



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RAMON CHING AND PO WING
PROPERTIES, INC.,

Petitioners,

G.R. No. 175507

Present:

-versus-

CARPIO, *J.*, Chairperson,
DEL CASTILLO,
MENDOZA,
PERLAS-BERNABE,* and
LEONEN, *JJ.*

JOSEPH CHENG, JAIME CHENG,
MERCEDES IGNE¹ AND LUCINA
SANTOS,

Respondents.

Promulgated:
OCT 08 2014

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DECISION

LEONEN, *J.*:

Rule 17 of the Rules of Civil Procedure governs dismissals of actions at the instance of the plaintiff. Hence, the “two-dismissal rule” under Rule 17, Section 1 of the Rules of Civil Procedure will not apply if the prior dismissal was done at the instance of the defendant.

This is a petition for review on certiorari assailing the decision² and resolution³ of the Court of Appeals in CA-G.R. SP. No. 86818, which upheld the (1) order⁴ dated November 22, 2002 dismissing Civil Case No. 02-103319 without prejudice, and (2) the omnibus order⁵ dated July 30, 2004,

¹ Mercedes Igne was referred to in some pleadings and court documents as Mercedes Igme.
* Designated acting member per Special Order No. 1829 dated October 8, 2014.
² *Rollo*, pp. 38-49. The decision was dated March 23, 2006.
³ *Id.* at 51. The resolution was dated November 16, 2006.
⁴ *Id.* at 53.
⁵ *Id.* at 54-60.

which denied petitioners' motion for reconsideration. Both orders were issued by the Regional Trial Court of Manila, Branch 6.⁶

The issues before this court are procedural. However, the factual antecedents in this case, which stemmed from a complicated family feud, must be stated to give context to its procedural development.

It is alleged that Antonio Ching owned several businesses and properties, among which was Po Wing Properties, Incorporated (Po Wing Properties).⁷ His total assets are alleged to have been worth more than ₱380 million.⁸ It is also alleged that while he was unmarried, he had children from two women.⁹

Ramon Ching alleged that he was the only child of Antonio Ching with his common-law wife, Lucina Santos.¹⁰ She, however, disputed this. She maintains that even if Ramon Ching's birth certificate indicates that he was Antonio Ching's illegitimate child, she and Antonio Ching merely adopted him and treated him like their own.¹¹

Joseph Cheng and Jaime Cheng, on the other hand, claim to be Antonio Ching's illegitimate children with his housemaid, Mercedes Igne.¹² While Ramon Ching disputed this,¹³ both Mercedes and Lucina have not.¹⁴

Lucina Santos alleged that when Antonio Ching fell ill sometime in 1996, he entrusted her with the distribution of his estate to his heirs if something were to happen to him. She alleged that she handed all the property titles and business documents to Ramon Ching for safekeeping.¹⁵ Fortunately, Antonio Ching recovered from illness and allegedly demanded that Ramon Ching return all the titles to the properties and business documents.¹⁶

On July 18, 1996, Antonio Ching was murdered.¹⁷ Ramon Ching allegedly induced Mercedes Igne and her children, Joseph Cheng and Jaime Cheng, to sign an agreement and waiver¹⁸ to Antonio Ching's estate in consideration of ₱22.5 million. Mercedes Igne's children alleged that

⁶ Branch 6 was presided over by Pairing Judge Amalia R. Andrade.

⁷ *Rollo*, p. 73.

⁸ *Id.* at 76.

⁹ *Id.* at 73.

¹⁰ *Id.* at 186.

¹¹ *Id.* at 74.

¹² *Id.* at 73.

¹³ *Id.* at 189–192.

¹⁴ *Id.* at 73 and 317.

¹⁵ *Id.* at 76.

¹⁶ *Id.* at 76–77.

¹⁷ *Id.* at 77.

¹⁸ *Id.* at 103–104.

Ramon Ching never paid them.¹⁹ On October 29, 1996, Ramon Ching allegedly executed an affidavit of settlement of estate,²⁰ naming himself as the sole heir and adjudicating upon himself the entirety of Antonio Ching's estate.²¹

Ramon Ching denied these allegations and insisted that when Antonio Ching died, the Ching family association, headed by Vicente Cheng, unduly influenced him to give Mercedes Igne and her children financial aid considering that they served Antonio Ching for years. It was for this reason that an agreement and waiver in consideration of ₱22.5 million was made. He also alleged that he was summoned by the family association to execute an affidavit of settlement of estate declaring him to be Antonio Ching's sole heir.²²

After a year of investigating Antonio Ching's death, the police found Ramon Ching to be its primary suspect.²³ Information²⁴ was filed against him, and a warrant of arrest²⁵ was issued.

