REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **23 June 2021** *which reads as follows*:

"G.R. No. 205165 ***(Cathay Land, Inc. v. Brigadier General (Ret.) Angel Sadang).*** – On March 8, 2005, respondent Brigadier General (Ret.) Angel Sadang (respondent) filed a complaint docketed as Civil Case No. 70328 against petitioner Cathay Land, Inc. (petitioner) for abatement of nuisance and violation of Republic Act No. 8749 (RA 8749)[1] or the Philippine Clean Air Act of 1999, with damages.[2] The case was raffled to the Regional Trial Court (RTC) – Branch 157, Pasig City.[3]

Respondent averred that petitioner was the developer and owner of Astoria Plaza, a 35-storey condominium located at Escriva Drive, corner General Lukban Street, Pasig City. His house was adjacent to the Astoria Plaza.[4] Eventually, petitioner installed in Astoria Plaza four (4) power blowers/condensers, exhaust ducts, and two (2) units of 2,000 KVA diesel-fed Gensets. The installation of these machineries allegedly produced all kinds of air pollutants, excessive noise, smoke, noxious odor, and heat causing not only nuisance but also harm to his family's health and safety.[5] More, the operation of the machineries constituted a violation of RA 8749, particularly a violation of a person's right to breathe clean air.[6] Meanwhile, respondent stated in the certification of non-forum shopping attached to the complaint that he did not commence any legal action or proceeding involving abatement

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[1] Entitled "AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES." Approved on June 23, 1999.
[2] *Rollo*, p. 44.
[3] *Id.* at 55.
[4] *Id.* at 44.
[5] *Id.* at 119.
[6] *Id.* at 120.

of nuisance and violation of RA 8749 in the Supreme Court, the Court of Appeals, or any tribunal. He disclosed, however, that he previously filed a complaint before the Department of Environment and Natural Resources (DENR) through the Pollution and Adjudication Board (PAB) which was allegedly permissible under Section 42, RA 8749, *viz.*:

> **Section 42. *Independence of Action.*** - The filing of an administrative suit against such person/entity **does not preclude the right** of any other person **to file any** criminal or **civil action. Such civil action shall proceed independently**. (Emphasis supplied)

Respondent, thus, prayed that the operation of the subject machineries be abated pursuant to Section 8,[7] Article 682 of the Civil Code on easement against nuisance in relation to the Philippine Clean Air Act of 1999 and that petitioner be ordered to pay damages in the amount of ₱100,000.00.[8]

For its part, petitioner filed a motion to dismiss on ground of forum-shopping. It alleged that on September 14, 2000, respondent wrote a letter-complaint to the Environment Management Bureau (EMB) pertaining to the installation of subject machineries, that is, whether petitioner followed the standards and the rules and regulations in the installation and operation thereof.[9] Then, the letter-complaint had been endorsed to the PAB docketed as DENR – PAB Case No. 01-00102 – NCR for violation of Presidential Decree No. 984 (PD 984)[10] or entitled "*Providing for the Revision of Republic Act No. 3931, commonly known as the Pollution Control Law, and for other Purposes*."[11]

By Order[12] dated July 11, 2002, the PAB found that the noise generated by the blowers of Astoria Plaza failed to conform with the standard 55 decibel (dB) for residential area and 65 dB for commercial area. On whether the subject machineries emitted air pollutants, the PAB stated that the "DENR had no standard for hot air emissions, and that the air pollution was more of a nuisance since it involved odor emanating from respondent's kitchen."[13] The PAB subsequently endorsed the case to the local government of Pasig City.[14] Respondent appealed the order of PAB to the Office of the President which denied the appeal under Order[15] dated December 8, 2003. In fine, by filing a prior administrative case before the DENR – PAB, respondent violated the rule against forum-shopping.[16]

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[7] Article 682. Every building or piece of land is subject to the easement which prohibits the proprietor or possessor from committing nuisance through noise, jarring, offensive odor, smoke, heat, dust, water, glare and other causes.
[8] *Rollo*, p. 120.
[9] *Id.* at 71.
[10] Approved on August 18, 1976.
[11] *Id.* at 45.
[12] *Id.* at 87-89.
[13] *Id.* at 89.
[14] *Id.*
[15] *Id.* at 91-92.
[16] *Id.* at 45.

