

SURENDRA GOBINDRAM DASWANI, PETITIONER, VS. BANCO DE ORO UNIVERSAL BANK AND REGISTER OF DEEDS OF MAKATI CITY, RESPONDENT.

G.R. No. 190983. July 29, 2015

Ponente: BRION, J.

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BRION, J.:

We resolve in this petition for review on certiorari[1] the challenge to the November 20, 2009 resolution[2] and the January 15, 2010 order[3] of the Regional Trial Court of Makati City, Br. 61. These assailed rulings granted respondent Banco De Oro Universal Bank's (BDO) motion to dismiss in Civil Case No. 09-843.

The Factual Antecedents

On September 17, 2004, petitioner Surendra Gobindram Daswani (Daswani) filed against BDO a complaint for the declaration of nullity of foreclosure proceedings and the cancellation of the certificate of sale's registration, with prayer for damages (Civil Case No. 04-1075).[4] This case was raffled to the Regional Trial Court of Makati City, Br. 133 (RTC Br. 133).

In his complaint, Daswani alleged that he and two other Indians mortgaged five condominium units to secure their loans to Dao Heng Bank, which BDO subsequently acquired. On January 27, 2004, BDO demanded the payment of their obligation. Having failed to pay, BDO extrajudicially foreclosed their real estate mortgage. The condominium units were subsequently sold in a public auction sale where BDO emerged as the highest bidder. Arguing that BDO was not an original party to the loan and mortgage agreement, Daswani prayed for the annulment of the foreclosure sale, the cancellation of BDO's annotation of the sale on their condominium certificates of title (CCTs), and the payment of damages from BDO.

On August 25, 2005, Daswani amended his complaint (first complaint) and alleged that during the pendency of the case, the Register of Deeds of Makati City cancelled their CCTs and issued new ones to BDO. Thus, in addition to his original prayer, Daswani asked for the cancellation of BDO's new CCTs and for the issuance of new ones under his name.[5]

In its March 20, 2009 order,[6] the RTC Br. 133 dismissed Daswani's amended complaint without prejudice. This trial court held that the conversion of the complaint into a reconveyance claim, a real action, necessitated the payment of additional docket fees based on either the fair market value or the assessed value of the real properties involved. Despite knowing this, Daswani allowed two years to pass without paying. On this basis, the RTC Br. 133 granted BDO's prayer for the dismissal of Daswani's complaint.

Instead of filing a motion for reconsideration from the dismissal order, Daswani filed a motion for leave of court to admit his amended complaint (motion to admit) on June 15, 2009.[7] Claiming to have paid the additional docket fees, Daswani asked the RTC Br. 133 to give due course to his dismissed amended complaint.

BDO opposed this motion and argued that the order of dismissal had already lapsed to finality when Daswani

failed to ask for its reconsideration. BDO also pointed out that despite Daswani's representation that he had already paid the additional docket fees, he failed to present any receipt as evidence of his claim. Thus, BDO asked the RTC Br. 133 not only to deny the motion, but also to dismiss Daswani's amended complaint with prejudice.[8]

Without waiting for the resolution of his motion to admit, Daswani filed a motion to withdraw his amended complaint[9] (motion to withdraw) on August 19, 2009. In this subsequent motion, Daswani gave notice to the RTC Br. 133 that he would now abandon his motion to admit and that he would just re-file his complaint, pursuant to the trial court's order of dismissal without prejudice.

True to his word, on September 16, 2009, Daswani re-filed his complaint[10] (second complaint) against BDO. This time, the case (Civil Case No. 09-843) was raffled to the Regional Trial Court of Makati City, Br. 61 (RTC Br. 61).

In response to this new case, BDO filed a motion to dismiss[11] and asserted that Daswani committed forum shopping when he filed another action identical to that pending in the RTC Br. 133. BDO also argued that Daswani misrepresented facts in his certification against forum shopping when he alleged that he had no knowledge of any pending case that had similar issues with his second complaint. Further, BDO alleged that Daswani failed again to pay the required docket fees. Under these circumstances, the new case should be dismissed for *litis pendentia* and lack of jurisdiction over the subject matter.

In its November 20, 2009 resolution,[12] the RTC Br. 61 ruled in favor of BDO and dismissed Daswani's second complaint because of the pendency of the first case in the RTC Br. 133. Daswani sought the reconsideration[13] of this ruling but the RTC Br. 61 also denied it in its January 15, 2010 order.[14]

Meanwhile, on February 2, 2010, the RTC Br. 133 granted Daswani's motion to withdraw his amended complaint.

Raising pure questions of law, Daswani is now before the Court on a petition for review on certiorari.

The Petition

Primarily, Daswani argues that he did not commit forum shopping when he filed his second complaint. In his motion to withdraw, he already gave due notice to the RTC Br. 133 that he would no longer pursue his first complaint and that he would just re-file it. On this basis, there could also be no misrepresentation in the certification against forum shopping that accompanied his second complaint.

The Issue

The main issue before us is whether Daswani committed forum shopping when he re-filed his complaint with the RTC Br. 61, thus warranting its dismissal for violation of the rule against *litis pendentia*.

The Court's Ruling

We GRANT the petition.

Rule 45 is the proper mode of appeal when only questions of law are raised.

This case is brought to us directly under Rule 45 in relation to Rule 41 of the Rules of Court.

Since the RTC Br. 61's order of dismissal was in the nature of a final order, the proper remedy for its review is Rule 41. However, under this rule, an appeal from the RTC's final decision or ruling may be undertaken in three

ways, depending on the nature of the attendant circumstances, namely:

(1)

an ordinary appeal to the Court of Appeals (CA) in cases decided by the RTC in the exercise of its original jurisdiction;

(2)

a petition for review to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction; and

(3)

a petition for review on certiorari directly filed with the Court where only questions of law are raised or involved.[15]

Applying the third paragraph, a party questioning the RTC's final decision or ruling could come directly to the Court when his appeal involved only questions of law.

In *Far Eastern Surety and Insurance v. People*,^[16] we explained that a question of law arises when there is doubt as to what the law is on a certain state of facts. Its resolution does not involve an examination of the probative value of the evidence presented by the litigants, and relies solely on what the law provides on a given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test is not the appellation given to a question by the party raising it, but whether the appellate court could resolve the issue without examining or evaluating the evidence.^[17]

The Court notes that the only issue before it is whether Daswani committed forum shopping when he filed his second complaint. This is a question of law as based on the facts; the Court only needs to determine if forum shopping which results to *litis pendencia* exists. If the answer is a yes, then the dismissal of Daswani's complaint is warranted under Section 1(e), Rule 16 of the Rules of Court, viz:

Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(e) That there is another action pending between the same parties for the same cause; xxx. [Emphasis supplied.]

In these lights, Daswani correctly availed of the remedy of Rule 45. When only questions of law remain to be addressed, a direct recourse to the Court under this remedy is the proper mode of appeal.^[18]

The facts of the case negate

Daswani's commission of

forum shopping.

Forum shopping exists when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.^[19]

Applying this definition, BDO asserts that Daswani is guilty of forum shopping. His second complaint filed with the RTC Br. 61 (Civil Case No. 09-843), was one and the same with his first complaint filed with the RTC Br. 133 (Civil Case No. 04-1075). Both complaints were founded on the same facts, involved the same parties, and raised the same issues for the trial courts' resolution.

However, a more analytical examination of the definition of forum shopping and the policy behind it compels us to judiciously apply it in Daswani's case.

In *Yap v. Chua*,^[20] the Court elaborately explained the nature of forum shopping, to wit:

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 [is] 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.^[21] [Emphasis supplied.]

Following this line of reasoning, one can conclude that forum shopping is always willful and deliberate on the part of the litigant. To secure a higher percentage of winning, a party resorts to the filing of the same suits in various fora, without any regard for the resulting abuse to the courts, to the other party, and to our justice system. This malicious ulterior motive compels a party to violate the rules against forum shopping notwithstanding its pernicious effects.

In the present case, no such intentional violation may be imputed to Daswani. He re-filed his complaint with the RTC Br. 61 under the good faith belief that his first complaint with the RTC Br. 133 could no longer be revived. To our mind, Daswani's manifestation in his motion to withdraw that he would just re-file his complaint, amounted to his acknowledgement of the finality of the RTC Br. 133's order of dismissal without prejudice.

Moreover, in determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: "(a) [there is] identity of parties, or at least such parties who represent the same interests in both actions; (b) [there is] identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) [that] 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."^[22]

Res judicata exists, if the following requisites are all present: "(1) the former judgment or order had already been final; (2) the judgment or order had been on the merits; (3) it had been rendered by a court having jurisdiction over the subject matter and the parties; (4) and because of the concurrence of the first three requisites, there is now between the first and the second action, identity of parties, of subject matter and cause of action."^[23]

All the stated elements of *res judicata* are present in this case except for the second requirement. The dismissal order in Daswani's first complaint did not touch on the merits of the case. Civil Case No. 04-1075 was dismissed merely because of Daswani's failure to fully pay the required docket fees.

