

SECOND DIVISION

[G.R. No. 149253, April 15, 2004]

**SPOUSES JIMMY AND PATRI CHAN, PETITIONERS, VS.
REGIONAL TRIAL COURT OF ZAMBOANGA DEL NORTE IN
DIPOLOG CITY, BRANCH 9, CYREANO HAMOY, AND SHIELDA
HAMOY-SINGALIVO, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 55730 and its Resolution denying the petitioners' motion for reconsideration of said decision.

The petition stemmed from the following backdrop:

On June 20, 1994, Shielda Hamoy-Singalivo and her brother, Cyreano Hamoy, as plaintiffs, filed a Complaint for Damages in the Regional Trial Court of Zamboanga del Norte, Branch 9, against the spouses Jimmy Chan and Patri Bajamunde-Chan and their employee, Virgilio Tagapan Egay. The plaintiffs alleged therein, *inter alia*, as follows:

5. At about 8:45 o'clock in the morning of June 23, 1993, plaintiff Cyreano Hamoy was driving the jeep [bearing plate no. FDD 649] of her sister, co-plaintiff Sheilda H. Singalivo, towards the latter's house, cruising along the national highway, along Lawaan, east to west;
6. Nearing the house of co-plaintiff Shielda H. Singalivo, co-plaintiff Cyreano Hamoy slowed down and turned on the left turn signal of the jeep. Thereafter, he moved to the center of the road and raised his left hand [indicating he was turning left]. He then turned left, and reached the left lane of the road. And just as he was about to enter the gate of the house, a speeding Chan Transit Jimboy Bus No. JVA-976, coming from Dapitan City and proceeding to Dipolog City [driven by co-defendant Virgilio Tagapan Egay] bumped the jeep driven by co-plaintiff Cyreano Hamoy;
7. Plaintiff Cyreano Hamoy was thrown away from the jeep and landed on the cemented road. The Chan Transit Jimboy Bus No. JVA-976, in view of its unusual speed and its very defective brakes, veered to the left lane, and then went to the left shoulder of the road, hitting several trees and finally halted after it frontally clashed with a tree;

8. The proximate and immediate cause of collision and the consequent loss of property and resultant injuries were due to the negligent, reckless and imprudent driving of defendant Virgilio Tagapan Egay who did not observe traffic rules, safety and precaution, and who was utterly unmindful of the circumstance of persons, place and time, while driving Chan Transit Jimboy Bus No. JVA-976;
9. Defendant Chan failed to exercise due care in the selection and supervision of their employees and failed to effectively monitor the conditions of their vehicles, on account of which they should be held equally liable;
10. On account of the incident, plaintiff Cyreano Hamoy, was severely injured but because of timely medical attendance, his life was spared;
11. Plaintiff Cyreano Hamoy was treated in Dapitan City and had to be immediately airlifted to Manila and underwent several surgical operations. As of now, the plaintiff has already spent no less than P350,000.00 for medication. Said amount will still increase as the medication continues. In fact, he is due to be operated again next year;
12. By reason of the incident, the jeep of plaintiff Shielda Hamoy-Singalivo was a total wreck and is now a total loss. The jeep is worth P170,000.00;
- ...
13. As a direct consequence of the incident in question, the plaintiffs suffered shock, anxiety, trauma and unbearable pain compensable in the form of moral damages in the sum of P50,000.00;
14. In addition to the cost of medication [which is not less than P350,000.00] and the value of the jeep [P170,000.00], the plaintiffs spent initial litigation costs of P10,000.00 and attorney's fees of P20,000.00;
15. In order to deter defendants from committing the same or similar acts in the future, and as an example for the public good and safety, the defendants should be condemned to pay exemplary damages in the sum of P50,000.00.^[2]

The plaintiffs prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, after having considered the foregoing premises, the Honorable Court is respectfully prayed that judgment issue holding defendants jointly and solidarily liable under Articles 2176 and 2180 of the New Civil Code of the Philippines, and ordering them to pay plaintiffs the following items of damages:

1. Actual cost of medication P350,000.00;

.....		
2. Value of the jeep	170,000.00;	
3. Initial litigation expense	10,000.00;	
.....		
4. Attorney's fees	20,000.00;	
5. Moral damages	50,000.00;	
6. Exemplary damages	50,000.00;	
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	P650,000.00 ^[3]	

Plaintiff Cyreano Hamoy verified the complaint without, however, including a certificate of non-forum shopping as required by Supreme Court Administrative Circular No. 04-94. Nonetheless, on July 11, 1994, the defendants-spouses Jimmy and Patri Chan, therein, filed their answer to the complaint. The defendants did not question the plaintiffs' non-compliance with the circular.

On July 19, 1994, the defendants filed a Motion to Dismiss the complaint for failure of the plaintiffs to comply with the said circular. The hearing on the motion was set on July 28, 1994 at 8:30 a.m., and a copy thereof was served on the plaintiffs by registered mail on July 18, 1994. During the hearing of the motion, the court issued an order directing the plaintiffs to file their comment on the motion within ten (10) days from notice thereof. The plaintiffs appended to their opposition their Motion dated July 25, 1994 praying for the admission of page 7 of their complaint, incorporating therein an affidavit of non-forum shopping executed by their counsel, *Atty. Eduardo T. Sedillo*. On August 18, 1994, the trial court issued an Order denying the motion to dismiss on the following grounds:

The court is satisfied (with) the explanation made by the plaintiffs that the non- submission or compliance with Administrative Circular No. 04-94 of the Supreme Court was by reason of inadvertence and not willful. With the "affidavit of non-forum shopping" now on record to form part of the complaint, as herein admitted, the ground upon which the motion to dismiss is relied may no longer hold. Accordingly, the motion to dismiss is DENIED.

SO ORDERED.^[4]

The defendants did not file any motion for the reconsideration of the order. Neither did they file any petition for certiorari in the Court of Appeals assailing the order of the trial court.

Meanwhile, the defendant Virgilio Egay filed his answer^[5] alleging affirmative defenses, notably, that the plaintiffs had no cause of action against him. He, likewise, interposed a counterclaim against the plaintiffs.

The parties filed their respective pre-trial briefs. The defendants- spouses proposed the following issues to be litigated on and resolved by the trial court:

1. Whose fault or negligence was the proximate cause of the accident?
2. If one party's fault or negligence caused the accident, did the other party contribute to it?

3. Which party should have avoided the accident under the doctrine of last clear chance, if it applies at all in the case?
4. Which party is entitled to damages?
5. Should this case be dismissed by the pendency of another prior case in another court arising from the same incident in which the same claim is instituted? [6]

After a series of postponements, the initial trial was finally set on March 22, 1999. Plaintiff Cyreano Hamoy testified on the said date. After the plaintiff's testimony, the defendants-spouses, through counsel, manifested in open court their intention to file a second motion to dismiss the complaint for the plaintiffs' failure to comply with SC Administrative Circular No. 04-94, in light of plaintiff Cyreano Hamoy's admission that neither he nor his sister executed a verified certification against forum shopping.[7]

The defendants-spouses filed their second Motion to Dismiss[8] on March 26, 1999, or almost five (5) years from the August 18, 1994 Order of the trial court denying their first motion to dismiss. They stressed that the certification against forum shopping ordained under the Rules is to be executed by the respondents, and not by their counsel. They cited jurisprudence[9] that a certification against forum shopping by counsel is a defective certification.

On June 1, 1999, the plaintiffs filed their Opposition[10] to the motion to dismiss, contending that the issue on the certificate of non-forum shopping had long been settled by the trial court in its Order dated August 18, 1994, which the defendants-spouses never questioned either by a motion for reconsideration or by a petition for *certiorari*. They averred that the brevity of the period between the date of the effectivity of Administrative Circular No. 04-94 and the date of the filing of the complaint, i.e., April 1, 1994 and June 20, 1994, respectively, justifies the relaxation of the circular. Besides, subsequent rulings of the Court which strictly require the plaintiffs to sign the certification against forum shopping "should not be allowed to retroact, otherwise, substantial rights will be prejudiced."

On June 8, 1999, the defendants filed their Reply [11] to the opposition in which they contended that adherence to the circular is "mandatory," and that a party to a suit has no vested rights or interests in procedural rules. They assert that the plaintiffs' counsel could have simply asked them to execute the certificate at any time before the lapse of the statute of limitations for their action.

In a Resolution[12] dated June 28, 1999, the trial court denied the defendants-spouses' second motion to dismiss for lack of merit. The trial court held that the said defendants were barred by laches from assailing for the second time the deficiency in the plaintiffs' complaint. Citing the rulings of this Court in *Cadalin v. POEA Administrator*[13] and *Kavinta v. Castillo, Jr.*[14] the trial court reiterated its previous order that the plaintiffs had substantially complied with the requirement of SC Administrative Circular No. 04-94. Moreover, it observed that the defendants-spouses' second motion to dismiss was but a reiteration of their first motion to dismiss. The latter sought a reconsideration[15] of the resolution, but the same was

denied by the trial court in its Order dated August 26, 1994.

Aggrieved, the defendants, now petitioners, elevated the matter to the Court of Appeals via a petition for *certiorari* and prohibition with a prayer for a writ of preliminary injunction. The petition was docketed as CA-G.R. SP No. 55730.

On May 12, 2000, the Court of Appeals rendered its Decision denying the petition for lack of merit. It ruled that there was substantial compliance by the respondents therein with SC Administrative Circular No. 04-94. It ruled that the proximity between the date of the effectivity of the circular and the filing of the complaint is a "special circumstance" which warranted the relaxation of the rule. It cited the ruling of the Court in *Loyola v. Court of Appeals* ^[16] as controlling.

With the denial of their motion for reconsideration, the petitioners came to this Court with the instant petition for review on *certiorari* and raised the following issues:

(a) Should the NFS certification executed merely by counsel, not by the plaintiffs themselves, be considered substantial compliance with the circular?

(b) Should the case at bar be covered by the ruling of the Supreme Court in *Loyola*? Or should *Loyola* be applied against private respondents?^[17]

The petitioners contend that there was no substantial compliance by the respondents of SC Administrative Circular No. 04-94. They argue that the ruling of this Court in *Loyola v. CA* cited by the Court of Appeals in support of its challenged decision is inapropos. In that case, what was belatedly submitted was a certification of non-forum shopping signed by the principal party, whereas, in this case, the certification of non-forum shopping was signed by the parties' counsel. The petitioners cite *Tomarong v. Lubguban*^[18] and *Far Eastern Shipping Co. v. Court of Appeals*,^[19] to buttress their view that the CA erred in dismissing their petition for *certiorari*.

The petition is denied due course and is dismissed.

The petitioners were burdened to prove that the trial court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed order. This Court has consistently ruled that in a petition for *certiorari* from an interlocutory order, the petitioner is burdened to prove that the remedy of appeal would not afford adequate and expeditious relief. ^[20] A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioners from the injurious effects of the acts of the lower court or agency. Appeal in due course is a speedy and adequate remedy.^[21] A tribunal acts with grave abuse of discretion only where it is clearly shown that there is a patent and gross abuse of discretion as to amount to an evasion of positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.^[22] The petitioners failed to discharge their burden.

First. The trial court acted in the exercise of its sound discretion when it denied the