



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **October 15, 2014**, which reads as follows:

“G.R. No. 180517 (*The Insular Life Assurance Co., Ltd., vs. Eduardo L. Rayo*). – Before this Court is a Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court, assailing the Decision² dated May 30, 2007 and Resolution³ dated November 6, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 82336, which reversed and set aside the Order⁴ dated January 28, 2004 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 213, in Civil Case No. MC-02-1787.

Spouses Nicolas and Mercedita Uy De Baron (Spouses De Baron) and their son, Harvie T. de Baron (Harvie), the predecessors-in-interest of Eduardo Rayo (respondent), were former underwriters and/or direct sales agents of The Insular Life Assurance Co., Ltd. (petitioner). As a matter of policy, the petitioner provides as an incentive a housing loan facility at subsidized interest rates to any agent who will qualify as Million Dollar Round Table (MDRT) awardee or he who will reach more than the target goal of insurance policy sales within a specified period of time. Specifically, the subsidized interest rate is fixed at 15.5% *per annum* for five years of the loan provided that the agent continues to qualify under the program. In case of disqualification or failure to comply with the conditions of the housing program, the prevailing mortgage rate of 17% *per annum* shall apply.⁵

Due to their sales performance, Spouses De Baron and Harvie became MDRT qualifiers and availed of the petitioner’s housing loan program. Harvie was granted a housing loan of ₱10,000,000.00, which was secured by certain real properties located in Mandaluyong City. On the other hand,

¹ Rollo, pp. 9-26.

² Pinned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Arturo G. Tayag, concurring; id. at 404-410.

³ Id. at 425.

⁴ Issued by Judge Amalia F. Dy; id. at 400-402.

⁵ Id. at 67.

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Spouses De Baron were granted a housing loan amounting to ₱20,000,000.00, in the following amounts, to wit:

- (1) ₱11,060,000.00, secured by real estate properties located in Mandaluyong City, particularly covered by Condominium Certificate of Title (CCT) Nos. 9251, 9252, 9253, 10167, 8211, 10168, 10169, 10170, 10171, 10172, 10173, 10174, 10175;
- (2) ₱3,380,000.00, secured by several real estate properties located in Pasig City covered by CCT Nos. PT-21332 and PT-21333; and
- (3) ₱5,560,000.00, secured by several real estate properties located in Quezon City covered by CCT Nos. 22211, 22212, 22213 and 22214.

All of the mentioned securities were owned and registered under the name of UDB International Holdings, Inc. (UDB), where Nicolas T. Uy de Baron is the President and Chairman.⁶

When Spouses De Baron and Harvie defaulted in the payment of their obligation, the petitioner commenced the foreclosure proceedings on the mortgaged properties. Specifically, on January 8 and 10, 2002, the mortgaged properties located in Mandaluyong City were sold on public auction where the petitioner was declared as the highest bidder.⁷ The petitioner likewise emerged as the highest bidder in the separate public auctions conducted for the mortgaged properties situated in Pasig City and Quezon City. Accordingly, certificates of sale were issued under the name of the petitioner and were entered in the respective titles of the properties.

On April 3, 2002, the respondent, by virtue of a Deed of Assignment,⁸ acquired all the rights, titles, interests and participation of UDB over the foreclosed properties covered by CCT Nos. 22211, 22212, 22213 and 22214 located in Quezon City; CCT Nos. 10167, 8211, 10168, 10169, 10170, 10171, 10172, 10173, 10174, 10175 located in Mandaluyong City; and CCT Nos. PT-21332 and PT-21333 located in Pasig City. Then, on April 10, 2002, he further acquired all the rights, titles, interests and participation of UDB over the foreclosed properties located in Mandaluyong City covered by CCT Nos. 9251, 9252 and 9253 by virtue of another Deed of Assignment.⁹

⁶ Id. at 68.

⁷ Id. at 69.

⁸ Id. at 46-51.

⁹ Id. at 61-63.

