

LIMITLESS POTENTIALS, INC., PETITIONER, VS. HON. COURT OF APPEALS, CRISOSTOMO YALUNG, AND ATTY. ROY MANUEL VILLASOR, RESPONDENTS.*G.R. NO. 164459. April 24, 2007*

Ponente: CHICO-NAZARIO, J.

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Before this Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to annul and set aside: (1) The Decision,[1] dated 16 September 2003, of the Court of Appeals in CA-G.R. SP No. 73463 entitled, *Limitless Potentials, Inc. vs. Hon. Manuel D. Victorio*, in his capacity as the Presiding Judge of the Regional Trial Court of Makati City, Branch 141, *Crisostomo Yalung, and Atty. Roy Manuel Villasor*, which dismissed herein petitioner's Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure for lack of merit, and (2) The Resolution,[2] dated 8 July 2004, of the appellate court in the same case which denied petitioner's Motion for Reconsideration because the issues and arguments raised therein had already been passed upon and judiciously resolved in the Decision dated 16 September 2003.

The controversy of this case stemmed from the following facts:

On 12 October 1995, Digital Networks Communications and Computers, Inc. (Digital) and herein petitioner Limitless Potentials, Inc. (LPI), a domestic corporation duly organized and existing under Philippine laws, entered into a Billboard Advertisement Contract whereby petitioner was to construct one billboard advertisement for Digital's product for a period of one year, with an agreed rental of P60,000.00 per month plus Value Added Tax (VAT). It was agreed, among other things, that Digital will make a three-month deposit in the following manner, to wit: (a) P60,000.00 plus VAT upon the signing of the contract, and (b) P120,000.00 plus VAT upon completion of the billboard. Digital complied with the aforesaid agreement.

The billboard, however, was destroyed by unknown persons. In view thereof, the contract between Digital and the petitioner was considered terminated. Digital demanded for the return of their rental deposit for two months, but the petitioner refused to do so claiming that the loss of the billboard was due to force majeure and that any cause of action should be directed against the responsible persons. Thus, on 18 April 1997, Digital commenced a suit against herein petitioner before the Metropolitan Trial Court (MeTC) of Makati City, Branch 66, presided over by then Judge Estela Perlas-Bernabe (Judge Perlas-Bernabe)[3], for the return of Digital's deposit, which was equivalent to two months rental inclusive of VAT and attorney's fees. The case was docketed as Civil Case No. 55170.

On 18 June 1997, consistent with its defense against Digital's Complaint, petitioner filed a Third-Party Complaint[4] against Macgraphics Carranz International Corporation (Macgraphics) and herein private respondents Bishop Crisostomo Yalung (Bishop Yalung) and Atty. Roy Manuel Villasor (Atty. Villasor) alleging that it had entered into a contract of lease with Roman Catholic Archbishop of Manila (RCAM), as represented by the private respondents, over a space inside San Carlos Manor Seminary in Guadalupe Viejo, Makati City, where

petitioner erected the subject billboard. Petitioner further averred that despite its full compliance with the terms and conditions of the lease contract, herein private respondents, together with their cohorts, maliciously dismantled and destroyed the subject billboard and prevented its men from reconstructing it. Thereafter, petitioner learned that Macgraphics had "cajoled and induced" RCAM, through the private respondents, to destroy the subject billboard to enable Macgraphics to erect its own billboard and advertising signs. Thus, by way of affirmative defenses, petitioner claimed that: (a) the destruction of the subject billboard was not of its own making and beyond its control, and (b) Digital's cause of action, if any, should be directed against the private respondents and Macgraphics. Hence, petitioner prayed that judgment be rendered in its favor and to hold private respondents liable for the following: (a) moral damages in the amount of P1,000,000.00; (b) exemplary, temperate and nominal damages amounting to P300,000.00; (c) P300,000.00 as attorney's fees; (d) P50,000.00 as litigation expenses; and (e) costs of suit, allegedly suffered or incurred by it because of the willful destruction of the billboard by the private respondents.

