

**GOODLAND COMPANY, INC., PETITIONER, VS. ASIA UNITED BANK,
CHRISTINE T. CHAN, FLORANTE DEL MUNDO, ENGRACIO M.
ESCASINAS, JR., IN HIS OFFICIAL CAPACITY AS CLERK OF COURT
& EX-OFFL...**

G.R. No. 195546. March 14, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

These consolidated petitions for review on certiorari filed under Rule 45 by one and the same party (Goodland Company, Inc.) both assail the Decision[1] dated September 15, 2010 and Resolution[2] dated January 31, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 90418.

Factual Antecedents

Sometime in July 1999, petitioner Goodland Company, Inc. (petitioner) mortgaged its two parcels of land situated in Sta. Rosa, Laguna and covered by Transfer Certificate of Title (TCT) Nos. 321672 and 321673 (“Laguna Properties”). The Third Party Real Estate Mortgage (REM) secured the loans extended by respondent Asia United Bank (“AUB”) to Radio Marine Network (Smartnet), Inc. (RMNSI), doing business as Smartnet Philippines,[3] under the latter’s Php250 million Omnibus Credit Line with AUB.

In addition to the aforesaid collaterals, petitioner executed a Third Party REM over its 5,801-square meter property located at Pasong Tamo St., Makati City (“Makati Property”) covered by TCT No. 114645. The REMs, both signed by Gilbert G. Guy, President of Goodland Company, Inc., were duly registered by AUB with the Registry of Deeds for Calamba, Laguna and Registry of Deeds for Makati City, and annotated on the said titles.

Subsequently, however, petitioner repudiated the REMs by claiming that AUB and its officers unlawfully filled up the blank mortgage forms and falsified the entries therein. The Laguna properties were the subject of two suits filed by petitioner to forestall their imminent foreclosure, and similar actions were likewise instituted by petitioner involving the Makati property which is the subject of the present case.

Laguna Properties[4]

On January 16, 2003, petitioner filed a complaint for annulment of mortgage before the Regional Trial Court (RTC) of Biñan, Laguna, Branch 25, docketed as Civil Case No. B-6242, on the ground that said REM was falsified and in contravention of the parties’ agreement that the blank mortgage form would merely serve as “comfort document” and not to be registered by AUB. While said case was pending, RMNSI/Smartnet defaulted on its loan obligation, which prompted AUB to exercise its right under the REM by filing on October 19, 2006 an application for extrajudicial foreclosure of real estate mortgage under Act 3135, as amended, with the Office of the Executive Judge of the RTC of Biñan, Laguna. In the public auction sale, AUB emerged as the highest bidder and was issued a Certificate of Sale which was registered with the Registry of Deeds of Calamba on November 23, 2006.

Prior to the consolidation of title in the foreclosing mortgagee (AUB), petitioner commenced a second suit on November 28, 2006 in the RTC of Biñan, Branch 25, docketed as Civil Case No. B-7110. The complaint sought to annul the foreclosure sale and enjoin the consolidation of title in favor of AUB, on the ground of alleged falsification of the REM.

On December 11, 2006, respondents moved to dismiss Civil Case No. B-7110, calling the attention of the RTC to petitioner's forum shopping in view of the pendency of Civil Case No. B-6242. They argued that the two cases were anchored on the alleged falsification of the REM as basis for the reliefs sought. The RTC granted the said motion on March 15, 2007 and dismissed with prejudice Civil Case No. B-7110 on grounds of forum shopping and *litis pendentia*. Said court explained that the injunction case (B-7110) and annulment case (B-6242) were founded on the same transactions, same essential facts and circumstances, and raise substantially the same issues. That petitioner additionally prayed for a writ of preliminary injunction did not affect the similarity of the two cases; petitioner could have prayed for injunctive relief as ancillary remedy in the annulment case. It was also stated that the judgment in the annulment case on the validity of the REM would constitute *res judicata* on the injunction case.

On March 15, 2007, the RTC granted AUB a writ of possession over the foreclosed properties. The writ was issued on March 26, 2007 and AUB obtained possession of the properties on April 2, 2007.

On August 16, 2007, the RTC dismissed Civil Case No. B-6242 on motion of respondents. Said court likewise noted that the allegations and reliefs sought by petitioner were identical with those in Civil Case No. B-7110, and that petitioner did not inform the court that it filed Civil Case No. B-7110.

Petitioner appealed both dismissals to the CA, the separate appeals it filed were docketed as CA-G.R. CV No. 90114 (injunction case) and CA-G.R. CV No. 91269 (annulment case).

On June 5, 2009, the CA granted the appeal in CA-G.R. CV No. 90114 and reversed the RTC's order dated March 15, 2007. It ordered the reinstatement of petitioner's complaint in Civil Case No. B-7110.[5] Respondents filed a motion for reconsideration which was denied in a resolution[6] dated February 17, 2010.

In a decision dated August 11, 2009, petitioner's appeal in CA-G.R. CV No. 91269 was likewise granted, which effectively reinstated Civil Case No. B-6242. Respondents moved for reconsideration but the same was denied in a resolution dated November 10, 2009.

Respondents elevated to this Court the CA's reversal of the RTC's dismissal orders, in separate petitions for review under Rule 45, docketed as G.R. No. 190231 (CA-G.R. CV No. 91269) and G.R. No. 191388 (CA-G.R. CV No. 90114).

On December 8, 2010, this Court's First Division granted the petition in G.R. No. 190231, reversing and setting aside the decision dated August 11, 2009 and resolution dated November 10, 2009 of the CA, and reinstating the August 16, 2007 and December 5, 2007 orders of the RTC which dismissed Civil Case No. B-6242. Petitioner filed a motion for reconsideration but the same was denied with finality in the Court's Resolution[7] dated January 19, 2011.

On March 9, 2011, this Court's First Division likewise granted the petition in G.R. No. 191388 (CA-G.R. CV No. 90114), reversing and setting aside the decision dated June 5, 2009 and resolution dated February 17, 2010 of the CA. The Court ordered the reinstatement of the March 15, 2007 order of the RTC dismissing Civil Case No. B-7110.

Makati Property

Petitioner filed the first suit assailing the REM over its property covered by TCT No. 114645 on January 17, 2003, docketed as Civil Case No. 03-045 of the RTC of Makati City, Branch 56. The Complaint[8] against AUB, Abraham Co (AUB President), Atty. Joel T. Pelicano and the Register of Deeds of Makati City alleged that sometime in March 2000, in compliance with the requirements of AUB, and by way of accommodation as security for the loan of Smartnet Philippines, Inc. (SPI), Mr. Gilbert G. Guy signed the blank REM deed with the understanding that the document shall not be completed and not to be registered with the Register of Deeds as it would only serve as comfort document to prove petitioner's willingness to execute a REM in the future if so demanded by AUB and agreed upon by Smartnet. In contravention of such agreement and despite the fact that no notary public was present when Mr. Guy signed the REM, AUB and its officers made it appear that the REM dated February 29, 2000 with the stated consideration of Php202 million was duly completed and notarized, and was subsequently registered with the Register of Deeds. Disparities in the copy of the REM on file with the Office of the Clerk of Court of Pasig City were likewise discovered by petitioner (community tax certificates used were issued in 2001). On January 29, 2002, petitioner sent its written objections to the spurious REM and demanded from AUB its immediate cancellation. Upon request of petitioner, the National Bureau of Investigation also investigated the falsification and found forgery in the signature of respondent Pelicano (Notary Public).

Petitioner further claimed that it learned from Smartnet that the latter never obtained any peso-denominated loan from AUB, as all its loans for working capital were in clean Japanese Yen loans. Being a falsified document, the subsequent annotation of the REM on the title of petitioner subjected the latter to an encumbrance never intended nor consented to by petitioner as owner, and consequently to the risk of foreclosure at the behest of AUB. Petitioner also alleged bad faith on the part of AUB and Co in the fraudulent execution and registration of the REM without its knowledge and consent, while respondent Pelicano's acknowledgment on the spurious REM is a violation of his duties as a notary public and made him a party to the fraudulent act.

Petitioner thus prayed for the following reliefs:

1. the Deed of Real Estate Mortgage dated February 29, 2000 be declared null and void, and accordingly cancelled;
2. the annotation of real estate mortgage on TCT-114645 under Entry No. 53584 be cancelled, and that defendants AUB and Co be ordered to surrender the said titles to plaintiff Goodland;
3. defendants AUB, Abraham Co, and Joel T. Pelicano be adjudged jointly and severally liable to plaintiff Goodland the sum of PhP5,000,000.00 as actual damages, PhP1,000,000.00 as attorney's fees and PhP1,000,000.00 as expenses of litigation;
4. defendants AUB and Abraham Co be adjudged jointly and severally liable to pay plaintiff Goodland the sum of PhP2,000,000.00 as exemplary damages; and
5. defendant Joel T. Pelicano, be adjudged liable to pay plaintiff Goodland the sum of P1,000,000.00 as exemplary damages;

Plaintiff prays for cost of suit and for such further or other reliefs and remedies just or equitable under the premises.[9]

On November 30, 2006, petitioner filed the second case against herein respondents AUB and its officers Christine T. Chan, Florante Del Mundo, Engracio M. Escasinas, Jr. (RTC of Makati City Clerk of Court and Ex-Officio Sheriff), Norberto B. Magsajo (Sheriff IV) and Ronald A. Ortile (Register of Deeds for Makati City), docketed as Civil Case No. 06-1032 of RTC of Makati City, Branch 145. Whereas the earlier case (Civil Case No. 03-045) sought the annulment of the REM based on alleged irregularities in its execution, Civil Case No. 06-1032 prayed for injunctive relief and/or nullification of the extrajudicial foreclosure sale which petitioner alleged to be

procedurally and legally defective on account of the following:

- The annotation of the falsified Third Party MORTGAGE was contrary to and in violation of the express agreement of defendant AUB and plaintiff GOODLAND;
- The Extra-Judicial Foreclosure is null and void as it is based on a null and void registration/annotation of a falsified Real Estate Mortgage;
- Defendant AUB's insistence on conducting the foreclosure despite the pendency of the annulment case betrays the utter bad faith and malicious intent of defendant AUB;
- The foreclosure is for an alleged unpaid obligation of RMNI which is not secured by the subject Third Party MORTGAGE;
- No demands for payment were made by defendant AUB on SPI;
- The publication of the subject "Notice of Sheriff's Sale" in "The Foreign Post", which is not a "newspaper of general circulation", is null and void as it does not comply with the strict and mandatory requirements of the law (Section 3 Act No. 3135, as amended).
- The provision on redemption in the General Banking Law of 2000 (R.A. No. 8791), that is, Section 47 (par. 2) thereof, is unconstitutional on the ground that it violates the constitutional right of plaintiff GOODLAND to equal protection of the laws under Sec. 1, Art. III of the Constitution. It also violates the prohibition against impairment of the obligations of contracts stipulated in Sec. 10, Art. III of the Constitution because it takes away from plaintiff GOODLAND the vested one-year redemption period under the existing law (Sec. 6 of Act No. 3135) at the time of the delivery of the subject Third Party MORTGAGE to defendant AUB in June 1999. The one (1) year redemption period of plaintiff GOODLAND under Sec. 6 of Act No. 3135 was drastically reduced to a maximum of three (3) months only to as short as twenty-four (24) hours, as what happened in the other foreclosure conducted by defendant AUB on the Sta. Rosa, Laguna properties of plaintiff GOODLAND.[10] (Emphasis and italics in the original.)

In addition to the issuance of a temporary restraining order (TRO) and writ of preliminary injunction to be made permanent after trial, petitioner specifically prayed that judgment be rendered in its favor and against the respondents, as follows:

(1)

Declaring the annotation and registration of the subject Third Party MORTGAGE with the Registry of Deeds of Makati City as null and void and of no legal force and effect;

(2)

In the event that a valid and legal auction sale be already conducted, declaring that the foreclosure proceeding/sale of the subject mortgaged property and/or the Certificate of Sale issued in favor of the winning bidder, as null and void and of no legal force and effect;

(3)

In the event that plaintiff GOODLAND's title to the subject property be already cancelled and the title was already consolidated or a new title already issued in favor of the winning bidder, declaring the said cancellation of title and consolidation of title and issuance of new title in the name of the winning bidder, as null and void, and ordering the cancellation of the said invalidly issued new title in the name of the winning bidder and likewise ordering the issuance of new title in the name of plaintiff GOODLAND;

(3)

In the alternative, in the event that the Honorable Court finds the foreclosure proceedings as proper, valid and legal, declaring that Section 47 (par. 2) of the General Banking Law of 2000 (R.A. No. 8791) is unconstitutional, and granting plaintiff GOODLAND the right to redeem the mortgaged properties in accordance with the provisions of Sec. 6 of Act No. 3135;

(4)

Ordering defendants AUB, Christine T. Chan and Florante del Mundo to, jointly and severally, pay plaintiff GOODLAND the following amounts, to wit:

(A)

Actual and compensatory damages in the amount of not less than Four Million Pesos (P4,000,000.00);

(B)

Exemplary damages in the amount of not less than One Million Pesos (P1,000,000.00);

(C)

Attorney's fees in the amount of Five Hundred Thousand Pesos (P500,000.00);

(D)

Litigation expenses; and,

(E)

Costs of suit.[11]

On December 13, 2006, the RTC issued an Order[12] denying petitioner's application for the issuance of a writ of preliminary injunction, as well as respondents' motion to dismiss based on forum shopping, non-payment of correct docket fees and failure to state a cause of action. However, the court reserved the issuance of the corresponding order requiring petitioner to pay the appropriate docket fees after respondents shall have submitted what they believed should have been the correct computation thereof.

Respondents filed their Answer Ad Cautelam[13] denying the allegations of the complaint regarding the fraudulent execution and registration of the REM and the loan obligation it secured, irregularities in the conduct of the extrajudicial foreclosure sale, and that their acts were done in bad faith. They asserted that: (1) Based on representations by Mr. Gilbert Guy, RMNSI, Smartnet Philippines and SPI operate under one and the same entity, all being businesses of Mr. Guy and hence, "Smartnet Philippines" undoubtedly refers to RMNSI which has an authorized capital stock of Php400 million and an Omnibus Credit Line with AUB, while SPI, a corporate shell created by Mr. Guy, has an authorized capital stock of only Php1 million and has not been granted any credit facility by AUB; (2) the mortgage deed states that the debtor is Smartnet Philippines, the DTI-registered name of RMNSI, as also with the Secretary's Certificate of petitioner in connection with the authority to use the Makati property as security for the loan obligation of RMNSI, and the promissory notes involved in the foreclosure application; (3) There was never any understanding not to complete or register the REM document as AUB would not have approved the loans if not for the security offered by petitioner; Mr. Guy himself transmitted the REM he signed, which was not a blank document, and petitioner knew from the start the registration of the REM was forthcoming after its due execution by Mr. Guy, as the same would be in the normal course of business of AUB; (4) The same facts obtain in connection with the mortgage of petitioner's Laguna Properties; (5) The REM was valid and binding, the property covered thereby may be validly foreclosed; respondents have not performed any irregularity or violation of law, and have neither engaged in any fraudulent, malicious and abusive conduct or

transaction; it was petitioner and Mr. Guy who had conspired to defraud AUB by, among others, denying the validity and due execution of the REM; (6) AUB complied with the legal requirements for the extrajudicial foreclosure of the subject property including the public auction held on December 4, 2006 conducted by Sheriff Magsajo in the presence of a representative of petitioner who did not bid, and accordingly AUB consolidated its ownership over the foreclosed property sold to it as the highest bidder, with the issuance of TCT No. 223120 in its name as the new absolute owner; and (7) Considering that the extrajudicial foreclosure was admittedly an exercise by AUB of its right as an unpaid and aggrieved creditor-mortgagee, the same may not legally rise to any liability for damages in favor of petitioner, in the exercise of such right, AUB committed no irregularity, bad faith, fraud or malicious action.

Respondents contended that petitioner is guilty of forum shopping, as it has previously filed a case for the annulment of the REM (Civil Case No. 03-045) which is pending before Branch 56. Said case was based on the same cause of action, that is, petitioner's perceived irregularities in the execution and registration of the REM. The injunctive relief sought by petitioner against the foreclosure is properly a provisional and ancillary remedy in the annulment case; the institution of the injunction case was therefore not compelled by respondents' acts but by petitioner's own negligence and contempt.

The following affirmative and special defenses were likewise raised by respondents: (1) the RTC has no jurisdiction over the subject matter considering petitioner's fraudulent failure to pay the correct amount of docket fees, as it deliberately concealed the fair market value of the subject property; (2) without prejudice to other sanctions, the complaint should be summarily dismissed considering that petitioner engaged in a willful, deliberate and contumacious act of forum shopping; the certificate of non-forum shopping it submitted was false and perjurious; (3) the case should also be dismissed on the ground of *litis pendentia* as the issues herein are already subsumed in the annulment case pending with another branch; (4) the court has not validly acquired jurisdiction over the persons of respondents for lack of service of summons, the Officer's Return dated December 4, 2006 clearly stated that the summons were unserved and which failed to state the facts and circumstances showing the impossibility of personal service of summons upon the respondents, and neither did petitioner seek the issuance of an alias summons; (5) the case is already moot because title had already been consolidated in the name of AUB which may no longer be restrained from exercising rights of ownership over the foreclosed property; the pendency of a civil case for the nullity of the mortgage document is not a legal bar to foreclosure by the creditor-mortgagee upon the default of the debtor-mortgagor; (6) even assuming there was a defect in the notarization of the REM, it is not a ground to invalidate the foreclosure sale or hold in abeyance the consolidation of title in favor of AUB; (7) based on the facts alleged in the complaint, it is clear that AUB did not act in bad faith nor abused its rights when it caused the foreclosure of the subject property; (8) petitioner's claims that the unpaid obligations of RMNSI is not secured by the REM and that no demand for payment was made on SPI, are both irrelevant and downright perjurious and misleading; and (9) even on the basis of the allegations in the complaint and its annexes, the same fail to state a cause of action, individual respondents cannot be held liable for damages as they have not acted with bad faith or fraud in connection with the REM; in any event, apart from the demand letter sent to RMNSI, a demand letter was also sent to SPI at the address indicated by petitioner itself in the complaint, a copy of said demand letter addressed to "Radiomarine Network (Smartnet), Inc. doing business as Smartnet Philippines and Smartnet Philippines, Inc." at Building 8359, Zambales Hi-way cor. Bataan Rd., Upper Cubi, Subic Bay Freeport Zone.

Respondents further averred that contrary to petitioner's allegation, "The Foreign Post" is a newspaper of general circulation, having been accredited as such by the Office of the Executive Judge in the Order dated June 17, 2002 issued by Executive Judge Leticia P. Morales. Mr. Dante Ofianga, Circulation Manager of "The Foreign Post", also testified during the hearing held on December 8, 2006, that said publication is a weekly newspaper of general

circulation, printed and published in the City of Manila, Philippines.

Finally, respondents argued that the three (3) months period prescribed by the General Banking Law of 2000 is a valid limitation on the right of redemption, which is the exception rather than the general rule. This Court has already upheld the restriction on the exercise of the right of redemption in *Landrito, Jr. v. Court of Appeals*[14].

On motion of respondents, Civil Case No. 06-1032 was consolidated with Civil Case No. 03-045. Prior to the consolidation, respondents moved to dismiss[15] with prejudice the two cases on the grounds of forum shopping, and that no jurisdiction was acquired by the RTC in Civil Case No. 03-045 for failure to pay the proper docket and other legal fees.

In a Joint Order[16] dated July 10, 2007, the RTC (Branch 56) dismissed with prejudice the complaints in both cases. Petitioner filed two separate motions for reconsideration, which the RTC likewise denied on October 16, 2007.[17]

Petitioner again filed separate appeals before the CA, which were docketed under only one case (CA-G.R. CV No. 90418).

By Decision[18] dated September 15, 2010, the CA's Fifth Division dismissed petitioner's appeal. While the CA disagreed with the RTC's dismissal of Civil Case No. 06-1032 on the ground of non-payment of correct docket fees, it nevertheless sustained the dismissal with prejudice of both Civil Case No. 03-045 and Civil Case No. 06-1032 on the ground of forum shopping.

The CA found that the twin complaints asked for a common relief: nullification of the REM over the Makati property, cancellation of its annotation, and return of the property to petitioner. It also ruled that a decision in either Civil Case No. 03-045 and Civil Case No. 06-1032 will certainly amount to res judicata in the other; both courts were called upon to rule on the issue of whether the REM was falsified, thus rendering it and all related transactions and proceedings invalid. The court to render a later judgment will find itself in an awkward predicament whether to decide on said issue in the same way the court which first ruled on the same issue, or to decide it the other way. The CA concluded that a malicious situation therefore presents itself because the twin fora are being pitted against each other, hence a case of plain and simple forum shopping.

The CA also concurred with the RTC Branch 56 in finding that petitioner inexplicably failed to inform said court of petitioner's subsequent filing of Civil Case No. 06-1032 despite its undertaking to do so in the first case (Civil Case No. 03-045), which fatal omission similarly reeks of forum shopping which is deliberate and malicious. The appellate court further said that the supervening event of the extrajudicial foreclosure did not justify the filing of a separate case, which on its face simply reiterated the same facts. The foreclosure of the mortgage was a mere continuation of the material facts presented in the first case, and thus petitioner's remedy arising therefrom is deemed subsumed in its prayer for nullification of the REM in the first case because such nullity of the mortgage contract invalidates everything else including the extrajudicial foreclosure. The CA opined that petitioner should have just amended its first complaint for the purpose of pleading the supervening event of extrajudicial foreclosure and perhaps adding in its prayer the nullification of the said foreclosure.

Petitioner filed two separate motions for reconsideration which the CA likewise denied in its Resolution[19] dated January 31, 2011. The CA further noted this Court's decision in G.R. No. 190231 which reinstated the dismissal of Civil Case No. B-6242 involving exactly the same parties, issues and subject matter.

The Consolidated Petitions and Parties' Arguments

Petitioner filed before this Court two separate petitions through different counsels assailing the same CA decision dismissing their two appeals and resolution denying their twin motions for reconsideration.

The core issue presented is whether petitioner was guilty of forum shopping when it successively filed Civil Case No. 03-045 and Civil Case No. 06-1032.

Petitioner argues that there was no forum shopping involved because contrary to the CA's view, a judgment in either of the two cases will not amount to res judicata in the other, stating that there are two probable outcomes for each case; thus, the REM may be declared either null and void or valid, and the extrajudicial foreclosure may likewise be declared either null and void or valid. Petitioner then posits that a judgment in Civil Case No. 03-045 that the REM is valid will not preclude it from filing a separate case for the annulment of the foreclosure proceeding; petitioner's claims on the irregularities in the extrajudicial foreclosure when proven would still result in its nullification, even if the REM is declared valid in the first case. Similarly, a judgment annulling the extrajudicial foreclosure would not bar a separate complaint for the annulment of a spurious and falsified mortgage.

Petitioner further notes that it did not fail to disclose as in fact it asserted the pendency of Civil Case No. 03-045 in Civil Case No. 06-1032 when it alleged the surreptitious foreclosure by the respondents during the pendency of Civil Case No. 03-045. The first case (Civil Case No. 03-045) was also disclosed by petitioner in the Certificate of Non-Forum Shopping appended to its complaint in Civil Case No. 06-1032. Moreover, petitioner pointed out that the consolidation of the two cases has eliminated the possibility of conflicting decisions. The filing of the second case to enjoin the foreclosure was justified since petitioner has no other sufficient and effective remedy under the circumstances. In the absence of malicious intent in the mere filing of Civil Case No. 06-1032, petitioner contends that the CA erred in finding it guilty of forum shopping.

