

## FIRST DIVISION

**[ G.R. No. 190231, December 08, 2010 ]**

**ASIA UNITED BANK AND ABRAHAM CO, PETITIONERS, VS.  
GOODLAND COMPANY, INC., RESPONDENT.**

### R E S O L U T I O N

#### **CORONA, C.J.:**

This petition under Rule 45 seeks to reverse and set aside the August 11, 2009 decision<sup>[1]</sup> and November 10, 2009 resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 91269. The CA decision and resolution affirmed the August 16, 2007<sup>[3]</sup> and December 5, 2007<sup>[4]</sup> orders of the Regional Trial Court (RTC) of Biñan, Laguna, Branch 25 dismissing Civil Case No. B-6242 with prejudice on the ground of willful and deliberate forum-shopping.

The antecedents follow.

On July 21, 1999, respondent Goodland Company, Inc. mortgaged<sup>[5]</sup> its two real properties in Laguna<sup>[6]</sup> to petitioner Asia United Bank (AUB) as security for the loans of Smartnet Philippines, Inc. (SPI). Respondent's vice president, Gilbert G. Guy,<sup>[7]</sup> signed the contract of real estate mortgage on its behalf.

On January 29, 2002, respondent sent a letter to petitioners<sup>[8]</sup> repudiating the mortgage over the Laguna properties and accusing them of fraud and falsification. Respondent claimed that Guy signed a blank deed of real estate mortgage on the understanding that the company would act as a third-party accommodation mortgagor for SPI. In other words, respondent did not intend to secure the loans of SPI or mortgage the Laguna properties. Petitioners, however, reneging on this understanding, fraudulently filled up the blank pre-signed forms and registered the same. Thus, respondent demanded that petitioners release the encumbrance over the Laguna properties; otherwise, it would take appropriate legal actions for fraud against petitioners.<sup>[9]</sup> Petitioners ignored respondent's demand.

On January 16, 2003, respondent filed Civil Case No. B-6242<sup>[10]</sup> in the RTC of Biñan, Laguna, Branch 25. Respondent, essentially reiterating the contents of the January 29, 2002 letter,<sup>[11]</sup> sought to nullify the mortgage over the Laguna properties on the ground of fraud.<sup>[12]</sup>

Meanwhile, AUB foreclosed on the Laguna properties due to SPI's failure to pay its loans. The properties were sold in a public auction in which the bank emerged as the highest bidder.

On November 26, 2006, respondent filed Civil Case No. B-7110<sup>[13]</sup> in the RTC of

Biñan, Laguna, Branch 25. Respondent sought to nullify the foreclosure of the Laguna properties on the ground that it never agreed to mortgage the same to AUB as security for SPI's loans.<sup>[14]</sup>

On the motion of AUB,<sup>[15]</sup> Civil Case No. B-7110 was dismissed with prejudice in an order dated March 15, 2007<sup>[16]</sup> on the ground of willful and deliberate forum-shopping.

On August 16, 2007, the RTC likewise dismissed Civil Case No. B-6242<sup>[17]</sup> on motion of petitioners.<sup>[18]</sup> It noted that the allegations of and reliefs sought by respondent in Civil Case Nos. B-6242 and B-7110 were identical and that the respondent did not inform the court that it filed Civil Case No. 7110. Respondent therefore did not comply with its undertaking in the certificate of non-forum shopping that it would report the filing of a complaint involving the same or similar action or claim to the court within five days of learning that such a complaint had been filed.<sup>[19]</sup> Thus, the RTC found respondent guilty of engaging in willful and deliberate forum-shopping and consequently dismissed Civil Case No. B-6242 with prejudice.<sup>[20]</sup>

Respondent moved for reconsideration but it was denied in an order dated December 5, 2007.<sup>[21]</sup>

Respondent appealed the aforementioned August 16, 2007 and December 5, 2007 orders to the CA.<sup>[22]</sup>

In a decision dated August 11, 2009, <sup>[23]</sup> the CA granted the appeal holding that respondent asserted dissimilar rights and sought different reliefs in Civil Case No. B-6242 and Civil Case No. B-7110.<sup>[24]</sup> It, in effect, reinstated Civil Case No. B-6242.

Petitioners moved for reconsideration but it was denied in a resolution dated November 10, 2009.<sup>[25]</sup>

Petitioners thus availed of this recourse claiming that the CA erred in reinstating Civil Case No. 6242.<sup>[26]</sup> They assert that respondent committed willful and deliberate forum-shopping by filing Civil Case Nos. B-6242 and B-7110.

We grant the petition.

Forum shopping is the institution of two or more actions or proceedings grounded on the same cause, on the supposition that one or the other court would render a favorable disposition.<sup>[27]</sup> It exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to res judicata in another.<sup>[28]</sup>

In Civil Case No. B-6242, respondent sought to nullify the deed of real estate mortgage respondent executed in favor of the AUB on the ground that it did not consent to encumber the Laguna properties as security for SPI's loan. On the other hand, in Civil Case No. B-7110, respondent claimed AUB did not have a right to foreclose over the Laguna properties because it never agreed to mortgage the same.

A cursory examination of respondent's allegations in Civil Case No. B-6242 and B7110 reveals the similarity of the two actions. In both cases, respondent essentially claimed that it did not consent to the mortgage and, for this reason, sought to nullify both the mortgage and the foreclosure. Thus, by filing Civil Case No. B-7110 while Civil Case No. B-6242 was still pending, respondent engaged in willful and deliberate forum-shopping.

The pivotal issue in this petition is whether Civil Case No. B-6242 was aptly dismissed with prejudice.

Rule 7, Section 5 of the Rules of Court<sup>[29]</sup> requires every litigant to notify the court of the filing or pendency of a complaint involving the same or similar action or claim within five days of learning of that fact. While both Civil Case Nos. B-6242 and B-7110 were raffled to the same court, the RTC of Biñan, Laguna, Branch 25, respondent did not report the filing of Civil Case No. B-7110 in the proceedings of Civil Case No. 6242.<sup>[30]</sup> This fact clearly established respondent's furtive intent to conceal the filing of Civil Case No. B-7110 for the purpose of securing a favorable judgment. For this reason, Civil Case No. 6242 was correctly dismissed with prejudice.<sup>[31]</sup>

**WHEREFORE**, the petition is hereby **GRANTED**. The August 11, 2009 decision and November 10, 2009 resolution of the Court of Appeals in CA-G.R. CV No. 9126 are **REVERSED** and **SET ASIDE**. The August 16, 2007 and December 5, 2007 orders of the Regional Trial Court of Biñan, Laguna, Branch 25 in Civil Case No. B-6242 are **REINSTATED**.

No pronouncement as to costs.

**SO ORDERED.**

*Leonardo-De Castro,\* Del Castillo, Abad\*\* and Perez, JJ., concur.*

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\* Per Special Order No. 916 dated November 24, 2010.

\*\* Per Special Order No. 917 dated November 24, 2010.

[1] Penned by Associate Justice Juan Q. Enriquez and concurred in by Associate Justices Celia C. Librea-Leagogo and Antonio L. Villamor of the Tenth Division of the Court of Appeals. *Rollo*, pp. 40-51.

[2] Penned by Associate Justice Juan Q. Enriquez and concurred in by Associate Justices Antonio L. Villamor and Jane Aurora C. Lantion of the Special Former Tenth Division of the Court of Appeals. *Id.*, pp. 53-54.

[3] Penned by Presiding Judge Teodoro N. Solis. *Id.*, pp. 259-264.

[4] *Id.*, p. 276.