

## **SECOND DIVISION**

**[ G.R. No. 224912, October 16, 2019 ]**

**BF CITILAND CORPORATION, PETITIONER, V. BANGKO SENTRAL  
NG PILIPINAS, RESPONDENT.**

### **D E C I S I O N**

**REYES, J. JR., J.:**

In forum shopping, what is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.<sup>[1]</sup>

#### **The Facts**

In May 2004, petitioner BF Citiland Corporation (BF Citiland) executed a Deed of Conveyance over its real property, covered by Transfer Certificate of Title (TCT) No. 218687, in favor of Banco Filipino Savings and Mortgage Bank (Banco Filipino), as payment for subscription of shares of stocks amounting to P130 Million. Banco Filipino used the property as collateral to secure its Special Liquidity Facilities loan (SLF loan) from respondent Bangko Sentral ng Pilipinas (BSP). However, the property's title was not yet transferred to Banco Filipino pending the Securities and Exchange Commission's (SEC's) approval of the investment and the BSP's favorable endorsement. Thus, Banco Filipino asked BF Citiland to execute a third-party mortgage in favor of BSP. On July 2, 2004, BF Citiland signed the mortgage. On July 13, 2004, BF Citiland executed another deed of real estate mortgage over the same property as accommodation mortgagor to secure Banco Filipino's SLF loan from the BSP, this time amounting to P101 Million.<sup>[2]</sup>

In October 2004, BF Citiland learned that BSP disapproved the conveyance of the property in exchange for Banco Filipino stocks, so it rescinded the deed. Banco Filipino agreed because it was unable to deliver the equivalent value of the shares of stock.<sup>[3]</sup>

On March 17, 2011, Banco Filipino was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC).<sup>[4]</sup>

In 2011,<sup>[5]</sup> BSP filed a petition for extrajudicial foreclosure of real estate mortgage against BF Citiland covering TCT No. 218687. On October 25, 2011, BF Citiland received a notice of sheriff's sale from the Clerk of Court and Ex-Officio Sheriff of the Makati Regional Trial Court (RTC).<sup>[6]</sup>

On November 18, 2011, BF Citiland filed a petition for declaratory relief and prohibition with application for the issuance of writ of preliminary

injunction/temporary restraining order docketed as **Civil Case No. 11-1146 (declaratory relief case)** against BSP and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff to determine BSP's right to foreclosure and to prevent them from conducting the public auction. It was raffled to **Makati RTC, Branch 143**.<sup>[7]</sup>

On August 2, 2012, the Makati RTC Clerk of Court proceeded with the auction sale of the mortgaged property, in which BSP was the highest bidder at P273,054,000.00.<sup>[8]</sup>

On November 8, 2012, BF Citiland filed an action for annulment of mortgage and foreclosure sale with application for preliminary injunction/temporary restraining order docketed as **Civil Case No. 12-1079 (annulment case)** against Banco Filipino, BSP, and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff to annul the following: (1) the deeds of real estate mortgage; (2) the auction sale; (3) the certificate of sale; and (4) the annotation on Banco Filipino's certificate of title. It was raffled to **Makati RTC, Branch 141**.<sup>[9]</sup>

BSP filed individual motions to dismiss in the Makati RTC Branches 141 and 143 on the ground of forum shopping. Branch 141 denied the motion to dismiss in the annulment case on July 5, 2013,<sup>[10]</sup> and the motion for reconsideration on December 4, 2013.<sup>[11]</sup> The Makati RTC reasoned that there is no forum shopping since the issues between the two actions are different.<sup>[12]</sup>

However, Branch 143 ruled differently in the declaratory relief case. In its January 29, 2014 Order,<sup>[13]</sup> the Makati RTC, Branch 143 dismissed the petition for declaratory relief because BF Citiland committed forum shopping. BF Citiland did not move for reconsideration, which resulted in the order becoming final and executory.<sup>[14]</sup>

BSP filed an omnibus motion before Branch 141 for the trial court to take judicial notice of the January 29, 2014 Order of Branch 143 and to dismiss the annulment case.<sup>[15]</sup> On July 21, 2014,<sup>[16]</sup> Branch 141 denied the omnibus motion because a similar motion to dismiss due to forum shopping had been previously filed, acted upon, and had attained finality. Branch 141 explained that even if it takes judicial notice of the dismissal of the case, this would not result to the dismissal of the annulment case as the court has expressly declared that dismissal shall only apply to the declaratory relief case.<sup>[17]</sup>

BSP moved for reconsideration, which Branch 141 denied in its November 8, 2014 Order.<sup>[18]</sup> Aggrieved, BSP filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals (CA), docketed as CA-G.R. SP No. 138747.

### **The CA Decision**

On October 9, 2015, the CA rendered a Decision<sup>[19]</sup> granting the petition for *certiorari* and dismissed the annulment case.

The CA defined forum shopping as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It pertains to the institution of two or more actions or proceedings based on the same cause so that one or the other would make a favorable disposition.

Here, the CA ruled that BF Citiland was securing an advantage by filing two identical cases consecutively.<sup>[20]</sup>

The elements of forum shopping are: (1) the identity of parties or parties that represent the same interests in both actions; (2) the identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration, regardless of which party is successful.<sup>[21]</sup>

The CA explained that the true test in identity of causes of action is not in the form of action, but on whether the same evidence would support and establish both causes of action.<sup>[22]</sup>

The CA resolved that there is identity of parties and of causes of action in the declaratory relief case and the annulment case.<sup>[23]</sup> The CA found no difference in both cases, because both were based on a single issue: whether or not the foreclosure of the real estate mortgages was proper while Banco Filipino is under receivership.<sup>[24]</sup> Even if BF Citiland added grounds to prove the nullity of the real estate mortgages, the same pieces of evidence were still required to prove its claim in either case.<sup>[25]</sup>

The CA demonstrated the similarity of causes of action in a comparative table.<sup>[26]</sup>

<b>Facts alleged in Civil Case No. 11-1146</b>	<b>Facts alleged in Civil Case No. 12-1079</b>
As stated in the above discussion, the debtor, Banco Filipino, cannot be compelled as yet to perform its obligations under the Promissory Notes executed in favor of the BSP due to the prohibition against payments while said Bank is under the receivership of the PDIC. Since the principal obligation, embodied [in the] Promissory Notes executed in favor of the BSP, cannot be enforced against the principal, then the accessory contract thereto, <i>i.e.</i> , the real estate mortgage executed by third-party mortgagor BF Citiland likewise cannot be enforced. <sup>[27]</sup>	As stated in the above discussion, the debtor, Banco Filipino, cannot be compelled as yet to perform its obligations under the Promissory Notes executed in favor of the BSP due to the prohibition against payments while said Bank is under the receivership of the PDIC. Since the principal obligation, embodied [in the] Promissory Notes executed in favor of the BSP, cannot be enforced against the principal, then the accessory contract thereto, <i>i.e.</i> , the real estate mortgage executed by third-party mortgagor BF Citiland likewise cannot be enforced. <sup>[28]</sup>

The CA elucidated on the nature of a petition for *certiorari* and the extent of grave abuse of discretion. A petition for *certiorari* is a remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave of abuse discretion amounting to lack or excess of jurisdiction. It is only available when there is no appeal, nor any plain, speedy, and adequate remedy at law. Grave abuse of discretion exists when the respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.<sup>[29]</sup>

Here, the CA determined that the Makati RTC, Branch 141 committed grave abuse of discretion for failing to apply the rule against forum shopping despite knowing that BF Citiland had previously filed a case. When there is a finding of forum shopping, the penalty is dismissal of both cases as a punitive measure to those who trifle with the orderly administration of justice.<sup>[30]</sup>

