

GUARANTEED HOTELS, INC., REPRESENTED BY URMA BALTAO CHIONGBIAN, PETITIONER, VS. JOSEFINA S. BALTAO, ROCIO P. BALTAO, GARY BALTAO AND GINO BALTAO, RESPONDENTS.

G.R. NO. 164338. January 17, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking a reversal of the Court of Appeals' April 6, 2004 Decision[1] and its June 30, 2004 Resolution[2] in CA-G.R. SP No. 74154, which reversed and set aside the Regional Trial Court of Manila, Branch 46, September 23, 2002 Order[3] and its February 17, 2004 Partial Decision[4] in Civil Case No. 02-102705.

On November 4, 1996, Sta. Lucia Realty and Development, Inc. ("Sta. Lucia") and Guaranteed Homes, Inc. entered into a Joint Venture Agreement (JVA)[5] for the purpose of developing a resort complex in Cabitugan, Zambales. The JVA included a parcel of land covered by TCT No. 11391[6] which was allegedly registered in the name of Guaranteed Hotels, Inc.

On August 28, 2001, the Testate Estate of Eugenio S. Baltao represented by Mariano Alejandro L. Baltao, Eugenio L. Baltao III and Urma Chiongbian, and Guaranteed Hotels, Inc., represented by Urma Chiongbian, in her capacity as a stockholder, filed before the Regional Trial Court of Olongapo City a derivative suit[7] ("OLONGAPO CASE") against Sta. Lucia and Guaranteed Homes, Inc. for Injunction, Annulment of Document and Damages with Application for a Temporary Restraining Order and a Writ of Preliminary Prohibitory and Mandatory Injunction.

The OLONGAPO CASE sought the annulment of the JVA insofar as the inclusion of TCT No. 11391 is concerned because it was allegedly made without the consent or knowledge of Guaranteed Hotels, Inc.

On June 21, 2002, during the pendency of the OLONGAPO CASE, Guaranteed Hotels, Inc., represented by Urma Chiongbian filed a second derivative suit before the Regional Trial Court of Manila ("MANILA CASE") against Rocio, Josefina, Gary, Jaime and Gino, all surnamed Baltao as alleged stockholders and directors of Guaranteed Hotels, Inc., and Alicia Pantig and Jane and John Does.[8] The MANILA CASE, docketed as Civil Case No. 02-102705 and raffled to Branch 46[9] of the Regional Trial Court of Manila, sought to annul and set aside all resolutions, corporate acts, and transactions of the defendants, herein respondents, from 1990 up to the present, including but not limited to those where the respondents allegedly authorized Guaranteed Hotels, Inc. to enter into joint venture agreements with Sta. Lucia and other corporations for the development of the properties of Guaranteed Hotels, Inc.[10]

The respondents filed their answer[11] in the MANILA CASE on August 16, 2002, raising petitioner's violation of the rules on forum shopping as one of their defenses. On September 3, 2002, they filed a Motion to Conduct Preliminary Hearing on the special and affirmative defenses which they raised in their answer but the same was denied by the trial court in its Order[12] dated September 23, 2002.

On December 2, 2002, respondents filed with the Court of Appeals a Petition for Certiorari[13] claiming that the trial court gravely abused its discretion in denying their motion to conduct a preliminary hearing. This petition was docketed as CA-G.R. SP No. 74154.

On February 13, 2003, the Seventh Division of the Court of Appeals, upon motion of respondents, temporarily restrained the Regional Trial Court of Manila, Branch 46 from taking further proceedings on the MANILA CASE until pending issues on the petitioners', the respondents herein, special and affirmative defenses are resolved.[14]

Finding petitioner guilty of violating the rules on forum shopping, the Court of Appeals, in its decision dated April 6, 2004, reversed and set aside the September 23, 2002 Order and February 17, 2004 Partial Decision of the Regional Trial Court of Manila, Branch 46 and dismissed Civil Case No. 02-102705.

The dispositive portion of the Court of Appeals' decision stated:

WHEREFORE, premises considered, the petition is GRANTED and the assailed September 23, 2002 Order and February 17, 2004 Partial Decision are hereby REVERSED, SET ASIDE. FINDING willful and deliberate forum shopping by private respondent, Civil Case No. 02102705, the second derivative suit, in the Regional Trial Court of Manila Branch 46, is hereby DISMISSED pursuant to Section 5, Rule 7 of the 1997 Rules of Civil Procedure. DISMISSAL of Civil Case No. 406-0-2001, the first derivative suit, in the Regional Trial Court of Olongapo City Branch 74, has become MOOT and ACADEMIC, the same having been DISMISSED at the instance of herein private respondent's counsel who filed a Notice of Dismissal for its dismissal.

Costs against private respondent.

SO ORDERED.[15]

Petitioner moved for reconsideration but the same was denied.

In the instant petition, petitioner maintains that it did not engage in forum shopping since there is no identity of parties or causes of action between the OLONGAPO CASE and MANILA CASE.

We are not persuaded.

