



Republic of the Philippines
COURT OF APPEALS
Manila

MUNICIPALITY OF TAGUIG
(now City of Taguig),
Plaintiff-Appellee,

CA-G.R. CV No.98377

-versus-

MUNICIPALITY OF MAKATI (now City of
Makati) ET AL.,
Defendants-Appellants.


NOTICE OF RESOLUTION

Sir / Madam:

March 8, 2017

Please take notice that on **March 8, 2017** a **RESOLUTION**, copy hereto attached was rendered by the **SPECIAL FORMER SIXTH DIVISION** of the Court of Appeals in the above-entitled case, the original of which is now on file in this office.

Respectfully yours,


MANUEL G. ASUNCION, JR.
Division Clerk of Court

Copy Furnished:

Hon. Presiding Judge - *per.*
RTC - Branch 153, 1600 Pasig City
(stationed in Taguig City)
Taguig City Hall of Justice

The Legal Department, City of Taguig - *per.*
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Tuktukan, 1630 Taguig

Office of the Executive Secretary - *per.*
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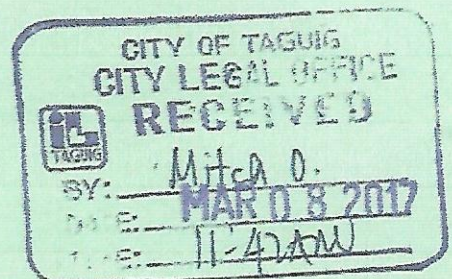
Hon. Secretary - *per.*
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Republic of the Philippines
COURT OF APPEALS
MANILA

SPECIAL FORMER SIXTH (6th) DIVISION

* * * * *

MUNICIPALITY OF TAGUIG
(NOW CITY OF TAGUIG),

Plaintiff-Appellee,

-versus-

CA G.R. CV No. 98377

*SORONGON, E.D.,
Acting Chairperson,

CRUZ, R.A.,

and

**FRANCISCO, R.C., JJ.

MUNICIPALITY OF MAKATI
(NOW CITY OF MAKATI), Hon.
TEOFISTO P. GUINGONA, in his
capacity as Executive Secretary,
HON. ANGEL ALCALA, in his
capacity as Secretary of
Environment and Natural
Resources, HON. ABELARDO
PALAD, JR., in his capacity as
Director of Lands Management
Bureau,

Defendants-Appellants.

Promulgated:

MAR 08 2017

X ----- *M 8:20 am* ----- X

RESOLUTION

*SORONGON, E.D., J. :

CERTIFIED TRUE COPY

MANUEL G. ASUNCION, Jr.
Division Clerk of Court

Before this Court, among others, is the *Motion to Dismiss for Forum Shopping*¹ filed on August 23, 2016 by herein plaintiff-appellee City of Taguig (Taguig), praying for the dismissal of this case in view of the Supreme Court's June 15, 2016 Decision in the case of *City of Taguig v. City of Makati*, particularly docketed as *G.R. No. 208393*,² which found herein defendant-appellant City of Makati (Makati) guilty of willful and deliberate forum shopping.

* New Ponente vice Justice Marlene B. Gonzales-Sison (inhibited) per Raffle dated October 4, 2016.

** New Member per Raffle dated October 4, 2016.

1 Rollo, Volume III, pp. 3622-3649.

2 Id. at 3651-3677.

A brief statement of the relevant facts is in order.

On November 22, 1993, Taguig filed before the Regional Trial Court (RTC) of Pasig City a Complaint against Makati and herein defendants-appellants former Executive Secretary Teofisto P. Guingona, Jr., former Department of Environment and Natural Resources Secretary Angel Alcala, and former Director of the Lands Management Bureau Abelardo Palad, Jr. docketed as *Civil Case No. 63896* and denominated as one for "*Judicial Confirmation of the Territory and Boundary Limits of [Taguig] and Declaration of the Unconstitutionality and Nullity of Certain Provisions of Presidential Proclamations 2475 and 518, with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order,*" Taguig's complaint was raffled to Branch 153 of the RTC, wherein it averred that the areas comprising the Enlisted Men's Barangays (EMBOs) and the Inner Fort in Fort Andres Bonifacio (Fort Bonifacio), formerly known as Fort William McKinley, are within its territory and jurisdiction. Traversing the complaint, Makati filed its answer and amended answer to specifically deny the allegations of Taguig, and to claim rightful ownership over the disputed areas. Thereafter, trial on the merits ensued.³

In its Decision⁴ dated July 8, 2011, the RTC, through Judge Briccio C. Ygaña (Judge Ygaña), ruled in favor of Taguig, disposing of the case in this wise:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Municipality, now City of Taguig and against all the defendants, as follows:

1. Fort Bonifacio Military Reservation consisting of Parcels 3 and 4, Psu-2031, is confirmed part of the territory of the plaintiff City of Taguig;

2. Proclamation No. 2475, Series of 1986 and [Proclamation] No. 518, Series of 1990 are hereby declared UNCONSTITUTIONAL and INVALID, insofar as they altered boundaries and diminished the areas of territorial jurisdiction of the City of Taguig without the benefit of a plebiscite as required in Section 10, Article X of the 1987 Constitution.

3. Making the Writ of Preliminary Injunction dated August 2, 1994 issued by this Court, explicitly referring to Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio, be made PERMANENT, to wit:

a) enjoining defendants Secretary of the Department of

3 Culled from this Court's (6th Division) July 30, 2013 Decision in C.A. G.R. CV No. 98377; Rollo, Volume I, pp. 450-486; and the Supreme Court's Decision in *City of Taguig v. City of Makati*, G.R. No. 208393, June 15, 2016; supra note 2.

4 Rollo, Volume I, pp. 34-53.

Environment and Natural Resources and Director of Lands Management Bureau, from disposing of, executing deeds of conveyances over, issuing titles, over the lots covered by Proclamation Nos. 2475 and 518; and

b) enjoining defendant Municipality, now City of Makati, from exercising jurisdiction over, making improvements on, or otherwise treating as part of its territory, Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio.

4. Ordering defendants to pay the cost of the suit.

SO ORDERED.

Dissatisfied, Makati filed a Motion for Reconsideration *Ad Cautelam* dated July 28, 2011 before the RTC. At the same time, Makati also filed a *Petition for Annulment of Judgment* dated July 28, 2011 before this Court, docketed as *CA-G.R. SP No. 120495*, challenging the RTC decision on the ground that it was rendered by Judge Ygafia after he already retired from office. In the meantime, the RTC's pairing judge, Judge Leili Cruz Suarez (Judge Suarez), heard the motion. In her Order dated December 19, 2011, Judge Suarez denied Makati's motion for reconsideration on the grounds that: (1) there is nothing improper and illegal for Judge Ygafia to adopt the narratives and arguments in the memorandum of Taguig; (2) Judge Ygafia had been at the helm of this case since its pre-trial stage until its conclusion thereby affording him the advantage of familiarity with the story of the case; (3) the decision stated sufficient findings of fact and conclusions of law in favor of Taguig; and (4) Makati was guilty of forum shopping. Subsequently, in her Omnibus Order⁵ dated February 13, 2012, Judge Suarez, opined that "*the findings of fact and conclusions of law in the Decision dated 8 July 2011, are all in order and soundly based.*"⁶

Thus, on January 5, 2012, Makati filed its Notice of Appeal *Ad Cautelam*, questioning the RTC's decision and order. Docketed as *CA-G.R. CV No. 98377*, the case is now pending final resolution before this Court.⁷ On October 5, 2012, Makati filed its Appellant's Brief *Ad Cautelam*.⁸ In response, Taguig filed a Motion to Dismiss Appeal⁹ on January 23, 2013 on the ground of forum shopping. Following the filing of the parties' respective pleadings, Makati's appeal was deemed submitted for decision and Taguig's Motion to Dismiss Appeal was deemed submitted for resolution per this Court's May 16, 2013 Resolution.¹⁰

5 Id. at 93-96.

6 Supra note 3.

7 Resolution dated July 15, 2016; Rollo, Volume III, pp. 3697-3699.

8 Rollo, Volume I, pp. 107-189.

9 Id. at 358-367.

10 Id. at 424.

On July 30, 2013, this Court rendered a Decision¹¹ in favor of Makati. Prefatorily, on the issue of forum shopping, this Court deferred to the wisdom and resolve of this Court's Seventh (7th) Division in *CA-G.R. SP No. 120495*, pertinently holding, to wit:

Before going to the meat of the issue, Taguig in its *Brief* stressed at the outset that Makati has refused to assign as an error the lower court's decision in the motion for reconsideration declaring that Makati was guilty of forum shopping in filing both a motion for reconsideration in the lower court and a petition for annulment of judgment before this Honorable Court.

However, said issue has been resolved by this Court's Seventh (7th) Division in a Resolution dated 30 April 2013 rejecting the ground of forum shopping as basis for dismissal of Makati's petition for annulment of judgment, hence the issue of forum shopping has been rendered moot.

On the main, this Court essentially held that the RTC erred: 1) in accepting as admissible Taguig's evidence which were not properly identified, authenticated, and cross-examined in order to have probative value; (2) in declaring the disputed areas as part of the territory of Taguig; and (3) in declaring Presidential Proclamation No. 2475 and Presidential Proclamation No. 418 as unconstitutional and invalid since the said proclamations did not alter the boundaries of the disputed areas but instead confirmed that the same are under the jurisdiction of Makati.¹² The dispositive portion of this Court's decision reads:

WHEREFORE, premises considered, this Court **GRANTS** the instant appeal, **REVERSES** and **SETS ASIDE** the assailed decision and order rendered by the Regional Trial Court of Pasig City, Branch 153 dated 08 July 2011 and 19 December 2011 respectively and **RENDERS** a new Decision as follows:

1) Dismissing the Complaint of Taguig for lack of merit and confirming that the Disputed Area comprising of the EMBO Barangays and Inner Fort Barangays (Barangay Post Proper Northside and Barangay Post Proper Southside) in Fort Bonifacio are within the territorial jurisdiction of Makati City;

2) Lifting the injunction issued by the lower court against Makati;

3) Declaring Presidential Proclamation No. 2475 and Proclamation No. 518 as constitutional and valid;

¹¹ Decision dated July 30, 2013 (C.A. G.R. CV No. 98377); supra note 3.

¹² Id.

4) Ordering Taguig to immediately cease and desist from exercising jurisdiction within the disputed area and return the same to Makati; and

5) Ordering Taguig to pay the cost of suit.

SO ORDERED.

Aggrieved, on September 3, 2013, Taguig filed, among others, its Motion for Reconsideration¹³ assailing this Court's July 30, 2013 Decision.

In the meantime, the rulings of this Court in *CA-G.R. SP No. 120495* eventually reached the Supreme Court. As aforementioned, on June 15, 2016, in the case of *City of Taguig v. City of Makati*,¹⁴ the Supreme Court found Makati guilty of willful and deliberate forum shopping for pursuing two (2) simultaneous remedies: 1) a Petition for Annulment of Judgment under Rule 47 of the 1997 Rules of Civil Procedure (docketed as *CA-G.R. SP No. 120495*); and (2) a Motion for Reconsideration *Ad Cautelam* (later, this Appeal docketed as *CA-G.R. CV No. 98377*). Thus:

WHEREFORE, the Petition is **GRANTED**. The assailed Resolutions dated April 30, 2013 and July 25, 2013 of the Court of Appeals Seventh Division in *CA-G.R. SP No. 120495* are **MODIFIED**. Respondent City of Makati is declared to have engaged in forum shopping in simultaneously pursuing a Petition for Annulment of Judgment before the Court of Appeals and a Motion for Reconsideration before Branch 153 of the Regional Trial Court of Pasig City, and later, an Appeal before the Court of Appeals.

We find respondent City of Makati, through its counsels Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano, **GUILTY** of direct contempt, and **FINE** Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason and Atty. Gwyn Gareth T. Mariano P2,000.00 each.

SO ORDERED.¹⁵

Hence, this Motion to Dismiss for Forum Shopping filed by Taguig based on the following grounds:

I.

THE RTC MOTION FOR RECONSIDERATION BEFORE THE RTC-PASIG (WHICH IS THE SUBJECT OF THIS CASE) AND THE CA PETITION FOR ANNULMENT OF JUDGMENT BEFORE THE

¹³ Rollo, Volume I, pp. 533-690.

¹⁴ G.R. No. 208393, June 15, 2016; supra note 2.

¹⁵ Id. at 3675-3676. (Emphasis in the original.)

HONORABLE COURT (NOW RULED BY THE SUPREME COURT IN THE SC FORUM SHOPPING CASE) SHOULD BE DISMISSED CONSIDERING THAT DEFENDANT-APPELLANT CITY OF MAKATI ENGAGED IN WILLFUL AND DELIBERATE FORUM SHOPPING;

II.

THROUGH THIS APPEAL, THE ACTS OF WILLFUL AND DELIBERATE FORUM SHOPPING BY DEFENDANT-APPELLANT CITY OF MAKATI WERE CONTINUED AND PERPETUATED;

III.

CONSIDERING THAT THE SUPREME COURT RULED THAT DEFENDANT-APPELLANT CITY OF MAKATI ENGAGED IN WILLFUL AND DELIBERATE FORUM SHOPPING, THE PENALTY SHOULD BE SUMMARY DISMISSAL OF THIS PETITION;

IV.

CONSIDERING THAT THE SUPREME COURT RULED THAT DEFENDANT-APPELLANT CITY OF MAKATI ENGAGED IN WILLFUL AND DELIBERATE FORUM SHOPPING, THE RTC DECISION ALREADY BECAME A FINAL AND EXECUTORY JUDGMENT. CONSEQUENTLY, AS AN EFFECT OF A FINAL AND EXECUTORY JUDGMENT, IT IS AS IF THIS PETITION WAS NOT FILED BEFORE THE HONORABLE COURT.¹⁶

Taguig avers, among others, that Makati handled this territorial dispute in bad faith in view of the fact that in a previous Supreme Court Decision in *G.R. No. 163175*,¹⁷ Makati was also found to have violated the rule on forum shopping. Invoking Supreme Court Administrative Circular No. 04-94,¹⁸ Taguig asserts that Makati's willful and deliberate act of forum shopping, as found by the Supreme Court in *City of Taguig v. City of Makati*, warrants the dismissal of this Appeal.¹⁹

16 Supra note 1.

17 Entitled: *City of Makati v. Municipality (now City) of Taguig*, G.R. No. 163175, June 27, 2008.

18 Supreme Court Administrative Circular No. 04-94 pertinently provides that:

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2. Any violation of this Circular shall be a cause for the dismissal of the complaint, petition, application or other initiatory pleading, upon motion and after hearing. However, any clearly willful and deliberate forum-shopping by any party and his counsel through the filing of multiple complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the undertakings therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary proceedings against the counsel and the filing of a criminal action against the guilty party.

19 Supra note 1. Please also see Taguig's Reply dated November 2, 2016; Rollo, Volume IV, pp. 3823-3862.

Complying with this Court's directive to file its comment thereon,²⁰ Makati counters that the Supreme Court's June 15, 2016 Decision in *City of Taguig v. City of Makati* is not yet final and executory as its motion for reconsideration²¹ thereto and its former counsels' own motion for partial reconsideration²² are still pending resolution before the Supreme Court. Makati insists that this Court would not transgress any Supreme Court ruling should this Court resolve this case on its merits because the Supreme Court, in its Decision, did not rule that this appeal should be dismissed. Makati also insists that Taguig's prayer to defer and hold in abeyance the resolution of this case should be denied considering that the Supreme Court did not issue any injunctive relief in connection with this case, and that assuming without admitting that the elements of forum shopping were present, the same was not willful and deliberate. Lastly, Makati posits that, considering the grave public interest involved in this case, and in the interest of substantial justice, this Court should look beyond the technical rules of procedure and allow the issue on the ownership of the disputed areas to be decided on the merits even if the Supreme Court denies Makati and its previous counsels' respective motions for reconsideration.²³

We grant Taguig's Motion to Dismiss for Forum Shopping.

