

**MICHAEL LONDON FOR AND IN BEHALF OF HIS MINOR SON
NICHOLAS FREDERICK LONDON, PETITIONER, VS. BAGUIO
COUNTRY CLUB CORPORATION, ANTHONY DE LEON AND FRANCIS
BASTIANO SIMALONG, RESP...**

G.R. No. 145436. October 10, 2002

Ponente: VITUG, J.

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VITUG, J.:

On 14 December 1998, Nicholas Frederick London, then 11 years old, assisted by his father, Michael London, executed and filed before the Office of the City Prosecutor in Baguio City a complaint-affidavit for “Sexual Harassment and/or Child Abuse and/or Acts of Lasciviousness and Unjust Vexation” against respondent Francis Bastiano Simalong, a bowling mechanic at the Baguio Country Club. The complaint contained asseverations about an incident that was said to have occurred on 29 November 1998 at the Baguio Country Club. Nicholas was playing video games at the recreation center of the club, when Simalong, then obviously drunk, placed his hand around Nicholas and touched the latter’s penis. Frightened, Nicholas immediately informed by telephone his parents about it. Forthwith, his parents fetched him, and the three proceeded to the police station to report the matter.

On 28 December 1998, the investigating prosecutor, finding probable cause to prosecute Simalong, filed an Information for unjust vexation before the Municipal Trial Court (“MTC”). On 09 October 1999, the MTC issued an order to the effect that, Nicholas being a minor, the case should instead be handled by the Regional Trial Court (“RTC”) of Baguio City in accordance with Circular No. 11-99 of the Supreme Court and Republic Act No. 8369 (the Family Courts Act of 1997). The criminal case was transferred to the RTC and docketed Criminal Case No. 17107-R. The private complainant reserved his right to institute an independent civil action.

On 17 December 1999, Nicholas, represented by his father Michael, filed a complaint for damages before the Baguio City RTC, against the Baguio Country Club, the club’s General Manager Anthony de Leon, and Francis Simalong. The civil action, docketed Civil Case No. 4587-R, was predicated on the civil liability of defendants for culpa acquiliana under the provisions of the Civil Code.

On 04 February 2000, the Baguio Country Club and Anthony de Leon filed a motion to dismiss the complaint on the ground that the “Verification/Certification” against forum shopping attached to the complaint did not disclose the existence and status of Criminal Case No. 17107-R.

The Presiding Judge of RTC Branch 61 issued, on 18 April 2000, a resolution granting the motion to dismiss. The plaintiff filed a motion for the reconsideration of the order of dismissal. In the meantime, plaintiff sought the inhibition of Presiding Judge Antonio Reyes of RTC Branch 61 from trying Civil Case No. 4587-R on the ground that the judge was a close friend of the club’s president and counsel. Judge Reyes inhibited himself and the case was transferred to Branch 59 of the Baguio City RTC presided over by Judge Abraham B. Borreta. On 10 October 2000, Judge Borreta issued an order denying the motion for the reconsideration of the 18th April 2000 order of

dismissal of the civil case.

On 29 November 2000, the plaintiff filed the instant petition for review assailing the dismissal of his complaint in Civil Case No. 4587-R.

The petition is meritorious.

Forum shopping is the institution of two (2) or more actions or proceedings grounded on the same cause upon the supposition that one or the other court would make a favorable disposition.[1] For forum shopping to exist, the actions must involve the same transaction, including the essential facts and circumstances thereof, and must raise identical causes of actions, subject matter and issues. The mere filing of two or more cases based on the same incident does not necessarily constitute forum-shopping.[2] In fine, there should be (a) identity of parties or at least such parties who represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, such relief being founded on the same circumstances, and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration, said requisites being likewise constitutive of the elements of *auter action pendent* or *litis pendentia*. [3]

While, in this instance, both the criminal action and the civil complaint for quasi-delict have arisen from an act of lasciviousness claimed to have been committed by Simalong against the person of Nicholas Frederick London, there are, however, material differences between the two actions. In the criminal case, the real party plaintiff is the “People of the Philippines” and the defendant is accused Simalong alone. In the civil case, the parties are plaintiff Michael London, for and in behalf of his minor son Nicholas Frederick London, and the defendants include not only Simalong but also the Baguio Country Club and its general manager Anthony de Leon. Given the circumstances, a judgment of conviction or acquittal in the criminal case against Simalong cannot at all be invoked as being one of *res judicata* in the independent suit for damages.

It may not be amiss to reiterate that rules of procedure are mere tools designed to facilitate the attainment of justice; thus, their strict and rigid application that would tend to frustrate rather than promote substantial justice are well to be avoided.[4] Indeed, the Rules of Civil Procedure on forum shopping are not always applied with inflexibility.[5]

WHEREFORE, the challenged resolutions, dated 18 April 2000 and 10 October 2000, of the Regional Trial Court of Baguio City, Branch 51, are SET ASIDE. Civil Case No. 4587-R is hereby ordered REINSTATED. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), concur.

Ynares-Santiago and Carpio, JJ., abroad on official business.

Sandoval-Gutierrez, J., (Special Member, per Special Order No. 269), concur.

[1] *Heirs of Victorina Motus Peñaverde vs. Heirs of Mariano Peñaverde*, 344 SCRA 69.

[2] *Paredes, Jr. vs. Sandiganbayan*, 252 SCRA 641.

[3] *Saura vs. Saura, Jr.*, 313 SCRA 465.

[4] *Ace Navigation Co., Inc. vs. Court of Appeals*, 338 SCRA 70.

[5] *Barroso vs. Ampig, Jr.*, 328 SCRA 530.

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