Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GRACE PARK* INTERNATIONAL CORPORATION and WOODLINK REALTY CORPORATION, Petitioners,	**G.R. No. 210606**
- versus -	Present: SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PERLAS-BERNABE, and CAGUIOA, *JJ.*
EASTWEST BANKING CORPORATION, SECURITY BANKING CORPORATION, ALLIED BANKING CORPORATION, represented by the Trustee and Attorney-in-Fact of EASTWEST BANKING CORPORATION TRUST DIVISION, EMMANUEL L. ORTEGA, in his capacity as the Ex-Officio Sheriff of the Regional Trial Court, Malolos City, Bulacan, EDRIC C. ESTRADA, in his capacity as Sheriff IV of the Regional Trial Court, Malolos City, Bulacan, Respondents.	Promulgated: JUL 27 2016

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 22, 2013 and the Resolution[3] dated December 27, 2013 of the

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* Mentioned as "Gracepark" in the title of the petition.

1 *Rollo*, pp. 9-23.

2 Id. at 28-37. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Florito S. Macalino concurring.

3 Id. at 38-39.

Court of Appeals (CA) in CA-G.R. CV No. 98880, which affirmed the Order[4] dated April 25, 2012 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 15 (RTC-Malolos) dismissing Civil Case No. 543-M-2010 on the ground of forum shopping and/or *litis pendentia*.

The Facts

The instant case arose from an Amended Complaint for Injunction and Annulment of Foreclosure Sale[5] filed by petitioners Grace Park International Corporation (Gracepark) and Woodlink Realty Corporation (Woodlink; collectively, petitioners) against respondents Eastwest Banking Corporation (EBC), Allied Banking Corporation (Allied), and Security Banking Corporation (Security), EBC Trust Division, Sheriff Emmanuel L. Ortega, and Sheriff Edric C. Estrada before the RTC-Malolos, docketed as Civil Case No. 543-M-2010. In their complaint, petitioners alleged that: (*a*) they entered into a Mortgage Trust Indenture[6] (MTI) with EBC, Allied, Security, and Banco De Oro Unibank (BDO), with EBC acting as trustee, in the aggregate amounts of ₱162,314,499.00 and US$797,176.47;[7] (*b*) under the MTI, BDO was the majority creditor with 58.04% ownership of the credit, with EBC, Allied, and Security having 18.33%, 12.58%, and 11.05% ownership, respectively;[8] (*c*) as collaterals, petitioners mortgaged eight (8) parcels of land, as well as the improvements found thereon, covered by Transfer Certificate of Title Nos. 439068, 439069, 439070, 439071, 439072, 439073, 439074, and 439075 (collaterals);[9] (*d*) under the MTI, EBC, as trustee, cannot commence foreclosure proceedings on any or all parts of the collaterals without the written instructions from the majority creditors;[10] (*e*) during the pendency of the MTI, BDO's majority share in the MTI was effectively paid for by Sherwyn Yao, Jeremy Jerome Sy, and Leveric Ng (Sherwyn, *et al.*);[11] (*f*) Sherwyn, *et al.* should have been subrogated to BDO's majority interest in the MTI; (*g*) EBC refused to honor the subrogation, causing Sherwyn, *et al.* to file an action for subrogation and injunction[12] before the RTC of Makati City (RTC-Makati), docketed as Civil Case No. 10-323; and (*h*) EBC commenced foreclosure proceedings without

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4 Id. at 143-146. Penned by Judge Alexander P. Tamayo.

5 With prayer for temporary restraining order and/or preliminary injunction dated October 3, 2010. Id. at 102-113.

6 Dated November 24, 2004. Id. at 40-63.

7 See id. at 29 and 104-105.

The aggregate amount is broken down as follows:

Name of Bank	Value of the Mortgage Participation Certificate		% of ownership
Allied Banking Corporation	Php	25,000,000.00	12.58%
Security Banking Corporation	Php	21,972,656.00	11.05%
East West Banking Corporation	Usd	797,176.47	18.33%
Banco de Oro Unibank	Php	115,341,843.00	58.04%

8 Id. at 105.

9 Id. at 29 and 104.

10 See id. at 30 and 107A-108. See Section 6, Item 6.05 (b) of the MTI; id. at 53.

11 Id. at 105-106.

12 See Complaint for Subrogation and Injunction with prayer for restraining order and/or preliminary injunction dated March 30, 2010; id. at 80-88.

written instructions from the majority creditors under the MTI, which by virtue of subrogation, should be Sherwyn, *et al.*[13]