On October 7, 1998, Joseph Cheng, Jaime Cheng, and Mercedes Igne (the Chengs) filed a complaint for declaration of nullity of titles against Ramon Ching before the Regional Trial Court of Manila. This case was docketed as **Civil Case No. 98-91046** (the first case).²⁶

On March 22, 1999, the complaint was amended, with leave of court, to implead additional defendants, including Po Wing Properties, of which Ramon Ching was a primary stockholder. The amended complaint was for "Annulment of Agreement, Waiver, Extra-Judicial Settlement of Estate and the Certificates of Title Issued by Virtue of Said Documents with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction."²⁷ Sometime after, Lucina Santos filed a motion for intervention and was allowed to intervene.²⁸

After the responsive pleadings had been filed, Po Wing Properties filed a motion to dismiss on the ground of lack of jurisdiction of the subject matter.²⁹

¹⁹ Id. at 78.

²⁰ Id. at 105–108.

²¹ Id. at 79.

²² Id. at 188 and 192–193.

²³ Id. at 113–120.

²⁴ Id. at 109–110.

²⁵ Id. at 112.

²⁶ Id. at 6 and 39.

²⁷ Id. at 482.

²⁸ Id. at 6 and 482.

²⁹ Id. at 40.

On November 13, 2001, the Regional Trial Court of Manila, Branch 6, granted the motion to dismiss on the ground of lack of jurisdiction over the subject matter.³⁰ Upon motion of the Chengs' counsel, however, the Chengs and Lucina Santos were given fifteen (15) days to file the appropriate pleading. They did not do so.³¹

On April 19, 2002, the Chengs and Lucina Santos filed a complaint for "Annulment of Agreement, Waiver, Extra-Judicial Settlement of Estate and the Certificates of Title Issued by Virtue of Said Documents with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction" against Ramon Ching and Po Wing Properties.³² This case was docketed as **Civil Case No. 02-103319** (the second case) and raffled to Branch 20 of the Regional Trial Court of Manila.³³

When Branch 20 was made aware of the first case, it issued an order transferring the case to Branch 6, considering that the case before it involved substantially the same parties and causes of action.³⁴

On November 11, 2002, the Chengs and Lucina Santos filed a motion to dismiss their complaint in the second case, praying that it be dismissed without prejudice.³⁵

On November 22, 2002, Branch 6 issued an order granting the motion to dismiss on the basis that the summons had not yet been served on Ramon Ching and Po Wing Properties, and they had not yet filed any responsive pleading. The dismissal of the second case was made *without prejudice*.³⁶

On December 9, 2002, Ramon Ching and Po Wing Properties filed a motion for reconsideration of the order dated November 22, 2002. They argue that the dismissal should have been with prejudice under the "two-dismissal rule" of Rule 17, Section 1 of the 1997 Rules of Civil Procedure, in view of the previous dismissal of the first case.³⁷

During the pendency of the motion for reconsideration, the Chengs and Lucina Santos filed a complaint for "Disinheritance and Declaration of Nullity of Agreement and Waiver, Affidavit of Extrajudicial Agreement, Deed of Absolute Sale, and Transfer Certificates of Title with Prayer for TRO and Writ of Preliminary Injunction" against Ramon Ching and Po

³⁰ Id.

³¹ Id. at 7–8.

³² Id. at 41 and 484.

³³ Id. at 8.

³⁴ Id. at 9.

³⁵ Id. at 41.

³⁶ Id. at 53.

³⁷ Id. at 42 and 485.