On the other hand, respondents maintain that the CA was correct in holding that petitioner is guilty of forum shopping as any ruling of either court on the identical issue of falsity of the REM would amount to res judicata in the other case. They also stress that forum shopping already exists when the cases involve the same or related causes and the same or substantially the same reliefs. Invoking stare decisis, respondents cite the final judgment rendered by this Court in G.R. No. 190231 involving the Laguna Properties which also involved the same parties and transactions as in the instant case. But even before the said ruling, respondents point out that it was already settled that there is forum shopping if two actions boil down to a single issue, although the issues and reliefs prayed for were stated differently, because the final disposition of one would constitute res judicata in the other, citing *Prubankers Association v. Prudential Bank & Trust Company*[20]. Another case[21] was cited by respondents holding that there is forum shopping when the remedies sought by the petitioner had the possibility of resulting in conflicting rulings, which supports the CA's observations.

Respondents underscore the deliberate and contumacious forum shopping committed by petitioner not only before the trial courts but also before the CA and this Court. They called attention to petitioner's filing of two notices of appeal, institution of two appeals and submission of two appeal briefs from one and the same RTC decision; two motions for reconsideration and; now, the herein identical petitions filed in this Court against the same principal party, AUB. Just like in the identical actions before the RTC, petitioner did not seasonably report the second petition in G.R. No. 195561. In fact, G.R. No. 195546 was consolidated with G.R. No. 195561 because this Court already found that "they arose from the same essential facts and assail the same decision and resolution of the Court of Appeals to avoid conflicting decisions." [22]

The Court's Ruling

The petitions must fail.

There is forum shopping when the following elements are present: "(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[,] such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites [are] also constitutive of the requisites for auter action pendant or lis pendens.”[23] The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment, through means other than by appeal or certiorari.[24]

All the foregoing elements are present in this case.

There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner’s properties in favor of AUB. While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter’s name were set forth only in the second case (Civil Case No. 06-1032), these were simply the expected consequences of the REM transaction in the first case (Civil Case No. 03-045). These eventualities are precisely what petitioner sought to avert when it filed the first case. Undeniably then, the injunctive relief sought against the extrajudicial foreclosure, as well as the cancellation of the new title in the name of the creditor-mortgagee AUB, were all premised on the alleged nullity of the REM due to its allegedly fraudulent and irregular execution and registration – the same facts set forth in the first case. In both cases, petitioner asserted its right as owner of the property subject of the REM, while AUB invoked the rights of a foreclosing creditor-mortgagee.

There is also identity of parties notwithstanding that in the first case, only one bank officer (Co), the notary public (Pelicano) and the Register of Deeds were impleaded along with AUB as defendants, whereas in the second case, AUB and its two officers (Chan and Del Mundo), along with the RTC Clerk of Court (Escasinas, Jr.), Sheriff (Magsajo) and the Register of Deeds of Makati City (Ortile) were the named defendants. The parties in both cases are substantially the same as they represent the same interests and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted.

With respect to identity of cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.[25]

In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner’s right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action. The procedural infirmities or non-compliance with legal requirements for extrajudicial foreclosure raised in the second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract’s nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case.

On this point, it is relevant to quote similar findings of this Court in G.R. No. 191388, which case involved, contrary to petitioner’s asseveration and as clearly shown in the factual antecedents herein set forth, the same parties, issues and causes of action founded on the same real estate mortgage transaction albeit covering properties of petitioner located in another province (Laguna), to wit:

The cause of action in the earlier Annulment Case is the alleged nullity of the REM (due to its allegedly falsified or spurious nature) which is allegedly violative of Goodland's right to the mortgaged property. It serves as the basis for the prayer for the nullification of the REM. The Injunction Case involves the same cause of action, inasmuch as it also invokes the nullity of the REM as the basis for the prayer for the nullification of the extrajudicial foreclosure and for injunction against consolidation of title. While the main relief sought in the Annulment Case (nullification of the REM) is ostensibly different from the main relief sought in the Injunction Case (nullification of the extrajudicial foreclosure and injunction against consolidation of title), the cause of action which serves as the basis for the said reliefs remains the same — the alleged nullity of the REM. Thus, what is involved here is the third way of committing forum shopping, i.e., filing multiple cases based on the same cause of action, but with different prayers. As previously held by the Court, there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues.

There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping.

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. The well-entrenched rule is that "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.[26] (Emphasis supplied.)

In the above-cited case, the Court also called attention to its earlier ruling in G.R. No. 190231 which involved substantially the same parties, and which constitutes another reason why the petition must fail, stating that "[t]he issue that Goodland committed deliberate forum shopping when it successively filed the Annulment and Injunction Cases against AUB and its officer was decided with finality therein. This ruling is conclusive on the petitioners and Goodland considering that they are substantially the same parties in that earlier case." [27]

Given the similar factual circumstances in the institution by herein petitioner of Civil Case Nos. 03-045 and 06-1032 (Makati Property case) before the RTC, with those two cases (Civil Case Nos. B-6242 and B-7110) subject of the petitions in G.R. Nos. 190231 and 191388 involving the Laguna Properties covered by the same real estate mortgage transaction between AUB and petitioner, the findings and conclusion of this Court in G.R. No. 190231 on the factual issue of whether the petitioner engaged in willful and deliberate forum shopping should be controlling, to wit:

Rule 7, Section 5 of the Rules of Court requires every litigant to notify the court of the filing or pendency of a complaint involving the same or similar action or claim within five days of learning of that fact. While both Civil Case Nos. B-6242 and B-7110 were raffled to the same court, the RTC of Biñan, Laguna, Branch 25, respondent did not report the filing of Civil Case No. B-7110 in the proceedings of Civil Case No. 6242. This fact clearly established respondent's furtive intent to conceal the filing of Civil Case No. B-7110 for the purpose of securing a favorable judgment. For this reason, Civil Case No. 6242 was correctly dismissed with prejudice.[28] (Emphasis supplied.)

Petitioner, however, insists that the above ruling is inapplicable to it considering that the pendency of Civil Case No. 06-1032 was in fact disclosed in the Verification and Certification of Non-Forum Shopping appended to its complaint in Civil Case No. 06-1032. The said certification reads:

x x x x

3. The plaintiff has not heretofore commenced any other action or filed any claim, involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein. There are however pending cases related to the instant case, namely: “Goodland Company, Inc. vs. Asia United Bank, et al.”, Civil Case No. 03-045, Regional Trial Court, Branch 133, Makati City; “Goodland Company, Inc. vs. Asia United Bank, et al.”. Civil Case No. B-6242, Regional Trial Court, Branch 25, Biñan, Laguna, “People of the Philippines vs. Christine Chan, et al.”, Crim. Case No. 332313, Metropolitan Trial Court, Branch 64, Makati City; and “Rafael H. Galvez vs. Christine Chan, et al.”, I.S. No. 03-73, Department of Justice, Manila.

x x x [29]

We find that the above certification still fell short of the requirement of the rule on forum shopping. While petitioner disclosed the pendency of Civil Case No. 03-045 it filed earlier, it qualified the nature of the said case by lumping it together with other pending related cases. Petitioner’s simultaneous attestation that it has not commenced “any other action or filed any claim, involving the same issues in any court” implies that the pending related cases mentioned therein do not involve the same issues as those raised by it in the subsequently filed Civil Case No. 06-1032. Consequently, petitioner has filed a certificate that is partly false and misleading because Civil Case No. 06-1032 squarely raised the issue of the nullity of the REM, which was in fact the principal issue in Civil Case No. 03-045.

Moreover, there was no showing that petitioner promptly reported to the RTC Branch 133 in which Civil Case No. 03-045 was pending, its subsequent filing of Civil Case No. 06-1032, as required by the Rules. It was at the instance of AUB that the two cases were consolidated. This fact did not escape the attention of the RTC which also found petitioner’s act of forum shopping willful and deliberate, as stated in its Joint Order dated July 10, 2007, to wit:

On a last note, the Court cannot countenance plaintiff’s violation of its undertaking as regards compliance of the prohibition against forum shopping. In plaintiff’s Certification as to Non-Forum Shopping embodied in its Complaint in Civil Case No. 03-045, plaintiff is duty bound to report, within five days from knowledge, the fact that a similar action or proceeding involving the same issues have been filed or is pending. The records are barren of any showing that plaintiff reported in Civil Case No. 03-045 the fact that it subsequently filed Civil Case No. 06-1032. Under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, the plaintiff is required under oath to certify, among others, his undertaking to report to the court the fact of filing of a similar case, failing which shall be cause for the dismissal of the case, to wit:

“(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.

...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.”

The totality of circumstances considered, plaintiff’s forum shopping committed in multifarious fashion cannot but be willful and deliberate. Hence, consistent with established rule and jurisprudence, the same is punishable by and results in the summary dismissal of the actions filed. Both Civil Case No. 03-045 and Civil Case No. 06-1032 are therefore dismissed with prejudice. x x x [30] (Emphasis supplied.)

The CA concurred with the RTC that petitioner’s act of forum shopping was deliberate and malicious considering that it knowingly filed Civil Case No. 06-1032 despite the pendency of Civil Case No. 03-045. The appellate

court said that petitioner unscrupulously took advantage of the availability of competent tribunals and tried its luck in different fora for a favorable result.

We concur with the CA's finding that a decision in either case will amount to res judicata in the other considering that both courts were called upon to rule on the same issue of whether the REM was falsified. Indeed, the possibility of conflicting rulings or decisions rendered by different courts on such issue militates against petitioner's posture that it never intended to conceal the subsequent filing of Civil Case No. 06-1032.

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 action under consideration.[31] Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as lis pendens and auter action pendant. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[32] Litis pendentia requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, 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.[33]

All the elements of litis pendentia are present in this case. As correctly found by both RTC and CA, any judgment rendered either in Civil Case No. 03-045 or Civil Case No. 06-1032 on the principal issue regarding the validity of the REM would amount to res judicata on the other. Contrary to petitioner's submissions, a determination by the RTC of whether petitioner is entitled to the injunctive relief in Civil Case No. 06-1032 necessarily entails a ruling on the validity of the REM raised therein by petitioner, which pronouncement may run counter to the separate findings and conclusion in Civil Case No. 03-045 on the same issue. In the same manner, the reliefs prayed for in Civil Case No. 03-045 for the cancellation of the REM and its registration cannot be granted without the court first ruling on the validity of the REM; if the court rules in the affirmative, it would in turn defeat the injunctive relief sought in Civil Case No. 06-1032.

The foregoing scenario is precisely what the prohibition on forum shopping seeks to avoid. What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.[34]

The Court need not say more. Petitioner's brazen and deliberate acts of repeated forum shopping in all stages of litigation are written all over this case, as well as in the two other identical cases already decided by this Court. No reversible error was thus committed by the CA when it affirmed the RTC's joint order of dismissal with prejudice.

WHEREFORE, the petitions for review on certiorari in G.R. Nos. 195546 and 195561 are both DENIED. The Decision dated September 15, 2010 and Resolution dated January 31, 2011 of the Court of Appeals in CA-G.R. CV No. 90418 are hereby AFFIRMED.

With double costs against the petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

[1] Rollo (G.R. No. 195546), pp. 60-79. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Rebecca De Guia-Salvador and Sesonando E. Villon concurring.

[2] Id. at 81-82.

[3] Business name registered with the Department of Trade and Industry (DTI), rollo (G.R. No. 195561), pp. 159-160.

[4] Factual antecedents with respect to the Laguna Properties were culled from this Court's Decisions in *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 190231, December 8, 2010, 637 SCRA 691 and *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205.

[5] Rollo (G.R. No. 195546), pp. 689-705. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr. concurring.

[6] Id. at 707-712. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Japar B. Dimaampao and Normandie B. Pizarro concurring.

[7] Id. at 1108.

[8] Id. at 241-256.

[9] Id. at 254-255.

[10] Id. at 102-103.

[11] Id. at 104-105.

[12] Id. at 323-325. Penned by Judge Cesar D. Santamaria.

[13] Id. at 258-321.

[14] G.R. No. 133079, August 9, 2005, 466 SCRA 107.

[15] Rollo (G.R. No. 195546) pp. 380-402.

[16] Id. at 522-529.

[17] Id. at 531-532.

[18] Id. at 60-79.

[19] Id. at 81-82.

[20] G.R. No. 131247, January 25, 1999, 302 SCRA 74.

[21] *Madara v. Perello*, G.R. No. 172449, August 20, 2008, 562 SCRA 638.

[22] Rollo (G.R. No. 195546), p. 728.

[23] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14,

2004, 427 SCRA 585, 590, citing *Saura v. Saura, Jr.*, 372 Phil. 337, 349 (1999).

[24] *Melo v. Court of Appeals*, G.R. No. 123686, November 16, 1999, 318 SCRA 94, 100; *Ligon v. Court of Appeals*, G.R. No. 127683, August 7, 1998, 294 SCRA 73, 88, citing *Washington Distillers, Inc. v. Court of Appeals*, G.R. No. 118151, August 22, 1996, 260 SCRA 821, 835.

[25] *Villanueva v. Court of Appeals*, G.R. No. 163433, August 22, 2011, 655 SCRA 707, 714, citing *Government Service Insurance System (GSIS) v. Group Management Corporation (GMC)*, G.R. Nos. 167000 & 169971, June 8, 2011, 651 SCRA 279, 313.

[26] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 216-217.

[27] *Id.* at 217.

[28] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 190231, December 8, 2010, 637 SCRA 691, 696-697.

[29] *Rollo* (G.R. No. 195546), p. 106.

[30] *Id.* at 527-528.

[31] *Spouses Marasigan v. Chevron Phils., Inc.*, G.R. No. 184015, February 8, 2012, p. 12, citing *Benedicto v. Lacson*, G.R. No. 141508, May 5, 2010, 620 SCRA 82, 98.

[32] *Id.*, citing *Dotmatrix Trading v. Legaspi*, G.R. No. 155622, October 26, 2009, 604 SCRA 431, 436.

[33] *Id.*

[34] *Municipality of Taguig v. Court of Appeals*, G.R. No. 142619, September 13, 2005, 469 SCRA 588, 595, citing *First Philippine International Bank v. Court of Appeals*, G.R. No. 115849, January 24, 1996, 252 SCRA 259, 289 and *Borromeo v. Intermediate Appellate Court*, G.R. No. 73592, March 15, 1996, 255 SCRA 75, 84.

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