

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.  
PINGOL LAND TRANSPORT SYSTEM COMPANY, INC., REMEDIOS D.  
PINGOL, JESUSITO L. PINGOL AND JOSEPHINE PINGOL-SILO,  
RESPONDENTS.**

*G.R. No. 145908. January 22, 2004*

Ponente: YNARES-SATIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-145908/>

---

**YNARES-SATIAGO, J.:**

Assailed in this petition for review on certiorari is the September 7, 2000 Decision[1] of the Court of Appeals in CA-G.R. SP No. 35189 which dismissed the petition for certiorari questioning the July 14, 1994 Order[2] of the Regional Trial Court of Naga City, Branch 22 in Civil Case No. 94-3192 denying petitioner's motion to dismiss.

The antecedent facts show that on December 2, 1991 and September 2, 1992, respondent Pingol Land Transport System Company, Inc. (PLTSCI), a domestic corporation, obtained loans from petitioner Development Bank of the Philippines in the total amount of P20 Million.[3] To secure the payment thereof, PLTSCI, represented by respondents Remedios D. Pingol, Jesusito L. Pingol, and Josephine Pingol-Silo, its Chairman of the Board, President and Treasurer, respectively,[4] executed, among others, a chattel mortgage over certain air-conditioned buses[5] in favor of petitioner.[6] On August 17, 1993, after PLTSCI defaulted in the payment of its loans, petitioner applied for the extra-judicial foreclosure of the mortgaged properties before the Office of the Clerk of Court of Naga City.[7]

On September 3, 1993, PLTSCI filed[8] with the Regional Trial Court of Makati, Branch 56, a complaint for damages with injunction, docketed as Civil Case No. 93-3121, against petitioner,[9] seeking the annulment of the foreclosure and seizure of its buses and the issuance of a restraining order and/or injunction to prevent their sale at public auction.

Meanwhile, the foreclosure sale proceeded on September 10 and 13, 1993, wherein petitioner was declared the highest bidder.[10] On November 4, 1993, PLTSCI filed with the RTC of Makati an Urgent Motion for the Issuance of a Preliminary Prohibitory Injunction and/or Restraining Order to prevent petitioner from conducting a public bidding of the buses it acquired at the foreclosure sale.[11]

On June 6, 1994, respondent Jesusito Pingol, President of PLTSCI filed a "Motion to Withdraw Complaint." [12] On June 14, 1994, petitioner filed its answer with counterclaim and received on the same day a copy of Jesusito Pingol's motion to withdraw the complaint.[13] On motion of petitioner, the court ordered Jesusito to show his authority to withdraw the complaint,[14] but the latter failed to do so.

On June 7, 1994, PLTSCI filed another complaint against petitioner for annulment of foreclosure and/or auction sale, replevin and damages before the Regional Trial Court of Naga City, Branch 22, docketed as Civil Case No. 94-3192.[15] The complaint was based on the same facts alleged in Civil Case No. 93-3121 pending before the Makati RTC, except that in the latter complaint, PLTSCI prayed for the issuance of a writ of replevin to recover

the buses foreclosed by petitioner. The officers of petitioner, the special and deputy sheriffs as well as the highest bidder were also impleaded as party-defendants therein.

On June 10, 1994, Judge Angel S. Malaya, then presiding Judge of Branch 22 of the Regional Trial Court of Naga City, issued an Order granting PLTSCI's prayer for the issuance of a writ of replevin.[16] Petitioner filed a motion to quash the writ of replevin, and subsequently, another motion to – (a) dismiss the complaint on the ground of forum shopping; (b) cite PLTSCI in contempt of court; and (c) lift and/or dissolve the writ of replevin on the ground that the bond posted by PLTSCI was fictitious.[17] In support of the motion to dismiss, petitioner attached a certification[18] issued by the Clerk of Court of Makati RTC attesting to the pendency of Civil Case No. 93-3121 before the Regional Trial Court of Makati, Branch 22.[19] Likewise attached to the motion was a certification from Utility Assurance Corporation, the company which supposedly issued the bond for the writ of replevin, stating that the bond posted by PLTSCI was fake.[20]

On July 14, 1994, Judge Malaya, of the Naga court, issued the assailed Order annulling the writ of replevin previously issued. He ruled that the replevin bond posted by PLTSCI was inefficacious because the officer of Utility Assurance Corporation who signed the replevin bond had no authority to do so. Nevertheless, he denied the motion to dismiss ratiocinating that no pending case exists at the time PLTSCI filed the complaint with the Naga court considering that the prior motion to withdraw the complaint filed by Jesusito Pingol terminated all the proceedings before the Makati court. Judge Malaya held that said complaint can be withdrawn as a matter of right because the same was filed before the petitioner filed its answer.[21] The dispositive portion of his Order states:

WHEREFORE, premises considered, the writ of replevin issued by this Court is hereby SET ASIDE and NULLIFIED.

And directing Sheriff Roque Angeles to repossess the subject nineteen (19) motor vehicles units and thereafter deliver the same nineteen (19) motor vehicle units to the herein defendant DBP.

And, the motion to dismiss is hereby DENIED.

SO ORDERED.[22]

Petitioner filed a motion for reconsideration but the same was denied.[23] Hence, it elevated the case to the Court of Appeals via a petition for certiorari,[24] contending, among others, that Judge Malaya gravely abused his discretion in not dismissing the complaint on the ground of forum shopping. The petition was docketed as CA-G.R. SP No. 35189.

In the meantime, the Makati RTC denied Jesusito Pingol's motion to withdraw the complaint for failure to submit a Board Resolution authorizing him to withdraw the same.[25] At the pre-trial, counsel for PLTSCI asked for the re-setting of the proceedings,[26] but failed to appear on the scheduled date. The complaint was thus dismissed and PLTSCI was declared as in default on the counterclaim of petitioner.[27] In due time, the Makati RTC rendered a decision ordering PLTSCI to pay petitioner the outstanding balance of its loan in the amount of P2,678,982.35 plus interest, litigation expenses, attorney's fees and cost of suit.[28] The said decision was assailed on certiorari by PLTSCI to the Court of Appeals,[29] docketed as CA-G.R. SP No. 35077.

On December 28, 1994, CA-G.R. SP No. 35189 and CA-G.R. SP No. 35077 were consolidated and the parties were ordered to maintain the status quo.[30]

On July 21, 2000, the Court of Appeals issued a Resolution granting PLTSCI's motion to withdraw its petition in CA-G.R. SP No. 35077. On the same date, said Resolution became final and executory.[31] Considering petitioner's manifestation that it was still interested in pursuing its petition in CA-G.R. SP No. 35189, the same was submitted for resolution.[32]

On September 7, 2000, the Court of Appeals rendered the assailed decision in CA-G.R. SP No. 35189, dismissing the petition for certiorari filed by petitioner. It ruled that assuming that the Naga court committed an error in not granting the motion to dismiss, said error is an error of judgment and not an error of jurisdiction correctible by certiorari.[33]

Hence, petitioner DBP filed the instant petition. PLTSCI, however, continuously failed to file its comment despite orders of the Court. On September 10, 2003, PLTSCI was declared to have waived its right to file comment and the case was submitted for resolution on the basis of the pleadings filed by petitioner.[34]

The issues here are – (1) whether or not the Court of Appeals erred in sustaining the denial of petitioner’s motion to dismiss Civil Case No. 94-3192; and (2) if in the affirmative, whether or not such an error is correctible by certiorari.

Forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. This is a practice which ridicules the judicial process, plays havoc with the rules on orderly procedure, and is vexatious and unfair to the other parties of the case. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[35]

The three elements for *litis pendentia* as a ground for dismissal of an action are: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity, with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.[36]

In the case at bar, the principal parties in the two complaints filed before the Makati and Naga courts were the same, i.e., PLTSCI and petitioner DBP as well as their officers. Both cases arose from the same loan and mortgage contracts; and both complaints filed by PLTSCI seek to annul the foreclosure and sale at public auction of the foreclosed buses, except that in the complaint before the Naga court, PLTSCI included an additional prayer for the issuance of a writ of replevin. Evidently, this is a clear case of forum shopping as the judgment in the Makati RTC would constitute a bar to the suit before the Naga court.

What highlights the error of the Court of Appeals in not dismissing the complaint before the Naga court is the fact that PLTSCI withdrew its appeal from the decision of the Makati RTC. Said withdrawal had the effect of rendering final and executory the decision of the Makati court which – (1) dismissed PLTSCI’s complaint to recover damages and to annul the foreclosure and sale of its buses; and (2) ordered PLTSCI to pay the balance of the loan plus damages for filing a clearly baseless and unfounded suit.[37] This is obviously a species of *res judicata*, specifically, “bar by former judgment,” which exists when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. Since these three identities are present in the instant case, the judgment on the merits rendered by the Makati court constitutes an absolute bar to subsequent action before the Naga court. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.[38]

Rule 17, Section 1 of the old Rules of Civil Procedure[39] which allows the dismissal of the complaint by the plaintiff as a matter of right at any time before service of the answer, is not applicable in the instant case because Jesusito Pingol who signed the motion to withdraw the complaint failed to present a Board Resolution authorizing him to withdraw the complaint filed by PLTSCI. Being a corporation, the latter has a personality separate and

distinct from Jesusito Pingol and the other officers composing it,[40] such that in the absence of a Board Resolution, the motion filed by Jesusito cannot be considered as a motion of PLTSCI itself. Inasmuch as no service of a proper “Motion to Withdraw Complaint” was made to petitioner prior to its filing of an answer with counterclaim, the applicable provision is Section 2 of Rule 17 of the old Rules. Under the said provision, if a counterclaim has been pleaded by the defendant prior to the service upon him of the plaintiff’s motion to dismiss, the action shall not be dismissed against the defendant’s objection unless the counterclaim can remain pending for independent adjudication by the court. In the present case, petitioner’s claim is dependent on the validity of the sale and foreclosure which PLTSCI branded as illegal. Moreover, petitioner’s claim for damages, caused by PLTSCI’s filing of a baseless suit, cannot be decided without going through the merits of the complaint filed by PLTSCI. Petitioner’s counterclaim cannot therefore stand independently from PLTSCI’s complaint, justifying the Makati court’s denial of the motion to withdraw the complaint.

It is thus clear from the above disquisition that PLTSCI was guilty of forum shopping and the Court of Appeals erred in sustaining the trial court’s denial of petitioner’s motion to dismiss the complaint.

Anent the second issue, petitioner correctly resorted to the extra-ordinary writ of certiorari in questioning the July 14, 1994 Order of the Naga court.

Basic is the doctrine that the denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by certiorari; it cannot be the subject of appeal, until final judgment or order is rendered. But this rule is not absolute. In *Casil v. Court of Appeals*,[41] the Court held that -

“...[E]ven when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of certiorari (1) where the appeal does not constitute a speedy and adequate remedy (*Salvades vs. Pajarillo, et al.*, 78 Phil. 77), as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB vs. Escolin, et al.*, L-27860 and 27896, Mar. 29, 1974); (2) where the orders were also issued either in excess of or without jurisdiction (*Aguilar vs. Tan*, L-23600, Jan. 30, 1970; *Cf. Bautista, et al. vs. Sarmiento, et al.*, l-45137, Sept. 23, 1985); (3) for certain special considerations, as public welfare or public policy (See *Jose vs. Zulueta, et al.*, L-16598, May 31, 1961 and cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal there could be no remedy (*People vs. Abalos*, L-29039, Nov. 28, 1968); (5) where the order is a patent nullity (*Marcelo vs. De Guzman, et al.*, L-29077, June 29, 1982); and (6) where the decision in the certiorari case will avoid future litigations (*St. Peter Memorial Park, Inc. vs. Campos, et al.*, L-38280, Mar. 21, 1975).”[42]

Indeed, where the questioned order is a patent nullity, or where it was issued in excess or without jurisdiction, resort to certiorari may be allowed. Here, the violation of the rule on forum shopping is obvious. Disregarding such fact constituted grave abuse of discretion on the part of the trial court, amounting to lack or excess of jurisdiction. The remedy of certiorari is therefore proper to assail the patently null order of the Naga court which denied petitioner’s motion to dismiss.

WHEREFORE, in view of all the foregoing, the petition is GRANTED. The September 7, 2000 Decision of the Court of Appeals in CA G.R. SP No. 35189, is REVERSED and SET ASIDE. The complaint in Civil Case No. 94-3192 before the Regional Trial Court of Naga City, Branch 22, is DISMISSED.

### **SO ORDERED.**

Davide, Jr., C.J., Panganiban, Carpio, and Azcuna, JJ., concur.

- [1] Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Salome A. Montoya and Romeo J. Callejo, Jr.; Rollo, p. 39.
- [2] Penned by Judge Angel S. Malaya; Rollo, p. 73.
- [3] Promissory Note Nos. 41 and 42, Rollo, pp. 79-84.
- [4] Respondent officers were residents of Naga City.
- [5] Decision, Rollo, p. 186.
- [6] List of Properties Mortgaged and Addendum To Chattel Mortgage, Rollo, pp. 92-94.
- [7] Amended Complaint, Rollo, p. 99.
- [8] Petition, Rollo, p. 40.
- [9] DBP's principal office was located in Makati, Metro Manila; See Complaint, Rollo, p. 98.
- [10] Answer with Compulsory Counterclaim, Rollo, p. 113.
- [11] Id.; Opposition To Motion To Withdraw Complaint with Motion To Cite Jesusito Pingol in Contempt of Court, Rollo, p. 126.
- [12] Rollo, p. 122.
- [13] Id., p. 124.
- [14] Order dated June 24, 1994, Rollo, p. 151.
- [15] Rollo, p. 132. Entitled Pingol Land Transport System Company, Inc., Remedios De Leon-Pingol, Jesusito L. Pingol, and Josephine Pingol-Silo v. Angel P. Ancheta, Jr. (First Vice President of DBP), Guillermo V. Rabuel (Branch Head of DBP), Atty. Lauro Doble (Special Sheriff), Atty. Romulo A. Badilla (Bidder for and in behalf of DBP), Sheriff Anastacio P. Bongon and Development Bank of the Philippines.
- [16] Rollo, p. 145.
- [17] Id., p. 153; Filed on June 28, 1994.
- [18] Dated June 21, 1994.
- [19] Rollo, p. 161.
- [20] Id., p. 149.
- [21] Order, Rollo, pp. 73-74.
- [22] Rollo, pp. 76-77.
- [23] Order dated August 23, 1994, Rollo, p. 78.
- [24] Filed on September 15, 1994.
- [25] Order dated November 8, 1994, Rollo, p. 178.
- [26] Order dated December 5, 1994, Rollo, p. 179.
- [27] Decision, Rollo, p. 186.

[28] Decision dated January 7, 1998, Rollo, p. 188.

[29] Filed on September 5, 1994.

[30] Rollo of CA-G.R. SP No. 35077, p. 219.

[31] CA Rollo of CA-G.R. SP No. 35189, p. 145.

[32] Id., p. 143.

[33] Rollo, p. 44.

[34] Resolution, Rollo, p. 260.

[35] *Spouses Hanopol v. Shoemart, Incorporated*, G.R. Nos. 148185 and 137774, 4 October 2002, 390 SCRA 439, 456-457; citing *Alejandrino v. Court of Appeals*, 356 Phil. 851 [1998]; *Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, 354 Phil. 791 [1998]; *Heirs of Victorina Motus Peñaverde v. Heirs of Mariano Peñaverde*, G.R. No. 131141, 30 October 2000, 344 SCRA 69; *Gatmaytan v. Court of Appeals*, 335 Phil. 155 [1997]; *Benguet Electric Coop., Inc. v. National Electrification Administration*, G.R. No. 93924, 23 January 1991, 193 SCRA 250; *Minister of Natural Resources, et al. v. Heirs of Orval Hughes, et al.*, G.R. No. L- 62664, 12 November 1987, 155 SCRA 566.

[36] *Spouses Hanopol v. Shoemart, Incorporated*, supra, at p. 456, citing *Compania General de Tabacos de Filipinas, et al. v. Court of Appeals, et al.*, G.R. No. 130326, and *Fieldman Agricultural Trading Corporation, et al. v. Hon. Court of Appeals, et al.*, G.R. No. 137868, 29 November 2001, 371 SCRA 95; *Ayala Land, Inc. v. Valisno*, 381 Phil. 518 [2000]; *Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, supra; *Investors' Finance Corporation v. Ebarle*, G.R. No. L-70640, 29 June 1988, 163 SCRA 60.

[37] The dispositive portion thereof, reads:

WHEREFORE, judgment is hereby rendered in favor of defendant Development Bank of the Philippines (DBP) and against the plaintiff ordering the latter to pay the former the following:

- The amount of P2,678,982.35 plus 17% interest per annum from September 30, 1993 until fully paid;
- The amount of P351,484.35 as litigation expenses;
- The sum equivalent to 10% of the total obligation as attorney's fees;
- The costs of suit.

SO ORDERED. (Rollo, p. 188)

[38] *Mendiola v. Court of Appeals*, 327 Phil. 1156, 1163 [1996]; citing *Nabus v. Court of Appeals*, G.R. No. 91670, 7 February 1991, 193 SCRA 732.

[39] The governing rule at the time PLTSCI filed the motion to withdraw the complaint. It states - Section 1. Dismissal by the plaintiff. – An action may be dismissed by the plaintiff without order of the court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed before a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without the approval of the court. (Rephrased but substantially the same under the 1997 Revised Rules of Civil Procedure)

[40] Powton Conglomerate, Inc. v. Agcolicol, G.R. No. 150978, 3 April 2003.

[41] 349 Phil. 187 (1998).

[42]Id., p. 197.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.