Subsequently, the respondent filed a complaint for nullification of real estate mortgage contract and extrajudicial foreclosure sale with the RTC of Mandaluyong City, docketed as Civil Case No. MC-02-1787, the proceeding subject of the instant petition. He alleged that the contract of loan secured by the mortgage imposed an interest rate higher than the 12% rate provided under Act No. 2655, as amended, otherwise known as the Usury Law, rendering the same, as well as the real estate mortgage constituted as security therefor and the extrajudicial foreclosure sale which ensued thereafter, null and void. He further contended that the extrajudicial foreclosure sale likewise failed to observe the statutory requirements under Act 3135 and Presidential Decree (PD) No. 1709 with respect to the posting of notices of sale and its publication in a newspaper of general circulation.

On April 17, 2002, the respondent filed another Complaint before the RTC of Quezon City, docketed as Civil Case No. Q-02-46626, questioning the real estate mortgage contract and the foreclosure proceeding conducted over the mortgaged properties located in the said jurisdiction. Then, on April 18, 2002, he filed another complaint before the RTC of Pasig City, which was docketed as Civil Case No. 68918.¹⁰

On November 11, 2002, the respondent filed a Motion for Summary Judgment¹¹ in Civil Case No. MC-02-1787. In the said motion, he withdrew his arguments regarding the petitioner's non-compliance with the statutory requirements for extrajudicial foreclosure under Act No. 3135 and PD No. 1709, and instead anchored his legal theory on the alleged unconstitutionality of Central Bank (CB) Circular No. 905, as well as PD Nos. 116, 858 and 1684, which pertained to the authority of the Monetary Board to abolish the maximum rate of interest under the Usury Law.¹² He argued that in view of the withdrawal of his arguments on the procedural defects in the extrajudicial foreclosure of his properties, there is no longer any factual issue left to be litigated such that the RTC may now render judgment on the case.

Subsequently, the respondent also filed separate motions for summary judgment in Civil Case No. Q-02-46626¹³ and Civil Case No. 68918¹⁴ in the RTCs of Quezon City and Pasig City, respectively. Both motions also contained an identical provision whereby he declared that he is waiving or withdrawing his allegations regarding the non-compliance with the statutory procedural requirements for extrajudicial foreclosure sale.¹⁵

¹⁰ Id. at 386.
¹¹ Id. at 74-164.
¹² Id. at 78.
¹³ Id. at 166-254.
¹⁴ Id. at 276-364.
¹⁵ Id. at 169, 279.

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Meanwhile, the RTC of Mandaluyong City issued an Order¹⁶ dated February 19, 2003, denying the respondent's motion for summary judgment in Civil Case No. MC-02-1787. The RTC opined that the principal issue of whether the real estate mortgage contract and the extrajudicial foreclosure sale should be nullified can be resolved without delving into the validity and constitutionality of CB Circular No. 905, PD Nos. 116, 858 and 1684. It ratiocinated, thus:

In sum, there is "NO NECESSITY" of deciding the constitutional questions posed by the plaintiff. The reason why this Court will as much as possible avoid the decision of a constitutional question can be traced to the doctrine of separation of powers which enjoins upon each department a proper respect for the acts of the other departments. In line with this policy, this court indulge[s] the presumption of constitutionality and go[es] by the maxim that "TO DOUBT IS TO SUSTAIN". The theory is that the subject Central Bank Circulars and Presidential Decrees are supposed to have been carefully studied and determined to be constitutional before they were issued for circulation and implementation. Hence, as long as there is some basis that can be used by this court for its resolution, the constitutionality of the challenged Central Bank Circulars and Presidential Decrees will not be touched and the case will be decided on other grounds. To reiterate, the nullification of the subject Real state [sic] Mortgage and Foreclosure Sale can be resolved after due hearing.

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WHEREFORE, prescinding from the foregoing, the court resolves to DENY the plaintiff's Motion for Summary Judgment for lack of merit.

SO ORDERED.¹⁷

On August 12, 2003, the petitioner filed a Motion for Summary Dismissal with Motion to Cite Plaintiff in Direct Contempt,¹⁸ on the ground that the respondent is guilty of deliberate forum shopping. It pointed out that the respondent filed two other cases, Civil Case No Q-02-46626 in the RTC of Quezon City and Civil Case No. 68918 in the RTC of Pasig City, which involved the same parties and issues as in Civil Case No. MC-02-1787, and all the said cases were entitled *Eduardo L. Rayo vs. Insular Life Assurance Co., Inc.* It further noted that the three complaints stated the same cause of action.¹⁹ Also, in all three cases, the respondent filed a motion for summary judgment, setting forth the same constitutional questions on the validity of CB Circular No. 905, PD Nos. 116, 858 and 1684. With the filing of three motions for summary judgment containing identical allegations, the respondent, in effect, has three pending actions in three different courts that involved the same parties, issues and cause of action. The petitioner thus prayed that the case be summarily dismissed with prejudice in accordance with Section 5, Rule 7 of the Rules of Court.

¹⁶ Issued by Judge Amalia F. Dy; id. at 382-384.

¹⁷ Id. at 383-384.

¹⁸ Id. at 386-390.

¹⁹ Id. at 386.

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On January 28, 2004, the RTC of Mandaluyong City issued an Order,²⁰ dismissing Civil Case No. MC-02-1787 with prejudice on the ground that the respondent committed forum shopping. The RTC held, thus:

Considering however, the failure of the Plaintiff to comply with his sworn duty to inform this court within five days should he learn thereafter that the same or similar action or claim has been filed or is pending in another tribunal, this court finds cogent reasons to DISMISS the instant complaint WITH PREJUDICE. At this juncture, the adjudication of the merit as to whether or not *litis pendentia* exists becomes moot and academic for no less than the plaintiff himself admitted that the pending cases in the Regional Trial Courts of Pasig and Quezon City involves the same parties and similar issues with respect to the validity, existence and applicability of the Usury Law. In sum, the plaintiff had set forth the same arguments relative to the validity and constitutionality of Presidential Decrees Nos. 116, 858 and 1684 as well as Central Bank Circular 905. This is evidenced by Annexes "A" and "B" of the defendant's REPLY dated August 28, 2003 where the contents of the (3) three motions for summary judgment filed by the plaintiff in the three (3) Regional Trial Courts are substantially similar and the same.

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IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the instant complaint is hereby DISMISSED WITH PREJUDICE.²¹

Unyielding, the respondent appealed the Order dated January 28, 2004 of the RTC of Mandaluyong City to the CA. He argued that the RTC erroneously dismissed Civil Case No. MC-02-1787 on the ground of forum shopping. He asseverated that while Civil Case No. MC-02-1787 involved the same parties as in Civil Case Nos. Q-02-46626 and 68918 pending before the RTCs of Quezon City and Pasig City, respectively, they have varying causes of action and subject matters. Further, the claims and reliefs in the mentioned cases are not the same although they all involved the same legal issues. There is also no *litis pendentia* because the judgment in one case will not constitute *res judicata* in the other cases as the contract of loan and real estate mortgage contract involved are particular in each case.²²

On May 30, 2007, the CA rendered a Decision,²³ reversing the appealed decision of the RTC of Mandaluyong City, ratiocinating thus:

Contrary to the finding[s] of the RTC, [respondent] is not guilty of forum shopping. [Respondent] is not mandated to inform the RTC of Mandaluyong City the pendency of Civil Case Nos. Q-02-46626 and 68918. While there is an identity of parties and reliefs prayed for in these cases, there is no identity of causes of action. The subject matter in Civil

²⁰ Id. at 400-402.

²¹ Id. at 401-402.

²² Id. at 408.

²³ Id. at 404-410.

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Case No. MC-02-1787 is the nullification of [the] real estate mortgage contract and extrajudicial foreclosure sale for condominium properties covered by CCT Nos. 8211, 10167 to 10175 and 9251 to 9253 located in Mandaluyong City. On the other hand, the subject matter in Civil Case No. Q-02-46626 is the nullification of real estate mortgage contract and extrajudicial foreclosure sale involving condominium properties covered by CCT Nos. 22211 to 22214 located in Quezon City. Finally, the subject matter in Civil Case No. 68918 is the nullification of the real estate mortgage contract and extrajudicial foreclosure sale involving condominium properties covered by CCT Nos. PT-21332 and PT-21334 located in Pasig City.