The CA discussed the settled rule in forum shopping. If forum shopping is willful and deliberate, both or all actions shall be dismissed with prejudice; otherwise, it shall be dismissed without prejudice. Here, the CA dismissed the case without prejudice, because of the absence of willful and deliberate intent to violate the rule against forum shopping on the part of BF Citiland. It indicated in its Certification of Non-Forum Shopping in Civil Case No. 12-1079 that Civil Case No. 11-1146 was pending. Furthermore, BSP was unable to substantiate that BF Citiland was in bad faith in committing forum shopping.<sup>[31]</sup>

BF Citiland moved for reconsideration, which the CA denied in its May 26, 2016 Resolution.<sup>[32]</sup> Unsuccessful, it filed before the Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.<sup>[33]</sup>

### **The Issue Presented**

The sole issue presented before the Court is whether or not BF Citiland committed forum shopping.

### **The Court's Ruling**

The Petition is denied.

In its Petition, BF Citiland argued that the elements of forum shopping are absent, because: (1) there is lack of common cause of action since declaratory relief is a special civil action, while the annulment case is an ordinary civil action; and (2) there are no common rights asserted and reliefs prayed for since one action seeks a declaration on the right of the mortgagee to foreclose the property, while the other action aims to annul the deeds of mortgage, the auction sale, and the certificate of sale.<sup>[34]</sup>

In its Comment, BSP raised technical issues in the Petition: (1) lack of competent evidence of identity in the Verification and Certification of Non Forum Shopping;<sup>[35]</sup> and (2) failure to attach material portions of the record as stated in Section 4(d), Rule 45 of the Rules of Court, making the Petition dismissible.<sup>[36]</sup> Respondent BSP also presented arguments on the correctness of the CA's ruling on the presence of forum shopping.<sup>[37]</sup>

In its Reply, BF Citiland did not tackle any of the technical issues and focused its discussion on the substantial issues.<sup>[38]</sup>

### **I. Technical Issue: Lack of competent evidence of identity in the Verification and Certification of Non-Forum Shopping**

In *Jorge v. Marcelo*,<sup>[39]</sup> the Court allowed the non-presentation to the notary public and non-indication in the verification and certification of non forum shopping of the

affiant's competent evidence of identity, because he/she was personally known to the notary public, to wit:

The fact that it contained no details of her competent evidence of identity is inconsequential simply because its presentation may be excused or dispensed with. If it is not required for the affiant to show competent evidence of identity in case he/she is personally known to the notary public, with more reason that it is unnecessary to state the details of such competent evidence of identity in the notarial certificate.<sup>[40]</sup>

Such is not the case here. The jurat of BF Citiland's Verification and Certification of Non-Forum Shopping does not mention that the affiants are personally known to the notary public. It clearly states that the affiants presented competent evidence of identity to the notary public and yet there were no entries under Identification and Date/Place of Issuance.

SUBSCRIBED AND SWORN to before me, a notary public for and in behalf of Parañaque this 7<sup>th</sup> day of July 2016, **affiants exhibited to me as competent evidence of identity:** (Emphasis supplied)

Identification	Date/Place of Issuance
CARMELO M. MENDOZA ANNA FRANCESCA ABAD <sup>[41]</sup>	

Proofs of competent evidence of identities are required to ensure that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith.<sup>[42]</sup> With the absence of the details of competent evidence of identity, the verification and certification are defective.

However, the Court had previously held that a defective verification and certification is not fatal to a case. In several cases,<sup>[43]</sup> the Court entertained a petition despite a defect in the verification and certification, and reasoned that "the verification is only a formal, not a jurisdictional, requirement that the Court may waive." In these cases, the Court considered it more appropriate to resolve the action based on merit and substantive issues, and not on technical issues.

Here, the Court had examined the pleadings of the parties and resolved to deny the petition based on substantive and technical grounds. Form follows substance. The technical grounds play a secondary role in our ruling and are only additional reasons for the denial of the petition. Still, the Court reminds the members of the bar to conform to the formal requirements under the Rules of Court for the proper and efficient administration of justice.

## **II. Technical Issue: Failure to attach material portions of the record as stated in Rule 45, Section 4(d) of the Rules of Court**

Section 4, Rule 45 of the Rules of Court enumerates the contents of a petition for review on *certiorari*: