

distributor. The coverage of such appointment includes storing, selling, and distributing Shellane LPG products for domestic household or commercial market within the territories of Tacloban City and Southern Leyte for a period as follows:⁵

2.0 Period of Agreement

Unless sooner terminated, this Agreement shall be effective for a period of THREE (3) years commencing on 01 FEBRUARY 2005. However, should the parties continue their relations after the term of this Agreement without having executed a written renewal, they shall continue to be governed by this Agreement in its entirety except for the term or period which shall be effective on a month to month basis only. In any event, either party may cancel this Agreement without cause by giving written notice to the other at least ninety (90) days prior to effective date of termination. SHELL may however terminate and cancel this Agreement immediately for violation of its terms and conditions by the DISTRIBUTOR.⁶

Pursuant to said Agreement, the agreement became effective on February 1, 2001. Under the same terms, the contract was renewed for another three years which commenced on March 1, 2008.⁷

Before the expiry of the renewed contract, LDCI assumed the distributorship of a certain Dondon Chua for a buy-out goodwill of about ₱5 Million which covered the areas of Ormoc, Isabel, Merida, Palompon and Biliran. Considering the further extent of LDCI's business, it was certified by Shell as its exclusive authorized distributor in the whole of Leyte.⁸

On September 12, 2011, Shell, through its General Manager Ramon Del Rosario (Del Rosario), informed LDCI that it sold its share in Shell Gas (LPG) Philippines, Inc. in favor of Isla Petroleum and Gas. Despite such changes, Del Rosario assured LDCI that such sale of shares would not have an immediate impact on it as a customer and it would still be able to purchase LPG products from Shell until the completion of the deal and from Isla Petroleum and Gas thereafter.⁹

The completion of the sale of all the shares of Shell to Isla Petroleum and Gas was scheduled on January 27, 2012. On even date, the name of Shell Gas (LPG) Philippines, Inc. would then be changed to Isla LPG Corporation.¹⁰

On January 30, 2012, Del Rosario, acting as General Manager of Isla, formally confirmed the acquisition by Isla Petroleum and Gas of Shell Gas

⁵ Id. at 52.

⁶ Id. at 66.

⁷ Id. at 52.

⁸ Id.

⁹ Id. at 52-53.

¹⁰ Id. at 53.

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(LPG) Philippines, Inc. and the subsequent change of its corporate name to Isla LPG Corporation (Isla).¹¹

Subsequently, Isla rebranded the Shellane LPG products as “Solane.” As a consequence, Shellane LPG cylinders were no longer refilled and released for distribution. Said rebranding caused delay in the repainting of the cylinders bearing the Solane brand name as well as their hauling and transportation for distribution. LDCI claimed that on peak months for LPG sales on account of several feast celebrations, the lack of availability of Solane LPG during those periods affected its sales volume.¹²

Sometime in 2012, LDCI reminded Isla of several confirmed and documented territorial encroachment perpetrated by another Solane distributor in its Tacloban area. LDCI claimed that said distributor was picking up Solane LPG from the Anibong depot and delivering to one of Isla’s cutthroat competitor, Rufrance/Samar Leyte Gas Center.¹³

As it remained unsatisfied with Isla’s measures, LDCI reiterated its concerns, more particularly on the lack of price support from Isla. In turn, Isla had a meeting with LDCI where the former undertook to further extend a price support program to the latter and revisit its sales and financial capacity in January, 2013.¹⁴

Reneging on its previous commitment, Isla advised LDCI that the Distributorship Agreement on a month-to-month basis was terminated effective January 12, 2013. Thus, on said date, LDCI may no longer use any Solane LPG trademark, logo and trade name.¹⁵

As the appointment of LDCI as the distributor in the Province of Leyte was no longer effective, Isla appointed Supreme Star Oil (Supreme) as the new distributor of Solane LPG products in the Provinces of Leyte, Masbate, and Biliran.¹⁶

Asserting that it lost its established business opportunity consisting of purchases of LPG products in the average of ₱5 Million to ₱15 Million per month, as well as its good name and the goodwill attached to the product, LDCI filed a Petition for Declaratory Relief with Application for a 72-Hour Temporary Restraining Order and/or Writ of Preliminary Injunction before the RTC-Makati.¹⁷

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 53-54.

¹⁵ Id. at 54.

¹⁶ Id. at 25-26.

¹⁷ Id.

However, as the Distributorship Agreement has already been terminated, the petition was dismissed without prejudice.¹⁸

Clutching at straws, LDCI filed a complaint for breach of contract and damages with application for writ of preliminary injunction, docketed as Civil Case No. 13-155, against Shell, Isla and their respective officers before the RTC-Makati.¹⁹

In an Order²⁰ dated March 11, 2013, the RTC-Makati issued a Writ of Preliminary Injunction in the absence of any valid ground which sufficiently warranted the immediate termination of the Distributorship Agreement, thus:

WHEREFORE, let a Writ of Preliminary Injunction issue commanding the defendants **ISLA LPG CORPORATION**, and/or **ISLA PETROLEUM & GAS CORPORATION**, and/or **RAMON DEL ROSARIO**, and/or **KELLY MANLANGIT**, and/or **MARIANO LABAYEN, JR.**, and/or all their employees, agents, officers, attorneys and all persons acting for and in their behalf from “implementing any of the effects of the purported termination or cancellation of the LPG Distributorship Agreement, more specifically the designation and appointment of defendants **SUPREME STAR OIL** and/or **JIMMY T. YAOKASIN, JR.** as new dealer/s or distributor/s of SHELLANE and/or SOLANE LPG products, including any actual or indirect dealing and distribution of such products by any persons or entities (sic) acting as business partners, assignees, agents, successors-in-interest or representatives of defendants in any of the defined territorial areas of plaintiff of Southern Leyte, Tacloban City and the nearby areas, including Biliran” effective immediately until further orders or unless sooner cancelled by this Court. Within five (5) days from the date hereof, plaintiff is ordered to post the Injunction Bond in the amount of two million (sic) (₱2,000,000.00) Philippine currency executed to the defendants to answer for whatever damages the latter may sustain by reason of this order.

SO ORDERED.²¹

Aggrieved, Isla filed a Motion for Reconsideration assailing the issuance of a writ of preliminary injunction while Shell filed a Motion to Dismiss on the ground of failure to state a cause of action.²²

In an Order²³ dated August 23, 2013, the motions were denied. The RTC-Makati upheld its earlier issuance of a writ of preliminary injunction and maintained that the allegations in the complaint are sufficient to constitute a cause of action. The RTC-Makati ordered Isla and Shell to file their respective responsive pleadings.

¹⁸ Id.

¹⁹ Id.

²⁰ Penned by Judge Selma Palacio Alaras; id at 174-181.

²¹ Id. at 181.

²² Id. at 233-235.

²³ Supra note 4.

However, instead of filing its pleading, Isla sought the reconsideration of the Order, introducing the fact that LDCI filed a complaint for damages with application for injunctive relief, docketed as Civil Case No. 2013-07-61, before the Regional Trial Court of Tacloban City, Branch 8 (RTC-Tacloban) while the case before RTC-Makati is pending.²⁴

In an Order²⁵ dated January 16, 2014, the RTC-Makati denied the motion.

Impugning the Orders of RTC-Makati, LDCI filed a petition for *certiorari*, ascribing grave abuse of discretion on the part of RTC-Makati in not dismissing the case before it on the ground of *litis pendentia*, before the CA.²⁶

In a Decision²⁷ dated February 24, 2015, the CA dismissed the petition. The CA found that *litis pendentia* exists in the case because the issue raised before the RTC-Makati and RTC-Tacloban is the same, that is, the validity of the termination of the Distributorship Agreement. However, while *litis pendentia* is extant, Isla's claim that the case before the RTC-Makati should have been dismissed is without basis as the priority in time rule is applicable. The *fallo* thereof provides:

WHEREFORE, the petition is **DISMISSED**. The assailed Orders of the Regional Trial Court of Makati City, Branch 134, are **SUSTAINED**.

SO ORDERED.

In a Resolution²⁸ dated August 5, 2015, the CA denied the Motion for Reconsideration filed by Isla.

Undaunted, Isla filed a Petition for Review on *Certiorari* before this Court.

The Issue

Should the case before RTC-Makati be dismissed on the ground of *litis pendentia*?

The Court's Ruling

Preliminarily, a Petition for Review on *Certiorari* under Rule 45 is the proper mode of appeal only when questions of law are involved.

²⁴ Id. at 236-242.

²⁵ Supra note 4.

²⁶ Id. at 55.

²⁷ Supra note 2.

²⁸ Supra note 3.

A question of law arises when there is doubt as to what the law is on a certain state of facts. Its resolution does not involve an examination of the probative value of the evidence presented by the litigants, and relies solely on what the law provides on a given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact.²⁹

In this case, what is left to be determined by this Court is the existence of forum shopping which results to *litis pendentia*. As such, whether Isla committed forum shopping in filing a second complaint before the RTC-Tacloban is a question of law.³⁰ Thus, the filing of a Petition for Review on *Certiorari* under Rule 45 is proper.

This Court now resolves.

Forum shopping is the repetitive availment of judicial remedies based on the same facts and circumstances with winning as an end in view, *viz.*:

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.³¹

In the case of *Heirs of Marcelo Sotto v. Palicte*,³² this Court laid down the tests to determine the existence of forum shopping, *i.e.*, whether the elements of *litis pendentia* are present or whether a final judgment in one case amounts to *res judicata* in the other. Chiefly, for forum shopping to apply, the following elements must be extant:

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.³³

Here, the CA correctly held that there exists a forum shopping when LDCI successively filed complaints before the RTC-Makati (Civil Case No. 13-155) and RTC-Tacloban (Civil Case No. 2013-07-61).

