

SECOND DIVISION

[G.R. NO. 150986, March 02, 2007]

**CLARK DEVELOPMENT CORPORATION, PETITIONER, PRESENT:
VS. MONDRAGON LEISURE AND RESORTS CORPORATION,
MONDRAGON INTERNATIONAL PHILIPPINES, INCORPORATED
AND MONDRAGON SECURITIES CORPORATION, RESPONDENTS.**

D E C I S I O N

VELASCO, JR., J.:

For review before the Court is the September 5, 2001 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 58302, setting aside the Orders dated December 2, 1999 and February 8, 2000 of the Angeles City Regional Trial Court (RTC), Branch 60, and directing the presiding judge to continue with the proceeding in Civil Case No. 9596 entitled *Mondragon and Leisure and Resorts Corporation, et al. v. Clark Development Corporation*.

The Facts

Petitioner Clark Development Corporation (CDC) is a government-owned and controlled corporation existing under and by virtue of Philippine laws. Through Republic Act No. 7227 or the "Bases Conversion and Development Act of 1992," petitioner was authorized to develop the Clark Special Economic Zone.^[2] On February 28, 1994, petitioner entered into a Lease Agreement with respondents Mondragon Leisure and Resorts Corporation (MLRC), Mondragon International Philippines, Inc., and Mondragon Securities Corporation (herein collectively referred to as "Mondragon"), covering the area now known as the Mimosa Leisure Estate. The parties thereafter executed Supplemental Agreements for additional smaller areas.^[3] Mondragon put up Holiday Inn Hotel, Mimosa Golf and Country Club, the North Vista Hotel, Mimosa Regency Casino, and other facilities and amenities.^[4]

On November 9, 1998, petitioner made a written demand on Mondragon to pay rental arrears amounting to PhP 427 million to be paid within 30 days from receipt of the demand; otherwise, the Lease Agreement would be terminated. On December 9, 1998, Mondragon filed before the Angeles City RTC, Branch 58 an action for specific performance with prayer for injunctive reliefs *pendente lite* against petitioner docketed as Civil Case No. 9242 entitled *Mondragon Leisure and Resorts Corporation, et al. v. Clark Development Corporation* (First Mondragon Case). In said case, Mondragon sought for a judicial writ for the parties dispute on the rental arrearages to be submitted to arbitration. The trial court granted a temporary restraining order and later, a writ of preliminary injunction restraining petitioner, in the interim, from terminating the Lease Agreement and taking over the Mimosa Leisure Estate. Petitioner questioned the issuance of the injunctive reliefs *pendente lite* before the CA. On March 19, 1999, the CA declared the injunctive reliefs null and

void.^[5]

From said adverse Decision, Mondragon appealed to this Court and the case was docketed as G.R. Nos. 137796-97. On June 28, 1999, the parties executed a Compromise Agreement,^[6] which this Court incorporated and noted in its July 15, 1999 Resolution.^[7] The significant stipulations in the Compromise Agreement stated:

1. Rentals in Arrears. MLRC shall pay CDC the amount of THREE HUNDRED TWENTY FIVE MILLION PESOS (Php325,000,000.00) by way of rentals in arrears as of June 30, 1999. MLRC shall pay CDC in installments, without need of demand, the amount of THREE HUNDRED TWENTY FIVE MILLION PESOS (Php325,000,000.00) on or before the following dates as follows:

July 31, 1999	P50,000,000.00
August 31, 1999	P50,000,000.00
September 31, 1999	P50,000,000.00
October 31, 1999	P50,000,000.00
November 31, 1999	P50,000,000.00
December 31, 1999	P50,000,000.00
June 30, 2000	P25,000,000.00

To secure the payment of the foregoing indebtedness of MLRC to CDC, MLRC shall open an irrevocable domestic letter of credit in favor of CDC from a reputable commercial or universal bank acceptable to CDC in the amount of THREE HUNDRED TWENTY FIVE MILLION PESOS (Php325,000,000.00) and shall submit such letter of credit to CDC not later than thirty (30) days from the signing of this Compromise Agreement at the office of CDC at Building 2127, E. Quirino Avenue cor. C.P. Garcia Avenue, Clark Field, Pampanga.

2. Minimum Guaranteed Lease Rentals. The Minimum Guaranteed Lease Rentals as provided in the Master Lease Agreement, the Supplemental Lease Agreements are hereby consolidated and modified as follows:

1-Jul 1999 to 28-Feb 2000 73,333,333.33

1-Mar 2000 to 28-Feb 2001 121,000,000.00^[8]

x x x x

In case of Mondragon's failure to comply with its obligations, Sections 7 and 8 of the Compromise Agreement empowered petitioner to cancel and terminate the said agreement after 30 days counted from Mondragon's receipt of a demand from petitioner. Mondragon shall leave the leased premises and return to petitioner parcels B, C, D, and F under the Sketch annexed to the Compromise Agreement, the parcel of land known as Wagner, and all lands and improvements along the parade grounds, except the lands where the Mimosa Regency Casino and Chi Restaurant were situated.^[9]

Mondragon failed to pay for the rental arrears and to open the irrevocable domestic

letter of credit. In a July 29, 1999 letter to Mondragon, petitioner demanded compliance with all its obligations under the Compromise Agreement within 30 days from receipt of the letter. In view of Mondragon's failure to comply, petitioner sent another letter on August 29, 1999, informing Mondragon of the cancellation and termination of the Compromise Agreement and demanding it to vacate all the leased premises.^[10]

On September 10, 1999, petitioner filed a Motion for Issuance of a Writ of Execution of Judgment by Compromise Agreement^[11] in Civil Case No. 9242. On October 25, 1999, petitioner then filed an Amended Motion for the Issuance of a Writ of Execution^[12] for the execution of the Supreme Court's July 15, 1999 Resolution. Mondragon opposed both motions on the ground that the issuance of a writ of execution in Civil Case No. 9242 was not proper. Before the trial court could resolve the motion or on November 12, 1999, Mondragon filed a Petition for Declaratory Relief and Specific Performance before the Angeles City RTC, Branch 60, which was docketed as Civil Case No. 9596 entitled *Mondragon Leisure and Resorts Corporation, et al. v. Clark Development Corporation* (Second Mondragon Case).^[13] Mondragon alleged in the petition that (1) CDC's cancellation/termination of the Compromise Agreement was null and void; (2) Mondragon had already substantially complied with its obligations under said agreement; and (3) CDC should be ordered to perform and comply with its obligations under the Compromise Agreement, and to implement in full the Compromise Agreement in so far as it allowed MLRC to settle the PHP 325 million compromise rentals not later than June 30, 2000, and, for this purpose, to accept any payment tendered by Mondragon as long as such was made not later than June 30, 2000.

On November 15, 1999, Mondragon filed before the Angeles City RTC, Branch 60 a Motion for Consolidation,^[14] praying that the petition in Civil Case No. 9596 be consolidated with Civil Case No. 9242 in Branch 58 of the said trial court. Petitioner opposed the motion and the presiding judge thereafter denied the Motion for Consolidation. On November 28, 1999, petitioner filed a Motion to Dismiss the Petition^[15] (Second Mondragon Case) alleging that (1) Mondragon was guilty of forum shopping; (2) the petition was barred by prior judgments; and (3) the petition stated no cause of action. Mondragon reacted by opposing petitioner's motion.

Pending resolution of the motion to dismiss in the Second Mondragon Case, the RTC Branch 58 in Civil Case No. 9242 (First Mondragon Case) granted the Motions for Execution in its December 1, 1999 Order.^[16] A writ of execution was then issued on the same day.^[17] Mondragon subsequently filed a Petition for Certiorari with the CA questioning the Writ of Execution, which was docketed as CA-G.R. No. 56079. Meanwhile, the RTC Branch 60 dismissed the Second Mondragon Case (Civil Case No. 9596) because of forum shopping. Mondragon filed a Motion for Reconsideration of said dismissal, which was likewise denied by the trial court. Hence, it filed another petition with the CA, which was docketed as CA-G.R. SP No. 58302.^[18]

The Ruling of the Court of Appeals

The CA held that the presiding judge of the Angeles City RTC, Branch 60 abused her discretion in finding Mondragon guilty of forum shopping. The CA ruled that while

there was an identity of parties in both cases, nevertheless, the nature and causes of the actions and the reliefs prayed for in Civil Case Nos. 9242 (First Mondragon Case) and 9596 (Second Mondragon Case) were entirely different. The CA further held, thus:

To address the issue frontally, this Court shall compare the two cases as to: (a) **nature of action;** (b) **causes of action;** and (c) **reliefs sought.** As to nature of action: Civil Case No. 9242 is for Specific Performance while Civil Case No. 9596 is for Declaratory Relief. As to **causes of action:** In Civil Case No. 9242, Mondragon's cause of action against [petitioner] CDC was the alleged improper or unlawful termination of the Lease Agreements and its refusal to submit their dispute to arbitration, while in Civil Case No. 9596, Mondragon's causes of action are the alleged (a) refusal of CDC to accept that Mondragon's monetary obligation under the Compromise Agreement were already substantially extinguished as a consequence of its turning over to CDC the High School Wagner Site; and (b) CDC's unlawful insistence that Mondragon's failure to secure a letter of credit within the period stipulated (which is a mere technicality) justified the termination of the Compromise Agreement.

As to **reliefs prayed for:** In Civil Case No. 9242, Mondragon asked the court to order CDC to submit to the stipulated Dispute Settlement under Art. XI of the Lease Agreement and if this fails, to submit the case for arbitration. In Civil Case No. 9596, Mondragon prayed the court (a) to nullify CDC's cancellation of the Compromise Agreement and affirms [sic] Mondragon's substantial compliance of its obligations thereunder; (b) to direct CDC to allow Mondragon to settle its P325 million obligation not later than June 30, 2000; and (c) to order CDC to pay Mondragon P1 million attorney's fees.

It is too obvious that the nature of the action, the causes of action and reliefs prayed for in Civil Case No. 9242 and Civil Case No. 9596 are entirely different. CDC may believe that Civil Case No. 9596 is utterly unmeritorious and intended only to impede the execution of the Compromise Agreement as embodied in the Supreme Court Decision, but that is no reason to charge Mondragon with forum shopping.^[19]

The CA however denied petitioner's Motion for Reconsideration in its November 28, 2001 Resolution.^[20] Hence, we have this petition.

The Issue

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS NO FORUM SHOPPING AND ALLOWED CONTINUANCE OF CIVIL CASE NO. [9596] WHEN IN FACT RES JUDICATA HAD ALREADY SET IN AND ANY MATTER/CASE RAISED/FILED RELATING THERETO IS FORUM SHOPPING

The Court's Ruling

The petition is meritorious.

We defined forum shopping as the "institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition" or "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of certiorari."^[21] In *First Philippine International Bank v. Court of Appeals*,^[22] we held that the test to determine whether forum shopping exists is whether the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other. *Res judicata* means a matter or thing adjudged, judicially acted upon or decided, or settled by judgment. Its requisites are: (1) the former judgment or order must be final; (2) the judgment or order must be one on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) between the first and second actions, there must be identity of parties, subject matter, and causes of action.^[23] Thus, in *First Philippine International Bank*, we explained further:

Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendencia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest. In either case, forum shopping could be cited by the other party as a ground to ask for summary dismissal of the two (or more) complaints or petitions, and for the imposition of the other sanctions, which are direct contempt of court, criminal prosecution, and disciplinary action against the erring lawyer.^[24]

We further held in *First Philippine International Bank* that "the filing by a party of two apparently different actions, but with the same objective, constituted forum shopping."^[25] The Court discussed this species of forum shopping as follows:

Very simply stated, the original complaint in the court a quo which gave rise to the instant petition was filed by the buyer (herein private respondent and his predecessors-in-interest) against the seller (herein petitioners) to enforce the alleged perfected sale of real estate. On the other hand, the complaint in the Second Case seeks to declare such purported sale involving the same real property "as unenforceable as against the Bank", which is the petitioner herein. In other words, in the Second Case, the majority stockholders, in representation of the Bank, are seeking to accomplish what the Bank itself failed to do in the original case in the trial court. **In brief, the objective or the relief being sought, though worded differently, is the same, namely, to enable the petitioner Bank to escape from the obligation to sell the property to respondent** (emphasis supplied).^[26]

In *Danville Maritime, Inc. v. Commission on Audit*, one of the bases of *First Philippine International Bank*, we ruled as follows:

In the attempt to make the two actions appear to be different, petitioner impleaded different respondents therein - PNOC in the case before the lower court and the COA in the case before this Court and sought what seems to be different reliefs. Petitioner asks this Court to set aside the