Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BORACAY ISLAND WATER COMPANY,* *Petitioner,*

- *versus* -

MALAY RESORTS HOLDINGS, INC., *Respondent.*

G.R. No. 235641

Present:

GESMUNDO, *C.J.*, Chairperson
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

JAN 17 2023

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DECISION

ZALAMEDA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated 28 February 2017 and the Resolution[3] dated 23 October 2017 by the Court of Appeals (CA) in CA-G.R. S.P. No. 08412. The CA reversed and set

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* Boracay Island Water Company, Inc. in some parts of the *rollo*.

1 *Rollo*, Vol. 1, pp. 9-50.

2 Id. at 52- 62; penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Edgardo L. Delos Santos (Ret) and Edward B. Contreras.

3 Id. at 64-66; penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Edgardo L. Delos Santos (Ret) and Edward B. Contreras.

aside the Orders dated 31 August 2012[4] and 06 February 2014[5] of Branch 9, Regional Trial Court (RTC) of Kalibo, Aklan in Civil Case No. 8849.

Antecedents

Petitioner Boracay Island Water Company (BIWC) operates one of the two water utilities in the Boracay Island, Municipality of Malay, Province of Aklan (Boracay Island), through which potable water is distributed to establishments and households within the area. The BIWC also operates the only sewerage utility in the Boracay Island.[6]

Issue arose when BIWC issued the Terms and Conditions of Factored Sewer Charging Program[7] (Program). Under the Program, customers exclusively patronizing BIWC-supplied water and connected to the sewer system of BIWC shall be charged in accordance with the existing sewer/tariff rate. However, customers who are connected to the sewer system operated by BIWC but not its water system (sewer-only customers) as well as those with dual water sources would be charged five times the customer's computed sewer charge.[8]

This prompted two affected customers, Ambassador in Paradise Corporation and Real Maris Resort & Hotel (plaintiffs), to file a civil case against BIWC before the RTC for declaration of nullity of the Program and damages[9] docketed as Civil Case No. 8849.[10]

J. King and Sons Company, Inc., and respondent Malay Resorts Holdings, Inc., (MRHI) moved to intervene and filed their respective complaints-in-intervention.[11] The RTC thereafter admitted the same.

On 08 July 2010, BIWC moved[12] to dismiss the complaint and complaints-in-intervention for failure to state a cause of action and forum shopping. BIWC stressed that the charter of the Philippine Tourism Authority[13] (PTA) grants it the power to develop tourist zones and construct, operate, and maintain water distribution systems and sewerage systems. It averred that in operating the sewer and water utility in the Boracay Island, BIWC merely acts as the agent of the PTA pursuant to a concession

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4 Id. at 100-103; penned by Presiding Judge Montalid P. Patnubay, Jr.
5 Id. at 105-106; penned by Presiding Judge Montalid P. Patnubay, Jr.
6 Id. at 53.
7 Id. at 123-125.
8 Id. at 53-54.
9 Id. at 126-137.
10 Id. at 53.
11 Id. at 151-169; 180-199.
12 Id. at 200-222.
13 PTA's function has been taken over by the Tourism Infrastructure and Enterprise Zone Authority.

agreement. As the designated concessionaire and agent of PTA, BIWC was merely implementing the existing Sewer Policies and Guidelines[14] approved by the PTA.

In its Motion to Dismiss [MRHI's] Complaint-In-Intervention,[15] BIWC asserted that the dismissal of the case was warranted on the ground of forum shopping. BIWC claimed that MRHI had previously filed with the National Water Resources Board (NWRB) a letter-complaint on the increased sewerage charge and the issue was discussed in the public conference conducted by the NWRB. It posited that all the elements of forum shopping were present: (i) BIWC and MRHI are parties to both the proceedings before the NWRB and the civil case before the RTC; (ii) the arguments and the relief MRHI set forth in its letter-complaint before the NWRB are the same as those raised and prayed for in the civil action; and, (iii) the decision of the RTC would preclude the NWRB from resolving the questioned Program and any decision or resolution by the NWRB would render the case before the RTC moot and academic.

Meanwhile, the NWRB called for a public conference in connection with the letter-complaints received by the agency alleging that BIWC "is operating a Water Supply and Sewerage System without a Certificate of Public Convenience (CPC) and charging fees therefore without authority from the NWRB."[16] The declared topic notwithstanding, the imposition of the increased sewer charges by BIWC was also discussed during the public conference held on 3 July 2010. However, the issue on NWRB's jurisdiction over the matter was raised by BIWC prompting the agency to seek the opinion of the Department of Justice (DOJ). On 13 August 2010, the DOJ issued its Opinion stating that the regulatory power over sewerage utility and service was not expressly granted by law or executive order to NWRB, as such, the latter cannot regulate said businesses for want of legal basis.[17]

Ruling of the RTC

After the parties presented their respective evidence on the motion to dismiss, the RTC rendered the Order dated 31 August 2012. The *fallo* reads:

> **WHEREFORE**, premises considered, plaintiff's amended complaint, and intervenors' complaints-in-intervention are hereby **DISMISSED** without prejudice for failure to comply with the requirements against forum shopping.

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[14] *Rollo*, Vol. 1, pp. 366-369.
[15] Id. at 396-419.
[16] Id. at 390; Letter dated 26 May 2010.
[17] Id. at 223-227; Opinion No. 37, S. 2010.

SO ORDERED.[18]

The RTC found that the rule against forum shopping was violated when the parties failed to disclose the proceedings before the NWRB, which was initiated through the filing of letter-complaints.[19]

It held that the relief sought in the civil case was substantially the same as that brought before the NWRB, *i.e.*, to put a stop to the imposition of the new sewer rates. The RTC noted that although the NWRB did not continue the proceedings due to the latter's lack of jurisdiction over sewerage utilities, the agency already asserted its authority and jurisdiction when it allowed the discussion of the issue during the public conference and it issued a show cause order against BIWC.[20]

MRHI moved for reconsideration, which the RTC denied in the Order[21] dated 6 February 2014.

Ruling of the CA

On appeal, the CA rendered the assailed Decision dated 28 February 2017. The dispositive portion reads:

> **WHEREFORE**, the petition for certiorari is **GRANTED**. The *31 August 2012 Order* rendered by the Regional Trial Court, Sixth (6th) Judicial Region, Branch 9, Kalibo, Aklan (court *a quo*), in Civil Case No. 8849 dismissing petitioner's Complaint-In-Intervention and the related *6 February 2014 Order* on the petitioner's Motion for Reconsideration are **SET ASIDE.**
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> **SO ORDERED.**[22]

The CA declared that the RTC committed grave abuse of discretion when it dismissed MRHI's Complaint-In-Intervention on the ground of forum shopping. Noting the opinion issued by the DOJ, the CA found that the NWRB has no jurisdiction over the subject matter being contended by the parties. As such, any judgment that may be rendered by the NWRB, regardless of which party is successful, would not amount to *res judicata* to

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18 Id. at 103.
19 Id. at 102-103.
20 Id.
21 Id. at 105-106.
22 Id. at 61.

the case filed before the RTC.[23]

Aggrieved, BIWC filed the present petition.[24]

BIWC argues that the CA erred in ruling that forum shopping may not be committed due to the lack of jurisdiction of the NWRB. It contends that such ruling goes against jurisprudence holding that forum shopping may be committed even when one forum has no jurisdiction. BIWC claims that MRHI committed willful and deliberate forum shopping for failing to disclose the pending NWRB proceedings, which justifies the dismissal with prejudice of the complaint pursuant to Section 5, Rule 7 of the Rules of Court. It further posits that the case should be dismissed on the ground of mootness considering that the questioned Program is no longer being implemented, there being new rates in place.[25]

In its memorandum,[26] MRHI counters that the elements of forum shopping are not present since there is no pending case before the NWRB, as evidenced by the NWRB certificate of no pending case.[27] It adds that its letter-inquiry should not be considered as a complaint since it lacks the requirements for filing a formal complaint provided in the implementing rules and regulations of Presidential Decree No. 1067 or the Water Code of the Philippines. There is also no identity of rights and reliefs prayed for since the issue before the NWRB pertains to BIWC's lack of CPC and not the validity of the Program. Lastly, there could be no *res judicata* in view of NWRB's lack of jurisdiction. MRHI also asseverates that the non-implementation of the Program does not render the case moot since the issue is capable of repetition yet evading review.

Issues

Two issues were raised for this Court's consideration:

1. Whether the CA erred when it ruled that the RTC committed grave abuse of discretion when it dismissed the complaint-in-intervention of MRHI for forum shopping; and

2. Whether the complaint-in-intervention of MRHI should be dismissed for being moot and academic.

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[23] Id. at 57-61.
[24] Id. at 9-50.
[25] *Rollo*, Vol. 2, pp. 819-864, Memorandum dated 16 October 2019.
[26] Id. at 765-799.
[27] *Rollo*, Vol. 1, p. 122.

Ruling of the Court

MRHI did not commit forum shopping.

Forum shopping traces its origin as a concept in private international law as a choice of venue, which evolved in our jurisdiction as a choice of remedy, as discussed by the Court in *First Philippine International Bank v. Court of Appeals*:[28]

> 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.
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> In the Philippines, forum shopping has acquired a connotation encompassing not only a choice of venues, as it was originally understood in conflicts of laws, but also to a choice of remedies. As to the first (choice of venues), the Rules of Court, for example, allow a plaintiff to commence personal actions "where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff" (Rule 4, Sec. 2 [b]). As to remedies, aggrieved parties, for example, are given a choice of pursuing civil liabilities independently of the criminal, arising from the same set of facts. A passenger of a public utility vehicle involved in a vehicular accident may sue on *culpa contractual*, *culpa aquiliana* or *culpa criminal* — each remedy being available independently of the others — although he cannot recover more than once.
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> > "In either of these situations (choice of venue or choice of remedy), the litigant actually *shops for a forum* of his action. This was the original concept of the term forum shopping.
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> > "Eventually, however, instead of actually making a choice of the forum of their actions, litigants, through the encouragement of their lawyers, file their actions in all available courts, or invoke all relevant remedies simultaneously. This practice had not only resulted to (sic) conflicting adjudications among different courts and

[28] 322 Phil. 280 (1996).

> consequent confusion enimical (sic) to an orderly administration of justice. It had created extreme inconvenience to some of the parties to the action.
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> "Thus, 'forum shopping' had acquired a different concept — which is unethical professional legal practice. And this necessitated or had given rise to the formulation of rules and canons discouraging or altogether prohibiting the practice."
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> **What therefore originally started both in conflicts of laws and in our domestic law as a legitimate device for solving problems has been abused and misused to assure scheming litigants of dubious reliefs.**[29]

To curb the reprehensible abuse of court processes and proceedings, the Court issued Circular No. 28-91,[30] the substance of which was later on incorporated in Section 5, Rule 7 of the Rules of Court. The provision 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 or she 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 or her 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 or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the court wherein his or her aforesaid complaint or initiatory pleading has been filed.
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> x x x x
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> 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 or her 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.[31]

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[29] Id. at 303-305. Citations omitted; Emphasis supplied.

[30] Additional Requisite for Petitions filed with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints.

[31] As amended by the 2019 amendments to the 1997 Rules of Civil Procedure.

