

SECOND DIVISION

[A.C. No. 8037, February 17, 2016]

RE: DECISION DATED AUGUST 19, 2008, 3RD DIVISION, COURT OF APPEALS IN CA-G.R. SP NO. 79904 [HON. DIONISIO DONATO T. GARCIANO, ET AL. V. HON. PATERNO G. TIAMSON, ETC., ET AL.], PETITIONER, VS. ATTY. JOSE DE G. FERRER, RESPONDENT.

RESOLUTION

LEONEN, J.:

This administrative complaint^[1] originated from the Court of Appeals Decision^[2] dated August 19, 2008, which summarily dismissed the Petition for Certiorari with prejudice and found petitioners^[3] in CA-G.R. SP No. 79904, as well as their counsel, Atty. Jose De G. Ferrer (Atty. Ferrer), guilty of direct contempt of court.^[4] They were further imposed a fine of P2,000.00.^[5] The Court of Appeals then ordered that a copy of its Decision be furnished to the Integrated Bar of the Philippines for investigation and appropriate disciplinary action against Atty. Ferrer, respondent in the present case.^[6]

On July 27, 2001, Dionisio Donato T. Garciano (Garciano), then Mayor of Baras, Rizal, sought to appoint Rolando Pilapil Lacayan (Lacayan) as Sangguniang Bayan Secretary, replacing Nolasco Vallesteros (Vallesteros).^[7] The appointment was opposed by Wilfredo Robles (Robles), then Vice Mayor of Baras, Rizal. He said that the position is not vacant and that it is the vice mayor, not the mayor, who has the authority^[8] to appoint the Sangguniang Bayan Secretary.

Garciano insisted and removed Vallesteros's name from the payroll.^[9] Vallesteros sued Garciano before the Sandiganbayan.^[10] Vallesteros, Robles, and other Sangguniang Bayan members also filed a "complaint for mandamus and damages with preliminary mandatory injunction"^[11] against Garciano and other municipal officials^[12] (Garciano, et al.) before the Regional Trial Court of Morong, Rizal. They sought for the payment of their respective salaries.^[13]

On June 24, 2003, the Regional Trial Court^[14] ordered Garciano, et al. to release the funds and pay Vallesteros's salaries and other benefits.^[15] Garciano, et al. did not heed the Regional Trial Court's order;^[16] hence, they were found liable for indirect contempt.^[17]

Appealing the trial court's ruling, Garciano, et al., through their counsel, Atty. Ferrer, filed a Petition for Certiorari (First Petition) on October 9, 2003 before the Court of Appeals.^[18] This was raffled to the Eleventh Division^[19] and was docketed as CA-

G.R. SP No. 79752.^[20]

On October 16, 2003, Garciano, et al., through Atty. Ferrer, filed another Petition for Certiorari with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order^[21] (Second Petition) before the Court of Appeals. This was raffled to the Third Division^[22] and was docketed as CA-G.R. SP No. 79904.^[23]

On the same day, Garciano, et al. filed before the Court of Appeals Eleventh Division an Urgent Ex-Parte Motion to Withdraw Petition Under Rule 17 Section 1^[24] of the Revised Rules of Court.^[25] They allegedly moved to withdraw the First Petition to avail themselves of other remedies, especially since a comment had not yet been filed.^[26]

On October 17, 2003, the Court of Appeals Third Division^[27] issued a temporary restraining order, effective for 60 days and conditioned upon the posting of a bond amounting to P100,000.00.^[28]

Meanwhile, in its Resolution dated October 24, 2003, the Court of Appeals Eleventh Division granted Garciano, et al.'s Motion to withdraw the First Petition.^[29]

In their Reply to the Comment on the Second Petition, Garciano, et al. admitted filing the First Petition docketed as CA-G.R. SP No. 79752, which was similar to the Second Petition.^[30] However, they maintained that the withdrawal of the First Petition was made in good faith and in order to correct the technical defect of the First Petition, which was solely verified by Garciano.^[31]

Garciano, et al. insisted that they did not commit perjury when they stated in the verification of their Second Petition that there was no pending petition filed involving the assailed Decision of the Regional Trial Court.^[32] Garciano, et al. also argued that when they withdrew the First Petition, there was no adverse opinion yet issued by the Eleventh Division.^[33] Finally, they claimed that the divisions of the Court of Appeals are not different courts in relation to the other divisions, and both divisions where the Petitions were filed are part and parcel of one court.^[34] Hence, there was no forum shopping.

In the Decision dated August 19, 2008, the Court of Appeals Third Division dismissed the Second Petition with prejudice due to the deliberate violation of the rule against forum shopping.^[35] The Court of Appeals found that Garciano, et al., through Atty. Ferrer, filed two (2) Petitions for Certiorari successively.^[36] It also held that the withdrawal of the First Petition was "intended to camouflage the glaring and blatant irregularity committed"^[37] by Garciano, et al. through their counsel.^[38] If the withdrawal was, indeed, impelled by the lack of verification of the other petitioners in the First Petition, then Garciano, et al. should have called the attention of the Eleventh Division instead of filing the Second Petition.^[39] The Court of Appeals held that when the Second Petition was filed (and the existence of the First Petition concealed), forum shopping had already been committed.^[40]

The Court of Appeals further held that neither the adjudication of cases pending

before courts nor the contents of these cases are taken judicial notice by the courts, notwithstanding that both cases may have been tried or are actually pending before the same judge.^[41] Rather, it is the party and the counsel's duty to inform the court trying the case of any pendency of a similar case filed before any court.^[42] Violation of this rule makes the parties and their counsel guilty of forum shopping.^[43] The Court of Appeals reiterated that the rule against forum shopping seeks to avoid the issuance of conflicting decisions by two (2) or more courts upon the same issue.^[44]

The Court of Appeals concluded:

WHEREFORE, the petition is summarily **Dismissed with prejudice**. Petitioners and Atty. Jose De G. Ferrer are hereby found guilty of direct contempt of court for which a maximum fine of P2,000.00 is imposed upon them, payable within 5 days from receipt of this decision.

Let a copy of this decision be furnished to the Integrated Bar of the Philippines for investigation and appropriate disciplinary action against Atty. Jose De G. Ferrer.^[45] (Emphasis in the original)

In the Indorsement dated September 1, 2008, Alicia A. Risos-Vidal, Director for Bar Discipline of the Integrated Bar of the Philippines, forwarded the Notice of Judgment of the Court of Appeals in CA-GR S.P. No. 79904 to the Office of the Bar Confidant.^[46]

On November 19, 2008, this court resolved to note the Indorsement and treat the Notice of Judgment as an administrative complaint against Atty. Ferrer.^[47]

Atty. Ferrer was ordered to comment on the administrative complaint.^[48] In his Comment, he states that he acted in good faith in the simultaneous filing of the Second Petition and the urgent ex-parte Motion to withdraw Garciano, et al.'s First Petition.^[49] He alleges that he withdrew the First Petition docketed as CA-G.R. SP No. 79752 on October 16, 2003, the same day he filed the Second Petition docketed as CA-GR. S.P No. 79904.^[50]

Atty. Ferrer states that there was an urgent need to file the Second Petition as the First Petition was verified by only one petitioner instead of four.^[51] He also claims that the technical defect may have hampered the immediate issuance of a temporary restraining order.^[52] Thus, he deems that it was "more realistic and expedient" to file the Second Petition and simultaneously withdraw the First Petition rather than amend the First Petition.^[53] He states that amending the First Petition would have required a hearing before it could be admitted as basis for the issuance of a temporary restraining order.^[54]

Atty. Ferrer adds that by filing the Motion to withdraw the First Petition on the same day as the filing of the Second Petition, he substantially complied with the rule against forum shopping.^[55] He asserts that he was acting in the best interest of his clients, whose "liberty [were] then at stake and time was of the essence."^[56] As the withdrawal of the First Petition and the filing of the Second Petition were made simultaneously and not one day after another, Atty. Ferrer claims that it was unlikely

to have conflicting decisions rendered by different courts on the same issue.^[57]

Finally, Atty. Ferrer states that there was no violation of the rule against forum shopping because the First and Second Petitions were not filed before different tribunals, although the Eleventh and Third Divisions of the Court of Appeals are technically separate from each other.^[58] He states that forum shopping takes place when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than appeal or certiorari) in another.^[59] Atty. Ferrer further asserts that the filing of the case took place before only one forum—the Court of Appeals—and that no forum shopping could be considered to have taken place.^[60]

In his Report and Recommendation dated November 17, 2009, Commissioner Salvador B. Hababag (Commissioner Hababag) of the Integrated Bar of the Philippines Commission on Bar Discipline adopted the findings of the Court of Appeals in toto.^[61] He stated that the Court of Appeals Decision dated August 19, 2008 in CA-G.R. SP No. 79904 is "loud and clear."^[62]

Based on the Court of Appeals' findings, Commissioner Hababag concluded that Atty. Ferrer clearly violated the rule on forum shopping.^[63] Thus, he recommended that Atty. Ferrer be suspended for three (3) months from the practice of law with a stern warning that any similar infraction in the future would be dealt with more severely.^[64]

On February 13, 2013, the Integrated Bar of the Philippines Board of Governors issued Resolution No. XX-2013-132,^[65] which resolved to adopt and approve the Report and Recommendation of Commissioner Hababag. It recommended that the penalty of Atty. Ferrer be reprimand with a warning that a repetition of the same act shall be dealt with more severely.^[66] The Integrated Bar of the Philippines Commission on Bar Discipline then transmitted the Notice of Resolution to this court through a letter dated October 7, 2013.^[67]

The issue for resolution is whether respondent Atty. Jose De G. Ferrer should be held administratively liable for violating the rule against forum shopping.

We affirm the factual findings of the Court of Appeals and the Report and Recommendation of Commissioner Hababag. Respondent is guilty of violating the rule against forum shopping.

Rule 7, Section 5 of the Rules of Court provides the rule against forum shopping:

Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall

report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

In *Asia United Bank v. Goodland Company, Inc.*,^[68] this court enumerated the instances where forum shopping takes place:

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*).^[69] (Citations omitted)

In *Dy v. Mandy Commodities Co, Inc.*,^[70] the court elaborated on the purpose of the rule against forum shopping:

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.^[71]

Respondent filed multiple cases based on the same cause of action and with the same prayer. All the elements necessary for the commission of forum shopping are present.