In response, private respondents filed a Motion to Dismiss the aforesaid Third-Party Complaint based on the following grounds: (1) *litis pendentia*; (2) lack of cause of action; (3) forum shopping; and (4) lack of privity of contract. The MeTC, in an Order dated 25 August 1997,[5] denied the said Motion to Dismiss. Petitioner filed an Amended Third-Party Complaint. Again, private respondents filed a Motion to Dismiss Amended Third-Party Complaint. However, the MeTC also denied the Motion to Dismiss Amended Third-Party Complaint in an Order dated 10 October 1997.[6]

On 9 December 1997, private respondents filed a Petition for Certiorari with Prayer for Preliminary Restraining Order and/or Writ of Preliminary Injunction before the Regional Trial Court (RTC) of Makati City, assailing the Orders dated 25 August 1997 and 10 October 1997 of the MeTC of Makati City denying their Motion to Dismiss Third-Party Complaint and Motion to Dismiss Amended Third-Party Complaint, respectively, in Civil Case No. 55170.

The RTC issued an Order on 6 February 1998,[7] granting private respondents' prayer for a writ of preliminary injunction, conditioned upon the posting of an injunction bond in the amount of P10,000.00. Thus, the MeTC was enjoined from hearing the Third-Party Complaint in Civil Case No. 55170. The pertinent portion of the aforesaid Order reads, as follows:

When the application for temporary restraining order and/or preliminary injunction was heard this afternoon, [herein petitioner] who did not file comment on the petition appeared thru counsel Emmanuel Magnaye. It was brought out to the attention of this Court that respondent judge is poised on pursuing the hearing of the case before her despite the pendency of this petition. It appeared that the case was set by respondent judge for hearing ex-parte for the reception of [herein petitioner's] evidence on 23 February 1998. It also appeared that [herein private respondents] were declared in default despite the fact that they have filed their answer and the motion to lift such order of default and for admission of the answer was denied by respondent judge.

Upon consideration of the allegations in the petition and the oral manifestations and admissions of both parties, this Court hereby resolves to issue the writ of preliminary injunction in order to preserve the status quo as well as not to render the issue herein raised moot and academic.

WHEREFORE, the motion for preliminary injunction is granted. Accordingly, upon the filing by [herein private respondents] of a bond in the amount of P10,000.00, let a writ of preliminary injunction be issued, enjoining respondent judge, or her successor, from hearing the [T]hird [P]arty [C]omplaint against [herein private respondents] in Civil Case No. 55170 until further orders from this Court.[8]

Subsequently, however, the RTC rendered a Decision[9] on 28 April 2000, dismissing the Petition for Certiorari filed by private respondents, the dispositive portion of which reads:

WHEREFORE, the petition is hereby dismissed for lack of merit. The preliminary injunction issued by this Court on 6 February 2000[10] (sic) is hereby dissolved.

Costs against [herein private respondents].[11]

Disgruntled, private respondents filed an Urgent Motion for Reconsideration, which was denied by the RTC in its Order[12] dated 26 June 2000.

Petitioner filed its Motion for Judgment Against the Bond, and in compliance with the directive of the RTC, the petitioner filed a pleading[13] specifying its claims, thus: (a) attorney's fees in the sum of P74, 375.00; and (b) moral damages for the tarnished good will in the sum of P1,000,000.00.

The RTC, in its Order dated 3 April 2002,[14] denied petitioner's Motion for Judgment Against the Bond declaring that the preliminary injunction was not wrongfully obtained; therefore, the claim for damages on the bond is untenable.

Aggrieved, the petitioner moved for the reconsideration of the aforesaid Order, which was also denied by the RTC in its Order dated 6 August 2002.[15]

Dissatisfied, the petitioner filed a Petition for Certiorari under Rule 65 of the Revised Rules of Civil Procedure before the Court of Appeals assailing the Orders of the RTC dated 3 April 2002 and 6 August 2002 for having been issued with grave abuse of discretion amounting to lack and/or excess of jurisdiction.