The test for determining the existence of forum shopping is well-established. In *Santos Ventura Hocorma Foundation, Inc. v. Mabalacat Institute, Inc.*,[32] the Court pronounced:

> **The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.** Simply put, **when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist.**
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> 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.** On the other hand, the elements of *res judicata*, also known as bar by prior judgment, are: (a) the former judgment must be final; **(b) the court which rendered it had jurisdiction over the subject matter and the parties;** (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.[33]

The justification for the prohibition against forum shopping is that "a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts."[34] **The rule seeks to avoid the grave evil of having two competent tribunals rendering two separate and contradictory decisions.**[35]

Guided by the foregoing legal precepts, the Court will now resolve the issue on forum shopping.

In invoking forum shopping as a ground for dismissal, BIWC points out that MRHI filed its complaint-in-intervention with the RTC on 18 May 2010 or after it filed a "letter-complaint" before the NWRB on 23 February 2010. It adds that the failure of MRHI to include the case before NWRB in the certificate of non-forum shopping merits dismissal with prejudice of the complaint-in-intervention.

BIWC's claim fails to convince. We agree with the CA that MRHI did

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[32] G.R. No. 211563, 29 September 2021 citing *Spouses Reyes v. Spouses Chung*, 818 Phil. 225, 234 (2017).

[33] Id. Citations omitted; Emphases and underscoring supplied.

[34] Land Bank of the Phils. v. Honeycomb Farms Corp., 698 Phil. 298, 314 (2012).

[35] *Dy v. Mandy Commodities, Inc.*, 611 Phil. 74, 84 (2009).

not commit forum shopping because the third element of *litis pendentia* is not present.

As found by the CA, the admitted lack of jurisdiction of the NWRB over the regulation of sewerage utilities and services is fatal to the claim of forum shopping. Corollary, any judgement that may be issued by the NWRB, regardless of which party is successful, would not amount to *res judicata* in the case before the RTC.

The relevance of jurisdiction in resolving a forum shopping issue is demonstrated in *Heirs of Vidad v. Land Bank*[36] *(Heirs of Vidad),* which is a case for determination of just compensation. In *Heirs of Vidad*, the landowners obtained a favorable decision from the Regional Agrarian Reform Adjudicator (RARAD) on the compensation for their land. Land Bank of the Philippines (LBP) then filed a petition for determination of just compensation with prayer for an injunctive writ before the RTC, sitting as a Special Agrarian Court (SAC). Resolving the propriety of issuing the injunctive writ against the execution of the RARAD's decision, the SAC found that it had no jurisdiction to resolve the matter. LBP then filed a petition for *certiorari* with the DARAB, which issued an injunctive writ. The successive filing by LBP with the SAC and the DARAB was questioned by the landowners, alleging that the same constituted forum shopping. Applying the test to determine the existence of forum shopping, *i.e.*, whether the elements of *litis pendentia* or *res judicata* are present, the Court declared that forum shopping was not committed in this wise:

> It is thus seen that there is no forum shopping because the SAC had no jurisdiction on the issuance of an injunctive writ against the RARAD's decision. As the SAC had no jurisdiction over such matter, any ruling it renders is void and of no legal effect. Thus, LBP's act of filing the petition for *certiorari* with the DARAB, which has the correct jurisdiction for the remedy sought, does not amount to forum shopping.[37]

Further, upon careful consideration of the records of this case, MRHI cannot be faulted for not declaring the NWRB proceedings in its certificate of non-forum shopping since it appears that the NWRB did not assume jurisdiction on the issue of sewerage rates. It is well to note that the NWRB called a public conference on 26 May 2010, that is after MRHI has already filed its complaint-in-intervention, and only to discuss BIWC's operation without obtaining a CPC. [38] Even if it were true that the issue on the sewerage rates was discussed during the public conference, the NWRB limited its action on the CPC issue. This can be gleaned from its Order dated 30 July 2010 directing BIWC and the PTA to show cause why no cease and

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[36] 634 Phil. 9 (2010).

[37] Id at. 37. See also *Land Bank of the Phils. v. Honeycomb Farms Corp*, 698 Phil. 298-322 (2012).

[38] *Rollo*, Vol. 1, p. 390.

desist order should be issued against them for operating a water supply system in the Boracay Island without a CPC.[39] That the NWRB has not assumed jurisdiction over the matter is bolstered by the fact that it sought the opinion of the DOJ to confirm its regulatory authority over sewerage utility and services. Surely, the NWRB could not have assumed jurisdiction already while it was entertaining doubt as to its authority over the subject matter. Notably, no order or issuance of the NWRB in relation to the Program or the sewerage rate concern was presented by BIWC. On the contrary, MRHI presented a certification from the NWRB stating that there is no pending case against BIWC filed before the agency.

In any event, it bears stressing that "the issue on forum shopping may be considered moot once the proliferation of contradictory decisions, which is precisely what the prohibition on forum shopping seeks to avoid, is no longer possible."[40] Thus, even assuming that the NWRB took cognizance of the issue on the validity of the Program or the sewer rate concern, the issue on forum shopping has been rendered moot when the NWRB no longer made any action to resolve said concern after obtaining the DOJ opinion.

The Court is mindful of the cases cited by BIWC where violation of the rule against forum shopping was found to have been committed regardless of the lack of jurisdiction of one forum. However, BIWC's reliance thereon is misplaced.

In *Villanueva v. Adre*[41] (*Villanueva*), the respondent therein and his counsel were declared in contempt of court for forum shopping by filing successive petitions assailing the writ of execution issued by the labor arbiter before this Court and before the RTC. The Court declared:

> There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. This is specially so, as in this case, where the court in which the second suit was brought, has no jurisdiction.
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> Accordingly, the respondent court must be held to be in error assuming jurisdiction over Special Case No. 227. It is well-established that the courts cannot enjoin execution of judgment rendered by the National

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39 *Rollo*, Vol. 2, 712-713.

40 *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 219340, 28 April 2021. See also *Belo Medical Group, Inc. v. Santos*, 817 Phil. 363-391 (2017).

41 254 Phil. 882-892 (1989).

Labor Relations Commission.[42]

This was cited in *Joy Mart Consolidated Corp. v. Court of Appeals*[43] (*Joy Mart*) where the Court was confronted with the issue of whether the trial court continued to have control of the writ of preliminary injunction even after the same had been raised to the CA for review. The Court answered in the negative and pronounced that the respondents therein engaged in forum shopping when it petitioned the trial court to lift the writ after they questioned the same before the CA.

Likewise citing *Villanueva* and *Joy Mart,* the Court stated in *Top Rate Construction & General Services v. Paxton Development Corp.*,[44] (*Top Rate*) that in forum shopping, "[w]hat 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, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action."[45] In *Top Rate*, forum shopping was found to have been committed by petitioner therein and its lawyers in filing a petition before this Court while a second motion for consideration was still pending before the CA.

Markedly, notwithstanding the lack of jurisdiction of one forum, the grave evil sought to be prevented by the prohibition against forum shopping – the possibility of rendition of conflicting decisions – was evident in *Villanueva*, *Joy Mart*, and *Top Rate*.

In *Villanueva*, the Court was faced with the issue on the propriety of the writ of execution twice: one, in a case brought directly before it after the labor arbiter issued the writ; the other, in a case assailing the restraining order issued by the trial court enjoining the execution of the same writ. The first case was resolved pursuant to a compromise agreement between the parties during the pendency of the second case. In *Joy Mart*, the trial court dissolved the writ of preliminary injunction it earlier issued pending the resolution by the CA of the propriety of the issuance thereof. Lastly, in *Top Rate*, the CA reversed its earlier ruling despite the fact that this Court has already affirmed with finality the denial of petitioner's petition for review. Certainly, the Court could not turn a blind eye to the reprehensible act committed by the parties and their counsels in the foregoing cases.

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42 Id. at 888.
43 285 Phil. 315 (1992).
44 457 Phil. 740 (2003).
45 Id. at 748.

Such is not the case here. To reiterate, the NWRB did not even assume jurisdiction over the issue on the validity of the Program or the increased sewer rates. Even if the NWRB initially took cognizance of the issue, it made no further action after the issuance of the DOJ opinion. Clearly, the grave evil sought to be avoided would not occur in this case.

At this juncture, it must be stressed that *res judicata* is the conceptual backbone upon which forum shopping rests.[46] Jurisdiction is an essential requirement of the same. The pronouncement in *Villanueva*, *Joy Mart*, and *Top Rate* cannot be applied haphazardly without regard to the established test on the determination of the existence of forum shopping. Care must be taken when applying the ruling in the aforementioned cases. As in *Villanueva*, *Joy Mart*, and *Top Rate*, forum shopping may be committed despite the lack of jurisdiction of one forum when the circumstances of the case clearly present the grave evil sought to be prevented by the rule, *i.e.*, the possibility of rendition of conflicting decisions.

The mandate of the judiciary is to ensure that justice is administered. It would be contrary to our mandate if this Court would, as the RTC has done, outrightly dismiss a case on the ground of forum shopping when there is no other pending case nor a final judgment issued relating to said case. Relatedly, an omission in the certificate of non-forum shopping about an event that would not constitute *res judicata* and *litis pendentia*, as in this case, should not merit the dismissal of the case considering that the evils sought to be prevented by the said certificate are not present.[47]

As such, We affirm the CA in ruling that the RTC committed grave abuse of discretion when it dismissed MRHI's complaint-in-intervention on the ground of forum shopping notwithstanding NWRB's lack of jurisdiction over the subject matter of the case.

The exception to the mootness doctrine applies

As a rule, this Court may only adjudicate actual, ongoing controversies.[48] The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.[49]

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[46] *Pavlow v. Mendenilla*, 809 Phil. 24, 49 (2017).
[47] *Fuentebella v. Castro*, 526 Phil. 668, 678 (2006).
[48] *Pormento v. Estrada*, 643 Phil. 735, 738 (2010).
[49] Id.

A case becomes moot and academic when there is no justiciable controversy between the parties, thereby rendering the resolution of the same of no practical use or value.[50] When a case is moot and academic, this Court generally declines jurisdiction over it.[51] As an exception, the Court may choose to take cognizance of a case if it is capable of repetition yet evading review.[52] For the case to fall under the said exception, two (2) elements must concur: (i) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (ii) there was a reasonable expectation that the same complaining party would be subjected to the same action again.[53]

The Court agrees with MRHI that the issue on the increased sewer rates is capable of repetition yet evading review.

Here, the summary dismissal of the case by the court *a quo* prevented MRHI from fully ventilating its claim. Further, in the notices of public hearing for the proposed sewerage rates,[54] it is clear that the assailed imposition against sewer-only customers and sewer customers with dual water sources of a rate five times the customer's computed sewer charge is still in place. Clearly, despite the non-implementation of the Program and the alleged new rates, the issue raised by MRHI in its complaint-in-intervention persists and needs to be resolved. However, considering that factual determination is necessary in resolving the issues raised by MRHI in its complaint-in-intervention, the remand of the case is warranted since this Court is not a trier of facts.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated 28 February 2017 and the Resolution dated 23 October 2017 by the Court of Appeals in CA-G.R. S.P. No. 08412 are **AFFIRMED.** Civil Case No. 8849 is hereby **REMANDED** to the court of origin which is **DIRECTED** to resolve the case with dispatch.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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50 *Garcia v. Commission on Elections*, 328 Phil. 288, 292 (1996).
51 *Timbol v. Commission on Elections*, 754 Phil. 578, 584-585 (2015).
52 Id.
53 *Madrilejos v. Gatdula*, G.R. No. 184389, 24 September 2019 citing *Weinstein et al. v. Bradford*, 423 US 147 (1975).
54 *Rollo*, Vol. I, p. 582-589.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

RAMON PAUL L. HERNANDO
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice