

**EVELYN T. PARADERO, PETITIONER, VS. HON. ALBERT B. ABRAGAN,
AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF LANA
DEL NORTE, BRANCH 4, ILIGAN CITY AND VICTOR B. JARABA,
RESPON...**

G.R. No. 158917. March 01, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Assailed in this petition for certiorari under Rule 65 of the Rules of Court is the March 12, 2003 Order[1] issued by respondent Judge of the Regional Trial Court of Iligan City, Branch 12, which granted the issuance of a writ of demolition against petitioner.

On February 20, 2001, respondent Victor B. Jaraba filed with the Municipal Trial Court in Cities (MTCC) of Iligan City, Branch I, an ejectment suit[2] against petitioner Evelyn T. Paradero.[3] He claimed that petitioner, without his consent and by means of strategy and stealth, occupied and built a house on a 140 square-meter lot registered in his name under Transfer Certificate of Title No. T-57,461 (a.f.) and located at Barangay Palao, Iligan City.[4] Petitioner failed to file an answer, hence, respondent filed a Motion for Judgment pursuant to Rule 70, Section 7, of the 1997 Rules of Civil Procedure.[5]

On May 20, 2002, the MTCC rendered a decision in favor of respondent, the dispositive portion of which, reads:

Wherefore, finding the allegations of the complaint of the plaintiff to be true, judgment is hereby rendered in favor of plaintiff and against the defendant:

(1) Ordering the defendant to vacate the parcel of land subject matter of the above-entitled case covered by Transfer Certificate of Title No. T-57,461 (a.f.) and restore physical possession thereof to plaintiff.

(2) Ordering defendant to pay the plaintiff P2,000.00 monthly rental or reasonable compensation for the use and occupation of the property from the date of the filing of the instant case until the restitution of the possession thereof to the plaintiff;

(3) Ordering the defendant to pay or reimburse the plaintiff P20,000.00 as attorney's fees and expenses of litigation.

(4) Ordering the defendant to pay the costs of suit.

SO ORDERED.[6]

Petitioner appealed to the Regional Trial Court (RTC) of Iligan City, Branch 4, while respondent moved for the immediate execution of the judgment pending appeal. Since the records of the case were forwarded to the RTC, private respondent filed a motion for execution pending appeal with the latter court, which was granted on July 26, 2002.[7]

Petitioner filed an Urgent Motion for Reconsideration and/or Lifting the Order dated July 26, 2002 and Fixing of the Supersedeas Bond.[8] At the hearing of the said motion, petitioner was asked to produce Supreme Court ruling authorizing the RTC to fix and approve supersedeas bonds. Thus, on August 14, 2002, petitioner submitted a “Manifestation in Compliance with the Order of the Honorable Court and Urgent Motion to Order the Clerk of Court to Receive/Accept the Monthly Rental Deposit of P2,000.00.”[9]

On October 1, 2002, the trial court denied petitioner’s motion for reconsideration and motion to fix the supersedeas bond. Pertinent portion thereof reads:

On the issue of whether or not the Regional Trial Court has jurisdiction to approve the supersedeas bond filed by herein defendant, the answer is in the affirmative. While the supersedeas bond must be filed in the lower court, the Court of First Instance (Regional Trial Court), in its discretion and upon good cause shown, may allow the defendant to file that bond in the latter court (Tagulimot vs. Makalintal, 85 Phil. 40).

Should the court allow the filing of the supersedeas bond by the herein defendant? The answer is in the negative. Defendant failed to show any good cause sufficient for this Court to exercise its discretion in her favor. Her mere allegation that she has a meritorious defense is not the good cause contemplated in the Tagulimot case. On the contrary, her failure to file a motion for fixing of the supersedeas bond to stay execution pending appeal from the time her counsel Atty. Lolito Jadman, filed the notice of appeal on June 26, 2002 to August 5, 2002 when she filed the motion to fix supersedeas bond is not consistent with her desire to stay execution of the judgment. Her indifference, if not negligence, is indicative of lack of interest on her case.

Then again, even granting that the defendant is allowed to post supersedeas bond, there is still the issue of periodic deposit of future rentals to ensure payment of rentals accruing after the judgment of the inferior court and until final judgment on appeal. Defendant-appellant failed to comply with this mandatory requirement in order to stay execution. Defendant had all the time from receipt of the decision on June 17, 2002 up to the time she filed motion to fix supersedeas bond on August 5, 2002 to pay rentals but this she failed to do so.[10]

After hearing, the RTC granted respondent’s prayer for the issuance of a writ of demolition.[11] Subsequently, on March 19, 2003, a decision was rendered denying petitioner’s appeal and affirming in toto the decision of the MTCC.[12] Petitioner filed two motions for reconsideration of the March 12, 2003 Order and the March 19, 2003 decision of the RTC, however, both were denied.[13] Petitioner’s house was demolished on May 22, 2003.

Petitioner filed a petition for review dated June 6, 2003, with the Court of Appeals,[14] challenging the affirmance by the RTC of the MTCC decision as well as the propriety of the execution pending appeal. Petitioner likewise prayed for damages for the demolition of her house.

On July 7, 2003, petitioner filed the instant petition for certiorari on the ground that the trial court gravely abused its discretion in granting the execution pending appeal and in issuing the writ of demolition. Respondent, on the other hand, prayed that the instant petition be dismissed because petitioner is guilty of forum shopping.

The issue for resolution before us is whether or not petitioner violated the rule against forum shopping.

There is forum shopping when, in the two or more cases pending, there is identity of parties, rights or causes of action and relief sought. Forum shopping exists where the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other. For *litis pendentia* to exist, the following requisites must be present:

- 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;
- 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 case.[15]

In the case at bar, the parties to the instant petition and in the one filed with the Court of Appeals are identical. The rights asserted are the same, i.e., to maintain peaceful possession of the disputed lot pending final adjudication of the case. Likewise, similar reliefs are prayed for — to nullify the order of execution pending appeal and the writ of demolition, such reliefs being founded on the same facts — the ejectment case filed with the trial court. A judgment in the present certiorari case on the validity of the order of execution pending appeal and the writ of demolition will pre-empt and amount to res judicata on the petition for review before the Court of Appeals, questioning, inter alia, the legality of the same order and writ with prayer for an award of damages. This is evident from the following issues raised by petitioner before the Court of Appeals, thus –

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WHETHER OR NOT THE REGIONAL TRIAL COURT WAS CORRECT IN GRANTING THE MOTION FOR EXECUTION OF JUDGMENT PENDING APPEAL, PETITIONER ... NOT [HAVING BEEN] PROPERLY NOTIFIED OF SUCH MOTION WHEN IT WAS SCHEDULED FOR HEARING.

III.

WHETHER OR NOT THE REGIONAL TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR THE POSTING OF A SUPERSEDEAS BOND AND THE DEPOSIT OF THE MONTHLY RENTALS BY THE PETITIONER TO THE CLERK OF COURT OF THE REGIONAL TRIAL COURT.

IV.

WHETHER OR NOT THE REGIONAL TRIAL COURT WAS CORRECT IN ORDERING THE DEMOLITION OF THE HOUSE OF PETITIONER WHEN THERE WAS NO ORDER OF REMOVAL OF THE SAID HOUSE AND ALL OTHER IMPROVEMENTS ON THE LAND IN THE DECISION OF THE MUNICIPAL TRIAL COURT IN CITIES, BRANCH I, ILIGAN CITY.

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VII.

WHETHER OR NOT PETITIONER IS ENTITLED TO RESTORATION OR RENUMERATION OF HER HOUSE AND OTHER IMPROVEMENTS SHE INTRODUCED INTO THE LAND IN CASE THIS HONORABLE COURT WILL RULE IN HER FAVOR.

VIII.

WHETHER OR NOT PETITIONER IS ENTITLED TO DAMAGES IN CASE THIS HONORABLE COURT WILL RULE IN HER FAVOR.[16]

The Court is aware of the doctrine that the availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where the appeal is

not an adequate remedy or equally beneficial, speedy and sufficient. Indeed, it is the inadequacy — not the mere absence — of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of certiorari. This has been the consistent ruling of the Court in *Jaca v. Davao Lumber Company*,^[17] reiterated in the subsequent cases of *Valencia v. Court of Appeals*,^[18] *Echaz v. Court of Appeals*,^[19] and *International School v. Court of Appeals*.^[20]

Anent the rule on forum shopping, the Court in *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*,^[21] citing *International School, Inc. v. Court of Appeals*,^[22] held that one party may validly question the decision in a regular appeal and at the same time assail the execution pending appeal via certiorari without violating the anti-forum shopping rule. This is so because the merits of the case would not be addressed in the petition dealing with the execution and vice versa, thus –

We likewise hold that respondent is not guilty of forum shopping. The test to determine whether a party violated the rule against it is whether the elements of *litis pendentia* are present, or whether the final judgment in one case will amount to *res judicata* in another. This Court has squarely decided in *International School v. Court of Appeals*, as follows: Forum-shopping is present when in the two or more cases pending there is identity of parties, rights or causes of action and reliefs sought. While there is an identity of parties in the appeal and in the petition for review on certiorari filed before this Court, it is clear that the causes of action and reliefs sought are unidentical, although petitioner ISM may have mentioned in its appeal the impropriety of the writ of execution pending appeal under the circumstances obtaining in the case at bar. Clearly, there can be no forum-shopping where in one petition a party questions the order granting the motion for execution pending appeal, as in the case at bar, and, in a regular appeal before the appellate court, the party questions the decision on the merits which finds the party guilty of negligence and holds the same liable for damages therefor. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice versa. Hence, reliance on the principle of forum-shopping is misplaced.

There is indeed an identity of parties in the appeal of the December 10, 1993 Judgment of the RTC as well as in the Petition for Certiorari – both filed by respondents before the Court of Appeals on January 10, 1994 and February 23, 1994, respectively. However, the causes of action and relief sought are different.

Thus, in line with *International School*, respondent did not violate the rule on no forum shopping. In its appeal, it assailed the merits of the Judgment of the RTC; in the present Petition it merely challenges the RTC Order allowing an execution pending appeal.

The foregoing doctrines, however, find no application in the instant case. The cases of *Jaca*, *Valencia*, *Echaz*, *International School* and *Philippine Nails and Wires Corporation* have a common denominator that is absent in the present controversy. In the said cases, the appeal did not include the validity of the execution of the decision pending appeal. They dealt mainly with the merits of the decision because the antecedents that led the petitioners therein to assail the execution pending appeal via certiorari transpired only after their respective notices of appeal were filed before the Court of Appeals. Otherwise stated, the appeal and the certiorari case dwelt on entirely different matters that would logically preclude the finding of forum shopping. Any ruling on the legality of the execution pending appeal in the certiorari case would not amount to *res judicata* on the disposition of the merits of the main case subject of the appeal precisely because the issue of the execution pending appeal was not among the concerns raised therein.

The case at bar, however, presents a different scenario. The March 12, 2003 writ of demolition and the March 19, 2003 decision of the RTC were received by petitioner on March 22, 2003, while the actual demolition occurred on May 22, 2003.^[23] Thus, when she filed a petition for review with the Court of Appeals on June 6, 2003, she questioned not only the merits of the March 19, 2003 decision but also the orders of the trial court granting the motion for execution pending appeal and the issuance of a writ of demolition. It is clear therefore that a ruling of

this Court on the very same issue of the legality of the execution pending appeal and writ of demolition would undoubtedly constitute *res judicata* on the identical issues pending with the Court of Appeals.

The admission by petitioner in her certification against forum shopping of the pendency of the certiorari case with the Court of Appeals[24] will not remove her petition from the effects of *res judicata* or *litis pendentia*. These doctrines may not be avoided by varying the form of the action or adopting a different mode of presenting one's case.[25] For being violative of the rule against forum shopping, the instant petition for certiorari should therefore be dismissed.

Moreover, even assuming that petitioner's recourse to certiorari is correct, the same is still dismissible for disregarding the hierarchy of courts. While we have concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue writs of certiorari, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A direct invocation of the Supreme Court's original jurisdiction to issue these extraordinary writs is allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.[26] Petitioner failed to show that such special and important reasons obtain in this case.

WHEREFORE, in view of all the foregoing, the instant petition for certiorari is DISMISSED.

SO ORDERED.

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

[**]Acting Working Chairman.[1] Rollo, p. 187.

[2] Complaint, Rollo, p. 42.

[3] Petitioner also filed an action for quieting of title against private respondent with the Regional Trial Court of Iligan City, Branch 5, docketed as Civil Case No. 5770 (Rollo, p. 221).

[4] Complaint, Rollo, pp. 42-43.

[5] Rollo, p. 74.

[6] Penned by Assisting Judge Gregorio S. Vios; Rollo, p. 93.

[7] Rollo, p. 148.

[8] *Id.*, p. 150.

[9] *Id.*, p. 154.

[10] *Id.*, p. 166.

[11] *Id.*, p. 187.

[12] *Id.*, p. 182.

[13] *Id.*, p. 217.

[14] *Id.*, p. 319.

[15] Prubanker's Association v. Prudential Bank and Trust Company, 361 Phil. 744, 755, (1999); citing First Philippine International Bank v. Court of Appeals, 322 Phil. 280 (1996).

[16] Rollo, pp. 338-339.

[17] 198 Phil. 493, 516-517 (1982); citing Silvestre v. Flores, 57 Phil. 885 (1933).

[18] G.R. No. 89431, 25 April 1990, 184 SCRA 561, 569-570.

[19] G.R. No. 79516, 18 July 1991, 199 SCRA 381, 386-387.

[20] 368 Phil. 791, 798-800 (1999).

[21] G.R. No. 143933, 14 February 2003.

[22] Supra.

[23] Petition, Rollo, p. 24.

[24] Id., p. 28.

[25] United Residents of Dominican Hill, Inc. v. Commission on Settlement of Land Problems, G.R. No. 135945, 7 March 2001, 353 SCRA 782, 803.

[26] SGMCM Realty Corporation v. Office of the President, G.R. No. 126999, 30 August 2000, 339 SCRA 275, 281-282.

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