

## SECOND DIVISION

[ G.R. NO. 143721, August 31, 2005 ]

**TERESITA E. VILLALUZ, PETITIONER, VS. ROLANDO R. LIGON,  
RESPONDENT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review seeking the reversal of the Decision<sup>[1]</sup> of the Court of Appeals (CA) promulgated on October 1, 1999 and the Resolution<sup>[2]</sup> dated June 6, 2000 which denied petitioner's motion for reconsideration.

The facts are as follows:

Petitioner Teresita E. Villaluz (Villaluz) and respondent Rolando R. Ligon (Ligon) were engaged in several businesses. Sometime in 1987, Villaluz borrowed sums of money from Ligon secured by postdated checks amounting to P1,543,586.00 which later bounced for the reasons "Drawn Against Insufficient Funds/Account Closed." Demands were made on Villaluz but she failed to pay her debt prompting Ligon to institute criminal proceedings for violation of Batas Pambansa Blg. 22 before the Regional Trial Court (RTC) of Manila. During the hearing of said cases, Villaluz asked for the settlement of their controversy<sup>[3]</sup> and Ligon, as the First Party, and Villaluz, as the Second Party, executed a Memorandum of Agreement with the following terms:

WHEREAS, the SECOND PARTY is indebted to the FIRST PARTY in the amount of THREE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND AND TWO HUNDRED FIFTY TWO PESOS (P3,489,252.00) inclusive of interests, which indebtedness is now the subject of criminal cases now pending with the Regional Trial Court of Manila, Branch 40, and docketed as Criminal Cases Nos. 89-73195 to 213 for Violation of Batas Pambansa Blg. 22;

WHEREAS, out of the aforesaid obligation the SECOND PARTY has made a total payment of ONE HUNDRED SIXTY FIVE THOUSAND PESOS (P165,000.00) thereby leaving a balance of THREE MILLION THREE HUNDRED TWENTY FOUR THOUSAND AND TWO HUNDRED FIFTY TWO PESOS (P3,324,252.00);

WHEREAS, on account of the desire of the parties to settle the aforementioned cases amicably, the FIRST PARTY, by way of liberality, has agreed to condone the amount of ONE MILLION TWO HUNDRED TWENTY FOUR THOUSAND TWO HUNDRED FIFTY TWO PESOS (P1,324,252.00) (sic) thereby reducing the indebtedness of the SECOND PARTY to the FIRST PARTY in the amount of TWO MILLION PESOS

(P2,000,000.00);

WHEREAS, the SECOND PARTY has on the date of this instrument, paid the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) thereby further reducing the SECOND PARTY'S obligation to ONE MILLION NINE HUNDRED THOUSAND PESOS (P1,900,000.00);

WHEREAS, the SECOND PARTY has acknowledged her aforesaid total outstanding obligation of ONE MILLION NINE HUNDRED THOUSAND PESOS (P1,900,000.00) in favor of the FIRST PARTY and has committed to pay the same on or before 31 December 1990;

WHEREAS, on account of the aforesaid settlement agreement, the FIRST PARTY has agreed to effect or cause the dismissal of the aforementioned criminal cases against the SECOND PARTY;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

1. The FIRST PARTY hereby condones the amount of P1,324,252.00 from the total obligation of the SECOND PARTY;
2. The SECOND PARTY hereby promises to pay her total outstanding obligation of P1,900,000.00 to the FIRST PARTY on or before 31 December 1990;
3. In the event the SECOND PARTY is unable to pay her aforesaid obligation to the FIRST PARTY on or before the date above stipulated, then the amount as condoned in paragraph one (1) hereof shall be added back to the said obligation as stipulated in paragraph two (2) hereof, and the FIRST PARTY shall have the right to enforce collection of the entire amounts due and owing from the SECOND PARTY without need of further demand;
4. The FIRST PARTY shall effect or cause the dismissal of the aforementioned criminal cases against the SECOND PARTY as soon as practicable, preferably on or before the next scheduled hearing of said cases.<sup>[4]</sup>

In accordance with said agreement, Villaluz issued a check dated December 31, 1990 in the amount of P1,900,000.00 which again bounced upon presentment for the reason that it was drawn against a closed account. Ligon made several demands on Villaluz but to no avail. Thus, Ligon, through his lawyer, sent Villaluz demand letters dated March 5, 1991 and July 1, 1991 which were allegedly duly received by her.<sup>[5]</sup>

Since no payment was made, Ligon instituted on April 2, 1992 a complaint against Villaluz with the RTC of Makati, Branch 134, for the recovery of P3,224,252.00<sup>[6]</sup> plus legal interest and attorney's fees.<sup>[7]</sup>

Upon failure of Villaluz and her counsel to appear at the pre-trial conference, the

RTC declared Villaluz as in default and received Ligon's evidence ex-parte. The RTC rendered a decision on October 16, 1992, ordering Villaluz to pay the amount prayed for plus interest, P30,000.00 as attorney's fees, plus costs.<sup>[8]</sup> On November 23, 1992, Villaluz through counsel, filed a Motion for New Trial and a Motion to Admit Answer which were both granted by the court.<sup>[9]</sup>

Villaluz in her Answer alleged that: she is an illiterate and could not engage in any business alone; on several occasions Ligon offered imported goods in exchange for postdated checks to be encashed upon delivery; there were occasions when the imported goods were not delivered and yet her checks were not returned; she requested for an accounting but none was made; the B.P. Blg. 22 cases filed against her involving the total amount of P1,543,586.00 were provisionally dismissed because there was a need for accounting; efforts were then made to settle the case amicably until November 1990, when Ligon's lawyer succeeded in persuading her to sign a Memorandum of Agreement and to issue a check in the amount of P1,900,000.00; said Memorandum of Agreement does not express the true intent and agreement of the parties and the check for P1.9 M is null and void; she did not receive any demand for the enforcement of the Memorandum of Agreement nor for the payment of the check, thus the instant action is premature and plaintiff has no cause of action. Villaluz prayed that the complaint be dismissed and the Memorandum of Agreement and the check be declared null and void.<sup>[10]</sup>

Ligon presented evidence to support his complaint and, on March 9, 1994, filed a Motion for Issuance of Writ of Preliminary Attachment which Villaluz opposed. On May 5, 1994, Villaluz filed a Motion to Dismiss Case on the Ground of Forum Shopping and a Motion to Cite Atty. Paulino E. Cases, Jr. in Contempt of Court. The trial court denied the said motions.<sup>[11]</sup>

On May 25, 1995, Villaluz filed before the RTC a Motion to Cancel Hearings pending the resolution of this Court of the issue in G.R. No. L-119865 entitled "Teresita Villaluz vs. Court of Appeals" where Villaluz questioned the validity of the reinstatement of the criminal cases against her which were provisionally dismissed. The trial court denied the motion to cancel hearings as well as her motion for reconsideration of the same.<sup>[12]</sup>

After the trial court ruled on Ligon's offer of exhibits, the case was set for hearing on August 29 and 31, 1995 which were reset to September 25 and 28, 1995 upon Villaluz's request. The September 25, 1995 hearing was also reset in view of the manifestation of the parties that they will settle the case amicably. On September 28, 1995, the parties agreed to reset the hearing to October 11 and 24, 1995. On October 11, 1995 the hearing was cancelled anew upon agreement of the parties. On October 24, 1995, the hearing was cancelled and reset to November 16, 23 and December 14, 1995 in view of the absence of Villaluz and her counsel. On November 10, 1995, Villaluz's counsel asked for the cancellation of the November and December settings and prayed that they be moved to January 1996. The hearings were reset to January 9 and 11, 1996, but Villaluz failed to appear on said dates. The husband of Villaluz asked for a resetting and the case was set anew to March 11, 14 and 19, 1996. Petitioner Villaluz and her counsel failed to appear on March 11, 1996 which prompted plaintiff Ligon's counsel to move that Villaluz be considered to have waived the presentation of her evidence and that the case be deemed submitted for decision. The motion was granted and on March 11, 1996, the

trial court issued an order submitting the case for decision which order was received by counsel for Villaluz on March 15, 1996.<sup>[13]</sup>

On May 7, 1996, the RTC of Makati, Branch 134, rendered its decision, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay to the former the sum of P3,224,252.00 (sic) plus legal interest at the rate of 12% per annum from April 2, 1992 (date of filing of the complaint) until the full amount is paid; the sum of P50,000.00 as attorney's fees, and the costs of suit.<sup>[14]</sup>

Villaluz filed a motion for reconsideration dated May 23, 1996, stating that given the opportunity to testify, she will re-affirm the contents of her affidavit that was submitted in support of her Motion for New Trial, or in the alternative, she will formally offer the same.<sup>[15]</sup> This was denied by the RTC in its Order dated July 22, 1996.<sup>[16]</sup>

Villaluz went to the CA and claimed that the trial court erred: in not dismissing the case on the ground of forum shopping; in not granting the defendant the opportunity to present evidence in her behalf thereby depriving her of her fundamental right to due process; and in not considering the evidence already on record showing that the subject checks had no valid consideration.<sup>[17]</sup>

The CA denied the petition in its Decision dated October 1, 1999, ruling that the motion to dismiss on the ground of forum shopping should have been filed within the time for but before filing of an answer to the complaint or pleading asserting a claim, pursuant to Section 1(e), Rule 16 of the Rules of Court; that Supreme Court Administrative Circular No. 04-94 on Anti-Forum Shopping Rule was not yet existing at the time the instant case was filed; that Villaluz cannot claim denial of due process as she and her counsel failed to appear in the scheduled hearings and the fact that Villaluz failed to file a motion for reconsideration when the RTC considered the case submitted for decision is an indication that she slept on her right; and that the "Sinumpaang Salaysay" which she submitted in support of her motion for new trial cannot be taken into consideration as the same was not formally offered in evidence during trial.<sup>[18]</sup> The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appealed decision (dated May 7, 1996) of the Regional Trial Court (Branch 134) in Makati City in Civil Case No. 92-914 is hereby AFFIRMED, with costs against the appellant.

SO ORDERED.<sup>[19]</sup>

Villaluz filed a motion for reconsideration which was denied by the appellate court in its Resolution dated June 6, 2000.<sup>[20]</sup>

Hence, the present petition raising the following issues:

I. WHETHER OR NOT HEREIN RESPONDENT COMMITTED FORUM SHOPPING IN THIS CASE;

II. IN THE ALTERNATIVE, ASSUMING THAT THERE WAS NO FORUM SHOPPING, WHETHER OR NOT PETITIONER WAS DEPRIVED OF HER FUNDAMENTAL RIGHT TO DUE PROCESS;

III. IN THE FURTHER ALTERNATIVE, ASSUMING THAT THERE WAS NO FORUM SHOPPING AND THAT PETITIONER WAS NOT DEPRIVED OF DUE PROCESS, WHETHER OR NOT AN ERROR WAS COMMITTED IN NOT CONSIDERING THE EVIDENCE ALREADY ON RECORD SHOWING THAT THE SUBJECT MEMORANDUM OF AGREEMENT AND THE CHECKS HAD NO VALID CONSIDERATION AND ARE, THEREFORE, NULL AND VOID.<sup>[21]</sup>

As to the first issue raised, petitioner argues that: the respondent and the CA were not correct in stating that there is no forum shopping in this case since the prohibition against forum shopping only started with the issuance of Circular No. 28-91 as modified by Admin. Circular No. 04-94; forum shopping has already been prohibited in *Buan vs. Lopez*, 145 SCRA 34, which was promulgated on October 13, 1986 and in *Limpin vs. Intermediate Appellate Court*, 161 SCRA 83, promulgated on May 5, 1988;<sup>[22]</sup> petitioner did not immediately raise the defense of forum shopping since it was a matter of trial strategy; the defense of forum shopping may also be raised at any time because it is a matter of judicial policy intended to unclog the court dockets and to prevent litigants from abusing the court's processes; all the elements of *litis pendentia* which are also the elements of forum shopping, are present herein, *i.e.*, the parties, the subject matter and the reliefs sought are the same; and the considerations for the execution of the Memorandum of Agreement were the same checks subject matter of the criminal cases; without said checks the Memorandum of Agreement would be null and void for want of consideration.<sup>[23]</sup>

Respondent in his Comment contends that: there is no forum shopping in the case at bar since the present case was filed with the trial court on April 2, 1992, before Revised Circular No. 28-91 and Admin. Circular No. 04-94 took effect; the instant case is a collection of sum of money which sprung from the violation of the Memorandum of Agreement between the petitioner and respondent, while Criminal Case Nos. 98-73195-213 entitled *People vs. Teresita Villaluz* pertain to violation of B.P. Blg. 22 which is a penal law; the said cases have different nature; there is also no identity of causes of action since the first case involves a personal civil action for collection of a sum of money whereas the second case is a criminal action wherein the State has interest.<sup>[24]</sup>

As to the second issue, petitioner claims that the CA should have been more lenient in allowing petitioner the opportunity to present her evidence especially considering that the delay in petitioner's presentation of evidence in court was due to the need for accounting and the efforts of the parties in trying to reach a settlement of the controversy.<sup>[25]</sup>

Respondent argues that: there were numerous postponements made by petitioner and her counsel and respondent did not object thereto to accommodate herein petitioner; it was only on March 11, 1996 that the counsel for the respondent moved that the petitioner be considered to have waived the presentation of her evidence which the trial court granted; despite receipt of the Order on March 15, 1996, granting respondent's motion, petitioner did not move to remedy said Order until it became final and executory; the failure of petitioner to file a Motion for