

SPOUSES ANGEL M. LAM AND CAROLINA U. LAM, PETITIONERS, VS. HON. SEVERINO B. DE CASTRO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 83, REGIONAL TRIAL COURT OF QUEZON CITY, ...

Ponente: VIDAL, M.D., J.

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VIDAL, M.D., J.:

Before Us is a Petition[1] for Certiorari under Rule 65 of the Revised Rules of Court with prayer for a Writ of Preliminary Injunction and Restraining Order under Rule 58, seeking to annul and set aside the Order[2] dated 28 January 2005 issued by the Regional Trial Court of the National Capital Judicial Region, Branch 82 of Quezon City presided by public respondent, Judge SEVERINO B. DE CASTRO, in Civil Case No. Q-04-52745 and the subsequent Order[3] dated 12 July 2005, denying the Petitioners' Motion for Reconsideration. The fallo of the assailed Order dated 28 January 2005 reads:

“WHEREFORE, defendant Marlowe Jacutin's Motion to Dismiss dated September 3, 2004 and defendant Hernani Panganiban's Motion to Dismiss dated September 9, 2004 are both hereby GRANTED and the instant case is hereby DISMISSED.[4]

The subsequent Order supra dated 12 July 2005 denying the Motion for Reconsideration, dispositively states:

“WHEREFORE, for lack of merit, plaintiffs' Motion for Reconsideration dated February 14, 2005 is hereby DENIED.[5]

SO ORDERED.”

THE FACTS

As synthesized by the Metropolitan Trial Court (MTC) of Quezon City, Branch 42 wherein Plaintiffs-Petitioners Spouses, ANGEL M. LAM and CAROLINA U. LAM (hereinafter Petitioners) instituted initially a complaint for Forcible Entry and Damages against the Defendants-Respondents:

From the pleadings submitted by the plaintiffs, it appears that since 1992, the latter are in possession of a lot located at the Don Mariano Marcos Avenue corner Regalado Street, Fairview, Quezon City. Sometime in 1996, plaintiffs received a letter from the GSIS claiming that it owns the aforementioned lot. In view thereof, plaintiffs offered to buy the subject lot from the GSIS. Consequently, a bidding was conducted for which no other persons except the plaintiffs participated. Thereafter, negotiations between the plaintiffs and the GSIS for the sale of the subject lot went on smoothly but the transaction did not materialize as the same was overtaken by the then National Elections and a change of administration. In consonance with the Quezon City Government's “Clean and Green Program”, plaintiffs built recently a concrete fence around the subject lot for which they spent almost P100,000.00 therefor. Early this year, plaintiff (sic) likewise coordinated with and sought the help of the Mayor's Office of Quezon City to help them exercise their rights of first refusal over the subject lot which they converted into a well- developed garage with big steel gate for their buses. The Mayor's response was very positive.

On March 3, 2004, the defendants, through their minions swooped down the subject premises without the permission or consent of the plaintiffs or any court order and demolished all the structures inside it, the buses driven out of the garage and the people therein forcibly evicted therefrom. Thereafter, guards were posted at the gate of the premises, thus effectively preventing plaintiffs and their employees from entering it.

In their pleadings submitted before the court, the defendants denied the allegations of the plaintiffs. They claim that they were merely performing their duties and functions and in good faith in accordance with the provisions of PD 1096 otherwise known as the National Building Code of the Philippines and its implementing Rules and Regulations; that in the performance of their duties and functions as mandated by law, they had faithfully complied with the basic requirements of due process as shown by the following chronology of events that led to the March 3, 2004 demolition:

- On August 14, 2003, President and General Manager of Government Service Insurance System (GSIS for short) Mr. Winston F. Garcia wrote a letter-complaint to the Hon. Feliciano R. Belmonte, Jr. City Mayor of Quezon City regarding the unlawful occupation and illegal construction of Carolina U. Ulam on the lot of GSIS located along Commonwealth Avenue, adjacent to Mc Donald's Burger House containing an area of 2,076 square meters and covered by TCT Nos. RT-32872 and RT-32373. In this said letter, Mr. Garcia requested the City Mayor's intercession regarding the immediate implementation of May 23, 2002 letter of Mr. Octavio Cabrega, Hearing Officer, Task Force for the Control and Prevention of Illegal squatting syndicate (COPRISS), to Mr. Marlowe Y. Jacutin, Task Force Head, for authority to remove/ dismantle the structures within the subject property by virtue of the provision of PD 1906. Copy of said letter of Mr. Winston F. Garcia dated August 24, 2003 is hereto attached as Annex "A".

- On September 5, 2003, Task Force Head Marlowe Y. Jacutin wrote the Honorable Feliciano R. Belmonte Jr. City Mayor of Quezon City regarding the letter of Mr. Winston F. Garcia in connection with the GSIS property located along Commonwealth Avenue, where CUL Transit is occupying with structures built housing their office.

Mr. Jacutin informed the City mayor in his said letter that he had endorsed this case to Engr. Joselito B. Cabungcal, City Engineer/ Building Official of Quezon City for issuance of an order authorizing his office to dismantle the subject structure there being no order yet issued at that time. Copy of said letter of Marlowe Y. Jacutin dated September 5, 2003 is hereto attached as Annex "B".

- It shall be recalled that prior to the above incident, on July 14, 2003, defendants Engrs. Jeffrey Peralta and Everec Galura, Building Inspection Officers of the Quezon of the City Engineer/ Building Official of Quezon City, with the approval of Engr. Edwin L. Pajara, Deputy Chief-Dist. II-B Enforcement and Inspection Division duly gave notice to Carolina Lam for violation of Section 301 and 309 of the National Building Code and requested the latter to report to the Office of the City Engineer Building Officials at 8th Floor, Quezon City Hall Bldg. regarding letter complaint on these illegal structures. The Notice of Violation was duly served upon Carolina Lam thru Alex Balalo who received the letter of her. Copy of the Notice of Violation is hereto attached as Annex "C";

- Likewise, on July 16, 2003, Engrs. Jeffrey Peralta and Everec Galura submitted to the Chief, Enforcement and Inspection Division their report on Mission Order No. 4360 after they had conducted ocular inspection on the premises of Carolina Lam on July 14, 2003 which said report was duly noted by Engr. Edwin L. Pajara, Deputy Chief Dist. II-B-Enforcement and Inspection Division. Copy of said Report on Mission Order No. 4360 is hereto attached as Annex "D";

- On September 1, 2003, Engr. Edwin L. Pajara Deputy-Chief Dist. II-B Enforcement and Inspection / Hearing Officer, issued Subpoena Duces Tecum to Carolina Lam relative to the complaint for illegal construction etc. ordering her to appear before the office on September 3, 2003 at 11:00AM. For the purpose as follows:

1. Testify in the said case.

2. Bring along pertinent building permit document/ title, occupancy certificate, etc;
3. Submit to clarificatory questioning.

which was received by her secretary Marivel U. Jamolin on Septemebr 9, 2003. Copy of said Subpoena/ Subpoena Duces Tecum is hereto attached as Annex “E”;

- On September 29, 2003, another Subpoena/ Subpoena Duces Tecum was issued to Carolina Lam to appear before that office on October 7, 2003 at 11:00 A.M signed by Engr. Edwin L. Pajara, Deputy Chief-Dist. II-B, Enforcement and Inspection Division, office of the Building Officials, Quezon City relative to the case also for the purposes such as abovementioned which was duly served by her secretary Marivel U. Jamolin on October 1, 2003, copy of the same is hereto attached as Annex “F”;

- Carolina Lam thru one Valen Camu received an invitation for Administrative Hearing signed and issued by Engr. Edwin Pajara Deputy-Chief Dist. II-B Enforcement and Inspection Division, Office of the Building Official Case No.03-078 on illegal structures erected inside the subject property for the purpose, to wit; 1) To testify in the above- entitled case; 2) Bring along pertinent permit/ documents, title, occupancy certificate etc; 3) Submit to clarificatory questioning. Copy of said Invitation for Administrative hearing is hereto attached as Annex “G”;

- Despite due notice to Carolina Lam, she or any representative failed to appear in the hearing of the above-entitled case on October 7, 2003. The hearing was reset to October 21, 2003 at 10:30 A.M. Copy of the Minutes of Hearing is hereto attached as Annex “H”;

- On October 21, 2003, during the hearing of the aforementioned Building Official Case No.03-078, through a representative of plaintiff Carolina Lam appeared, but she failed to present any document such as building permit causing the Hearing Officer Engr. Edwin L. Pajara to recommend the issuance of demolition order. Copy of the Minutes of Hearing held on October 21, 2003 is hereto attached as Annex “I”;

- On November 10, 2003, Engr. Joselito B. Cabungcal, City Engineer/ Building Official of Quezon City, issued an order directing Carolina Lam to remove the structures inside the subject property within fifteen (15) days from receipt of the order, otherwise demolition of the same will be effected by the Head, Task Force COPRISS. Copy of said Order is hereto attached as Annex “J”;

- On January 6, 2004, Engr. Joselito B. Cabungcal issued another order addressed to the Head Task Force COPRISS, Marlowe Y. Jacutin for the implementation of the order dated November 10, 2003. Copy of said Order is hereto attached as Annex “K”;

- On January 19, 2004, Task Force COPRISS through Romeo Espino, Head-Operation sent to Carolina Lam “Paunawa ng Pagbabaklas” giving her seven (7) days from receipt of the notice within which to remove the illegal structures. The notice was received by her Secretary Marivel U. Jamolin on January 19, 2004. Copy of said “Paunawa ng Pagbabaklas” dated January 19, 2004 is hereto attached as Annex “L”;

- For her failure to remove the illegal structures within said period, on January 26, 2004, Head task Force COPRISS, Marlowe Y. Jacutin, still sent to Carolina Lam another “Paunawa ng Pagbabaklas” giving her fifteen (15) days from receipt thereof within which to remove the illegal structures. The notice was received by one Gemma on January 26, 2004. Copy of said “Paunawa ng Pagbabaklas” dated January 26, 2004 is hereto attached as Annex “M”;

After trial the MTC rendered its Decision in the Forcible Entry with Damages case filed by herein Petitioners against herein Respondents, EDWIN PAJARA, ET AL, the dispositive portion thereof reads:

“WHEREFORE, the judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering

said defendants to restore plaintiffs to the peaceful possession of the subject premises.

Defendants counterclaims are dismissed.

SO ORDERED”[7]

Subsequently, Petitioners instituted the instant case against the Respondents to recover damages and for the return of the possession of their CUL Bus with body No.70008 and plate late No. TVR 670 which was allegedly taken from the above-mentioned premises when demolition of their structures was done. The case was docketed as Civil Case No. Q-04-527458 and raffled to Branch 83 of the Regional Trial Court of Quezon City which issued the assailed Orders, *supra*.

Hence, Petitioners come now before Us raising the following assigned errors:

A.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE PETITIONERS' COMPLAINT FOR REPLEVIN (DELIVERY OF PETITIONERS' BUS WHICH WAS ILLEGALLY TAKEN BY THE RESPONDENTS IN CONCERT WITH ONE ANOTHER) ON THE ALLEGED GROUND LACK OF CAUSE OF ACTION [9][;]

B.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING IN ITS ASSAILED ORDER DATED JANUARY 28, 2005 THAT PETITIONERS ARE ALLEGEDLY GUILTY OF LITIS PENDENTIA OR FORUM SHOPPING FOR FILING THE SUBJECT COMPLAINT FOR REPLEVIN BEFORE RTC DESPITE THE FACT THAT THEY PREVIOUSLY FILED AN ACTION FOR FORCIBLE ENTRY AGAINST THE RESPONDENTS BEFORE THE MTC [10][;]

The Petition is impressed with merit.

Anent the 1st assigned error, petitioners submit that the court a quo committed grave error in concluding that there exist no cause of action.[11] A reading however of the assailed order reveals that the dismissal of the case was on ground of failure of the complaint to state a cause of action. The Court a quo's order pertinently states:

“From the facts alleged in the amended complaint, there is no showing that defendant Hernani Panganiban has committed acts which could have violated plaintiffs' rights. While the complaint made repeated mention of a “demolition team” who was allegedly responsible for the unlawful destruction of the structures in plaintiffs' garage, it was never alleged that defendant Hernani Panganiban was actually present at the time of the said demolition or that he has direct hand in the enforcement thereof. Neither is there a showing that he has participated in the alleged unlawful taking of the subject property or that the same is presently in his possession. Hence, the complaint failed to state a cause of action against him”[12] (underscoring supplied)

Ergo, contrary to Petitioners' contention, it is not the want of cause of action which was the basis of the dismissal by the court a quo of Petitioners' complaint but rather the manifest and evident failure to state a cause of action in the aforesaid complaint.

Failure to state a cause of action is essentially different from lack of cause of action.[13] The former refers to the insufficiency of allegation in the pleading whereas the latter refers to the insufficiency of factual basis for the action.[14] In the instant case, it is not the lack or absence of cause of action wherein the ground for dismissal was anchored by the Court a quo but the fact that the complaint states no cause of action in so far as the case of Respondent HERNANI PANGANIBAN is concerned. A case is dismissible based on the fact that the Complaint, on the face thereof, evidently states no cause of action.[15]

In fact, no less than the Petitioners themselves averred that the sufficiency of the cause of action must appear on the face of the complaint itself in order to sustain a dismissal on that ground.[16] Indeed, for failure to state a cause of action there is no basis to override the findings of the court a quo, absent grave abuse of discretion on its part. There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as when the assailed order is bereft of any factual and legal justification.[17]

With respect, however, to the rest of the Respondents, We tackle the 2nd] assigned error for purposes of determining whether or not the case against them may prosper. It was Petitioners contention that the court a quo seriously erred in dismissing the Replevin case on the ground of forum shopping.[18]

We agree.

The court a quo holds that the instant case is an example of forum shopping considering that the essential facts and circumstances before the Metropolitan Trial Court are practically the same facts and circumstances with it. It went to rule that:

“Further, while it is true that the instant case is one for recovery of personal property with prayer for damages, it should be noted that the case for forcible entry with damages earlier filed by plaintiffs before the MeTC contained the same essential facts and circumstances as alleged in the instant case. Plaintiffs' claim for damages in these two (2) cases arose from one cause of action, i.e, defendants alleged unlawful entry and demolition of structures in plaintiffs' garage located at Don Mariano Avenue, corner Regalado Street, Quezon City. While herein plaintiffs' obtained a favorable ruling from the MeTC with respect to the issue of possession, their prayer for damages was however denied and no appeal was filed by them as regards the ruling made on the issue of damages. Hence, their act of filing another claim for damages founded on the same facts and circumstances after the denial of their prayer before the MeTC constitutes forum-shopping.”[19]

Forum-shopping is the institution of two or more suits in different courts, either simultaneously or successively in order to ask the court to rule on the same or related cases and/ or to grant the same or substantially the same reliefs.[20] Its elements are: (a.) identity of parties, or at least such parties as would represent the same interest in both actions; (b.) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c.) identity of the two preceding particulars such that any judgment rendered in the other action will , regardless of which party is successful, amount to res judicata in the action under consideration.[21] To determine whether a party violated the rule against forum-shopping the most crucial factor to ask is whether the elements of *litis pendentia* are present or whether a final judgment in one case will amount to res judicata in another i.e, whether in the two or more cases pending, there is identity of parties, rights or causes of action and reliefs sought.[22]

