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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

VILLAMOR & VICTOLERO
CONSTRUCTION COMPANY,
ERWIN VICTOLERO, and
RHEENA BERNADETTE C.
VILLAMOR,

G.R. No. 218771

Petitioners,

- versus -

SOGO REALTY AND
DEVELOPMENT CORPORATION,
Respondent.

X-----X
SOGO REALTY AND
DEVELOPMENT CORPORATION,
Petitioner,

G.R. No. 220689

Present:

- versus -

VILLAMOR & VICTOLERO
CONSTRUCTION COMPANY,
RHEENA BERNADETTE C.
VILLAMOR, and ERWIN V.
VICTOLERO,

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

Promulgated:

Respondents.

June 3, 2019

X-----X

DECISION

PERALTA, J.:

Before the Court are consolidated cases docketed as G.R. No. 218771 and G.R. No. 220689. In G.R. No. 218771, Villamor & Victolero Construction Company (VVCC), Erwin Victolero, and Rheena Bernadette C. Villamor (collectively, *Villamor, et al.*) filed a Petition for Review on

*Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² and the Resolution,³ dated November 12, 2014 and May 26, 2015, respectively, of the Special Tenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 126320. In G.R. No. 220689, Sogo Realty and Development Corporation (*Sogo Realty*) questioned, through a Petition for Review on *Certiorari*⁴ under Rule 45 of the Rules of Court, the Decision⁵ and the Resolution, dated February 9, 2015⁶ and September 21, 2015, respectively, of the Fifteenth Division of the CA in CA-G.R. SP No. 125273.

The antecedent facts are as follows.

On December 14, 2011, Sogo Realty filed a Complaint (With Application for Interim Measures)⁷ against Villamor, et al. before the Construction Industry Arbitration Commission (CIAC) alleging that on December 1, 2009, the parties entered into a Construction Agreement by virtue of which Sogo Realty, as owner and developer of a subdivision known as “Ciudad Verde Homes – Phases 2 and 3,” located at Paradahan 1, Tanza, Cavite (*the Project*), engaged the services of Villamor, et al. as its contractor. In particular, Villamor, et al. guaranteed to accomplish the works of the Project which include land development such as road works and road preparation works, for a period of one (1) year from the date of final acceptance, as well as to make good all possible defects within a guarantee period and at their own expense. According to Sogo Realty, after the completion of the works, the roads constructed by Villamor, et al. began to show ominous signs of defects in workmanship and deficiencies in the materials used therefor. Specifically, Sogo Realty called attention to the fact that despite ordinary and expected use of the roads, they began showing large cracks and are breaking apart. Tests were then conducted on the roads which confirmed the alleged defects. Consequently, Sogo Realty sent a demand letter dated November 16, 2011 to Villamor, et al. directing the latter to remove the defective structures and reconstruct them according to the agreed plans and specifications. Villamor, et al., however, did not take any action.⁸ Hence, Sogo Realty’s complaint before the CIAC.

As for its decision to submit its issues to arbitration, Sogo Realty alleged that the parties agreed to do so in a handwritten and signed statement in a letter dated September 22, 2011. The arbitration letter was signed for

¹ *Rollo* (G.R. No. 218771), pp. 11-23.

² *Id.* at 141-148; penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Vicente S.E. Veloso and Carmelita Salandanan-Manahan.

³ *Id.* at 139-140; penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Carmelita Salandanan-Manahan.

⁴ *Rollo* (G.R. No. 220689), pp. 3-10.

⁵ *Rollo* (G.R. No. 218771), pp. 67-79; penned by Associate Justice Samuel H. Gaerlan, with the concurrence of Associate Justices Normandie B. Pizarro and Zenaida T. Galapate-Laguilles.

⁶ *Rollo* (G.R. No. 220689), p. 4.

⁷ *Rollo* (G.R. No. 218771), pp. 34-41.

⁸ *Id.* at 68-70.

and on behalf of VVCC, by its Estimation and Marketing Manager, Lawrence Napoleon F. Villamor, and for and on behalf of Sogo Realty, by its Vice President for Administration, Francisco M. Gutierrez.⁹ The letter states:

I agree to the proposal to submit to Arbitration, in case we do not agree to the report.

10/5/11 sgd. Lawrence Napoleon F. Villamor¹⁰

Thus, Sogo Realty prayed that the CIAC: (1) grant the interim measure of preliminary attachment and examination of the land development works; and (2) issue an arbitral award ordering Villamor, et al. to pay actual damages, exemplary damages, attorney's fees, and costs of arbitration.

In response, Villamor, et al. filed a Motion to Dismiss¹¹ the Complaint on the ground that CIAC had no jurisdiction over the same. According to them, the Construction Agreement signed by the parties does not contain an arbitration agreement. They also asserted that VVCC did not consent to the submission of issues to arbitration and that Lawrence was not authorized to enter into any arbitration agreement with Sogo Realty. The fact that Lawrence signed the Construction Agreement did not mean that he was likewise given authority to enter into a subsequent agreement to arbitrate on behalf of VVCC.¹²

In an Order¹³ dated March 21, 2012, the CIAC denied Villamor, et al.'s Motion to Dismiss, as well as their motion seeking a reconsideration of said denial. According to the CIAC, there is no reason for Sogo Realty to doubt the authority of Lawrence as to being the authorized representative of VVCC considering that it has dealt with him from the inception of the contract. It is clear from the signature appearing on the arbitration letter that the same was Lawrence's and that he was aware of what he was agreeing to. Thus, the CIAC has jurisdiction over the case.¹⁴ As such, it directed Villamor, et al. to file an Answer to the Complaint and scheduled the Preliminary Conference. Villamor, et al., however, did not file their Answer. Instead, they informed the CIAC Arbitral Tribunal during the preliminary conference that they were not submitting themselves to its jurisdiction and that they would be filing a petition for *certiorari*. Thus, proceedings ensued without their participation.¹⁵

⁹ *Id.* at 70.

¹⁰ *Id.*

¹¹ *Id.* at 43-45.

¹² *Id.* at 71.

¹³ *Id.* at 46-48.

¹⁴ *Id.* at 72-74.

¹⁵ *Id.* at 143.



True to their word, Villamor, et al. filed a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court against Sogo Realty and the members of the CIAC Tribunal before the CA docketed as CA-G.R. SP No. 125273. In the petition, they imputed grave abuse of discretion on the CIAC Tribunal for issuing the Order denying their Motion to Dismiss and Motion for Reconsideration. In the meantime, however, the CIAC rendered its Final Award¹⁶ in favor of Sogo Realty ordering Villamor, et al. to pay Sogo Realty ₱3,523,650.27 worth of damages, fees, and costs. Aggrieved, Villamor, et al. filed a Petition for Review under Rule 43 of the Rules of Court before the CA assailing the CIAC ruling and insisted that the CIAC did not have jurisdiction over the case.¹⁷

In a Decision¹⁸ dated November 12, 2014, the CA, Special Tenth Division, dismissed Villamor, et al.'s Petition for Review, finding them guilty of forum shopping. *First*, the parties in the Petition for Review are the same parties in the Petition for *Certiorari*. *Second*, in both petitions, Villamor, et al. raised the issue of the CIAC's lack of jurisdiction. *Third*, a judgment in the Petition for *Certiorari* would amount to *res judicata* in the Petition for Review. Thus, the dismissal of the Petition for Review is in order.¹⁹

In another Decision²⁰ dated February 9, 2015, however, the CA, Fifteenth Division, granted Villamor, et al.'s Petition for *Certiorari* and declared as null and void the orders of the CIAC. Citing Article 1818 of the Civil Code, the CA held that except when authorized by the other partners or unless they have abandoned their business, one or more, but less than all the partners, have no authority to submit a partnership claim or liability to arbitration. The general rule is that powers not specifically delegated in a partnership agreement are presumed to be withheld. According to the appellate court, while Lawrence is VVCC's Estimation and Marketing Manager, it still remains that he is not a partner in said partnership. The fact that he is the husband of Rheena Villamor, one of the partners, is of no moment as it does not give him the personality of a partner. The CA further disagreed with the finding of the CIAC that there is no reason for Sogo Realty to doubt the authority of Lawrence as the authorized representative of VVCC. On the contrary, Sogo Realty, as a corporation conversant with business usages, and one which acts through its board of directors, officers, and agents, should have easily determined whether Lawrence was, in fact, clothed with authority. Thus, since VVCC was represented by one without capacity to enter into a binding arbitration, and in the absence of an

¹⁶ *Id.* at 80-100.

¹⁷ *Id.* at 144.

¹⁸ *Supra* note 2.

¹⁹ *Rollo* (G.R. No. 218771), pp. 145-147.

²⁰ *Supra* note 5.

arbitration clause in their Construction Agreement, the CA ruled that the CIAC had no jurisdiction over the issues brought before it.²¹

On October 20, 2015, Sogo Realty filed its Petition for Review on *Certiorari*²² before the Court, docketed as G.R. No. 220689, alleging that Villamor, et al. are guilty of forum shopping, that the CIAC has jurisdiction over the case, and that the parties entered into a valid arbitration agreement.²³

On August 20, 2015, Villamor, et al. filed their Petition for Review on *Certiorari*²⁴ before the Court, docketed as G.R. No. 218771, arguing that they are not guilty of forum shopping. They claim that in the Petition for *Certiorari* that they filed before the CA, the only issue raised was whether the CIAC had jurisdiction over the complaint; while in their Petition for Review, likewise filed before the CA, apart from the issue of jurisdiction, they raised the additional issue of whether the CIAC erred in awarding damages, fees, and costs in favor of Sogo Realty. As such, the causes of action between the two petitions are different. Villamor, et al. also alleged that they correctly declared in their Certification Against Forum Shopping the pending Petition for *Certiorari* before the CA and that despite said Petition for *Certiorari*, the CIAC proceeded with the case, to their damage and prejudice. Thus, they were left with no other recourse, but to file their Petition for Review to assail the Final Award of the CIAC.²⁵

In a Resolution²⁶ dated November 9, 2015, the Court consolidated G.R. No. 220689 with G.R. No. 218771 as both cases proceeded from the same set of facts, involved identical parties and raised interrelated issues. The Court also resolved to defer action on the Petition for Review on *Certiorari* filed by Sogo Realty in G.R. No. 220689 and required said party to submit to the Court clearly legible duplicate originals or certified true copies of the assailed decision and resolutions within five (5) days from notice.

Sogo Realty, however, failed to comply with the directive in the November 9, 2015 Resolution, requiring the submission of clearly legible duplicate originals or certified true copies of the assailed decision and resolutions. Thus, in a Resolution²⁷ dated July 25, 2016, the Court resolved to deny Sogo Realty's petition in G.R. No. 220689 for its failure to obey a lawful order of the Court pursuant to Section 5(e), Rule 56 of the 1997 Rules of Civil Procedure, as amended. Thereafter, the July 25, 2016 Resolution

²¹ *Rollo* (G.R. No. 218771), pp. 76-78.

²² *Supra* note 4.

²³ *Rollo* (G.R. No. 218771), pp. 3-9.

²⁴ *Supra* note 1.

²⁵ *Rollo* (G.R. No. 218771), pp. 17-19.

²⁶ *Rollo* (G.R. No. 220689), pp. 13-14.

²⁷ *Id.* at 16-17.

became final and executory and was duly recorded in the Book of Entries of Judgment, as evidenced by an Entry of Judgment²⁸ dated September 27, 2016.

Thus, what remains pending before the Court is the following argument raised by Villamor, et al. in their Petition for Review on *Certiorari* docketed as G.R. No. 218771:

A. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW OF THE PETITIONERS AND IN DENYING THE PETITIONERS' MOTION FOR RECONSIDERATION[.]

We resolve to deny Villamor, et al.'s petition.

Time and again, the Court has held that forum shopping exists 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. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It also degrades the administration of justice and adds to the already congested court dockets.²⁹

It is equally settled, moreover, that “[t]he grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. [Thus, t]o avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.”³⁰ This rule is embodied in Rule 7, Section 5 of the Revised Rules of Court:

Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof;

²⁸ *Id.* at 28-29.

²⁹ *Fontana Development Corp., et al. v. Vukasinovic*, 795 Phil. 913, 920 (2016).

³⁰ *Id.*, citing *Dy v. Mandy Commodities Co., Inc.*, 611 Phil. 74, 84 (2009).

and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

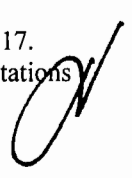
Thus, the test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.³¹

After a careful scrutiny of the facts of the instant case, we find that all of the foregoing elements are present. As borne by the records, it is undisputed that Villamor, et al. filed two (2) petitions before the CA: (1) a Petition for *Certiorari* under Rule 65; and (2) a Petition for Review under Rule 43.

First of all, there is identity of parties in the Petition for *Certiorari* and in the Petition for Review. Settled is the rule that there is identity of parties not only when the parties in the cases are the same, but also between those in privity with them, such as between their successors-in-interest. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.³² Here, while the members of the CIAC Tribunal were included as respondents in the Petition for *Certiorari*, it cannot be denied that there still exists an identity of parties between the Petition for *Certiorari* and the Petition for Review. In both petitions, Villamor, et al. essentially refuted Sogo Realty's

³¹ *Bernardo S. Zamora v. Emmanuel Z. Quinan, Jr., et al.*, G.R. No. 216139, November 29, 2017.

³² *Guerrero v. Director, Land Management Bureau, et al.*, 759 Phil. 99, 113 (2015); citations omitted.



claim to damages, and the CIAC Tribunal's jurisdiction and decision to grant said claim.

Second of all, there is an identity of rights asserted and reliefs prayed for in both petitions. Jurisprudence dictates that this requisite obtains where the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions is different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.³³

On this score, we sustain the findings of the appellate court. On the one hand, Villamor, et al. argued in their Petition for *Certiorari* that the CIAC's denial of their Motion to Dismiss and Motion for Reconsideration was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction because the CIAC did not have jurisdiction over the case. Thus, among others, they prayed that judgment be rendered: (1) declaring null and void the orders of the CIAC denying their motions; and (2) ordering the CIAC to dismiss the complaint for lack of jurisdiction. On the other hand, in their Petition for Review, Villamor, et al. argued that the CIAC's Final Award was erroneous for it did not have jurisdiction over the case. Thus, among others, they prayed that judgment be rendered: (1) setting aside the Final Award of the CIAC; and (2) dismissing the case for lack of jurisdiction.³⁴

There is no denying, therefore, that the petitions filed by Villamor, et al. practically raise one and the same issue: the CIAC's lack of jurisdiction to hear and decide the present case. In both petitions, Villamor, et al. asserted the same arguments and legal bases in support of their respective position. In both petitions, Villamor, et al. relied on the same pieces of evidence to substantiate their causes of action, which are essentially hinged on the alleged lack of jurisdiction of the CIAC. Thus, we cannot give credence to Villamor, et al.'s conclusion that they are innocent of the charge of forum shopping for the simple reason that unlike in the Petition for *Certiorari*, where they alleged the lone issue of the CIAC's jurisdiction, the Petition for Review raised an additional issue of the CIAC's alleged error in awarding damages, fees, and costs in Sogo Realty's favor. A cursory perusal of both petitions would show that Villamor, et al. basically pray for one and the same thing: that the CIAC judgment be dismissed, again, on the ground of its lack of jurisdiction.

³³ *Senator Leila M. De Lima v. Hon. Juanita Guerrero, etc., et al.*, G.R. No. 229781, October 10, 2017.

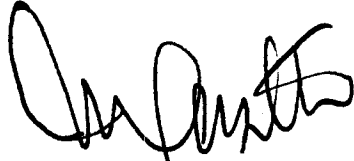
³⁴ *Rollo* (G.R. No. 218771), p. 146.

Third and finally, with the identity of the two preceding particulars, the Court finds that the third requisite obtains in the present case such that any judgment rendered in the Petition for *Certiorari*, specifically on the question of whether the CIAC has jurisdiction over the arbitration proceedings, will, regardless of which party is successful, amount to *res judicata* in the Petition for Review.

In view of the foregoing, the Court finds no cogent reason to reverse the ruling of the CA, Special Tenth Division, finding that Villamor, et al. engaged in forum shopping. As the appellate court correctly puts it, when Villamor, et al. filed the two distinct petitions before the same court, they placed said tribunal in a “quandary,” making the possibility of two separate and contradictory decisions on the issue of the CIAC’s jurisdiction all “too imminent and real.” Indeed, one division may uphold the CIAC’s jurisdiction while another may rule otherwise and reverse the CIAC’s ruling. To the Court, this is the very evil that the proscription on forum shopping seeks to avoid. Thus, it is in keeping with the orderly administration of justice that we remind litigants to exercise prudence and vigilance in seeing to it that forum shopping is avoided so as to prevent not only the undue inconvenience upon the other party, but also the congestion of the already burdened dockets of the courts.³⁵

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision and Resolution dated November 12, 2014 and May 26, 2015, respectively, of the Special Tenth Division of the Court of Appeals are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice


³⁵


Bernardo S. Zamora v. Emmanuel Z. Quinan, Jr., et al., supra note 31.

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

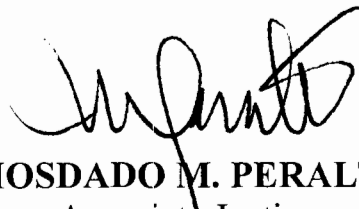

ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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


LUCAS F. BERSAMIN
Chief Justice