REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

OFFICE OF THE MUNICIPAL TREASURER of the Municipality of Labrador, Pangasinan,
Plaintiff,

- versus -

MANILA ELECTRIC COMPANY and NATIONAL TRANSMISSION CORPORATION,
Defendants.

CTA OC NO. 019

Members:

BAUTISTA, *Chairperson*
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
JAN 06 2017
11:15 a.m.

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RESOLUTION

This resolves respondents' prayers in their respective Comments, filed on November 9, 2015[1] and December 21, 2015,[2] that the Court dismiss the Complaint filed by petitioner on August 25, 2015.

Petitioner is the Office of the Municipal Treasurer, who is vested with authority under Section 170 of the Local Government Code (LGC) to collect taxes due the Municipality of Labrador, Pangasinan.[3] Petitioner is located at the Municipal Hall, Poblacion, Labrador, Pangasinan.

Respondent National Transmission Corporation (Transco) is a government-owned-and-controlled corporation, with principal office at Transco Main Building, Quezon Avenue corner Agham Road, Diliman, Quezon City.

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[1] Filed by respondent Manila Electric Company; docket, pp. 102-112.
[2] Filed by respondent National Transmission Corporation; docket, pp. 130-156.
[3] Docket, p. 8.

Respondent Manila Electric Company (Meralco) is a domestic corporation with principal office at Ortigas Avenue, Pasig City.

The Complaint filed on August 25, 2015

On August 25, 2015, petitioner filed a Complaint under Sections 174 and 175 of the LGC,[4] praying that the Court render judgment ordering Meralco to deliver to the Office of the Municipal Treasurer of Labrador, Pangasinan, the receivables of Transco from Meralco to the extent of ₱84,949,335.09.

Petitioner alleges that Transco conducted its business of transmission of electricity in Labrador, Pangasinan, and incurred ₱159,635,669.15 in local business taxes based on its gross receipts for the years 2002, 2003, 2004 and 2005. Petitioner claimed that for failure of Transco to appeal the notice of assessment for the said period, the same had become final and executory as pronounced by the Court in CTA AC No. 112, entitled, *Municipality of Labrador and the Office of the Municipal Treasurer v. National Transmission Corporation.*[5] Petitioner further averred that on December 10, 2009, it served on Meralco a Warrant of Distraint seizing the credit or money receivables of Transco from Meralco.[6] The Warrant of Distraint states, in part:

> BY VIRTUE OF THE POWERS AND AUTHORITIES vested in me by the provisions of Sections 170, 174 and 175 of the Local Government Code of 1991, Rules and Regulations Implementing the Local Government Code and other pertinent laws, the money or credit due the National Transmission Corporation from your company to the extent of its unpaid local business tax to the Municipality of Labrador, Pangasinan in the amount of ONE HUNDRED FIFTY NINE MILLION SIX HUNDRED THIRTY FIVE THOUSAND SIX HUNDRED SIXTY NINE AND 15/100 PESOS **(₱159,635,669.15) for the years 2002, 2003, 2004 and 2005 <u>is hereby ordered seized and/or confiscated</u>** and YOU,
>
> MANILA ELECTRIC COMPANY (MERALCO)
>
> and/or the President, Treasurer, or COMPETENT OFFICERS are hereby ordered to deliver to the Office of Municipal Treasurer of the Municipality of Labrador, Pangasinan the said money, credit of or your periodic payment to National Transmission Corporation thru bank manager's / cashier's or certified check of in any manner

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[4] Docket, pp. 8-12.
[5] Paragraph 1, Complaint; docket, p. 8.
[6] Paragraph 2, Complaint; docket, p. 8.

> payable to the Municipal Treasurer of Labrador, Pangasinan in the above amount on the day you received this Warrant of Distraint or on the day the Transco's credit is due.[7]

The receivables being sought to be seized by petitioner represents the payments of the sub-transmission assets of Transco purchased by Meralco in the amount of ₱84,949,335.09. Petitioner claims that Meralco refused to deliver the credit or money receivable despite numerous extrajudicial demands.[8]

Petitioner avers that it discovered that Meralco and Transco jointly filed before the Energy Regulatory Commission (ERC) an application entitled *In the Matter of the Application for the Approval of the Sale of Various SubTransmission Lines/Assets of the National Transmission Corporation (Transco) to Manila Electric Company as Covered by Contract to Sell with Prayer for Provisional Remedy,* docketed as ERC Case No. 2009-174 to purchase the subtransmission assets/lines of Transco for the amount of ₱84,949,335.09, payable in cash or manager's check upon approval by the ERC of the Application with prayer for provisional approval of the purchase.[9]

Hence, on December 10, 2009, petitioner served on Meralco a Warrant of Distraint of even date, ordering seized or confiscated the money or credit due to Transco from Meralco to the extent of the amount of ₱159,635,669.15, representing unpaid local business tax for the years 2002, 2003, 2004 and 2005.[10]

Upon provisional approval on February 25, 2010 by the ERC of the application of sale for the subtransmission assets by Transco to Meralco,[11] petitioner served upon Meralco on March 1, 2010, a letter demanding the delivery of ₱84,949,335.09.[12]

On June 1, 2012, the ERC rendered a Decision approving the Application of Meralco to purchase the subtransmission assets of Transco.[13] On June 15, 2012, petitioner once again reiterated its demand to Meralco to deliver the amount of ₱84,949,335.09.[14]

Meanwhile, on March 20, 2015, Meralco filed a Complaint for Interpleader with the Regional Trial Court of Pasig City, raffled to Branch 155 and docketed as SCA 4035-PSG. Petitioner filed a motion to dismiss on the ground of impropriety since petitioner and Transco had been litigating the same

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7 Docket, pp. 32-33.
8 Id.
9 Paragraph 9, Complaint; docket, p. 10.
10 Paragraph 10, Complaint; docket, p. 10.
11 Paragraph 11, Complaint; docket, p. 11.
12 Paragraph 12, Complaint; docket, p. 11.
13 Paragraph 14, Complaint; docket, p. 11.
14 Paragraph 15, Complaint; docket, p. 11.

subject matter local business tax.[15] Petitioner also stated that since the amount sought to be collected is more than one million pesos, jurisdiction lies with the Court of Tax Appeals.[16]

The Court's Resolution dated October 7, 2015

On October 7, 2015, the Court, in a Resolution,[17] stating that the Complaint should be treated as a Petition for Mandamus. Hence, the Court ordered Meralco and Transco to file their Comments.

Meralco's Comment filed on November 9, 2015

On November 9, 2015, Meralco filed its Comment,[18] stating that the Complaint/Petition should be dismissed on the following grounds:

1. The filing of the Complaint or Petition is in violation of the certification of non-forum shopping attached to the said Complaint, considering the pending Interpleader with Consignation and Specific Performance filed by Respondent MERALCO, and pending before the Regional Trial Court of Pasig City, Branch 155, with case number SCA No. 4035;

2. This Honorable Court has no jurisdiction to hear and decide Petitions for Mandamus; and

3. The Petition for Mandamus is improper since Respondent MERALCO does not have any ministerial duty to comply with the Warrant of Distraint and Levy issued by Petitioner.[19]

As regards the first ground, Meralco points out that when it filed an Interpleader before the RTC in Pasig City, petitioner stated in its Motion to Dismiss the Interpleader case that there are cases pending before the different Courts regarding the subject assessment and Warrants of Distraint, and that the Interpleader would only be a duplication of the litigations that were already had all the way to the Supreme Court.[20]

Anent the third ground, Meralco states that it is not a party to CTA AC No. 112, which petitioner cited as a basis for its collection.[21] Meralco claims that

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[15] Paragraph 17, Complaint; docket, p. 12.
[16] Paragraph 18, Complaint; docket, p. 12
[17] Docket, pp. 83-85.
[18] Docket, pp. 102-112.
[19] Docket, p. 103.
[20] Docket, pp. 106-107.
[21] Docket, p. 111.

there is no ministerial duty on its part to pay petitioner, and hence, Mandamus, even if it were proper, must ultimately fail.[22]

Transco's Comment filed on December 21, 2015

On December 21, 2015, Transco filed its Comment,[23] where it points out that the present case is one of seven cases still pending before different courts involving petitioner and Transco that arose from Labrador's Tax Ordinance 97-001 (Tax Ordinance).[24] Transco outlines the following cases:

The Sual Gross Receipts

a. For the 13 March 2006 Assessment, Labrador filed a complaint on 7 July 2006 before the Regional Trial Court (RTC) of Lingayen, Pangasinan and raffled to Branch 38 for the collection of local business tax amounting to ₱104,869,800.00 for the period 26 December 2002 to 31 December 2005 docketed as **Civil Case 18717.**

   In a 15 December 2010 Resolution, RTC Branch 38 dismissed the case on the ground that the amount involved (₱104,869,800.00) falls within the exclusive original jurisdiction of the CTA in division and not with the RTC. x x x

b. For the 22 July 2008 Notice of Assessment, Labrador seized TransCo's deposits with different banks x x x.

   Thus, on 9 February 2011, TransCo filed a Complaint for refund of ₱101,933,820.91 before the RTC of Lingayen, Pangasinan, later raffled to Branch 37, docketed as **Civil Case 19086** for Labrador's seizure of TransCo's accounts which TransCo maintains as baseless and illegal.

   In a 26 December 2012 Order, RTC 37 directed Labrador to "refund in favor of TransCo the business tax collected in the total amount of ₱101,933,820.91." In that case, RTC 37 painstakingly threshed out the merits of the case x x x.

   Labrador then filed a Petition for Review before the CTA docketed as **CTA AC Case 112** which reversed RTC 37's Order. TransCo then filed a Petition for Review before the

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[22] Id.

[23] Docket, pp. 130-156.

[24] Docket, p. 131.

Supreme Court docketed as **G.R. 217742** which is currently awaiting resolution.

c. For the 20 February 2009 Notice of Assessment, Labrador filed a complaint before the RTC of Lingayen Pangasinan on 20 April 2009, later raffled to Branch 39 for collection of municipal business tax, surcharges and monthly interests amounting to ₱73,799,167.46 docketed as **Civil Case 18931**.

The Masinloc Gross Receipts

d. For the 2006 to 2008 Masinloc Gross Receipts covered by the 7 January 2011 Assessment, TransCo filed an appeal with RTC, Lingayen, Pangasinan, Branch 69 in accordance with the LGC after Labrador denied TransCo's protest docketed as **Civil Case 19099**.

On 10 June 2014, RTC Branch 69 of Lingayen, Pangasinan issued a decision declaring null and void the assessments for local business taxes for 2006, 2007 and 2008 Labrador made against TransCo.

Labrador then filed a Petition for Review before the CTA later raffled to the First Division docketed as **CTA AC 120**. In a 3 November 2015 Decision, the CTA First Division declared that TransCo's business does not fall within the lengthy and exhaustive enumeration of businesses subject to tax under the enumeration of businesses subject to tax under the Ordinance x x x. The CTA also ruled that Labrador does not have the situs of taxation since TransCo's Kadampat substation located in Labrador is undoubtedly not a branch or a sales office.

Labrador then filed a Motion for Reconsideration on 27 November 2015.

e. For the 2009 Masinloc Gross Receipts, Labrador filed a case for collection of local business taxes before the CTA, Second Division docketed as **CTA OC 15**.

The Cases Involving Meralco

f. On 20 March 2015, Meralco filed an Interpleader with Consignation and Specific Performance against Labrador and TransCo after it allegedly received a number of Warrants of Distraint and letters from Labrador directing it to deliver the

P84,945,335.09 (the Subject Amount) to Labrador for the value of the sub-transmission assets being acquired by Meralco from TransCo. The case was raffled to RTC Branch 155 of Pasig City docketed as **SCA 4035-PSG**. Here, Meralco sought, among others, that judgment be rendered directing Labrador and TransCo to litigate their claims over the Subject Amount. On 21 March 2015 TransCo filed a Motion to Dismiss on the grounds of *litis pendentia* and impropriety while Labrador also filed on 14 April 2015 a Motion to Dismiss on the ground of impropriety of the interpleader action allegedly because Meralco is fully aware that TransCo and Labrador had been litigating in courts and that Labrador had already prevailed upon TransCo.

In a 21 October 2015 Order, RTC Branch 155 granted the Motion to Dismiss x x x.

g. On 25 August 2015, Labrador filed the present Complaint against Meralco and TransCo asking this Honorable Court to issue a judgment ordering Meralco to deliver to it "the money receivables of TransCo from Meralco to the extent of ₱84,949,335.09" docketed as **CTA OC 19** x x x.[25]

Transco argues the following: (1) the present case constitutes forum shopping; (2) the core issue is the validity of Labrador's business tax imposition on Transco under the Tax Ordinance; (3) petitioner's case is a judicial action that is already barred by prescription; (4) the Court has no jurisdiction over mandamus cases; and (5) even assuming that the Court can take cognizance of this case as mandamus, it should not be given due course for failure to meet the requirements for mandamus.

Transco claims that petitioner's maneuver in moving to dismiss the Interpleader on the ground that several cases are ongoing before different courts, but then proceeding to file the instant case, constitutes forum shopping. Transco further claims that the Municipal Treasurer Edualino C. Casipit and petitioner's counsel are liable for direct contempt and perjury.[26]

We resolve as follows.

<u>On the Mandamus</u>

After a thorough review of the petition and the comments, we recall our Resolution dated October 7, 2015 converting the instant collection case into a

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[25] Docket, pp. 135-138.
[26] Docket, p. 139.

mandamus case. Petitioner has no clear right and respondents have no clear legal duty to perform the act required for the case to prosper as mandamus.

Section 3, Rule 65 of the 1997 Rules of Civil Procedure reads:

> SEC. 3. *Petition for mandamus.* When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Mandamus lies to compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust or station.[27] In *Philippine Coconut Authority v. Primex Coco Products, Inc.*,[28] the Supreme Court held –

> For a writ of mandamus to be issued, **it is essential that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required**. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed. Mandamus applies as a remedy only where petitioners right is founded clearly in law and not when it is doubtful. The writ will not be granted where its issuance would be unavailing, nugatory, or useless. (Emphasis supplied.)

In this case, the fact that petitioner and Transco are litigating seven pending cases pertaining to the same root issue of the validity of the imposition of the business tax on Transco pursuant to the Tax Ordinance demonstrates the lack of petitioner's clear legal right to the amount it is asking the Court to Order Meralco to pay.

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[27] *Gatmaytan v. Court of Appeals*, G.R. No. 132856, August 28, 2006.

[28] G.R. No. 163088, July 20, 2006.

In fact, the Decision in CTA AC No. 112 cited by petitioner as its basis for collecting from Meralco is not yet final and executory. The same case was appealed to the Court *En Banc* and docketed as CTA EB No. 1250. The Decision in CTA EB No. 1250 was promulgated on April 8, 2016. The case was then elevated to the Supreme Court, docketed as G.R. No. 217742, and is still pending.

Moreover, there is no imperative duty on the part of Meralco to deliver the stated amount. In fact, a review of the dates relating to the issuance of the Warrant of Distraint dated December 10, 2009 reveals that Meralco was justified in refusing to deliver the said amount. The ERC approved the sale of the subtransmission assets of Transco to Meralco only on June 1, 2012. Hence, at the time the Warrant of Distraint was issued against Meralco, no amount was yet due to Transco from Meralco.

Sections 174 and 175 of the LGC provides:

> SECTION 174. *Civil Remedies.* — The civil remedies for the collection of local taxes, fees, or charges, and related surcharges and interest resulting from delinquency shall be:
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> (a) **By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character**, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
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> (b) By judicial action.
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> Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned.
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> SECTION 175. *Distraint of Personal Property.* — The remedy by distraint shall proceed as follows:
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> (a) Seizure — Upon failure of the person owing any local tax, fee, or charge to pay the same at the time required, the local treasurer or his deputy may, upon written notice, seize or confiscate **any personal property belonging to that person** or any personal property subject to the lien in sufficient quantity to satisfy the tax, fee, or charge in question, together with any increment thereto incident to delinquency and the expenses of seizure. x x x

Sections 174 and 175 clearly provide that the property subject of distraint must belong to the person owing the local tax, or that he has interest in and rights thereto.

The foregoing discussion clearly warrants the recall of the Court's Resolution dated October 7, 2015 treating the Complaint as a Petition for Mandamus. Consequently, it is no longer necessary to determine whether the Court can take cognizance of the Petition for Mandamus.

However, we dismiss the Complaint filed on August 25, 2015 on the grounds of *litis pendentia* and prescription.

On Forum Shopping and *Litis Pendentia*

Meralco and Transco both allege that petitioner engaged in forum shopping. The Supreme Court discussed the elements of forum shopping in *Yap v. Court of Appeals*,[29] thus:

> Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. What is critical 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. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.
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> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

[29] G.R. No. 186730, June 13, 2012.

> *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.
>
> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

The existence of either forum shopping or *litis pendentia* warrants the dismissal of the case in order to avoid a situation where conflicting judgments over the same subject matter between the same parties will result.

There are several cases between petitioner and Transco. Of particular interest in this case is CTA AC No. 112 because it is the case cited by petitioner in its Complaint, and, more importantly, it covers the same Notice of Assessment dated March 13, 2006 for taxable years 2002, 2003, 2004 and 2005 that is covered by the present collection case.

CTA AC No. 112 stemmed from a refund case instituted by Transco, seeking to recover the local business taxes which petitioner collected from Transco's depositary banks, covering the Notices of Assessment dated March 13, 2006, February 23, 2009 and July 24, 2008. The Court there stated:

> Records of this case reveal that respondent claims the refund of local business taxes which petitioners collected from respondent's depositary banks in the total amount of ₱101,933,820.91, which was allegedly released on February 11, 2009, July 29, 2009, August 3, 2009 and July 24, 2009 pursuant to the three assessments issued by petitioners against respondent. As found by the RTC, for **Notice of Assessment dated March 13, 2006 covering the period November 1999 to December 2005, respondent filed a protest on May 11, 2006. Before the 60-day period to file an appeal could elapse, it became a collection suit via Civil Case No. 18717 before RTC Branch 38 for the tax covering the period December 26, 2002 to December 31, 2005**

> **amounting to ₱104,869,800.00**. For the Notice of Assessment dated February 23, 2009 covering the year 2008, respondent filed a protest on March 16, 2009. Again, before the expiration of the 60-day period to appeal on May 16, 2009, respondent became a respondent in Civil Case No. 18931 before RTC Branch 39. It also received a treasurer's denial of its protest dated March 16, 2009 on June 22, 2009. The Notice of Assessment on July 24, 2008 for the period 2006 to 2007 was protested by respondent on September 22, 2008 for being premature as there is still a pending case contesting the right to tax before RTC Branch 38.
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> It is clear from the foregoing that respondent filed letters of protest on the assessment notices issued by petitioners instead of paying the amount indicated in the assessment within the 60-day period to protest pursuant to Section 195 of the LGC. Furthermore, the RTC itself found in the assailed Decision that there was no original action on the part of respondent to appeal the three assessment notices with the competent court.
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> Accordingly, the Court cannot sustain the grant by the RTC of respondent's claim for refund considering that a grant of the refund claim would necessarily violate Section 195 of the LGC, which specifically renders an assessment final and executory when no appeal from the denial of the protest on the assessment or form the lapse of the sixty-day period within which to appeal to the court of competent jurisdiction was made.
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> x x x
>
> In this case, respondent should have appealed the denial of its protest within thirty (30) days from the receipt of the denial or from the lapse of the sixty-day period within which to appeal with the court of competent jurisdiction. Due to respondent's failure in this regard, the assessment notices issued by petitioners against respondent became conclusive and unappealable. Accordingly, the claim for refund on taxes collected based on the final and executory assessments issued by petitioners must necessarily fail.

On appeal, the Court *en banc* affirmed the Decision in CTA AC No. 112.[30] Transco filed a Petition for Review on Certiorari, docketed as G.R. No. 217742, pending before the Supreme Court.

We cannot speculate on the outcome of G.R. No. 217742. The ruling of the Supreme Court on subject matter presented in G.R. No. 217742 will precisely

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[30] CTA EB No. 1250, April 8, 2016.

affect the subject matter in this case. Both cases involve the issue of whether or not petitioner can collect local business taxes based on the Notice of Assessment dated March 13, 2006. Both cases deal with the propriety of petitioner collecting the local business tax assessed from persons holding Transco's personal property.

Consequently, we cannot proceed with the present case without risking a situation where conflicting judgments will result. Moreover, G.R. No. 217742 is much farther along the stages of litigation than the present case, already being before the Supreme Court, the final arbiter of disputes. Hence, it is proper to dismiss the case on the ground of *litis pendentia.*

On Prescription

The case is also dismissible on the ground of prescription. Transco alleged in its Comment that the Complaint was filed beyond the period provided in Section 194 of the LGC.

Section 194 of the LGC reads:

> SECTION 194. *Periods of Assessment and Collection.* — (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That. taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
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> (b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.
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> (c) **Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period**: Provided, however, That, taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.
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> (d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:

(1) The treasurer is legally prevented from making the assessment of collection;
(2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and
(3) The taxpayer is out of the country or otherwise cannot be located.

The Notice of Assessment subject of this case was issued on March 13, 2006. The Complaint was filed out of time on August 25, 2015, or after more than nine years. Section 194 of the LGC provides for only five years within which to collect by administrative or judicial action.

The pendency of G.R. No. 196035 before the Supreme Court did not legally prevent petitioner from collecting from Transco via a judicial action. G.R. No. 196035 stemmed from Civil Case No. 18717, which was the collection case corresponding to the Notice of Assessment dated March 13, 2006. Civil Case No. 18717 was dismissed without prejudice by RTC Branch 38 of Lingayen, Pangasinan for lack of jurisdiction because the amount being collected was more than ₱1,000,000.00, which is within the jurisdiction of this Court.

Instead of filing the case anew before the Court, petitioner went to the Supreme Court via a Petition for Review on Certiorari. The Supreme Court dismissed the case for failure to observe the hierarchy of courts, and stated that in any event, the petition failed to sufficiently show any reversible error in the assailed resolutions to warrant the exercise of discretionary appellate jurisdiction.[31]

The dismissal without prejudice did not pose as a legal obstacle for petitioner to collect on the Notice of Assessment dated March 13, 2006. The Supreme Court has distinguished dismissal with prejudice from a dismissal without prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice.[32]

The Rules of Court provide grounds for dismissal in Section 1, Rule 16.[33] Section 5 of the same rule provides that dismissals based on the following

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[31] Docket, p. 200.

[32] *Strongworld Construction Corporation v. Perello*, G.R. No. 148026, July 27, 2006.

[33] SECTION 1. Grounds. Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That the venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) That the pleading asserting the claim states no cause of action;

grounds bar the refiling of the same action or claim: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refiling of the same action or claim.[34] Hence, dismissals based on the rest of the grounds enumerated in Section 1 of Rule 16 are without prejudice because they do not preclude the refiling of the same action.[35]

Consequently, the running of the prescription period to collect on the Notice of Assessment dated March 13, 2006 was not suspended. As such, the present Complaint was filed beyond the five-year period provided in Section 194 of the LGC, and is hereby dismissed.

WHEREFORE, premises considered, the Complaint filed by the Office of the Municipal Treasurer of Labrador, Pangasinan on August 25, 2015 is hereby **DISMISSED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(h) That the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
(j) That a condition precedent for filing the claim has not been complied with.

[34] *Strongworld Construction Corporation v. Perello*, supra.
[35] Id.