

EMILIO S. YOUNG, PETITIONER, VS. JOHN KENG SENG A.K.A. JOHN SY, RESPONDENT.

G.R. No. 143464. March 05, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In general, violation of the rule on forum shopping should be raised at the earliest opportunity in a motion to dismiss or a similar pleading. Invoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action as an exception only if the violation arises from or will result in (1) the loss of jurisdiction over the subject matter, (2) the pendency of another action between the same parties for the same cause, (3) the barring of the action by a prior judgment, or (4) the crossing of the Statute of Limitations.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to set aside the February 24, 2000 Decision and the May 26, 2000 Resolution of the Court of Appeals (CA)[1] in CA-GR SP No. 52976. The decretal portion of the assailed Decision reads as follows:

“WHEREFORE, the petition at bench is DISMISSED. Costs against the petitioner.”[2]

The assailed Resolution[3] denied petitioner’s Motion for Reconsideration.

The Facts

The factual antecedents are summarized by the CA as follows:

“On September 16, 1996, the herein private respondent John Keng Seng, a.k.a. John Sy, filed a complaint for ‘accounting of general agency, injunction, turning over of properties, and damages,’ with the Regional Trial Court of Bacolod City, Branch 53, against the herein petitioner Emilio Young and his wife, Tita Young. The case was docketed thereat as Civil Case No. 96-9508. The private respondent subsequently filed an Amended Complaint with the same Court. The spouses Young, for their part, filed a Motion to Dismiss the case for lack of cause of action.

“On March 6, 1997, the Regional Trial Court of Bacolod City, Branch 53, issued an order dismissing Civil Case No. 96-9508. The private respondent’s Motion for Reconsideration of the aforesaid order was denied by the same court in its Order of April 2, 1997.

“On June 23, 1997, John Keng Seng filed another complaint for accounting and damages with the Regional Trial Court of Bacolod City, Branch 44, against the herein petitioner Emilio Young. The case was docketed in that court as Civil Case No. 97-9830. Young filed a Motion to Dismiss the case on the ground that the ‘complaint fails to state a good, valid and/or worthwhile cause of action against the defendant.’ The respondent court denied the Motion to Dismiss in its order of August 19, 1997. The petitioner filed a Motion for Reconsideration of the aforesaid order based on the following grounds:

‘The complainant x x x fails to state a good, valid and/or worthwhile cause of action as against the defendant.

‘and

‘Plaintiff had fatally failed to comply with the rule against forum shopping, as he has in fact deliberately submitted a false certification under oath as contained in the complaint in the present suit.’

“The private respondent having filed his ‘Opposition to Motion for Reconsideration,’ and the petitioner, his Reply, the presiding judge of the Regional Trial Court of Negros Occidental, Branch 44, Bacolod City, Judge Anastacio I. Lobaton, issued an order x x x date[d] September 23, 1997 granting the petitioner’s Motion for Reconsideration and dismissing Civil Case No. 97-9830. To this, the private respondent filed a Motion for Reconsideration; to which, the petitioner, in turn, tendered an Opposition.

“On October 24, 1997, Judge A.I. Lobaton inhibited himself from the case, thusly—

‘WHEREFORE, undersigned inhibits himself from hearing the cases wherein John Keng Seng is one of the parties and let the following records be forwarded to the Office of the Clerk of Court of RTC, Bacolod City for re-raffle.

‘SO ORDERED.

‘Bacolod City, October 24, 1997.

‘(SGD) ANASTACIO I. LOBATON

‘Presiding Judge’

“On December 16, 1998, the herein public respondent Judge Demosthenes L. Magallanes, the presiding judge of the respondent Branch 54, Regional Trial Court of Bacolod City, to whom the present case was re-raffled, issued an order, the decretal part of which reads:

‘THEREFORE, in the light of the foregoing consideration, this Court is of the opinion that the herein plaintiff had not violated the rule on forum shopping. The order dated September 23, 1998 is therefore RECONSIDERED. The Clerk of Court is hereby directed to set the case for further proceedings.

‘SO ORDERED.

‘Bacolod City, Philippines, December 16, 1998.

‘(SGD) DEMOSTHENES L. MAGALLANES

‘Judge’

“The petitioner moved for reconsideration of the above order, but his motion was [denied] by the respondent court x x x in its order of April 23, 1999.” (Citations omitted)[4]

Ruling of the Court of Appeals

In dismissing petitioner’s appeal, the CA ruled that respondent did not violate the rule on forum shopping, since Civil Case No. 96-9508 (the “First Case”) had been dismissed by the RTC on March 6, 1997; while Civil Case No. 97-9830 (the “Second Case”) had been filed only on June 23, 1997. It further held that failure to state a cause of action -- the ground on which petitioner based his Motion to Dismiss -- “[did] not, and [could not], bar the refiling of the same action or claim.”[5]

Hence, this Petition.[6]

The Issues

In his Memorandum,[7] petitioner assigns this lone error for the Court's consideration:

"Whether or not in holding that respondent has not violated the rule against forum shopping notwithstanding and despite the record clearly showing and the trial court itself having categorically found via its Order of Sept. 23, 1997 there to have been the willful and deliberate submission of a false certification (against forum shopping) as well as non-compliance with the undertaking under Rule 7, Sec. 5 of the Rules of Court, the Court of Appeals had decided a question of substance in a way not in accord with law, that law being the rule abovementioned and jurisprudence; as well as had sanctioned a substantial departure from the accepted and usual course of judicial proceedings as to warrant the exercise by this Honorable Tribunal of its supervisory powers thereover." [8] (Citation omitted)

On the other hand, respondent raises these two issues before us:

"I. Whether or not the Court of Appeals has sanctioned a substantial departure from the accepted and usual course of judicial proceedings in upholding the order dated September 16, 1998 in Civil Case No. 97-9830 of Hon. Judge Demosthenes Magallanes denying petitioner's motion to dismiss on the alleged ground of forum shopping; and

"II. Whether or not the petitioner is deemed to have waived the right to invoke forum shopping as a ground for a motion to dismiss in Civil Case No. 97-9830." [9]

For purposes of clarity, we deem it wise to discuss the issues as follows: (1) whether petitioner can still raise the alleged violation of the rule on non-forum shopping, even if he failed to cite it as a ground in his Motion to Dismiss the Second Case; (2) whether the CA erred in holding that respondent had not violated the rule on forum shopping; and (3) whether such violation warrants the automatic dismissal of the Second Case.

The Court's Ruling

The Petition is not meritorious. We sustain respondent, but not for the reasons given by the Court of Appeals or the Regional Trial Court.

First Issue:

Waiver

Petitioner contends that the CA should have ordered the dismissal of the Second Case. Allegedly, respondent was guilty of forum shopping when he deliberately and willfully submitted a false certification of non-forum shopping.[10]

On the other hand, respondent claims that petitioner waived this ground by failing to raise it in his Motion to Dismiss before the trial court.

Section 1 of Rule 9 of the Rules of Court provides that defenses and objections not pleaded in a motion to dismiss or in an answer are deemed waived. However, courts shall nonetheless dismiss the claim when it appears from the pleadings or the evidence on record that (1) the court has no jurisdiction over the subject matter, (2) there is another action pending between the same parties for the same cause, (3) the action is barred by prior judgment, or 4) the statute of limitations has been crossed.

Bolstering this provision is Section 8 of Rule 15 which states: "Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived."

Applying these principles to the instant case, we hold that petitioner is barred from raising the ground of forum shopping in the Court of Appeals and in this Court. If only for his failure to invoke such ground at the first

opportunity in his Motion to Dismiss filed in the trial court,[11] his appeal should have been given short shrift and denied outright.

However, we deem it wise to give due course to the Petition herein to discuss -- for the benefit of the bench and the bar -- the interrelated issues of whether respondent violated the rule on non-forum shopping, and whether such violation warrants the automatic dismissal of the present case.

Second and Third Issues:

Forum Shopping

Petitioner avers that respondent violated the rule on non-forum shopping when he knowingly, deliberately and willfully certified falsely under oath that he had not commenced any other action or petition before any court, tribunal or agency involving the same issue.

It is said that forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court, other than by appeal or the special civil action of certiorari. More accurately, however, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.[12] It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[13]

To stamp out this abominable practice of trifling with the administration of justice, the Supreme Court promulgated Administrative Circulars 28-91 and 04-94, which are now embodied as Section 5 of Rule 7 of the Rules of Court, which we reproduce as follows:

“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.”

