

SECOND DIVISION

[G.R. No. 159130, August 22, 2008]

ATTY. GEORGE S. BRIONES, PETITIONER, VS. LILIA J. HENSON-CRUZ, RUBY J. HENSON, AND ANTONIO J. HENSON, RESPONDENTS.

DECISION

BRION, J.:

We review in this petition^[1] the Decision of the Court of Appeals (Fifteenth Division) dated February 11, 2003^[2] in CA-G.R. SP No. 71844.

THE ANTECEDENTS

Respondent Ruby J. Henson filed on February 23, 1999 a petition for the allowance of the will of her late mother, Luz J. Henson, with the Regional Trial Court (RTC) of Manila, docketed as Special Proceedings No. 99-92870.

Lilia Henson-Cruz, one of the deceased's daughters and also a respondent in this petition, opposed Ruby's petition. She alleged that Ruby understated the value of their late mother's estate and acted with "unconscionable bad faith" in the management thereof. Lilia prayed that her mother's holographic will be disallowed and that she be appointed as the Intestate Administratrix.

Lilia subsequently moved for the appointment of an Interim Special Administrator of the estate of her late mother, praying that the Prudential Bank & Trust Company-Ermita Branch be appointed as Interim Special Administrator. The trial court granted the motion but designated Jose V. Ferro (Senior Vice-President and Trust Officer, Trust Banking Group of the Philippines National Bank) as the Special Administrator. Ferro, however, declined the appointment.

The trial court then designated petitioner Atty. George S. Briones as Special Administrator of the estate. Atty. Briones accepted the appointment, took his oath of office, and started the administration of the estate. The significant highlights of his administration are listed below:

1. On November 22, 1999, the trial court directed the heirs of Luz J. Henson to turn over the possession of all the properties of the deceased to the Special Administrator.
2. On February 16, 2000, Atty. Briones moved that the trial court approve Special Administrator's fees of P75,000.00 per month. These fees were *in addition to* the commission referred to in Section 7, Rule 85 of the Revised Rules of Court. The trial court granted the motion but reduced the fees to P60,000.00 per

month, retroactive to the date Atty. Briones assumed office.

3. Atty. Briones filed a Special Administrator's Report No. 1 dated September 8, 2000 which contained an inventory of the properties in his custody and a statement of the income received and the disbursements made for the estate. The trial court issued an Order dated March 5, 2001 approving the report.
4. On September 17, 2001, the heirs of Luz J. Henson submitted a project of partition of the estate for the trial court's approval.
5. On January 8, 2002, Atty. Briones submitted the Special Administrator's Final Report for the approval of the court. He prayed that he be paid a commission of P97,850,191.26 representing eight percent (8%) of the value of the estate under his administration.
6. The respondents opposed the approval of the final report and prayed that they be granted an opportunity to examine the documents, vouchers, and receipts mentioned in the statement of income and disbursements. They likewise asked the trial court to deny the Atty. Briones' claim for commission and that he be ordered to refund the sum of P134,126.33 to the estate.
7. On February 21, 2002, the respondents filed an audit request with the trial court. Atty. Briones filed his comment suggesting that the audit be done by an independent auditor at the expense of the estate.
8. In an Order dated March 12, 2002, the trial court granted the request for audit and appointed the accounting firm Alba, Romeo & Co. to conduct the audit.
9. The respondents moved for the reconsideration of Order dated March 12, 2002, alleging that in view of the partition of the estate there was no more need for a special administrator. They also clarified that they were not asking for an external audit; they merely wanted to be allowed to examine the receipts, vouchers, bank statements, and other documents in support of the Special Administrator's Final Report and to examine the Special Administrator under oath.
10. The trial court handed down an **Order dated April 13, 2002**, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the court hereby:

1. **Reiterates its designation of the accounting firm of Messrs. Alba, Romeo & Co. to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.**
2. **Suspends the approval of the report of the special administrator except the payment of his commission, which is hereby fixed at 1.8% of the value of the estate.**

3. Directs the special administrator to deliver the residue to the heirs in proportion to their shares. From the shares of Lilia J. Henson-Cruz, there shall be deducted the advances made to her.

IT IS SO ORDERED.

On April 29, 2002, respondents filed with the Court of Appeals (CA) a **Petition for Certiorari, Prohibition, and Mandamus** which was raffled to the CA's Ninth Division and docketed as **CA-G.R. SP No. 70349**. The petition assailed the Order dated March 12, 2002 which appointed accounting firm Alba, Romeo & Co. as auditors and the Order dated April 3, 2002 which reiterated the appointment.

Prior the filing of the petition for *certiorari* in CA G.R. SP No. 70349, the heirs of Luz Henson filed on April 9, 2002 a Notice of Appeal with the RTC assailing the Order dated April 3, 2003 insofar as it directed the payment of Atty. Briones' commission. They subsequently filed their record on appeal.

The trial court, however, denied the appeal and disapproved the record on appeal on May 23, 2002 on the ground of forum shopping. Respondents' motion for reconsideration was likewise denied.

On July 26, 2002, the respondents filed a **Petition for Mandamus** with the appellate court, docketed as **CA-G.R. SP No. 71844**. They claimed that the trial court unlawfully refused to comply with its ministerial duty to approve their seasonably-perfected appeal. They refuted the trial court's finding of forum shopping by declaring that the issues in their appeal and in their petition for *certiorari* (CA-G.R. SP No. 70349) are not identical, although both stemmed from the same Order of April 3, 2002. The appeal involved the payment of the special administrator's commission, while the petition for *certiorari* assailed the appointment of an accounting firm to conduct an external audit.

On the other hand, the petitioner insisted that the respondents committed forum shopping when they assailed the Order of April 3, 2002 twice, *i.e.*, through a special civil action for *certiorari* and by ordinary appeal. Forum shopping took place because of the identity of the reliefs prayed for in the two cases. The petitioner likewise posited that the trial court's error, if any, in dismissing the appeal on the ground of forum shopping is an error of judgment, not of jurisdiction, and hence is not correctible by *certiorari*.

On February 11, 2003, the Court of Appeals decided the respondents' petition for *Mandamus* (CA-G.R. SP No. 71844) as follows:

WHEREFORE, the petition is GRANTED and respondent Judge is directed to give due course to the appeal of petitioners from the Order dated April 3, 2002 insofar as it directed the payment of commission to private respondent. [Emphasis supplied.]

SO ORDERED.

The Court of Appeals held that the trial court had neither the power nor the authority to deny the appeal on the ground of forum shopping. It pointed out that under Section 13, Rule 41 of the 1997 Rules of Civil Procedure, as amended, the authority of the trial court to dismiss an appeal, either *motu proprio* or on motion,

may be exercised only if the appeal was taken out of time or if the appellate court docket and other fees were not paid within the reglementary period.

Atty. Briones moved for the reconsideration of this decision. The appellate court denied his motion in its Resolution dated July 17, 2003. Thereupon, he seasonably filed the present Petition for Review on *Certiorari* on September 4, 2003 on the ground that the CA refused to resolve the issue of forum shopping in its Decision of February 11, 2003 and its resolution of July 17, 2003 in CA-G.R. SP No. 71844 (Petition for *Mandamus* to give due course to the appeal).

In the interim, on August 5, 2003, the Court of Appeals (Ninth Division) handed down its Decision^[3] in **CA-G.R. SP No. 70439** (Petition for *Certiorari*, Prohibition, and *Mandamus* on the appointment of the auditing firm), whose *fallo* reads:

WHEREFORE, premises considered, the petition is GRANTED. The assailed Orders dated March 12, 2002 and April 3, 2002 are REVERSED and SET ASIDE. Public respondent Judge Artemio S. Tipon is hereby COMMANDED **to allow petitioner-heirs: 1)** to examine all the receipts, bank statements, bank passbook, treasury bills, and other documents in support of the Special Administrator's Final Report, as well as the Statement of the Income and Disbursement Made from the Estate; and **2)** to cross-examine private respondent Briones, before finally approving the Special Administrator's Final Report. [Emphasis supplied.]

SO ORDERED.

THE PARTIES' POSITIONS

The petitioner faults the appellate court for refusing to resolve the forum shopping issue in its Decision of February 11, 2003 and the Resolution of July 17, 2003, thereby deciding the case in a way not in accord with law or with applicable decisions of this Court. On the matter of forum shopping, the appellate court simply stated in its decision that *"In view of the fact that respondent Judge had no power to disallow the appeal on the ground of forum shopping, we deem it unnecessary to discuss whether or not petitioners committed forum shopping."* Neither did the appellate court pass upon the issue of forum shopping in its ruling on the petitioner's motion for reconsideration, stating that forum shopping should be resolved either in the respondent's appeal or in their petition for *certiorari*, prohibition, and *mandamus* (CA-G.R. SP No. 70349).

As basis, the petitioner cites Section 3 of this Court's Circular No. 28-91 which provides that "(a) Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint; and (b) Any willful and deliberate forum shopping by any party and his lawyer with the filing of multiple petitions and complaints to ensure favorable action shall constitute direct contempt of court."

To prove that forum shopping transpired, the petitioner cites the respondents' petition for *certiorari*, prohibition, and *mandamus* (CA-G.R. SP No. 70349) that prayed for the annulment of the assailed Order of April 3, 2002 *in its entirety*. To the petitioner, the attack on the entire Order meant that even the payment of the special administrator's commission - which was the subject of a separate appeal -

was covered by the petition. The petitioner further alleged that "to conceal the attempt at forum shopping, respondents deliberately failed to mention the existence of their ordinary appeal of the same Order of April 3, 2002 in the certification against forum shopping attached to their petition for *certiorari*, prohibition, and *mandamus* in CA-G.R. SP No. 70349."

The petitioner cites in support of his position the cases of *Silahis International, Inc. v. National Labor Relations Commission*,^[4] *Tantoy Sr. v. Court of Appeals*,^[5] and *First Philippine International Bank v. Court of Appeals*.^[6] *Silahis* was cited for the proposition that only one recourse - the appeal - should have been filed because the issues were inter-related. *Tantoy, Sr.* spoke of related causes or the same or substantially the same reliefs in considering whether there is forum shopping. On the other hand, *First Philippine International Bank* was cited to emphasize that the key to a finding of forum shopping is the objective of the relief; though differently worded, there is violation of the rule against forum shopping if the objective in all the actions filed involves the same relief - in this case, the setting aside of the Order of April 3, 2002. The petitioner noted that the respondents had succeeded in obtaining this relief in their petition for *certiorari*, prohibition, and *mandamus* (CA-G.R. SP No. 70349) and the ruling in this petition already constituted *res judicata* on the validity of the Order of April 3, 2002.

The respondents, for their part, claim that "the mere failure to specify in the decision the contentions of the appellant and the reason for refusing to believe them is not sufficient to hold the same contrary to the provisions of the law and the Constitution."^[7] In support of the twin recourses they took, they cite *Argel v. Court of Appeals*^[8] where this Court rejected the ground for objection similar to present petitioner's because "the special civil action for *certiorari* and the appeal did not involve the same issue." The respondents saw as ineffective the argument that the petition for *certiorari* prayed for the annulment of the entire Order of April 3, 2002 since the petition and the appeal were very specific on the portions of the Order that were being assailed. They pointed, too, to the decision in CA-G.R. SP No. 70349 which only passed upon the issues specified in the petition for *certiorari*, leaving untouched the issue that they chose to raise *via* an appeal. As their last point, the respondents claimed they saw no need to mention the pendency of the appeal in their non-forum shopping certification because the appeal dealt with an issue altogether different from the issues raised in the petition for *certiorari*, citing for this purpose the specific wordings of Section 5, Rule 7 of the Revised Rules of Court.

THE ISSUE

The sole issue presented to us for resolution is: **Did the Court of Appeals (Fifteenth Division) err in not dismissing the respondents' petition for *mandamus* (CA-G.R. SP No. 71844) on the ground of forum shopping?**

THE COURT'S RULING

We find the petition devoid of merit as the discussions below will show.

The Order of April 3, 2002

An examination of the RTC Order of April 3, 2002 shows that it resolved three