Wing Properties. This case was docketed as **Civil Case No. 02-105251** (the third case) and was eventually raffled to Branch 6.³⁸

On December 10, 2002, Ramon Ching and Po Wing Properties filed their comment/opposition to the application for temporary restraining order in the third case. They also filed a motion to dismiss on the ground of *res judicata*, *litis pendencia*, forum-shopping, and failure of the complaint to state a cause of action. A series of responsive pleadings were filed by both parties.³⁹

On July 30, 2004, Branch 6 issued an omnibus order⁴⁰ resolving both the motion for reconsideration in the second case and the motion to dismiss in the third case. The trial court denied the motion for reconsideration and the motion to dismiss, holding that the dismissal of the second case was without prejudice and, hence, would not bar the filing of the third case.⁴¹

On October 8, 2004, while their motion for reconsideration in the third case was pending, Ramon Ching and Po Wing Properties filed a petition for certiorari (the first certiorari case) with the Court of Appeals, assailing the order dated November 22, 2002 and the portion of the omnibus order dated July 30, 2004, which upheld the dismissal of the second case.⁴²

On December 28, 2004, the trial court issued an order denying the motion for reconsideration in the third case. The denial prompted Ramon Ching and Po Wing Properties to file a petition for certiorari and prohibition with application for a writ of preliminary injunction or the issuance of a temporary restraining order (the second certiorari case) with the Court of Appeals.⁴³

On March 23, 2006, the Court of Appeals rendered the decision⁴⁴ in the first certiorari case dismissing the petition. The appellate court ruled that Ramon Ching and Po Wing Properties' reliance on the "two-dismissal rule" was misplaced since the rule involves two motions for dismissals filed by the plaintiff only. In this case, it found that the dismissal of the first case was upon the motion of the defendants, while the dismissal of the second case was at the instance of the plaintiffs.⁴⁵

³⁸ Id. at 10 and 486.

³⁹ Id. at 486.

⁴⁰ Id. at 54–60.

⁴¹ Id. at 56–58.

⁴² Id. at 13. The first certiorari case was docketed as CA-G.R. SP. No. 86818.

⁴³ Id. at 487. The second certiorari case was docketed as CA-G.R. SP. No. 89433.

⁴⁴ Id. at 38–49. The decision was penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino of the Fourth Division.

⁴⁵ Id. at 45–46.

Upon the denial of their motion for reconsideration,⁴⁶ Ramon Ching and Po Wing Properties filed this present petition for review⁴⁷ under Rule 45 of the Rules of Civil Procedure.

Ramon Ching and Po Wing Properties argue that the dismissal of the second case was with prejudice since the non-filing of an amended complaint in the first case operated as a dismissal on the merits.⁴⁸ They also argue that the second case should be dismissed on the ground of *res judicata* since there was a previous final judgment of the first case involving the same parties, subject matter, and cause of action.⁴⁹

Lucina Santos was able to file a comment⁵⁰ on the petition within the period required.⁵¹ The Chengs, however, did not comply.⁵² Upon the issuance by this court of a show cause order on September 24, 2007,⁵³ they eventually filed a comment with substantially the same allegations and arguments as that of Lucina Santos'.⁵⁴

In their comment, respondents allege that when the trial court granted the motion to dismiss, Ramon Ching's counsel was notified in open court that the dismissal was without prejudice. They argue that the trial court's order became final and executory when he failed to file his motion for reconsideration within the reglementary period.⁵⁵

Respondents argue that the petition for review should be dismissed on the ground of forum shopping and *litis pendencia* since Ramon Ching and Po Wing Properties are seeking relief simultaneously in two forums by filing the two petitions for certiorari, which involved the same omnibus order by the trial court.⁵⁶ They also argue that the "two-dismissal rule" and *res judicata* did not apply since (1) the failure to amend a complaint is not a dismissal, and (2) they only moved for dismissal once in the second case.⁵⁷

In their reply,⁵⁸ petitioners argue that they did not commit forum shopping since the actions they commenced against respondents stemmed from the complaints filed against them in the trial courts.⁵⁹ They reiterate

⁴⁶ Id. at 51.

⁴⁷ Id. at 3–30.

⁴⁸ Id. at 275.

⁴⁹ Id. at 26.

⁵⁰ Id. at 71–101.

⁵¹ Id. at 173.

⁵² Id. at 246.

⁵³ Id.

⁵⁴ Id. at 315–346.

⁵⁵ Id. at 83.

⁵⁶ Id. at 89–91.

⁵⁷ Id. at 96.

⁵⁸ Id. at 247–278.

