

**MUNICIPALITY OF TAGUIG, HON. MAYOR RICARDO PAPA, JR. AND
ROBERT O. SANTOS, PETITIONERS, VS. THE HON. COURT OF
APPEALS, HON. JUDGE RODOLFO BONIFACIO AND BARANGAY
HAGONOY, TAGUIG,...**

G.R. NO. 142619. September 13, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.

Before us is a petition for review on certiorari filed by petitioners seeking to annul the Resolution[1] dated February 2, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 56369 dismissing their case for violation of the rule against forum shopping and the Resolution[2] dated March 20, 2000 denying their motion for reconsideration.

Petitioners, then Municipality of Taguig, together with the then Mayor Ricardo Papa, Jr. and Chief of the General Service Office (GSO) Roberto Santos, and respondent Barangay Hagonoy, Taguig are fighting over the ownership of the Hagonoy Multi-Purpose Hall in Hagonoy, Taguig, Metro Manila.

On December 8, 1999, respondent Barangay filed a complaint with the Regional Trial Court of Pasig for damages with prayer for the issuance of a writ of preliminary injunction and temporary restraining order (TRO), docketed as Civil Case No. 67720, against petitioners to prevent the latter from taking over control and possession of the subject multi-purpose hall. On the same day, the trial court presided over by Judge Rodolfo Bonifacio issued a 72-hour TRO against petitioners. On December 10, 1999, the trial court, after hearing the application for TRO, issued an Order extending the 72-hour TRO to 20 days.

On December 13, 1999, petitioners filed a petition[3] for certiorari and prohibition with application for issuance of writ of preliminary injunction in the CA, docketed as CA- G.R. SP No. 56211 which was raffled to a member of the Fourteenth Division thereof.

On December 15, 1999, the CA issued a Resolution[4] directing the trial court to cease and desist from further proceeding or hearing Civil Case No. 67720 for 60 days and ordered respondents to file their Comment.

The following day, December 16, 1999, respondent Barangay filed an urgent motion to lift the cease and desist order issued by the appellate court as well as its comment on the petition. On the same day, the CA issued a Resolution[5] granting respondent's motion and admitted the comment. It found that respondent Barangay has been in possession of the multi-purpose hall since 1996 and that its continued possession until Civil Case No. 67720 between petitioners and respondent is finally resolved will not unduly prejudice or cause injury and damage to petitioners. It then ordered the respondent Judge to speedily resolve Civil Case No. 67720.

On December 17, 1999, the trial court issued an order granting respondent's application for a writ of preliminary injunction.

On December 22, 1999, petitioners filed with the CA Fourteenth Division a motion to withdraw[6] their petition for certiorari and prohibition (CA-G.R. SP No. 56211, the first petition).

On the same day, petitioners filed another petition[7] for certiorari and prohibition with application for issuance of writ of preliminary injunction with the same CA assailing the Order of the trial court dated December 17, 1999 granting respondent's application for injunction, which is docketed as CA-G.R. SP No. 56369 (the second petition) and raffled to a member of the CA's Fourth Division. Petitioners' motion to withdraw the earlier petition was opposed by respondents.

On February 2, 2000, the CA Fourth Division issued herein assailed Resolution dismissing the petition for certiorari and prohibition for violation of the rule against forum shopping. It said:

In this Petition for Certiorari and Prohibition (With application for Issuance of Writ of Preliminary Injunction), petitioners seek among others, the issuance of a writ of preliminary injunction enjoining respondent Judge from enforcing his Order dated 17 December 1999, and from continuing proceedings in Civil Case No. 67720. The assailed Order issued a writ of preliminary injunction against petitioners, among others, from proceeding with the taking over, control and possession of the Hagonoy Multi-Purpose Hall, until further orders from said court. Earlier, the same petitioners filed a Petition for certiorari and prohibition (With Application for Issuance of Writ of Preliminary Injunction) before the Former Fourteenth Division of this Court, docketed as CA-G.R. SP No. 56211, similarly praying for the issuance of a preliminary injunction enjoining the same respondent judge from continuing proceedings in Civil case No. 67720, and for the annulment of his order dated 10 December 1999, issuing a 17-day extension of the original 72-hour Temporary Restraining Order issued on 08 December 1999.

Notably, the instant petition was filed while CA GR SP NO. 56211 is still pending with the former Fourteenth Division of this Court, and only after the instant petition was filed did petitioners file a motion to withdraw CA-GR SP No. 56211. Thus, the filing of the instant petition and the execution of the Verification/Certification attached on page 11 of the rollo of the instant petition evidently constitute willful and deliberate forum shopping.

In *First Philippine International Bank vs. Court of Appeals*, 252 SCRA 259, citing Words and Phrases, the Supreme Court ruled:

A litigant is open to a charge of "forum shopping" whenever he chooses a forum with slight connection to factual surrounding of his suit. xxx"

The test for determining whether a party violated a rule against forum shopping has been laid down in the 1986 case of *Buan vs. Lopez*, 145 SCRA 34, i.e., 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

Consequently, where a litigant sues the same party against whom another action for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the other; and a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the other. In either case, forum shopping could be cited by the other party as a ground for summary dismissal of the petition, and for the imposition of other sanctions.

The instant petition falls squarely under the foregoing tests. CA-G.R. SP. No. 56211 was filed to secure a writ of preliminary injunction to enjoin respondent judge from proceeding with Civil Case No. 67720 and to annul extension of his TRO preventing herein petitioners from taking over, control and possession of the Hagonoy-Multi-Purpose Hall. The instant petition was filed to secure a writ of preliminary injunction to enjoin respondent judge from proceeding with Civil Case No. 67720, and from enforcing his Order effectively preventing herein petitioners from taking over the control and possession of the Hagonoy Multi-Purpose Hall until further orders from his court. In brief, the objective of relief being sought, though pertaining to different Orders of

the same judge, is ultimately the same, i.e., preventing respondent judge from enjoining herein petitioners from taking over, control and possession of the Hagonoy Multi-Purpose Hall and from further proceeding with the case below. In *Danville Maritime, Inc. vs. Commission on Audit*, 175 SCRA 201, the highest tribunal ruled that the filing of two apparently different actions, but with the same objective, constituted forum shopping. The Former Fourteenth Division itself, in its Resolution dated 16 December 1999, recognized the fact that respondent Barangay has been in possession of the Multi-Purpose Hall since 1996, which continued possession would not unduly prejudice or cause injury and damage to petitioners. It conceded respondent's contention that "allowing the respondent judge to proceed in the case will not render moot and academic whatever action this Honorable Court may take in this case." Though both CA-G.R. SP No. 56211 and the instant case are for certiorari and prohibition and filed with the same court, which technically are not covered by the rules on forum shopping, the fact that CA-G.R. No. 56211 is still pending (as there is no action yet on petitioners' motion to withdraw the same) when the instant petition was filed, is enough proof that the instant petition was resorted to circumvent the law. [8]

On February 18, 2000, the CA Fourteenth Division where the first petition is pending issued a Resolution[9] granting petitioners' motion to withdraw and dismissed the petition. It likewise found that the instant petition violated the rule on forum shopping since petitioners had also filed with the same court another petition (CA-G.R. SP No. 56369, the second petition) involving identical parties and issues, and virtually the same facts and circumstances.

Hence, this petition for review.

Petitioners allege that there is no forum shopping committed since the second petition for certiorari and prohibition was filed after they had filed a motion to withdraw their first petition citing *Executive Secretary vs. Gordon*;^[10] that it was ruled in the *Gordon* case that there is no forum shopping when a party files a case in the lower court even after applying for a similar relief with the Supreme Court where such party had sought the withdrawal of his case in the SC in order to seek recourse in the lower court; that there could be no forum shopping before the same court or when both petitions are filed in the same court; that the two petitions assailed two different orders of the trial court: (1) the Order dated December 10, 1999 which extended the initial 72-hour TRO to 20 days; and (2) the Order dated December 17, 1999 granting the preliminary injunction against petitioners; that there is no forum shopping since no decision had been arrived at yet in the first petition nor did the filing of the second petition increase petitioners' chances of winning or securing a favorable action. Respondents filed their Comment thereto.

The parties filed their respective memoranda as required by the Court.

On August 8, 2003, the Municipality of Taguig filed a Manifestation and Motion stating that petitioners Ricardo Papa, Jr. and Roberto Santos were the then Mayor of Taguig and Chief of the GSO of the Municipality, respectively; that they are no longer occupying these positions because of the election of a new Mayor and the appointment of a new GSO Chief; that petitioner Municipality of Taguig now agrees with the position of respondent Barangay that it is the owner of the multi-purpose hall subject of this case, thus, the Municipality of Taguig should be disassociated in this case as petitioner and instead be made one of the respondents; and that the issue on forum shopping be resolved.

We find no merit in the petition.

Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.^[11]

What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.[12]

Petitioners allege that forum shopping does not exist where two different orders were questioned, two distinct causes of action and issues were raised and two objectives were sought, citing the case of *Golangco vs. CA*. [13]

We do not agree as the reliance of petitioners on *Golangco* is misplaced. We found no forum shopping in said case because the two petitions, one filed in the CA and other with us, questioned two unrelated orders of the trial court. Petitioner filed a petition for certiorari under Rule 65 before the CA assailing the decision of the trial court dated October 4, 1995, granting the writ of preliminary injunction prayed for by the wife which enjoined petitioner husband from seeing their children. The CA dismissed the petition for violation of forum shopping since petitioner also filed a petition before us questioning the trial court's Order dated July 21, 1994, granting custody pendente lite of petitioner husband's children to his wife. We reversed the finding of the CA that there was forum shopping, thus:

In assailing the October 4, 1995 order, petitioner was actually questioning the propriety of the issuance of the writ of injunction. He alleged therein that the trial court acted with grave abuse of discretion in issuing the order since it disregarded his right to procedural due process. Moreover the said order restrained him from seeing his children. He, therefore, sought the reinstatement of the July 21, 1994 order wherein he was given visitation rights of at least one week in a month.

On the other hand, in the order dated July 21 1994, petitioner specifically questioned the award of custody of the children to his wife and prayed for more time to spend with his children.

Thus, it is clear from the foregoing that the issues raised in the two petitions, that is, first questioning the order dated July 21, 1994 and second, the order dated October 4, 1995 are distinct and different from one another.[14]

Unlike in the instant case, although two different orders are being questioned by petitioners in their separate petitions for certiorari filed with the CA, to wit: (1) the Order dated December 10, 1999 which extended the initial 72-hour TRO for another 17 days and (2) the Order dated December 17, 1999 granting the issuance of preliminary injunction against petitioners, the latter are asking for the same relief, that is, to prevent respondent judge from enjoining petitioners from taking over, control and possession of the Hagonoy Multi-Purpose Hall and from further hearing Civil Case No. 67720. Notably, the reliefs being asked by petitioners in both petitions are founded on the same fact that the act sought to be enjoined, which is taking the control and possession of the multi-purpose hall, had already been consummated. Thus, the two actions are based on the same cause of action.

Moreover, it bears stressing that the CA Fourteenth Division where the first petition was pending had earlier issued a Resolution dated December 16, 1999 lifting the cease and desist order it issued against the trial court after finding that respondent Barangay is in actual possession of the hall since 1996. In effect, there was already a preliminary finding that there was no merit to petitioners' contention that they are in possession of the multi-purpose hall. With the filing of the second petition where petitioners are again claiming that they are in possession and control of the hall, which was assigned by raffle to another member of the CA belonging to another Division of the latter, they, in effect, sought to improve their chances of obtaining a more favorable action by the issuance of a preliminary injunction in their favor.

