SUPREME COURT
SECOND DIVISION

ALFREDO CANUTO, JR. and ROMEO DE LA CORTE,
Petitioners,

-versus-

G.R. No. 110914
June 28, 2001

NATIONAL LABOR RELATIONS COMMISSION and COLGATE PALMOLIVE PHILIPPINES, INC.,
Respondents.
x----------x

D E C I S I O N

DE LEON, JR., *J.*:

Before us is a Petition for *Certiorari* under Rule 65 seeking the reversal of the Resolution[1] and Order[2] of public respondent National Labor Relations Commission dated April 22, 1993 and June 30, 1993, respectively, rendered in NLRC NCR CA No. 003891-92, declaring petitioners to have been lawfully dismissed by private respondent.

Prior to their termination, petitioners Alfredo Canuto, Jr. and Romeo De La Corte were employed by private respondent Colgate Palmolive Philippines, Inc. (Colgate) as statistical quality control supervisor and

production foreman, respectively. Canuto was then earning a salary of P9,540.00 per month plus a monthly allowance of P6,770.00, while De La Corte was paid P8,250.00 per month.

On July 5, 1989, Colgate terminated petitioners' services. The notice of termination, signed by respondent's officers, namely Aniceto Y. Dideles, Dexter C. Mendoza, and Ramon F. Alborte, stated that petitioners were being dismissed for loss of confidence. Petitioners, it would appear, were involved in a scheme to defraud respondent company. Basically, the plot consisted of an attempt to induce the company to purchase several drums of perfume used in the manufacture of its toilet soaps and shampoos. The deception was that Colgate already owned the drums of perfume.

The plot was uncovered when Colgate's Manufacturing Director, William Christopher, received two (2) confidential letters detailing the anomaly. An investigation resulted, leading to the entrapment of the malefactors, among whom were petitioners. For purposes of this resolution, we deem it unnecessary to recount at length the complicated behind-the-scene maneuverings which revealed petitioners' complicity in the scheme, for reasons we shall subsequently discuss.

On July 4, 1990, petitioners filed a complaint for illegal termination against Colgate.[3] The complaint prayed for the payment of backwages and other benefits, as well as damages.

Hearings ensued. On September 8, 1992, Labor Arbiter Manuel R. Caday issued a Decision[4] finding petitioners to have been illegally dismissed. He ordered private respondent to reinstate petitioners and to pay them backwages and other benefits equivalent to P825,492.00 [Canuto] and P404,814.00 [De La Corte]. Colgate appealed the decision to the Commission. As aforesaid, the Commission overruled the labor arbiter's findings and declared petitioners to have been dismissed for cause. However, it ordered Colgate to pay petitioners an indemnity of P1,000.00 in view of the company's alleged failure to accord petitioners due process.

The petitioners then interposed the instant special civil action. As grounds for allowance of their petition, petitioners argue, to wit:

I

Public Respondent gravely abused its discretion in completely ignoring the findings of facts by the labor arbiter in the case at bar;

II

Public Respondent gravely abused its discretion in admitting/considering purely respondent evidence in resolving the appeal made to them by respondent company Colgate Palmolive Philippines despite its inadmissibility as ruled by the labor arbiter;

III

Public Respondent gravely abused its discretion in resolving that respondent Colgate Palmolive Philippines, Inc. had sufficiently proven petitioners guilt in the labor arbiter's proceedings;

IV

Public Respondent gravely abused its discretion in ignoring petitioners evidence and testimonies given in the proceedings undisputed;

V

Public Respondent gravely abused its discretion in not awarding petitioners of lawful claim arising out of their illegal termination from employment as provided for by existing jurisprudence.

The petition should be dismissed.

It has been revealed that prior to filing the illegal dismissal case before the labor tribunal, petitioners filed an amended complaint for damages dated August 16, 1989 against Dideles, Mendoza and

Alborte, the officers whose signatures appeared in the notice of termination given to petitioners, docketed as Civil Case No. Q-89-3291 before the Regional Trial Court of Quezon City. Abbreviating the proceedings before the trial court, the defendants therein filed a second motion to dismiss the civil case after petitioners initiated the illegal dismissal case before the labor arbiter on July 4, 1990. The defendants interposed the defense of lack of jurisdiction, averring that the trial court had no jurisdiction over a labor dispute, and accused petitioners of forum shopping. When the trial court denied the motion to dismiss, the defendants elevated the matter to the Court of Appeals via a special civil action for certiorari, docketed as CA-G.R. SP No. 25418. On September 13, 1999, the former Ninth Division of the appellate court rendered judgment dismissing the civil case on the ground of forum shopping. Reconsideration having been denied, petitioners filed a petition for review of certiorari before us, which was docketed as G.R. No. 142851.

On July 10, 2000, the Third Division of this Court issued a Resolution denying the petition for its failure to comply with Section 11, Rule 13 of the Rules of Court. Further, the resolution stated that petitioners failed to show that the Court of Appeals committed a reversible error. Instead of filing a motion for reconsideration, petitioners filed a motion for extension of time to file the aforesaid motion. In a Resolution dated October 18, 2000, we denied the motion for extension for being a prohibited pleading. Accordingly, we decreed that no further pleadings would be entertained, and that entry of judgment be made in due course. In a subsequent Resolution dated November 27, 2000, we denied with finality petitioners' motion for reconsideration.

Undeniably, the dismissal of G.R. No. 142851 affects the disposition of the present case, exhibiting as it does petitioners' clear act of forum shopping. Forum shopping is manifest whenever 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."[5] It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in

another forum, other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." *(Sto. Tomas University Hospital vs. Surla, 294 SCRA 382, 384 [1998]).* Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.[6]

There is no doubt that at the time the complaint for illegal dismissal was filed, there was already pending before the regular courts another action involving substantially the same issues. In relation thereto, Rule 7, Section 5 of the Rules of Court provides:

> *Certification against forum shopping*.—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly 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 sanctions.

We note that both Civil Case No. Q-89-3291 and NLRC NCR-00-07-03622-90 were filed before the issuance of the pertinent circulars guarding against forum shopping. This is not to say, though, that forum shopping was a tolerated practice then. "The rule against forum shopping has long been established and subsequent circulars of the Supreme Court merely formalized the prohibition and provided the appropriate penalties against the transgressors." *Benguet Electric Cooperative, Inc. vs. Flores, 287 SCRA 449, 456 (1998), citing Chemphil Export and Import Corporation vs. Court of Appeals, 251 SCRA 257, 291 (1995)* However, at the time material to the case, when the instant petition for certiorari was filed on July 22, 1993, the same was already subject to the provisions of Circular 28-91 which took effect on January 1, 1992.[7] In fact, we took pains to emphasize in *Maricalum Mining Corporation vs. National Labor Relations Commission, 298 SCRA 378, 384 (1998)* that compliance with the circular is mandatory even for labor cases. Hence, petitioners were duty-bound to make the disclosures so required, and this they failed to do.

To this end, the Supreme Court explained in *Melo vs. Court of Appeals,* [318 SCRA 94, 102 (1999)], that the submission of a certification against forum shopping is a different undertaking from the assurances stated therein. Thus:

> x x x failure to comply with this requirement cannot be excused by the fact that plaintiff is not guilty of forum shopping. x x x

The Circular applies to any complaint, petition, application, or other initiatory pleading, regardless of whether the party filing it has actually committed forum shopping. Every party filing a complaint or any other initiatory pleading is required to swear under oath that he has not committed nor will he commit forum shopping. Otherwise, we would have an absurd situation where the parties themselves would be the judge of whether their actions constitute a violation of said Circular, and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such

interpretation of the requirement would defeat the very purpose of Circular 04-94.

Indeed, compliance with the certification against forum shopping is separate from, and independent of, the avoidance of forum shopping itself. Thus, there is a difference in the treatment—in terms of imposable sanctions—between failure to comply with the certification requirement and violation of the prohibition against forum shopping. The former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt.

We need not belabor the point that petitioners, in failing to state the pendency of Civil Case No. Q-89-3291, or even CA-G.R. SP No. 25418, engaged in a deliberate act of forum shopping. It matters not that the defendant in the civil case differed from the respondent in the labor case inasmuch as literal identity of parties in the two cases is not indispensable.[8] It is material that the issues and causes of action involved in both actions revolve around the legality of their dismissal. From the very same act of termination, petitioners seek damages either from herein respondent which they claim unlawfully fired them, or failing that, from respondent's officers whom they claim terminated them without the sanction of the company. Both claims are, quite obviously, contradictory, which only underscores their attempt to canvass for a friendly forum, namely, that if their claim is defeated in the regular court, then they would attempt to prevail in the labor tribunal, or *vice versa*.

In view of the foregoing, the dismissal of the case at bar is indubitably in order.

WHEREFORE, the instant petition is hereby **DISMISSED** on the ground of forum shopping. Costs against petitioners.

SO ORDERED.

Bellosillo, *J.*, *(Chairman)*, Mendoza, Quisumbing, and Buena, *JJ.*, concur.

[1] Annex "A" of the Petition, Rollo, pp. 27-44.
[2] Annex "B" of the Petition, Rollo, p. 46.
[3] I Record, last page.
[4] Annex "C" of the Petition, Rollo, pp. 49-64.
[5] Gatmaytan vs. Court of Appeals, 267 SCRA 487, 500 [1997].
[6] Progressive Development Corporation, Inc. vs. Court of Appeals, 301 SCRA 637 (1999).
[7] This subsequently became Revised Circular 28-91 effective April 1, 1994. The requirement of filing a certification of non-forum shopping was extended to complaints and initiatory pleadings filed before all other courts and agencies, per Administrative Circular No. 4-94.
[8] Cf. First Philippine International Bank vs. Court of Appeals, 252 SCRA 259 (1996).