



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 28, 2022**, which reads as follows:*

**“G.R. No. 223493 (*J. Bernardo Company Inc., represented by its Corporate Secretary, Mary Angeline Bernardo Rosario v. Anna Patricia Bernardo Tan and Rodex International Trading Inc., represented by its President Dexter U. Yu, and Treasurer Linda Yu, and the Registry of Deeds of Quezon City*). — We resolve this Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated October 16, 2015 and Resolution<sup>3</sup> dated March 14, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 101453. The *CA* affirmed the Resolution dated July 3, 2013 rendered by the Regional Trial Court (*RTC*), Branch 218, Quezon City, which dismissed with prejudice the petition for annulment of deed of sale, annulment of title and damages filed by *J. Bernardo Company Inc. (J. Bernardo)*.**

On July 19, 2019, Patricio Bernardo (*Patricio*), as President of *J. Bernardo*; filed a complaint for intra-corporate controversy against Dionisio B. Bernardo (*Dionisio*), Eduardo B. Bernardo (*Eduardo*), Matthew Clement Velasco (*Velasco*), Anna Patricia B. Tan (*Tan*), and Linda U. Yu (*Yu*), (collectively to be referred as *Dionisio et al.*) before the *RTC*, Branch 159, Pasig City. The complaint alleged that *Dionisio et al.* illegally transferred shares of the corporation to individuals to act as dummies and falsified the general information sheet of *J. Bernardo Co. Inc.* for them to transact business without the knowledge of the other stockholders. *Patricio* claimed that *Dionisio et al.* had been offering to sell one of the corporate assets, a property located at 8 Avenue corner 9<sup>th</sup> Street, Caloocan City. *Patricio* prayed that all transactions made under the administration of *Dionisio* be declared null and void. He likewise sought to declare the transfer of shares in favor of *Tan*, *Velasco*, and *Yu* as null and void for being illegally and surreptitiously done, and made in violation of his right of first refusal; to order *Dionisio et al.* to cease and desist from transacting in behalf of *J. Bernardo Co. Inc.*, especially

<sup>1</sup> *Rollo*, pp. 12-26.

<sup>2</sup> Penned by Associate Justice Ma. Luisa C. Quijano-Padilla (retired), with Associate Justices Normandie B. Pizarro (retired) and Samuel H. Gaerlan (now a member of this Court), concurring; *rollo*, pp. 361-374.

<sup>3</sup> *Id.* at 380-381.

from selling the assets; and to make a complete accounting of the funds of the company.<sup>4</sup>

Thereafter, the parties entered into an amicable agreement approved by the RTC Pasig City on December 19, 2011. In turn, the RTC issued an Order dated July 9, 2012, approving, among others, the offer of Rodex International Trading Inc. (*Rodex*) to buy the one-half portion of the parcel of land and building covered by Transfer Certificate of Title (*TCT*) No. C-37632, which it co-owns, located on Matalino Street in Quezon City, (*Matalino property*) in the amount of ₱17,000,000.00.<sup>5</sup>

Subsequently, Patricio and Mary Angeline Bernardo Rosario (*Rosario*) filed their separate motions for reconsideration of the said order. They also sought the inhibition of Presiding Judge Rodolfo R. Bonifacio, which was eventually granted. The case was thereafter re-raffled to Branch 158, RTC Pasig City.<sup>6</sup>

On July 20, 2012, Tan, in her capacity as director and treasurer of J. Bernardo, executed a deed of absolute sale of real property in favor of Rodex. The sale resulted in the cancellation of TCT No. 37632, in the names of J. Bernardo and Rodex, and the issuance of a new title, TCT No. 004-2012008968, registered exclusively in the name of Rodex.<sup>7</sup>

Meanwhile, on August 3, 2012, Rosario without waiting for the trial court's resolution of her motion for reconsideration, filed before the CA, a petition for injunction with application for temporary restraining order and writ of preliminary injunction to restrain the implementation of the order dated July 9, 2012 of the RTC Pasig City.<sup>8</sup>

On August 16, 2012, Rosario, purporting to represent J. Bernardo, instituted a petition for annulment of deed of sale, annulment of title, and damages before the RTC Quezon City against Tan, Rodex, and the Registry of Deeds of Quezon City (RDQC). She filed the suit while her petition for injunction before the CA and her motion for reconsideration before the RTC Pasig City were still pending. Thereat, Rosario prayed for the nullification of the deed of absolute sale of real property executed by Tan in favor of Rodex. She likewise asked to invalidate TCT No. 004-2012008968 registered in the name of Rodex and restore TCT No. 37632 in the name of Rodex and J. Bernardo. Rosario likewise implored the cancellation of Tan's copy of TCT No. 37632 and to direct the RDQC to issue a new owner's duplicate of TCT No. 37632.<sup>9</sup>

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<sup>4</sup> *Id.* at 362.

<sup>5</sup> *Id.* at 363.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 365.

<sup>9</sup> *Id.* at 365-366.

Meanwhile, on March 27, 2013, RTC Pasig City, Branch 158 granted the motion for reconsideration of Patricio. The trial court noted that not all the siblings were impleaded as parties to the case. As such, the court has no jurisdiction over them, specifically with respect to the implementation or execution of the approved agreement. On the other hand, Rosario's motion was not acted upon because she was not a party to the case.<sup>10</sup>

As to the petition for annulment of documents filed with the RTC Quezon City, the same was dismissed on the ground of violation of the rule against forum shopping, the pertinent portions of the resolution read:

It is therefore clear that during the filing of the case, there were already two other cases pending. The fact that the Court of Appeals dismissed the Petition of Mary Angeline Bernardo Rosario through its Resolution dated 15 August 2012 which was received by their counsel on 24 August 2012, does not negate the fact that during the time of filing of the petition in this Court, there was already a pending case before the Court of Appeals with issues, closely intertwined with the issue in the case at bar.

It is also important to point out that Petitioner admitted in Page 2 of the Partial Motion for Reconsideration that the case pending in the Regional Trial Court of Pasig City is intimately related with and is determinative of the result of the case at bar by claiming that "with the suspension of the Order dated 09 July 2012, it is very obvious that herein petitioner has all the right to collect the rentals from tenants and that defendant Rodex should be ordered to cease and desist from collecting rentals from the tenants of the unlawfully sold property."

Included in the prayer in the intra-corporate case pending in the Regional Trial Court of Pasig is the nullification of all transactions made by certain corporate officers, one of such transactions is the sale of property involved in the present case.

With the foregoing circumstances, the Petitioner was being untruthful when it claimed that no case involving the same issues is pending before any court or tribunal. The petitioner must therefore suffer the consequences of such insincere claims in its Verification/Certification against forum shopping.<sup>11</sup>

Rosario, representing J. Bernardo, appealed the resolution of the RTC Quezon City. She argued that the trial court erred in dismissing the case on the ground of forum shopping.

On October 16, 2015, the CA promulgated its assailed Decision that affirmed the findings of the RTC Quezon City. The dispositive portion of the Decision reads:

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<sup>10</sup> *Id.* at 363-364.

<sup>11</sup> *Id.* at 368.

**WHEREFORE**, in view of the foregoing, the appeal filed by petitioner-appellant J. Bernardo Company Inc. is hereby **DISMISSED**.

The Resolution dated July 3, 2013 of Regional Trial Court, Branch 218, Quezon City, dismissing with prejudice *Civil Case No. Q-12-71800* is **AFFIRMED**.

**SO ORDERED.**<sup>12</sup>

In finding that there was forum shopping, the CA observed that there was identity of parties in the petition for *certiorari*, the intra-corporate suit, and the ordinary civil action instituted by the officers of J. Bernardo. The CA noted that the complaint for intra-corporate controversy was filed by Patricio in his capacity as president of J. Bernardo while the petition for injunction filed before the CA and the petition for annulment of documents before the RTC Quezon City were instituted by Rosario in her capacity as treasurer of J. Bernardo.<sup>13</sup>

As to the identity of the subject matter and cause of action, the CA pointed out that although only one property in Caloocan City was specified in the intra-corporate case, the petition prayed for the protection of all the corporate assets of the company, which necessarily include the Matalino property.<sup>14</sup>

The CA then concluded that when Rosario instituted the petition in the RTC Quezon City, the trial court was certainly exposed to the risk of ruling against the RTC Pasig City, a coequal court. The CA found that there was actual vexation caused to the courts and the abuse of processes is readily apparent.<sup>15</sup>

On March 14, 2016, the CA denied the motion for reconsideration filed by Rosario representing J. Bernardo. The decretal part of the Resolution reads:

**WHEREFORE**, premises considered, petitioner-appellant's Motion for Reconsideration is **DENIED**.

The Decision dated October 16, 2015 **stays**.

**SO ORDERED.**<sup>16</sup>

Hence, the instant petition.

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<sup>12</sup> *Id.* at 373.

<sup>13</sup> *Id.* at 371.

<sup>14</sup> *Id.* at 371-372.

<sup>15</sup> *Id.* at 372-373.

<sup>16</sup> *Id.* at 381.

Petitioner cites the case of *Saura v. Saura, Jr.*<sup>17</sup> to support its claim that the petition it filed with the RTC Quezon City should not have been dismissed on the ground of forum shopping. It submits that there is no forum shopping since there was no identity of parties, subject matter, and cause of action. According to petitioner, the annulment of the sale of the property in Quezon City is not included therein because it came long after the filing of the case. It was also allegedly pursuant to the July 9, 2012 Order of the Branch 159, RTC Pasig City, which did not attain finality and according to Branch 158, RTC Pasig City, where it was reraffled, could not be implemented.<sup>18</sup> On the other hand, the petition lodged in the RTC Quezon City was filed by J. Bernardo against Tan and Rodex for the annulment of the sale of the property located in Quezon City.<sup>19</sup>

Petitioner states that the complaint for annulment of sale of the subject property to Rodex has no intra-corporate aspect as it was entered into by an unauthorized officer of the said company. Petitioner further avers that the case before the RTC Pasig City involves the annulment of subscription and recovery of corporate assets and funds while the case before the RTC Quezon City relates to the annulment of sale and/or declaration of nullity of title. In short, J. Bernardo contends that the case in the RTC Pasig City is a Securities and Exchange Commission (SEC) case while the complaint lodged in the RTC Quezon City is an ordinary civil action.<sup>20</sup> Lastly, petitioner argues that there is no *litis pendentia* because the issue of whether the sale of the Quezon City property should be annulled has not been tried in the RTC Pasig City eversince. In fact, the sale at first glance is void because it was based on the Order dated July 9, 2012, which was not yet final at the time of the sale. After the sale, and prior to the resolution dismissing the case, the RTC Pasig City issued an order that the implementation of the July 9, 2012 order was not possible.

Respondents counter that the CA did not err in affirming the Resolution of the RTC Quezon City<sup>21</sup> They contend that *Saura* is not applicable since there is a clear showing of *litis pendentia* in the present case while there is none in the case mentioned.<sup>22</sup>

The petitioner submitted a Reply,<sup>23</sup> reiterating its previous arguments.

After a thorough review of the arguments presented by the parties, the Court finds that the CA did not err in its finding that petitioner committed forum shopping.

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<sup>17</sup> 372 Phil. 337 (1999).

<sup>18</sup> *Rollo*, p. 22.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 24.

<sup>21</sup> *Id.* at 395.

<sup>22</sup> *Id.* at 400.

<sup>23</sup> *Id.* at 436-440.

“The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another.”<sup>24</sup> Our ruling in *Heirs of Simon v. Chan*,<sup>25</sup> discussed the requisites of *litis pendentia* as follows:

For *litis pendentia* to be successfully invoked as a bar to an action, the concurrence of the following requisites is necessary, namely: (a) there must be identity of parties or at least such as represent the same interest in both actions; (b) there must be identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and, (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in respect of the other. Absent the first two requisites, the possibility of the existence of the third becomes nil.<sup>26</sup>

The Court finds that the elements of *litis pendentia* are present.

There is substantial identity of parties when “there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.”<sup>27</sup> It is not required that absolute identity of parties is present. “At the minimum, the parties in both cases must represent the same interest.”<sup>28</sup>

The Court finds the presence of identity of parties. In the two cases, it is J. Bernardo, represented by two different set of officers, that filed the cases into two separate fora. As an artificial person, J. Bernardo may only have legally recognized acts through identifiable and responsible natural persons, such as in the present controversy wherein it was the president in one case and treasurer in another case, who instituted suits intended to protect the dissipation of the company’s assets. Thus, we find that there is identity of the parties involved despite two different officers filing an intra-corporate suit on one hand and an ordinary civil action on the other. The actions undertaken by the two officers were not diametrically opposed against each other.

The second requisite is likewise present. There is significant identity of rights asserted and reliefs sought between the intra-corporate suit and the action for annulment of deed of sale, annulment of title, and damages. A side by side comparison of the reliefs sought in the two cases would reveal the undeniable similarities, thus:

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<sup>24</sup> *Heirs of Mampo v. Morada*, G.R. No. 214526, November 3, 2020.

<sup>25</sup> 659 Phil. 81 (2011).

<sup>26</sup> *Id.* at 102-103. (Citation omitted)

<sup>27</sup> *TF Ventures, Inc. v. Yoshitsugu Matsuura*, 475 Phil. 477, 485 (2004).

<sup>28</sup> *Seloza v. Onshore Strategic Assets (SPV-AMC) Inc.*, G.R. No. 227889, September 28, 2020.

<u>Intra-Corporate Suit</u>	<u>Complaint for annulment, of deed of sale, annulment of title and damages</u>
1) To order the declaration of nullity of all the transactions made under the administration of Dionisio Bernardo and of all the defendants;	1) To annul or nullify the Deed of Absolute Sale of Real Property executed by and between Anna Patricia B. Tan and Rodex International Trading, Inc.;
2) To declare the transfer of shares in favor of Anna Patricia Tan, Matthew Clement Velasco and Linda Yu as NULL and VOID for being illegally, surreptitiously xxx and in violation of Right of First Refusal;	2) To annul or nullify TCT No. 004-2012-008-968 in the name of Rodex International Trading Inc. and restore TCT No. 37632 in the name of Rodex International Trading Inc. and J. Bernardo Co. Inc.;
3) To order the defendants to cease and desist from transacting in behalf of J. Bernardo Co. Inc., especially from selling the assets more particularly that located in 8 Avenue corner 9th Street, Caloocan City and to cease and desist from withdrawing company funds without any court order to avoid malversation for the defendants' own interest;	3) To declare the owner's duplicate copy of TCT No. 37632 in possession of Anna Patricia B. Tan annulled/cancelled;
4) To order the defendants to make complete accounting of the company's funds. <sup>29</sup>	5) To direct the Register of Deeds to cancel TCT No. (0042012-008-968 and to) issue a new owner's duplicate of TCT No. 37632 to petitioner as authorized representative of J. Bernardo Company, Inc., AND CANCEL TCT NO. 004-2012-008-968 in their records;
	6) For the Court to issue the Temporary Restraining Orderrestraining respondent Rodex International Trading Inc. from collecting rentals due to J. Bernardo Company Inc. during the pendency of the petition for issuance of writ of preliminary injunction and allow J. Bernardo Co., Inc. to continue collecting rentals in accordance with the lease contracts;
	7) For the Court to issue the Writ of Preliminary Injunction after due

<sup>29</sup> Rollo, p. 198. (Emphasis supplied)

	notice and hearing preventing Rodex International Trading Inc. from collecting rentals due to J. Bernardo Company, Inc. during the pendency of this case and allowing J. Bernardo Co., inc. to continue collecting rentals in accordance with the lease contracts; <sup>30</sup>
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In addition, We find that the CA aptly found that there was identity of the cause of action and the reliefs prayed for. We quote the pertinent findings of the CA, thus:

The SEC case filed in 2010 included a prayer for the Pasig trial court to nullify “all the transactions made under the administration of Dionisio Bernardo and of all the defendants” and to order defendants therein “to cease and desist from transacting in behalf of J. Bernardo Co. Inc., especially from selling the assets x x x.” We note that while the SEC case mentioned one particular property in Caloocan City, the reliefs still include all the corporate assets, one of which is the Matalino property, which are allegedly to be sold by the dummies of the erring corporate officers.

It cannot be disputed that the ultimate objective of both the SEC case in Pasig City and the civil case in Quezon City is to prevent the other officers from selling the corporate assets without proper authority. Any ruling which may be handed down by both trial courts will only benefit or prejudice the corporation, as a juridical person and not its individual officers.

We also find that the trial court was correct in ruling that it matters not that this Court eventually dismissed the Petition for Injunction owing to the glaring procedural infirmities. It is also immaterial that the Pasig City trial court eventually suspended the implementation of the earlier Order dated July 9, 2012, for what determines forum shopping is the actual vexation of the courts and the act of trifling with court processes.<sup>31</sup>

Withal, this Court finds that Rosario, representing J. Bernardo, committed deliberate forum shopping by filing a petition for annulment of deed of sale, annulment of title, and damages while there was a pending intra-corporate dispute in a court of coequal rank. There was indeed a risk of exposure on the part of the RTC Quezon City to commit an act that would go against the doctrine of judicial stability wherein it was made to interfere with, or worse, to reverse, and/or modify the proceedings of a court of coequal rank.

Section 5, Rule 7 of the Rules on Civil Procedure, as amended, provides that if the acts of a party 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

<sup>30</sup> *Id.* at 39-40. (Emphasis supplied)

<sup>31</sup> *Id.* at 371-372.

sanctions. Thus, We find that the RTC Quezon City did not err in dismissing with prejudice the petition filed by Rosario on behalf of J. Bernardo.

**WHEREFORE**, premises considered, the Decision and Resolution of the Court of Appeals in CA-G.R. CV. No. 101453 promulgated on October 16, 2015 and March 14, 2016, dismissing with prejudice the petition for annulment of deed of sale, annulment of title and damages docketed as Civil Case No. Q-12-71800, are hereby **AFFIRMED**.

**SO ORDERED.”**

By authority of the Court:

*Mis+DCBatt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *11/2/22*

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(Civil Case No. Q-12-71800)

**G.R. No. 223493**

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