



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **September 19, 2022** which reads as follows:*

“**G.R. No. 235267 (Gijsbertus Marinus De Boer, petitioner v. Regis V. Puno, respondent)**. – Assailed in this Petition for Review on *Certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated January 27, 2017 and the Resolution<sup>3</sup> dated October 25, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 37576, which affirmed the Decision<sup>4</sup> dated November 7, 2014 of the Regional Trial Court (RTC) of Makati City, Branch 139 (RTC Br. 139) finding petitioner Gijsbertus Marinus De Boer (De Boer) guilty of Indirect Contempt.

**The Facts**

This case stemmed from a contract of sale between respondent Regis V. Puno (Puno), a Filipino national, and De Boer, a Dutch businessperson, over a yacht for the consideration of €200,000.00. De Boer alleged that sometime in 2008, he met Puno through a broker, Richelle Gacoba-Mojica. Puno was interested in selling his yacht berthed at the Manila Yacht Club. According to De Boer, their agreement to the sale of the yacht included the following stipulations, among others: (1) the sale of the yacht and the berthing space shall only be considered perfected after De Boer shall have conducted a successful test drive of the said yacht; and (2) the sale of the berthing space of the yacht shall be included for the additional amount of ₱2,000,000.00.<sup>5</sup>

Prior to the scheduled test drive, De Boer wire-transferred half of the purchase price in the amount of €100,000.00 to Puno. The test drive proceeded but was cut short because the yacht’s generator had a hole that caused the water to seep into it. Upon apprising Puno of the unsuccessful

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<sup>1</sup> *Rolla*, pp. 9–21.

<sup>2</sup> *Id.* at 27–34. Penned by Associate Justice Francisco P. Acosta with Associate Justices Noel G. Tijam (retired member of this Court) and Eduardo B. Peralta, Jr., concurring.

<sup>3</sup> *Id.* at 35–38. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Priscilla J. Baltazar-Padilla and Nina G. Antonio-Valenzuela, concurring.

<sup>4</sup> *Id.* at 170–176. Penned by Presiding Judge Benjamin T. Pozon.

<sup>5</sup> *Id.* at 11.

test drive, Puno committed to repair the yacht at his own expense. However, while awaiting the repair of the yacht, De Boer allegedly incurred expenses in the amount of ₱120,000.00 for fuel costs and allowances of the crew.<sup>6</sup>

With the repair not forthcoming, De Boer himself volunteered to go abroad to purchase the parts needed to fix the yacht only to be informed by Puno later on that the yacht had already been repaired. De Boer then allegedly found out that Puno intended to allow other persons to use the yacht notwithstanding the initial payment made by De Boer. Considering the turn of events, De Boer paid what remains as balance of the contract price in the amount of €100,000.00 upon Puno's supposed commitment that he would not allow other persons to use the yacht.<sup>7</sup>

De Boer thereafter demanded another test drive, in conformity with their agreement, but Puno was no longer amenable to it for lack of necessity to do the same in view of De Boer's now consolidated ownership of the yacht. To this, De Boer differed as the stance of Puno was contrary to their agreement that a successful test drive is a condition precedent for the perfection of the contract. Moreover, De Boer was informed that the purchase of the berthing space will not be possible; again, in contravention to their agreement. Considering the foregoing, De Boer demanded the refund of the amount paid but Puno refused to return the same.<sup>8</sup>

For his part, Puno contended that there was no agreement that the berthing space would be sold to De Boer. In fact, Puno does not own the berthing space; hence, he is not in the capacity to sell the same. Moreover, Puno claimed that De Boer never paid the berthing, electricity, and water charges, as well as the salaries and allowances of the crew. He then maintained that De Boer fabricated an excuse in an attempt to unilaterally cancel the sale of the yacht and demand the return of the €200,000.00 despite the completion and execution of their agreement.<sup>9</sup>

Hence, on September 18, 2008, Puno filed a Civil Case for Specific Performance and Damages docketed as Civil Case No. 08-691 (Civil Case) praying for the execution of a Deed of Absolute Sale and the removal of the subject yacht from the berthing place. This Civil Case was then decided by the RTC of Makati City, Branch 134 (RTC Br. 134) on August 1, 2017 in favor of Puno.<sup>10</sup> The RTC Br. 134 noted that the matters of test drive and acquisition of berthing space were never considered by the parties as requisites for the purchase of the yacht.<sup>11</sup>

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<sup>6</sup> Id. at 11-12.

<sup>7</sup> Id. at 12.

<sup>8</sup> Id. at 12-13.

<sup>9</sup> Records, pp. 66-67.

<sup>10</sup> See Decision dated August 1, 2017 rendered by Acting Presiding Judge Manuel I. Sese; *rollo*, pp. 132-143.

<sup>11</sup> Id. at 141-142.

Meanwhile, unaware of the pendency of the Civil Case against him, De Boer filed an Affidavit<sup>12</sup> dated January 15, 2009 before the National Bureau of Investigation (NBI) charging Puno with Estafa for the latter's alleged failure to deliver the yacht. This was, however, dismissed by the NBI upon finding that Puno did not renege on his obligation.<sup>13</sup> The records also disclose that on April 17, 2009, the Office of the City Prosecutor of Mandaluyong City issued a Resolution<sup>14</sup> finding probable cause and recommending the filing of an Information for Perjury against De Boer in view of his false claims in the Estafa case.

Also during the pendency of the Civil Case, and upon learning of said Civil Case against him, De Boer filed a Complaint-Affidavit<sup>15</sup> dated July 24, 2009 before the Office of the City Prosecutor of Pasig City charging Puno with Perjury in view of the latter's allegations in the Civil Case. This was, however, dismissed in a Resolution<sup>16</sup> dated September 16, 2009 for being premature in view of the pendency of the Civil Case.

Thus, on September 10, 2009, Puno filed a petition<sup>17</sup> praying that De Boer be held liable for Indirect Contempt pursuant to Rule 71, Section 3 (d) of the Rules of Court as a result of his brazen misuse and abuse of the Philippine judicial and quasi-judicial system through his deliberate forum shopping.<sup>18</sup>

In De Boer's defense, he argued that there is no identity of rights asserted and reliefs prayed for in the subject cases. Further, a judgment in any of the cases will not amount to *res judicata* in the others. De Boer likewise posited that the basis of the NBI complaint is the transaction that occurred between him and Puno while the basis of the Perjury case is the alleged falsities contained in the Civil Case filed by Puno.<sup>19</sup>

### The RTC Ruling

In a Decision<sup>20</sup> dated November 7, 2014, the RTC Br. 139 found De Boer guilty of Indirect Contempt and ordered him to pay a fine of ₱15,000.00.

It observed that De Boer's defense in the Civil Case constituted the basis for the filing of the Estafa and Perjury cases. It further noted that the same factual antecedents prompted the filing of these cases. As such, this

<sup>12</sup> Records, pp. 14-19.

<sup>13</sup> See Disposition Form signed by Agent III, SAU, Atty. Janet M. Francisco; *rollo*, pp. 150-151.

<sup>14</sup> Records, pp. 36-39.

<sup>15</sup> Id. at 60-63.

<sup>16</sup> *Rollo*, pp. 165-167. Signed by Investigating Prosecutor Michael B. Robles.

<sup>17</sup> Records, pp. 1-11.

<sup>18</sup> Id. at 1.

<sup>19</sup> Id. at 147.

<sup>20</sup> *Rollo*, pp. 170-176.

could result in possible conflicting rulings among the fora upon which said cases were filed. The RTC Br. 139 then ruled that this improper conduct – the act of committing forum shopping – on the part of De Boer tends to degrade the administration of justice and is considered Indirect Contempt under Rule 71, Section 3 (d) of the Rules of Court.<sup>21</sup>

Aggrieved, petitioner appealed to the CA.

### **The CA Ruling**

In a Decision<sup>22</sup> dated January 27, 2017, the CA affirmed in *toto* the RTC Br. 139 ruling. Similar with the RTC Br. 139, the CA ruled that all the cases subject of the appeal before it are premised on the same factual antecedents – the circumstances surrounding the sale of the yacht.<sup>23</sup> This, according to the CA, shows De Boer's ultimate goal to have a favorable finding from any of these tribunals – that Puno agreed to sell not only the yacht but also the berthing space thereof.<sup>24</sup> Thus, the similarity not just of the parties but also of the cause of action is evident in the subject cases.<sup>25</sup>

Aggrieved, De Boer moved for reconsideration but was denied in a Resolution<sup>26</sup> dated October 25, 2017; hence, this petition.

### **The Issue Before the Court**

The issue before the Court is whether or not De Boer is guilty of Indirect Contempt under Rule 71, Section 3 (d) of the Rules of Court by reason of forum shopping.

### **The Court's Ruling**

The petition is meritorious.

The Court has consistently ruled that forum shopping exists 'when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.'<sup>27</sup>

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<sup>21</sup> Id. at 173-175.

<sup>22</sup> Id. at 27-34.

<sup>23</sup> Id. at 31.

<sup>24</sup> Id.

<sup>25</sup> Id. at 32.

<sup>26</sup> Id. at 35-38.

<sup>27</sup> *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 654 (2014); citation omitted.

In *Dy v. Mandy Commodities Co., Inc.*,<sup>28</sup> the Court held that the test for determining forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: '(a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.'<sup>29</sup>

In this case, a judicious review of the records shows that De Boer did not commit forum shopping, as explained hereunder.

The courts *a quo*, in finding against De Boer, observed that 'apart from the fact that the same factual antecedents prompted the filing of the said cases, [De Boer]'s defense in the Makati civil case constitutes the basis for the filing of the NBI estafa case and the Pasig perjury case.'<sup>30</sup> Further, '[t]he subsequent filing of these criminal cases relying on his version of facts, which constitutes his very Answer to the civil case, is indicative of his deliberate and willful attempt to impose upon the Makati court such version of the facts by imploring the NBI in the estafa case to make a finding that [Puno] has no intention to deliver the yacht and in the perjury case, for the Pasig City Prosecution Office to make a finding that the affidavits relied upon in the Amended Complaint were false assertions.'<sup>31</sup> The Court, however, finds these conclusions inaccurate.

A perusal of the records show that De Boer filed two cases – Estafa and Perjury; hence, only these two cases should be the basis for determining whether De Boer committed forum shopping. To establish the existence of forum shopping, there must be a finding of either *litis pendentia* or *res judicata*. Here, however, identity of causes of action, an element of *litis pendentia* and *res judicata*, is wanting. De Boer, in filing the case for Estafa, had the intention of having Puno prosecuted for misappropriating the money he paid the latter given that Puno allegedly never intended to deliver the yacht to De Boer. The case for Perjury, on the other hand, was by reason of the untruthful statements made by Puno in the Civil Case he filed against De Boer. It is thus not difficult to see how the causes of action in each of these cases differ, notwithstanding the fact that they were prompted by the same factual antecedents.

In the same vein, the courts *a quo* likewise erred in finding that the cases for Perjury and Estafa are closely related to the Civil Case that the

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<sup>28</sup> 611 Phil. 74 (2009).

<sup>29</sup> *Id.* at 85-86.

<sup>30</sup> *Rollo*, p. 31.

<sup>31</sup> *Id.* at 32.

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disposition of either of the former would have a practical legal effect on the resolution of the latter. To stress, the Civil Case was not instituted by De Boer. As the adverse party in the said case, the only pleading he filed therein was the Answer with a compulsory counterclaim. Hence, it was an error on the part of the courts *a quo* to relate the causes of action in the Estafa and Perjury cases to De Boer's mere Answer in the Civil Case and thereby rule that De Boer is keen on influencing the resolution of the Civil Case by using the judgments he obtained from the two subsequently filed cases. In fact, the case of Estafa was instituted by De Boer without knowledge of the pendency of the Civil Case filed against him, hence, no such intent to influence can be gleaned on the part of De Boer in this case. As such, a finding of forum shopping is therefore not possible as De Boer cannot be said to have repetitively availed of several judicial remedies in various courts involving the same issue. To be clear, the cases for Estafa and Perjury can proceed independently of each other. If any, the Perjury case would be interrelated only to the Civil Case but not to the point that there could be a finding of forum shopping considering that De Boer did not file the latter.

At this point, the Court notes that the underlying principle in the proscription of forum shopping is 'the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues[.]'<sup>32</sup> Verily, the intent of De Boer to vex the courts and Puno are not evident in this case. The Court cannot fault De Boer in availing the remedies provided by law to protect his rights especially where such rights were founded on different causes of action.

In view of the foregoing, the Court is constrained to disagree with the findings of the courts *a quo*. De Boer cannot be held guilty of Indirect Contempt as he did not commit forum shopping.

**FOR THIS REASON**, the petition is **GRANTED**. Accordingly, the Decision dated January 27, 2017 and the Resolution dated October 25, 2017 of the Court of Appeals in CA-G.R. CR No. 37576 are hereby **REVERSED** and **SET ASIDE**.

**SO ORDERED.**" (Lopez, M., *J.*, on official business.)

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<sup>32</sup> *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740 (2003).

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court

25 JAN 2023

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 139  
Makati City  
(Civil Case No. 09-816)

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