

ECOLE FRANCAISE DE MANILLE (FRENCH SCHOOL OF MANILA), AS PART OF THE EUROPEAN INTERNATIONAL SCHOOL, INC. AND HUBERT D'ABOVILLE, PETITIONERS, VS. THE HON. JUDGE PERLA CABRERA-FAL...

Ponente: DACUDAO, J.

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DACUDAO, J.:

Impugned in this special civil action for certiorari, as having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction, are: (1) the Order[1] dated January 23, 2006 issued by the public respondent Judge of the Regional Trial Court of Dasmariñas, Cavite, Branch 90, the Honorable Perla Cabrera-Faller, denying Petitioners' Motion to Dismiss Complaint in Civil Case No. 0587-05; and (2) the Order,[2] issued on February 14, 2006 by the same court, denying petitioners' Motion for Reconsideration thereon.

This case is cast against the following factual backdrop:

Before the Regional Trial Court at Parañaque City, National Capital Judicial Region, Branch 274, there was filed on September 2, 2005, by the spouses Jean Francois Belvisi and Rita Atendido-Belvisi, and the minors Geraldine and Angelique, both surnamed Belvisi (represented by their parents, the Belvisi spouses), as therein plaintiffs, a verified petition[3] for preliminary mandatory injunction with prayer for the issuance of a temporary restraining order against therein defendants, the Ecole Francaise de Manille (French School of Manila), as part of the European International School, Incorporated, and Hubert D' Aboville as president of the said school's Committee de Gestion (or Board of Trustees). Thereat docketed as Civil Case No. 05-0336, the petition alleged, amongst others, that:

“3.7. Sometime in January 2005, respondent school gave petitioner’s parents a reply form for the purpose of knowing from them if petitioners would still re-enroll this coming SY 2005-2006. As early as 25 January 2005, petitioners parents had manifested their desire to re-enroll petitioners this coming SY 2005-2006 through such reply form which they returned to respondent school. xxx

“3.8. After having made known their desire to re-enroll petitioners this coming SY 2005-2006, petitioners’ parents expected and waited for the corresponding re-enrollment forms to be sent to them by respondent school, as a matter of enrollment procedure, so that they could re-enroll their children (petitioners) in the soonest possible time;

“3.9. However, many days had passed without petitioner’s parents having received any re-enrollment form or any notice whatsoever from respondent school indicating that they could already re-enroll their children (petitioners);

“3.10. As classes for SY 2005-2006 in respondent school would start soon on 05 September 2005, petitioners’ parents made several inquiries and follow-ups, in person and by phone, from respondent school as to when they could re-enroll their children (petitioners). But they were just told that certain officials of respondent school would still have to decide on whether or not to allow petitioners to re-enroll in SY 2005-2006 and that such officials were either out of the country or attending meetings. From all those inquiries, petitioners’

parents got no definite answer from respondent school as to why they could not yet re-enroll their children (petitioners). What was then definite was the fact that they could not re-enroll their children;

“3.11. Aside from verbal inquiries and follow-ups made in early August 2005, petitioners’ father even sent a letter to respondent school, thereby renewing his request for confirmation of the re-enrollment of his daughters (petitioners). xxx

“3.12. Sometime in the second or third week of August 2005, petitioners’ parents attempted twice to re-enroll their children (petitioners), but they were again refused by respondent school. Consequently, given the proximity of the coming school year, which would commence on 05 September 2005, petitioners sought the legal assistance of their counsel. Petitioners’ counsel then wrote a formal letter dated 22 August 2005 to respondent school through its Headmaster informing respondent school about the intention of petitioners’ parents to enroll their daughters (petitioners) on that day and to pay in full or completely the tuition fees of their said daughters for this SY 2005-2006. xxx

“3.13. However, on 31 August 2005, or only five (5) days before the opening of classes in defendant school on 05 September 2005, petitioners’ counsel received a letter dated 27 August 2005 from respondent school’s counsel, thereby making known respondent school’s unwillingness to take petitioners for re-enrollment for SY 2005-2006. xxx

“3.14. Meanwhile, because of the arbitrary and discriminatory treatment of respondent school towards petitioners in refusing the re-enrollment and admission of the latter without any valid cause or ground, and in order to seek redress in court for the enforcement of their rights and protection of their interest, petitioners were compelled to engage the services of counsel and agree to pay counsel in the amount of Php100,000.00, as attorney’s fees, plus an appearance fee of Php5,000.00 for every hearing of the case, and to incur Php50,000.00, more or less, as expenses of litigation.”

On September 2, 2005, the Executive Judge of the Regional Trial Court of Parañaque City, the Honorable Raul de Leon, issued a Temporary Restraining Order, effective for seventy-two hours, enjoining petitioners from refusing the re-enrollment of private respondent minors for the School Year (SY) 2005-2006, conditioned upon the private respondents’ paying in full their tuition fees.

On September 7, 2005, Judge Fortunito L. Madrona, to whom the case was raffled off, issued an Order extending the temporary restraining order earlier issued by Executive Judge Raul de Leon, up to September 22, 2005, and requiring private respondents to present within three (3) days from September 7, 2005 the two checks in full payment of their tuition fees for the SY 2005-2006.

On September 13, 2005, private respondents filed a Manifestation,[4] alleging that petitioner-school was harassing and discriminating against Geraldine and Angelique. According to private respondents, a teacher of petitioner-school, a certain Professor Roiland, confronted Geraldine Belvisi that she would have to take three (3) subjects, namely, French Literature, French Philosophy and Advanced Italian, from a long distance learning correspondent school duly accredited with the Ministry of Education of France, since petitioner-school would not be offering those subjects in the SY 2005–2006. Because of this incident, Geraldine had a nervous breakdown and was taken to the infirmary. Private respondents later brought Geraldine and Angelique to a psychiatrist at the De La Salle University Medical Center in Dasmariñas, Cavite. The preliminary findings of Dra. Victoria D. Villanueva-Briguela, the psychiatrist who attended to the two minors, showed that “both [Geraldine and Angelique Belvisi] suffer from Major Depressive Disorder with Psychiatric Features.” Dr. Villanueva- Briguela also advised private respondents not to enroll Geraldine and Angelique in the meantime.

On September 17, 2005, petitioners filed their Answer[5] to the petition for preliminary mandatory injunction.

On September 22, 2005, an Order[6] was issued by the Regional Trial Court of Parañaque, Branch 274, to wit:

“WHEREFORE, the foregoing considered, the Court, in the interest of the children’s right of education, is

inclined to grant the prayer for preliminary mandatory injunction, provided that the petitioners post a bond to be executed to and in favor of the respondent school in the amount of Php300,000.00 to be posted within five (5) days from receipt of this Order to answer to the respondent school for all damages which said respondent may sustain by reason of the injunction if the Court should finally decide that the petitioners were not entitled thereto.

“Upon approval of the requisite bond let the writ of preliminary mandatory injunction issue ordering the respondent school, its officials, and or representatives acting in its behalf to allow petitioners Geraldine Belvisi and Angelique Belvisi to re-enroll in their respective year levels and course for the school year 2005-2006.

“SO ORDERED.

“In chambers, Parañaque, September 22, 2005.

(Sgd). “FORTUNITO L. MADRONA

“Presiding Judge”

On September 28, 2005, private respondent filed a Motion for Leave to Withdraw/Dismiss the Petition, grounded on the recommendation of the psychiatrist, who conducted a psychiatric examination on the two minors, that private respondents should transfer Geraldine and Angelique to another French school.

On October 4, 2005, petitioner-school filed a Motion to Dismiss, now seeking a dismissal with prejudice of the petition for preliminary mandatory injunction, and later on, an Opposition to the Motion to Withdraw/Dismiss Petition, thereunder stating that it had no objection to the withdrawal/dismissal, provided that it was with prejudice.

On October 6, 2005, while the petition for preliminary mandatory injunction was still pending, private respondents filed a complaint^[7] for damages against petitioners with the Regional Trial Court of Dasmariñas, Cavite, Branch 90. Thereat docketed as Civil Case No. 0587-05, this complaint for damages contained substantially the same allegations set forth in the earlier petition, except for some additional allegations, to wit:

“3.14. Hence, plaintiff-spouses Belvisi were constrained to come back anew to Court. Plaintiffs were compelled to file an action for Preliminary Mandatory Injunction entitled, Geraldine and Angelique Belvisi, represented by herein Spouses Jean Francois Belvisi and Rita Atendido-Belvisi vs. Ecole Francaise de Manille (French School of Manila), as part of the European International School, Inc., and docketed as Civil Case No. 05-0336, before the Regional Trial Court (RTC), Branch 274, Parañaque City in order to enjoin the defendant school from refusing admission to their two (2) daughters. By virtue of the Temporary Restraining Order (TRO) dated 02 September 2005 issued by the Hon. Raul E. De Leon, Executive Judge, Regional Trial Court of Parañaque City, on 05 September 2005, plaintiffs presented themselves to defendant school to enroll.

“3.15. Meanwhile, in campus on 05 September 2005, Geraldine Belvisi was confronted by her professor, a certain Professor Roiland, and was told that although she might be accepted to enroll in defendant school because of the Order of the Court, but three (3) major subjects which she had to take to complete her curriculum and to graduate at the end of School Year 2005-2006, namely, French Literature, French Philosophy and Advanced Italian, would not be offered. Professor Roiland advised plaintiff Geraldine to take instead these subjects through distance learning from the French Education Ministry in Paris, French.

“3.16. This information from Professor Roiland came as a big shock to plaintiff Geraldine because it would only entail the expenditure of a considerable amount of money of around Php300,000.00 for said three (2) subjects, in addition to the regular tuition fees to be paid for School Year 2005-2006. Also, this would entail great inconvenience to plaintiff Geraldine as to the matter of schedule as the distance learning must be done simultaneously with her regular schooling at defendant school.

“3.17 Because of the restriction brought about again by defendant school, this time concerning the purported non-offering of petitioner Geraldine’s major subjects, petitioner Geraldine on the first day of school had a nervous breakdown and was taken to the infirmary. Obviously, petitioner Geraldine, at such young age, was

not able to handle any more the stress from the problems that the defendant school have been creating to prevent her from pursuing her studies with defendant school, which were started last September 2004 for SY 2004- 2005.

“3.18. In fact, on 10 September 2005, the parents of petitioners deemed it best to bring plaintiffs/students to a psychiatrist at the De La Salle University Medical Center in Dasmariñas, Cavite, where Dra. Victoria D. Villanueva-Briguela, MD, a leading psychiatrist in said Medical Center, attended to the two (2) plaintiffs Geraldine and Angelique. Dr. Villanueva-Briguela’s preliminary findings shows that: ‘(b)oth [Geraldine and Angelique Belvisi] suffer(s) from Major Depressive Disorder with Psychiatric Features’. xxx

“3.19. After completing the three (3) psychological/psychiatric sessions to be conducted by Dr. Villanueva-Briguela in order to ascertain the full psychological condition of the two (2) children, the good doctor came out with a Psychiatric Report dated 20 September 2005, which was received by the Belvisi couple. xxx

“3.20. A perusal of the said Psychiatric Report reveals the good doctor’s diagnosis that petitioners-school children are suffering from major depressive disorder with psychotic features. Dr. Briguela recommended that the children be no longer enrolled with defendant school as the depression of the children will only be aggravated by the continued pressure and unhealthy environment in school, xxx

“3.21. Meanwhile, or on 23 September 2005, petitioners received a copy of the Order of the Honorable Court dated 22 September 2005 granting the instant petition for preliminary mandatory injunction and ordering defendant school, its officials and or representatives acting in its behalf to allow petitioners Geraldine Belvisi and Angelique Belvisi to re-enroll in their respective year levels and course for the school year 2005-2006.