On 6 November 2002, the Court of Appeals issued a Resolution[16] dismissing the Petition for failure to show proof that a certain Quirino B. Baterna has been duly authorized by the petitioner to file the Petition for and in its behalf. Petitioner moved for the reconsideration of the aforesaid Resolution, which was granted by the appellate court in its Resolution dated 24 January 2003[17] thereby reinstating the Petition for Certiorari filed by the petitioner.

On 16 September 2003, the Court of Appeals rendered a Decision dismissing the Petition filed by the petitioner for utter lack of merit. The petitioner filed a Motion for Reconsideration based on the following grounds:

- The dismissal of the petition and dissolution of the injunction amount to a determination that the injunction was wrongfully or improvidently obtained.
- The petitioner suffered damages by reason of the issuance of the injunction.
- The damages claimed by the petitioner are covered by the injunction bond.

The Court of Appeals through a Resolution dated 8 July 2004, denied the petitioner's Motion for Reconsideration.

Hence, this Petition.

Petitioner pointed out two basic legal issues wherein the appellate court committed serious and reversible errors, to wit:

- Is malice or bad faith a condition sine qua non for liability to attach on the injunction bond?
- Are attorney's fees, litigation costs, and cost of delay by reason of the injunction covered by the injunction bond?

Petitioner argues that malice or lack of good faith is not an element of recovery on the bond. The dissolution of the injunction, even if the injunction was obtained in good faith, amounts to a determination that the injunction was wrongfully obtained and a right of action on the injunction immediately accrues to the defendant. The petitioner maintains that the attorney's fees, litigation costs, and cost of delay by reason of the injunction are

proper and valid items of damages which can be claimed against the injunction bond. Hence, having proven through testimonial and documentary evidence that it suffered damages because of the issuance of the writ of injunction, and since malice or lack of good faith is not an element of recovery on the injunction bond, petitioner asserts that it can properly collect such damages on the said bond.

Private respondent Bishop Yalung on the other hand, prays for the outright dismissal of the present Petition due to the alleged failure of the petitioner to comply with the mandatory rule on proper certification on non-forum shopping under Section 5, Rule 7 of the 1997 Revised Rules of Civil Procedure. According to him, it is not sufficient for Mr. Baterna to make the undertaking that "I have not commenced any other action or proceeding involving the same issue in the Supreme Court, etc." inasmuch as such undertaking should have been made by the principal party, namely, the petitioner. He underscores that the verification/disclaimer of forum shopping executed by Mr. Baterna on behalf of the petitioner is legally defective for failure to enumerate with particularity the multiple civil and criminal actions, which were filed by him and the petitioner against the private respondents.

Private respondent Bishop Yalung also avers that the petitioner is not entitled to collect damages on the injunction bond filed before the court a quo. Primarily, as the appellate court mentioned in its Decision, the preliminary injunction was directed not against the petitioner but against the MeTC. The petitioner was not restrained from doing any act. What was restrained was the hearing of the Third-Party Complaint while the Petition for Certiorari was pending, "in order to preserve the status quo and not to render the issue therein moot and academic." [18] Also, the fact that the decision is favorable to the party against whom the injunction was issued does not automatically entitle the latter to recover damages on the bond. Therefore, the petitioner cannot claim that it suffered damages because of the issuance of the writ of injunction.

Private respondent Atty. Villasor shares the same argument as that of his co-respondent Bishop Yalung that it was the MeTC which was enjoined and not herein petitioner. Private respondent Atty. Villasor further alleged that in the Special Civil Action for Certiorari, the action is principally against any tribunal, board, or officer exercising judicial or quasi-judicial functions who has acted without or in excess of jurisdiction or with grave abuse of discretion. Thus, private respondents' Petition for Certiorari before the RTC principally pertains to the MeTC and not to herein petitioner. Additionally, private respondent Atty. Villasor argues that it was petitioner who was benefited by such writ of preliminary injunction, because the injunction left Digital unable to prosecute Civil Case No. 55170 against herein petitioner. Lastly, private respondent Atty. Villasor claims that petitioner did not oppose their application for a writ of preliminary injunction at the hearing wherein petitioner was duly represented by counsel.

