



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ANTONIO M. GARCIA,  
Petitioner,

G.R. No. 172505

Present:

-versus-

VELASCO, JR.,\*  
BRION, *Acting Chairperson*,  
DEL CASTILLO,  
VILLARAMA, JR.\*\* and  
LEONEN, JJ.

FERRO CHEMICALS, INC.,  
Respondent.

Promulgated:

OCT 01 2014

*dlm Catalina P. Reyes*

X-----X

DECISION

LEONEN, J.

Before this court is a petition for review on certiorari<sup>1</sup> assailing the decision<sup>2</sup> of the Court of Appeals dated August 11, 2005 and its resolution<sup>3</sup> dated April 27, 2006, denying petitioner Antonio Garcia's motion for reconsideration.

Antonio Garcia, as seller, and Ferro Chemicals, Inc., through Ramon Garcia, as buyer, entered into a deed of absolute sale and purchase of shares of stock on July 15, 1988. The deed was for the sale and purchase of shares of stock from various corporations, including one class "A" share in Alabang

\* Designated additional member per Raffle dated September 24, 2014.

\*\* Designated member per Raffle dated August 8, 2011.

<sup>1</sup> *Rollo*, pp. 14-33.

<sup>2</sup> *Id.* at 96-108.

<sup>3</sup> *Id.* at 110-112.

*e*

Country Club, Inc. and one proprietary membership in the Manila Polo Club, Inc.<sup>4</sup> These shares of stock were in the name of Antonio Garcia.<sup>5</sup> The contract was allegedly entered into to prevent these shares of stock from being sold at public auction to pay the outstanding obligations of Antonio Garcia.<sup>6</sup>

On March 3, 1989, a deed of right of repurchase over the same shares of stock subject of the deed of absolute sale and purchase of shares of stock was entered into between Antonio Garcia and Ferro Chemicals, Inc. Under the deed of right of repurchase, Antonio Garcia can redeem the properties sold within 180 days from the signing of the agreement.<sup>7</sup>

Before the end of the 180-day period, Antonio Garcia exercised his right to repurchase the properties.<sup>8</sup> However, Ferro Chemicals, Inc. did not agree to the repurchase of the shares of stock.<sup>9</sup> Thus, Antonio Garcia filed an action for specific performance and annulment of transfer of shares.<sup>10</sup>

On September 6, 1989, the class “A” share in Alabang Country Club, Inc. and proprietary membership in the Manila Polo Club, Inc., which were included in the contracts entered into between Antonio Garcia and Ferro Chemicals, Inc., were sold at public auction to Philippine Investment System Organization.<sup>11</sup>

On September 3, 1990, the information based on the complaint of Ferro Chemicals, Inc. was filed against Antonio Garcia before the Regional Trial Court.<sup>12</sup> He was charged with estafa under Article 318 (Other Deceits) of the Revised Penal Code for allegedly misrepresenting to Ferro Chemicals, Inc. that the shares subject of the contracts entered into were free from all liens and encumbrances. The information reads:

The undersigned Assistant Prosecutor accuses Antonio M. Garcia of the felony of Estafa as defined and penalized under Art. 318 of the Revised Penal Code as amended, committed as follows:

THAT on or about 15 July 1988, in Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with evident bad faith and deceit, did, then and there, willfully, unlawfully and feloniously, misrepresent to FERRO

---

<sup>4</sup> Id. at 16.

<sup>5</sup> Id.

<sup>6</sup> Id. at 97.

<sup>7</sup> Id. at 98.

<sup>8</sup> Id. at 99.

<sup>9</sup> Id.

<sup>10</sup> Id. at 100.

<sup>11</sup> Id.

<sup>12</sup> Id. at 100–101.

CHEMICALS, INC. (FCI) represented by Ramon M. Garcia, that his share of stock/proprietary share with Ayala Alabang Country Club, Inc. and Manila Polo Club, Inc. collectively valued at about P10.00 Million Pesos, being part of other shares of stock subject matter of a Deed of Absolute Sale and Purchase of Shares of Stock between the accused and FCI, were free from all liens, encumbrances and claims by third persons, when in truth and in fact, accused well knew that aforesaid share of stock/proprietary share had already been garnished in July 1985 and subsequently sold at public auction in September 1989, and which misrepresentation and assurance FCI relied upon and paid the consideration in accordance with the stipulated condition/manner of payment, all to the damage and prejudice of FCI in the aforesaid amount of P10.00 Million Pesos.

Contrary to law.<sup>13</sup>

In the decision dated December 12, 1996 of the Regional Trial Court, Antonio Garcia was acquitted for insufficiency of evidence.<sup>14</sup> The Regional Trial Court held:

From the foregoing, it is very clear that private complainant was aware of the status of the subject CLUB SHARES. Thus, the element of false pretense, fraudulent act or fraudulent means which constitute the very cause or the only motive which induced the private complainant to enter into the questioned deed of sale (Exh. "A") is wanting in the case at bar.<sup>15</sup> (Underscoring in the original)

Ferro Chemicals, Inc. filed a motion for reconsideration, which was denied by the Regional Trial Court in the order dated July 29, 1997.<sup>16</sup>

On August 25, 1997, Ferro Chemicals, Inc. appealed to the Court of Appeals the July 29, 1997 order of the Regional Trial Court as to the civil aspect of the case.<sup>17</sup> The notice of appeal<sup>18</sup> filed was entitled "Notice of Appeal Ex Gratia Abundantia Ad Cautelam (Of The Civil Aspect of the Case)." It alleged:

4. Herein private complainant hereby gives notice, out of extreme caution, that it is appealing the Decision dated 12 December 1996 and the Order dated 29 July 1997 on the civil aspect of the case to the Court of Appeals on the ground that it is not in accordance with the law and the facts of the case.

5. This notice of appeal is without prejudice to the filing of an appropriate petition for certiorari under Rule 65 of the Rules of Court on

---

<sup>13</sup> Id.

<sup>14</sup> Id. at 130.

<sup>15</sup> Id.

<sup>16</sup> Id. at 22.

<sup>17</sup> CA *rollo*, p. 76.

<sup>18</sup> RTC records, pp. 1267-1269.

the criminal aspect, upon the giving of due course thereto, private complainant shall endeavor to seek the consolidation of this appeal with the said petition.<sup>19</sup>

On October 15, 1997, the Makati City Prosecutor's Office and Ferro Chemicals, Inc. also filed a petition for certiorari<sup>20</sup> with this court, assailing the Regional Trial Court's December 12, 1996 decision and July 29, 1997 order acquitting Antonio Garcia.<sup>21</sup>

The petition for certiorari<sup>22</sup> filed before this court sought to annul the decision of the trial court acquitting Antonio Garcia. People of the Philippines and Ferro Chemicals, Inc. argued that the trial court "acted in grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the judgment of acquittal based on affidavits not at all introduced in evidence by either of the parties thereby depriving the people of their substantive right to due process of law."<sup>23</sup> The verification/certification against forum shopping, signed by Ramon Garcia as president of Ferro Chemicals, Inc., disclosed that the notice of appeal was filed "with respect to the civil aspect of the case."<sup>24</sup>

In the resolution<sup>25</sup> dated November 16, 1998, this court dismissed the petition for certiorari filed, and entry of judgment was made on December 24, 1998.<sup>26</sup>

On the other hand, the Court of Appeals,<sup>27</sup> in its decision<sup>28</sup> dated August 11, 2005, granted the appeal and awarded Ferro Chemicals, Inc. the amount of ₱1,000,000.00 as actual loss with legal interest and attorney's fees in the amount of ₱20,000.00.<sup>29</sup> The appellate court found that Antonio Garcia failed to disclose the Philippine Investment and Savings Organization's lien over the club shares.<sup>30</sup> Thus:

The issue in this case is whether or not Antonio Garcia disclosed to Ferro-Chemicals, during the negotiation stage of the impending sale of the imputed club shares, the third attachment lien in favor of Philippine Investment and Savings Organization (*PISO*) which, ultimately, became the basis of the auction sale of said club shares. We have scrutinized the

---

<sup>19</sup> Id. at 1267–1268.

<sup>20</sup> *Rollo*, p. 22. The case was docketed as G.R. No. 130880.

<sup>21</sup> *Rollo*, p. 89 and RTC records, p. 1316.

<sup>22</sup> RTC records, pp. 1273–1317.

<sup>23</sup> Id. at 1278.

<sup>24</sup> Id. at 1318.

<sup>25</sup> *Rollo*, p. 22.

<sup>26</sup> Id. at 22–23.

<sup>27</sup> The decision was penned by Associate Justice Jose Catral Mendoza and concurred in by Presiding Justice Romeo A. Brawner and Associate Justice Edgardo P. Cruz, First Division of the Court of Appeals, Manila.

<sup>28</sup> *Rollo*, pp. 37–49.

<sup>29</sup> Id. at 48.

<sup>30</sup> Id. at 45.

records of the case but found no evidence that Antonio Garcia intimated to his brother the third attachment lien of PISO over the said club shares. While it is true that Antonio Garcia divulged the two liens of Security Bank and Insular Bank of Asia and America, the lien of PISO was clearly not discussed. The affidavits executed by the two lawyers to the effect that the lien of PISO was considered but deliberately left out in the deed cannot be given much weight as they were never placed on the witness stand and cross-examined by Ferro-Chemicals. If their affidavits, although not offered, were considered in the criminal aspect and placed a cloud on the prosecution's thrust, they cannot be given the same probative value in this civil aspect as only a preponderance of evidence is necessary to carry the day for the plaintiff, Ferro Chemicals.

While Antonio Garcia insists that no consideration was ever made over the club shares as the same were merely given for safekeeping, the document denominated as Deed of Absolute Sale states otherwise. It is a basic rule of evidence that between documentary evidence and oral evidence, the former carries more weight.

Also, We have observed that in Antonio Garcia's letter of redemption addressed to Ferro Chemicals, he mentioned his interest in redeeming the company shares only. That he did not include the club shares only meant that said club shares no longer had any much redeemable value as there was a lien over them. To redeem them would be pointless.

If they had no redeemable value to Antonio Garcia, to Ferro Chemical they were certainly marketable assets. The non-disclosure of the third lien in favor of PISO materially affected Ferro Chemicals since it was not able to act on time to protect its interest when the auction sale over the club shares actually took place. As a result, Ferro Chemicals suffered losses due to the unfortunate public auction sale. It is but just and fair that Antonio Garcia be made to compensate the loss pursuant to Articles 21 and 2199 of the Civil Code.

The actual loss suffered by Ferro Chemicals amounted to P1,000,000.00 which corresponds to the bid value of the club shares at the time of the auction as evidenced by the Sheriff's Certificate of Sale.<sup>31</sup> (Citations omitted)

Antonio Garcia filed a motion for reconsideration and Ferro Chemicals, Inc. filed a partial motion for reconsideration of the decision of the Court of Appeals.<sup>32</sup> These motions were denied in the resolution<sup>33</sup> dated April 27, 2006. Thus, Antonio Garcia filed this petition for review on certiorari,<sup>34</sup> assailing the decision and resolution of the Court of Appeals.

Antonio Garcia argues that the factual findings of the Court of

---

<sup>31</sup> Id. at 45–46.

<sup>32</sup> Id. at 51.

<sup>33</sup> Id. at 51–53. The resolution was penned by Associate Justice Jose Catral Mendoza and concurred in by Presiding Justice Roberto A. Barrios and Associate Justice Edgardo P. Cruz.

<sup>34</sup> Id. at 73–92.

Appeals were erroneous<sup>35</sup> and insists that “[Ferro Chemicals, Inc.] was fully aware that the shares covered by the Deed of Absolute Sale, including the Subject Club Shares, were not free from liens and encumbrances and that the Deed [of] Sale was executed [to] *warehouse* [Antonio Garcia’s] assets based on, among other evidence, the affidavits executed by Jaime Gonzales . . . and Rolando Navarro. . . .”<sup>36</sup>

Antonio Garcia faults the Court of Appeals in disregarding the affidavits executed by Jaime Gonzales and Rolando Navarro. Antonio Garcia argues that even this court in G.R. No. 130880 entitled *People of the Philippines and Ferro Chemicals, Inc. v. Hon. Dennis Villa Ignacio and Antonio Garcia* where the admissibility of the affidavits was put in issue held that the trial court did not commit any grave abuse of discretion in the challenged decision.<sup>37</sup> He then reasoned that “pursuant to the *law of the case*, [the affidavits of Gonzalez and Navarro] are admissible and should be given weight.”<sup>38</sup>

Finally, Antonio Garcia claims that both he and and Ferro Chemicals, Inc. acted in bad faith when they entered into the deed of absolute sale as a scheme to defraud Antonio Garcia’s creditors. Thus, they are *in pari delicto* and Ferro Chemicals, Inc. should not be allowed to recover from Antonio Garcia.<sup>39</sup>

In its comment,<sup>40</sup> Ferro Chemicals, Inc. points out that Antonio Garcia raised factual issues not proper in a Rule 45 petition and reiterates the findings of the Court of Appeals.<sup>41</sup>

There are pertinent and important issues that the parties failed to raise before the trial court, Court of Appeals, and this court. Nonetheless, we resolve to rule on these issues.

As a general rule, this court through its appellate jurisdiction can only decide on matters or issues raised by the parties.<sup>42</sup> However, the rule admits of exceptions.<sup>43</sup> When the unassigned error affects jurisdiction over the subject matter<sup>44</sup> or when the consideration of the error is necessary for a

---

<sup>35</sup> Id. at 82–83.

<sup>36</sup> Id. at 86–87.

<sup>37</sup> Id. at 89.

<sup>38</sup> Id. at 90.

<sup>39</sup> Id. at 90–91.

<sup>40</sup> Id. at 144–155.

<sup>41</sup> Id. at 144–145.

<sup>42</sup> *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206, 218 (1996) [Per J. Hermosisima, Jr., First Division]. See also RULES OF COURT, Rule 51, sec. 8.

<sup>43</sup> *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206, 217–218 (1996) [Per J. Hermosisima, Jr., First Division].

<sup>44</sup> *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206, 217 (1996) [Per J. Hermosisima, Jr., First Division]. See also RULES OF COURT, Rule 51, sec. 8.

complete resolution of the case,<sup>45</sup> this court can still decide on these issues.

We cannot turn a blind eye on glaring misapplications of the law or patently erroneous decisions or resolutions simply because the parties failed to raise these errors before the court. Otherwise, we will be allowing injustice by reason of the mistakes of the parties' counsel and condoning reckless and negligent acts of lawyers to the prejudice of the litigants. Failure to rule on these issues amounts to an abdication of our duty to dispense justice to all parties.

The issues are:

- I. Whether the Regional Trial Court had jurisdiction over the case
- II. Whether the act of Ferro Chemicals, Inc. in filing the notice of appeal before the Court of Appeals and the petition for certiorari assailing the same trial court decision amounted to forum shopping
- III. Whether Ferro Chemicals, Inc. was entitled to the awards given as civil liability *ex delicto*

### **The Regional Trial Court did not have jurisdiction**

Jurisdiction of a court over the subject matter is vested by law.<sup>46</sup> In criminal cases, the imposable penalty of the crime charged in the information determines the court that has jurisdiction over the case.<sup>47</sup>

The information charged Antonio Garcia with violation of Article 318 of the Revised Penal Code, which is punishable by *arresto mayor*, or imprisonment for a period of one (1) month and one (1) day to six (6) months. Article 318 states:

ART. 318: *Other deceits*. – The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who

---

<sup>45</sup> *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206, 217 (1996) [Per J. Hermosissima, Jr., First Division], citing *Korean Airlines Co., Ltd. v. Court of Appeals*, G.R. No. 114061, August 3, 1994, 234 SCRA 717, 725 [Per J. Cruz, First Division]; *Vda. de Javellana v. Court of Appeals*, 208 Phil. 706, 714 (1983) [Per J. Concepcion, Jr., Second Division]; *Saura Import & Export Co., Inc. v. Philippine International Co., Inc.*, 118 Phil. 150, 156 (1963) [Per J. Paredes, En Banc]; *Servicewide Specialists, Inc. v. Court of Appeals, et al.*, 327 Phil. 431, 442 (1996) [Per J. Puno, Second Division].

<sup>46</sup> *People v. Sps. Vanzuela*, 581 Phil. 211, 219 (2008) [Per J. Nachura, Third Division].

<sup>47</sup> *People v. Purisima*, 161 Phil. 443, 451 (1976) [Per J. Martin, First Division].

shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto mayor* or a fine not exceeding 200 pesos.

When the information was filed on September 3, 1990, the law in force was Batas Pambansa Blg. 129 before it was amended by Republic Act No. 7691. Under Section 32 of Batas Pambansa Blg. 129, the Metropolitan Trial Court had jurisdiction over the case:

SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in criminal cases.*—

.....

2. Exclusive original jurisdiction over all offenses punishable with *imprisonment of not exceeding four years and two months*, or a fine of not more than four thousand pesos, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof: *Provided, however*, That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction where the imposable fine does not exceed twenty thousand pesos. (Emphasis supplied)

The Regional Trial Court did not have jurisdiction to hear and decide the case. This lack of jurisdiction resulted in voiding all of the trial court's proceedings and the judgment rendered.<sup>48</sup>

Although the trial court's lack of jurisdiction was never raised as an issue in any part of the proceedings and even until it reached this court, we proceed with resolving the matter.

In *Pangilinan v. Court of Appeals*,<sup>49</sup> this court held:

Thus, we apply the general rule that jurisdiction is vested by law and cannot be conferred or waived by the parties. Even on appeal and even if the reviewing parties did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that the lower court had no jurisdiction over the case[.]

---

<sup>48</sup> *Villagracia v. Fifth Shari'a District Court, et al.*, G.R. No. 188832, April 23, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/188832.pdf>> [Per J. Leonen, Third Division].

<sup>49</sup> 378 Phil. 670 (1999) [Per J. Kapunan, First Division].



....

Having arrived at the conclusion that the Regional Trial Court did not have jurisdiction to try the case against the appellant, it is no longer necessary to consider the other issues raised as the decision of the Regional Trial Court is null and void.<sup>50</sup>

The trial court's lack of jurisdiction cannot be cured by the parties' silence on the matter.<sup>51</sup> The failure of the parties to raise the matter of jurisdiction also cannot be construed as a waiver of the parties. Jurisdiction is conferred by law and cannot be waived by the parties.

The assailed decision is void, considering that it originates from a void decision of the Regional Trial Court for lack of jurisdiction over the subject matter.

**Ferro Chemicals, Inc.  
committed forum shopping**

Forum shopping is defined as “the act of a litigant who ‘repetitively availed 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 . . . to increase his chances of obtaining a favorable decision if not in one court, then in another’.”<sup>52</sup>

Once clearly established that forum shopping was committed willfully and deliberately by a party or his or her counsel, the case may be summarily dismissed with prejudice, and the act shall constitute direct contempt and a cause for administrative sanctions.<sup>53</sup>

Forum shopping is prohibited, and sanctions are imposed on those who commit forum shopping as “it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets.”<sup>54</sup> This court has said:

What is critical is the vexation brought upon the courts and the

---

<sup>50</sup> Id. at 677–679.

<sup>51</sup> *People v. Sps. Vanzuela*, 581 Phil. 211, 219 (2008) [Per J. Nachura, Third Division].

<sup>52</sup> *Tokio Marine Malayan Insurance Company Inc., et al. v. Valdez*, 566 Phil. 443, 453 (2008) [Per J. Sandoval-Gutierrez, First Division], citing *Gatmaytan v. Court of Appeals*, 335 Phil. 155, 167 (1997) [Per C.J. Narvasa, Third Division].

<sup>53</sup> RULES OF COURT, Rule 7, sec. 5, par. 2.

<sup>54</sup> *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003) [Per J. Bellosillo, Second Division].

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, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.<sup>55</sup> (Citation omitted)

The test and requisites that must concur to establish when a litigant commits forum shopping are the following:

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, 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*.<sup>56</sup> (Citation omitted)

There is no question that Ferro Chemicals, Inc. committed forum shopping when it filed an appeal before the Court of Appeals and a petition for certiorari before this court assailing the same trial court decision. This is true even if Ferro Chemicals, Inc.'s notice of appeal to the Court of Appeals was entitled "Notice of Appeal Ex Gratia Abundantia Ad Cautelam (Of The Civil Aspect of the Case)."<sup>57</sup> The "civil aspect of the case" referred to by Ferro Chemicals, Inc. is for the recovery of civil liability *ex delicto*. However, it failed to make a reservation before the trial court to institute the civil action for the recovery of civil liability *ex delicto* or institute a separate civil action prior to the filing of the criminal case.

There is identity of parties. Petitioner, Antonio Garcia, and respondent, Ferro Chemicals, Inc., are both parties in the appeal filed before the Court of Appeals and the petition for certiorari before this court.

There is identity of the rights asserted and reliefs prayed for in both actions. At a glance, it may appear that Ferro Chemicals, Inc. asserted different rights: The appeal before the Court of Appeals is purely on the civil aspect of the trial court's decision while the petition for certiorari before this court is allegedly only on the criminal aspect of the case. However, the civil liability asserted by Ferro Chemicals, Inc. before the Court of Appeals arose from the criminal act. It is in the nature of civil

---

<sup>55</sup> Id.

<sup>56</sup> *Rural Bank of the Seven Lakes (S.P.C.), Inc. v. Dan*, 595 Phil. 1061, 1071 (2008) [Per J. Chico-Nazario, Third Division].

<sup>57</sup> RTC records, p. 1267.

liability *ex delicto*. Ferro Chemicals, Inc. did not reserve the right to institute the civil action for the recovery of civil liability *ex delicto* or institute a separate civil action prior to the filing of the criminal case.<sup>58</sup> Thus, it is an adjunct of the criminal aspect of the case. As held in *Lim v. Kou Co Ping*:<sup>59</sup>

The civil liability arising from the offense or *ex delicto* is based on the acts or omissions that constitute the criminal offense; hence, its *trial is inherently intertwined with the criminal action*. For this reason, the civil liability *ex delicto* is impliedly instituted with the criminal offense. If the action for the civil liability *ex delicto* is instituted prior to or subsequent to the filing of the criminal action, its proceedings are suspended until the final outcome of the criminal action. The civil liability based on delict is extinguished when the court hearing the criminal action declares that ‘the act or omission from which the civil liability may arise did not exist’.<sup>60</sup> (Emphasis supplied, citations omitted).

When the trial court’s decision was appealed as to its criminal aspect in the petition for certiorari before this court, the civil aspect thereof is deemed included in the appeal. Thus, the relief prayed for by Ferro Chemicals, Inc., that is, recovery of civil liability *ex delicto*, is asserted in both actions before this court and the Court of Appeals.

Even the allegations in the notice of appeal readily show that Ferro Chemicals, Inc. committed forum shopping, to wit:

5. This notice of appeal is without prejudice to the filing of an appropriate petition for certiorari under Rule 65 of the Rules of Court on the criminal aspect, upon the giving of due course thereto, private complainant shall endeavor to seek the consolidation of this appeal with the said petition.<sup>61</sup>

As to the third requisite, on the assumption that the trial court had jurisdiction over the case, this court’s decision in G.R. No. 130880 affirming the trial court’s decision acquitting the accused for lack of an essential element of the crime charged amounts to *res judicata* to assert the recovery of civil liability arising from the offense. This court’s resolution dismissing the petition for certiorari filed by Ferro Chemicals, Inc. states:

In any event, petitioners failed to sufficiently show that any grave abuse of discretion was committed by the Regional Trial Court in rendering the challenged decision and order which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.<sup>62</sup>

---

<sup>58</sup> RULES OF COURT, Rule 111, sec. 1, par. (a).

<sup>59</sup> G.R. No. 175256, August 23, 2012, 679 SCRA 114 [Per J. Del Castillo, First Division].

<sup>60</sup> Id. at 128.

<sup>61</sup> RTC records, p. 1268.

<sup>62</sup> *Rollo*, p. 23.

Litigants cannot avail themselves of two separate remedies for the same relief in the hope that in one forum, the relief prayed for will be granted. This is the evil sought to be averted by the doctrine of non-forum shopping, and this is the problem that has happened in this case. This court denied the petition for certiorari filed by Ferro Chemicals, Inc. resulting in finality of the trial court's decision. The decision found Antonio Garcia not guilty of the offense charged, and no civil liability was awarded to Ferro Chemicals, Inc. However, at present, there is a conflicting decision from the Court of Appeals awarding Ferro Chemicals, Inc. civil indemnity arising from the offense charged.