The Ruling of the RTC

By Order[17] dated October 24, 2005, the trial court rendered a judgment granting petitioner's motion to dismiss on ground of forum shopping considering the similarity of issues filed before the court and the DENR – PAB.

Respondent's motion for reconsideration was denied per Order[18] dated November 25, 2005.

The Ruling of the Court of Appeals

On appeal, the Court of Appeals reversed.[19]

It ruled that there was no forum shopping because the causes of action filed before the trial court and the DENR – PAB were not the same.[20] The case lodged before the DENR – PAB pertained to the installation and operation of the subject machineries and their subsequent removal which was allegedly in violation of existing standards and rules and regulations. On the other hand, in the civil case, respondent raised the triple issues of nuisance as governed by Article 682 of the Civil Code and violation of RA 8749 plus respondent's claim for damages which are beyond the jurisdiction of an administrative body to resolve. Hence, there could be no forum shopping to speak of.

The Court of Appeals thus granted respondent's appeal by Decision[21] dated March 31, 2011 and nullified the trial court's Orders[22] dated October 24, 2005 and November 25, 2005. Per Resolution[23] dated January 10, 2012, the Court of Appeals also directed the issuance of the corresponding entry of judgment, thus:

> "Considering that the Motion to Issue Final Entry of Judgment filed by the counsel for appellant on June 14, 2011; and the Tracer Report of the Postmaster of Quezon City dated July 26, 2011 that the registered letter no. 2748 was returned unclaimed for the reason that the addressee counsel for appellee was "no longer at given address"; the Court **RESOLVED**:
>
> Tracer Report is **NOTED** and for failure of counsel to inform the Court of new/forwarding address, service is deemed complete; and
>
> Let **Entry of Judgment** be issued."[24]

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[17] *Id.* at 55-57.
[18] *Id.* at 58.
[19] *Id.* at 43-53.
[20] *Id.* at 49.
[21] *Id.* at 43-53.
[22] *Id.* at 55-58.
[23] *Id.* at 32.
[24] *Id.*

The corresponding Entry of Judgment[25] dated June 28, 2011 was thereafter issued.

Eight (8) months later or on February 6, 2012, petitioner filed an "*Urgent Omnibus Motion to Set Aside Resolution dated 10 January 2012, To Recall Entry of Judgment dated 28 June 2011, To Admit and Give Due Course to the Attached Motion for Reconsideration, To Remand Case for Further Proceedings and To Set Aside Decision dated March 31, 2011.*"[26] Petitioner essentially averred that it did not receive a copy of the March 31, 2011 Decision of the Court of Appeals.[27]

By Resolution dated January 3, 2013, the Court of Appeals denied the omnibus motion for lack of merit. It held that it cannot be faulted for causing the service of its Decision dated March 31, 2011 on Atty. Larry Cabero (Atty. Cabero), petitioner's counsel, at his address on record at 23/F, Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City, absent any notice from said counsel that he, indeed, transferred to another office.[28]

The Court of Appeals noted, too, that it seemed peculiar why petitioner had received **all** its Resolutions and Notices **except** the assailed March 31, 2011 Decision.[29] And while petitioner denied receipt of this Decision, it later acknowledged having received a copy of the January 12, 2012, directing the issuance of entry of judgment which prompted it in filing the omnibus motion. The assailed March 31, 2011 Decision had therefore already become final and executory.[30]

The Present Petition

Petitioner now seeks affirmative relief from the Court *via* Rule 45 of the Rules of Court, claiming anew that since it did not receive the March 31, 2011 Decision of the Court of Appeals, the entry of judgment in the case should be recalled.[31]

In refutation, respondent maintains that the March 31, 2011 Decision of the Court of Appeals had already attained finality following the issuance of the entry of judgment dated June 28, 2011.[32]

Issue

Can the Court still review the assailed March 31, 2011 Decision of the Court of Appeals?

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[25] *Id.* at 33.
[26] *Id.* at 8-9.
[27] *Id.* at 37.
[28] *Id.* at 38.
[29] *Id.*
[30] *Id.* at 39.
[31] *Id.* at 6.
[32] *Id.* at 153.

Ruling

The petition is denied.

Petitioner asserts that it did not receive the March 31, 2011 Decision of the Court of Appeals, hence, the entry of judgment in the case should be recalled.

We are not persuaded.

Section 1, Rule VII of the 2009 Internal Rules of the Court of Appeals provides that "[u]nless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties."[33]

Here, the Tracer Report dated July 26, 2011 showed that the registered letter no. 2748 was returned unclaimed because the addressee, Atty. Cabero, petitioner's counsel "was no longer at the given address."[34] It is a matter of record that his office address on record is at 23/F, Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City and there is no notice on record that he transferred to another office. Hence, for all intents and purposes, his office address on record remains the same. Thus, when the Court of Appeals caused its March 31, 2011 Decision to be forwarded to this address, albeit petitioner's counsel was no longer there, it is deemed a valid service.[35] And from the date it was deemed served, the fifteen (15) day period began to run such that the lapse thereof, *sans* petitioner having filed either a motion for reconsideration or a petition for review on *certiorari*, necessarily resulted in the finality of the decision.

Macondray & Co., Inc. vs. Provident Insurance Corp.,[36] is in point, *viz.*:

> **If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision.** The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office. (Emphasis and underscoring supplied)

Notably, petitioner specifically indicated in its Memorandum before this Court that it holds office at 23rd Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City **which is the same office address** of Atty. Ronald Uy and Atty. Cabero.[37]

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[33] *Mateo v. Enriquez, Jr.*, G.R. No. 202995 (Notice), [September 6, 2016].
[34] *Rollo*, p. 32.
[35] See *Phil. Suburban Dev't. Corp. v. Court of Appeals*, 188 Phil. 213, 217 (1980).
[36] 487 Phil. 158, 167-168 (2004).
[37] *Rollo*, p. 243.

Mendoza v. Court of Appeals,[38] is relevant:

> **When a party lost the right to appeal on account of his own and his counsel's negligence, and, as a result of which, a judgment has attained finality, such party cannot thereafter unduly burden the courts by endlessly pursuing the due process routine** in an effort to frustrate the prompt implementation of final and executory judgment. (Emphasis and underscoring supplied)

Further, the Court cannot simply accept petitioner's untruthful denial of receipt of the unfavorable decision rendered against it. For this would render meaningless the guidelines set by the Rules of Court and jurisprudence for an orderly and expeditious procedure in the determination of lawsuits.[39] For aside from clogging the court dockets, such strategy is a common course resorted to by losing litigants in the hope of evading manifest obligations. The Court will not allow every defeated party, in order to salvage his case, to claim that he failed to receive the court's adverse ruling. In the end, court proceedings will become indefinite, and be subjected to reopening at any time.[40]

Verily, the Decision dated March 31, 2011 of the Court of Appeals can no longer be reviewed by this Court as it had since become final and immutable.[41]

WHEREFORE, the petition is **DENIED** in view of the finality of the Decision dated March 31, 2011 of the Court of Appeals in CA-G.R. CV No. 86402.

SO ORDERED." (**J. Lopez, J.**, designated additional member per Special Order No. 2822 dated April 7, 2021)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
22 JUL 2021

[38] 764 Phil. 53, 65 (2015).
[39] Supra note 35.
[40] See *Juani v. Alarcon*, 532 Phil. 585, 604 (2006).
[41] Supra note 33.

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Please notify the Court of any change in your address.
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