

**RUDECON MANAGEMENT CORPORATION, PETITIONER, VS.
SISENANDO S. SINGSON, RESPONDENT.***G.R. NO. 150798. March 31, 2005*

Ponente: CALLEJO, SR., J.

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In this petition for review under Rule 45 of the Revised Rules of Court, petitioner Rudecon Management Corporation seeks the reversal of the two (2) Resolutions[1] of the Court of Appeals in CA-G.R. CV No. 64281. The first resolution denied petitioner's omnibus motion to dismiss CA-G.R. CV No. 64281, while the second denied the petitioner's motion for reconsideration thereof.

The Antecedents

The spouses Pablo and Ma. Theresa P. Tolentino were the owners of a condominium unit (Room 302) in the Tempus Place I Condominium located at Matalino St., Diliman, Quezon City, covered by Condominium Certificate of Title (CCT) No. 8876. In 1993, Rudecon Management Corporation (RMC) executed a Deed of Absolute Sale[2] in favor of the spouses Tolentino over its condominium unit, Room 404, at the same Tempus Place I Condominium covered by CCT No. 3295 for P600,000.00. Sisenando S. Singson, on the other hand, was the owner of two condominium units in the Tempus Place II Condominium, Unit A covered by CCT No. 5013, and Unit B covered by CCT No. 5014.

On April 18, 1997, the spouses Tolentino and Sisenando Singson executed a Deed of Exchange[3] in which the latter deeded his condominium units (Units A and B) to the spouses Tolentino in exchange for Rooms 302 and 404, which the spouses Tolentino deeded to Singson.

On or about September 15, 1987, RMC filed a complaint against Ramon Veluz for unlawful detainer with the Metropolitan Trial Court of Quezon City (MeTC), Branch 41. RMC sought the eviction of Ramon Veluz from Room 404, which the latter leased from Singson on August 7, 1995. The complaint was docketed as Civil Case No. 18436.

The decision of the MeTC was appealed to the Regional Trial Court (RTC), docketed as Civil Case No. 35326.

On September 3, 1998, Singson filed a complaint against the RMC for the reconveyance of Room 404 covered by Condominium Certificate of Title (CCT) No. 3295 with damages. Singson alleged, inter alia, that Pablo Tolentino acquired ownership over the unit based on the deed of absolute sale executed by RMC covering the said unit; he acquired ownership over the same based on the "unit-swapping arrangement" between him and the spouses Tolentino; he later leased the unit to Veluz; despite its knowledge of his ownership over the unit and that he had leased the same to Veluz, RMC, nevertheless, filed a complaint for unlawful detainer against his lessee; and despite demands, RMC refused to turn over to him CCT No. 3295 to enable him to register the title over the unit in his name.

Singson prayed that judgment be rendered in his favor for damages and that –

... the Defendant be ordered to reconvey to the Plaintiff Condominium Certificate of Title No. 3295 over the subject property issued by the Registry of Deeds of Quezon City in the name of the Defendant in order that the Plaintiff may register the same under his name and for this purpose, that the Defendant be ordered to execute the duly notarized deed of absolute sale thereover in favor of Pablo C. Tolentino and/or the Plaintiff by virtue of the swapping arrangement between the latter. ...[4]

The case was docketed as Civil Case No. 98-35444. Singson appended to his complaint the Deed of Absolute Sale executed by RMC in favor of the spouses Tolentino.

Singson, thereafter, filed an amended complaint wherein he alleged the following:

3. That the Plaintiff is the actual owner of a condominium unit designated as Unit 404, with an area of sixty point two square meters (60.2 sq. m.) in the Tempus I Condominium located at 21 Matalino Street, Diliman, Quezon City, Metro Manila, by virtue of a unit-swapping arrangement between the latter and one Pablo C. Tolentino; That on April 18, 1997, a deed of exchange, hereto marked Annex "A," was executed by the parties to formalize the swapping arrangement previously entered by the parties; of which swapping arrangement, defendant Rudecon Management Corporation, through its president Rudegelio Tacorda has full knowledge per its letter dated March 5, 1997 advising Pablo Tolentino and Petitioner to formalize the same, copy of which letter is marked as Annex "B"; That said Pablo C. Tolentino was the owner of said Unit 404 as his share in the joint construction venture with defendant, under an unnotarized deed of absolute sale, valid between the parties, executed by the Defendant Rudecon Management Corporation in his favor dated February 1993, a copy of which is attached and made an integral part hereof as Annexes "C" and "C-1"; That the subject unit is covered by one Condominium Certificate of Title No. 3295 issued by the Registry of Deeds of Quezon City in the name of the Defendant, a copy of which is attached hereto and made an integral part hereof as Annex "D," and that said condominium certificate of title was never transferred by the Defendant to Pablo C. Tolentino and to this day still remains in the name of Defendant despite the latter's execution of a deed of absolute sale in favor of the former;