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.[16]

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 in the other.[17]

The case of *Buan v. Lopez*[18] laid down the test for determining whether there has been a violation of the rule against forum shopping. Thus, forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to res judicata in the other. *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary:

- (a) identity of parties or at least such as represent the same interest in both actions;
- (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and
- (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to res judicata in the other.[19]

The practice of forum shopping is proscribed because it unnecessarily burdens our courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary and trifles with and mocks our judicial processes thereby affecting the efficient administration of justice. This condemnable conduct has prompted the issuance of circulars[20] penalizing violators with the dismissal of the case or cases without prejudice to the taking of appropriate action against the counsel or party concerned.[21]

Petitioner, in filing the OLONGAPO and MANILA cases engaged in forum shopping. The elements of *litis pendentia* are present between the two derivative suits filed by petitioner.

Petitioner maintains that there is no identity of parties because in the OLONGAPO CASE, the plaintiffs are the Testate Estate of Eugenio S. Baltao, represented by Urma Chiongbian and the petitioner herein, also represented by Urma Chiongbian, while in the MANILA CASE, the plaintiff is Guaranteed Hotels, Inc. alone, represented by Urma Chiongbian.

In *TF Ventures, et al. v. Yoshitsugu Matsuura, et al.*, [22] we reiterated the well settled rule that *lis pendens* requires only substantial, and not absolute identity of parties.[23] There is substantial identity of parties where there is a community of interest between a party in the first case and a party in the second case. Undeniably, the OLONGAPO and MANILA cases were purportedly filed to protect the interests of Guaranteed Hotels, Inc. Such constitutes a community of interest that makes the parties identical thereby making it within the purview of the first requisite of *litis pendentia*.

We agree with the Court of Appeals in ruling that the rights being asserted and the reliefs prayed for in the two derivative suits are identical.

In the OLONGAPO CASE, petitioner sought the nullification of the JVA entered into by Guaranteed Homes, Inc. and Sta. Lucia insofar as the inclusion of TCT No. 11391 is concerned. On the other hand, the MANILA CASE sought for the annulment of the corporate acts of herein respondents including the resolution authorizing the execution of the JVA.

While the reliefs prayed for in the two derivative suits were not similarly worded, it cannot be denied that their objective is to bring about the annulment of the JVA. The OLONGAPO CASE directly attacked the JVA. Petitioner, however, adopted another mode in the MANILA CASE. It indirectly assailed the JVA by putting in issue the authority of the respondents to execute the same in the hope that, once established that the same is *ultra vires*, the nullification of the JVA would follow as a matter of course. Plainly, the identity of the two derivative suits is such that the judgment that may be rendered in one would amount to *res judicata* in the other.

We cannot allow the possibility of two regional trial courts ruling differently on the reliefs prayed for by the petitioner. Consider this: If the trial court in the OLONGAPO CASE uphold the validity of the JVA while the trial court in the MANILA CASE rules on the contrary, these two incompatible decisions will wreak havoc on our judicial system.

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, we adhere strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.[24]

WHEREFORE, premises considered, the instant petition for review on certiorari is DENIED and the Decision of the Court of Appeals dated April 6, 2004 and its Resolution dated June 30, 2004 in CA-G.R. SP No. 74154, are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Rodrigo V. Cosico and Mariano C. Del Castillo; Rollo, pp. 298-317.

[2] Rollo, pp. 376-377.

[3] Id., pp. 193-194.

[4] Id., pp. 262-292.

[5] Id., pp. 52-62.

[6] Id., p. 124.

[7] Docketed as Civil Case No. 406-0-2001 and raffled to Branch 74, Judge Ramon S. Caguioa, Presiding; Rollo, pp. 63-75.

[8] Rollo, pp. 76-111.

[9] Presided by Judge Artemio S. Tipon.

[10] Rollo, pp. 76-77.

[11] CA Rollo, pp. 148-157.

[12] See note 3.

[13] Rollo, pp. 196-217.

[14] Penned by Associate Justice Remedios Salazar Fernando and concurred in by Associate Justices Ruben T. Reyes and Edgardo F. Sundiam; CA Rollo, pp. 197-198.

[15] Rollo, p. 316.

[16] Leyson, Jr. v. Office of the Ombudsman, 387 Phil. 241, 250 (2000).

[17] Jimmy L. Barnes, aka James L. Barnes v. Judge Ma. Luisa Quijano Padilla, et al., G.R. No. 160753, 30 September 2004.

[18] 229 Phil. 65, 69-70 (1986).

[19] Republic v. Carmel Development, Incorporated, G.R. No. 142572, 20 February 2002, 377 SCRA 459, 470-471.

[20] See Administrative Circular No. 4-94, ADDITIONAL REQUISITES FOR CIVIL COMPLAINTS, PETITIONS AND OTHER INITIATORY PLEADINGS FILED IN ALL COURTS AND AGENCIES, OTHER THAN THE SUPREME COURT AND THE COURT OF APPEALS, TO PREVENT FORUM SHOPPING OR MULTIPLE FILING OF SUCH PLEADINGS.

[21] Riano, Fundamentals of Civil Procedure, 2003 Edition, pp. 395-396, citing Progressive Development Corporation, Inc. v. Court of Appeals, 361 Phil. 566, 584 (1999).

[22] G.R. No. 154177, 9 June 2004, p. 7.

[23] See also *T’Boli Agro-Industrial Development, Inc. v. Solilapsi*, A.C. No. 4766, 27 December 2002, 394 SCRA 269, 279.

[24] *Supra*, note 22, pp. 4-5.

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