

JESSE YAP, PETITIONER, VS. COURT OF APPEALS (SPECIAL ELEVENTH [11TH] DIVISION), AND ELIZA CHUA AND EVELYN TE, RESPONDENTS.

G.R. No. 186730. June 13, 2012

Ponente: REYES, J.

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REYES, J.:

This is a petition for review on certiorari of the Decision[1] dated December 10, 2008 and Resolution[2] dated February 19, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 93974. The dispositive portion of the CA's assailed Decision states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case and the Orders issued by the public respondent Judge Rommel O. Baybay dated October 21, 2005 and January 18, 2006 are hereby SET ASIDE. Consequently, Civil Case No. 04-030 is hereby ordered as DISMISSED on account of *litis pendentia* and violation of the rule against forum-shopping.

SO ORDERED.[3]

On January 9, 2004, petitioner Jesse Yap (Yap) filed a complaint against respondents Eliza Chua (Chua) and Evelyn Te (Te) with the Regional Trial Court (RTC) of Makati City principally praying for the cancellation or discharge of several checks that he drew against his account with the Bank of the Philippine Islands (BPI). Yap's complaint was docketed as Civil Case No. 04-030 and raffled to Branch 66.

Yap alleged that he purchased several real properties through Te, a real estate broker, and as payment, delivered to her a number of checks either payable to her, the property owners or to the various individuals who agreed to finance his acquisitions. He agreed to effect payment in such manner on Te's claim that this will expedite the transfer of the titles in his favor.

Chua, one of those who funded his purchases, asked him to issue checks with her as payee to replace the checks he delivered to Te. Obliging, he drew six (6) checks payable to her against his account with BPI, which were uniformly postdated July 30, 1997. Particularly:

Check No.

Amount

659599

P3,000,000.00

708158

P2,500,000.00

708160

P2,756,666.00

712418

P10,900,000.00

712417

P10,900,000.00

727214

P960,000.00

He stopped payment on the above checks and closed his account when Te failed to deliver the titles on the properties. He also did the same on the following checks that Te endorsed to Chua for rediscounting without his consent:

Check No.

Date

Amount

0727205

September 15, 1997

P770,833.33

0727206

September 30, 1997

P770,833.33

He delivered to Te these checks, which were payable to a certain Badoria Bagatao (Bagatao), for the purchase of a parcel of land that, as Te represented, Bagatao supposedly owns. He, however, was later informed of the contrary leading to the conclusion that as no consideration attended the contract with Bagatao and all the other contracts of sale that he entered into through Te, it was just proper that the checks he issued as payment be cancelled or annulled.

Chua presented an altogether different version of the facts. According to Chua, she released P9,415,000.00 to Yap through a certain Jovita Dimalanta (Dimalanta) sometime in January 1997 in exchange for two (2) postdated checks payable to her with a face value of P5,000,000.00 each. A similar transaction took place in February 1997,

where she delivered to Dimalanta P9,415,000.00 upon request of Yap, with the latter issuing in her favor two (2) postdated checks payable to her in the total amount of P10,000,000.00. Yap twice requested for an extension and for Chua not to encash the four (4) checks. In return, he issued two (2) checks payable to Chua with a face value of P1,400,000.00 and P1,206,066.66 to cover the interest due.

Yap later replaced the four (4) checks with a face value of P5,000,000.00 each with a check payable to Chua for P20,000,000.00 and postdated April 22, 1997. When this check became due, Yap once again requested Chua for an extension and replaced it with BPI Check Nos. 712418 and 712417 to include the interest that would accrue until June 15, 1997. Thereafter, Yap, who asked for another extension, issued to Chua BPI Check No. 727214 to include payment of the interest that would accrue until July 30, 1997 on the P20,000,000.00 covered by BPI Check Nos. 712418 and 712417.

Apparently, Yap also delivered to Chua BPI Check Nos. 659599 and 708158 to replace the checks drawn against his account, which a certain Jesus Dy endorsed to her. Yap likewise delivered a check payable to Canda Medical Clinic and Hospital to Te, who in turn, endorsed it to Chua for rediscounting. Sometime in June 1997, Yap replaced this check with BPI Check No. 708160 to cover the interest from March to May 1997. Yap also gave Te two (2) checks payable to Bagatao, BPI Check Nos. 0727205 and 0727206, which were subsequently endorsed to Chua for rediscounting.

BPI Check Nos. 659599, 708158, 708160, 712418, 712417 and 727214 were dishonored for the reason “account closed”. On the other hand, Yap stopped payment on BPI Check Nos. 727205 and 727206.[4]

Verbal demands for Yap to make good the checks he issued proved to be futile. Thus, Chua filed with the RTC of General Santos City a complaint[5] for sum of money against Yap and his wife, Bessie. Chua’s complaint was docketed as Civil Case No. 6236 and raffled to Branch 23.

On June 8, 2001, the RTC of General Santos City issued a Decision,[6] the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants, ordering the latter to pay the former the following:

- P32,558,332.00 as principal with interest at 6% per annum from the date of the filing of the case until the whole amount is fully paid;
- P150,000.00 as moral damages;
- P50,000.00 as exemplary damages;
- P1,000,000.00 in concept of attorney’s fees; and
- The cost of suit.

The third-party complaint is DISMISSED.[7]

Armed with the foregoing narration, Chua moved for the dismissal of Civil Case No. 04-030 on the twin grounds of *litis pendentia* and forum shopping. Chua averred that Yap violated the rule against forum shopping when he failed to inform the RTC of Makati City of Civil Case No. 6236 and the pendency of his appeal of the decision rendered therein. The elements of *litis pendentia* exist, and forum shopping as the logical consequence thereof, considering that the two (2) cases arose from the same set of facts and involve the same parties.

In an Order[8] dated October 21, 2005, the RTC of Makati City refused to dismiss the case, ratiocinating as follows:

On *litis pendentia* as a ground for dismissal, the Court is not convinced. As correctly stated by the plaintiff, the reliefs prayed for in the two cases are different from each other considering that the collection case before the RTC of General Santos City is different from the instant case praying for the discharge/annulment of issued checks. As such the fundamental requisites of [*litis pendentia*] have not been met.

Anent dismissal on ground of forum shopping, the same is likewise denied for lack of merit. It is well-settled that it is the duty of the plaintiff, not the defendant, to declare pending suits it initiated between and among parties in its verification and certificate of non-forum shopping and not the other way around. A plaintiff in a civil case therefore, is not mandated under the Rules to declare that said plaintiff was a defendant in a prior suit instituted against him and other defendants by the defendant in a subsequent case of different nature.[9]

In an Order[10] dated January 18, 2006, the RTC of Makati City denied Chua's motion for reconsideration.

Chua filed a petition for certiorari with the CA, alleging that grave abuse of discretion attended the Orders of the RTC of Makati City dated October 21, 2005 and January 18, 2006. By virtue of the assailed decision, this was given due course and the CA ordered the dismissal of Civil Case No. 04-030.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence on the premises, we have come up with a finding that the respondent judge committed grave abuse of discretion in issuing the assailed orders.

The requisites of [*litis pendentia*] are: (a) the identity of parties or at least such as representing the same interests in both actions; (b) the identity of rights asserted and the relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

The relief sought in Chua in Civil Case No. 6236 was for Yap to pay the amount that he owed to Chua based on BPI Checks (sic) Nos. 0727205, 0727206, 659599, 708158, 708160, 712418, 712417 and 727214 that he issued. On the other hand, the relief prayed for by Yap in Civil Case No. 04-030 was for BPI Checks (sic) Nos. 0727205, 0727206, 659599, 708158, 708160, 712418, 712417 and 727214 that he issued to Chua purportedly without any valid consideration to be declared as null and void.

The cause of action of Yap in Civil Case No. 04-030 was also his defense in Civil Case No. 6236. Necessarily, in determining the liability of Yap in Civil Case No. 6236, the lower court addressed the issue of the validity of the subject checks. Branch 23 of the RTC in General Santos City ruled that the checks were validly issued and declared Chua as a holder in due course thereof. Moreover, the lack of consideration was raised as an affirmative defense and as the basis for his counterclaim and third-party complaint by Yap in Civil Case No. 6236. Therefore, Branch 66 of the RTC in Makati City committed grave abuse of discretion amounting to lack of jurisdiction when it took cognizance of Civil Case No. 04-030 and denied Chua's motion to dismiss it on account of the pendency of another action in another court between them for the same case.

Yap, in filing Civil Case No. 04-030, also violated the rule against forum shopping. In the test to determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendencia* (sic) are present, or whether a final judgment in one case will amount to *res judicata* in another, i.e., whether in the two or more cases pending, there is identity of parties, rights or causes of action, and the reliefs sought.

A Motion to Dismiss was timely filed by Chua invoking *litis pendencia* (sic) and violation of the rule against forum shopping. After having been appraised of the pending appeal before the Supreme Court of a case involving the same parties based on the same rights and reliefs sought, the respondent judge should have granted the said motion of Chua and dismissed Civil Case No. 04-030.[11] (Citations omitted)

Yap urges this Court to reverse and set aside the CA's dismissal of his complaint against Chua and Te, claiming

that he is not guilty of forum shopping as the alleged existence of *litis pendentia* is belied by the incomparable causes of action he and Chua advanced in the separate complaints they initiated against each other. Yap claimed that his prayer for the cancellation or discharge of the subject checks entails a determination of their validity and on whether a valid consideration exists for their issuance, which is immaterial or irrelevant in determining whether he should be liable for the amounts that Chua released to Te and Dimalanta.

Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any 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 appeal or a special civil action for certiorari. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets.[12] What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.[13] Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.[14]

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[15]

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. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[16]

The foregoing guided this Court in determining whether Yap is liable for forum shopping for filing a complaint for annulment or discharge of checks following Chua's filing of a complaint for a sum of money with the two cases allegedly involving the same factual antecedents, issues and arguments. In so doing, this Court agrees with the CA that all the elements of *litis pendentia* exist and that Yap had indulged in the detestable act of forum shopping, warranting the outright and summary dismissal of Civil Case No. 04-030.

The first requisite of *litis pendentia* is present as there is identity of parties. The second and third requisites are likewise present. Apart from the fact that the same factual antecedents prompted the filing of the two cases, that Yap's defense in Civil Case No. 6236 constitutes his cause of action in Civil Case No. 04-030 necessarily implies reliance on the same evidence for the resolution of both cases.

Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both

actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other.[17] Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint.[18]

This Court takes note of the fact that Yap filed his complaint for the annulment of the checks he issued to Chua after he was adjudged by the RTC of General Santos City liable. This strikes the Court as indicative of his deliberate and willful attempt to render nugatory and defeat the adverse decision of the RTC of General Santos City and relieve himself of his obligation to pay by having the checks he issued annulled, albeit the remedy of appeal was available and which he, in fact, resorted to. Chua's complaint is anchored on the amounts Yap received from her and the RTC of General Santos City decided in her favor on the strength of the checks that Yap issued and endorsed to her. By seeking to cancel or discharge such checks, Yap attempted to use the RTC of Makati City to destroy the evidentiary foundation of the decision of the RTC of General Santos City. In doing so, Yap trifled with court processes and exposed the courts to the possibility of rendering conflicting decisions. Worse, Yap sought to accomplish the prohibited - a court reversing a decision rendered by a court of co-equal rank. Thus, it matters not that the factual findings and conclusions of law of the RTC of General Santos City, the RTC of Makati City, the CA and even of this Court may concur. It is the fact that our judicial system is rendered vulnerable to such uncertainties and vexations that any and all efforts to forum shop should be treated with aversion.

As this Court held in *Madara v. Perello*:^[19]

Other permutations depending on the rulings of the two courts and the timing of these rulings are possible. In every case, our justice system suffers as this kind of sharp practice opens the system to the possibility of manipulation; to uncertainties when conflict of rulings arise; and at least to vexation for complications other than conflict of rulings. Thus, it matters not that ultimately the Court of Appeals may completely agree with the RTC; what the rule on forum shopping addresses are the possibility and the actuality of its harmful effects on our judicial system.^[20]

WHEREFORE, premises considered, the petition is DENIED. The Decision dated December 10, 2008 and Resolution dated February 19, 2009 of the Court of Appeals in CA-G.R. SP No. 93974 are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Pampio A. Abarintos and Marlene Gonzales-Sison, concurring; rollo, pp. 210-217.

[2] *Id.* at 229-230.

[3] *Id.* at 216.

- [4] Id. at 129.
- [5] Id. at 44-56.
- [6] Id. at 137-151.
- [7] Id. at 151.
- [8] Id. at 121.
- [9] Id.
- [10] Id. at 122.
- [11] Id. at 215-216.
- [12] *Spouses dela Cruz v. Joaquin*, 502 Phil. 803, 813 (2005).
- [13] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003).
- [14] *Municipality of Taguig v. Court of Appeals*, 506 Phil. 567, 582 (2005).
- [15] *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003).
- [16] *Villarica Pawnshop, Inc. v. Gernale*, G.R. No. 163344, March 20, 2009, 582 SCRA 67, 78-79.
- [17] *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority*, G.R. No. 185159, October 12, 2009, 603 SCRA 470, 482.
- [18] *Umale v. Canoga Park Development Corporation*, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 162.
- [19] G.R. No. 172449, August 20, 2008, 562 SCRA 638.
- [20] Id. at 655.

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