995 issued by Orlando Malabanan Metro Manila Zoning Administration, MMDA.

(c)

Ordering defendants jointly and severally to pay plaintiffs:

1. Actual damages - P 100,000

2. Moral damages - P1,000,000

3. Attorney's fees - P 100,000

Plaintiffs pray for such other relief and remedy which may be deemed just and equitable under the premises.[3]

Defendant Cathay filed a motion to dismiss the complaint, which the trial court denied. After a motion for reconsideration was denied, defendant filed a petition for certiorari, prohibition and mandamus with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order with the Court of Appeals.[4]

The Court of Appeals decided, as follows:

There can be no debate that private respondents' first cause of action pertains to the same subject matter as that of HLURB No. REM-A-960603 earlier initiated by private respondent Angel L. Sadang against petitioner before the HLURB. Both proceedings are for the nullification of one and the same development permit covering Astoria Plaza Condominium. A decision was rendered by the HLURB against them which was appealed to the Office of the President where it is pending. Surely, he cannot now seek in the RTC for the annulment of the development permit issued pursuant to the HLURB decision without awaiting the final outcome of the HLURB case. This would be a violation of the doctrine of primary jurisdiction. The doctrine of primary jurisdiction simply calls for the determination of administrative questions, which are ordinarily questions of fact, by administrative agencies rather than courts of justice. Increasingly, the Supreme Court has been committed to the view that unless the law speaks clearly unequivocally, the choice should fall on an administrative agency.

True, private respondents rightly argue they are not buyers of subdivision lots or condominium units who are the owner or developer, as envisioned by the enabling act of [the] HLURB. The undeniable fact, however, is that private respondent Angel L. Sadang invoked the jurisdiction of the HLURB by filing a complaint before it in connection with the Astoria Plaza Condominium and the decision thereof is pending appeal brought by him before the Office of the President. He must await the definitive decision of the administrative case before he

can claim a cause of action in the present complaint. He is also estopped to dispute now the legal competence of HLURB on the issue.

The [claim that the HLURB case is a] "mere incident to the damage suit ruling" of respondent Judge is not conducive to orderly administration of justice. Precisely, one of the reasons for the primary jurisdiction rule in administrative cases is to avoid conflicting rulings between administrative agencies and the courts. To repeat, the instant complaint specifically seeks the declaration of nullity of the development permit dated 01 December 1995 issued by HLURB - the same relief sought in the HLURB and now pending appeal before the Office of the President. Under the aforesaid doctrine, the suit before the RTC seeking the same relief is, therefore, premature.

Private respondents cannot also ask for the annulment of (a) the locational clearance of the barangay captain, (b) certification to construct in a C-2 Zone issued by the City Development Planning Officer, Pasig City, and, (c) the MMDA certification issued by Metro Manila Zoning Administration in the present case. They never opposed the issuances of the aforementioned documents at their offices/agencies of origin. If they did not know beforehand of their issuances, upon learning of their existence, they did not file any motion for reconsideration with the agency concerned before commencing the instant case. This is in line with the doctrine of exhaustion of administrative remedies which means that an administrative decision must first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. And it may be added that the case does not fall under the established exceptions.

Significantly, there is no allegation at all in the complaint that private respondents first sought reconsideration of the issuances of the three aforesaid documents with their respective agencies of origins prior to this suit. This is a condition precedent to the existence of a cause of action.

To be sure, the complaint may be treated as one for damages based on the allegations of the fifth cause of action, above quoted. Reprinting private respondents' words in their comment:Plaintiffs' questions as to the validity of defendants' building permits as well as zoning violations are incidental issues to their suit, the main controversy being their claim for damages arising from quasi-delict.

A suit of this nature is within the legal competence of the RTC, pursuant to Section 19 (1), BP 129 as amended. But, that approach will be academic in the light of the resolution of the succeeding issue.

Coming to the issue of forum shopping, it is a matter of record that the complaint's first cause of action was priorly brought to [HLURB] by private respondent Angel L. Sadang and the president of [San] Antonio Village Association. In the affidavit of non-forum shopping Angel signed, and he certified under oath that -

x x x

- I have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different divisions thereof or any other tribunal or agency;
- To the best of my knowledge, no such action or proceeding is pending in the Court of Appeals, or any division thereof or other tribunal or agency;
- If I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, Court of Appeals or any division thereof or any other tribunal or agency, I undertake to report this fact within five (5) days therefrom to the aforesaid courts, other tribunal or agency;

The consequent question is: could there be a violation of the non-forum shopping rule when one of the causes of action in the complaint is pending before another agency, and with the full knowledge of the plaintiff? If in the affirmative, should the entire case be dismissed?

Private respondent Angel L. Sadang signed the letter-complaint to the HLURB as one of the complainants. At the

time he filed the case at bar, said HLURB case was pending - as in fact it is still pending except that it is on appeal before the Office of the President made by private respondent Angel and his co-signor to the letter complaint. The fact that private respondent Angel L. Sadang still signed the certificate of non-forum shopping under the aforementioned circumstances is a clear case of a "submission of a false certification or non-compliance with any of the undertaking therein x x x". And the rules say "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." Forum-shopping and/or violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure was the third ground in petitioner's Motion to Dismiss before respondent Judge. Private respondents filed their "Omnibus Opposition" to said motion, followed by their "Motion to Submit Additional Evidence In Support of Opposition to Motion to Dismiss." For the questioned order dated 12 December 1997 of respondent Judge, there was due hearing.

Stated simply, the provision on non-forum shopping (Sec. 5, Rule 7) of the 1997 Rules of Civil Procedure applies. As there is breach thereof, "dismissal of the case without prejudice" is in order.

By way of recap, since the contested orders were issued with grave abuse of discretion amounting to lack or excess of jurisdiction, certiorari must be granted.

WHEREFORE, the orders dated 12 December 1997 and 02 February 1998 are hereby SET ASIDE and Civil Case No. 66375 entitled "Spouses Angel L. Sadang and Maritoni A. Sadang, plaintiffs, vs. Cathay Land Inc., William Golangco Construction Corp., Wilfredo I. Imperial, Gragorio B. Rupisan, Luisa Soriano and Orlando Malabanan, defendants" is DISMISSED without prejudice.

SO ORDERED.

From the decision of the Court of Appeals, petitioners filed this petition for review, raising the following issues:

I

PUBLIC RESPONDENT ERRED IN HOLDING THAT THE LOWER COURT LACKS JURISDICTION IN ENTERTAINING PETITIONERS' ACTION FOR DAMAGES, REVOCATION/ANNULMENT OF DEVELOPMENT PERMITS, BARANGAY CERTIFICATION, MMDA CERTIFICATION WITH PRAYER FOR TEMPORARY RESTRAINING ORDER AND LATER WRIT OF PRELIMINARY INJUNCTION.

II

PUBLIC RESPONDENT ERRED IN RULING THAT PETITIONERS ARE GUILTY OF FORUM SHOPPING.

Petitioners prayed that "the Decision of the Honorable Court of Appeals promulgated on April 30, 1999 as well as its Resolution promulgated on September 17, 1999 be set aside and that this case be remanded to the Regional Trial Court, Branch 160, Pasig City, for continuation of trial on the merits."

This Court fully agrees with the Court of Appeals that there has been a violation of the rule on forum shopping by the non-disclosure of the filing with an administrative agency, the HLURB, of a complaint raising the same issues as those brought before the Regional Trial Court by petitioners herein. For while the decision of the HLURB may not necessarily constitute res judicata to bar the suit filed in the Regional Trial Court, so that strictly speaking it is not a lis pendens relative to the suit filed in court, the purpose of including the words "or agency" in addition to "any other tribunal" in the non-forum shopping certificate required is to advise the court of the possible application of the doctrine of primary jurisdiction, namely, that technical matters such as zoning classifications and building certifications should be primarily resolved first by the administrative agency whose expertise relates

thereto.

As the Court of Appeals rightly pointed out, petitioner Angel I. Sadang himself filed the complaint before the HLURB and took the appeal from its decision to the Office of the President. The non-disclosure of this fact in his non-forum shopping certification provided sufficient ground to dismiss the complaint. After all, the dismissal is, as stated in the dispositive portion of the decision of the Court of Appeals, "without prejudice."

This Court thus finds no reversible error committed by the Court of Appeals.

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioners.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1]Civil Case No. 66375.

[2]Civil Case No. 66375.

[3]Rollo, pp. 83-84.

[4]CA G.R. No. 46952.

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