In their Answer[14] and Motion to Dismiss,[15] EBC, Allied, and Security contended that the complaint before the RTC-Malolos should be dismissed on the grounds of forum shopping and *litis pendentia*. They claimed that the action for subrogation pending before the RTC-Makati basically involved the same parties, reliefs, and causes of action with the action pending before the RTC-Malolos in that: (*a*) the individual plaintiffs in the RTC-Makati case, *i.e.*, Sherwyn, *et al.*, represent the same interests as the corporation plaintiffs, *i.e.*, petitioners, in the RTC-Malolos case, since they are the respective owners of petitioner corporations; (*b*) there were glaring similarities in the complaints filed before the RTC-Makati and the RTC-Malolos; and (*c*) both complaints essentially sought the injunction of the foreclosure sale, as well as the inclusion of the claims of Sherwyn, *et al.* in the said foreclosure.[16]

In opposition to the Motion to Dismiss,[17] petitioners insisted that the forum shopping and/or *litis pendentia* are not attendant between Civil Case No. 543-M-2010 and Civil Case No. 10-323, considering that there is no identity of parties and causes of action in both cases.[18] Petitioners likewise averred that the judgment in Civil Case No. 10-323 pending in the RTC-Makati will not amount to *res judicata* in Civil Case No. 543-M-2010 pending in the RTC-Malolos because such judgment can only be used as evidence in the latter case to prove that the requirements of the MTI for the foreclosure of the collaterals were not complied with.[19]

The RTC-Malolos Ruling

In an Order[20] dated April 25, 2012, the RTC-Malolos dismissed Civil Case No. 543-M-2010 on the ground of forum shopping. It found that several similarities existed between the complaint filed before it and that in Civil Case No. 10-323 pending in the RTC-Makati, *i.e.*, (*a*) both complaints dealt with the same collaterals under the MTI, and (*b*) both cases involved substantially the same parties as the individual plaintiffs in Civil Case No. 10-323 (herein Sherwyn, *et al.*) and the corporation plaintiffs in Civil Case No. 543-M-2010 (herein petitioners) represented a common interest adverse to EBC, Allied, and Security.[21] In this light, the RTC-Malolos concluded that the determination of the validity of foreclosure would necessarily be

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13 Id. at 107A-109. See also id. at 29-30.
14 Dated January 27, 2011. Id. at 114-121.
15 Dated March 5, 2012. Id. at 122-125.
16 See id. at 119. See also id. at 31.
17 Dated March 12, 2012; id. at 139-142.
18 See id. at 140.
19 Id. at 141.
20 Id. at 143-146.
21 See id. at 144.

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intertwined with the issue of whether or not Sherwyn, *et al.* should be subrogated to the rights of BDO under the MTI – an issue already pending before the RTC-Makati.[22]

Aggrieved, petitioners appealed to the CA.[23]

The CA Ruling

In a Decision[24] dated May 22, 2013, the CA upheld the RTC-Malolos's dismissal of Civil Case No. 543-M-2010 on the ground of forum shopping. It held that the elements of *litis pendentia* are attendant in the said case, considering that: (*a*) there is a community of interests between the parties in the cases pending before the RTC-Malolos and the RTC-Makati, in that the aforesaid cases were instituted to protect the alleged respective rights of the individual and corporation plaintiffs over the collaterals and both sought the identical relief of enjoining the foreclosure thereof;[25] (*b*) although both cases differ in form or nature, they alleged the same facts and the same evidence would be required to substantiate the parties' claim, considering that the resolution of both cases would be based on the right of Sherwyn, *et al.* to be subrogated to BDO's rights under the MTI;[26] and (*c*) the resolution of said issue in one case would amount to *res judicata* in the other.[27]

Undaunted, petitioners moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated December 27, 2013; hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CA correctly upheld the dismissal of Civil Case No. 543-M-2010 pending before the RTC-Malolos on the ground of forum shopping in the concept of *litis pendentia*.

The Court's Ruling

The petition is meritorious.

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22 Id. at 144-145.
23 See appellant's brief dated November 5, 2012; id. at 147-161.
24 Id. at 28-37.
25 Id. at 34.
26 Id. at 35.
27 Id. at 36.
28 The motion for reconsideration is not attached to the *rollo*.
29 *Rollo*, pp. 38-39.

At the outset, it must be emphasized that "[forum shopping] is 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. ***What is important in determining whether [forum shopping] exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.***"[30]

In *Heirs of Sotto v. Palicte*,[31] the Court held that "[t]he test to determine 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 the other. **Thus, there is forum shopping when the following elements are present, namely: (*a*) identity of parties, or at least such parties as represent 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, amounts to *res judicata* in the action under consideration.**"[32]

In reference to the foregoing, *litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[33]

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30 *Pentacapital Investment Corporation v. Mahinay*, 637 Phil. 283, 308-309 (2010), emphasis, italics, underscoring supplied and citations omitted.

31 G.R. No. 159691, February 17, 2014, 716 SCRA 175.

32 Id. at 178-179; emphasis and underscoring supplied.

33 *Benavidez v. Salvador*, 723 Phil. 332, 342 (2013). See also Section 1 (e), Rule 16 of the Rules of Court, which reads:

> 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:
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> x x x x
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> (e) That there is another action pending between the same parties for the same cause[.]

Anent the first requisite of forum shopping, "[t]here is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. Absolute identity of parties is not required, shared identity of interest is sufficient to invoke the coverage of this principle. Thus, it is enough that there is a community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case."[34]

With respect to the second and third requisites of forum shopping, "[h]ornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint."[35]

Here, it cannot be said that there is an identity of parties between Civil Case No. 10-323 pending before RTC-Makati and Civil Case No. 543-M-2010 pending before RTC-Malolos because the plaintiffs in the former, herein Sherwyn, *et al.*, represent substantially different interests from the plaintiffs in the latter, herein petitioners. This is because in Civil Case No. 10-323, Sherwyn, *et al.*'s interest is to be subrogated into the shoes of BDO as one of the creditors under the MTI; on the other hand, petitioners' interest in Civil Case No. 543-M-2010 is the enforcement of their rights as debtors to the MTI, *i.e.*, ensuring that the foreclosure proceedings were in accord with the foreclosure provisions of the MTI.

Secondly, the underlying circumstances surrounding the causes of action in both cases are likewise substantially different in that: (*a*) in Civil Case No. 10-323, the cause of action arose from EBC's alleged unjust refusal to subrogate Sherwyn, *et al.* to the rights of BDO; while (*b*) in Civil

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[34] *Degayo v. Magbanua-Dinglasan*, G.R. Nos. 173148, April 6, 2015, 755 SCRA 1, 13.
[35] *Yap v. Chua*, 687 Phil. 392, 401-402 (2012).

Case No. 543-M-2010, the cause of action stemmed from EBC's purported breach of Section 6.05[36] of the MTI which provides that it should first secure a written instruction from the Majority Creditors[37] before commencing foreclosure proceedings against the collaterals.

Finally, a judgment in Civil Case No. 10-323 will not necessarily result in *res judicata* in Civil Case No. 543-M-2010. Being principally a subrogation case which is an action *in personam*,[38] a judgment in Civil Case No. 10-323 will not bind any non-parties to it, such as the corporation plaintiffs and the other defendants (aside from EBC) in Civil Case No. 543-M-2010 that represent interests separate and distinct from the parties in Civil Case No. 10-323.[39] At the most, a judgment in Civil Case No. 10-323 may only constitute the *factum probans* (or evidentiary facts) by which the *factum probandum* (or the ultimate fact) sought to be proven by petitioners in Civil Case No. 543-M-2010, *i.e.*, EBC's non-compliance with the foreclosure provisions of the MTI, could be established.

In sum, both the RTC-Malolos and the CA erred in dismissing Civil Case No. 543-M-2010 on the ground of forum shopping and/or *litis pendentia*. Hence, Civil Case No. 543-M-2010 stands to be reinstated and remanded to the court *a quo* for further proceedings.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 22, 2013 and the Resolution dated December 27, 2013 of the Court of

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[36] See *rollo*, p. 53. Section 6.05 of the MTI states:

> 6.05. No foreclosure of the Collateral or any part thereof may be made by the TRUSTEE unless:
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> (*a*) an Event of Default has been declared and has remained unremedied, as provided for in Sections 6.02 and 6.03 hereof (except when sub-paragraphs (a) and (g) of Section 6.01 is applicable); and
>
> (*b*) the Majority Creditors shall have given their written instructions to the TRUSTEE to foreclose the Collateral.
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> x x x x

[37] See id. at 41. Section 1.08 of the MTI reads:

> 1.08. "Majority Creditors" shall mean the Creditor or Creditors holding more than fifty percent (50%) of the aggregate principal amount of the Obligations outstanding from time to time (with any Obligation denominated in foreign currency computed in its Peso Equivalent) as of 11:00 a.m. (Philippine Time) on the date any decision or determination by the Majority Creditors is required under this Indenture.

[38] "A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant." (*Macasaet v. Co, Jr.*, 710 Phil. 167, 177 [2013], citing *Domagas v. Jensen*, 489 Phil. 631, 641 [2005].)

[39] See *Green Acres Holdings, Inc. v. Cabral*, 710 Phil. 235, 250-251 (2013), citing *Muñoz v. Yabut, Jr.*, 665 Phil. 488, 509-510 (2011). See also *Dare Adventure Farm Corporation v. CA*, 695 Phil. 681, 690-691 (2012).

Appeals in CA-G.R. CV No. 98880 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 543-M-2010 is **REINSTATED** and **REMANDED** to the Regional Trial Court of Malolos City, Bulacan, Branch 15 for further proceedings.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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