



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 REGISTERED
 FEB 07 2017
 BY: LCA
 TIME: 9:29

FIRST DIVISION

FCD PAWNSHOP AND
 MERCHANDISING COMPANY,
 FORTUNATO C. DIONISIO, JR.,
 and FRANKLIN C. DIONISIO,

G.R. No. 207914

Petitioners,

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

UNION BANK OF THE PHILIPPINES,
 ATTY. NORMAN R. GABRIEL,
 ATTY. ENGRACIO M. ESCASINAS, JR.,
 and THE REGISTRY OF DEEDS FOR
 MAKATI CITY,

Promulgated:
JAN 18 2017

Respondents.

X-----X

DECISION

DEL CASTILLO, J.:

Assailed in this Petition for Review on *Certiorari*¹ are the February 28, 2013 Decision² of the Court of Appeals (CA) dismissing the herein petitioners' Petition for *Certiorari*³ in CA-G.R. SP. No. 126075, and its June 28, 2013 Resolution⁴ denying their Motion for Reconsideration⁵ in said case.

Factual Antecedents

Together with Felicitas Dionisio-Juguilon and Adelaida Dionisio, petitioners Fortunato C. Dionisio, Jr. (Fortunato) and Franklin C. Dionisio (Franklin) owned FCD Pawnshop and Merchandising Company, which in turn was the registered owner of a parcel of land in Makati under Transfer Certificate of Title No. (168302) S-3664, or TCT (168302) S-3664.

In 2009, Fortunato and Franklin entrusted the original owner's copy of

¹ *Rollo*, Vol. 1, pp. 3-18.

² Id. at 28-38; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

³ Id. at 39-65.

⁴ Id. at 24-26.

⁵ id. at 196-212.

TCT (168302) S-3664 to Atty. Rowena Dionisio. It was later discovered that the said title was used as collateral by Sunyang Mining Corporation (Sunyang) to obtain a ₱20 million loan from respondent Union Bank of the Philippines (UBP).

Civil Case No. 11-116 – for annulment of mortgage

On February 9, 2011, Fortunato and Franklin filed against UBP, Sunyang, the Registry of Deeds of Makati, and several others Civil Case No. 11-116, a Petition⁶ to annul the Sunyang mortgage and claim for damages, based on the premise that TCT (168302) S-3664 was fraudulently mortgaged. The case was assigned to Branch 57 of the Regional Trial Court (RTC) of Makati (Branch 57).

Meanwhile, UBP caused the extrajudicial foreclosure of the subject property, and it bought the same at the auction sale. In the Notice of Extrajudicial Sale⁷ published prior to the auction sale, however, the title to the subject property was at one point erroneously indicated as “Transfer Certificate of Title No. 163302 (S-3664);” but elsewhere in the notice, the title was correctly indicated as “Transfer Certificate of Title No. 168302 (S-3664).” The publisher later circulated an Erratum⁸ admitting its mistake, and it made the corresponding correction.

Civil Case No. 11-1192 – for annulment of foreclosure sale and certificate of sale

On account of perceived irregularities in the foreclosure and sale proceedings, Fortunato and Franklin filed in December 2011 a Complaint⁹ against UBP, the Registry of Deeds of Makati, and several others for annulment of the extrajudicial foreclosure and certificate of sale issued, with injunctive relief. The case was docketed as Civil Case No. 11-1192 and assigned to Branch 133 of the Makati RTC (Branch 133).

In a written opposition, UBP claimed that the filing of Civil Case No. 11-1192 violated the rule against forum shopping.

Ruling of the Regional Trial Court in Civil Case No. 11-1192

On March 26, 2012, Branch 133 issued an Order¹⁰ dismissing Civil Case No. 11-1192 on the ground of forum shopping. It held:

⁶ Id. at 222-231.

⁷ Id. at 325.

⁸ Id. at 326.

⁹ Id. at 268-283.

¹⁰ Id. at 333-335; penned by Presiding Judge Elpidio R. Calis.

The instant case involves the Annulment of Extra-Judicial Foreclosure Sale and Certificate of Sale with Prayer for Temporary Restraining Order and Preliminary Injunction, and Damages. However, a case for Annulment of Mortgage is still pending before the Regional Trial Court Makati City, Branch 57. The Annulment of Extra-Judicial Foreclosure Sale and the Annulment of Mortgage involves (sic) the same subject property described in the Transfer Certificate of Title No. (168302)-S-3664. While the plaintiffs alleged that the issue in the case before RTC 57 deals with the validity of the mortgage and the issue in the instant case deals with the validity of the foreclosure sale, this Court finds the same to be interrelated. The ruling on the validity of the Foreclosure Sale would also deal with the validity of the mortgage. Thus, there would be a possibility that the ruling on the said validity by this Court would be in conflict with ruling on the Annulment of Mortgage case which is now pending before the RTC Makati Branch 57.

As the Supreme Court consistently held x x x there is forum shopping 'when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.' Hence, there is a clear showing of forum shopping which is a ground for the dismissal of this case.

WHEREFORE, in view of the foregoing[,] the instant case is hereby DISMISSED on the ground of forum shopping.

SO ORDERED.¹¹

Fortunato and Franklin moved to reconsider, but the trial court, in a June 14, 2012 Order,¹² held its ground, stating among others that –

In the present case, there is no dispute that the plaintiffs clearly violated Section 4, Rule 2, of the Rules of Court apparently for splitting a cause of action by filing separately and independently the instant action which can be best pleaded in the annulment of mortgage earlier lodged.

Certainly, it would be for the best interest and benefit of the parties herein if the present action (annulment of foreclosure proceeding) is just pleaded as plaintiff's cause of action in the annulment of mortgage first lodged and now pending before RTC Branch 57, instead of being filed separately to save time and effort. x x x

x x x x

In the final analysis, although it may seem that the two cases contain two separate remedies that are both available to the plaintiffs, it cannot be said that the two remedies which arose from one wrongful act can be pursued in two different cases.

The rule against splitting a cause of action is intended to prevent repeated

¹¹ Id. at 334-335.

¹² Id. at 336-339.



litigation between the same parties in regard to the same subject of controversy, to protect the defendant from unnecessary vexation; and to avoid the costs and expenses incident to numerous suits. It comes from the old maxim *nemo debet bis vexari, pro una et eadem causa* (no man shall be twice vexed for one and the same cause).¹³

Ruling of the Court of Appeals

Petitioners filed an original Petition for *Certiorari*¹⁴ before the CA docketed as CA-G.R. SP. No. 126075. Claiming that there is no forum shopping, they argued that Civil Case No. 11-116 (annulment of mortgage) and Civil Case No. 11-1192 (annulment of foreclosure and sale proceedings) involve different subject matters; in the first, the subject is the mortgage constituted on the property and its validity, while the second covers the foreclosure and sale thereof, as well as the validity thereof; that the evidence required to prove the first case is not the same as that which must prove the second; that judgments obtained in the two cases will not be inconsistent with each other; and that the causes of action in both cases are not the same, as in fact the cause of action in the second case did not exist yet when they filed the first, but accrued only later. They added that there is no splitting of a single cause of action, and that as between the two cases, there is no identity of reliefs sought.

On February 28, 2013, the CA rendered the assailed Decision dismissing the Petition, stating thus –

In sum, the lone issue to be resolved is whether petitioners Fortunato and Franklin were guilty of forum-shopping when they successively filed the Annulment of Mortgage case and Annulment of Foreclosure Sale case.

x x x x

Given the foregoing considerations, We hold that petitioners Fortunato and Franklin clearly violated the rule on forum-shopping as the elements of *litis pendentia* are present in the case at bench. Consider the following:

Firstly, it is undisputed that there is identity of parties representing the same interests in the two cases, both involving petitioners x x x and private respondent Bank. Notwithstanding that in the first case, FCD Pawnshop x x x was not indicated as a party and respondent Sunyang was not impleaded therein, it is evident that the primary litigants in the two actions are the same.

Secondly, in finding that the other elements of *litis pendentia* were present in the instant case, We deem it necessary to apply the case of *Goodland Company, Inc. vs. Asia United Bank, et al.*¹⁵

¹³ Id. at 338-339.

¹⁴ Id. at 39-65.

¹⁵ 684 Phil. 391 (2012).

In *Goodland*, petitioner initially filed a Complaint for Annulment of Mortgage on the ground that the Real Estate Mortgage (REM) contract was falsified and irregularly executed. Subsequently, it filed a second case where it prayed for injunctive relief and/or nullification of the extrajudicial foreclosure sale by reason of, among others, defective publication of the Notice of Sale and falsification of the REM contract which was the basis of foreclosure, thus, rendering the latter as similarly null and void. The High Court found petitioner guilty of forum-shopping ratiocinating that there can be no determination of the validity of the extrajudicial foreclosure and the propriety of the injunction in the Injunction case without necessarily ruling on the validity of the REM.

