SECOND DIVISION

[G.R. No. 186730, June 13, 2012]

JESSE YAP, PETITIONER, VS. COURT OF APPEALS (SPECIAL ELEVENTH [11TH] DIVISION), AND ELIZA CHUA AND EVELYN TE, RESPONDENTS.

R E S O L U T I O N

REYES, J.:

This is a petition for review on *certiorari* of the Decision[1] dated December 10, 2008 and Resolution[2] dated February 19, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 93974. The dispositive portion of the CA's assailed Decision states:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case and the Orders issued by the public respondent Judge Rommel O. Baybay dated October 21, 2005 and January 18, 2006 are hereby **SET ASIDE.** Consequently, Civil Case No. 04-030 is hereby ordered as **DISMISSED** on account of *litis pendentia* and violation of the rule against forum-shopping.
>
> **SO ORDERED**.[3]

On January 9, 2004, petitioner Jesse Yap (Yap) filed a complaint against respondents Eliza Chua (Chua) and Evelyn Te (Te) with the Regional Trial Court (RTC) of Makati City principally praying for the cancellation or discharge of several checks that he drew against his account with the Bank of the Philippine Islands (BPI). Yap's complaint was docketed as Civil Case No. 04-030 and raffled to Branch 66.

Yap alleged that he purchased several real properties through Te, a real estate broker, and as payment, delivered to her a number of checks either payable to her, the property owners or to the various individuals who agreed to finance his acquisitions. He agreed to effect payment in such manner on Te's claim that this will expedite the transfer of the titles in his favor.

Chua, one of those who funded his purchases, asked him to issue checks with her as payee to replace the checks he delivered to Te. Obliging, he drew six (6) checks payable to her against his account with BPI, which were uniformly postdated July 30, 1997. Particularly:

Check No.	Amount
659599	P3,000,000.00
708158	P2,500,000.00

708160	P2,756,666.00
712418	P10,900,000.00
712417	P10,900,000.00
727214	P960,000.00

He stopped payment on the above checks and closed his account when Te failed to deliver the titles on the properties. He also did the same on the following checks that Te endorsed to Chua for rediscounting without his consent:

Check No.	Date	Amount
0727205	September 15, 1997	P770,833.33
0727206	September 30, 1997	P770,833.33

He delivered to Te these checks, which were payable to a certain Badoria Bagatao (Bagatao), for the purchase of a parcel of land that, as Te represented, Bagatao supposedly owns. He, however, was later informed of the contrary leading to the conclusion that as no consideration attended the contract with Bagatao and all the other contracts of sale that he entered into through Te, it was just proper that the checks he issued as payment be cancelled or annulled.

Chua presented an altogether different version of the facts. According to Chua, she released P9,415,000.00 to Yap through a certain Jovita Dimalanta (Dimalanta) sometime in January 1997 in exchange for two (2) postdated checks payable to her with a face value of P5,000,000.00 each. A similar transaction took place in February 1997, where she delivered to Dimalanta P9,415,000.00 upon request of Yap, with the latter issuing in her favor two (2) postdated checks payable to her in the total amount of P10,000,000.00. Yap twice requested for an extension and for Chua not to encash the four (4) checks. In return, he issued two (2) checks payable to Chua with a face value of P1,400,000.00 and P1,206,066.66 to cover the interest due.

Yap later replaced the four (4) checks with a face value of P5,000,000.00 each with a check payable to Chua for P20,000,000.00 and postdated April 22, 1997. When this check became due, Yap once again requested Chua for an extension and replaced it with BPI Check Nos. 712418 and 712417 to include the interest that would accrue until June 15, 1997. Thereafter, Yap, who asked for another extension, issued to Chua BPI Check No. 727214 to include payment of the interest that would accrue until July 30, 1997 on the P20,000,000.00 covered by BPI Check Nos. 712418 and 712417.

Apparently, Yap also delivered to Chua BPI Check Nos. 659599 and 708158 to replace the checks drawn against his account, which a certain Jesus Dy endorsed to her. Yap likewise delivered a check payable to Canda Medical Clinic and Hospital to Te, who in turn, endorsed it to Chua for rediscounting. Sometime in June 1997, Yap replaced this check with BPI Check No. 708160 to cover the interest from March to May 1997. Yap also gave Te two (2) checks payable to Bagatao, BPI Check Nos. 0727205 and 0727206, which were subsequently endorsed to Chua for rediscounting.

BPI Check Nos. 659599, 708158, 708160, 712418, 712417 and 727214 were

dishonored for the reason "account closed". On the other hand, Yap stopped payment on BPI Check Nos. 727205 and 727206.[4]

Verbal demands for Yap to make good the checks he issued proved to be futile. Thus, Chua filed with the RTC of General Santos City a complaint[5] for sum of money against Yap and his wife, Bessie. Chua's complaint was docketed as Civil Case No. 6236 and raffled to Branch 23.

On June 8, 2001, the RTC of General Santos City issued a Decision,[6] the dispositive portion of which states:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants, ordering the latter to pay the former the following:
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> 1. P32,558,332.00 as principal with interest at 6% per annum from the date of the filing of the case until the whole amount is fully paid;
> 2. P150,000.00 as moral damages;
> 3. P50,000,00 as exemplary damages;
> 4. P1,000,000.00 in concept of attorney's fees; and
> 5. The cost of suit.
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> The third-party complaint is DISMISSED.[7]

Armed with the foregoing narration, Chua moved for the dismissal of Civil Case No. 04-030 on the twin grounds of *litis pendentia* and forum shopping. Chua averred that Yap violated the rule against forum shopping when he failed to inform the RTC of Makati City of Civil Case No. 6236 and the pendency of his appeal of the decision rendered therein. The elements of *litis pendentia* exist, and forum shopping as the logical consequence thereof, considering that the two (2) cases arose from the same set of facts and involve the same parties.

In an Order[8] dated October 21, 2005, the RTC of Makati City refused to dismiss the case, ratiocinating as follows:

> On litis pendentia as a ground for dismissal, the Court is not convinced. As correctly stated by the plaintiff, the reliefs prayed for in the two cases are different from each other considering that the collection case before the RTC of General Santos City is different from the instant case praying for the discharge/annulment of issued checks. As such the fundamental requisites of [*litis pendentia*] have not been met.
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> Anent dismissal on ground of forum shopping, the same is likewise denied for lack of merit. It is well-settled that it is the duty of the plaintiff, not the defendant, to declare pending suits it initiated between and among parties in its verification and certificate of non-forum shopping and not the other way around. A plaintiff in a civil case therefore, is not mandated under the Rules to declare that said plaintiff

was a defendant in a prior suit instituted against him and other defendants by the defendant in a subsequent case of different nature.[9]

In an Order[10] dated January 18, 2006, the RTC of Makati City denied Chua's motion for reconsideration.

Chua filed a petition for *certiorari* with the CA, alleging that grave abuse of discretion attended the Orders of the RTC of Makati City dated October 21, 2005 and January 18, 2006. By virtue of the assailed decision, this was given due course and the CA ordered the dismissal of Civil Case No. 04-030.

> After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence on the premises, we have come up with a finding that the respondent judge committed grave abuse of discretion in issuing the assailed orders.
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> The requisites of [*litis pendentia*] are: (a) the identity of parties or at least such as representing the same interests in both actions; (b) the identity of rights asserted and the relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other.
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> The relief sought in Chua in Civil Case No. 6236 was for Yap to pay the amount that he owed to Chua based on BPI Checks (sic) Nos. 0727205, 0727206, 659599, 708158, 708160, 712418, 712417 and 727214 that he issued. On the other hand, the relief prayed for by Yap in Civil Case No. 04-030 was for BPI Checks (sic) Nos. 0727205, 0727206, 659599, 708158, 708160, 712418, 712417 and 727214 that he issued to Chua purportedly without any valid consideration to be declared as null and void.
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> The cause of action of Yap in Civil Case No. 04-030 was also his defense in Civil Case No. 6236. Necessarily, in determining the liability of Yap in Civil Case No. 6236, the lower court addressed the issue of the validity of the subject checks. Branch 23 of the RTC in General Santos City ruled that the checks were validly issued and declared Chua as a holder in due course thereof. Moreover, the lack of consideration was raised as an affirmative defense and as the basis for his counterclaim and third-party complaint by Yap in Civil Case No. 6236. Therefore, Branch 66 of the RTC in Makati City committed grave abuse of discretion amounting to lack of jurisdiction when it took cognizance of Civil Case No. 04-030 and denied Chua's motion to dismiss it on account of the pendency of another action in another court between them for the same case.
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> Yap, in filing Civil Case No. 04-030, also violated the rule against forum shopping. In the test to determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendencia* (sic) are present, or whether a final judgment in one case will amount to *res judicata* in another, *i.e.*, whether in the