

**SPOUSES ROLANDO M. ZOSA AND LUISA Y. ZOSA, PETITIONERS, VS.  
HON. SANTIAGO ESTRELLA, IN HIS CAPACITY AS PRESIDING JUDGE,  
REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 67,  
CHINATRUST...**

*G.R. No. 149984. November 28, 2008*

Ponente: NACHURA, J.

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**NACHURA, J.:**

The controversy between the parties started in August 1999 when respondent Chinatrust (Phils.) Commercial Bank Corporation (Chinatrust) demanded from the petitioners the payment of their outstanding loan totaling P89,426,732.29,[1] and, on account of the latter's failure to pay, extra-judicially foreclosed the mortgaged real property and its improvements under Transfer Certificate of Title No. 18718.[2] To keep the respondent notary public from carrying out the public auction sale of the subject property, petitioners instituted Civil Case No. 67620 for injunction, specific performance, and damages, with prayer for the issuance of an injunctive relief, before the Regional Trial Court (RTC) of Pasig City, Branch 67.[3]

In its September 28, 1999 Resolution,[4] the trial court issued a temporary restraining order (TRO) preventing the respondents from selling the property. It later issued a writ of preliminary injunction on October 15, 1999.[5]

Several months after respondent Chinatrust filed its December 9, 1999 Answer,[6] the trial court, on motion of the respondent, dismissed the complaint, on June 26, 2000, for petitioners' failure to prosecute.[7] Thereafter, it issued the August 21, 2000 Clarificatory Order[8] stating that, with the dismissal of the case, the writ of preliminary injunction earlier issued had been automatically dissolved. The trial court, in its November 23, 2000 Omnibus Order,[9] further denied petitioners' motion for reconsideration.

Aggrieved, petitioners, on December 4, 2000, filed a Notice of Appeal[10] questioning the June 26, 2000 Order,[11] the August 21, 2000 Clarificatory Order,[12] and the November 23, 2000 Omnibus Order[13] of the RTC. Their appeal was consequently docketed as CA-G.R. CV No. 69892 with the Court of Appeals (CA).

On January 28, 2001, petitioners also filed with the CA, a petition for certiorari, prohibition and mandamus assailing the same Orders[14] of the trial court. This was docketed as CA-G.R. SP No. 62915.[15]

Later, the appellate court, in the assailed June 22, 2001 Decision,[16] dismissed for lack of merit the petition for extraordinary writ in CA-G.R. SP No. 62915.[17] It also denied petitioners' motion for reconsideration in the further challenged September 5, 2001 Resolution.[18]

In the meantime, on August 30, 2001, respondent Chailease Finance Corporation, the highest bidder in the auction sale, registered in its name the subject property.[19]

Subsequently, on May 16, 2002, the CA, in CA-G.R. CV No. 69892, rendered the challenged Resolution[20] dismissing petitioners' appeal for forum shopping and for the absence in the appellants' brief of page references to

the record as required in Section 13(c) and (d) of Rule 44 of the Rules of Court.[21] The appellate court, on August 23, 2002, in the further assailed Resolution,[22] denied petitioners' motion for reconsideration.

Rejected repeatedly by the appellate court, petitioners instituted two petitions for review on certiorari before us: (1) G.R. No. 149984 questioning the June 22, 2001 Decision[23] and the September 5, 2001 Resolution[24] in CA-G.R. SP No. 62915; and (2) G.R. No. 154991 assailing the May 16, 2002 Resolution[25] and the August 23, 2002 Resolution[26] in CA-G.R. CV No. 69892. On December 2, 2002, we resolved to consolidate the two petitions.[27]

The petitions are denied. The present controversy is on all fours with *Young v. Sy*,[28] in which we ruled that the successive filing of a notice of appeal and a petition for certiorari both to assail the trial court's dismissal order for non-suit constitutes forum shopping. Thus,

Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.

There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*.

Ineluctably, the petitioner, by filing an ordinary appeal and a petition for certiorari with the CA, engaged in forum shopping. When the petitioner commenced the appeal, only four months had elapsed prior to her filing with the CA the Petition for Certiorari under Rule 65 and which eventually came up to this Court by way of the instant Petition (re: Non-Suit). The elements of *litis pendentia* are present between the two suits. As the CA, through its Thirteenth Division, correctly noted, both suits are founded on exactly the same facts and refer to the same subject matter--the RTC Orders which dismissed Civil Case No. SP-5703 (2000) for failure to prosecute. In both cases, the petitioner is seeking the reversal of the RTC orders. The parties, the rights asserted, the issues professed, and the reliefs prayed for, are all the same. It is evident that the judgment of one forum may amount to *res judicata* in the other.

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The remedies of appeal and certiorari under Rule 65 are mutually exclusive and not alternative or cumulative. This is a firm judicial policy. The petitioner cannot hedge her case by wagering two or more appeals, and, in the event that the ordinary appeal lags significantly behind the others, she cannot post facto validate this circumstance as a demonstration that the ordinary appeal had not been speedy or adequate enough, in order to justify the recourse to Rule 65. This practice, if adopted, would sanction the filing of multiple suits in multiple fora, where each one, as the petitioner couches it, becomes a "precautionary measure" for the rest, thereby increasing the chances of a favorable decision. This is the very evil that the proscription on forum shopping seeks to put right. In *Guaranteed Hotels, Inc. v. Baltao*, the Court stated that the grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of the case.

Thus, the CA correctly dismissed the petition for certiorari and the petition for review (G.R. No. 157745) filed with this Court must be denied for lack of merit.[29]

We also made the same ruling in *Candido v. Camacho*,[30] when the respondent therein assailed identical court orders through both an appeal and a petition for an extraordinary writ.[31]

Here, petitioners questioned the June 26, 2000 Order,[32] the August 21, 2000 Clarificatory Order,[33] and the November 23, 2000 Omnibus Order[34] of the RTC via ordinary appeal (CA-G.R. CV No. 69892) and through a petition for certiorari (CA-G.R. SP No. 62915) in different divisions of the same court. The actions were filed with a month's interval from each one. Certainly, petitioners were seeking to obtain the same relief in two different divisions with the end in view of endorsing whichever proceeding would yield favorable consequences.[35] Thus, following settled jurisprudence, both the appeal and the certiorari petitions should be dismissed.[36]

WHEREFORE, premises considered, the petitions for review on certiorari are DENIED.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

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[1] Rollo (G.R. No. 154991), p. 77.

[2] Id. at 78.

[3] Id. at 49.

[4] Id. at 81-83.

[5] Id. at 85-86.

[6] Id. at 87-92.

[7] Rollo (G.R. No. 149984), p. 186.

[8] Id. at 187.

[9] Id. at 188-189.

[10] Id. at 169, 221.

[11] Supra note 7.

[12] Supra note 8.

[13] Supra note 9.

[14] Supra notes 7 to 9.

[15] Rollo (G.R. No. 149984), pp. 166 and 223.

[16] Penned by Associate Justice Martin S. Villarama, with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice of the appellate court) and Sergio L. Pestaño, concurring; id. at 19-25.

[17] The dispositive portion of the June 22, 2001 Decision reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit.

Consequently, the assailed Orders dated June 26, 2000, August 21, 2000 and November 23, 2000 of the respondent judge in Civil Case No. 67620, entitled "Spouses Rolando M. Zosa and Luisa Zosa v. ChinaTrust (Phils.) Commercial Bank Corporation and Notary Public Jaime Portugal for Pasig City," are all hereby

AFFIRMED and REITERATED.

Costs against the petitioners.

SO ORDERED. (Id. at 24.)

[18] Id. at 30.

[19] Rollo (G.R. No. 154991), p. 108.

[20] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Candido V. Rivera and Sergio L. Pestaño, concurring, id. at 35.

[21] The pertinent portions of the May 16, 2002 Resolution reads:

Upon consideration of the defendants-appellees' Motion, we agree that the plaintiffs-appellants' appeal is dismissible under Section 1(f), Rule 50 of the 1997 Rules of Civil Procedure, in view of the absence on the appellants' brief of page references to the record as required in Sec. 13, par. (c) and (d), Rule 44.

More importantly, the plaintiffs-appellants are obviously guilty of forum shopping, it appearing that the issues in this appeal have already been raised in the related case numbered CA-G.R. SP No. 62915 which has already been decided by this Court through its former Twelfth Division on June 22, 2001.

WHEREFORE, let this appeal case be, as it is hereby, DISMISSED.

SO ORDERED. (Id.)

[22] Id. at 47.

[23] Supra note 16.

[24] Supra note 18.

[25] Supra note 20.

[26] Supra note 22.

[27] Rollo (G.R. No. 154991), p. 156.

[28] G.R. Nos. 157745 and 157955, September 26, 2006, 503 SCRA 151.

[29] Id. at 166-169.

[30] 424 Phil. 291 (2002).

[31] See however *Argel v. Court of Appeals*, 374 Phil. 867 (1999), in which the Court did not find forum shopping in the successive filing of an ordinary appeal and a petition for extraordinary writ to question the same order of the trial court. The Court, nonetheless, noted in *Argel* that the two remedies involve dissimilar issues and that the appellate court was apprised of the existence of the other. Thus, in *GSIS v. Bengson Commercial Buildings, Inc.*, 426 Phil. 111, 125 (2002), the Court, citing *Argel*, declared that "there is no forum shopping where, for instance, the special civil action for certiorari and the appeal brought by a party do not involve the same issue." (Underscoring supplied.)

[32] Supra note 7.

[33] Supra note 8.

[34] Supra note 9.

[35] See *Top Rate Construction & Gen. Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 764 (2003); *Quinsay v. Court of Appeals*, 393 Phil. 838, 842 (2000).

[36] *Candido v. Camacho*, supra note 30, at 301.

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