Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEIRS OF MARCELO SOTTO, REPRESENTED BY: LOLIBETH SOTTO NOBLE, DANILO C. SOTTO, CRISTINA C. SOTTO, EMMANUEL C. SOTTO and FILEMON C. SOTTO; and SALVACION BARCELONA, AS HEIR OF DECEASED MIGUEL BARCELONA, Petitioners,	**G.R. No. 159691**
	Present:
	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and *MENDOZA, *JJ.*
-versus-	Promulgated:
MATILDE S. PALICTE, Respondent.	FEB 17 2014

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RESOLUTION

BERSAMIN, *J.*:

We now determine whether or not the petitioners' counsel, Atty. Makilito B. Mahinay, committed forum shopping.

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, 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."[1] Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[2]

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* Vice Associate Justice Bienvenido L. Reyes, who penned the decision under review, pursuant to the raffle of May 8, 2013.

1 *Chua v. Metropolitan Bank & Trust Company,* G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

2 *Executive Secretary v. Gordon,* G.R. No. 134171, November 18, 1998, 298 SCRA 736, 741.

An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.[3]

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

In our June 13, 2013 decision in this case,[4] we directed Atty. Mahinay to show cause "why he should not be sanctioned as a member of the Integrated Bar of the Philippines for committing a clear violation of the rule prohibiting forum-shopping by aiding his clients in asserting the same claims at least twice." The directive was called for by the following observations made in the decision, to wit:

> We start this decision by expressing our alarm that this case is the fifth suit to reach the Court dividing the several heirs of the late Don Filemon Y. Sotto (Filemon) respecting four real properties that had belonged to Filemon's estate (Estate of Sotto).
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> The first case (*Matilde S. Palicte v. Hon. Jose O. Ramolete*, *et al*., No. L-55076, September 21, 1987, 154 SCRA 132) held that herein respondent Matilde S. Palicte (Matilde), one of four declared heirs of Filemon, had validly redeemed the four properties pursuant to the assailed deed of redemption, and was entitled to have the title over the four properties transferred to her name, subject to the right of the three other declared heirs to join her in the redemption of the four properties within a period of six months.
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> The second was the civil case filed by Pascuala against Matilde (Civil Case No. CEB-19338) to annul the former's waiver of rights, and to restore her as a co-redemptioner of Matilde with respect to the four properties (G.R. No. 131722, February 4, 1998).
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> The third was an incident in Civil Case No. R-10027 (that is, the suit brought by the heirs of Carmen Rallos against the Estate of Sotto) wherein the heirs of Miguel belatedly filed in November 1998 a motion for reconsideration praying that the order issued on October 5, 1989 be set aside, and that they be still included as Matilde's co-redemptioners. After the trial court denied their motion for reconsideration for its lack of merit, the heirs of Miguel elevated the denial to the CA on *certiorari* and prohibition, but the CA dismissed their petition and upheld the order

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3 *Foronda v. Guerrero*, A.C. No. 5469, August 10, 2004, 436 SCRA 9, 23.
4 698 SCRA 294.

issued on October 5, 1989. Thence, the heirs of Miguel came to the Court on *certiorari* (G.R. No. 154585), but the Court dismissed their petition for being filed out of time and for lack of merit on September 23, 2002.

The fourth was *The Estate of Don Filemon Y. Sotto, represented by its duly designated Administrator, Sixto Sotto Pahang, Jr. v. Matilde S. Palicte, et al*. (G.R. No. 158642, September 22, 2008, 566 SCRA 142), whereby the Court expressly affirmed the ruling rendered by the probate court in Cebu City in Special Proceedings No. 2706-R entitled *Intestate Estate of the Deceased Don Filemon Sotto* denying the administrator's motion to require Matilde to turn over the four real properties to the Estate of Sotto.

The fifth is this case. It seems that the disposition by the Court of the previous cases did not yet satisfy herein petitioners despite their being the successors-in-interest of two of the declared heirs of Filemon who had been parties in the previous cases either directly or in privity. They now pray that the Court undo the decision promulgated on November 29, 2002, whereby the Court of Appeals (CA) declared their action for the partition of the four properties as already barred by the judgments previously rendered, and the resolution promulgated on August 5, 2003 denying their motion for reconsideration.

