

**FONTANA DEVELOPMENT CORP., DENNIS PAK AS GENERAL
MANAGER, PASTOR ISAAC AS DIRECTOR OF HUMAN RESOURCES,
CHRIS CHENG AS DEPUTY GROUP FINANCIAL CONTROLLER, JESUS
CHUA, REPRESENTATI...**

G.R. No. 222424. September 21, 2016

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated April 28, 2015 and the Resolution[2] dated January 18, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 125945.

The Facts

In July 2009, respondent Sascha Vukasinovic was hired by petitioner Fontana Development Corporation (FDC) as its Director for Business Development for one year. His employment was renewed for another year at the end of his first contract.[3]

Sometime in May 2010, he allegedly received a text message from one Jenny Mallari (Mallari) informing him that Nestor Dischoso (Dischoso) and Chief Hotel Engineer Jaime Villareal (Engr. Villareal), both officers of petitioner FDC, were receiving commissions from company transactions.

Thereafter, respondent met with Mallari and offered her money in exchange for evidence that will support her allegations. Mapari handed over to respondent a photocopy of a check issued to Engr. Villareal, as proof of receiving commission. The check, however, had an alteration so respondent asked Mallari to execute an affidavit and provide more proof. Respondent then paid Mallari the total amount of fourteen thousand pesos (P14,000) on different occasions.

Mallari eventually gave respondent two invoices issued by one of the suppliers of petitioner FDC as proof of her allegations. Again, respondent discovered discrepancies. Consequently, in his Inter-Office Memorandum dated June 7, 2010, respondent recommended to Dennis Pak, petitioner FDC's General Manager, to conduct further investigations on the alleged corruptions of Engr. Villareal.

On June 15, 2010, FDC's Safety and Security Department brought Engr. Villareal and Mallari to the National Bureau of Investigation (NBI) Office for questioning.[4] During the inquiry, Mallari denied that Engr. Villareal asked for commissions from her and revealed that she merely fabricated the story against Engr. Villareal so that she can ask money from respondent.

Following this turn of events, petitioner FDC received a complaint from Engr. Villareal claiming that respondent paid Mallari a substantial amount of money to concoct a story depicting Engr. Villareal as a corrupt employee.[5]

On October 2, 2010, respondent received a Show Cause/Preventive Suspension Order from petitioner FDC's Human Resources Department, informing him of the complaint filed by Engr. Villareal and directing him to explain why no disciplinary action should be taken against him for violating the provisions of the Company Code of Conduct on Dishonesty.

Respondent did not deny the allegations against him and, instead, admitted that he gave money to Mallari because "it is a common practice in Fontana to give money to informants for vital information." [6]

Thus, petitioner FDC approved the recommendation of the Investigating Panel and terminated respondent's employment after finding him guilty of acts of dishonesty in the form of "bribery in any form or manner" under Rule 1, Section 4 of petitioner FDC's Code of Conduct, [7] which carries the maximum penalty of dismissal. The Decision and the Notice of Termination were served on November 2, 2010. Respondent, however, refused to acknowledge its receipt and, instead, filed a complaint for illegal dismissal, illegal suspension, regularization, non-payment of salaries, service incentive leave, 13[th] month pay, actual, moral and exemplary damages, attorney's fees and demands for his reinstatement with full backwages against petitioner FDC and its officers. The case was docketed as NLRC Case No. RAB-III-11-16967-10.

The Ruling of the Labor Arbiter

On June 27, 2011, Labor Arbiter Mariano L. Bactin (Bactin) dismissed the complaint for lack of factual or legal basis, and ruled that respondent cannot be regularized as he is an employee with a legal and valid fixed-term employment and that his dismissal was for a just cause. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, a Decision has been rendered DISMISSING this case with prejudice for lack of merit.

His claim for regularization, as well as his money claims, damages and attorney's fees must also be dismissed with prejudice for lack of legal and factual basis.

SO ORDERED. [8]

Respondent appealed the said Decision to the National Labor

Relations Commission (NLRC).

The Ruling of the NLRC

The NLRC rendered a Resolution [9] dated March 15, 2012, dismissing the appeal and affirming the Decision of Labor Arbiter Bactin, as follows:

WHEREFORE, premises considered, the appeal filed by complainant is DISMISSED. The Decision of the Labor Arbiter Mariano L. Bactin dated June 27, 2011 is hereby AFFIRMED.

SO ORDERED. [10]

In so ruling, the NLRC noted that respondent had previously filed another complaint before the same branch of the NLRC in San Fernando, Pampanga, involving the same facts, issues, and prayer, entitled *Sascha Vukasinovic v. Jimei International Ltd., Suk Man Choi*, as Group Financial Comptroller, and *Chris Cheng*, as Deputy Group Financial Comptroller, and docketed as NLRC Case No. RAB III-09-18113-11. This previous case has been dismissed 11 by Labor Arbiter Reynaldo Abdon (Abdon) on the ground of forum shopping. The dismissal was eventually sustained by both the NLRC and the CA. In its, March 16, 2015 Decision in CA-G.R. SP No. 126225, the 13[th] Division of the CA affirmed that there was, indeed, forum shopping. The CA Decision has become final there being no appeal interposed by respondent.

Respondent then filed a petition for certiorari with the CA which was docketed as CA-G.R. SP No. 125945 and raffled to its 9[th] Division.

The Ruling of the CA

The CA agreed with the NLRC when it ruled that herein respondent's employment had not ripened into regular employment and that he was validly dismissed. Respondent, being a managerial employee, can be terminated on the ground of loss of trust and confidence. However, contrary to the Decision of the NLRC, the CA ordered the award of unpaid salaries to respondent. The CA held that petitioner FDC failed to present evidence to show payment of the salaries of respondent for the period claimed. The dispositive portion of the April 28, 2015 Decision reads:

WHEREFORE, premises considered, the assailed March 15, 2012 Resolution is AFFIRMED with the MODIFICATION that petitioner's salaries for July 2009 to October 2009 and January 2010 to October 21, 2010 are hereby awarded.

This case is REMANDED to the Labor Arbiter for the computation, with dispatch, of the amounts due.

SO ORDERED.[12]

Petitioners filed a petition for review before this Court, contending that the CA erred in not dismissing outright respondent's petition in CA- G.R. SP No. 125945. They claim that given the final decision in CA-G.R. SP No. 126225, wherein all the elements of *litis pendentia* were found, the CA should have refused to take cognizance of the case.

The Issue

The pivotal issue in this case is whether the CA gravely erred in not dismissing the petition in CA-G.R. SP No. 125945 for deliberate forum shopping.

The Court's Ruling

The petition is meritorious.

Respondent is guilty of forum shopping

There is forum shopping 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. Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes.[13] It degrades the administration of justice and adds to the already congested court dockets.[14]

In *Gloria S. Dy v. Mandy Commodities Co., Inc.*, [15] this Court had the occasion to explain the grave evil sought to be avoided by forum shopping, to wit:

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. To stamp out this abominable practice, which seriously impairs the efficient administration of justice, this Court promulgated Administrative Circulars No. 28-91 and No. 04-94, which are now embodied as Section 5, Rule 7 of the Rules of Court, which reads:

SEC. 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 a cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification of 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 a ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The test for determining the existence of forum shopping is whether a final judgment in one case amounts to res judicata in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs 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*.^[16]

In the instant case, there is no doubt that all the elements of *litis pendentia* have already been established, as this was already settled with finality in CA-G.R. SP No. 126225. Yet, in his Comment, respondent repeatedly claimed that there was no forum shopping and petitioners are misleading this Court, making it appear that forum shopping exists when there is none at all.

Respondent's position is without basis.

It should be noted that in his Decision in NLRC Case No. RAB III-09-18113-11, Labor Arbiter Abdon observed that there is an identity of parties between NLRC Case No. RAB III-09-18113-11 and NLRC Case No. RAB-III-11-16967-10 which is the complaint incipient in the present controversy. He pointed out that both complaints show that petitioners Chris Cheng and Man Choi are similarly impleaded in their capacities as officers of petitioner FDC and that there is also an identity of causes of action and reliefs prayed for by respondent.^[17] To reiterate, Labor Arbiter Abdon's Decision was affirmed by the NLRC and the CA. In particular, in its Decision in CA-G.R. SP No. 126225 denying the petition for certiorari filed by respondent, the CA observed, thus:

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 for a upon the same issues.

In this case, it is undisputed that respondent filed two labor complaints: first, NLRC Case No. RAB III-11-16967-10-P entitled "Sascha Vukasinovic v. Fontana Development Corporation, Dennis Pak, Pastor Isaac, Cllris Clleng, Jesus Chua, Michael Feliciano, Alma Erediano, Leilani Valiente, Man Clwi and Jaime Villareal" for illegal dismissal, illegal suspension, regularization, non-payment of salaries, service incentive leave pay, 13th month pay, as well as actual, moral and exemplary damages and attorney's fees, with prayer for reinstatement and full back wages; and second, NLRC Case No. RAB III-09-18113-11 entitled "Sascha

Vukasinovic v. National Labor Relations Commission, Labor Arbiter Reynaldo B. Abdon, Jimei S. International, Ltd. (JSIL), Mr. Suk Man Choi in his capacity as Group Financial Comptroller of JSIL, Chris Cheng in his capacity as Deputy Group Financial Comptroller of JSIL", for constructive (illegal) dismissal, regularization, non-payment of salaries, premium pay for holiday and rest days, service incentive leave pay, 13[th] month pay, as well as damages and attorney's fees and other monetary claims including bonuses and travel expenses (repatriation expenses). It is also undisputed that the causes of action (illegal dismissal and constructive dismissal) in the respective complaints in the two (2) cases stemmed from the adverse decision in the administrative case filed against respondent that resulted to his dismissal from employment.

In *Jesse Yap v. Court of Appeals*, it was held:

x x x x

The requisites of *litis pendencia* 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.

All the elements of *litis pendencia* are present in this case.[18]

(emphasis supplied)

Indeed, the existence of forum shopping has been duly proved in this case. As a result, petitioners hinge this present appeal on the error committed by the CA in not dismissing outright the appeal filed by respondent.

When there is forum shopping, all pending claims on the same claim must be dismissed

It is well-settled that once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is the punitive measure to those who trifle with the orderly administration of justice.[19]

The rule originated from the 1986 case of *Buan v. Lopez, Jr.*[20] In the said case, petitioners therein instituted before the Court a special civil action for prohibition and, almost a month earlier, another special civil action for prohibition with preliminary injunction before the Regional Trial Court (RTC) Manila. Finding petitioners guilty of forum shopping since all the elements of *litis pendencia* were duly proved, the Court dismissed not only the action before it, but also the special civil action still pending before the RTC, viz:

Indeed, the petitioners in both actions x x x have incurred not only the sanction of dismissal of their case before this Court in accordance with Rule 16 of the Rules of Court, but also punitive measure of dismissal of both their actions, that in this Court and that in Regional Trial Court as well.

The rule essentially penalizes the forum shopper by dismissing all pending actions on the same claim filed in any court. Because of the severity of the penalty of the rule, an examination must first be made on the purpose of the rule.[21] The purpose of the rule is to avoid multiplicity of suits and to prevent a party from instituting two or more actions or proceeding 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.[22]

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.[23] 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.[24]

Furthermore, Rule 7, Section 5 of the Rules of Court mandates that a willful and deliberate forum shopping shall be a ground for summary dismissal of a case with prejudice, thus:

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. (emphasis supplied)

Consequently, the CA should have dismissed the case outright without rendering a decision on the merits of the case. Respondent should be penalized for willfully and deliberately trifling with court processes. The purpose of the law will be defeated if respondent will be granted the relief prayed for despite his act of deliberately committing forum shopping.

Respondent, per Manifestation of his counsel, Atty. Erick Nolan G. Mosuela (Mosuela), died on July 19, 2016. Atty. Mosuela manifested that he has no information as to the heirs of respondent, hence, his inability to substitute them, if any, in the place of respondent.

The instant case involves an illegal dismissal which is an action that does not survive the death of the accused. The Court ruled in *Bonilla v. Barcena*,^[25] to wit:

The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.

Since the property and property rights of the respondent is only incidental to his complaint for illegal dismissal, the same does not survive his death. Nonetheless, considering the foregoing disposition dismissing respondent's petition before the CA and ergo his complaint for illegal dismissal, the Court can proceed with the resolution of the petition even without the need for substitution of the heirs of respondent.

WHEREFORE, premises considered, the instant petition is GRANTED. The Decision dated April 28, 2015 in CA-G.R. SP No. 125945 of the Court of Appeals is hereby REVERSED and SET ASIDE. The petition for certiorari filed by respondent Sascha Vukasinovic with the CA is ordered DISMISSED on the ground of deliberate forum shopping.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez, Reyes, and Jardeleza, JJ., concur.

October 20, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____September 21, 2016____ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 20, 2016 at 1:55 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] "Chris Chen" in some parts of the records.

[1] Rollo, pp. 22-34. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicedican and Elihu A. Ybanez.

[2] Id. at 36-38.

[3] Id. at 24.

[4] Id. at 4.

[5] Id. at 25.

[6] Id.

[7] Id. at 26.

[8] Id. at 54.

[9] Id. at 56-63.

[10] Id. at 63.

[11] On December 5, 2011.

[12] Rollo, p. 34.

[13] Heirs of Marcelo Sotto et al. v. Matilde S. Palicte, G.R. No. 159691, February 17, 20 14; citing Chua v. Metropolitan Bank & Trust Company, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

[14] Id.; citing Executive Secretary v. Gordon, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 741.

[15] G.R. No. 171842, July 22, 2009.

[16] Id.

[17] Rollo, p. 76.

[18] Id. at 105-]07.

[19] Gloria S. Dy v. Mandy Commodities Co., Inc., supra note 15.

[20] G.R. No. 75349, October 13, 1986.

[21] Ramon Ching and Po Wing Properties, Inc. v. Joseph Cheng, Jaime Cheng, Mercedes Igne and Lucina Santos, G.R. No. 175507, October 8, 2014.

[22] Jesse Yap v. Court of Appeals, G.R. No. 186730, June 13, 2012.

[23] Id.; citing Top Rate Construction & General Services, Inc. v. Paxton Development Corporation, 457 Phil. 740, 748 (2003).

[24] Id.; citing Municipality of Taguig v. Court of Appeals, 506 Phil. 567, 582 (2005).

[25] No. L-41715, June 18, 1976.

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