

**CATALINA L. SANTOS, REPRESENTED BY HER ATTORNEY-IN-FACT,
LUZ PROTACIO AND DAVID A. RAYMUNDO, PETITIONERS, VS.
PARAÑAQUE KINGS ENTERPRISES, INC., RESPONDENT.**

G.R. NO. 143562. October 23, 2006

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

For a finding of forum shopping and the application of sanctions for such violation, there must be an identity of transactions and causes of action. Forum shopping does not exist where the petitions for certiorari concern the alleged grave abuse of discretion of the trial court but relate to different transactions or orders which are not essentially or intimately related.

The Case

This Petition for Review[1] on Certiorari under Rule 45 assails the December 6, 1999 Decision[2] of the Court of Appeals (CA) and the June 15, 2000 Resolution[3] in CA G.R. SP No. 48214, entitled *Parañaque Kings Enterprises, Inc. v. Honorable Bonifacio Sanz Maceda, et al.* (first CA Petition) which nullified the May 18 and June 11, 1998 Orders issued by the Regional Trial Court of Makati City (Makati City RTC), Branch 57 in Civil Case No. 91-786, entitled *Parañaque Kings Enterprises, Inc. v. Catalina L. Santos, et al.* Petitioners Catalina L. Santos and David Raymundo claim that private respondent Parañaque Kings Enterprises, Inc. engaged in forum shopping through the filing of another petition before the CA docketed as CA G.R. SP No. 50570 (second CA Petition), also entitled *Parañaque Kings Enterprises, Inc. v. Hon. Bonifacio Sanz Maceda, et al.*; hence, they filed the instant petition for the dismissal of both CA G.R. SP No. 48214 and 50570.

The Facts

This case originated from Civil Case No. 91-786, a complaint for breach of contract with damages filed by Parañaque Kings Enterprises, Inc. (PKE) against the petitioners. In said case, respondent PKE asserted that as lessee of several parcels of land along Sucat Road in Parañaque City, it had the first option to buy the same lots from the latter, petitioner Catalina Santos, who had sold it to co-petitioner, David A. Raymundo.[4] The trial court presided by Acting Judge Bonifacio Sanz Maceda dismissed the complaint and upon appeal, the CA affirmed the dismissal. Upon petition for certiorari filed with this Court, we reversed the order of dismissal in *Parañaque Kings Enterprises, Inc. v. Court of Appeals, et al.*[5] We held that before the lessor (Catalina L. Santos), finally sold the property for PhP 9 million to a third person (David A. Raymundo), she should have offered it anew to the lessee (PKE) also for the same value. The Decision states:

Santos again appeared to have violated the same provision of the lease contract when she finally resold the properties to respondent Raymundo for only P9 million without first offering them to petitioner at such price. Whether there was actual breach which entitled petitioner to damages and/or other just or equitable relief, is a question which can better be resolved after trial on the merits where each party can present evidence to prove their respective allegations and defenses.

After finding that PKE's complaint stated a valid cause of action, we remanded the case to the Makati City RTC for further proceedings.

Subsequently, petitioners filed their Joint Answer with Counterclaims in Civil Case No. 91-786. They alleged that the purchase price of PhP 9 million had been offered to the lessee, the respondent in the instant case. Private respondent replied that this allegation be stricken off on the ground of *res judicata*, asserting that this Court already made a finding of fact in G.R. No. 111538 that petitioner Santos failed to offer the property to PKE for PhP 9 million. Acting Judge Bonifacio Sanz Maceda, the presiding judge of RTC Branch 57, gave the parties time to file their respective pleadings relative to the issue. In the May 18[6] and June 11, 1998[7] Orders, Acting Judge Bonifacio Sanz Maceda denied private respondent's prayer and motion for reconsideration, respectively. Seeking to nullify the foregoing orders on the ground of grave abuse of discretion, private respondent PKE filed on July 7, 1998 a Petition for Certiorari under Rule 65[8] before the CA which was docketed as CA G.R. SP No. 48214 (first CA Petition) and assigned to the Twelfth Division. In essence, private respondent alleged that Acting Judge Maceda committed grave abuse of discretion-when he denied the motion to strike out the allegation in the answer of petitioner Santos on the offer of PhP 9 million as purchase price-without waiting for private respondent's reply to be filed.

Meanwhile, the pre-trial of Civil Case No. 91-786 was set on July 7, 1998. On that day, private respondent PKE moved for its cancellation on the ground that a petition (CA G.R. SP No. 48214) was filed before the CA assailing the May 18 and June 11, 1998 Orders. Without any proof that a petition was indeed filed, Acting Judge Maceda denied the motion for cancellation of pre-trial.[9] Thereafter, the judge ordered private respondent's counsel to start the pre-trial by presenting the statement of his case but the latter refused, reiterating the reasons for the motion for cancellation. Judge Maceda issued another Order[10] dismissing the complaint for failure to prosecute. Private respondent filed a Motion for Reconsideration of the July 7, 1998 Order, but the motion was denied on September 21, 1998.[11] Private respondent sought to appeal the trial court's orders but its Notice of Appeal was denied in the November 27, 1998 Order[12] for having been filed out of time. The trial court found that respondent's Motion for Reconsideration was addressed only to the Clerk of Court, in violation of Section 5, Rule 15 of the Rules of Court. Citing related jurisprudence, Acting Judge Maceda ruled that the motion was fatally defective; thus, it did not toll the running of the period to appeal.

On January 25, 1999, private respondent PKE filed another Petition for Certiorari under Rule 65[13] before the CA, docketed as CA G.R. SP No. 50570 (second CA Petition), which was assigned to the First Division. Private respondent PKE attributed grave abuse of discretion to the trial judge in dismissing the complaint for non-suit and denying the Notice of Appeal. In the second CA Petition, petitioners raised the issue of forum shopping in its comment, pointing out the pendency of CA G.R. SP No. 48214 (first CA Petition).

On December 6, 1999, the CA rendered a Decision in the earlier petition in CA G.R. SP No. 48214 which reads:

WHEREFORE, for all the foregoing, the petition is hereby GRANTED, with respect to the order of the Court a quo on May 18, 1998, and the aforesaid order is hereby SET ASIDE and RECALLED. The motion to strike out certain allegations in the answer is ordered to be resolved by the regular judge appointed in Branch 57. On the other issues raised, We find no reversible error which may be attributed to the public respondent.[14]

Private respondent PKE filed a Motion for Partial Reconsideration[15] reiterating its plea to likewise nullify the trial court's June 11, 1998 Order which denied private respondent's Motion for Reconsideration of the May 18, 1998 Order. When petitioners Santos and David filed their Comment[16] to the Motion for Partial Reconsideration, they raised the issue of forum shopping because of the pendency of the second CA Petition (CA G.R. SP No. 50570). Nevertheless, the CA promulgated its June 15, 2000 Resolution, also annulling the June 11, 1998 Order, in addition to the May 18, 1998 Order earlier set aside.

Alleging that the CA should have addressed the issue of forum shopping and summarily dismissed the two petitions, petitioners Santos and David now come to this Court through this appeal under Rule 45.

The Issues

Petitioners submit the following issues for our consideration:

IS RESPONDENT GUILTY OF FORUM SHOPPING FOR SEPARATELY FILING THE TWO PETITIONS FOR CERTIORARI?

DID THE TRIAL COURT COMMIT GRAVE ABUSE OF DISCRETION IN ISSUING THE ORDERS DATED MAY 18 AND JUNE 11, 1998?

The Court's Ruling

We find no merit in the petition.

Forum shopping is the "institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition" or "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of certiorari." [17] In *Gatmaytan v. Court of Appeals*, we found that there is forum shopping when [a party] "repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court (emphasis supplied)." [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]

In the case at bar, there is no identity of transactions, facts and issues in the first and second CA Petitions. The first CA Petition questioned the May 18 and June 11, 1998 Orders of the Makati City RTC relative to the striking out of the allegations made by petitioners Santos and David in their answer. The second CA Petition, on the other hand, questions the Orders of the RTC relative to the dismissal of the Civil Case No. 91-786 for non-suit and the denial of the Notice of Appeal-events which transpired after the filing of the first CA Petition. The causes of action are clearly distinct. Although private respondent PKE alleged in both petitions that there was grave abuse of discretion of the acting presiding judge, that prayer alone does not imply that there are similar facts, issues, and causes of action.

Although there is a possibility that a decision in the second CA Petition affirming the trial court's Orders dismissing PKE's complaint and appeal will nullify any decision rendered in the first CA Petition, that is, upholding the dismissal of the complaint for non-suit and the denial of the Notice of Appeal will render the first CA Petition moot and academic, suffice it to state that: 1) the CA First Division was made aware of the pendency of the second CA Petition and judiciously deferred any action on said petition; and 2) this possibility is already moot and academic by the issuance of the questioned Decision ahead of the second CA Petition.

The most prudent measure is to merge or consolidate the two (2) petitions. At this point, however, it is no longer an option. The questioned Decision had already attained finality against the petitioners Santos and David when they failed to file a Motion for Reconsideration of the December 6, 1999 Decision in CA G.R. SP No. 48214 (first CA Petition). It was private respondent PKE who filed the Motion for Partial Reconsideration which was granted by the CA in the June 15, 2000 Resolution. Since the period for filing a Motion for Reconsideration expired without petitioners having filed any, the CA Decision became final as to them.

What petitioners are then actually appealing to this Court is the June 15, 2000 CA Resolution. Such strategy is however futile for the petitioners because the assailed June 15, 2000 Resolution is merely a corrective order. The

CA thus pointed out that "[s]ince the order of May 18, 1998 has been set aside and recalled, obviously, the order of June 11, 1998 denying the motion for reconsideration of the May 18, 1998 order necessarily should be nullified." [20]

A review at this time of the June 15, 2000 Resolution will necessarily require us to look into the Decision of the appellate court in the first petition. This cannot be countenanced because said Decision already attained finality as to the petitioners. It is too late in the day to review the same. Thus, the Court sees no need in discussing the merits of the second issue raised by the petitioners.

One last point; petitioners Santos and David had squarely presented already the issue of forum shopping for the consideration of the CA First and Twelfth Divisions. Either division of the CA could have dismissed the petition pending before it had that division seen merit in the propositions of petitioners. Obviously, the CA did not see any forum shopping either. The Court also finds that there is indeed no forum shopping.

WHEREFORE, the instant petition is DISMISSED. Costs against the petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 9-22.

[2] Rendered by Justices Mariano M. Umali (ponente), Quirino D. Abad Santos, Jr. and Romeo J. Callejo, Sr. who is now a member of this Court, rollo, pp. 25-36.

[3] Rollo, pp. 38-39.

[4] Supra note 1, at 12.

[5] G.R. No. 111538, February 26, 1997, 268 SCRA 727.

[6] Rollo, pp. 42-44.

[7] Rollo, pp. 45-48.

[8] Rollo, pp. 67-100.

[9] Rollo, pp. 49-50.

[10] Rollo, p. 51.

[11] Rollo, pp. 52-57.

[12] Rollo, pp. 58-63.

[13] Rollo, pp. 102-151.

[14] Supra note 2, at 35.

[15] Rollo, pp. 156-162.

[16] Rollo, pp. 164-181.

[17] *Gatmaytan v. Court of Appeals*, G.R. No. 123332, February 3, 1997, 267 SCRA 487, 499-500, citing *Ortigas & Company Limited Partnership v. Velasco*, G.R. No. 109645, July 25, 1994, 234 SCRA 455, 500.

[18] Id. at 500.

[19] First Philippine International Bank v. Court of Appeals, G.R. No. 115849, January 24, 1996, 252 SCRA 259, 283, citing Buan v. Lopez, G.R. No. L-75349, October 13, 1986, 145 SCRA 34.

[20] Supra note 3, at 39.

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