We stress, however, that unlike the *Goodland* case, the instant controversy involved a situation wherein the allegations in the Complaint for Annulment of Foreclosure did not explicitly and categorically raise the falsification of the REM contract as one of the grounds for declaring the annulment of the said foreclosure sale. Here, petitioners anchored their arguments on the alleged irregularities in the foreclosure proceedings, *i.e.*, different title numbers in the documents used or issued in the auction sale and that the Petition for Extrajudicial Foreclosure Sale was filed without authority. Nonetheless, after a careful study of the *Goodland* case, We are ever more convinced that the same is still instructive on the issue at hand. Consider the following pertinent portions of the case:

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

x x x In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. **Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action.** The procedural infirmities or non-compliance with legal requirements for extrajudicial foreclosure raised in the



second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract's nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case. x x x'

While in the instant case, the Annulment of Foreclosure Sale was merely founded on irregularities in the foreclosure proceedings, without deliberately raising the alleged nullity of the REM, the foregoing clearly suggests that in resolving the said Annulment of Foreclosure Sale case, its determination will still be anchored upon and premised on the issue of the validity of REM. Parenthetically, should it be found that the mortgage contract is null and void, the proceedings based thereon shall likewise become ineffectual. The resolution of the Annulment of Foreclosure Sale case, therefore, is inevitably dependent on the effectivity of the REM transaction, thus, it can be said that both cases shall be substantially founded on the same transactions, same essential facts and circumstances.

In addition, as correctly pointed out by the private respondent Bank, a careful scrutiny of the Complaint for Annulment of Foreclosure shows petitioners Fortunato and Franklin's repeated reference to the subject property as unlawfully and fraudulently mortgaged. As such, insofar as the determination of the validity of foreclosure proceedings is concerned, same evidence will have to be utilized as the antecedent facts that gave rise to both cases were the same.

x x x x

Thirdly, a judgment in the Annulment of Mortgage case will amount to *res judicata* in the Annulment of Foreclosure Sale case. It is a principle in *res judicata* that once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment. To allow relitigation creates the risk of inconsistent results and presents the embarrassing problem of determining which of two conflicting decisions is to be preferred. Here, conflicting decisions may result should the Annulment of Foreclosure case be allowed to proceed.

To stress once again, should RTC Br. 57 rule that the REM contract is null and void, the proceedings based thereon shall likewise become ineffectual. Considering that both RTC Brs. 57 and 133 will be confronted (sic) to discuss or make any pronouncement regarding the validity of the REM, the possibility of conflicting rulings or decisions may be rendered with respect to the said issue. With that, We deem it proper that petitioners Fortunato and Franklin should have just amended their Complaint for Annulment of Mortgage, pleading therein the subsequent extrajudicial foreclosure and include in the prayer the nullification of the said extrajudicial foreclosure.

In view of the foregoing, no grave abuse of discretion can be imputed to public respondent RTC Br. 133 in finding that petitioners Fortunato and Franklin committed forum-shopping. The instant petition, therefore, indubitably warrants denial.

WHEREFORE, the petition is **DENIED**. The assailed Orders dated March 26, 2012 and June 14, 2012 of the x x x Regional Trial Court of Makati City, Branch 133, in Civil Case No. 11-1192, are hereby **AFFIRMED**.



Costs against petitioners.

SO ORDERED.¹⁶ (Emphasis in the original)

A Motion for Reconsideration was filed, but the same was denied in a June 28, 2013 Resolution of the CA. Hence, the present Petition.

In a September 1, 2014 Resolution,¹⁷ the Court resolved to give due course to the instant Petition.

Issues

Petitioners essentially point out that in maintaining Civil Case Nos. 11-116 and 11-1192, they are not guilty of forum shopping, nor did they violate the rule on *litis pendentia*.

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside, petitioners in their Petition and Reply¹⁸ reiterate the arguments in their CA Petition that, as between Civil Case No. 11-116 (annulment of mortgage) and Civil Case No. 11-1192 (annulment of foreclosure and sale proceedings), there is no identity of causes of action, subject matter, issues, and reliefs sought; that both cases require different evidence as proof; and that judgments obtained in the two cases will not be inconsistent with each other, and any decision obtained in one will not constitute *res judicata* on the other.

Respondent UBP's Arguments

Respondent UBP, on the other hand, essentially argues in its Comment¹⁹ that the Petition should be denied, for being a mere rehash of the arguments in petitioners' CA Petition which have been thoroughly passed upon by the appellate court; that as correctly held by the CA, Civil Case No. 11-1192 (annulment of foreclosure and sale proceedings) is anchored on a determination of the validity or binding effect of the real estate mortgage in Civil Case No. 11-116 (annulment of mortgage case), and both cases are supported by, and will rise and fall on, the same evidence; that the necessary consequence of Civil Case No. 11-1192 is determined solely by the decision in Civil Case No. 11-116 in that if it is found that the mortgage is null and void, then the foreclosure and sale proceedings based

¹⁶ *Rollo*, pp. 32-37.

¹⁷ *Id.* at 434-435.

¹⁸ *Id.* at 385-391.

¹⁹ *Id.* at 370-381.



thereon would likewise become ineffectual; that the grounds for annulment of the foreclosure and sale proceedings merely constitute additional reasons for seeking injunctive relief, if any, in the annulment of mortgage case, but cannot form the basis of a separate cause of action; and that a judgment in Civil Case No. 11-116 on the validity of the mortgage should thus amount to *res judicata* in Civil Case No. 11-1192 on the effect of the foreclosure and sale, but with the pendency of both cases, a possibility of conflicting rulings by different courts on the validity of the mortgage exists.

Our Ruling

The Court denies the Petition.

This *ponente* has had the occasion to rule on a case²⁰ where a party instituted two cases against the same set of defendants – one for the annulment of a real estate mortgage, and a second for injunction and nullification of the extrajudicial foreclosure and consolidation of title, rooted in the same real estate mortgage – who moved to dismiss the second case on the ground of forum shopping, claiming that both cases relied on a determination of the same issue: that is, the validity of the real estate mortgage. The trial court dismissed the second case, but the CA ordered its reinstatement. This *ponente* affirmed the trial court, declaring as follows:

There is forum shopping ‘when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.’ The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and **(3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).**

Common in these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as ‘the act or omission by which a party violates the right of another.’

The cause of action in the earlier Annulment Case is the alleged

²⁰ *Asia United Bank v. Goodland Company, Inc.*, 660 Phil. 504 (2011).



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

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

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. **The well-entrenched rule is that 'a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.'**²¹ (Emphasis supplied)

The foregoing view was reiterated in a subsequent pronouncement,²² which happens to form the underlying premise of the CA's disposition.

The factual milieu in the present case is the same as in the above-cited cases. The plaintiffs in both cases first filed a case for annulment of the mortgage, followed by the case for annulment of the foreclosure proceedings. For this reason, the underlying principle in these previously decided cases must apply equally to the instant case. Thus, the Court completely agrees with the CA's findings that in the event that the court in Civil Case No. 11-116 (annulment of mortgage case) should nullify the Sunyang mortgage, then subsequent proceedings based thereon, including the foreclosure, shall also be nullified. Notably as well, the CA's observation in Civil Case No. 11-1192 (case for annulment of foreclosure and sale) – that since the complaint therein repeatedly makes reference to an “unlawful” and “fraudulent” Sunyang mortgage, then the same evidence in Civil Case No. 11-116 will have to be utilized – is well-taken.

²¹ Id. at 514-515.

²² *Goodland Company Inc. v. Asia United Bank*, supra note 15.

Petitioners maintain that Civil Case No. 11-1192 (case for annulment of foreclosure and sale) is grounded on specific irregularities committed during the foreclosure proceedings. However, their Complaint in said case reiterates the supposed illegality of the Sunyang mortgage, thus presenting the court in said case with the opportunity and temptation to resolve the issue of validity of the mortgage. There is therefore a danger that a decision might be rendered by the court in Civil Case No. 11-1192 that contradicts the eventual ruling in Civil Case No. 11-116, or the annulment of mortgage case.


The rules of procedure are geared toward securing a just, speedy, and inexpensive disposition of every action and proceeding.²³ “Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes.”²⁴ With these principles in mind, the Court would rather have petitioners try their cause of action in Civil Case No. 11-116, rather than leave the trial court in danger of committing error by issuing a decision or resolving an issue in Civil Case No. 11-1192 that should properly be rendered or resolved by the court trying Civil Case No. 11-116.

WHEREFORE, the Petition is **DENIED**. The February 28, 2013 Decision and June 28, 2013 Resolution of the Court of Appeals in CA-G.R. SP. No. 126075 are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

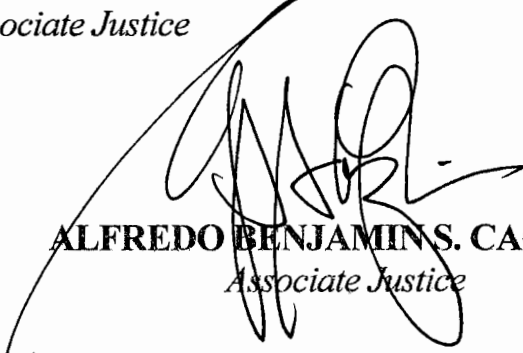

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

²³ RULES OF COURT, Rule 1, Section 6.

²⁴ *Sebastian v. Morales*, 445 Phil. 595, 605 (2003).



TERESITA J. LEONARDO-DECASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMINS 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