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WHEREFORE, the appeal is **GRANTED**. The assailed order dated January 28, 2004 of the Regional Trial Court, Branch 213, Mandaluyong City, in Civil Case No. MC-02-1787 is **REVERSED** and **SET ASIDE**. The said case is ordered **REVIVED**, for further proceedings.

SO ORDERED.²⁴

The petitioner filed a motion for reconsideration²⁵ but the CA denied the same in its Resolution²⁶ dated November 6, 2007. Undeterred, the petitioner filed the instant petition for review on *certiorari*, challenging the CA's ruling to reinstate Civil Case No. MC-02-1787 despite a clear violation of Section 5, Rule 7 of the Rules of Court.

The lone issue in this case is whether or not the respondent engaged in forum shopping.

After a careful consideration of the circumstances of the instant case, the Court finds that the action of the respondent did not amount to forum shopping.

"Forum shopping is manifest whenever 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.'"²⁷ It is considered a pernicious evil as it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.²⁸

²⁴ Id. at 409-410.

²⁵ Id. at 412-422.

²⁶ Id. at 425.

²⁷ *Canuto, Jr. v. National Labor Relations Commission*, 412 Phil. 467, 474 (2001).

²⁸ Id.

In *Chua, et al. v. Metropolitan Bank and Trust Co., et al.*,²⁹ this Court discussed the instances by which forum shopping can be committed, thus:

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 of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).³⁰ (Citation omitted)

As can be gathered from the foregoing enumeration, the common characteristic of the instances of forum shopping is the identity of the cause of action in the cases filed. A cause of action is defined under Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another.

It is the petitioner's contention that the CA erred in ruling out forum shopping by simply holding that the alleged differences in the locations of the mortgaged properties warranted the simultaneous filing of three separate cases for nullification of real estate mortgage contract and extrajudicial foreclosure sale in the RTCs of Mandaluyong City, Pasig City and Quezon City. It argued that the supposed differences in the location of the properties became immaterial when the respondent filed separate motions for summary judgment in all three cases, wherein he specifically withdrew all the allegations relative to the supposed non-compliance with the statutory requirements in the extrajudicial foreclosure sale of the mortgaged properties, leaving only the issue on the constitutionality of CB Circular No. 905, as well as PD Nos. 116, 858 and 1684, as the only matters to be resolved by the mentioned courts. His actions, therefore, resulted to three similar cases pending in three RTCs between the same parties and involving the same legal issues, a blatant manifestation of forum shopping.³¹ Thus, it claimed that the CA should have affirmed the dismissal of the case by the RTC of Mandaluyong City on the ground of forum shopping.

"Forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration."³²

²⁹ 613 Phil. 143 (2009).

³⁰ Id. at 153-154.

³¹ *Rollo*, pp. 505-506.

³² *Spouses Cruz v. Spouses Caraos*, 550 Phil. 98, 108 (2007).

Indeed, the records bear out that the respondent filed three separate cases for nullification of real estate mortgage contract and extrajudicial foreclosure sale in the RTCs of Mandaluyong City, Pasig City and Quezon City. This is, however, justified by the fact that the actions partake of a real action or one that affects the title or ownership of the property, the venue of which lies before the court having jurisdiction over the territory where the property is situated.³³ Further, it bears noting that each of the three actions involved a distinct contract of loan, secured by different sets of properties located in the mentioned jurisdictions. The disparity in the causes of action and subject matters of the three actions precludes forum shopping.

The petitioner strongly maintained, however, that the respondent's filing of a motion for summary judgment in the three cases, which incorporated a waiver of some of the allegations in the complaint, leaving only the issue on the validity of PD Nos. 116, 858 and 1684, as well as CB Circular No. 905 as the only matter to be resolved by the mentioned RTCs, amounted to forum shopping.

The petitioner's argument is misplaced.

The petitioner is alluding to the identical provision in the three motions for summary judgment filed by the respondent which reads, thus:

That for purposes of this motion, plaintiff is waiving or withdrawing his allegations regarding non-compliance with the statutory procedural requirements for extrajudicial foreclosure sale under Act No. 3135, as amended[,] as well as P.D. 1709.³⁴

There is no dispute that the allegations in the motions for summary judgment filed in each of the cases are similarly worded. The sameness of the essential facts and circumstances can hardly be overlooked. Forum shopping, however, requires more than just similarity in relevant details. There must be the concurrence of all its elements.

Upon examination of the records, the Court finds that even with the identity of the parties and reliefs in the mentioned cases, the fact remains that each has a distinct subject matter and cause of action such that the judgment in one case will not amount to *res judicata* in the other cases. The variance in the subject matter and cause of action of the three cases subsists even with the supposed waiver made by the respondent in the motions for summary judgment. It should be remembered that each of the actions filed by the respondent was for the nullification of a separate real estate mortgage contract and extrajudicial foreclosure proceedings. Also, a specific real estate mortgage contract stood as security for distinct contracts of loan.

³³ *Go v. UCPB*, 484 Phil. 869, 876 (2004).

³⁴ *Rollo*, pp. 77, 169, 279.

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Clearly, all the three actions filed by the respondent pertain to varying subject matters.

Apparently, the petitioner misconstrued the respondent's waiver to mean that he is abandoning his challenge to the validity of the extrajudicial foreclosure sale. On the contrary, however, the respondent's motions for summary judgment were not meant to modify his cause of action but only to explore the possibility of cutting short the proceedings through a summary judgment. This is allowed under the rules provided that there are no questions of fact in issue or where the material allegations of the pleadings are not disputed. "A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant."³⁵ If the trial court finds otherwise, then it denies the motion for summary judgment and proceeds with a full-blown trial.

The petitioner must understand that the motions for summary judgment did not change the respondent's cause of action in each of the cases. It was resorted only to abbreviate the proceedings. Thus, in the mentioned motions, his prayers³⁶ still pertained to the granting of the reliefs he stated in the complaint, *i.e.*, that the real estate mortgage contracts and the extrajudicial foreclosure sale, as well as the certificates of sale that was issued pursuant thereto, be rendered null and void.³⁷ If at all, the respondent merely changed his legal theory, only for purposes of the motion, by opting to subsume his challenge to the validity of the real estate mortgage contracts and the extrajudicial foreclosure sale on the alleged nullity of the contracts of loan. But ultimately, the disposition of a trial court will only pertain to subject matter of the case pending before it and will not amount to *res judicata* to the cases pending before other courts.

WHEREFORE, in view of the foregoing disquisitions, the instant petition for review on *certiorari* is **DENIED**. The Decision dated May 30, 2007 and Resolution dated November 6, 2007 of the Court of Appeals CA-G.R. CV No. 82336 are **AFFIRMED**." (Velasco, Jr., J., *on leave*; Peralta and Perlas-Bernabe, JJ., *designated Acting Chairperson and Acting Member per Special Order Nos. 1815 and 1816, respectively, both dated October 3, 2014*, Brion, J., *additional member vice Villarama, Jr., J. per raffle dated October 8, 2012.*)

³⁵ *Sps. Go v. CA*, 322 Phil. 613, 618 (1996).

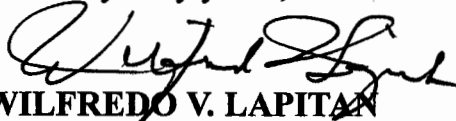
³⁶ *Rollo*, pp. 163, 253, 363.

³⁷ *Id.* at 43.

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SO ORDERED.”

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court
10/15/14

Atty. Eduardo P. Tanjuatco
Counsel for Petitioner
LAW FIRM TANJUATCO & PARTNERS
11th Floor, Taipan Place Building
F. Ortigas, Jr. Road, Ortigas Center
1605 Pasig City

COURT OF APPEALS
CA G.R. CV No. 82336
1000 Manila

Mr. Eduardo L. Rayo
Respondent
No. 28 Estrada St., Tierra Bella
Tandang Sora, 1107 Quezon City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 213, Mandaluyong City
(Civil Case No. MC-02-1787)

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