

THIRD DIVISION

[G.R. No. 154377, December 08, 2003]

**LAND CAR, INC., PETITIONER, VS. BACHELOR EXPRESS, INC.
AND VALLACAR TRANSIT, INC., RESPONDENTS.**

DECISION

VITUG, J.:

On 21 May 1999, petitioner filed with the Regional Office of the Land Transportation Franchising and Regulatory Board (LTFRB), Region XII, a verified application to operate a public utility bus service from Davao City to Cagayan de Oro City *via* Butuan City.

Respondents, themselves grantees of certificates of public convenience, opposed petitioner's application alleging that the route applied for was sufficiently being served by them, and that "cutthroat competition" would only result if petitioner's application were to be favorably acted upon.

On 29 October 1999, the LTFRB rendered its decision granting petitioner's application and directing the issuance of the corresponding Certificate of Public Convenience. Respondents' motion for reconsideration was denied in the board's resolution of 27 January 2000. Respondents then appealed to the Office of the Secretary of the Department of Transportation and Communication (DOTC). On 05 June 2000, the DOTC Secretary reversed the decision of the LTFRB. This time, it was petitioner's turn to move for reconsideration of the DOTC Secretary's resolution. The motion, however, was denied by the DOTC Secretary in his order of 30 August 2000. Respondents thereupon moved for the immediate implementation by the LTFRB of the decision of the DOTC Secretary. On 03 October 2000, the LTFRB granted respondents' motion and directed petitioner to cease and desist from operating its buses along the contested route.

On 07 October 2000, petitioner filed a letter-appeal to the Office of the President seeking to set aside the resolution and order, dated 05 June 2000 and 30 August 2000, respectively, of the DOTC Secretary. Petitioner then likewise filed before the Court of Appeals a petition for *certiorari*, docketed C.A.- G.R. SP No. 61159, questioning the same resolution and order of the DOTC Secretary subject of the letter-appeal addressed to the Office of the President. Upon advice of its new counsel, however, petitioner filed a notice of withdrawal of its petition for *certiorari* (C.A.-G.R. SP No. 61159) pending with the appellate court. The appellate court did not act upon the notice of withdrawal of the petition (C.A. G.R. SP No. 61159) but, instead, dismissed, in its resolution of 09 November 2000, the petition for failure of compliance with Section 1, Rule 42, of the 1997 Rules of Civil Procedure on non-forum shopping.

On 20 October 2000, the Office of the President issued a memorandum directing

that the execution of the resolution and order of the DOTC Secretary, dated 05 June 2000 and 30 August 2000, respectively, be meanwhile stayed.

On 15 January 2001, respondents filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, docketed C.A.-G.R. SP No. 62619, assailing the Memorandum Order of the Office of the President. Respondents argued that the Office of the President had no jurisdiction to issue the assailed order in the absence of any law providing for an appeal from the DOTC to the Office of the President, adding that petitioner was guilty of forum shopping in addressing a letter-appeal to the Office of the President.

On 18 June 2001, the Court of Appeals granted respondents' petition for *certiorari* basically on the ground that petitioner was guilty of forum shopping. It **ordered the dismissal of the appeal filed by petitioner before the Office of the President** and reinstated the resolution and order of the DOTC Secretary enjoining petitioner from operating its buses along the contested route.

In the instant appeal, petitioner contends that the appellate court has decided a question in a way not in accord with applicable jurisprudence. There is merit in the petition.

Forum shopping refers to the act of availing oneself of several judicial remedies in different courts, either simultaneously or successively, substantially founded on the same transaction and identical material facts and circumstances, raising basically like issues either pending in, or already resolved by, some other court. ^[1] The principle applies not only with respect to suits filed before courts but also in connection with a litigation commenced in court while an administrative proceeding is pending in order to defeat administrative processes in anticipation of an unfavorable administrative ruling and possibly a favorable court ruling.^[2] Forum shopping is said to exist where the elements of *litis pendentia* are present or where a final judgment in one case would amount to *res judicata* in the other;^[3] or where, in the two or more cases pending, there is identity of (a) parties, (b) rights or causes of action, and (c) reliefs sought.^[4]

In order to deter the evils of forum shopping, Circular 28-91, dated 08 February 1994, issued by the Supreme Court requires that every petition filed with the Supreme Court or the Court of Appeals must be accompanied by a certification of non-forum shopping. Administrative Circular 04-94, made effective on 01 April 1994, expands the certification requirement to include cases filed in court and quasi-judicial agencies below the Supreme Court and the Court of Appeals. Ultimately, the Court adopted paragraphs (1) and (2) of Administrative Circular No. 04-94 to become Section 5, Rule 7, of the 1997 Rules of Civil Procedure. Significantly, to curb the malpractice of forum shopping, the rule ordains that a violation thereof would constitute contempt of court and be a cause for the summary dismissal of both petitions without prejudice to the taking of appropriate action against the counsel of the party concerned.^[5]

Undeniably, there is identity of cause of action and reliefs sought between the petitioner's letter-appeal filed with the Office of the President and the petition for *certiorari* filed with the Court of Appeals (C.A. G.R. SP No. 61159). The DOTC resolution and order, dated 05 June 2000 and 30 August 2000, respectively, were