

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 1766
(CTA Case No. 8862)

-versus-

NORKIS TRADING COMPANY,
INC.,

Respondent.

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COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 1845
(CTA Case No. 8862)

-versus-

NORKIS TRADING COMPANY,
INC.,

Respondent.

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

MAY 29 2019

3:14 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

In a Resolution dated October 18, 2018, the Court deemed it necessary to recall the Resolution dated May 21, 2018 in view of the consolidation of CTA EB Nos. 1766 and 1845 and deemed the case submitted for decision.

Subsequently, on March 27, 2019, Norkis Trading Company, Inc. filed a "Motion for Leave to File and to Admit

Attached Comment on the Petition for Review in CTA EB No. 1845.

The Motion alleges that while respondent in CTA EB No. 1766 was ordered to file a Comment to the Petition for Review, the Court did not order the same in CTA EB No. 1845.

The Court denies the "Motion for Leave to File and to Admit Attached Comment on the Petition for Review in CTA EB No. 1845."

At the outset, consolidation of CTA EB Nos. 1766 and 1845 was seen by this Court as a prudent move in order to fulfill the purpose mandated under Rule 31, Section 1 of the Revised Rules on Civil Procedure, which provides as follows:

"Section 1. Consolidation. - When **actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions;** it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Relative thereto, in the case of *Deutsche Bank AG v. Court of Appeals and Steel Corporation of the Philippines*¹, it cited as basis the case of *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*², the Supreme Court ruled in this wise:

"x x x it is a time-honored principle that when **two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried,** in order to serve the best interests of the parties and to settle expeditiously the issues involved. x x x

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It is well recognized that the **purpose of the rule on consolidation is to avoid multiplicity of suits; to guard against oppression and abuse; to prevent**

¹ G.R. No. 193065, February 27, 2012.

² G.R. No. 190462 & G.R. No. 190538, November 17, 2010.

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delays; to clear congested dockets; and to simplify the work of the trial court. In short, consolidation aims to attain justice with the least expense and vexation to the parties-litigants. **It contributes to the swift dispensation of justice,** and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Further, it results in the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases, which would otherwise require a single judgment.”

Applying the foregoing, it is without a doubt that the Court found a factual relation among the proceedings in CTA EB No. 1766 and 1845. The Court has carefully considered the allegations raised in the petitions and noted that there is among the cases, identity of parties, subject matter, and causes of action.

In this regard, while respondent was not ordered by this Court to file its comment to the Petition for Review in CTA EB No. 1845, nonetheless, the Comment it filed in CTA EB No. 1766 will serve the very same purpose in view of the consolidation of the cases.

Even granting for the sake of argument that this Court grants the motion of respondent, such fact would remain unnecessary in this case considering that the Petitions for Review are dismissible on the ground of *litis pendentia*.

Petitioner is guilty of forum shopping in the case at bar. There is forum shopping when a party seeks a favorable opinion in another forum, other than by an appeal or by certiorari, as a result of an adverse opinion in one forum, or when he institutes two or more actions or proceedings grounded on the same cause, hoping that one or the other court would make a favorable disposition on his case.³

To end such practice, a certification against forum shopping is required by Section 5, Rule 7 of the Rules of Court which states:

³ Commissioner of Customs vs. Pilipinas Shell Petroleum Corporation, G.R. No. 205002, April 20, 2016.

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RESOLUTION

"Section 5. 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. x x x"

The purpose of the rule is to avoid multiplicity of suits and to prevent a party from instituting two or more actions or proceeding 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.⁴

What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.⁵

⁴ Fontana Development Corp., et al vs. Sascha Vukasinovic, G.R. No. 222424, September 21, 2016.

⁵ Philip S. Yu vs. Hernan G. Lim, G.R. No. 182291, September 22, 2010.

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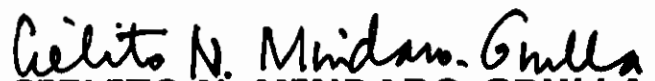
To determine whether a party violated the rule against forum shopping, it is crucial to ask whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.⁶ Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent 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.⁷

Applying the foregoing in the instant case, records show that when petitioner filed his petition for Review on May 15, 2018, docketed as CTA EB No. 1845, an appeal was pending before the Court En Banc with regard to his Petition for Review filed on February 7, 2018, docketed as CTA EB No. 1766. There is no doubt that both Petitions assail the Court in Division's Decision promulgated on August 16, 2017 and its Resolution promulgated on December 12, 2017. Lastly, the same parties, rights asserted and reliefs prayed for are founded on the same facts, thus, the resolution in one petition would amount to *res judicata* in the other.

We reiterate, as the elements of *litis pendentia* are present, the Petitions for Review in CTA EB Nos. 1766 and 1845 must fail. Consequently, ordering Norkis Trading Company, Inc., to file a Comment is already moot and academic.

WHEREFORE, premises considered, Norkis Trading Company, Inc.'s "Motion for Leave to File and to Admit Attached Comment on the Petition for Review in CTA EB No. 1845" is hereby **DENIED**. The Petitions for Review in CTA EB Nos. 1766 and 1845 are hereby **DISMISSED**.

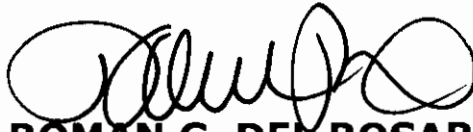
SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

⁶ Ignacio vs. Office of the City Treasurer of Quezon City, G.R. No. 221620, September 11, 2017.

⁷ Lanao Del Norte Electric Cooperative, Inc. vs. Provincial Government of Lanao del Norte, G.R. No. 185420, August 29, 2017.

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

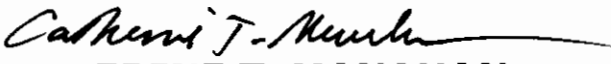

JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice