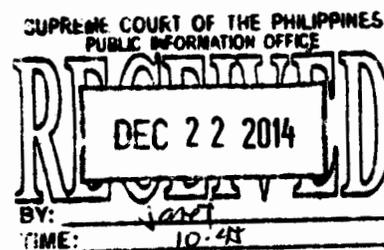




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION  
NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **November 26, 2014** which reads as follows:*

**“G.R. No. 157051 (*Tri-Corp Land & Development v. Bernardine T. Siy*).** – This case involves the jurisdiction of the trial court over a criminal complaint. Although the voluminous records and pleadings apparently give rise to a number of different issues, what this Court deems to be pivotal is the question of whether the trial court committed grave abuse of discretion in granting the withdrawal of the Information by the prosecutor.

This is a Rule 45 Petition for Review, questioning the Resolution<sup>1</sup> and Decision<sup>2</sup> of the Court of Appeals’ (CA) Second and Former Second Division dated 24 January 2003 and 5 July 2002 respectively in CA-G.R. SP No. 68174. The said Resolution and Decision stem from a Rule 65 Petition for Review on Certiorari against the Orders dated 9 October 2001 and 5 June 2001 of the Regional Trial Court of Makati City, Branch 60 and the Order dated 24 August 2001 of the Metropolitan Trial Court of Makati City, Branch 66. The said Orders granted the motion of the prosecution to withdraw the Information in Criminal Cases Nos. 01-329 and 01-330 against respondent Bernardine Siy (respondent), denied the motion for reconsideration filed by petitioner Tri-Corp (petitioner), and lifted the warrant of arrest against respondent.

The facts are undisputed, and were presented by the Court of Appeals as follows:

On September 26, 2000, petitioner Tri-Corporation Land and Development, Incorporated, (Tri-Corp., for brevity) filed a criminal complaint with the Makati City Prosecutor's Office charging herein private respondent Bernardine T. Siy for falsification of documents, relative to a condominium corporation project developed by private

<sup>1</sup> *Rollo.*, pp. 997-998.

<sup>2</sup> *Id.* at 988-995; Penned by Associate Justice Rodrigo V. Cosico, and concurred in by Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona.

respondent's Greystone Corporation, one unit of which was purchased by Tri-Corp.

In a resolution, dated January 23, 2001, the City Prosecutor's Office, thru Prosecutor Andres N. Marcos recommended that Bernardine T. Siy be charged in court for falsification and use of a public document, and violation of P.D. 957. Pursuantly [sic], two (2) separate Informations were filed against Siy, with the RTC of Makati, namely, for Falsification of Public Document, under Article 171(4) and 172(1) of the Revised Penal Code, docketed as Criminal Case No. 01-329; and for Violation of Section 17, P.D. 957 and Sec. 24, Implementing the Rules of P.D. 957, in relation to Sec. 39, of P.D. 957, docketed as Criminal Case No. 01-330. Additionally, an Information for Use of Falsified Public Document, under the last paragraph of Article 171 of the Revised Penal Code was filed and docketed with the MTC of Makati as Criminal Case No. 296502.

The private respondent filed a petition for review of the said resolution of the City Prosecutor with the Department of Justice. On April 23, 2001, the Secretary of Justice, acting through undersecretary Manuel A.J. Teehankee, found merit in the private respondent's appeal, and accordingly reversed the prosecutor's ruling, and ordered the withdrawal, with leave of court, of the three (3) Informations filed against Siy.

Petitioner, as complaining witness, filed a motion for reconsideration of the ruling of Undersecretary Teehankee. On June 22, 2001, Secretary Hernando B. Perez of the Department of Justice found no merit in the motion for reconsideration, and accordingly denied the same.

In the meantime, on April 30, 2001, the Makati City Prosecutor's Office, pursuant to the April 23, 2001 ruling of the Undersecretary of Justice, filed a motion to withdraw the Informations in the RTC under Criminal Cases Nos. 01-329 and 01-330. Said motion was granted in the first assailed order of the RTC of Makati, dated June 5, 2001.

As held by the RTC:

Accordingly then, as prayed for, the motion is granted. Leave is herein granted to the prosecution to withdraw the Information filed for Criminal Cases Nos. 01-329 and 330.

SO ORDERED.

Tri-Corp.'s motion for reconsideration of the said order was denied in the second assailed order, dated October 9, 2001.

On August 24, 2001, private respondent Bernardine Siy filed in Criminal Case No. 296502, in the MTC of Makati City, an urgent motion to lift/recall warrant of arrest earlier issued against her.

On the same date, the MTC of Makati ordered the warrant of arrest issued against private respondent lifted and set aside. Said the MTC, under the third assailed order:

WHEREFORE, the Warrant of Arrest dated June 18, 2001 issued against Bernardine T. Siy is ordered lifted and set aside, and the cash bond posted by the accused is ordered reinstated.

The arraignment is set on September 24, 2001 at 1:30 in the afternoon as previously scheduled.

SO ORDERED.<sup>3</sup>

On the basis of these facts, the CA decided against petitioner. First, the CA found petitioner guilty of forum-shopping, for the failure to admit and report to the appellate court the existence of another petition involving the same parties and issues pending before the Court, but assigned to a different *ponente*. The first petition was docketed as CA-G.R. SP No. 66299, and the second petition before the CA was docketed as CA-G.R. SP No. 68174.<sup>4</sup> Second, the CA determined that the petition before it sought to set aside the ruling of the Department of Justice (DOJ) and require the trial court, on mandamus, to continue with the prosecution of respondent. This, to the CA, was not a function of the trial court, since the determination of probable cause during a preliminary investigation is a function that belongs to the public prosecutor, or the Secretary of Justice on appeal. Hence, the CA dismissed the petition.

Undeterred, petitioner filed a motion for reconsideration, arguing that the proceedings in CA-G.R. SP No. 66299 were not the same in CA-G.R. SP No. 68174, and thus the latter did not merit dismissal on grounds of forum-shopping. The CA likewise denied the motion.

Hence this petition.

On the issue of forum-shopping, this Court finds that the CA properly identified the cases of CA-G.R. SP Nos. 66299 and 68174 as being, in essence, the same case.

In *Rudecon Management Corporation v. Singson*,<sup>5</sup> this Court provided a detailed guide on how to determine a violation of the rules on forum-shopping, *viz*:

The rule on forum shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule

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<sup>3</sup> Id. at 988-991.

<sup>4</sup> Id. at 992.

<sup>5</sup> G.R. No. 150798, 31 March 2005.

shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned.” Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Adm. Cir. No. 04-94. The rule is now embodied in Section 5, Rule 7 of the Revised Rules of Court which reads:

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. 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.

**Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.**

**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 causes and/or grant the same or substantially the same reliefs, in the process creating possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.**

In *Ayala Land, Inc. v. Valisno*, the Court explained the concept of forum shopping, to wit –

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another (*Alejandrino v. Court of Appeals*, 295 SCRA 536, 554 [1998]; *Philippine Woman’s Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, 292 SCRA 785, 794 [1998]). *Litis pendentia* requires the concurrence of the following requisites:

1. **Identity of parties**, or at least such parties as those representing the same interests in both actions;
2. **Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts**; and
3. Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to **res adjudicata** in the other case. (*Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, supra, at 791; citations omitted.)

As explained by this Court in *First Philippine International Bank v. Court of Appeals* (252 SCRA 259 [1996]), forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. Thus, there is forum shopping when, between an action pending before this Court and another one, there exist: “a) identity of parties, or at least such parties as represent the same interests in both actions, b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and c) the identity of the two preceding particulars is 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; said requisites also constitutive of the requisites for *auter action pendant* or *lis pendens*.” Another case elucidates the consequence of forum shopping: “[W]here a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest.” (*Prubankers Association v. Prudential Bank & Trust Company*, 302 SCRA 74, 83-84 [1999].)<sup>6</sup> (Emphases ours)

As admitted by petitioner, the only difference between the two CA cases was the fact that the first questioned the ruling of the Secretary of Justice relative to the finding of probable cause to file the criminal charges against respondent, while the second questioned the ruling of the trial court that allowed the withdrawal of the Informations against the respondent. However, as the CA highlights, what petitioner raised in both petitions is the propriety and legal justifiability of the ruling of the Secretary of Justice.<sup>7</sup> Moreover, a judgment on either case (that the DOJ committed grave abuse of discretion in withdrawing the Information due to lack of probable cause, or that the trial court committed grave abuse of discretion in granting said withdrawal) with the commensurate reliefs prayed for would lead to the same result, in that the trial court would be compelled to continue to hear the case and the DOJ would be compelled to continue to

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<sup>6</sup> Id.

<sup>7</sup> *Rollo*, p. 993.

prosecute the case. Thus, it is clear as day that the petitioner violated the rules against forum-shopping.

More importantly, petitioner appears to have misunderstood the role of the courts in criminal justice. In *Metropolitan Bank and Trust Company v. Reynaldo*,<sup>8</sup> this Court ruled that “[i]n a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof. The Secretary of Justice, however, may review or modify the resolution of the prosecutor.”<sup>9</sup> Thus the discretion falls upon the prosecutorial arm of government on whether a criminal case must be pursued, depending on its appreciation of probable cause in the extant case. The only exception to this is when the courts’ power of judicial review is exercised, in instances where it is clearly established that the prosecutor committed grave abuse of discretion, that is, when he has exercised his discretion “in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.”<sup>10</sup>

The invocation of this narrow exception does not prevent the trial court from granting the motion to withdraw the Informations. It is true that upon filing the Information, the Court acquires jurisdiction over the case. It is likewise true that the court may order the case continue, despite the contrary belief of the Secretary of Justice.<sup>11</sup> However, this means that it is also **within the Court’s discretion** to grant a motion to withdraw the Information filed by the prosecutor. The fact that the trial court decided to grant the motion, which was well within its authority, with basis for the grant, does not give rise to an instance of grave abuse of discretion that the appellate court must strike down. The trial court simply believed the reasoning of the DOJ for the withdrawal. Petitioner relies on the fact that the issue of probable cause before the Secretary of Justice had not attained finality, since there was a motion for reconsideration filed before the DOJ.<sup>12</sup> However, the trial court was not bound to adhere to the reglementary rules of the DOJ. It is not required to wait for a final resolution of the validity of the DOJ’s ruling before it makes a decision on the withdrawal of the Informations.

Clearly, the DOJ through its system of appeal, found no probable cause to file the suit. That is the prerogative of the DOJ. The trial court could not, therefore, deny the motion and take up the cudgels of the

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<sup>8</sup> G.R. No. 164538, 9 August 2010.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Crespo v. Mogul*, G.R. No. L-53373, 30 June 1987.

<sup>12</sup> *Rollo*, p. 1025.

prosecutorial office absent any indication of grave abuse on the part of the prosecution. Neither was it bound to wait for the motion for reconsideration before the Secretary of Justice, since that legal avenue and hierarchy is distinct from the court's own duty to pass upon motion filed before it.

In fact, not even a Rule 65 Petition before the CA can bar the trial court from proceeding, in the absence of a temporary restraining order or injunctive relief.<sup>13</sup> Petitioner cannot now claim that the trial court preempted the CA when it granted the motion for withdrawal of Informations despite the pending Rule 65 Petition before the CA.<sup>14</sup>

Therefore, the CA committed no reversible error when it dismissed the petition, since it found no grave abuse of discretion on the part of the trial court. There was no need for the appellate court to even delve into issues on personality since the sole question before it was the existence of grave abuse of discretion. Hence this Court must simply reaffirm the *fallo* of the Court of Appeals.

**WHEREFORE**, premises considered, the instant Petition is hereby **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 68174 are **AFFIRMED**.

**SO ORDERED.**” **PERLAS-BERNABE, J.**, on leave;  
**VILLARAMA, JR., J.**, designated additional member per S.O. No. 1885 dated November 24, 2014.

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court  
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- over -

<sup>13</sup> *Juliano-Llave v. Republic*, G.R. No. 169766, 30 March 2011.

<sup>14</sup> *Rollo*, pp. 1108-1109.

The Hon. Presiding Judge  
Regional Trial Court, Br. 60  
1200 Makati City  
(Crim. Case Nos. 01-329 & 330)

The Hon. Presiding Judge  
Metropolitan Trial Court, Br. 66  
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(Crim. Case No. 296-502)

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