

SECOND DIVISION

[G.R. No. 113576 & 118235, July 01, 2004]

CARLOS A. GOTHONG LINES, INC., PETITIONER, VS. COURT OF APPEALS, HON. PACIENCIO M. BALBON, & COKALIONG SHIPPING LINES, INC., RESPONDENTS.

[G.R. NO. 118235. JULY 1, 2004]

CARLOS GOTHONG LINES, INC., PETITIONER, VS. COURT OF APPEALS AND COKALIONG SHIPPING LINES, INC., RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court are two petitions for review on certiorari. The first petition, docketed as G.R. No. 118235, assails the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 32307. The second petition, docketed as G.R. No. 113576, assails the Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 33174.

The Antecedents

Carlos A. Gothong Lines, Inc. (Gothong, for brevity), filed an application, docketed as Case No. 93-036, with the Maritime Industry Authority (MARINA) for provisional authority to re-route its vessel M/V Our Lady of Guadalupe.^[3] In due course, Gothong was granted a special permit by the MARINA to operate its vessel in the Cebu-Cagayan-Cebu-Cagayan-Cebu-Cagayan-Jagna-Cagayan route. Gothong prayed in its application, *viz*:

WHEREFORE, in view of the foregoing, it is respectfully prayed of this Honorable Authority:

1. That a Provisional Authority be immediately granted the applicant for the vessel M/V OUR LADY OF GUADALUPE in the route herein applied for, to wit: Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu;
2. That upon due notice and hearing, this Authority grant the herein applicant Certificate of Public Convenience for the vessel M/V OUR LADY OF GUADALUPE in the route applied for; and
3. That Applicant be granted such other relief and remedies just, fair, and equitable under the circumstances.^[4]

Cokaliong Shipping Lines, Inc. (Cokaliong, for brevity), the owner-operator of two vessels, the M/V Filipinas-Tandag and M/V Filipinas-Surigao, opposed the application, alleging that the MARINA had previously issued in its favor a permit to operate its vessels serving the Cebu–Surigao–Tandang link and the Cebu–Maasin link. It also alleged that to allow Gothong to operate its vessel along the said routes could be a cause of over-tonnage and a big possibility of a cut-throat competition.^[5]

After Gothong’s documentary evidence was admitted, the MARINA considered the application for a provisional authority submitted for resolution on July 22, 1993.

On August 10, 1993, the MARINA issued an Order denying the application of Gothong for a provisional authority until such time that MARINA had conducted the necessary actual market study/survey in the applied route. The dispositive portion of the Order reads:

In view thereof, the applicant’s request for Provisional Authority to operate the vessel M/V “OUR LADY OF GUADALUPE” in the Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu route is hereby DENIED, until such time that this Authority has conducted the necessary actual market study/survey in the applied route to verify if additional shipping services/frequency of trips are warranted therein.

SO ORDERED.^[6]

Gothong filed a motion for the reconsideration of the order, to which Cokaliong filed an opposition. Gothong complained that the denial of its application for a provisional authority effectively dismissed its application without any countervailing evidence being submitted by the oppositor. It asserted that the order was based solely on Cokaliong’s opposition, and that its evidence was sufficient for the MARINA to grant its application for provisional authority. In an Urgent Motion dated September 29, 1983, Cokaliong submitted documents showing that the M/V Our Lady of Guadalupe was unseaworthy.^[7]

On October 1, 1993, the MARINA issued an Order granting the application of Gothong for provisional authority to carry passengers and cargoes for the Cebu–Surigao–Cebu–Surigao–Cebu–Surigao–Cebu–Maasin-Cebu route of its vessel, the M/V Our Lady of Guadalupe.^[8] The provisional authority granted to Gothong was subject to several conditions, one of which reads:

20. That this PROVISIONAL AUTHORITY shall be valid for a period of THREE (3) MONTHS from date hereof.

It may be cancelled, revoked or modified at any time as public interest may require and is without prejudice to whatever decision this Authority may finally render on the basic application for a Certificate of Public Convenience.^[9]

On October 6, 1993, Cokaliong filed a Motion for Revocation of the provisional authority on the following grounds:

1. Market condition does not warrant additional capacities:

2. There has been an increase in vessels plying the subject route, therefore, the route is over-tonnaged;
3. The route is being adequately served by oppositor, as well as by Trans-Asia Shipping lines, Inc. and Escano Lines and therefore there is no urgent public need; and
4. M/V "OUR LADY OF GUADALUPE" is unseaworthy.^[10]

However, Cokaliong failed to serve copies of its motion on Gothong and to set the same for hearing on a specific date and time.

On October 8, 1993, the MARINA issued an Order setting the motion of Cokaliong for hearing on October 21, 1993 at 9:30 a.m.^[11] However, the MARINA also suspended the provisional authority it issued in Gothong's favor pending the said hearing, on account of the therein alleged unseaworthiness of the vessel. It ordered Gothong to cease and desist from operating the vessel until the motion shall have been resolved. The MARINA also ordered Gothong to file its reply to Cokaliong's pleading.

Instead of doing so, Gothong filed a petition for certiorari and prohibition on October 12, 1993 with the Court of Appeals with a prayer for a temporary restraining order and for writ of preliminary injunction assailing the October 8, 1993 Order of the MARINA. Gothong claimed that the MARINA acted with grave abuse of discretion amounting to excess or lack of jurisdiction when it suspended the operation of the M/V Our Lady of Guadalupe *ex parte* and without any notice of hearing of Cokaliong's motion and the proper and timely service thereof on it. The petition was docketed as CA-G.R. SP No. 32307 and was raffled to the 16th Division of the CA. On October 15, 1993, the Court of Appeals issued a Resolution requiring the respondents MARINA and Cokaliong to file their comment thereon and ordering them to desist from enforcing or directing the enforcement of the assailed order.^[12] The Court set for hearing the petitioner's plea for a preliminary injunction on November 16, 1993. During the hearing the parties agreed to maintain the *status quo* until the resolution of Gothong's plea for a writ of preliminary injunction.^[13]

On December 20, 1993, Gothong filed a motion with the MARINA for an extension of its provisional authority to operate the vessel for a period of three months from January 1, 1994. The MARINA issued the Order granting the motion on December 29, 1993.^[14]

In the meantime, the respondent MARINA filed in CA-G.R. SP No. 32307 its comment and supplement thereto.^[15] Respondent Cokaliong, likewise, filed its comment.^[16]

On February 1, 1994, Cokaliong filed a petition for *certiorari* and prohibition in the Court of Appeals with a prayer for a temporary restraining order and/or writ of preliminary injunction for the nullification of the December 29, 1993 Order of the MARINA granting an extension of Gothong's provisional authority to operate its vessel. The case was docketed as CA-G.R. SP No. 33174 and raffled to the 13th Division of the Court of Appeals.

On February 22, 1994, the Court of Appeals issued a temporary restraining order in CA-G.R. SP No. 33174 directing the respondents to cease and desist from enforcing the assailed Order of the MARINA. It also issued a resolution in the same case, holding that there was no need to consolidate the case with CA-G.R. SP No. 32307 pending in the 16th Division of the appellate court, since the issues raised therein were different. The CA also granted in the same Order Cokaliong's plea for a writ of preliminary injunction on a bond of ₱500,000.00.^[17]

On February 11, 1994, Gothong filed a petition for review on certiorari in this Court, docketed as G.R. No. 113576, for the nullification of the February 3, 1994 Resolution of the Court of Appeals in G.R. SP No. 33174 and for the Court to order the CA to consolidate CA-G.R. No. 33174 with CA-G.R. No. 32307 pending in the 16th Division of the CA. On February 28, 1994, the Court issued a temporary restraining order in G.R. No. 113576 and required the respondents to comment on the petition.

On March 9, 1994, the Court of Appeals rendered judgment in CA-G.R. SP No. 32307 dismissing the petition for the petitioner's failure to file a motion for reconsideration of the assailed order with the MARINA before filing its petition in the Court of Appeals.^[18] Gothong filed a motion for reconsideration of the decision, but the CA denied the same. Gothong then filed its petition for review on certiorari with this Court for the reversal of the CA decision. The case was docketed as G.R. No. 118235. The two petitions were then consolidated for resolution.

The Issues

From our review of the records, the issues for resolution in the two petitions are (a) whether the private respondent Cokaliong is guilty of forum shopping in filing its petition in the Court of Appeals, docketed as CA-G.R. SP No. 33174, despite the pendency of the petition filed by Gothong, docketed as CA-G.R. SP No. 32307; (b) whether the Court of Appeals erred in not consolidating CA-G.R. SP No. 33174, raffled to its 13th Division, with CA-G.R. SP No. 32307 pending before the 16th Division; (c) whether the Court of Appeals erred in issuing a temporary restraining order in CA-G.R. SP No. 33174; and, (d) whether the 16th Division of the appellate court erred in dismissing the petition for certiorari in CA-G.R. SP No. 32307 filed by Gothong, for its failure to file a motion for reconsideration of the assailed order.

The Ruling of the Court

On the first issue, petitioner Gothong asserts that the respondent was present during the hearing in CA-G.R. SP No. 32307 on November 16, 1993 and agreed to maintain the *status quo*, yet it filed its petition, docketed as CA-G.R. SP No. 33174, in the CA. It contends that the act of respondent Cokaliong constitutes forum shopping or malpractice proscribed by Section 17 of the Interim Rules, because it violated the *status quo* agreement of the parties during the hearing of November 16, 1993 in the Court of Appeals. The petitioner avers that the extension of the provisional authority granted to it by the MARINA was ministerial, in view of the *status quo* order of the CA in CA-G.R. SP No. 32307. It avers that if the MARINA erred in extending its provisional authority, it behooved the respondent to have assailed the same in CA-G.R. SP No. 32307, instead of filing its petition in CA-G.R. SP No. 33174.

On the issue of forum shopping, the Court of Appeals ruled as follows:

There is forum shopping when a party seek (sic) to obtain remedies in an action in one court which had already been solicited and, what is worse, already refused in other actions and proceedings in other tribunal (MB Finance Corp. v. Abesamis, G.R. No. 93875, March 22, 1991) 195 SCRA 592.

In *GSIS v. Rebecca Panlilio, et al.*, G.R. No. 83385, Nov. 26, 1990, 191 SCRA 655, it was held that: "forum shopping" exists "whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another." However, as held in another case," both actions, (must) involve the same transactions, same essential facts and circumstances." (citing *Palm Avenue Realty Dev't. Corp. v. PCGG*, 153 SCRA 579, 591).

In the present case, COKALIANG (sic) does not seek to obtain a remedy against the original three months provisional authority granted by MARINA to GO THONG. The action in this case seeks a remedy against the Order granting GO THONG an extension of its Provisional Authority. In the first case, GO THONG claims that there was a violation of due process. In this case, it is COKALIONG that is claiming lack of due process. The two actions involve different events, facts and circumstances.^[19]

We agree with the Court of Appeals. The subject of the petition in CA-G.R. SP No. 32307 was the Order issued by the MARINA dated **October 8, 1998**, suspending, *ex parte*, the provisional authority it issued on October 1, 1993 in favor of the petitioner. The petitioner alleged therein that the MARINA violated its right to due process by suspending its provisional authority *ex parte* and declaring the suspension order immediately effective until the motion for reconsideration of the respondent shall have been resolved by it. On the other hand, the subject of the respondent's petition in CA-G.R. SP No. 33174, was the Order of the MARINA dated **December 29, 1993**, extending the provisional authority of the petitioner for another three months from January 1, 1994. Any judgment of the Court of Appeals in CA-G.R. SP No. 32307 would not then constitute *res judicata* in CA-G.R. SP No. 37174, and *vice versa*. The reliefs prayed for in CA-G.R. SP No. 32307 are different from those in CA-G.R. SP No. 33174. As such, the pendency of one case did not bar the filing of the petition in the other case. Thus, the prescription against forum shopping is not applicable in the case at bar.^[20]

On the second issue, the petitioner avers that the Court of Appeals erred in denying the consolidation of CA-G.R. SP No. 32307 and CA-G.R. SP No. 33174, on its claim that the petitions in the said cases involved the same parties and the same basic issues. The petitioner posits that the MARINA extended its provisional authority for another three months from the expiry of the original period therefor precisely because of the pendency in the Court of Appeals of CA-G.R. SP No. 32307, and the existence of the parties' *status quo* agreement allowing the operation of the vessel pending the CA's resolution of its petition for a writ of preliminary injunction.