⁵⁹ Id. at 260–262.

that their petition for review is only about the second case; it just so happened that the assailed omnibus order resolved both the second and third cases.⁶⁰

Upon the filing of the parties' respective memoranda,⁶¹ the case was submitted for decision.⁶²

For this court's resolution are the following issues:

- I. Whether the trial court's dismissal of the second case operated as a bar to the filing of a third case, as per the "two-dismissal rule"; and
- II. Whether respondents committed forum shopping when they filed the third case while the motion for reconsideration of the second case was still pending.

The petition is denied.

The "two-dismissal rule" vis-à-vis the Rules of Civil Procedure

Dismissals of actions are governed by Rule 17 of the 1997 Rules of Civil Procedure. The pertinent provisions state:

RULE 17 DISMISSAL OF ACTIONS

SEC. 1. *Dismissal upon notice by plaintiff.* — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. *Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.*

SEC. 2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without

⁶⁰ Id. at 268–269.

⁶¹ Id. at 405–436 and 440–477.

⁶² Id. at 527.

prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. *Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice.* A class suit shall not be dismissed or compromised without the approval of the court.

SEC. 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. *This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.* (Emphasis supplied)

The first section of the rule contemplates a situation where a plaintiff requests the dismissal of the case before any responsive pleadings have been filed by the defendant. It is done through notice by the plaintiff and confirmation by the court. The dismissal is *without* prejudice unless otherwise declared by the court.

The second section of the rule contemplates a situation where a counterclaim has been pleaded by the defendant before the service on him or her of the plaintiff's motion to dismiss. It requires leave of court, and the dismissal is generally *without* prejudice unless otherwise declared by the court.

The third section contemplates dismissals due to the fault of the plaintiff such as the failure to prosecute. The case is dismissed either upon motion of the defendant or by the court *motu proprio*. Generally, the dismissal is *with* prejudice unless otherwise declared by the court.

In all instances, Rule 17 governs dismissals at the instance of the plaintiff, not of the defendant. Dismissals upon the instance of the defendant are generally governed by Rule 16, which covers motions to dismiss.⁶³

In *Insular Veneer, Inc. v. Hon. Plan*,⁶⁴ Consolidated Logging and Lumber Mills filed a complaint against Insular Veneer to recover some logs the former had delivered to the latter. It also filed *ex parte* a motion for

⁶³ Rule 16, Section 1 covers the instances when a motion to dismiss may be filed. Under Section 5 of the same Rule, the grant of a motion to dismiss does not bar the re-filing of the complaint except when the dismissal is based on *res judicata*, prescription, extinguishment of claim, or the statute of frauds.

⁶⁴ 165 Phil. 1 (1976) [Per J. Aquino, Second Division].

issuance of a restraining order. The complaint and motion were filed in a trial court in Isabela.⁶⁵

The trial court granted the motion and treated the restraining order as a writ of preliminary injunction. When Consolidated Logging recovered the logs, it filed a notice of dismissal under Rule 17, Section 1 of the 1964 Rules of Civil Procedure.⁶⁶

While the action on its notice for dismissal was pending, Consolidated Logging filed the same complaint against Insular Veneer, this time in a trial court in Manila. It did not mention any previous action pending in the Isabela court.⁶⁷

The Manila court eventually dismissed the complaint due to the non-appearance of Consolidated Logging's counsel during pre-trial. Consolidated Logging subsequently returned to the Isabela court to revive the same complaint. The Isabela court apparently treated the filing of the amended complaint as a withdrawal of its notice of dismissal.⁶⁸

Insular Veneer also filed in the Isabela court a motion to dismiss, arguing that the dismissal by the Manila court constituted *res judicata* over the case. The Isabela court, presided over by Judge Plan, denied the motion to dismiss. The dismissal was the subject of the petition for certiorari and mandamus with this court.⁶⁹

This court stated that:

In resolving that issue, we are confronted with the unarguable fact that Consolidated Logging on its volition dismissed its action for damages and injunction in the Isabela court and refiled substantially the same action in the Manila court. Then, when the Manila court dismissed its action for failure to prosecute, it went back [sic] to the Isabela court and revived its old action by means of an amended complaint.

Consolidated Logging would like to forget the Manila case, consign it to oblivion as if it were a bad dream, and prosecute its amended complaint in the Isabela court as if nothing had transpired in the Manila court. We hold that it cannot elude the effects of its conduct in junking the Isabela case and in giving that case a reincarnation in the Manila court.

⁶⁵ Id. at 4–5.

⁶⁶ Id. at 5–6. The rule remains substantially the same in the 1997 Rules of Civil Procedure, except that the new rules require the trial court to issue the order confirming the dismissal. In the old rules, the case was dismissed *ipso facto* upon notice. See *O.B. Jovenir Construction and Development Corporation v. Macamir Realty and Development Corporation*, 520 Phil. 318, 328 (2006) [Per J. Tinga, Third Division].

⁶⁷ Id. at 6.

⁶⁸ Id. at 6–8.

⁶⁹ Id. at 9.

Consolidated Logging' [sic] filed a new case in Manila at its own risk. Its lawyer at his peril failed to appear at the pre-trial.⁷⁰

This court ruled that the filing of the amended complaint in the Isabela court was barred by the prior dismissal of the Manila court, stating that:

The provision in section 1(e), Rule 16 of the Rules of Court that an action may be dismissed because "there is another action pending between the same parties for the same cause" presupposes that two similar actions are simultaneously pending in two different Courts of First Instance. *Lis pendens* as a ground for a motion to dismiss has the same requisites as the plea of *res judicata*.

On the other hand, when a pleading is amended, the original pleading is deemed abandoned. The original ceases to perform any further function as a pleading. The case stands for trial on the amended pleading only. So, when Consolidated Logging filed its amended complaint dated March 16, 1970 in Civil Case No. 2158, the prior dismissal order dated January 5, 1970 in the Manila case could he [sic] interposed in the Isabela court to support the defense of *res judicata*.⁷¹

As a general rule, dismissals under Section 1 of Rule 17 are without prejudice except when it is the second time that the plaintiff caused its dismissal. Accordingly, for a dismissal to operate as an adjudication upon the merits, i.e, *with prejudice to the re-filing of the same claim*, the following requisites must be present:

- (1) There was a previous case that was dismissed by a competent court;
- (2) Both cases were based on or include the same claim;
- (3) Both notices for dismissal were filed by the plaintiff; and
- (4) When the motion to dismiss filed by the plaintiff was consented to by the defendant on the ground that the latter paid and satisfied all the claims of the former.⁷²

The purpose of the "two-dismissal rule" is "to avoid vexatious litigation."⁷³ When a complaint is dismissed a second time, the plaintiff is now barred from seeking relief on the same claim.

The dismissal of the second case was without prejudice in view of the "two-dismissal rule"

⁷⁰ Id. at 9–10.

⁷¹ Id. at 11–12, *citing* 1 Moran's Comments on the Rules of Court, 1970 Ed., pp. 363 and 488–489.

⁷² *See Serrano v. Cabrera*, 93 Phil. 774 (1953) [Per J. Padilla, En Banc].

⁷³ *National Coconut Corporation v. Kalaw*, 94 Phil. 282, 286 (1954) [Per C.J. Paras, En Banc].

Here, the first case was filed as an ordinary civil action. It was later amended to include not only new defendants but new causes of action that should have been adjudicated in a special proceeding. A motion to dismiss was inevitably filed by the defendants on the ground of lack of jurisdiction.

The trial court granted that motion to dismiss, stating that:

A careful perusal of the allegations of the Amended Complaint dated February 10, 1999, filed by Plaintiff Joseph Cheng, show that additional causes of action were incorporated i.e. extra-judicial settlement of the intestate estate of Antonio Ching and receivership, subject matters, which should be threshed out in a special proceedings case. This is a clear departure from the main cause of action in the original complaint which is for declaration of nullity of certificate of titles with damages. And the rules of procedure which govern special proceedings case are different and distinct from the rules of procedure applicable in an ordinary civil action.

In view of the afore-going, the court finds the Motion to Dismiss filed by Atty. Maria Lina Nieva S. Casals to be meritorious and the Court is left with no alternative but to dismiss as it hereby dismisses the Amended Complaint.

However, on motion of Atty. Mirardo Arroyo Obias, counsel for the plaintiffs, he is given a period of fifteen (15) days from today, within which to file an appropriate pleading, copy furnished to all the parties concerned.

....

SO ORDERED.⁷⁴

Petitioners are of the view that when Atty. Mirardo Arroyo Obias failed to file the appropriate pleading within fifteen (15) days, he violated the order of the court. This, they argue, made the original dismissal an adjudication upon the merits, in accordance with Rule 17, Section 3, i.e., a dismissal through the default of the plaintiff. Hence, they argue that when respondents filed the second case and then caused its dismissal, the dismissal should have been with prejudice according to Rule 17, Section 1, i.e., two dismissals caused by the plaintiff on the same claim.

Unfortunately, petitioners' theory is erroneous.

The trial court dismissed the first case by granting the motion to dismiss filed *by the defendants*. When it allowed Atty. Mirardo Arroyo Obias a period of fifteen (15) days to file an appropriate pleading, it was

⁷⁴ *Rollo*, p. 7.

merely acquiescing to a request made by the plaintiff's counsel that had no bearing on the dismissal of the case.

Under Rule 17, Section 3, a defendant may move to dismiss the case if the plaintiff defaults; it does not contemplate a situation where the dismissal was due to lack of jurisdiction. Since there was already a dismissal prior to plaintiff's default, the trial court's instruction to file the appropriate pleading will not reverse the dismissal. If the plaintiff fails to file the appropriate pleading, the trial court does not dismiss the case anew; the order dismissing the case still stands.

The dismissal of the first case was done at the instance of the defendant under Rule 16, Section 1(b) of the Rules of Civil Procedure, which states:

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

....

(b) That the court has no jurisdiction over the subject matter of the claim;

....

Under Section 5 of the same rule,⁷⁵ a party may re-file the same action or claim subject to certain exceptions.

Thus, when respondents filed the second case, they were merely re-filing the same claim that had been previously dismissed on the basis of lack of jurisdiction. When they moved to dismiss the second case, the motion to dismiss can be considered as the first dismissal at the plaintiff's instance.

Petitioners do not deny that the second dismissal was requested by respondents before the service of any responsive pleadings. Accordingly, the dismissal at this instance is a matter of right that is not subject to the trial court's discretion. In *O.B. Jovenir Construction and Development Corporation v. Macamir Realty and Development Corporation*.⁷⁶

[T]he trial court has no discretion or option to deny the motion, since dismissal by the plaintiff under Section 1, Rule 17 is guaranteed as a

⁷⁵ Sec. 5. *Effect of dismissal.* — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of section 1 hereof shall bar the re-filing of the same action or claim.

⁷⁶ 520 Phil. 318 (2006) [Per J. Tinga, Third Division].

matter of right to the plaintiffs. *Even if the motion cites the most ridiculous of grounds for dismissal, the trial court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of ground.*⁷⁷ (Emphasis supplied)

For this reason, the trial court issued its order dated November 22, 2002 dismissing the case, *without prejudice*. The order states:

When this Motion was called for hearing, all the plaintiffs namely, Joseph Cheng, Jaime Cheng, Mercedes Igne and Lucina Santos appeared without their counsels. That they verbally affirmed the execution of the Motion to Dismiss, as shown by their signatures over their respective names reflected thereat. Similarly, none of the defendants appeared, except the counsel for defendant, Ramon Chang [sic], who manifested that they have not yet filed their Answer as there was a defect in the address of Ramon Cheng [sic] and the latter has not yet been served with summons.

Under the circumstances, and further considering that the defendants herein have not yet filed their Answers nor any pleading, the plaintiffs has [sic] the right to out rightly [sic] cause the dismissal of the Complaint pursuant to Section 2, Rule 17 of the 1997 Rules of Civil Procedure without prejudice. Thereby, and as prayed for, *this case is hereby ordered DISMISSED without prejudice.*

SO ORDERED.⁷⁸ (Emphasis supplied)

When respondents filed the third case on substantially the same claim, there was already one prior dismissal at the instance of the plaintiffs and one prior dismissal at the instance of the defendants. While it is true that there were two previous dismissals on the same claim, it does not necessarily follow that the re-filing of the claim was barred by Rule 17, Section 1 of the Rules of Civil Procedure. The circumstances surrounding each dismissal must first be examined to determine before the rule may apply, as in this case.

Even assuming for the sake of argument that the failure of Atty. Mirardo Arroyo Obias to file the appropriate pleading in the first case came under the purview of Rule 17, Section 3 of the Rules of Civil Procedure, the dismissal in the second case is still considered as one *without prejudice*. In *Gomez v. Alcantara*:⁷⁹

The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, *unless otherwise provided in the order of dismissal*. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the

⁷⁷ Id. at 326.

⁷⁸ *Rollo*, p. 53.

⁷⁹ 598 Phil. 935 (2009) [Per J. Chico-Nazario, Third Division].

merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice.⁸⁰ (Emphasis supplied)

In granting the dismissal of the second case, the trial court specifically orders the dismissal to be without prejudice. It is only when the trial court's order either is silent on the matter, or states otherwise, that the dismissal will be considered an adjudication on the merits.

However, while the dismissal of the second case was without prejudice, respondents' act of filing the third case while petitioners' motion for reconsideration was still pending constituted forum shopping.

The rule against forum shopping and the "twin-dismissal rule"

In *Yap v. Chua*.⁸¹

Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for certiorari. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. 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. 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.

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.⁸² (Emphasis supplied)

⁸⁰ Id. at 946–947.

⁸¹ G.R. No. 186730, June 13, 2012, 672 SCRA 419 [Per J. Reyes, Second Division].

⁸² Id. at 427–428, citing *Spouses De la Cruz v. Joaquin*, 502 Phil. 803, 813 (2005) [Per J. Panganiban, Third Division]; *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003) [Per J. Bellosillo, Second Division]; *Municipality of Taguig v. Court of Appeals*, 506 Phil. 567, 582 (2005) [Per J. Austria-Martinez, Second Division]; *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

When respondents filed the third case, petitioners' motion for reconsideration of the dismissal of the second case was still pending. Clearly, the order of dismissal was not yet final since it could still be overturned upon reconsideration, or even on appeal to a higher court.

Moreover, petitioners were not prohibited from filing the motion for reconsideration. This court has already stated in *Narciso v. Garcia*⁸³ that a defendant has the right to file a motion for reconsideration of a trial court's order denying the motion to dismiss since "[n]o rule prohibits the filing of such a motion for reconsideration."⁸⁴ The second case, therefore, was still pending when the third case was filed.

The prudent thing that respondents could have done was to wait until the final disposition of the second case before filing the third case. As it stands, the dismissal of the second case was without prejudice to the re-filing of the same claim, in accordance with the Rules of Civil Procedure. In their haste to file the third case, however, they unfortunately transgressed certain procedural safeguards, among which are the rules on *litis pendentia* and *res judicata*.

In *Yap*:

Litis pendentia as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. *The underlying principle of litis pendentia is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action.* This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.⁸⁵ (Emphasis supplied)

There is no question that there was an identity of parties, rights, and reliefs in the second and third cases. While it may be true that the trial court

⁸³ G.R. No. 196877, November 21, 2012, 686 SCRA 244 [Per J. Abad, Third Division].

⁸⁴ Id. at 249.

⁸⁵ *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428–429 [Per J. Reyes, Second Division], citing *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per J. Austria-Martinez, Third Division].

already dismissed the second case when the third case was filed, it failed to take into account that a motion for reconsideration was filed in the second case and, thus, was still pending. Considering that the dismissal of the second case was the subject of the first certiorari case and this present petition for review, it can be reasonably concluded that the second case, to this day, remains pending.

Hence, when respondents filed the third case, they engaged in forum shopping. Any judgment by this court on the propriety of the dismissal of the second case will inevitably affect the disposition of the third case.

This, in fact, is the reason why there were two different petitions for certiorari before the appellate court. The omnibus order dated July 30, 2004 denied two pending motions by petitioners: (1) the motion for reconsideration in the second case and (2) the motion to dismiss in the third case. Since petitioners are barred from filing a second motion for reconsideration of the second case, the first certiorari case was filed before the appellate court and is now the subject of this review.

The denial of petitioners' motion for reconsideration in the third case, however, could still be the subject of a separate petition for certiorari. That petition would be based now on the third case, and not on the second case.

This multiplicity of suits is the very evil sought to be avoided by the rule on forum shopping. In *Dy v. Mandy Commodities Co., Inc.*,⁸⁶ the rule is 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 a punitive measure to those who trifle with the orderly administration of justice.*⁸⁷ (Emphasis supplied)

The rule originated from the 1986 case of *Buan v. Lopez, Jr.*⁸⁸ In *Buan*, petitioners filed a petition for prohibition with this court while another petition for prohibition with preliminary injunction was pending before the Regional Trial Court of Manila involving the same parties and based on the same set of facts. This court, in dismissing both actions, stated:

Indeed, the petitioners in both actions . . . 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 the punitive measure of dismissal of both their actions, that in this Court and that in the Regional Trial Court

⁸⁶ 611 Phil. 74 (2009) [Per J. Chico-Nazario, Third Division].

⁸⁷ *Id.* at 87.

⁸⁸ 229 Phil. 65 (1986) [Per J. Narvasa, First Division].

as well. Quite recently, upon substantially identical factual premises, the Court *en banc* had occasion to condemn and penalize the act of litigants of filing the same suit in different courts, aptly described as “forum-shopping[.]”⁸⁹

The rule essentially penalizes the forum shopper by dismissing all pending actions on the same claim filed in any court. Accordingly, the grant of this petition would inevitably result in the summary dismissal of the third case. Any action, therefore, which originates from the third case pending with any court would be barred by *res judicata*.

Because of the severity of the penalty of the rule, an examination must first be made on the purpose of the rule. Parties resort to forum shopping when they file several actions of the same claim in different forums in the hope of obtaining a favorable result. It is prohibited by the courts as it “trifle[s] with the orderly administration of justice.”⁹⁰

In this case, however, the dismissal of the first case became final and executory upon the failure of respondents’ counsel to file the appropriate pleading. They filed the correct pleading the second time around but eventually sought its dismissal as they “[suspected] that their counsel is not amply protecting their interests as the case is not moving for almost three (3) years.”⁹¹ The filing of the third case, therefore, was not precisely for the purpose of obtaining a favorable result but only to get the case moving, in an attempt to protect their rights.

It appears that the resolution on the merits of the original controversy between the parties has long been mired in numerous procedural entanglements. While it might be more judicially expedient to apply the “twin-dismissal rule” and disallow the proceedings in the third case to continue, it would not serve the ends of substantial justice. Courts of justice must always endeavor to resolve cases on their merits, rather than summarily dismiss these on technicalities:

[C]ases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. In that way, the ends of justice would be served better. *Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided.* In fact, Section 6 of Rule 1 states that the Rules [on Civil Procedure] shall be liberally construed in order to promote their objective

⁸⁹ Id. at 70.

⁹⁰ *Dy v. Mandy Commodities Co., Inc.*, 611 Phil. 74, 87 (2009) [Per J. Chico-Nazario, Third Division].

⁹¹ *Rollo*, p. 444.

of ensuring the just, speedy and inexpensive disposition of every action and proceeding.⁹² (Emphasis supplied)

The rule on forum shopping will not strictly apply when it can be shown that (1) the original case has been dismissed upon request of the plaintiff for valid procedural reasons; (2) the only pending matter is a motion for reconsideration; and (3) there are valid procedural reasons that serve the goal of substantial justice for the fresh new case to proceed.

The motion for reconsideration filed in the second case has since been dismissed and is now the subject of a petition for certiorari. The third case filed apparently contains the better cause of action for the plaintiffs and is now being prosecuted by a counsel they are more comfortable with. Substantial justice will be better served if respondents do not fall victim to the labyrinth in the procedures that their travails led them. It is for this reason that we deny the petition.

WHEREFORE, the petition is **DENIED**. The Regional Trial Court of Manila, Branch 6 is ordered to proceed with Civil Case No. 02-105251 with due and deliberate dispatch.

SO ORDERED.




MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson

⁹² *Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation*, 451 Phil. 647, 661 (2003) [Per J. Panganiban, Third Division], citing *Jaro v. CA*, 427 Phil. 532, 548 (2002) [Per J. Carpio, Third Division]; *Paras v. Baldado*, 406 Phil. 589, 596 (2001) [Per J. Gonzaga-Reyes, Third Division]; *Cusi-Hernandez v. Diaz*, 390 Phil. 1245, 1252 (2000) [Per J. Panganiban, Third Division]; *Republic v. CA*, 354 Phil. 252, 260 (1998) [Per J. Mendoza, Second Division]; *Malonzo v. Zamora*, 370 Phil. 240, 257 (1999) [Per J. Romero, En Banc]; *Fortich v. Corona*, 352 Phil. 461, 481-482 (1998) [Per J. Martinez, Second Division].

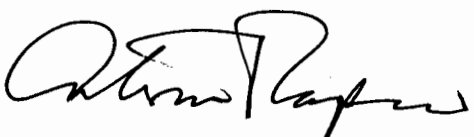

MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


ESTELA M. PERLAS-BERNABE
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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.


MARIA LOURDES P. A. SERENO
Chief Justice