In *City of Taguig v. City of Makati*,²⁴ the Supreme Court clearly and pertinently held:

Respondent City of Makati pursued two (2) simultaneous remedies: a Petition for Annulment of Judgment under Rule 47 of the 1997 Rules of Civil Procedure (docketed as CA-G.R. SP No. 120495); and a Motion for Reconsideration (later, an Appeal, docketed as CA-G.R. CV No. 98377).

There is identity of parties in both cases: the cities of Makati and Taguig.

Nonetheless, respondent City of Makati argues that it could not have engaged in forum shopping as its Petition for Annulment of Judgment and Motion for Reconsideration/Appeal were based on different causes of action, raised different issues, and sought different reliefs. It asserted that the Petition for Annulment of Judgment related to the validity of the July 8, 2011 Decision, *i.e.*, that it was void for having been rendered by a retired judge. It added that, in contrast, the Motion for Reconsideration/Appeal pertained to the merits of the territorial dispute

20 Resolution dated November 2, 2016; Rollo, Volume IV, p. 3815.

21 Rollo, Volume IV, pp. 3731-3750.

22 *Id.* at 3752-3766.

23 Makati's Comment/Opposition dated January 3, 2017; Rollo, Volume IV, pp. 3880-3905.

24 G.R. No. 208393, June 15, 2016; *supra* note 2 at 3792-3803.

or the substance of the respective territorial claims of petitioner City of Taguig and respondent City of Makati.

These arguments are specious considering the basic nature of a Rule 47 Petition and that of an appeal.

Rule 47 of the 1997 Rules of Civil Procedure “govern[s] the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.”

XXX

No stretch of legal imagination can justify as final and executory the Order assailed in the Petition for Annulment of Judgment filed by respondent City of Makati. It was still subject to appeal. Respondent City of Makati's having availed itself of this remedy is, in fact, the entire impetus for this Decision.

XXX

In terms of immediacy of relief, there is a difference between motions for reconsideration of judgments and final orders, on the one hand, and petitions for annulment of judgment, on the other. The grant of a Motion for Reconsideration grants the movant immediate relief, the court's issuance granting the Motion is itself the amended judgment superseding the original Decision. On the other hand, the grant of a Petition for Annulment of Judgment only allows for a “renewal of litigation.” Nevertheless, the purposes of Motions for Reconsideration and Petitions for Annulment of Judgment are fundamentally the same: the setting aside of a judgment in order that a different, favorable, one may take its place. They “grant . . . substantially the same reliefs.”

XXX

In *Ley Construction*, one could have dwelt on the fine distinction between, on one hand, Rule 65 petitions as proceedings grounded on errors in jurisdiction, and, on the other, appeals as proceedings that go into the merits or substance of a case. This is not entirely different from respondent City of Makati's invitation to dwell on the difference between, on one hand, its Rule 47 Petition as assailing the issuance of a judgment without jurisdiction, and, on the other, its Motion for Reconsideration (later, Appeal), as focusing on the substance of its and of petitioner City of Taguig's respective territorial claims.

Besides, a Rule 47 petition was not even opportune. It was not as though respondent City of Makati was left with no other remedy but a Rule 47 petition. Lack of jurisdiction could have just as easily been raised

as an error in its Appeal or in its Motion for Reconsideration. It is as much a cause for pursuing a motion for reconsideration or an appeal as it is for pursuing a petition for annulment of judgment.

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The Omnibus Motion Rule explicitly refers to Rule 9, Section 1. This provision provides for the following exceptions to the Omnibus Motion Rule:

- (a) lack of jurisdiction over the subject matter;
- (b) *litis pendentia*;
- (c) *res judicata*; and
- (d) prescription.

Thus, even if these grounds are not pleaded in a motion attacking a judgment, such as a motion for reconsideration, they are not deemed waived.

Clearly, *lack of jurisdiction may be invoked as a ground in a motion for reconsideration*. It can thereby serve as basis for setting aside or amending a judgment or final order. Accordingly, it is as much a cause for pursuing a motion for reconsideration as it is a petition for annulment of judgment.

XXX

In Nazareno, the petitioner did not simultaneously pursue a Petition for Annulment of Judgment and an Appeal. Respondent City of Makati did so here. In *Nazareno*, the petitioner had the prudence to not trifle with court processes and “creat[e] the possibility of conflicting decisions.” On the contrary, the petitioner deferred to the Court of Appeals where his Petition for Annulment of Judgment was then pending. It was only after this Court dismissed his Appeal from the Court of Appeals’ adverse Decision that he filed a Notice of Appeal.

Nazareno, far from helping respondent City of Makati’s case, actually weakens it. *Nazareno* shows that an appeal (or a motion for reconsideration as a prelude to an Appeal) need not be pursued simultaneously with a Petition for Annulment of Judgment. *Nazareno* shows that a party burdened by a decision issued without jurisdiction need not simultaneously go to several fora to obtain relief. *Nazareno* shows that the issuance of a decision despite a tribunal’s lack of jurisdiction is no license for forum shopping.

IV

Respondent City of Makati emphasized that its Motion for

Reconsideration and Appeal were mere precautionary measures. We are not impressed by this argument. Appending the phrase "*ad cautelam*" to an application for relief does not alter the nature of the remedy being pursued. Had it been granted by the trial court, the Motion for Reconsideration — *ad cautelam* or otherwise — would have ultimately resulted in the setting aside of the assailed decision.

The antecedents of the present Petition show that respondent City of Makati's actions have actually and already given rise to the harm sought to be avoided by the rule against forum shopping. The Regional Trial Court conflicted with the Court of Appeals.

XXX

For its part, the Court of Appeals has strangely flip-flopped on the question of respondent City of Makati's forum shopping. Its May 16, 2012 Resolution denying petitioner City of Taguig's Motion to Dismiss absolved respondent City of Makati of the charge of forum shopping. Its December 18, 2012 Resolution granted petitioner City Taguig's Motion for Reconsideration and dismissed respondent City of Makati's Petition for Annulment of Judgment for, among other reasons, forum shopping. Its April 30, 2013 Resolution denied respondent City of Makati's Motion for Reconsideration but abandoned its earlier conclusion that respondent City of Makati engaged in forum shopping. Finally, its July 25, 2013 Resolution granted petitioner City of Taguig's prayer that a pronouncement be made to the effect that respondent City of Makati's Petition for Annulment of Judgment was moot. This Resolution, however, was silent on the matter of forum shopping.

Respondent City of Makati's actions have not only vexed courts and an adverse litigant. They have actually and already given rise to conflicting decisions, not only between different courts — the Regional Trial Court and the Court of Appeals — but even within the Court of Appeals itself. The damage to the administration of justice is not hypothetical; it is a realized harm. (Emphasis and italics in the original; underscoring supplied)

It bears stressing that the aforementioned Motion for Reconsideration *Ad Cautelam*, which eventually led to an Appeal docketed as *CA-G.R. CV No. 98377* is the case at bar. Previously, in our July 30, 2013 Decision,²⁵ this Court brushed aside the issue of forum shopping for being moot as we gave due respect to the rulings of this Court's Seventh (7th) Division in *CA-G.R. SP No. 120495*. However, the Supreme Court has now spoken. Ineluctably, we must adhere. The issue of whether Makati committed willful and deliberate forum shopping in these cases has been finally laid to rest no less than by the Supreme Court. Now, this Court is confronted with the task of determining the adverse effects of willful and deliberate forum shopping in

²⁵ Decision dated July 30, 2013 in C.A. G.R. CV No. 98377; supra note 3.

this particular case in view of Taguig's Motion to Dismiss for Forum Shopping.

At this juncture, and inasmuch as this case is closely interwoven therein, we draw guidance from the Supreme Court's pronouncements in *City of Taguig v. City of Makati*,²⁶ to wit:

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation explained that:

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

First Philippine International Bank v. Court of Appeals recounted that forum shopping originated as a concept in private international law:

To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.

In this light, *Black's Law Dictionary* says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to *Words and Phrases*, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co.* recounted that:

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 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 Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.

Presently, Rule 7, Section 5 of the 1997 Rules of Civil Procedure requires that a Certification against Forum Shopping be appended to every complaint or initiatory pleading asserting a claim for relief. It also provides for the consequences of willful and deliberate forum shopping:

RULE 7
PARTS OF A PLEADING

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SEC. 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.* (Italics in the original; citations omitted; underscoring supplied.)

Notwithstanding, Makati insists that Taguig's Motion to Dismiss should be denied. Dissecting Makati's postulations, we find three points worthy of resolution.

First. Makati invokes that the Supreme Court's Decision in *City of*

*Taguig v. City of Makati*²⁷ is not yet final and executory because of it and its previous counsels' pending motions for reconsideration.

We discard such position on the basic premise that, upon our verification and Taguig's own Manifestation,²⁸ this Court learned that by its Resolution²⁹ dated November 16, 2016 in *City of Taguig v. City of Makati*, the Supreme Court has denied with finality Makati's Motion for Reconsideration and its previous counsels' separate motion for partial reconsideration. Therein, the Supreme Court pertinently held:

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Acting on the motion for reconsideration filed by respondent City of Makati and partial motion for reconsideration filed by Attys. Glenda Isabel L. Biason, Gwyn Gareth T. Mariano and Pio Kenneth I. Dasal of the Decision dated 15 June 2016 which granted the petition and found Attys. Glenda Isabel L. Biason, Gwyn Gareth T. Mariano and Pio Kenneth I. Dasal guilty of direct contempt, the Court further resolves to **DENY** the motion with **FINALITY**, the basic issues raised therein having been duly considered and passed upon by the Court in the aforesaid decision to warrant the reconsideration sought.

No further pleadings or motions shall be entertained in this case. Let entry of final judgment be made in due course. (Emphasis in the original)

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Second. Makati argues that, assuming that the elements of forum shopping were present, the same was not willful and deliberate, adding that the Supreme Court did not order for the dismissal of the case as it merely focused on the liability of its counsels.

Makati clutches at straws. The willful and deliberate nature of its act of pursuing two simultaneous remedies of a Petition for Annulment of Judgment and a Motion for Reconsideration which eventually led to this Appeal can be clearly deduced from the Supreme Court's decision in *City of Taguig v. City of Makati*,³⁰ and is sufficiently evident from the fact that the Supreme Court sanctioned Makati's previous counsels for contumaciously engaging in this deplorable act. In no uncertain terms, the Supreme Court held:

27 G.R. No. 208393, June 15, 2016; supra note 2.

28 Dated December 19, 2016; Rollo, Volume IV, pp. 3872-3877.

29 Id. at 3878-3879.

30 G.R. No. 208393, June 15, 2016; supra note 2 at 3792-3803.

Rule 7, Section 5 of the 1997 Rules of Civil Procedure provides that, apart from being a ground for summary dismissal, “willful and deliberate forum shopping . . . shall constitute direct contempt, [and is] a cause for administrative sanctions.” Thus, it would be inadequate to stop with a mere declaration that respondent City of Makati, which acted through its counsels, engaged in forum shopping.

It was among the matters prayed for by petitioner City of Taguig that appropriate sanctions be imposed for respondent City of Makati's [willful] and deliberate forum shopping. So too, respondent City of Makati's defenses have been duly pleaded and considered in this case. Under Rule 71, Section 1 of the 1997 Rules of Civil Procedure, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding P2,000.00. Accordingly, a fine of P2,000.00 is imposed on each of respondent City of Makati's counsels who filed the Petition for Annulment of Judgment before the Court of Appeals: Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano. (Emphasis and underscoring supplied.)

Verily, the acts of a party or his counsel clearly constituting willful and deliberate forum shopping shall be a ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer. Accordingly, if the forum shopping is willful and deliberate, both actions (or all, if there are more than two) shall be dismissed with prejudice.³¹

Lastly, invoking, among others, *Tanenglian v. Lorenzo*,³² Makati prays that this Court should relax the rules in the interest of substantial justice and allow the case to proceed on the merits despite the procedural defects and lapses.