Simply stated, the threshold issues are:

- Can petitioner recover damages from the injunction bond?
- Was petitioner able to substantiate the damages?

Quite apart from the above, there appears to be another question concerning the alleged violation by the petitioner of the mandatory rule on proper certification on non-forum shopping.

In the case at bar, petitioner repeatedly argues that malice or lack of good faith is not an element of recovery on the injunction bond. In answering this issue raised by petitioner, this Court must initially establish the nature of the preliminary injunction, the purpose of the injunction bond, as well as the manner of recovering damages on the said bond.

A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action. [19] It is an order granted at any stage of an action, prior to

the judgment or final order, requiring a party, court, agency or person to perform or to refrain from performing a particular act or acts. A preliminary injunction, as the term itself suggests, is merely temporary, subject to the final disposition of the principal action.[20] It is issued to preserve the status quo ante, which is the last actual, peaceful, and uncontested status that preceded the actual controversy,[21] in order to protect the rights of the plaintiff during the pendency of the suit. Otherwise, if no preliminary injunction is issued, the defendant may, before final judgment, do the act which the plaintiff is seeking the court to restrain. This will make ineffectual the final judgment that the court may afterwards render in granting relief to the plaintiff.[22] The status quo should be existing ante litem motam, or at the time of the filing of the case. For this reason, a preliminary injunction should not establish new relations between the parties, but merely maintain or re-establish the pre-existing relationship between them.[23]

The purpose of a preliminary injunction is to prevent threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Thus, to be entitled to an injunctive writ, the petitioner has the burden to establish the following requisites:

- (1) a right in esse or a clear and unmistakable right to be protected;
- (2) a violation of that right;
- (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[24]

A preliminary injunction or temporary restraining order may be granted only when, among other things, the applicant, not explicitly exempted, files with the court, where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.[25] Thus, the posting of a bond is a condition sine qua non for a writ of preliminary injunction to be issued.

The injunction bond is intended as a security for damages in case it is finally decided that the injunction ought not to have been granted. Its principal purpose is to protect the enjoined party against loss or damage by reason of the injunction,[26] and the bond is usually conditioned accordingly.

The damages sustained as a result of a wrongfully obtained injunction may be recovered upon the injunction bond which is required to be deposited with court.[27] Rule 57, Section 20, of the 1997 Revised Rules of Civil Procedure, which is similarly applicable to preliminary injunction,[28] has outlined the procedure for the filing of a claim for damages against an injunction bond. The aforesaid provision of law pertinently provides:

SEC. 20. Claim for damages on account of improper, irregular or excessive attachment. - An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.[29]

Now, it can be clearly gleaned that there is nothing from the aforequoted provision of law which requires an enjoined party, who suffered damages by reason of the issuance of a writ of injunction, to prove malice or lack of good faith in the issuance thereof before he can recover damages against the injunction bond. This Court was very succinct in the case of *Aquino v. Socorro*,^[30] citing the case of *Pacis v. Commission on Elections*,^[31] thus:

Malice or lack of good faith is not an element of recovery on the bond. This must be so, because to require malice as a prerequisite would make the filing of a bond a useless formality. The dissolution of the injunction, even if the injunction was obtained in good faith, amounts to a determination that the injunction was wrongfully obtained and a right of action on the injunction bond immediately accrues. Thus, for the purpose of recovery upon the injunction bond, the dissolution of the injunction because of petitioner's main cause of action provides the actionable wrong for the purpose of recovery upon the bond.

We, therefore, agree with the petitioner that indeed, malice or lack of good faith is not a condition sine qua non for liability to attach on the injunction bond.

With respect to the issue raised by the petitioner regarding the coverage of the injunction bond, this Court finds it necessary to quote once again the provision of Section 4(b), Rule 58 of the 1997 Revised Rules of Civil Procedure, to wit:

Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

The aforesaid provision of law clearly provides that the injunction bond is answerable for all damages. The bond insures with all practicable certainty that the defendant may sustain no ultimate loss in the event that the injunction could finally be dissolved.^[32] Consequently, the bond may obligate the bondsmen to account to the defendant in the injunction suit for all damages, or costs and reasonable counsel's fees, incurred or sustained by the latter in case it is determined that the injunction was wrongfully issued.^[33] Likewise, the posting of a bond in connection with a preliminary injunction does not operate to relieve the party obtaining an injunction from any and all responsibility for damages that the writ may thereby cause. It merely gives additional protection to the party against whom the injunction is directed. It gives the latter a right of recourse against either the applicant or his surety or against both.^[34]

The contention of the petitioner, thus, is tenable. Attorney's fees, litigation costs, and costs of delay can be recovered from the injunction bond as long as it can be shown that said expenses were sustained by the party seeking recovery by reason of the writ of preliminary injunction, which was later on determined as not to have been validly issued and that the party who applied for the said writ was not entitled thereto. The case of *Aquino v. Socorro*,^[35] citing the case of *Pacis v. Commission on Elections*,^[36] holds that the dissolution of the injunction, even if the injunction was obtained in good faith, amounts to a determination that the injunction was wrongfully obtained and a right of action on the injunction bond immediately accrues. It is also erroneous for the appellate court to rule that petitioner is not entitled to claim damages from the injunction bond simply because the preliminary injunction was directed against the MeTC and not against the petitioner. The MeTC does not stand to suffer damages from the injunction because it has no interest or stake in the Petition pending before it. Damage or loss is suffered by the party whose right to pursue its case is suspended or delayed, which in this case, is the petitioner. Upon issuance of the writ of injunction, it is the petitioner who will stand to suffer damages for the delay in the principal case because, had it not been for the injunction, the petitioner would not have incurred additional expenses for attending the separate hearings on the injunction, and the RTC can already decide the

main case and make a prompt determination of the respective rights of the parties therein. Hence, even if the preliminary injunction was directed against the MeTC and not against the petitioner, it is the latter which has the right to recover from the injunction bond the damages which it might have suffered by reason of the said injunction.

As to the second main issue in the present case, although we do recognize that the petitioner had a right to recover damages from the injunction bond, however, we agree in the findings of the Court of Appeals, which affirmed the findings of the RTC, that the petitioner did not sustain any damage by reason of the issuance of the writ of injunction. In the petitioner's Motion for Judgment Against the Bond,[37] petitioner stated therein, thus:

- There can be no serious debate that the issuance of the Writ of Preliminary injunction, all at the instance of [herein private respondents], resulted in actual and pecuniary damages on the part of [herein petitioner] in the amount more than the value of the bond posted by [private respondents]. The attorney's fees for expenses in litigation alone expended by [petitioner] to defend itself in this proceedings, not to mention other pecuniary damages, amounts to P10,000.00.[38]

In the case at bar, petitioner is claiming attorney's fees in the sum of P74,375.00 it allegedly paid to defend itself in the main case for certiorari, which it would not have spent had the private respondents not filed their nuisance Petition and secured a writ of preliminary injunction. Likewise, by reason of the unfounded suit, the good will of the petitioner was brought to bad light, hence, damaged.[39] It is noteworthy to mention that the undertaking of the injunction bond is that it shall answer for all damages which the party to be restrained may sustain by reason of the injunction if the court should finally decide that the plaintiff was not entitled thereto. Apparently, as the appellate court pointed out in its Decision dated 16 September 2003, the damages being claimed by the petitioner were not by reason of the injunction but the litigation expenses it incurred in defending itself in the main case for certiorari, which is definitely not within the coverage of the injunction bond. Thus, this Court is not convinced that the attorney's fees in the amount of P74,375.00 as well as the moral damages for the tarnished good will in the sum of P1,000,000.00 were suffered by the petitioner because of the issuance of the writ of injunction.

Furthermore, this Court will not delve into the sufficiency of evidence as to the existence and amount of damages suffered by petitioner for it is already a question of fact. It is settled that the factual findings of the trial court, particularly when affirmed by the Court of Appeals, are binding on the Supreme Court.[40] Although this rule is subject to exceptions,[41] the present case does not fall into any of those exceptions which would have allowed this Court to make its own determination of facts. This Court upholds the factual findings of both the RTC and the Court of Appeals that there is insufficient evidence to establish that petitioner actually suffered damages because of the preliminary injunction issued by the RTC.

Now, on the matter of proper certification on non-forum shopping.

The requirement of a Certification on Non-Forum Shopping is contained in Rule 7, Section 5, of the 1997 Revised Rules of Civil Procedure, which states that:

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.

Private respondent Bishop Yalung might have overlooked the Secretary's Certificate^[42] attached to the petitioner's Petition for Review, which authorized Mr. Baterna, President of herein petitioner LPI, to represent the latter in this case. According to the Secretary's Certificate, the Board of Directors of petitioner LPI, at a special meeting held on 12 August 2004 at its office at No. 812 J.P. Rizal St., Makati City, during which there was a quorum, the following resolutions were approved, to wit:

RESOLVED, AS IT IS HEREBY RESOLVED, that the corporation reiterates the authority of its President, Mr. Quirino B. Baterna, to represent the corporation in all cases by and/or against the corporation vis-à-vis the Roman Catholic Archbishop of Manila/Crisostomo Yalung, Roy Villasor/Digital Netwrok (sic) Communications and Computers, Inc., and/or MacGraphics Carranz International Corporation, to file a Petition for Review on Certiorari with the Supreme Court docketed as G.R. No. 164459 to assert/protect LPI's rights and interests in connection with C.A.-G.R. No. 73463, entitled "Limitless Potentials, Inc., vs. Hon. Manuel Victorio, et al.," Honorable Court of Appeals, Manila.

RESOLVED FURTHERMORE, that any and all acts of our President, concerning the above-referenced subject matter are hereby affirmed, confirmed and ratified by the corporation for all legal intents and purposes.^[43]

Private respondent Bishop Yalung further argued that Mr. Baterna failed to enumerate in the Certification against Forum Shopping the multiple cases filed by him and the petitioner against private respondents. This is also erroneous.

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.^[44] It exists where the elements of *litis pendencia*^[45] are present or where a final judgment in one case will amount to *res judicata* in another.^[46] It may be resorted to by a party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by an appeal or a special civil action for certiorari.^[47]

As the RTC correctly found, there was no violation of the rule against forum shopping. The cause of action in petitioner's case for consignment and damages docketed as Civil Case No. 95-1559,^[48] is different from the cause of action in its Third-Party Complaint in Civil Case No. 55170. The damages sought in the first case were those suffered by petitioner by reason of the alleged breach of the contract of lease by the RCAM; whereas the damages sought in the Third-Party Complaint were those allegedly suffered by petitioner owing to the destruction of its billboard by the private respondents, thereby terminating the Billboard Advertisement Contract between petitioner and Digital. Digital also sued petitioner for recovery of the rental deposits it had already paid under the same contract. Consequently, petitioner had to engage the services of counsel and incurred litigation expenses in order to defend itself in the case filed against it by Digital. Thus, the two actions are completely different and distinct from each other so much so that a decision in either case could not be pleaded as *res judicata* in the other. Hence, there is no forum shopping that would necessitate the outright dismissal of this case.

WHEREFORE, premises considered, the instant Petition is hereby DENIED. The Decision and Resolution of the Court of Appeals dated 16 September 2003 and 8 July 2004, respectively, affirming the Decision of the RTC dated 28 April 2000, denying herein petitioner's motion to recover damages against the injunction bond, are

hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Callejo, Sr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Eloy R. Bello, Jr. and Arturo D. Brion, concurring; rollo, pp. 32-39.

[2] Id. at 41-42.

[3] Now Associate Justice of the Court of Appeals.

[4] Records, pp. 47-51.

[5] Penned by Judge Estela Perlas-Bernabe, Records, pp. 32-34.

[6] Id. at 36-37.

[7] Penned by Judge Manuel D. Victorio; CA rollo, pp. 53-54.

[8] Id.

[9] Penned by Judge Manuel D. Victorio; rollo, pp. 75-84.

[10] The correct date of issuance of the Order granting the writ of preliminary injunction is 6 February 1998.

[11] Rollo, p. 84.

[12] Id. at 85.

[13] Id. at 90.

[14] Id. at 92-94.

[15] Id. at 102.

[16] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Eubulo G. Verzola and Candido V. Rivera, concurring; CA rollo, p. 119.

[17] Id. at 129.

[18] Rollo, p. 37.

[19] First Global Realty and Development Corporation v. San Agustin, 427 Phil. 593, 600 (2002).

[20] Dungog v. Court of Appeals, 455 Phil. 675, 685 (2003).

[21] First Global Realty and Development Corporation v. San Agustin, supra note 19.

[22] Dungog v. Court of Appeals, supra note 20.

[23] Bustamante v. Court of Appeals, 430 Phil. 797, 809 (2002).

[24] Medina v. Greenfield Development Corporation, G.R. No. 140228, 19 November 2004, 443 SCRA 150, 159.

[25] Section 4(b), Rule 58, 1997 Revised Rules of Civil Procedure.

- [26] *Mendoza v. Cruz*, G.R. No. L-26829, 27 December 1979, 94 SCRA 821, 826.
- [27] *Aquino v. Socorro*, 146 Phil. 396, 401 (1970).
- [28] *Paramount Insurance Corporation v. Court of Appeals*, 369 Phil. 641, 649 (1999).
- [29] Rule 57, 1997 Revised Rules of Civil Procedure.
- [30] *Aquino v. Socorro*, *supra* note 27.
- [31] 139 Phil. 519, 524-525 (1969).
- [32] *Paramount Insurance Corporation v. Court of Appeals*, *supra* note 28.
- [33] *Valencia v. Court of Appeals*, 331 Phil. 590, 607 (1996).
- [34] *Paramount Insurance Corporation v. Court of Appeals*, *supra* note 28.
- [35] *Supra* note 27.
- [36] *Supra* note 31.
- [37] *Rollo*, pp. 86-89.
- [38] *Id.* at 87-88.
- [39] *Id.* at 24.
- [40] *Mindex Resources Development v. Morillo*, G.R. No. 138123, 12 March 2002, 379 SCRA 144, 152.
- [41] Recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the finding of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion [*Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, 8 December 2000, 347 SCRA 542; *Nokom v. National Labor Relations Commissions*, 390 Phil. 1228, 1243 (2000); *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phils.), Inc.*, 364 Phil. 541, 546-547 (1999); *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998); *Almendrala v. Ngo*, G.R. No. 142408, 30 September 2005, 471 SCRA 311, 322].
- [42] *Rollo*, p. 29.
- [43] *Id.*
- [44] *Nordic Asia Limited v. Court of Appeals*, 451 Phil. 482, 495 (2003).
- [45] For *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who 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 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.

[46] *Melo v. Court of Appeals*, G.R. No. 123686, 16 November 1999, 318 SCRA 94, 100.

[47] *Dela Cruz v. Joaquin*, G.R. No. 162788, 28 July 2005, 464 SCRA 576, 587-588.

[48] *Records*, pp. 78-97.

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