Notably, the RTC Br. 133's dismissal order categorically provided that it was a dismissal without prejudice. In other words, Daswani was given the option to re-file his complaint, provided that it had not yet prescribed, and that the defect which caused its dismissal had already been cured. In this case, the defect was the nonpayment of the required docket fees, which Daswani already addressed in his second complaint.

There was no misrepresentation

in Daswani's certification

against forum shopping.

To further emphasize that the facts of this case sanctioned the dismissal of Daswani's second complaint, BDO also alleged that Daswani misrepresented facts in his certification against forum shopping.

This pleading requirement is provided for in Section 5, Rule 7[24] of the Rules of Court. Under this provision, the plaintiff is required to certify that: "(a) 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."

Thus, in order to be held liable under this provision, there should be, either a failure to include the certification in one's initiatory pleading, or a misrepresentation as to the pendency of another case involving the same issues, parties, and causes of actions with the second complaint. As this certification aims to address the malicious practice of forum shopping among litigants, it penalizes the noncomplying party with the dismissal of his complaint, and possibly with contempt.[25]

On this basis, the necessary conclusion is that the earlier case should still be ongoing or pending when the subsequent action had been filed. Notably, this was not the situation in Daswani's case.

When Daswani filed his second complaint, the RTC Br. 133's dismissal order had already attained finality. Daswani's failure to file a motion for reconsideration within 15 days from his receipt of this order, made it final and executory. Even BDO acknowledged this fact when it adopted this argument in its opposition[26] to Daswani's subsequent motion for leave of court to admit his amended complaint.

In these lights, the RTC Br. 133 lost jurisdiction over Civil Case No. 04-1075 after its dismissal order attained finality. Daswani's filing of his motion to admit and subsequently his motion to withdraw, did not operate to revive its jurisdiction over his first complaint. Hence, even the RTC Br. 133's belated February 2, 2010 order (which granted Daswani's motion to withdraw) was also void as it was rendered by a court without jurisdiction.

On the basis of this reasoning, there could be no misrepresentation in Daswani's certification against forum shopping in his second complaint. Moreover, fraud is not presumed; it must be proven by clear and convincing evidence,[27] which BDO failed to do.

Under these facts and circumstances, we rule that there was no pending litigation that could give rise to forum shopping, *litis pendentia*, or *res judicata* on Daswani's part without any valid ground for dismissal, the RTC Br. 61 should not have dismissed Daswani's second complaint but should have given it due course.

WHEREFORE, premises considered, we hereby GRANT the present petition and ANNUL the November 20, 2009 resolution and the January 15, 2010 order of the Regional Trial Court of Makati City, Br. 61. The trial court is hereby ordered to give due course to petitioner Surendra Gobindram Daswani's complaint, docketed as Civil Case No. 09-843. No costs.

SO ORDERED.

Carpio, (Chairperson), Mendoza, Perlas-Bernabe,[*] and Leonen, JJ., concur.

[*] Designated as Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 2115 dated July 22, 2015.

[1] Rollo, pp. 8-20.

[2] Penned by Judge J. Cedrick O. Ruiz; *id.* at 83-86.

[3] Id. at 91.

[4] Id. at 21-28.

[5] Id. at 29-36.

[6] Id. at 37-38.

[7] Id. at 39-51.

[8] Id. at 52-54.

[9] Id. at 55-58.

[10] Id. at 59-67.

[11] Id. at 68-76.

[12] Supra note 2.

[13] Id. at 87-90.

[14] Supra note 3.

[15] Section 2, Rule 41, Rules of Civil Procedure.

[16] G.R. No. 170618, November 20, 2013, 710 SCRA 358.

[17] Id. at 365.

[18] *Sevilleno v. Carilo*, 559 Phil. 789, 792 (2007).

[19] *Heirs of Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 178.

[20] G.R. No. 186730, June 13, 2012, 672 SCRA 419.

[21] Id. at 427-428.

[22] *Spouses Melo v. The Hon. Court of Appeals*, G.R. No. 123686, November 16, 1999, 376 Phil. 204, 211 (1999).

[23] *Taganas v. Emuslan*, 457 Phil. 305, 311-312 (2003).

[24] 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. (n)

[25] Section 5, Rule 7, Rules of Court.

[26] Supra note 8.

[27] Spouses Ramos v. Obispo, G.R. No. 193804, February 27, 2013, 692 SCRA 240, 249-250.

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