In order for forum-shopping to exist, both actions must involve the same transactions, same essential facts and circumstances and must raise identical causes of action, subject matter and issues.[23] The rule finds no application where the cases, although based on the same essential facts and circumstances, do not raise identical causes of action and issues.[24] The mere filing of two or more cases based on the same incident does not necessarily constitute forum-shopping.[25]

In the case at bar, We agree with the Petitioners that the court a quo erred in dismissing the Replevin case considering that the issues and reliefs sought are relatively different from the ejectment case before the MTC. The principal issues for consideration in the Replevin case is the existence of unlawful taking of Petitioners' Bus allegedly committed by the Respondents as well as Petitioners entitlement to the Writ prayed for while the issue involved on the ejectment is the determination of who has a better right of possession on the subject premises. Otherwise put, the relief being sought in the Replevin case is the issuance of a Writ for the return of Petitioners' Bus while the relief sought before the MTC was to restore possession of the subject premises in Petitioners' favor.

Definitely, the essential elements, i.e. 2[nd] and 3[rd] elements of forum-shopping in the instant case, albeit concededly there is identity of parties in both cases as embodied in the 1[st] element, supra, are absent herein. Whereas the rights and relief sought in the ejectment case is that Petitioners be restored to the peaceful possession of subject premises, in the Replevin case, it is for the recovery of possession of the bus in question.

Unquestionably, therefore, the judgment in the ejectment case is not constitutive of res judicata in the Replevin case.

Res judicata literally means a matter adjudged, judicially acted upon or settled by judgment.[26] Its elements are: (1) the former judgment must be final (2) the court that rendered it had jurisdiction over the subject matter and the parties (3.) it is a judgment on the merits and (4.) there is between the first and the second actions an identity of parties, subject matter and cause of action.

In the light of the preceding discussion, all the elements necessary to constitute res judicata are not present in the instant case.

WHEREFORE, premises considered, the instant Petition is partially GRANTED. We rule:

- 1) the dismissal of the case against HERNANI PANGANIBAN is hereby AFFIRMED.
- 2) the assailed Orders are hereby CANCELLED and SET ASIDE in so far as Respondents MANUEL N. SABALZA, EDWIN B. CANDO, EDWIN PAJARA, JEFFREY PERALTA, EVEREC GALURA, JOSELITO B. CABUNGAL and MARLOWE Y. JACUTIN are concerned.

Accordingly, let this case be remanded to the Court a quo for further proceedings.

SO ORDERED.

Reyes, and Lampas Peralta, JJ., concur.

[1] Rollo, pp.2-23

[2] Rollo, pp.27-30

[3] Rollo, p.31

[4] Rollo, pp.29-30

[5] Rollo, p.31

[6] Rollo, pp.120-124

[7] Rollo, p.126

[8] Rollo, pp.69-79

[9] Rollo, p.12

[10] Rollo, p.12

[11] Rollo, p.13

[12] Rollo, p.29

[13] Bank of America NT & SA vs. Court of Appeals, 400 SCRA 156

[14] Ibid

[15] Ibid

[16] Rollo,p.14

[17] The Senate Blue Ribbon Committee vs. Majaducon, 407 SCRA 356

[18] Rollo, p.19

[19] Rollo,p.29

[20] Young vs. Keng Seng, 398 SCRA 629

[21] Government Services Insurance System vs. Bengzon Commercial, 375 SCRA 431

[22] Young vs. Keng Seng, 398 SCRA 629

[23] Tala Realty Services Corp. vs. Banco Filipino Savings and Mortgage Bank, 392 SCRA 506

[24] Velasquez vs. Hernandez, 437 SCRA 357

[25] London vs. Baguio Country Club Corporation, 390 SCRA 618

[26] Bardillon vs. Barangay Masili of Calamba, Laguna, 402 SCRA 440

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