Apropos in this regard is the ruling of the Supreme Court in *Magsino v. De Ocampo*,³³ to wit:

The petitioner is further reminded that any “resort to a liberal application or suspension of the application of procedural rules,

31 *Heirs of Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, citing *Ao-as v. Court of Appeals*, G.R. No. 128464, June 20, 2006. Please also see *Philippine Trust Company v. Spouses Roxas*, G.R. No. 171897, October 14, 2015; *Rallos v. City of Cebu*, G.R. No. 202651, August 28, 2013; *Goodland Company, Inc. v. Asia United Bank*, G.R. Nos. 195546 & 195561, March 14, 2012; *Air Materiel Wing Savings and Loan Association, Inc. v. Manay*, G.R. No. 175338, April 29, 2008; *Montes v. Court of Appeals*, G.R. No. 143797, May 4, 2006; and *Municipality of Taguig v. Court of Appeals*, G.R. No. 142619, September 13, 2005.

32 G.R. No. 173415, March 28, 2008.

33 G.R. No. 166944, August 18, 2014.

must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.” It cannot be otherwise for him, for, as the Court aptly put it in *Republic v. Kenrick Development Corporation*:

Procedural requirements which have often been disparagingly labeled as mere technicalities have their own valid *d' etre* in the orderly administration of justice. To summarily brush them aside may result in arbitrariness and injustice.

The Court's pronouncement in *Garbo v. Court of Appeals* is relevant:

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. **And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.** While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.

The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. **Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them.** We have repeatedly emphasized this standard. In *Bergonia v. Court of Appeals, (4th Division)*, for instance, we declared:

The petitioners' plea for the application of the principles of substantial justice in their favor deserves scant consideration. The petitioners should be reminded that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving. While the petitioners adverted to several jurisprudential rulings of this Court which set aside procedural rules, it is noted that there were underlying considerations in those cases which warranted a disregard of procedural technicalities to favor substantial justice. Here, there exists no such consideration.

The petitioners ought to be reminded that the bare invocation of “the interest of substantial justice” is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

Nor should the rules of procedure be held to be for the benefit of only one side of the litigation, for they have been instituted for the sake of all. (Citations omitted; emphasis supplied.)

In *City of Taguig v. City of Makati*,³⁴ the Supreme Court found that Makati's resort to two simultaneous reliefs was not justified, discarding even Makati's similar claim herein that its Motion for Reconsideration *Ad Cautelam* and Appeal were mere precautionary measures. The Supreme Court further opined that appending the phrase “*ad cautelam*” to an application for relief does not alter the nature of the remedy being pursued. Most importantly, the Supreme Court held that Makati's own actions have actually and already given rise to the harm sought to be avoided by the rule against forum shopping as Makati sowed conflicts between the courts in these cases. In this light, and in the absence of any justification on the part of Makati, this Court cannot but draw the conclusion that Makati's simultaneous availment of the aforementioned reliefs was not a by-product of mere thoughtlessness or negligence but of a willful and deliberate act of forum shopping. Taking into account too of the fact that this is the second time that the Supreme Court has found Makati to have violated the rule on forum shopping.³⁵ Its deleterious effects, without a doubt, had set in. The necessary legal consequence of dismissal of this case must perforce follow.

WHEREFORE, premises considered, the *Motion to Dismiss for Forum Shopping* is hereby **GRANTED**. Accordingly, the instant Appeal docketed as *CA-G.R. CV No. 98377* is hereby **DISMISSED**.

SO ORDERED.

ORIGINAL SIGNED

EDWIN D. SORONGON

Associate Justice

Acting Chairperson,

Special Former Sixth (6th) Division


³⁴ G.R. No. 208393, June 15, 2016; supra note 2 at 3801.

³⁵ Supra at Note 17.

WE CONCUR:

ORIGINAL SIGNED
RAMON A. CRUZ
Associate Justice

ORIGINAL SIGNED
RENATO C. FRANCISCO
Associate Justice

CERTIFIED TRUE COPY

MANUEL G. ASUNCION, JR.,
Division Clerk of Court