...

8. That it likewise appears that defendant through its president Rudegelio Tacorda maliciously and falsely claiming ownership over subject condominium unit mortgaged the same to Allied Banking Corporation for a reported sum of not less than P2,000,000.00 as per attached letter dated February 14, 1997 marked Annex "H" to the great prejudice and damage, representing actual, moral and exemplary damages, of herein plaintiff in the sum of not less than P2,000,000.00.[5]

Singson prayed that judgment be rendered in his favor, thus:

Upon the additional cause of action alleged in paragraph 8 of this Amended Complaint, it is further prayed that defendant be adjudged to pay the plaintiff the sum of not less [than] P2,000,000.00 by way of actual, moral and exemplary damages.

It is also respectfully prayed of this Honorable Court that the Defendant be ordered to liquidate its mortgage indebtedness with the Allied Banking Corporation upon subject unit and thereafter to reconvey to the Plaintiff Condominium Certificate of Title No. 3295 over the subject property issued by the Registry of Deeds of Quezon City in the name of the Defendant free from any liens or encumbrances in order that the Plaintiff may register the same in his name and for this purpose, that the Defendant be ordered to execute the duly notarized deed of absolute sale over subject condominium unit in favor of the Plaintiff as transferee from the former owner Pablo Tolentino by virtue of the swapping arrangement and deed of exchange between the parties.

Other relief as may be just and equitable under the circumstances are likewise prayed for. ...[6]

Singson also executed a "Verification and Affidavit of Non-Forum Shopping," wherein he stated that –

... That if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report such fact within five (5) days therefrom to this Honorable Court. ...[7]

RMC filed a motion to dismiss the amended complaint on the following grounds:

I.

PLAINTIFF'S AMENDED COMPLAINT STATES NO CAUSE OF ACTION (SECTION 1[g], RULE 16) BECAUSE, UNDER ART. 1311 OF THE NEW CIVIL CODE IN RELATION TO SECTION 28, RULE 130, DEFENDANT IS NOT BOUND BY EITHER THE ALLEGED DEED OF EXCHANGE (ANNEX A, COMPLAINT) OR THE ALLEGED VERBAL SWAPPING AGREEMENT BETWEEN PLAINTIFF AND PABLO TOLENTINO CONSIDERING THAT DEFENDANT IS NOT A PARTY OR PRIVY TO SAID DEED OR AGREEMENT AND FURTHER CONSIDERING THAT THE DEED OF EXCHANGE IS SIMULATED AND FORGED.

II.

PLAINTIFF'S AMENDED COMPLAINT STATES NO CAUSE OF ACTION BECAUSE PLAINTIFF, NOT BEING A REAL PARTY- IN-INTEREST, DOES NOT HAVE THE LEGAL PERSONALITY TO SUE FOR THE PERFORMANCE OR ENFORCEMENT OF THE UNNOTARIZED DEED OF SALE (ANNEX C, COMPLAINT) BETWEEN DEFENDANT AND PABLO TOLENTINO TO WHICH PLAINTIFF IS ADMITTEDLY NOT A PARTY OR PRIVY.

III.

PLAINTIFF'S AMENDED COMPLAINT STATES NO CAUSE OF ACTION BECAUSE PLAINTIFF HAS ADMITTEDLY NOT TRANSFERRED OWNERSHIP OF CCT NOS. 1503 (SIC) AND 1504 (SIC) TO PABLO TOLENTINO AND INSTEAD PLAINTIFF HOLDS ON TO SAID TITLES AND CONTINUES TO OCCUPY THE CONDOMINIUM UNITS THEREOF THEREBY PRECLUDING AND BELYING THE DAMAGE SUPPOSEDLY SUSTAINED BY PLAINTIFF. MOREOVER, THE AMENDED COMPLAINT IS BUT PLAINTIFF'S MALICIOUS ATTEMPT AT UNJUST ENRICHMENT AT DEFENDANT'S EXPENSE.

IV.

PLAINTIFF'S AMENDED COMPLAINT STATES NO CAUSE OF ACTION AS THE RELIEF OF RECONVEYANCE SOUGHT BY HIM IS NOT A PROPER REMEDY AND CANNOT BE GRANTED BY THIS HONORABLE COURT BECAUSE ADMITTEDLY CCT NO. 3295 IS VALID AND GENUINE AND THERE IS NO WRONGFUL OR ERRONEOUS REGISTRATION THEREOF IN DEFENDANT'S NAME THAT WOULD WARRANT RECONVEYANCE AS A LEGAL REMEDY.[8]

RMC averred that it was not a party to the deed of exchange executed by Singson and the spouses Tolentino; hence, it could not be compelled to reconvey the subject unit to Singson. And since it was not a party to the said deed of exchange, Singson had no right to enforce the same against it. Hence, despite the deed of exchange, Singson continued to occupy Units A and B and failed to transfer the same to the spouses Tolentino.

RMC maintained that Singson was not entitled to the reconveyance of the unit since there was no allegation in the complaint that it had been erroneously or fraudulently registered in the name of another person.[9]

On April 7, 1999, the trial court issued an Order[10] granting the motion and dismissing the complaint. Singson then filed a motion for the reconsideration of the Order and for the inhibition of the Presiding Judge of the court. On June 30, 1999, the trial court issued an Order[11] denying the motion for reconsideration, but granted the motion for inhibition. Hence, Singson appealed the April 7, 1999 Order of the trial court to the CA, docketed as CA-G.R. CV No. 64281.

In the meantime, Singson filed another complaint with the RTC of Quezon City, this time against Allied Banking Corporation and the Sheriff's Office of Quezon City, for the annulment of the Sheriff's Sale at Public Auction of Room 302 (covered by CCT No. 8876) in favor of the said bank. He alleged, inter alia, that as early as June 1995, he became the owner of Room 302 and Room 404 based on his verbal agreement with the spouses Tolentino which was contextualized via their deed of exchange. Allied Banking Corporation had been informed of his ownership and occupancy of Room 302 as early as 1995. He then offered Unit A (covered by CCT No. 5013) for Room 302, as substitute collateral for the payment of the loan of Pablo Tolentino which the latter endorsed to the bank. Singson also alleged that the extrajudicial sheriff's foreclosure of the mortgage and the subsequent sale was illegal for want of notice and publication, including for the following reasons:

... [T]he defendant bank employed deceptive and fraudulent scheme to consummate the Sheriffs' Auction Sale to the prejudice of the plaintiff.

17. Defendant bank confused and misled the plaintiff by accepting Condominium Unit No. 302 with CCT No. 8876 and allowed it to be used as a collateral to secure a loan of P2 Million and the Bank is fully aware that said condominium unit is owned and occupied by the plaintiff and thereafter foreclosed it without notice to the plaintiff. Defendant bank is fully aware that plaintiff exercises rights of possession and ownership on the said property since defendant bank was duly informed by plaintiffs about the physical possession thereof and the Deed of Exchange.[12]

Singson prayed that judgment be rendered in his favor as follows:

ON THE ISSUANCE OF PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

- A temporary restraining Order be issued ex parte restraining/preventing defendant or any of its agents to consolidate/repossess the Real Estate property identified as Condo Unit No. 302 with CCT No. 8876 of the Register of Deeds of Quezon City and after due hearing, the Temporary Restraining Order be made permanent.

ON THE MAIN CAUSE OF ACTION

- An order be issued declaring the foreclosure sale and the Sheriff's sale of condominium unit No. 302 with CCT No. 8876 as null and void.

- An Order be issued declaring defendant bank liable for moral damages in the amount of Two Million Pesos (P2,000,000.00), exemplary damages of Fifty Thousand Pesos (P50,000.00) and ordering the defendant bank to pay the attorney's fees in the amount of Three Hundred Thousand Pesos (P300,000.00) and appearance fee of Five Thousand Pesos (P5,000.00) per hearing.

- Plus cost of suit.

Other reliefs just and equitable in the premises are likewise prayed for.[13]

Singson signed his Affidavit of Non-Forum Shopping in this manner:

VERIFICATION AND AFFIDAVIT OF NON-FORUM SHOPPING

I, SISENANDO S. SINGSON, subscribing under oath do hereby depose and say that:

1. I am the plaintiff in the above-entitled case;
2. I caused the preparation of the foregoing Complaint For Annulment of Sheriff's Foreclosure/Certificate of Sale and Damages with Prayer for Issuance of Preliminary Injunction/Temporary Restraining Order;
3. Pursuant to Supreme Court Administrative Circular No. 04-94, I hereby certify that plaintiff has not

therefore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency, and to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals or any other tribunal or agency, and if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, I undertake to report that fact within five (5) days therefrom;

4. I have read and understood the contents thereof and the allegations contained therein are true and correct of my own personal knowledge.

(Sgd.) SISENANDO SINGSON AFFIANT[14]

The case was docketed as Civil Case No. Q-00-39794.

Meanwhile, RMC filed an Omnibus Motion in CA-G.R. CV No. 64281 praying for the dismissal of Singson's appeal in Civil Case No. Q-98-35444 on the ground of forum shopping. They also prayed that Singson and his counsel be cited for indirect contempt for their failure to comply with the undertaking in the Verification and Affidavit of Non-Forum Shopping embodied in his amended complaint in Civil Case No. Q-00-39794, that is, to inform the trial court of the filing of the complaint within fifteen (15) days thereof. RMC averred that as gleaned from the averments of the amended complaint in Civil Case No. Q-98-35444, and the allegations in the complaint in Civil Case No. Q-00-39794, the two cases involved the same issues. RMC averred that Singson had also submitted a false certificate of non-forum shopping in Civil Case No. Q-00-39794, where he stated that he had not commenced any action or proceeding involving the same issue.

On July 31, 2001, the CA issued a Resolution denying the Omnibus Motion of RMC on the ground that:

- There is no identity of parties and cause of action between Civil Cases Nos. Q-98-35444 and Q-00-39794;
- The subject matter in the former is CCT No. 3295, whereas that of the latter is CCT No. 8876;
- The reliefs sought in the two actions are vastly different.[15]

Upon the appellate court's denial of its motion for reconsideration of the said resolution, RMC filed the present petition for review on certiorari under Rule 45 of the Rules of Court, contending that:

I.

WHETHER OR NOT THE COURT OF APPEALS, IN DENYING PETITIONER'S OMNIBUS MOTION (ANNEX "K" HEREOF), RESOLVED SAID OMNIBUS MOTION NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT WHEN IT RULED THAT THERE IS NO FORUM SHOPPING HEREIN BECAUSE THE ELEMENTS OF RES JUDICATA ARE NOT PRESENT IN PATENT ARBITRARY DISREGARD OF, AND DESPITE, THE FACT THAT PETITIONER NEVER INVOKED SAID SPECIE OF FORUM SHOPPING GROUNDED ON RES JUDICATA AND HAS INSTEAD SPECIFICALLY INVOKED IN SAID OMNIBUS MOTION TWO (2) OTHER SPECIES OR FORMS OF FORUM SHOPPING, NAMELY, (a.) RESPONDENT'S DELIBERATE NON-COMPLIANCE WITH HIS UNDERTAKING TO REPORT THE PENDENCY OF ANOTHER SIMILAR ACTION INVOLVING THE SAME ISSUES; AND (b.) RESPONDENT'S [WILLFUL] SUBMISSION OF FALSE CERTIFICATION ON NON-FORUM SHOPPING AS PENALIZED UNDER PARAGRAPH 2, SC ADM. CIRCULAR NO. 04-94.

II.

COROLLARY TO THE ABOVE, WHETHER OR NOT THE ANTECEDENT ISSUES OF VALIDITY AND ENFORCEABILITY OF HEREIN DEED OF EXCHANGE (ANNEX "D" HEREOF) EXPRESSLY

RAISED BY RESPONDENT IN CIVIL CASE NO. Q-98-35444 (CA-G.R. CV NO. 64281) AND ALSO IMPLICITLY POSITED BY RESPONDENT IN CIVIL CASE NO. Q-00-39794 CAN BE CONSIDERED AS "SIMILAR ISSUES" AS CONTEMPLATED IN PARAGRAPH 1, SC ADM. CIRCULAR NO. 04-94 THEREBY OBLIGATING RESPONDENT: (a.) TO STRICTLY COMPLY WITH HIS UNDERTAKING TO REPORT IN CIVIL CASE NO. Q-98-35444 (CA-G.R. CV NO. 64281) THE PENDENCY OF CIVIL CASE NO. Q-00-39794, AND VICE-VERSA AND (b.) TO DISCLOSE IN HIS CERTIFICATIONS ON NON-FORUM SHOPPING IN BOTH THE ORIGINAL AND AMENDED COMPLAINTS IN THE LATTER CASE THE PENDENCY OF THE FORMER CASE SUCH THAT THE FAILURE OF RESPONDENT AND ATTY. CAMACHO TO SO REPORT AND DISCLOSE ARE CONSTITUTIVE OF FORUM SHOPPING UNDER SC ADM. CIRCULAR NO. 04-94.

III.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED AND DEPARTED FROM APPLICABLE LAWS AND SUPREME COURT DECISIONS WHEN IT RULED THAT THERE IS NO IDENTITY OF CAUSES OF ACTION BETWEEN CIVIL CASE NO. Q-98-35444 AND CIVIL CASE NO. Q-00-39794 IN COMPLETE DISREGARD OF, AND DESPITE, THE FACT THAT THERE IS SUCH IDENTITY OF CAUSES OF ACTION BECAUSE BOTH AFORESAID CASES, EVEN IF DIFFERENT IN FORMS OR NATURE, INVOLVED THE SAME ANTECEDENT FACTS AND CIRCUMSTANCES, THE SAME EVIDENCE AND ACTIONABLE DOCUMENT, NAMELY, THE DEED OF EXCHANGE DATED APRIL 18, 1997 (ANNEX D HEREOF) WHOSE VALIDITY AND ENFORCEABILITY MUST PRIORLY BE RESOLVED AS THE RESOLUTION THEREOF IS DETERMINATIVE OF ANY FURTHER ADJUDICATIONS IN SAID TWO (2) CASES (MANGOMA VS. COURT OF APPEALS, 241 SCRA 25; VDA. DE CRUZO VS. CARRIAGA, 174 SCRA 330; BANGKO SILANGAN DEVELOPMENT BANK VS. COURT OF APPEALS, ET. AL., G.R. NO. 1140480 [SIC], JUNE 29, 2001)

IV.

COROLLARY TO ALL THE FOREGOING, WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED (a.) IN NOT DISMISSING CA-G.R. CV NO. 62481 GROUNDED ON THE DELIBERATE AND WILFUL (SIC) COMMISSION BY RESPONDENT SINGSON AND ATTY. MANUEL N. CAMACHO OF THE AFORESAID TWO (2) SPECIES OF FORUM SHOPPING; AND (b.) IN NOT HOLDING THAT RESPONDENT SINGSON AND ATTY. MANUEL CAMACHO ARE GUILTY OF MULTIPLE AND DELIBERATE FORUM SHOPPING AND SHOULD THEREFORE BE CITED IN CONTEMPT UNDER SUPREME COURT ADM. CIRCULAR NO. 04-94 AND APPLICABLE JURISPRUDENCE (BUAN VS. LOPEZ, 145 SCRA 34).[16]

In his comment on the petition, the respondent asserts that the petitioner's procedural recourse to this Court under Rule 45 of the Revised Rules of Court is flawed. He argues that the resolutions of the CA subject of this petition for review are interlocutory; hence, not appealable under Section 1, Rule 45. He also argues that the Court may not even treat the present recourse as a petition for certiorari under Rule 65 since there is nary an allegation or proof that the CA committed grave abuse of discretion.

In its reply, the petitioner adamantly insists that the questioned resolutions of the CA are final in character and, therefore, appealable. It argues that a violation SC Adm. Cir. No. 04-94 is unlike those grounds under Rule 16 of the Revised Rules of Court, where when a motion to dismiss is denied, the proper procedure to be followed by the dissatisfied movant is not to appeal from the order of denial but to answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.

We agree with respondent that the mode of appeal resorted to by the petitioner is improper.

Indubitably, the Resolution of the CA dated July 31, 2001 denying the petitioner's omnibus motion is interlocutory in nature. The word interlocutory refers to something intervening between the commencement and

the end of a suit which decides some point or matter but is not a final decision of the whole controversy.[17] The Court distinguished a final order or resolution from an interlocutory one in *Investments, Inc. v. Court of Appeals*[18] as follows:

... A “final” judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res adjudicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties’ next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes “final” or, to use the established and more distinctive term, “final and executory.”

...

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties’ contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is “interlocutory,” e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a “final” judgment or order, which is appealable, as above pointed out, an “interlocutory” order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.

The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by him and interlocutory orders rendered or issued by the lower court.[19]

Under Section 1, Rule 45 of the Revised Rules of Court, only final judgments, orders or resolutions of the Court of Appeals or Sandiganbayan may be assailed therein. The remedy is a mode of appeal on questions of law only.[20]

In the case at bar, the CA merely denied the petitioner’s omnibus motion to dismiss based on forum shopping, on its finding that there was no *litis pendentia* between the parties. The motion is only an incident in CA-G.R. CV No. 64281, which is a continuation of Civil Case No. Q-98-35444 for “damages and reconveyance” instituted by the respondent against the petitioner. The appellate court had yet to resolve the appeal on its merits. Being interlocutory, the resolution is not appealable[21] but may be assailed in this Court only under Rule 65 of the Revised Rules of Court grounded on grave abuse of discretion amounting to excess or lack of jurisdiction committed by the CA. However, the petitioner opted to file a petition for review on certiorari under Rule 45 of the Revised Rules of Court.

Even on the merits, the petition must be denied.

The petitioner avers that there are three (3) species of forum shopping: (1) forum shopping grounded either on *res adjudicata* or *litis pendentia*; (2) forum shopping for “non-compliance to report the pendency of another action or

proceeding involving the same issues;" and (3) forum shopping based on the "submission of a false certification on non-forum shopping by not disclosing the pendency of another action or proceedings involving the same issues as provided in paragraph 2 of SC Adm. Cir. No. 04-94." To violate SC Adm. Cir. No. 04-94, it maintains, "similarity of issues" between the first and the second case is enough.

The petitioner faults the CA for denying its omnibus motion based on its so-called first species of forum shopping. It argues that what it invoked therein were the other two (2) species, not the first one. It avers that respondent and his counsel violated SC Adm. Cir. No. 04-94 because:

- a.) Respondent Singson and Atty. Camacho did not report in CA-G.R. CV No. 64281 (Civil Case No. Q-98-35444) the pendency of Civil Case No. Q-00-39794 filed by respondent himself on January 26, 2000 and which case involves the same principal issues of validity and enforceability of the same deed of exchange dated April 18, 1997.
- b.) Vice-versa, respondent and Atty. Camacho did not report in Civil Case No. Q-00-39794 the pendency of CA-G.R. CV No. 64281 (Civil Case No. Q-98-35444);
- c.) Respondent Singson submitted a false certification on non-forum shopping in the original complaint in Civil Case Q-00-39794 by wilful (sic) non-disclosure of the pendency of CA-G.R. CV No. 64281 (Civil Case No. Q-98-35444);
- d.) Corollary to the above, respondent Singson and Atty. Camacho submitted a false certification on non-forum shopping in the amended complaint in Civil Case No. Q-00-39794 by wilful (sic) non-disclosure of the pendency of CA-G.R. CV No. 64281 (Civil Case No. Q-98-35444).[22]

We are not swayed.

The rule on forum shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Adm. Cir. No. 04-94. The rule is now embodied in Section 5, Rule 7 of the Revised Rules of Court which reads:

SECTION 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.

Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion

(other than by appeal or certiorari) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.[23]

What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[24]

In *Ayala Land, Inc. v. Valisno*,^[25] the Court explained the concept of forum shopping, to wit –

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another (*Alejandrino v. Court of Appeals*, 295 SCRA 536, 554 [1998]; *Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, 292 SCRA 785, 794 [1998]). *Litis pendentia* requires the concurrence of the following requisites:

- Identity of parties, or at least such parties as those representing the same interests in both actions;
- Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and
- Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res adjudicata* in the other case. (*Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, *supra*, at 791; citations omitted.)

As explained by this Court in *First Philippine International Bank v. Court of Appeals* (252 SCRA 259 [1996]), forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. Thus, there is forum shopping when, between an action pending before this Court and another one, 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 other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant* or *lis pendens*.” Another case elucidates the consequence of forum shopping: “[W]here a litigant 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.” (*Prubankers Association v. Prudential Bank & Trust Company*, 302 SCRA 74, 83-84 [1999].)

We agree with the contention of the petitioner that, under Section 5, Rule 7, of the Revised Rules of Court, a complaint may be dismissed for failure of the plaintiff therein to inform the court of the filing of the same or similar complaint within five (5) days from such filing. The same or similar complaint referred to in the rule refers to a complaint wherein the parties, causes of action, issues and reliefs prayed for, are identical to those in the first complaint. The plaintiff may also be declared in indirect contempt of court if he submits a false certification.

But the respondent cannot be faulted for stating in his Affidavit of Non-Forum Shopping in Civil Case No. Q-00-39794 that he had not commenced any other action or proceeding involving the same issues in the CA or in any other tribunal; nor can he be charged with executing a falsified certification in Civil Case No. Q-00-39794 for stating that he had not commenced before any other tribunal any initiatory pleading involving the same issues.

The petitioner was not mandated to inform the trial court in Civil Case No. Q-00-39794 and Civil Case No. Q-98-35444 and of CA-G.R. CV No. 64281. This is so because, as admitted by the petitioner, there is no identity of the causes of action, the parties, issues and reliefs prayed for in the two complaints. The subject matter of the

suit in Civil Case No. Q-00-39794 is Room 302, while that in Civil Case No. Q-98-35444 is Room 404. The principal issue raised in Civil Case No. Q-00-39794 is whether the extrajudicial foreclosure of the real estate mortgage over Room 404 and the sale thereof to Allied Banking Corporation are null and void, while the principal issue in Civil Case No. Q-98-35444 is whether or not the petitioner as defendant therein is obliged to convey to the respondent Room 404.

While it is true that in his Amended Complaint in Civil Case No. Q-98-35444, the respondent sought to compel the petitioner to execute a deed of sale over Room 404 free from any liens or encumbrances arising from the real estate mortgage over the said unit as security for a loan of P2,000,000.00 secured by the petitioner from Allied Banking Corporation, it cannot thereby be concluded that the issues raised in the said case are the same or similar to those in Civil Case No. Q-00-39794.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The assailed Resolutions of the Court of Appeals are AFFIRMED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Teodoro P. Regino (retired) and Josefina Guevara-Salonga, concurring.

[2] Rollo, pp. 48-49.

[3] Id. at 58-59.

[4] Id. at 46.

[5] Id. at 52-55.

[6] Id. at 55-56.

[7] Id. at 57.

[8] Id. at 68-69.

[9] Id. at 68-78.

[10] Id. at 79-83.

[11] Id. at 84-86.

[12] Id. at 92.

[13] Id. at 94.

[14] Id. at 95.

[15] Id. at 37.

[16] Id. at 15-16.

[17] Ramiscal, Jr. v. Sandiganbayan, G.R. No. 140576, December 13, 2004.

[18] 147 SCRA 334 (1987).

[19] *Sitchon v. Sheriff of Occidental Negros*, 80 Phil. 397 (1948).

[20] Section. 1. Filing of petition with Supreme Court. – A person desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[21] Section 1(c), Rule 41, Revised Rules of Court.

[22] *Rollo*, pp. 19-20.

[23] *Benguet Electric Cooperative, Inc. v. Flores*, 287 SCRA 449 (1998).

[24] *Yupangco Cotton Mills, Inc. v. Court of Appeals*, 373 SCRA 451 (2002).

[25] 324 SCRA 522 (2000).

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