

## SECOND DIVISION

[ G.R. No. 171247, July 22, 2015 ]

**ALFREDO L. VILLAMOR, JR., PETITIONER, VS. HON. AMELIA C. MANALASTAS, PRESIDING JUDGE, RTC-PASIG CITY, BRANCH 268, AND LEONARDO S. UMALE [DECEASED] SUBSTITUTED BY HIS SPOUSE, CLARISSA VICTORIA UMALE, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve the present petition for review on *certiorari*<sup>[1]</sup> assailing the January 31, 2006 resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 91940.

#### Factual Antecedents

This case stemmed from the complaint<sup>[3]</sup> filed by Leonardo S. Umale<sup>[4]</sup> (*respondent*) against Alfredo L. Villamor, Jr. (*petitioner*) and others<sup>[5]</sup> with the Regional Trial Court (RTC) of Pasig City. The complaint sought to compel the petitioner to account for, pay, and deliver to the respondent the rental payments allegedly in the petitioner's possession.<sup>[6]</sup>

The case was originally raffled to Branch 155 presided over by Judge Luis R. Tongco, who voluntarily inhibited from hearing the case upon the respondent's motion.<sup>[7]</sup> The case was later re-raffled to Branch 268 in the sala of Judge Amelia C. Manalastas (*Judge Manalastas*).<sup>[8]</sup>

Subsequently, the petitioner filed a Motion for Inhibition,<sup>[9]</sup> Supplemental Motion for Inhibition,<sup>[10]</sup> and Second Supplemental Motion for Inhibition,<sup>[11]</sup> (collectively, *Motions for Inhibition*) to disqualify Judge Manalastas, on the following grounds:

- (i) That defendant Villamor [petitioner] has obtained information that the presiding Judge [Judge Manalastas] has stood, together with plaintiff [respondent], as godparents to a child of common friend; and
- (ii) That the Law Firm of Ponce Enrile Reyes and Manalastas, for and in behalf of their client Mr. Hernando Balmores, wrote defendant Villamor [petitioner] on a purported claim which appears to be the very same claims asserted by plaintiff [respondent].<sup>[12]</sup>

Judge Manalastas issued Omnibus Order<sup>[13]</sup> dated October 17, 2005, which denied, among others, the Motions for Inhibition, thus:

The allegations of defendant-movant [petitioner] in seeking inhibition of the presiding Judge fall short of the proof required to overcome the presumption that the judge will undertake her noble role to dispense justice according to law and evidence without fear and favor.

On November 7, 2005, the petitioner filed a **Petition for Certiorari** with the Court of Appeals (CA) assailing the Omnibus Order insofar as it denied his Motions for Inhibition.<sup>[14]</sup>

The petitioner claimed that Judge Manalastas's resolutions,<sup>[15]</sup> not pertaining to his Motions for Inhibition, were not included in the Petition for *Certiorari* as they were the subject of a **Motion for Reconsideration with Motion to Lift Order of Default** (*MR with Motion to Lift Default Order*)<sup>[16]</sup> filed with the RTC on November 3, 2005.

On November 16, 2005, the CA issued a resolution requiring respondent to comment on the petition. The respondent filed his comment on December 14, 2005.<sup>[17]</sup>

The parties, however, had already filed with the CA the following manifestations and motions before the issuance of the November 16, 2005 resolution:

1. On November 11, 2005, the respondent filed a Manifestation with Motion to Dismiss Petition on the ground of forum shopping, pointing out the pendency of the MR with Motion to Lift Default Order filed by the petitioner with the RTC assailing Judge Manalastas's Omnibus Order.
2. The petitioner filed his comment in opposition to the Manifestation with Motion to Dismiss Petition. He argued that the MR with Motion to Lift Default Order did not include the subject matter of the Petition for *Certiorari*, *i.e.*, the refusal of Judge Manalastas to inhibit from hearing the civil case.<sup>[18]</sup>
3. Meanwhile, the petitioner filed with the RTC a **Motion for Inhibition of Presiding Judge on Account of Institution of Administrative Case** (*Motion for Inhibition on Account of Administrative Case*)<sup>[19]</sup> on November 12, 2005, on the basis of an Administrative Complaint for Gross Ignorance of the Law or Procedure and for Bias and Partiality (*administrative complaint*)<sup>[20]</sup> filed with this Court through the Office of the Court Administrator on November 11, 2005. In this regard, the petitioner filed with the CA a Manifestation of Filing of Administrative Complaint for Gross Ignorance of the Law or Procedure and for Bias and Partiality on November 14, 2005.

Subsequently, on November 18, 2005, the respondent filed a Supplemental Manifestation/Motion to Dismiss Petition (reiterating his claim that the petitioner engaged in forum shopping and praying for the dismissal of the Petition for *Certiorari*) since Judge Manalastas's inhibition had also been raised as an issue in the Motion for Inhibition on Account of Administrative Case filed with the RTC.

The petitioner later filed with the CA a Manifestation dated November 22, 2005, to the effect that in view of his filing of an administrative complaint against Judge Manalastas, he filed with the RTC a Motion for Inhibition on Account of

Administrative Case.

On December 1, 2005, the petitioner filed another Manifestation with the CA stating that he had filed an administrative complaint against Judge Manalastas with the Office of the Court Administrator.

### **The CA Resolution**<sup>[21]</sup>

The CA dismissed the petition on the ground of forum shopping. It noted that contrary to the petitioner's claim, the MR with Motion to Lift Default Order prayed that the entire Omnibus Order be reconsidered and set aside without excluding the issue of Judge Manalastas's inhibition.

Moreover, the petitioner later filed with the RTC the Motion for Inhibition on Account of Administrative Case. The CA observed that the administrative case referred to by the petitioner in support of the motion was based on the very same grounds he raised in his previous motions for inhibition.

The CA also found that the Petition for *Certiorari* filed with the CA and the pending motions in the RTC prayed for the same relief; this, to the CA, was a plain and simple case of forum shopping.

The dispositive portion of the CA resolution reads:

**WHEREFORE**, premises considered, the private respondent's motion and supplemental motion to dismiss the petition are **GRANTED**. The instant petition is hereby **DISMISSED**.

**SO ORDERED.**

### **The Petition**

The petitioner seeks the reversal of the CA resolution on the following grounds:

1. "THE COURT OF APPEALS, BY ITS RESOLUTION DATED JANUARY 31, 2006, xxx HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, WHEN IT ACTED UPON MOTIONS TO DISMISS FILED, WITHOUT LEAVE OF COURT, BY RESPONDENT IN VIOLATION OF SEC. 5, RULE 46, AND ITS OWN RESOLUTION DATED NOVEMBER 16, 2005 REQUIRING PETITIONER [sic] TO FILE A COMMENT TO THE PETITION AND NOT A MOTION TO DISMISS, AND THEREAFTER, DISMISSING THE PETITION IN CA-G.R. S.P. NO. 91940 ON THE GROUND OF FORUM SHOPPING; AND
2. "THE COURT OF APPEALS HAS, BY ITS RESOLUTION SOUGHT TO BE REVIEWED HEREIN, SANCTIONED THE DEPARTURE BY THE TRIAL COURT, MORE PARTICULARLY ITS PRESIDING JUDGE AMELIA C. MANALASTAS, FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN THE MATTER OF INHIBITION, SO AS TO CALL FOR THE EXERCISE BY THIS HONORABLE COURT OF ITS POWER OF SUPERVISION OVER THE COURT OF APPEALS AND THE TRIAL COURT."<sup>[22]</sup>

## **Respondent's Comment**<sup>[23]</sup>

The respondent raises the sole issue of whether the petitioner engaged in forum shopping.

The respondent argues that the petitioner engaged in forum shopping when he availed of three separate remedies, namely: (1) the MR with Motion to Lift Default Order filed with the RTC; (2) the Petition for *Certiorari* filed with the CA; and (3) the Motion for Inhibition on Account of Administrative Case, also filed with the RTC; praying for the same relief, *i.e.*, the inhibition of Judge Manalastas from hearing the case.

The respondent asserts that a party is guilty of forum shopping when he repetitively avails of several judicial remedies in different courts 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.<sup>[24]</sup>

## **Petitioner's Reply**<sup>[25]</sup>

The petitioner reiterates in his reply all the arguments he raised in the petition.

Additionally, he wants this Court to rule on the propriety of Judge Manalastas's refusal to inhibit herself from hearing the RTC case. He points out that considerable time has already elapsed, and to serve the ends of justice, the controversy must finally and totally be laid to rest.<sup>[26]</sup>

## **Issues**

Two issues thus arise for this Court' resolution:

- I. Whether the petitioner engaged in forum shopping; and
- II. Whether Judge Manalastas's decision to continue hearing the civil case was improper.

## **Our Ruling**

**The petition is without merit.**

We rule that (1) the petitioner engaged in forum shopping, and (2) Judge Manalastas's decision to continue hearing the civil case is *not* improper.

### ***The Petitioner Engaged in Forum Shopping***

As a rule, forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court other than by appeal or the special civil action of *certiorari*. Conceptually, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.<sup>[27]</sup>

Forum shopping also exists when, as a result of an adverse decision in one forum **or in anticipation thereof**, a party seeks a favorable opinion in another forum through means other than an appeal or *certiorari*.<sup>[28]</sup>

There is likewise forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.<sup>[29]</sup>

*Litis pendentia* is a Latin term meaning "a pending suit" and is variously referred to in some decisions as *Lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.<sup>[30]</sup>

There is *litis pendentia* when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.<sup>[31]</sup>

Otherwise stated, the test is whether the two (or more) pending cases have identity of parties, of rights or causes of action, and of the reliefs sought. Willful and deliberate violation of the rule against it is a ground for summary dismissal of the case; it may also constitute direct contempt.<sup>[32]</sup>

Appeals and petitions for *certiorari* are normally outside the scope of forum shopping because of their nature and purpose; they grant a litigant the remedy of elevating his case to a superior court for review.

It is assumed, however, that **the filing of the appeal or petition for *certiorari* is properly or regularly invoked** in the usual course of judicial proceedings, and **not when the relief sought**, through a petition for *certiorari* or appeal, is **still pending** with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority, *e.g.*, a still pending motion for reconsideration of the order assailed via a petition for *certiorari* under Rule 65.<sup>[33]</sup>

#### *Forum Shopping at the Court of Appeals*

We agree with the CA that the petitioner engaged in forum shopping.

At the time the petitioner filed the Petition for *Certiorari* with the CA, the RTC had yet to resolve the MR with Motion to Lift Default Order earlier filed with the RTC.<sup>[34]</sup>

The petitioner took pains to explain that the MR with Motion to Lift Default Order did not include Judge Manalastas's denial of his Motions for Inhibition.

The petitioner fails to convince us of the merits of this claim.