The principal concern here is whether this action for partition should still prosper notwithstanding the earlier rulings favoring Matilde's exclusive right over the four properties.

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What we have seen here is a clear demonstration of unmitigated forum shopping on the part of petitioners and their counsel. It should not be enough for us to just express our alarm at petitioners' disregard of the doctrine of *res judicata*. We do not justly conclude this decision unless we perform one last unpleasant task, which is to demand from petitioners' counsel, Atty. Makilito B. Mahinay, an explanation of his role in this pernicious attempt to relitigate the already settled issue regarding Matilde's exclusive right in the four properties. **He was not unaware of the other cases in which the issue had been definitely settled considering that his clients were the heirs themselves of Marcelo and Miguel. Moreover, he had represented the Estate of Sotto in G.R. No. 158642 (*The Estate of Don Filemon Y. Sotto v. Palicte*).** (Bold underscoring added for emphasis only)

On July 22, 2013, Atty. Mahinay submitted a so-called *Compliance (With Humble Motion for Reconsideration)* containing his explanations, praying that he not be sanctioned for violating the rule against forum shopping, as follows:

1. The first three cases did not resolve the issues raised in Civil Case No. CEB-24393;

2. Marcelo Sotto's cause of action arose only when respondent Palicte violated her "hypothetically admitted" agreement with Marcelo Sotto;

3. He (Atty. Mahinay) was not the one who had prepared and signed the complaint in Civil Case No. CEB-24393, although he assumed the responsibility as to its filing;

4. He (Atty. Mahinay) had filed a motion for referral or consolidation of Civil Case No. CEB-24293 with the intestate proceedings of the Estate of Filemon Y. Sotto, and

5. He (Atty. Mahinay) had acted in good faith in assisting the administrator of the Estate of Filemon Y. Sotto in filing the *Motion to Require Matilde Palicte To Turn Over And/or Account Properties Owned by the Estate in Her Possession*.[5]

The Court considers Atty. Mahinay's explanations unsatisfactory.

First of all, Atty. Mahinay claims that he could not be deemed guilty of forum shopping because the previous cases did not involve the issues raised in Civil Case No. CEB-24293; hence, *res judicata* would not apply. He maintains that Civil Case No. CEB-24293 was based on the agreement between Palicte and Marcelo Sotto (as the then Administrator of the Estate) to the effect that Palicte would redeem the properties under her name using the funds of the Estate, and she would thereafter share the same properties equally with the Estate.

To establish the agreement between Palicte and Marcelo Sotto, Atty. Mahinay cites Palicte's filing of a motion to dismiss in Civil Case No. CEB-24293 on the ground, among others, of the complaint failing to state a cause of action whereby Palicte *hypothetically admitted* the complaint's averment of the agreement. He submits that a constructive trust between Palicte and the Estate was thereby created; and argues that the issues in Civil Case No. CEB-24293 could not have been raised in the earlier cases because the plaintiffs' cause of action in Civil Case No. CEB-24293 arose only after Palicte violated her agreement with Marcelo Sotto.

Atty. Mahinay's reliance on Palicte's hypothetical admission of her agreement with Marcelo Sotto to buttress his explanation here is unjustified. Such hypothetical admission is only for the purpose of resolving the merits of the ground of insufficiency of the complaint. This is because the test of the sufficiency of the statement of the cause of action is whether or not, *accepting the veracity of the facts alleged*, the court could render a valid

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[5] *Rollo*, pp. 235-248.

judgment upon the same in accordance with the prayer of the complaint.[6] Even so, the filing of the motion to dismiss assailing the sufficiency of the complaint does not hypothetically admit allegations of which the court will take judicial notice of to be not true, nor does the rule of hypothetical admission apply to legally impossible facts, or to facts inadmissible in evidence, or to facts that appear to be unfounded by record or document included in the pleadings.[7]

For the ground to be effective, the insufficiency of the complaint must appear on the face of the complaint, and nowhere else. It will be unfair to the plaintiff, indeed, to determine the sufficiency of his cause of action from facts outside of those pleaded in the complaint. According to Moran: "A complaint should not be dismissed for insufficiency unless it appears to a certainty, from the face of the complaint, that plaintiff would be entitled to no relief under any state of facts which could be proved within the facts alleged therein."[8] Thus, in *Heirs of Juliana Clavano v. Judge Genato*,[9] the Court disapproved the act the trial judge of setting a preliminary hearing on the motion to dismiss based on the insufficiency of the complaint, *viz*:

> x x x We believe that the respondent Judge committed an error in conducting a preliminary hearing on the private respondent's affirmative defenses. It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer of the complaint? Stated otherwise, the sufficiency of the cause of action must appear on the face of the complaint in order to sustain a dismissal on this ground. No extraneous matter may be considered nor facts not alleged, which would require evidence and therefore must be raised as defenses and await the trial. In other words, to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no others should be considered.[10]

Should the trial court find that the statement of the cause of action in the complaint cannot support a valid judgment in accordance with the prayer of the complaint, the motion to dismiss is granted and the complaint is dismissed. But if the motion to dismiss is denied, the defending party who has moved to dismiss is then called upon to file an answer or other proper responsive pleading allowed by the rules of procedure, and through such responsive pleading join issues by either admitting or denying the factual

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6 1 Moran, *Comments on the Rules of Court*, 1995 Edition, p. 605.
7 *Tan v. Director of Forestry*, No. L-24548, October 27, 1983, 125 SCRA 302, 315.
8 Moran, note 6.
9 G.R. No. L-45837, October 28, 1977, 80 SCRA 217.
10 Id. at 222.

averments of the complaint or initiatory pleading. The case then proceeds upon the issues thus raised and joined by the exchange of pleadings.

To stress, the admission of the veracity of the facts alleged in the complaint, being only hypothetical, does not extend beyond the resolution of the motion to dismiss, because a defending party may effectively traverse the factual averments of the complaint or other initiatory pleading only through the authorized responsive pleadings like the answer. Clearly, Atty. Mahinay cannot bind Palicte to her hypothetical admission of the agreement between her and Marcelo Sotto as the Administrator of the Estate.

Given the foregoing, the complaint was properly dismissed because of *res judicata*. There is no question that the ultimate objective of each of the actions was the return of the properties to the Estate in order that such properties would be partitioned among the heirs. In the other cases, the petitioners failed to attain the objective because Palicte's right in the properties had been declared exclusive. There was between Civil Case No. CEB-24293 and the other cases a clear identity of the parties, of subject matter, of evidence, and of the factual and legal issues raised. The Court saw through the petitioners' "ploy to countermand the previous decisions' sustaining Palicte's rights over the properties."

Secondly, Atty. Mahinay asserts good faith in the filing Civil Case No. CEB-24293. He points out that an associate lawyer in his law office prepared and filed the complaint without his law firm being yet familiar with the incidents in the intestate proceedings involving the Estate, or with those of the previous three cases mentioned in the decision of June 13, 2013.[11] He posits that such lack of knowledge of the previous cases shows his good faith, and rules out deliberate forum shopping on his part and on the part of his law firm.

Rather than prove good faith, the filing of the complaint, "simply guided by the facts as narrated and the documentary evidence submitted by petitioners,"[12] smacked of professional irresponsibility. It is axiomatic that a lawyer shall not handle any legal matter without adequate preparation.[13] He is expected to make a thorough study and an independent assessment of the case he is about to commence. As such, his claim of good faith was utterly baseless and unfounded.

Moreover, laying the blame on the associate lawyer is not plausible. Any client who employs a law firm undeniably engages the entire law firm,[14]

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11 *Rollo*, p. 245.
12 Id.
13 Canon 18, Rule 18.02.
14 *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunication Philippines, Inc.*, G.R. No. 104600, July 2, 1999, 309 SCRA 566, 574.

not a particular member of it. Consequently, it was not only the associate lawyer but the entire law firm, Atty. Mahinay included, who had presumably prepared the complaint. For Atty. Mahinay to insist the contrary is the height of professional irresponsibility.

Even assuming that Atty. Mahinay did not himself prepare the complaint, it remains that he subsequently personally handled the case. In so doing, he had sufficient time to still become fully acquainted with the previous cases and their incidents, and thereby learn in the due course of his professional service to the petitioners that the complaint in Civil Case No. CEB-24293 was nothing but a replication of the other cases. Under the circumstances, the *Rules of Court* and the canons of professional ethics bound him to have his clients desist from pursuing the case. Instead, he opted to re-litigate the same issues all the way up to this Court.

Thirdly, Atty. Mahinay states that his filing of the *Motion To Refer Or Consolidate The Instant Case With The Proceedings In The Intestate Estate Of Filemon Sotto Before RTC Branch XVI In SP Proc. No. 2706-R*[15] disproved deliberate forum shopping on his part.

The Court disagrees. Atty. Mahinay's filing of the *Motion To Refer Or Consolidate The Instant Case With The Proceedings In The Intestate Estate Of Filemon Sotto Before RTC Branch XVI In SP Proc. No. 2706-R* indicated that he relentlessly pursued the goal of taking away the properties from Palicte in disregard of the rulings in the earlier cases. We note that the dismissal of the complaint in Civil Case No. CEB-24293 on November 15, 1999[16] prompted Atty. Mahinay to file a motion for reconsideration on December 3, 1999.[17] But he did not await the resolution of the motion for reconsideration, and instead filed the *Motion To Refer Or Consolidate The Instant Case With The Proceedings In The Intestate Estate Of Filemon Sotto Before RTC Branch XVI In SP Proc. No. 2706-R* on May 9, 2000 obviously to pre-empt the trial court's denial of the motion.[18] His actuations did not manifest good faith on his part. Instead, they indicated an obsession to transfer the case to another court to enable his clients to have another chance to obtain a favorable resolution, and still constituted deliberate forum shopping.

And, lastly, Atty. Mahinay argues that his assisting the Administrator of the Estate in filing the *Motion to Require Matilde Palicte To Turn Over And/or Account Properties Owned by the Estate in Her Possession*, wherein he disclosed the commencement of Civil Case No. CEB-24293, and extensively quoted the allegations of the complaint, disproved any forum

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15 *Rollo*, p. 249.
16 Id. at 97.
17 Id. at 114.
18 Id. at 251; the Order denying the motion for reconsideration was issued on June 6, 2000 (Id. at 124).

shopping. He insists that his disclosure of the pendency of Civil Case No. CEB-24293 proved that forum shopping was not in his mind at all.

The insistence cannot command belief. The disclosure alone of the pendency of a similar case does not negate actual forum shopping. Had Atty. Mahinay been sincere, the least he could have done was to cause the dismissal of the action that replicated those already ruled against his clients. The records show otherwise. The filing of the *Motion to Require Matilde Palicte To Turn Over And/or Account Properties Owned by the Estate in Her Possession* on June 7, 2000, a day after the trial court denied his motion for reconsideration in Civil Case No. CEB-24293, was undeniably another attempt of the petitioners and Atty. Mahinay to obtain a different resolution of the same claim. Needless to observe, the motion reiterated the allegations in Civil Case No. CEB-24293, and was the subject of the petition in *The Estate of Don Filemon Y. Sotto vs. Palicte.*[19]

The acts of a party or his counsel clearly constituting willful and deliberate forum shopping shall be ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer.[20] Forum shopping can be committed in either of three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. But if the forum shopping is willful and deliberate, *both* (or *all*, if there are more than two) actions shall be dismissed with prejudice.[21]

In view of the foregoing, Atty. Mahinay was guilty of forum shopping. Under Revised Circular No. 28-91,[22] any willful and deliberate forum shopping by any party and his counsel through the filing of multiple petitions or complaints to ensure favorable action shall constitute direct contempt of court. Direct contempt of court is meted the summary penalty of fine not exceeding ₱2,000.00.[23]

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19 G.R. No. 158642, September 22, 2008, 566 SCRA 142.
20 Section 5, Rule 7, *Rules of Court*.
21 *Ao-as v. Court of Appeals*, G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354-355.
22 *Additional Requisites For Petitions Filed With The Supreme Court And The Court Of Appeals To Prevent Forum Shopping Or Appeals To Prevent Forum Shopping Or Multiple Filing Of Petitions And Complaints* (February 8, 1994).
23 Section 1, Rule 71.

WHEREFORE, the Court **FINDS** and **PRONOUNCES ATTY. MAKILITO B. MAHINAY** guilty of forum shopping; and **ORDERS** him to pay to this Court, through the Office of the Clerk of Court, a **FINE** of ₱2,000.00 within fifteen (15) days from notice hereof.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice