

BHAGWANI CHUGANI, PETITIONER, VS. HON. JUDGE FRANKLIN J. DEMONTEVERDE, PRESIDING JUDGE, RTC BRANCH 49, BACOLOD CITY AND MA. CORAZON VASQUEZ-DULAY, RESPONDENTS.

Ponente: DIY, J.

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DIY, J.:

Petitioner, by way of a petition filed under Rule 42 of the 1997 Rules of Civil Procedure, assails the October 3, 2008 Decision[2] of Branch 49 of the Regional Trial Court of Bacolod City. Said court affirmed in toto the April 3, 2008 Decision[3] of Branch 4, Municipal Trial Court in Cities of Bacolod City. Petitioner likewise questions the May 21, 2009 Order[4] of the court a quo denying his motion for reconsideration.[5]

The subject of the dispute is a 338-square meter lot denominated as Lot No. 154-A-1-B located at Gonzaga St., Bacolod City. Said lot is covered by Transfer Certificate of Title No. T-139362 registered in the name of Angeles Vasquez. A building which is erected on said lot houses the Indian Emporium, owned by herein petitioner.

Petitioner had been leasing the property since the early 1950's from respondent Ma. Corazon Vasquez-Dulay's parents, Jose and Angeles Vasquez (respectively, Jose and Angeles, for brevity). Petitioner claimed that the lease was renewed annually. Further, the original lessors would also secure advances from him chargeable to the rent. Petitioner likewise alleged that the last contract of lease executed prior to the time this controversy arose varied from the previous ones since such contract provided for a term of nine (9) years beginning May 1, 1998 and to expire on April 30, 2007. Said contract likewise provided for an option for the lessee to renew the contract for another nine (9) years subject to the terms and conditions as may be agreed upon by the parties.

Angeles thereafter died and Jose waived his rights over the property in favor of their heirs, leaving to the latter the administration of the property.

Sometime in August 2006, respondent and petitioner conducted talks regarding the renewal of the contract of lease which was to expire on April 30, 2007. Petitioner was not, however, amenable to the new terms and conditions imposed by the heirs of the original lessors. He found the rent exorbitant since he was required to pay P130,000.00 per month with advance rental payment for two (2) years. A yearly increase of ten (10) percent on the rent to take effect on the fourth year of the effectivity of the new contract was likewise allegedly imposed. Petitioner's previous privilege to sublease the property was also eliminated. Petitioner offered to pay a higher rent albeit a lower amount than that proposed by the heirs. However, the latter were not agreeable to petitioner's counterproposal. In short, petitioner and the heirs of the original lessors failed to forge a new agreement. The heirs thereafter repeatedly informed petitioner to signify his acceptance to their proposal on various dates which would be considered petitioner's deadlines. The heirs intended to start negotiations with other prospective lessees should they and petitioner fail to come to a new agreement. Petitioner, however, stood firm on his own counterproposals. The heirs thus entered into a new lease contract with Unitop International Group Co., which new contract was to take effect immediately after the expiry of the lease contract executed between petitioner and the original lessors.

On November 11, 2006, petitioner wrote to Jose asserting that petitioner had no unpaid obligation to his original

lessors. Petitioner further demanded for Jose to pay the latter's promissory note with a face value of P720,000.000. Subsequently on February 15, 2007, Haresh Chugani (hereinafter, Haresh), petitioner's son and attorney-in-fact, likewise wrote to Jose informing the latter that they are exercising their option to renew the lease contract for another 9 years.

On March 7, 2007, Haresh again sent a letter to Jose requesting that they reconcile their records regarding the P700,000.00 obligation Jose allegedly still owed them. Roberto (Roberto, for brevity), one of the heirs of the original lessors, wrote back contesting the veracity and correctness of the accounting. Roberto likewise reiterated their demand that defendants should vacate the premises on or before April 30, 2007 and that whatever may be the result of their accounting, respondent and her co-heirs intend to recover possession of the property not later than May 1, 2007.

On March 22, 2007, Haresh, as petitioner's attorney-in-fact, filed a complaint for specific performance and/or to fix reasonable rent of the lease with damages against Jose (specific performance case, for brevity).[6] The complaint alleged that the parties could not forge an agreement and consequently, there was no renewal of the contract of lease since respondent had been imposing unreasonable terms and conditions. Petitioner further claimed that the onerous terms of the new contract were purportedly designed to ease him out of the leased premises. Petitioner likewise indicated in his complaint that Jose had an obligation to pay petitioner the amount of P1,401,099.00 plus interest of 3% per month. Petitioner, in said complaint, prayed that Jose be ordered to execute a contract of lease in his favor effective for another nine (9) years under such reasonable and just terms and conditions that the court may fix and that petitioner be allowed to stay on the leased premises in the meantime. Petitioner likewise sought that Jose be ordered to pay Jose's obligation amounting to P1,401,099.00 plus agreed interest of 3% per month or in the alternative, that the same be applied as rent. Petitioner further prayed for moral and exemplary damages as well as attorney's fees.

On May 25, 2007, Roberto filed a case for injunction and damages (injunction case, for brevity) against petitioner before Branch 46, RTC of Bacolod City.[7] Roberto alleged in the complaint that he took over the possession of the leased premises after the expiration of the contract of lease with petitioner. The latter, however, as well as other persons acting in petitioner's behalf made several attempts to re-enter and regain possession of the property despite the expiration of their contract of lease. Roberto thus prayed that injunctive relief be issued against petitioner, the latter's agents, representatives, and other persons acting in his behalf from entering and interfering with the use, occupation and enjoyment of the property and that after trial on the merits, judgment be issued making such injunction permanent. Roberto likewise prayed that he be awarded actual damages, exemplary damages, and attorney's fees.

While both the specific performance and the injunction cases were pending, herein respondent claiming to represent all of the heirs of Jose and Angeles, filed an ejectment suit on September 21, 2007 before Branch 4, Municipal Trial Court in Cities (MTCC, for brevity), impleading petitioner, the latter's son, and attorney-in-fact Haresh Chugani, and an unnamed owner of another shop who is admittedly petitioner's sub-lessee. The case was docketed as Civil Case No. 31535 (ejectment suit, for brevity).[8]

On April 3, 2008, the MTCC granted respondent's complaint and directed petitioner, his son, and the unnamed sub-lessee to vacate the leased premises, remove the improvements thereon, and turn over the possession of the property to respondent. The MTCC likewise directed petitioner to pay the amount of P1,130,000.00 representing accrued rentals from May 1, 2007 to March 31, 2008 less any amount that may have been consigned with the court in the injunction case. The MTCC further ordered petitioner to pay the amount of P130,000.00 per month from the date of the decision until the time that petitioner, his son, and the unnamed sub-lessee shall vacate the premises and surrender possession thereof to respondent. The MTCC also awarded attorney's fees in the amount

of P50,000.00 in respondent's favor.[9]

Petitioner thereafter elevated the matter before the court a quo. On October 3, 2008, the court a quo rendered the now appealed decision affirming in toto the decision of the MTCC.[10] Petitioner moved for reconsideration[11] of the decision but the motion proved unavailing as on May 29, 2009, the court a quo denied petitioner's motion.[12] Petitioner is thus now before Us via the instant petition raising the following –

ASSIGNMENT OF ERRORS

1. Respondent Court (RTC) erred in not dismissing the complaint for ejectment (Unlawful Detainer) for lack of jurisdiction, the subject matter of the litigation being incapable of pecuniary estimation.
2. Respondent Court erred in not dismissing the complaint for ejectment (Unlawful Detainer) for failure to join the other co-owners who are indispensable parties as party-plaintiff.
3. Respondent Court erred in not dismissing the complaint for ejectment (Unlawful Detainer) there being no demand to vacate.
4. Respondent Court (RTC) erred in not dismissing the complaint for ejectment (Unlawful Detainer) on the ground of forum shopping.
5. Respondent Court (RTC) erred in not awarding the compulsory counterclaim of the petitioner in connection with the advances made by the original lessor.[13]

Petitioner seeks the reversal of the appealed decision contending that the court a quo erred in not dismissing the complaint on the aforesaid grounds. He further prays that respondent be directed to pay to petitioner the amount of P1,401,099.00 plus interest of 3% per month, which Jose owes to him, until fully paid, or in the alternative, to apply said amount to the extended lease and that respondent be directed to pay moral damages and exemplary damages as well as attorney's fees.

We shall resolve the aforesaid assigned errors in seriatim.

In his first assigned error, petitioner contends that the ejectment suit was essentially for the interpretation of a lease contract. He remonstrates that the case extended beyond matters which are not commonly involved in an ejectment case. Petitioner thus, argues that the case was one incapable of pecuniary estimation thus jurisdiction lies not with the MTCC, but with the RTC.

It is an elementary rule of procedural law that jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the matters to be consulted.[14]

The complaint filed in the case at bench is denominated as one for ejectment. An ejectment suit or accion interdical is a summary action for the recovery of physical possession where the dispossession has not lasted for more than one year. An action for ejectment may either be for forcible entry (detentacion) or unlawful detainer (desahucio).[15]

It is alleged in the complaint that petitioner entered into a contract of lease with respondent's predecessors-in-interest. Administration over the properties was later on relinquished in favor of the heirs. Hence, when the contract of lease was nearing its expiration, respondent, who was one of the heirs, notified petitioner of such fact and proposed new terms for the renewal of the lease. The parties, however, failed to agree on the terms

proposed by respondent, thus no new contract of lease was entered upon until the subsisting contract of lease expired. Since petitioner refused to vacate the leased premises and surrender possession thereof, respondent claimed to have been deprived of possession of the same. Respondent, through the ejectment suit, thus sought the eviction of petitioner from the property and the return of its possession to them.

The material allegations as well as the reliefs prayed for in the case at bench show that the complaint is one for unlawful detainer. Considering that these circumstances sufficiently allege a cause of action for unlawful detainer, the case was properly filed before the MTCC pursuant to Section, 1, Rule 70 of the 1997 Rules of Civil Procedure. It was thus erroneous for petitioner to say that the court a quo erred in not dismissing the complaint on this ground.

Petitioner next ascribes reversible error on the part of the court a quo in not dismissing the complaint for ejectment on the ground of respondent's failure to implead all the co-owners as party-plaintiffs. Petitioner argues that all the co-owners, being indispensable parties, should have been impleaded. Petitioner cites *Regner v. Logarta*[16] where it was held that co-owners who are not parties to the suit must be impleaded to avoid harassing a defendant by as many succeeding actions of ejectment as there might be co-owners.

Petitioner is mistaken.

Indeed, indispensable parties must be impleaded in order that final determination can be had of an action.[17] Jurisprudence in fact instructs that when indispensable parties are not before the court, the action should be dismissed.[18] Article 487 of the Civil Code, however, clearly provides that any of the co-owners may bring an action in ejectment.

In *Mendoza v. Coronel*,[19] it was categorically held:

We reiterate the *Arcelona* ruling that the controlling law is Article 487 of the Civil Code which categorically states:

Any one of the co-owners may bring an action in ejectment.

Article 487 is a departure from the rule laid down in the case of *Palarca v. Baguisi* which held that an action for ejectment must be brought by all the co-owners. As explained by Tolentino, the law now allows a co-owner to bring an action for ejectment, which covers all kinds of actions for the recovery of possession, including forcible entry and unlawful detainer, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.

In the earlier case of *Marmo v. Anacay*,[20] the Supreme Court made a thorough disquisition on the matter in this wise:

Section 7, Rule 3 of the Revised Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants. Jurisprudence further holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.

When the controversy involves a property held in common, Article 487 of the Civil Code explicitly provides that "any one of the co-owners may bring an action in ejectment".

We have explained in *Vencilao v. Camarenta* and in *Sering v. Plazo* that the term "action in ejectment"

includes a suit for forcible entry (detentacion) or unlawful detainer (desahucio). We also noted in *Sering* that the term "action in ejectment" includes "also, an accion publiciana (recovery of possession) or accion reivindicatoria (recovery of ownership)". Most recently in *Estreller v. Ysmael*, we applied Article 487 to an accion publiciana case; in *Plasabas v. Court of Appeals* we categorically stated that Article 487 applies to reivindicatory actions.

We upheld in several cases the right of a co-owner to file a suit without impleading other co-owners, pursuant to Article 487 of the Civil Code. We made this ruling in *Vencilao*, where the amended complaint for "forcible entry and detainer" specified that the plaintiff is one of the heirs who co-owns the disputed properties. In *Sering*, and *Resuena v. Court of Appeals*, the co-owners who filed the ejectment case did not represent themselves as the exclusive owners of the property. In *Celino v. Heirs of Alejo and Teresa Santiago*, the complaint for quieting of title was brought in behalf of the co-owners precisely to recover lots owned in common. In *Plasabas*, the plaintiffs alleged in their complaint for recovery of title to property (accion reivindicatoria) that they are the sole owners of the property in litigation, but acknowledged during the trial that the property is co-owned with other parties, and the plaintiffs have been authorized by the co-owners to pursue the case on the latter's behalf.

These cases should be distinguished from *Baloloy v. Hular* and *Adlawan v. Adlawan* where the actions for quieting of title and unlawful detainer, respectively, were brought for the benefit of the plaintiff alone who claimed to be the sole owner. We held that the action will not prosper unless the plaintiff impleaded the other co-owners who are indispensable parties. In these cases, the absence of an indispensable party rendered all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

We read these cases to collectively mean that where the suit is brought by a co-owner, without repudiating the co-ownership, then the suit is presumed to be filed for the benefit of the other co-owners and may proceed without impleading the other co-owners. However, where the co-owner repudiates the co-ownership by claiming sole ownership of the property or where the suit is brought against a co-owner, his co-owners are indispensable parties and must be impleaded as party-defendants, as the suit affects the rights and interests of these other co-owners.

(Emphasis Ours)

Petitioner's reliance on *Regner v. Logarta*[21] is misplaced. The factual milieu of said case is not on all fours with case at bench. *Regner* involved a complaint for declaration of nullity of deed of donation where the Supreme Court categorically held that all the co-owners must be impleaded being indispensable parties. The case under consideration is one for ejectment where a co-owner is allowed under Article 487 of the Civil Code to bring an action in behalf of and for the benefit of all the other co-owners.

Petitioner next questions the decision of the court a quo in affirming the MTCC thus upholding his eviction from the leased premises when the case for unlawful detainer should have been dismissed for lack of prior demand.

Indeed, Section 2, Rule 70 of the 1997 Rules of Civil Procedure states:

SEC. 2. Lessor to proceed against lessee only after demand. – Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

Jurisprudence, however, instructs that demand to vacate is not a jurisdictional requirement when the ground for ejectment is the expiration of term of the lease contract for in such case, the notice/demand to vacate serves no

other purpose than to make known the lessor's intention to terminate the lease contract.[22] In the case at bench, the contract of lease expired on April 30, 2007. No contract of lease was thereafter entered into by and between petitioner and respondent. The ejectment suit was then instituted on September 21, 2007 or within the one-year prescriptive period of filing the action. Petitioner's plea for dismissal on the ground of lack of prior demand is thus rendered without any legal leg to stand on.

Petitioner would, however, insist that the contract of lease had been renewed as he opted to exercise his right to do so under the prevailing contract of lease. On this point, the ruling in *LL & Company Development and Agro-Industrial Corporation v. Huang Chao Chun*[23] is enlightening, thus:

A stipulation in a lease contract stating that its five-year term is subject to "an option to renew" shall be interpreted to be reciprocal in character. Unless the language shows an intent to allow the lessee to exercise it unilaterally, such option shall be deemed to benefit both the lessor and the lessee who must both consent to the extension or renewal, as well as to its specific terms and conditions.

In said case, the Supreme Court reasoned:

Citing *Koh v. Ongsiaco and Cruz v. Alberto*, the MeTC — upheld by the RTC and the CA — ruled that the stipulation in the Contract of Lease providing an option to renew should be construed in favor of and for the benefit of the lessee. This ruling has however, been expressly reversed in *Fernandez v. CA*, from which we quote:

It is also important to bear in mind that in a reciprocal contract like a lease, the period of the lease must be deemed to have been agreed upon for the benefit of both parties, absent language showing that the term was deliberately set for the benefit of the lessee or lessor alone. We are not aware of any presumption in law that the term of a lease is designed for the benefit of the lessee alone. *Koh and Cruz* in effect rested upon such a presumption. But that presumption cannot reasonably be indulged in casually in an era of rapid economic change, marked by, among other things, volatile costs of living and fluctuations in the value of the domestic currency. The longer the period the more clearly unreasonable such a presumption would be. In an age like that we live in, very specific language is necessary to show an intent to grant a unilateral faculty to extend or renew a contract of lease to the lessee alone, or to the lessor alone for that matter. We hold that the above-quoted rulings in *Koh v. Ongsiaco and Cruz v. Alberto* should be and are overruled."

The foregoing doctrine was recently reiterated in *Heirs of Amando Dalisay v. Court of Appeals*. Thus, pursuant to *Fernandez*, *Dalisay* and Article 1196 of the Civil Code, the period of the lease contract is deemed to have been set for the benefit of both parties. Its renewal may be authorized only upon their mutual agreement or at their joint will. Its continuance, effectivity or fulfillment cannot be made to depend exclusively upon the free and uncontrolled choice of just one party. While the lessee has the option to continue or to stop paying the rentals, the lessor cannot be completely deprived of any say on the matter. Absent any contrary stipulation in a reciprocal contract, the period of lease is deemed to be for the benefit of both parties.

We point out that in the case before Us, while the contract of lease granted the lessee the option to renew the contract, the same equally explicitly provided that such right shall be subject to the terms and conditions that the parties may agree upon. The records show that the parties were never able to forge any agreement. The contract of lease was, consequently, never renewed contrary to petitioner's assertion.

Petitioner further claims that forum shopping was obtaining in this case and the court a quo erred in not dismissing the complaint. Petitioner pointed out that Roberto, respondent's co-heir, already instituted a case for injunction seeking to enjoin petitioner from "entering and interfering with the use, occupation, and enjoyment of the property"[24] which seeks the same relief as the ejectment case filed by respondent.

There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case

will amount to res judicata in another.[25]

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as lis pendens and auter action pendant. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits. The elements of litis pendentia are as follows: (1) identity of the parties in the two actions; (2) substantial identity in the causes of action and in the reliefs sought by the parties; and (3) the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to res judicata in the other.[26]

Both courts ruled that there was no forum-shopping ratiocinating that an action for injunction is different from an ejectment suit. On this score, We disagree. We find that litis pendentia between the injunction case and the ejectment suit is extant. First, there is identity of parties. While the cases were instituted by different persons against petitioner, these cases were brought for the protection of the interest of the heirs of Jose and Angeles. Second, the two (2) cases involved the same property. Third, both cases seek to prevent petitioner from occupying and possessing the property on the ground that the contract of lease had already expired. And fourth, a decision in one case is determinative of the other case as would amount to res judicata in the other. A decision in the unlawful detainer seeking the ouster of petitioner from the leased premises on the ground of the expiration of the lease contract would be determinative of the outcome of the injunction case which sought the enjoinder of petitioner and any other person acting in his behalf from entering the property on account of the expiration of the same lease contract.

Indeed, *Hilario v. Court of Appeals, et al.*, [27] citing *Wilmon Auto Supply Corporation, et al. v. Court of Appeals, et al.*, [28] declared that injunction suits instituted before the RTC do not abate ejectment suits filed before the MTC. However, it should be pointed out that the injunction suits instituted in these cases were anchored on issues of ownership.[29] We point out that forcible entry and unlawful detainer cases under Rule 70 are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[30] It should be stressed that in the case at bench, both the injunction and ejectment suits sought the eviction of petitioner from the leased premises on the ground of the expiration of the contract of lease.

As a general rule, where litis pendentia obtains, one of two pending actions is abated and preference is given to the first action filed to be retained. Hence, as a rule, the later action should be dismissed. This is in accordance with the maxim, *qui prior est tempore, potior est jure*. [31] The rule, however, is not ironclad. In *Benavidez v. Salvador*, [32] the Supreme Court elucidated:

With the foregoing, which case then should be dismissed? At first glance, it would seem that Civil Case No. 00-5660 or the complaint filed with RTC-Antipolo should have been dismissed applying the "priority-in-time rule." This rule, however, is not ironclad. The rule is not applied if the first case was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. A crucial consideration is the good faith of the parties. In recent rulings, the more appropriate case is preferred and survives. In *Spouses Abines v. BPI*, it was written:

There is no hard and fast rule in determining which of the actions should be abated on the ground of litis pendentia, but through time, the Supreme Court has endeavored to lay down certain criteria to guide lower courts faced with this legal dilemma. As a rule, preference is given to the first action filed to be retained. This is in accordance with the maxim *Qui prior est tempore, potior est jure*. There are, however, limitations to this rule. Hence, the first action may be abated if it was filed merely to pre-empt the later action or to anticipate its

filing and lay the basis for its dismissal. Thus, the bona fides or good faith of the parties is a crucial element. A later case shall not be abated if not brought to harass or vex; and the first case can be abated if it is merely an anticipatory action or, more appropriately, an anticipatory defense against an expected suit — a clever move to steal the march from the aggrieved party.

Another exception to the priority in time rule is the criterion of the more appropriate action. Thus, an action, although filed later, shall not be dismissed if it is the more appropriate vehicle for litigating the issues between the parties.

In the relatively recent case of *Dotmatrix Trading v. Legaspi*, the Court had the occasion to extensively discuss the various rules and consideration in determining which case to dismiss in such situations. It included its analysis of *Abines*. Thus:

Early on, we applied the principle of *Qui prior est tempore, potior est jure* (literally, he who is before in time is better in right) in dismissing a case on the ground of *litis pendentia*. This was exemplified in the relatively early case of *Del Rosario v. Jacinto* where two complaints for reconveyance and/or recovery of the same parcel of land were filed by substantially the same parties, with the second case only impleading more party-plaintiffs. The Court held that "parties who base their contention upon the same rights as the litigants in a previous suit are bound by the judgment in the latter case." Without expressly saying so in *litis pendentia* terms, the Court gave priority to the suit filed earlier.

In *Pampanga Bus Company, Inc. v. Ocfemia*, complaints for damages arising from a collision of a cargo truck and a bus were separately filed by the owners of the colliding vehicles. The complaint of the owners of the cargo truck prevailed and the complaint of the owners of the bus had to yield, as the cargo truck owners first filed their complaint. Notably, the first and prevailing case was far advanced in development, with an answer with counterclaim and an answer to the counterclaim having been already filed, thus fully joining the issues.

In *Lamis Ents. v. Lagamon*, the first case was a complaint for specific performance of obligations under a Memorandum of Agreement, while the second case was a complaint for sums of money arising from obligations under a promissory note and a chattel mortgage, and damages. We dismissed the second case because the claims for sums of money therein arose from the Memorandum of Agreement sued upon in the first case.

Ago Timber Corporation v. Ruiz offered an insightful reason after both parties had each pleaded the pendency of another action between the same parties for the same cause. The Court ruled that the second action should be dismissed, "not only as a matter of comity with a coordinate and co-equal court (citation omitted), but also to prevent confusion that might seriously hinder the administration of justice. (citation omitted)."

In all these cases, we gave preference to the first action filed to be retained. The "priority-in-time rule," however, is not absolute.

In the 1956 case of *Teodoro v. Mirasol*, we deviated from the "priority-in-time rule" and applied the "more appropriate action test" and the "anticipatory test."

The "more appropriate action test" considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled. In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties — whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract; this was the subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

In the "anticipatory test," the bona fides or good faith of the parties is the critical element. If the first suit is

filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed. In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.

We also applied the "more appropriate action test" in *Ramos v. Peralta*. In this case, the lessee filed an action for consignation of lease rentals against the new owner of the property, but the new owner moved to dismiss the consignation case because of the quieting of title case he had also filed against the lessee. Finding that the real issue between the parties involved the right to occupy/possess the subject property, we ordered the dismissal of the consignation case, noting that the quieting of title case is the more appropriate vehicle for the ventilation of the issues between them; the consignation case raised the issue of the right to possession of the lessee under the lease contract, an issue that was effectively covered by the quieting of title case which raised the issue of the validity and effectivity of the same lease contract.

In *University Physician Services, Inc. v. Court of Appeals*, we applied both the "more appropriate action test" and "anticipatory test." In this case, the new owner of an apartment sent a demand letter to the lessee to vacate the leased apartment unit. When the lessee filed an action for damages and injunction against the new owner, the new owner moved for the dismissal of the action for damages on account of the action for ejectment it had also filed. We noted that ejectment suit is the more appropriate action to resolve the issue of whether the lessee had the right to occupy the apartment unit, where the question of possession is likewise the primary issue for resolution. We also noted that the lessee, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming; the lessee's filing of the complaint for damages and injunction was but a canny and preemptive maneuver intended to block the new owner's action for ejectment.

We also applied the "more appropriate action test" in the 2003 case *Panganiban v. Pilipinas Shell Petroleum Corp.*, where the lessee filed a petition for declaratory relief on the issue of renewal of the lease of a gasoline service station, while the lessor filed an unlawful detainer case against the lessee. On the question of which action should be dismissed, we noted that the interpretation of a provision in the lease contract as to when the lease would expire is the key issue that would determine the lessee's right to possess the gasoline service station. The primary issue — the physical possession of the gasoline station — is best settled in the ejectment suit that directly confronted the physical possession issue, and not in any other case such as an action for declaratory relief.

A more recent case — *Abines v. Bank of the Philippine Islands* in 2006 — saw the application of both the "priority-in-time rule" and the "more appropriate action test." In this case, the respondent filed a complaint for collection of sum of money against the petitioners to enforce its rights under the promissory notes and real estate mortgages, while the petitioners subsequently filed a complaint for reformation of the promissory notes and real estate mortgages. We held that the first case, the collection case, should subsist because it is the first action filed and the more appropriate vehicle for litigating all the issues in the controversy. We noted that in the second case, the reformation case, the petitioners acknowledged their indebtedness to the respondent; they merely contested the amounts of the principal, interest and the remaining balance. We observed, too, that the petitioners' claims in the reformation case were in the nature of defenses to the collection case and should be asserted in this latter case.

Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.

In the instant case, We apply the "more appropriate action test" pursuant to the ruling in *Teodoro v. Mirasol*[33] and rule that the ejectment suit should be given preference albeit filed later than the injunction case. In *Teodoro*,

the Supreme Court gave preference to an unlawful detainer case as against a case for specific performance/declaratory relief. The Supreme Court reasoned therein that the real issue between the parties was whether plaintiff-appellant in said case should be allowed to continue occupying the land under the terms of the lease contract. The Supreme Court thus concluded that said matter can be adequately addressed in the case for unlawful detainer thus dispensing the need to thresh out the matters in a specific performance/declaratory relief case. We find such ruling apropos taking into consideration the factual milieu of this case.

Finally, petitioner laments that the court a quo erred in not granting his counterclaim.

We, unfortunately, cannot rule on the propriety of the court a quo's refusal to grant the counterclaim. We point out that no evidence had been proffered before Us to substantiate said claim. We, perforce, affirm the court a quo's finding on this matter.

WHEREFORE, premises foregoing, the appealed October 3, 2008 Decision of Branch 49, Regional Trial Court of Bacolod City as well as its May 21, 2009 Order are hereby **AFFIRMED** with the modification that the complaint in Civil Case No. 07-13016 entitled "Injunction with Damages" is abated and is ordered **DISMISSED**.

SO ORDERED.

Maxino, and Diy, JJ., concur.

[1] The court a quo should not have been impleaded as a respondent pursuant to Section 2(a), Rule 42 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 221-226.

[3] Ibid., pp. 156-179.

[4] Ibid., p. 265.

[5] Ibid., pp. 227-242.

[6] Rollo, pp. 38-52.

[7] Ibid., pp. 53-59.

[8] Ibid., pp. 60-79.

[9] Supra., see note no. 3.

[10] Supra., see note no. 2.

[11] Supra., see note no. 5.

[12] Supra., see note no. 4.

[13] Rollo, p. 13.

[14] Rapsing v. Ables, G.R. No. 171855, October 15, 2012.

[15] Corpuz v. Spouses Agustin, G.R. No. 183822, January 18, 2012.

[16] Rollo, p. 17; infra.

[17] Section 7, Rule 3, 1997 Rules of Civil Procedure.

- [18] Cañez v. Rojas, G.R. No. 148788, November 23, 2007.
- [19] G.R. No. 156402, February 13, 2006.
- [20] G.R. No. 182585, November 27, 2009.
- [21] G.R. No. 168747, October 19, 2007.
- [22] Tubiano v. Razo, G.R. No. 132598, July 13, 2000.
- [23] G.R. No. 142378, March 7, 2002.
- [24] Rollo, p. 57.
- [25] Benavidez v. Salvador, G.R. No. 173331, December 11, 2013.
- [26] Ibid.
- [27] G.R. No. 121865, August 7, 1996.
- [28] G.R. No. 97637, April 10, 1992
- [29] Nacorda v. Yatco, G.R. No. L-19520, August 12, 1966.
- [30] Palattao v. Court of Appeals, G. R. No. 131726, May 7, 2002.
- [31] Spouses Abines v. BPI, G.R. No. 167900, February 13, 2006.
- [32] Supra.
- [33] G.R. No. L-8934, May 18, 1956.

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