In fact, there was no need for petitioners to file a separate second petition where a new case docket number was given since they could have just filed a supplemental pleading to their first petition since the issue raised in the

second petition, which is the issuance of the preliminary injunction, is but a continuation of the order assailed in the first petition, the issuance of a TRO, which can properly be ruled upon by the same Division. In not doing so, petitioners deliberately sought another forum to grant them the relief that they wanted.

We likewise find no merit in petitioners' claim that since both petitions were filed in the CA, it is absurd for there to be forum shopping when there is only one forum involved. In *Silahis International Hotel, Inc. vs. NLRC*,^[15] we held:

The labor arbiter ruled that the strike staged by the respondents was illegal. After receiving notice of a favorable decision, petitioner-hotel dismissed the respondent-employees for having participated in this illegal strike. Respondents then filed its appeal from this decision. And within the same month, the respondents filed their petition for injunction as a new injunction case.

It is not very difficult to see that the issues in these two cases are interrelated. Because of this relevant connection, the relief prayed for by the respondents, i.e., injunction restraining the petitioner from dismissing them, could have been properly granted or denied in the case on appeal. There was in fact no reason for the respondents to file a new injunction case before the same agency.

By doing this, they effectively sought another forum to grant them relief. The Court cannot but proscribe this as a species of forum shopping.

In *Villanueva vs. Adre*, we said that:

There 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. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling.

And in *Gabriel vs. Court of Appeals*, we added that "filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court."

We have consistently ruled that a party should not be allowed to pursue simultaneous remedies in two different forums. Although most of the cases we have ruled upon regarding forum shopping involved petitions in the courts and administrative agencies, the rule prohibiting it applies equally to multiple petitions in the same tribunal or agency.

By filing another petition involving the same essential facts and circumstances in the same agency, as in this case where respondents filed their appeal and injunction case separately in the NLRC, respondents approached two different fora in order to increase their chances of obtaining a favorable decision or action. This practice cannot be tolerated and should be condemned.^[16] (Emphasis supplied).

Thus, there is forum shopping in this case even if the petitions for certiorari and prohibition were both filed in the CA since there are different Divisions involved.

Petitioners assert that they are in good faith since they specifically informed the CA of the existence of the first petition in their second petition and that a motion to withdraw the same had already been filed. They cite the case of *Executive Secretary vs. Gordon*^[17] where we did not find Gordon to have committed forum shopping when despite the pendency of a petition for certiorari before us, he filed the exact same petition with the trial court. Petitioners contend that the similarity of such case with this case is the fact that the motion to withdraw petition was filed and that Gordon's second petition was filed before the motion to withdraw the first petition was granted; that unlike in the Gordon case where he filed exactly the same case before different forum, the instant case

involves two different orders subject of two petitions, thus forum shopping is less likely to have been committed in the instant case than in the Gordon case.

We are not persuaded.

In the Gordon case, the filing of then Secretary Gordon of the second petition with the trial court was "due to the present policy of the Court requiring parties and their counsel to adhere strictly to the hierarchy of courts and to obviate any technical objection on this ground." In this case, there was no valid reason advanced by petitioners in filing the second petition except that the first petition had been mooted with the issuance of the preliminary injunction, subject of the second petition. Moreover, in the Gordon case, no action had as yet been made on the case when he withdrew his earlier petition filed with us and filed the same case in the trial court. In the instant case, however, the former Fourteenth Division of the CA where the first petition was pending had dissolved its earlier cease and desist order issued against the trial court and ordered the respondent Judge to speedily resolve Civil Case No. 67720. It bears stressing that petitioners were asking the CA to prevent respondent judge from enjoining petitioners from taking over, control and possession of the Hagonoy Multi-Purpose Hall and from further hearing Civil Case No. 67720. With the filing of the second petition in the CA, it is evident that they intended to take the chance that the second petition will be raffled off to another Justice belonging to a different Division and thus improve their chances of obtaining a writ of preliminary injunction which was earlier denied by the former Fourteenth Division.

Petitioners argue that the CA should have ordered the consolidation of the second petition with the first petition instead of dismissing both cases on the ground of forum shopping.

We do not agree.

Forum shopping is contumacious, as well as an act of malpractice that is proscribed and condemned as trifling with the courts and abusive of their processes.[18] It is improper conduct that degrades the administration of justice. As held in *Biñan Steel Corporation vs. Court of Appeals*,[19] thus:

Such contemptuous act is penalized by the summary dismissal of both actions as mandated by paragraph 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983 and Supreme Court Circular No. 28-91, to wit:

...

SUBJECT: ADDITIONAL REQUISITES FOR PETITIONS FILED WITH THE SUPREME COURT AND THE COURT OF APPEALS TO PREVENT FORUM-SHOPPING OR MULTIPLE FILING OF PETITIONS AND COMPLAINTS.

The attention of the Court has been called to the filing of multiple petitions and complaints involving the same issues in the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, with the result that said tribunals or agency have to resolve the same issues.

...

3. Penalties.

(a) Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint;

...

In *Bugnay Construction & Development Corporation vs. Laron*, we declared:

Forum-shopping, an act of malpractice, is proscribed and condemned as trifling with the courts and abusing their processes. It is improper conduct that degrades the administration of justice. The rule has been formalized

in Paragraph 17 of the Interim Rules and Guidelines issued by this Court of January 11, 1983, in connection with the implementation of the Judiciary Reorganization Act x x x. The Rule ordains that (a) violation of the rule shall constitute a contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned.

The rule against forum-shopping has been further strengthened by the issuance of Supreme Court Administrative Circular No. 04-94. Said circular formally established the rule that the deliberate filing of multiple complaints to obtain favorable action constitutes forum-shopping and shall be a ground for summary dismissal thereof.

Thus, a party's willful and deliberate act of forum shopping is punishable by summary dismissal of the actions filed.[20]

WHEREFORE, the petition for review on certiorari is DENIED and the Resolutions dated February 2, 2000 and March 20, 2000 of the Court of Appeals are AFFIRMED.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.

Tinga, J., No part. Close association with the parties.

[1] Penned by Associate Justice Romeo A. Brawner (now Presiding Justice) with the concurrence of Justices Fermin A. Martin, Jr. (now retired) and Renato C. Dacudao; Rollo, pp. 17-19.

[2] Rollo, p. 15.

[3] Id. at pp. 32-28.

[4] Penned by Justice Eugenio S. Labitoria, concurred in by Justices Rodrigo V. Cosico and Mercedes Gozo-Dadole (now retired); Rollo, p. 53.

[5] Rollo, pp. 55-56.

[6] Id. at p. 57.

[7] Id. at pp. 21-31.

[8] Id. at pp. 17-18.

[9] Id. at pp. 63-64.

[10] G.R. No. 134171, November 18, 1998, 298 SCRA 736.

[11] Rudecon vs. Singson, G.R. No. 150798, March 31, 2005; Chemphil Export and Import Corp. vs. CA, G.R. Nos. 112438-39, December 12, 1995, 251 SCRA 257.

[12] First Philippine International Bank vs. CA, G.R. No. 115849, January 24, 1996, 252 SCRA 259; Borromeo vs. IAC, G.R. No. 73592, March 15, 1996, 255 SCRA 75.

[13] G.R. No. 124724, December 22, 1997, 283 SCRA 493.

[14] Id. at pp. 499-500.

[15] G.R. No. 104513, August 4, 1993, 225 SCRA 94.

[16] Id. at pp. 99-100.

[17] Supra. See Note 10.

[18] Ortigas and Company Limited Partnership vs. Velasco, G.R. No. 109645, July 25, 1994, 234 SCRA 455.

[19] G.R. No. 142013, October 15, 2002, 391 SCRA 90, 105-107.

[20] Prubankers Association vs. Prudential Bank & Trust Company, G.R. No. 131247, January 25, 1999, 302 SCRA 74, 84.

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