²⁹ *Daswani v. Banco de Oro Universal Bank*, 765 Phil. 88, 96-97 (2015).

³⁰ *Id.* at 97.

³¹ *Grace Park International Corporation v. Eastwest Banking Corporation*, 791 Phil. 570, 577 (2016).

³² 726 Phil. 651, 654 (2014)

³³ *Id.*

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First, there is identity of parties in this case. It must be noted that in both cases, the plaintiffs are LDCI and its President. Except for Shell and Isla, the defendants in both cases differ but there exists a community of interest among them. Said defendants, who are the officers of Isla and Shell and the Tacloban distributor of Isla, were being sued essentially for unilaterally terminating the Distributorship Agreement without valid grounds and for allowing the newly-appointed distributor to supply LPG in the Province of Leyte.

Second, there is identity of rights asserted and reliefs prayed for in both complaints.

Couched in a language which may convince this Court in ruling against the existence of forum shopping, LDCI contends that the relief prayed for in the first complaint is the reimbursement of the damages caused to its goodwill by the undue termination of the Distributorship Agreement while the relief prayed for in the second complaint is the indemnification for the lost business opportunities and profits by Isla, *et.al.*'s violation of the injunctive writ.

This Court does not agree.

A reading of the complaint in Civil Case No. 13-155 reveals that the reliefs prayed for are: (1) indemnification; (2) declaration of nullity of the non-compete clause found in the Agreement; and (3) issuance of an injunctive writ to prevent the implementation of any of the effects of the termination of the Agreement, while in Civil Case No. 2013-07-61, the reliefs prayed for are: (a) indemnification; (b) opening of the books and business records of Isla, *et. al.* to determine the sales and profits that should have accrued to LDCI; and (3) issuance of an injunctive writ to prevent the implementation of any of the effects of the termination of the Agreement. In detail:³⁴

Civil Case No. 13-155	Civil Case No. 2013-07-61
1. Upon due notice and hearing, a Writ of Preliminary Injunction be issued forthwith restraining and enjoining defendants, particularly defendants Kelly Manlangit, Mariano Labayen, Jr. and Ramon del Rosario, or any other persons acting for and on their behalf, from implementing any of the effects of the purported termination or cancellation of the LPG Distributorship Agreement, more specifically the designation and appointment of defendants Supreme Star Oil and Jimmy T. Yaokasin, Jr. as	1. Upon due notice and hearing, a Writ of Preliminary Injunction be issued forthwith restraining and enjoining defendants, particularly defendants Brandon Briones and Nolan Supat or any other persons acting for and on their behalf, from implementing any of the effects of the purported termination or cancellation of the LPG Distributorship Agreement in the defined territorial areas of plaintiff LEDECO; and specifically restraining and enjoining defendants Supreme Star Oil and Jimmy T. Yaokasin, Jr. as new dealer/s or distributor/s of SHELLANE

³⁴ *Rollo*, pp. 149-150; 215.

<p>new dealer/s or distributor/s of SHELLANE and/or SOLANE LPG products, including any actual or indirect dealing and distribution of such products by any persons or entities (sic) acting as business partners, assignees, agents, successors-in-interest or representatives of defendants in any of the defined territorial areas of the plaintiff in Southern Leyte, Tacloban City and the nearby areas including Biliran;</p>	<p>and/or SOLANE LPG products, including any actual or indirect dealing and distribution of such products by any persons or entities (sic) acting as business partners, assignees, agents, successors-in-interest or representatives of defendants in any of the defined territorial areas of the plaintiff in Southern Leyte, Tacloban City and the nearby areas including Biliran;</p>
<p>2. After the necessary proceedings, judgment be rendered as follows –</p> <ol style="list-style-type: none"> i. directing defendants to immediately and solidarily pay or reimburse plaintiff of the goodwill appurtenant to the market it has preserved and further established in its territorial areas in the amount of not less than ₱36,000,000.00; ii. ordering both parties to duly and promptly settle all their respective accountabilities and liabilities in accordance with the provisions of the distributorship agreement and the prevailing business practices; iii. declaring the non-compete clause under Clause 15.7 as unreasonable, inapplicable and ineffective against plaintiff, and permitting plaintiff to engage in any business of selling, dealing, storing and/or distributing LPG other than bearing the brands SHELLANE or SOLANE in any area or territory; iv. declaring plaintiff as entitled to be accordingly informed and furnished with the necessary documents regarding the sale of all shares of Pilipinas Shell in Shell Gas (LPG) Philippines, Inc. in favor of IP&G to verify the extent, if not the definite terms and conditions, of the assignment of “all or any part of the benefits of, or its rights, benefits and/or obligations under the LPG Distributorship Agreement”; v. ordering defendants to solidarily pay plaintiffs the amounts of not 	<p>1. After the necessary proceedings, judgment be rendered as follows:</p> <ol style="list-style-type: none"> i. directing defendants to open their books and business records, and account for all the LPG sales and profits that should have accrued to plaintiff; ii. ordering defendants to solidarily pay plaintiffs the amounts of not less than ₱1,000,000.00 as and by way of indemnification for lost business opportunities and profits; not less than ₱2,500.00 as and by way of exemplary damages, and not less than ₱250,000.00 as and by way of attorney’s fees and litigation expenses; and iii. ordering defendants to solidarily pay the costs of suit. <p>x x x x</p>

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<p>less than ₱3,000,000.00 as and by way of indemnification for lost business opportunities and profits; not less than ₱500,000.00 as and by way of exemplary damages, and not less than ₱500,000.00 as and by way of attorney's fees, as well as the costs of suit.</p> <p>X X X X</p>	
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Verily, the reliefs prayed for in the complaints stemmed from the alleged undue termination of the Distributorship Agreement by Isla, which allowed another distributor to assume the distributorship rights of LDCI. It must be noted that the averred damage to LDCI caused by such termination which led to the appointment of a new distributor is entwined in the question of the propriety of the cancellation of said Agreement.

Clearly, while the first complaint prayed for the determination of Isla's breach of the terms of the Distributorship Agreement, it likewise sought for indemnification for its lost business opportunities as a result thereof. Similarly, the second complaint attempted to obtain such relief, supported with the same allegations against Isla, *et.al.*

Moreover, both complaints sought for damages on account of the termination of the Distributorship Agreement which led to lost business opportunity on the part of LDCI.³⁵ Also, it bears stressing that in Civil Case No. 2013-07-61, LDCI put forth the validity of the terms of the Distributorship Agreement, asserting its right as a distributor. This further belies LDCI's claim that the second complaint was solely related to the breach of the injunctive writ.

Third, it is clear that any judgment rendered by the RTC-Makati amounts to *res judicata* in the case before RTC-Tacloban. At the risk of sounding repetitive, the issues in both cases are the validity of the termination of the Distributorship Agreement and the consequential damages that may arise in case of any breach.

Thus, while forum shopping exists in this case, this Court does not agree that the filing of the second complaint is willful and deliberate. Hence, it is necessary to rule on which of the two cases must be dismissed.


³⁵ Complaint in Civil Case No. 13-155; *id.* at 145, and Complaint in Civil Case No. 2013-07-61; *id.* at 211-212.

Generally, the first action which was filed should be retained in accordance with the maxim *qui prior est tempore, potior est jure*. However, this rule is subject to exceptions: (a) the first action may be abated if it was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal or **the anticipatory test**; and (b) the first action may be abated if it is not the more appropriate vehicle for litigating the issues between the parties or the **more appropriate action test**.³⁶


In this case, this Court deems it proper to apply the general rule, there being no showing that the first complaint was filed to simply pre-empt the second complaint or anticipate its filing nor any indication that the second complaint was the more appropriate case. Noteworthy is the fact that the first complaint delves into the validity of the contract itself, which would determine whether or not the award of damages is in order. Hence, it is but proper to allow the first complaint to proceed for the determination of the rights of all the parties.

WHEREFORE, premises considered, the petition is **DENIED**. Accordingly, the Decision dated February 24, 2015 and the Resolution dated August 5, 2015 of the Court of Appeals in CA-G.R. SP No. 134532 are **AFFIRMED in toto**.

SO ORDERED.

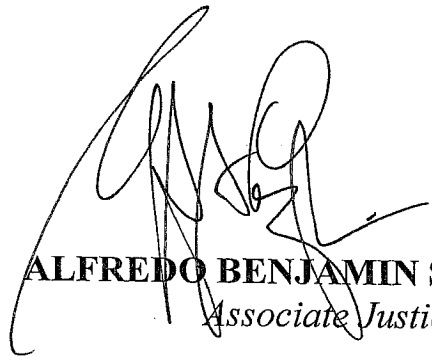

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

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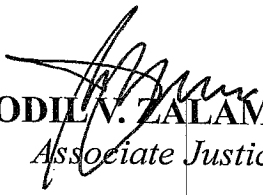
Benavidez v. Salvador, 723 Phil. 332, 343-344 (2013), emphasis supplied.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



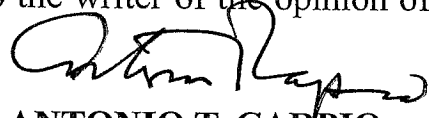
AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
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
Senior 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.



LUCAS P. BERSAMIN
Chief Justice

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