In dismissing a case based on forum shopping, it is important to consider the “vexation caused [to] the courts and parties-litigants by a party who asks different courts to rule on the same or related causes or grant the same or substantially the same reliefs.”[14] Thus, to determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendencia*[15] are present, or whether a final judgment in one case will amount to *res judicata*[16] in another.[17] Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[18]

In *First Philippine International Bank v. Court of Appeals*,^[19] the test for determining the presence of forum shopping was explained by the Court as follows:

“The test for determining whether a party violated the rule against forum shopping has been laid down in the 1986 case of *Buan v. Lopez*, x x x by Chief Justice Narvasa, and that is, 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, as follows:

‘There thus exists between the action before this Court and the RTC Case No. 86-36563 identity of parties, or at least such parties as represent the same interests in both action, as well as identity of rights asserted and relief prayed for, the relief being founded on the same facts, and the identity on the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration: all the requisites, in fine, of *auter action pendant*.’

x x x x x x x x

‘As already observed, there is between the action at bar and the RTC Case No. 86-36563, an identity as regards parties, or interests represented, rights asserted and relief sought, as well as basis thereof, to a degree sufficient to give rise to the ground for dismissal known as *auter action pendant* or *lis pendens*. That same identity puts into operation the sanction of twin dismissals just mentioned. The application of this sanction will prevent any further delay in the settlement of the controversy which might ensue from attempts to seek reconsideration of or to appeal from the Order of the Regional Trial Court in Civil Case No. 86-36563 promulgated on July 15, 1986, which dismissed the petition upon grounds which appear persuasive.’

“Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions 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 others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest. In either case, forum shopping could be cited by the other party as a ground to ask for summary dismissal of the two (or more) complaints or petitions, which are direct contempt of court, criminal prosecution, and disciplinary action against the erring lawyer.”^[20]

Ruling that respondent was not guilty of forum shopping, the RTC issued its Order dated December 16, 1998, in which it said:

“A close scrutiny of the records shows that Civil Case No. 96-9508 was dismissed on March 6, 1997; Civil Case No. 97-9830 was filed on June 23, 1997, more than two months after the first dismissal. This shows that when the latter case was filed, the previous case was no longer pending. In short, the element of *litis pendentia* is not present under the circumstances.

“As to the second element, since the dismissal in Civil Case No. 96-9508 is based on the theory that the complaint did not state a cause of action then it does not bar the plaintiff from refiled the same action or claim with the proper allegations showing a valid cause of action. No *res judicata* would arise in one action as to the other.

“THEREFORE, in light of the foregoing consideration, this Court is of the opinion that the herein plaintiff has not violated the rule on forum shopping. x x x”

This holding was sustained by the CA. We opine, however, that a perusal of respondent’s certification shows that there was a violation of the rule on non-forum shopping. The certification is hereunder quoted verbatim:

“5. That I hereby certify that I have not commenced any other action or petition before any court, tribunal or agency involving the same issue and to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, Court of Appeals, Regional Trial Court or any other tribunal or agency and that if I should learn of any action filed in said office I will accordingly informed [sic] this Hon. Court of said action and the

status therein within five (5) days from knowledge thereof.”[21]

The foregoing certification is obviously inaccurate, if not downright false, because it does not disclose the filing of the First Case. Had this violation been appropriately brought up in the Motion to Dismiss, it could have resulted in the abatement of the Second Case.

Nonetheless, strengthening our ruling on the First Issue, we hold that substantial justice[22] requires the resolution of the present controversy on its merits. It must be noted that the verification requirement is a formal, not a jurisdictional, requirement.[23] Moreover, the ground for the dismissal of the First Case was lack of cause of action, which means that essentially, no case was filed, because the Complaint was fatally defective on its face. Hence, its dismissal was not determinative of the Second Case.[24]

We repeat: the First Case was dismissed because of lack of cause of action. It was thus a dismissal without prejudice; respondent was not barred from filing a new suit against petitioner involving the same facts, but raising a cause of action arising therefrom. In fact, respondent actually filed the Second Case, even if he failed to disclose in his certification that he had commenced the First Case against the same defendant, herein petitioner. Furthermore, we must bear in mind that, whenever possible and feasible, procedural rules should be liberally construed to ensure the just, speedy and inexpensive disposition of actions and proceedings on their merits.[25]

In *Loyola v. Court of Appeals*,[26] we said that the rule on non-forum shopping was designed to promote and facilitate the orderly administration of justice and, therefore, should not be interpreted literally at all times.

“The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.”[27]

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED. The trial court is DIRECTED to hear the controversy and decide it with all deliberate speed. Costs against petitioner.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez and Carpio Morales, JJ., concur.
Corona, J., on leave.

[1] Third Division. Penned by Justice Renato C. Dacudao (member); concurred in by Justices Quirino D. Abad Santos Jr. (Division chairman) and B.A. Adefuin-de la Cruz (member).

[2] Assailed CA Decision, p. 6; rollo, p. 120.

[3] Rollo, pp. 128-129.

[4] Assailed CA Decision, pp. 1-4; rollo, pp. 115-118.

[5] *Id.*, pp. 5 & 119.

[6] The case was deemed submitted on April 26, 2001, upon this Court’s receipt of respondent’s Memorandum signed by Atty. Edmundo G. Manlapao. Petitioner’s Memorandum, signed by Atty. Benjamin L. Hilado of Hilado, Hagad & Hilado, was received by the Court on April 17, 2001.

[7] Rollo, pp. 155-177.

[8] *Id.*, p. 162. Original in upper case.

[9] Respondent's Memorandum, p. 8; rollo, 186.

[10] Id., pp. 48-50.

[11] Cf. Annex I of Motion to Dismiss dated July 27, 1997; CA rollo, pp. 141-144.

[12] Executive Secretary v. Gordon, 298 SCRA 736, 741, November 18, 1998; First Philippine International Bank v. Court of Appeals, 252 SCRA 259, 283, January 24, 1996; Chemphil Export & Import Corporation v. Court of Appeals, 251 SCRA 257, 291-292, December 12, 1995; International Container Terminal Services, Inc. v. Court of Appeals, 249 SCRA 389, 395-396, October 18, 1995.

[13] Executive Secretary v. Gordon, supra; Chemphil Export & Import Corporation v. Court of Appeals, supra.

[14] Roxas v. Court of Appeals, 363 SCRA 207, 218, August 15, 2001, per de Leon Jr., J.

[15] Before the pendency of one action can operate to abate a second one, there must be (1) substantial identity of the parties and (2) substantial identity of causes of action and of the issues. J. Northcott & Co., v. Villa Abrille, 41 Phil. 462, March 17, 1921.

[16] For the principle of res judicata to apply, the following elements must be present: (1) there is a decision on the merits; (2) it was rendered by a court of competent jurisdiction; (3) the decision is final; and (4) the two actions involve identical parties, subject matter and causes of action. Roxas v. Court of Appeals, supra, p. 218.

[17] Spouses Tirona v. Alejo, GR No. 129313, October 10, 2001.

[18] Employees Compensation Commission v. Court of Appeals, 257 SCRA 717, 723, June 28, 1996; Buan v. Lopez Jr., 145 SCRA 34, 38, October 13, 1986.

[19] Supra.

[20] Id., pp. 283-284, per Panganiban, J.

[21] Appendix "E," Complaint, p. 4; CA rollo, p. 44.

[22] Basco v. Court of Appeals, 326 SCRA 768, February 29, 2000; Magno-Adamos v. Bagasao, 162 SCRA 747, June 28, 1988; Beutifont Inc. v. Court of Appeals, 157 SCRA 481, January 29, 1988; Lianga Bay Logging Co., Inc. v. Court of Appeals, 157 SCRA 357, January 28, 1988, Francisco v. City of Davao, 12 SCRA 628, December 24, 1964.

[23] Quimpo v. Dela Victoria, 46 SCRA 139, 144, July 31, 1972.

[24] On the other hand, the present Rule on forum shopping gives petitioner remedies other than the denial of the present Petition.

[25] Section 6, Rule 1 of Rules of Court.

[26] 245 SCRA 477, June 29, 1995.

[27] Id., pp. 483-484, per Davide Jr. (later CJ).

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