

**REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE
DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, PETITIONER,
VS. CARMEL DEVELOPMENT, INC., RESPONDENT.**

G.R. No. 142572. February 20, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul the August 16, 1999 Decision[1] and the March 17, 2000 Resolution[2] of the Court of Appeals[3] in C.A.-G.R. SP No. 49388.

The Antecedent Facts

The factual background is as follows:

On March 17, 1998, Carmel Development, Inc. (“Carmel” for brevity) filed with the Regional Trial Court of Caloocan City (Branch 125)[4] a Complaint for recovery of possession with preliminary injunction against the Department of Education, Culture and Sports (“the Department of Education” for brevity) and the Caloocan City School Board (“School Board” for brevity) docketed as Civil Case No. C-18264.[5] Carmel sought to recover possession of a parcel of land covered by Transfer Certificate of Title No. (64007)15807, allegedly occupied by the Pangarap Elementary School and the Pangarap High School which were established by the Department of Education.

The Department of Education filed a Motion for Extension of Time to File Answer dated April 16, 1998 as well as a Manifestation with Motion to Dismiss dated April 24, 1998.

On April 27, 1998, Carmel filed a Motion to Declare Defendants in Default alleging that the period to answer had already lapsed since the subpoenas were served upon the Department of Education and the School Board on April 2, 1998 and March 2, 1998, respectively. On the same day, April 27, 1998, the trial court granted the motion declaring the Department of Education and the School Board in default and allowing Carmel to present its evidence ex parte.[6]

In an Order dated April 29, 1998, the trial court declared the “Motion for Extension of Time to File Answer filed on April 28, 1998 by the Department of Education and the School Board as moot and academic.”[7] Thereafter, in an Order dated April 30, 1998, the trial court declared that “no action shall be taken on the Manifestation with Motion to Dismiss filed on April 30, 1998 by the Department of Education and the School Board considering that the defendants have already been declared in default and have lost their standing in court.”[8]

On May 14, 1998, the Department of Education filed a Motion for Reconsideration of the Orders dated April 27, 29 and 30, 1998 and to Lift Order of Default.[9] It contended that it seasonably filed its motion for extension of

time to file its answer on April 16, 1998. It also claimed that it filed its motion to dismiss within the reglementary period. It explained that the summons issued on March 23, 1998 was received by the School Board on March 27, 1998 and not on March 2, 1998 as erroneously found by the trial court. The Department of Education further claimed that Carmel failed to notify and furnish it with a copy of the motion to declare it in default. Aside from praying for the lifting of the order of default, the Department of Education likewise sought the dismissal of the case for violation of Supreme Court Administrative Circular No. 04-94[10] on forum shopping. Carmel filed an Opposition on June 8, 1998.

In an Order dated June 15, 1998, the trial court set aside its orders dated April 27, 29 and 30, 1998 and lifted the order of default. The trial court, however, denied the dismissal of the case, explaining thus:

“The Court after considering the arguments in support of and against the motion resolves as it hereby RESOLVED to grant the same.

The interest of justice would be better served if the defendants shall be allowed to file their answer to enable them to ventilate their defenses and to enable the plaintiff to prove its causes of action and claims against the defendant, setting aside technicalities. This objective could only be attained in a full-blown trial.

The defendants likewise moved for the dismissal of the case for the alleged violation by the Plaintiff of the Supreme Court Administrative Circular No. 04-94. The Court finds, however, substantial compliance of the aforesaid circular, hence the motion for the dismissal of this case is hereby DENIED.” [11]

The Department of Education filed a Manifestation with Motion for Reconsideration of the Order dated June 15, 1998.[12] It contended that the trial court’s finding of “substantial compliance” with the Supreme Court Circular had “no factual or legal bases to stand on.” It also maintained that Carmel is engaged in forum shopping. Carmel filed its Opposition dated July 31, 1998 claiming that the issues in the other pending cases are different. On August 17, 1998, the trial court issued an Order[13] denying the Department of Education’s motion for reconsideration, reasoning out as follows:

“x x x.

Aside from the bare assertion that the instant case is similar to the cases pending before Branch 126, RTC, Caloocan City, no other proof, however, has been submitted by the movants to support the same. Moreover, in the case of Kavinta vs. Castillo, Jr., 249 SCRA 604, our court ruled that `Administrative Circular No. 04-94 is mandatory but substantial compliance therewith is sufficient.”(emphasis supplied).

x x x.”

Dissatisfied, the Department of Education filed a petition for certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure before the Court of Appeals seeking to annul the trial court’s orders dated June 15, 1998 and August 17, 1998. Carmel filed a Comment as well as a Supplemental Comment while the Department of Education filed its Reply.

On August 16, 1999, the Court of Appeals dismissed the Department of Education’s petition for certiorari and denied on March 17, 2000 the motion to reconsider the same.

Hence, this Petition.

Ruling of the Court of Appeals

The Court of Appeals justified the dismissal as follows:

“Private respondent claims in its Comment and Supplemental Comment that it has fully complied with the requirement of said circular by the presence of the Verification/Certification signed by its counsels; that the

petition does not contain certified true copies of the assailed orders.

In its Reply, petitioner adds that the “Certification prepared and attested to by counsel of private respondent is not sufficient compliance with Supreme Court Administrative Circular No. 4-94 (Section 5, Rule 7 of the Rules of Court).

The certification found at the end of the complaint in question reads as follows:

Verification/Certification

JUAN VICTOR R. LLAMAS, under oath, states that he is the counsel of Carmel Development, Inc. the plaintiff in above-entitled case who prepared the foregoing Complaint the allegations therein are true of his knowledge and belief and further certifies that (1) plaintiff has not commenced or filed in any courts or tribunal any other action involving same parties and issues, (2) that to the best of his knowledge no such other action is pending or filed in any court or tribunals, (3) that if he learns that another action is filed or is pending in any courts or tribunal involving same parties and issues he undertakes to report the status thereof within five (5) days therefrom to this Honorable Court.

(Sgd.) JUAN VICTOR R. LLAMAS

As to the existence of two civil cases pending before another Branch of the Regional Trial Court of Caloocan City, we do not find fault on the part of respondent Judge in denying the motion to dismiss considering that petitioner did not attach to its Motion to Dismiss and Motion for Reconsideration the proper pleadings in said civil cases to show that the civil cases and the complaint filed before respondent Judge involve the same issues of ownership and possession.

Further, under Section 1, Rule 65 of the 1997 Rules of Civil Procedure, it is required that the petition shall be accompanied by a certified true copy of the assailed orders and not by mere duplicate originals.

As to the claim of petitioner that respondent Judge committed grave abuse of discretion in not dismissing the complaint because the certification was merely signed by the counsel of petitioner, the same cannot be entertained in the present petition as said issue is raised for the first time in the present petition for certiorari. Respondent Judge was not given the opportunity to rule on said issue. It was not even raised by petitioner in its Motion for Reconsideration.”

The Issues

The Department of Education assails the dismissal of its petition, raising the following issues:

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON THE GROUND THAT IT WAS NOT ACCOMPANIED BY CERTIFIED TRUE COPIES OF THE ASSAILED DECISION AND RESOLUTION BUT ONLY DUPLICATE ORIGINALS.
- WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT RULING THAT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE TRIAL COURT WHEN THE LATTER DENIED PETITIONER’S MOTION TO DISMISS NOTWITHSTANDING THE FACT THAT PRIVATE RESPONDENT’S PLEADING SHOWS LITIS PENDENTIA.
- WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PRIVATE RESPONDENT HAS COMPLIED WITH SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 04-94.

The Court’s Ruling

The Petition is meritorious.

First Issue: Propriety of Dismissal of the Petition

The Department of Education assails the dismissal of its petition for certiorari by the Court of Appeals on the ground that copies of the Orders of the Regional Trial Court must be certified true copies instead of mere duplicate originals pursuant to Section 1, Rule 65 of the 1997 Rules of Civil Procedure ("1997 Rules" for brevity). It argues that either duplicate originals or certified true copies of the assailed judgment, order or resolution is allowed under Rule 46 of the 1997 Rules which is the applicable rule. Meanwhile, Carmel maintains that the petition for certiorari is governed by Rule 65 which requires the submission of certified true copies of the assailed orders.

This issue has been settled in *Rosa Yap Paras and Valente Dy Yap vs. Judge Ismael O. Baldado and Justo De Jesus Paras*[14] wherein it was held that:

"The filing of original actions for certiorari in the Court of Appeals is governed by Section 3, Rule 46 of the 1997 Rules of Civil Procedure, which requires that the petition for certiorari "be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof x x x." The same Section provides that "the failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition." (Emphasis supplied)

This is the clear import of Sections 1, 2 and 3, Rule 46 (Original Cases) of the 1997 Rules which read in pertinent parts:

"SECTION 1. Title of cases. – In all cases originally filed in the Court of Appeals, the party instituting the action shall be called the petitioner and the opposing party the respondent.

SEC. 2. To what actions applicable. – This Rule shall apply to original actions for certiorari, prohibition, mandamus and quo warranto.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for certiorari, prohibition and mandamus by Rule 65, and for quo warranto by Rule 66.

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. - x x x.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. xxx." (Emphasis supplied)

Carmel argues that the phrase "[e]xcept as otherwise provided" found in the second paragraph of Section 2 of Rule 46 means that original actions for certiorari filed before the Court of Appeals are governed solely by Rule 65 which states that "the petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof x x x." [15] Carmel's interpretation will render inutile the entire Rule 46. It is well-settled that a legal provision or rule must not be so construed as to make it a useless surplusage, and hence meaningless in the sense of having no effect whatsoever. [16]

The phrase "[e]xcept as otherwise provided" means exactly what it says, that is, except as otherwise provided in Rule 46, original actions for certiorari shall be governed by Rule 65. Contrary to Carmel's contention, Rule 46 applies to original actions for certiorari because Section 2 thereof expressly states that "[t]his Rule shall apply to original actions for certiorari, x x x." That Rule 46 applies to actions for certiorari filed before the Court of Appeals can hardly be disputed.

Rule 46 should be construed in relation to Rule 65 without rendering any of its provisions useless. This is evident in Section 6 of Rule 65 which provides that "[i]n petitions for certiorari before the Supreme Court and the Court

of Appeals, the provision of Section 2, Rule 56, shall be observed.” Section 2 of Rule 56 which governs the procedure in the Supreme Court, specifically original cases filed therein, provides in turn:

Sec. 2. Rules applicable. – The procedure in original cases for certiorari, prohibition, mandamus, quo warranto and habeas corpus shall be in accordance with the applicable provisions of the Constitution, laws, and Rule 46, 48, 49, 51 and 52 and this Rule, subject to the following provisions:

a)

All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;

b)

The portions of said Rule dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and

x x x.”

This simply means that “the following rules which are of primary governance in the Court of Appeals, viz.: Rule 46 (Original Actions in the Court of Appeals), Rule 48 (Preliminary Conference), Rule 49 (Hearings on Oral Argument), Rule 51 (Judgment), and Rule 52 (Motion for Reconsideration) have been expressly made applicable to original actions in the Supreme Court save for those portions which deal strictly with and are specifically intended for appealed cases in the Court of Appeals.”[17] (Emphasis supplied)

In fine, Rule 46 primarily governs original actions for certiorari filed in the Court of Appeals but Rule 65 generally serves to supplement the same. Rules 46 and 65 co-exist with each other and should be construed so as to give effect to every provision of both rules.

Clearly, it was error for the Court of Appeals to dismiss the petition for certiorari filed by the Department of Education on the ground that it was accompanied by mere duplicate originals instead of certified true copies of the assailed orders.

Supreme Court Administrative Circular No. 3-96 defines duplicate originals in this wise:

“1. The “duplicate original copy” shall be understood to be that copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same. xxx.

2. The duplicate original copy must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy. xxx.”

Indeed, the copies of the orders attached to the petition were the copies furnished to the Office of the Solicitor General by the trial court as counsel of the Department of Education. We note that the Order dated June 15, 1998 was duly signed by the presiding judge of the trial court. However, the Order dated August 17, 1998 falls short of the requirements found in Supreme Court Administrative Circular No. 3-96 considering that it was not duly signed or initialed by the judge or other appropriate officer of the court nor does it bear the dry seal thereof. Instead, it contains the stamp mark ‘ORIGINAL SIGNED’ atop the name of the presiding judge. Still, there is substantial compliance with the requirement that the petition be accompanied by duplicate originals of the orders being assailed since the Order dated June 15, 1998 is what is being primarily assailed in the petition, while the Order dated August 17, 1998 was merely the denial of the motion to reconsider the same. A liberal construction of the Rules may be invoked in this instance to achieve substantial justice as expeditiously as possible.

Second issue: Litis Pendentia

The Department of Education also takes exception to the finding of the Court of Appeals that no fault may be attributed to the trial court when it denied its motion to dismiss on the ground of *litis pendentia* since “petitioner did not attach to its Motion to Dismiss and Motion for Reconsideration the proper pleadings in said civil cases to show that the civil cases and the complaint filed before respondent judge involve the same issues of ownership and possession.”

The Department of Education alleged in its Manifestation with Motion to Dismiss that Carmel is engaged in forum shopping and did not inform the court that plaintiff and defendants are parties in two other civil cases pending before Branch 126 of the Regional Trial Court of Caloocan City involving the same issues of ownership and possession of subject land, namely:

“1. Civil Case No. 17762, entitled: Carmel Farms vs. Clarita M. Martinez et al., an action to enjoin public respondents from pursuing the construction of the proposed additional school building of Pangarap High School on plaintiffs’ lots;

2. Civil Case No. C-16181, entitled Pangarap Neighborhood Association Inc. vs. Carmel Farms, et. al for Declaration of Ownership and/or Quieting of Title, Cancellation of Annotation with Damages.”

The Court of Appeals, in brushing aside this issue, agreed with the trial court that no proof was attached to the Motion to Dismiss and to the Motion for Reconsideration to support this allegation.

Sections 2 and 3 of Rule 16 (Motion to Dismiss) of the 1997 Rules allow the presentation of evidence during the hearing on the motion to dismiss as follows:

“SEC. 2. Hearing of motion. – At the hearing of the motion, the parties shall submit their arguments on the questions of law and their evidence on the questions of fact involved except those not available at that time. Should the case go to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same.

SEC. 3. Resolution of motion. – After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor.”

These sections provide that at the hearing of the motion, the parties shall submit all arguments and evidence then available. If the case goes to trial, the evidence presented shall automatically constitute part of the evidence of the party who presented the same. Thus, it is not necessary to attach to the motion to dismiss the evidence required to establish the movant’s cause and failure to do so is not fatal to his case.

The requisites in order that an action may be dismissed on the ground of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[18] 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 the other.[19]

The Department of Education points out that aside from Civil Case No. 18264, subject of the instant petition, there are two other cases pending before another court involving identical parties, issues and reliefs prayed for.

The Department of Education asserts that in Civil Case No. 18264, Carmel seeks to recover possession against the Department of Education and the School Board the parcel of land allegedly occupied by Pangarap High School. In Civil Case No. 17762, Carmel seeks to enjoin Clarita M. Martinez, school principal of Pangarap High School and a representative of the Department of Education, from proceeding with the construction of additional school buildings on the same parcel of land. Meanwhile, Civil Case No. C-16181 is an action for declaration of ownership and quieting of title involving the same parcel of land. In sum, the Department of Education argues that all three cases revolve around the same parties' conflicting claims of ownership and possession over the same parcel of land.

Carmel posits the contrary and insists that there can be no *litis pendentia* or forum shopping. According to Carmel, the Department of Education and the School Board are not parties in Civil Case No. C-16181 which involves ownership of a parcel of land. It also claims that Civil Case No. 17762 is an injunction case to enjoin the school principal and other defendants from constructing additional school buildings. It further contends that these cases are different from Civil Case No. 18264, subject of the instant petition, which is an action for recovery of possession. To bolster its stance, Carmel points out that assuming it obtains a favorable judgment in the injunction case, this would not automatically entitle it to eject the Department of Education or recover possession of the property and that a separate action for this purpose is necessary.

An important issue of fact exists - whether there are two other similar cases pending in another court as alleged in the motion to dismiss. Since resolution of this issue requires presentation of proof, the trial court should not have decided the issue without giving the parties an opportunity to present proof of their respective stand in a hearing duly held for that purpose.

In light of Sections 2 and 3 of Rule 16, the appellate court erred in finding that there was no grave abuse of discretion on the part of the trial court in precipitately denying the motion to dismiss without so much as a hearing and giving the party concerned an opportunity to present its proof. Verily, the charge of forum shopping or *litis pendentia*, which works havoc upon orderly judicial procedure, requires the presentation of proof and the Department of Education should have been given an opportunity to do so.

Third Issue: Compliance with Supreme Court Administrative Circular No. 04-94

We have ruled that the Court of Appeals erred in dismissing the petition on a technicality. However, we find that remanding the case to the appellate court to resolve the remaining issue will serve no useful purpose. It is more in consonance with the speedy disposition of justice for us to resolve this particular legal question since no factual issues are involved.

The dismissed petition for certiorari sought the dismissal of Carmel's complaint for violation of Supreme Court Administrative Circular No. 09-94 ("Supreme Court Circular" for brevity). The Court of Appeals gave this issue short shrift because "the said issue was raised for the first time in the present petition for certiorari."

We disagree. The Department of Education's Manifestation with Motion to Dismiss prayed for the dismissal of the case for violation of the Supreme Court Circular. It is noteworthy that the trial court in its Order dated June 15, 1998 took cognizance of said issue by stating that there was substantial compliance with the Supreme Court Circular. In so ruling, it readily appears that the trial court passed upon the issue of compliance with the formal requirements of the Supreme Court Circular. In its Manifestation with Motion for Reconsideration of the Order dated June 15, 1998, the Department of Education submitted that the trial court's finding of substantial compliance has no factual or legal basis to stand on and reiterated its prayer for the dismissal of the complaint. Thus, it could not be said that the Department of Education raised the issue of compliance with the Supreme Court

Circular for the first time in its petition for certiorari filed before the Court of Appeals and that the trial court was not given the opportunity to rule on said issue.

The Supreme Court Circular, with minor modifications, has been incorporated in the 1997 Rules of Civil Procedure which took effect on July 1, 1997 before Carmel filed its complaint on March 17, 1998. Section 5, Rule 7 thereof provides:

“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.”

The requirement of a certification against forum shopping has likewise been adopted in Rules 42, 43, 45, 46, 47, 64 and 65.[20]

The rule on certification against forum shopping is intended to prevent the actual filing of multiple petitions or complaints involving identical causes of action, subject matter and issues in other tribunals or agencies as a form of forum shopping.[21] This is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different forums, as this practice is detrimental to orderly judicial procedure.[22]

A distinction was made between the prohibition against forum shopping and the certification requirement in *Melo vs. Court of Appeals*[23] as follows:

“Compliance with the certification against forum shopping is separate from, and independent of, the avoidance of forum shopping itself. There is a difference in the treatment – in terms of imposable sanctions – between failure to comply with the certification requirement and violation of the prohibition against forum shopping. The former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt.”

The rule expressly requires that a certification against forum shopping should be attached to complaints or other initiatory pleadings filed before courts. The rule also requires that the party, not counsel must certify under oath that he has not commenced any other action involving the same issues in the courts or any other tribunal or agency.[24]

A cursory examination of Carmel’s complaint shows that the certification against forum shopping found at the end thereof was attested by its counsel Juan Victor R. Llamas and not by plaintiff or any of the principal parties as required by the rule. This is fatal to Carmel’s cause.

The certification against forum shopping must be by the plaintiff or any of the principal parties and not by the attorney.[25] It is mandatory that the certification be executed by the petitioner himself, and not by the

attorney.[26] A certification against forum shopping executed by counsel is cause for dismissal of the case.[27] The rationale for this requirement has been explained thus:

“xxx. Obviously, it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case.”[28]

In this case, Carmel admits that their lawyer signed the certification against forum shopping. Carmel now asserts that their lawyer’s signature must be accepted as substantial compliance with the requirements of the Supreme Court Circular citing *Robern Development Corporation vs. Quitain*.^[29] Regrettably, reliance on said case is misplaced and could not relieve Carmel of the adverse effect of non-compliance. The Court considered the certification in the *Robern* case as sufficient compliance with the Supreme Court Circular for the following reasons:

“In this case, the questioned verification stated that Atty. Cañete was the acting regional legal counsel of NPC at the Mindanao Regional Center in Iligan City. He was not merely a retained lawyer, but an NPC in-house counsel and officer, whose basic function was to prepare legal pleadings and to represent NPC-Mindanao in legal cases. As regional legal counsel for the Mindanao area, he was the officer who was in the best position to verify the truthfulness and the correctness of the allegations in the Complaint x x x. As internal legal counsel, he was also in the best position to know and to certify if an action x x x had already been filed and pending with the courts.”

The same could not be said of the instant case. Carmel does not claim or imply that Atty. Juan Victor R. Llamas who executed the certification against forum shopping was Carmel’s internal legal counsel or corporate officer charged with monitoring Carmel’s legal cases before courts, tribunals or quasi-judicial agencies. For all intents and purposes, he was merely a retained lawyer and his execution of the certification does not constitute substantial compliance with the rule.

The mandatory character of the requirement that the certification be signed by the party and not merely by the retained counsel is underscored by the Department of Education’s allegation in its Motion to Dismiss and subsequent pleadings that Carmel is actually engaged in forum shopping. The rationale for this requirement assumes greater importance considering that the retained counsel may be unaware of the other pending cases which he may not be handling. Surely, the policy of the rule to promote and facilitate the orderly administration of justice will be undermined if certification by the retained counsel will be deemed substantial compliance with the rule. A certification against forum shopping executed by retained counsel should not pass muster in this case lest the objectives of the rule be subverted.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals dated August 16, 1999 and Resolution dated March 17, 2000 dismissing the Department of Education’s petition are SET ASIDE. The complaint filed by respondent Carmel Development, Inc. against the Department of Education with the Regional Trial Court of Caloocan City (Branch 125) in Civil Case No. C-18264 is DISMISSED without prejudice.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 27-31.

[2] Rollo, p. 33.

[3] Ninth Division composed of Justices Ma. Alicia Austria-Martinez (Chairman and Ponente); Salvador J. Valdez, Jr. and Renato C. Dacudao (Members).

[4] Presided by Judge Adoracion G. Angeles.

[5] CA Rollo, Annex “C”, pp. 13-17.

[6] CA Rollo, Annex “2”, p. 35.

[7] CA Rollo, Annex “3”, p. 36.

[8] CA Rollo, Annex “4”, p. 37.

[9] CA Rollo, Annex “E”, pp. 20-25.

[10] “Subject: Additional Requisites for Civil Complaints, Petitions and Other Initiatory Pleadings Filed In All Courts and Agencies, Other Than the Supreme Court and the Court of Appeals, to Prevent Forum Shopping or Multiple Filing of Such Pleadings.”

[11] CA Rollo, Annex “A”, pp. 9-10.

[12] CA Rollo, Annex “6”, pp. 41-44.

[13] Rollo, pp. 44-45.

[14] G.R. No. 140713, March 8, 2001.

[15] SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.” (Emphasis supplied)

[16] Niere vs. CFI of Negros Occ., 54 SCRA 165 (1973).

[17] FLORENZ D. REGALADO, Remedial Law Compendium, Vol. 1, p. 148, 1999 Ed.

[18] Casil vs. Court of Appeals, 285 SCRA 264 (1998).

[19] Philippine Woman’s Christian Temperance Union, Inc. vs. Abiertas House of Friendship, Inc., 292 SCRA 785 (1998).

[20] REGALADO, *supra*.

[21] Kavinta vs. Castillo, Jr., 249 SCRA 604 (1995).

[22] Robern Development Corporation vs. Quitain, 315 SCRA 150 (1999).

[23] 318 SCRA 94 (1999).

[24] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 (1999).

[25] Escorpizo vs. University of Baguio, 306 SCRA 497 (1999).

[26] Far Eastern Shipping Company vs. Court of Appeals, 297 SCRA 30 (1998).

[27] Ibid.

[28] Ibid.

[29] 315 SCRA 150 (1999).

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