When the civil action for the recovery of civil liability *ex delicto* is instituted with the criminal action, whether by choice of private complainant (i.e., no reservation is made or no prior filing of a separate civil action) or as required by the law or rules, the case will be prosecuted under the direction and control of the public prosecutor.<sup>63</sup> The civil action cannot proceed independently of the criminal case. This includes subsequent proceedings on the criminal action such as an appeal. In any case, Ferro Chemicals, Inc. joined the public prosecutor in filing the petition for certiorari before this court. Ramon Garcia, President of Ferro Chemicals, Inc., signed the verification and certification of non-forum shopping of the petition for certiorari.<sup>64</sup>

We must clarify, however, that private complainants in criminal cases are not precluded from filing a motion for reconsideration and subsequently an appeal on the civil aspect of a decision acquitting the accused. An exception to the rule that only the Solicitor General can bring actions in criminal proceedings before the Court of Appeals or this court is "when the private offended party questions the civil aspect of a decision of a lower court."<sup>65</sup> As discussed in *Mobilia Products, Inc. v. Hajime Umezawa*:<sup>66</sup>

In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned. In so

---

<sup>63</sup> RULES OF COURT, Rule 110, sec. 5.

<sup>64</sup> RTC records, p. 1318.

<sup>65</sup> *Heirs of Delgado, et al. v. Gonzalez, et al.*, 612 Phil. 817, 844 (2009) [Per J. Carpio, First Division].

<sup>66</sup> 493 Phil. 85 (2005) [Per J. Callejo, Sr., Second Division].

doing, the private complainant or offended party need not secure the conformity of the public prosecutor. If the court denies his motion for reconsideration, the private complainant or offended party may appeal or file a petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or given an adequate remedy in the ordinary course of law.<sup>67</sup> (Citations omitted)

This is in consonance with the doctrine that:

[T]he extinction of the penal action does not necessarily carry with it the extinction of the civil action, whether the latter is instituted with or separately from the criminal action. The offended party may still claim civil liability *ex delicto* if there is a finding in the final judgment in the criminal action that the act or omission from which the liability may arise exists. Jurisprudence has enumerated three instances when, notwithstanding the accused's acquittal, the offended party may still claim civil liability *ex delicto*: (a) if the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) if the court declared that the liability of the accused is only civil; and (c) if the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.<sup>68</sup>

However, if the state pursues an appeal on the criminal aspect of a decision of the trial court acquitting the accused and private complainant/s failed to reserve the right to institute a separate civil action, the civil liability *ex delicto* that is inherently attached to the offense is likewise appealed. The appeal of the civil liability *ex delicto* is *impliedly instituted* with the petition for certiorari assailing the acquittal of the accused. Private complainant cannot anymore pursue a separate appeal from that of the state without violating the doctrine of non-forum shopping.

On the other hand, the conclusion is different if private complainant reserved the right to institute the civil action for the recovery of civil liability *ex delicto* before the Regional Trial Court or institute a separate civil action prior to the filing of the criminal case in accordance with Rule 111 of the Rules of Court. In these situations, the filing of an appeal as to the civil aspect of the case cannot be considered as forum shopping. This is not the situation here.

We see no more reason to discuss the issues presented by the parties in light of the foregoing discussion.

Entry of judgment having been made on the resolution of the court in

---

<sup>67</sup> Id. at 108.

<sup>68</sup> *Co v. Muñoz, Jr.*, G.R. No. 181986, December 4, 2013 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2013/december2013/181986.pdf>> [Per J. Brion, Second Division].

G.R. No. 130880 involving the same parties and issues and by virtue of the doctrine of finality of judgment, we reiterate the resolution of this court.

**WHEREFORE**, the resolution in G.R. No. 130880 is reiterated. We grant the petition insofar as it prays for the setting aside of the Court of Appeals' decision dated August 11, 2005 and resolution dated April 27, 2006 as a final decision over the assailed Regional Trial Court decision that was rendered on November 16, 1998 in G.R. No. 130880.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice  
Acting Chairperson

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

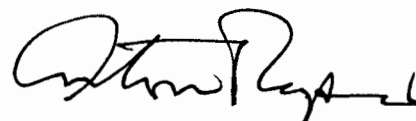
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ARTURO D. BRION**  
Associate Justice  
Acting Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Acting Chief Justice