“3.22. However, on 27 September 2005, after spending much thought on the matter, especially because their decision will have serious repercussions on the lives of their daughters and/or their lives as a whole family and considering the 22 September 2005 Order of the Court after they hurdled so much financial and emotional stress to win this case, petitioners were prevailed by their hearts as parents and handed to the undersigned counsel their letter dated 24 September 2005 stating their regret not to pursue the instant petition any longer. xxx

“3.23. And, following the wishes of plaintiffs Belvisi couple, counsel filed before the Regional Trial Court, Branch 274, Parañaque City, on 29 September 2005, a Motion to Withdraw/Dismiss the Case because of their decision not to enroll the plaintiff minors in the defendant school upon advise of the children’s psychiatrist.

“3.24. Because of the arbitrary and discriminatory treatment of defendant school towards plaintiffs in refusing the re-enrollment and admission of the latter without any valid cause or ground, and in order to seek redress in court for the enforcement of their rights and protection of their interests, plaintiffs were compelled to engage the services of counsel to pursue this damage suit instead.

“3.25. This highhanded and arbitrary treatment that defendants gave the two (2) plaintiffs (fellow French citizens at that) smack of rudeness, arrogance and despotic manners and is violative of our basic law and principles on the education of youngsters, a universally recognized right which shall be protected by our law.

“3.26. The plaintiffs schoolchildren are being deprived of the education by defendant school – a school supervised by their own government , because of the arbitrary, unreasonable, and harsh treatment by its Headmaster of the defendant school as early as last September 2004, who can heavily influence and maneuver the action of the Board of Trustees of the defendant school, should be given the necessary protection of our law, as they are also half-Filipinos, their mother, Rita Atendido-Belvisi, being a native of Baler, Quezon, and is still a Filipino citizen.

“3.27. This unjust, arbitrary, immoral and despotic treatment given by the defendants to the plaintiffs school children was done in utter bad faith- just for defendant school to get even with Jean Francois Belvisi (in retaliation (for) an earlier school incident related above) – violates our basic law on human relations, which exacts the necessary compensation on damage caused by such violation of said rights, xxx”

On November 7, 2005, petitioners filed a Motion to Dismiss Complaint[8] grounded on *litis pendentia*, *forum-shopping*, and *splitting of a cause of action*.

Whereupon, private respondent countered with an Opposition to the Motion to Dismiss Complaint,[9] thereunder arguing that the cause of the complaint for damages is different or dissimilar from the cause of action of the petition for preliminary mandatory injunction, for the former involved the “continued” discrimination and harassment being done by petitioners against Geraldine and Angelique.

Petitioners filed a Reply to the Opposition[10] and a Supplemental to Reply[11].

On November 22, 2005, the RTC of Parañaque, Branch 274, issued an Order[12] dismissing the petition for preliminary mandatory injunction as well as petitioner-school’s compulsory counterclaim, with prejudice.

On January 23, 2006, the RTC of Dasmariñas, Cavite, Branch 90, issued an Order resolving the motion to dismiss complaint filed by petitioners. It ruled:

“While it appeared that the case filed before the Regional Trial Court of Parañaque and the present case are between the same parties and involve the same issue on the failure of the minors Belvisi to enroll in the defendant-school and the alleged refusal of the defendant-school to admit these minors for enrollment, yet, the Court feels that the requisites of *litis pendentia* or violation of FORUM SHOPPING RULE, or that of splitting a single cause of action, as the defendants put it, do not exist. Verily, the cause of action in this case is one for DAMAGES, pursuant to the provisions of Chapter 1, 2, and 3, Title XVIII of the Civil Code of the Philippines. The present complaint no longer attacks the refusal of the defendant-school to admit the plaintiff-minors, instead, it now tackles the alleged hurtful and unkind effects of such refusal upon the psychological and emotional quotient of the plaintiff-minors and their parents, the Spouses Belvisi, who now claim for retribution by way of this action.

“ACCORDINGLY, the defendant school is hereby ordered to submit its ANSWER to the complaint within five (5) days from receipt of this Order, consistent with the provision of Section 4, Rule 16, of the Rules of Civil Procedure.

“SO ORDERED.

“Imus for Dasmariñas, Cavite, January 23, 2006.

(Sgd) “PERLA V. CABRERA-FALLER

“Executive Judge”

Petitioners moved for reconsideration thereon,[13] but this motion was by the respondent court denied in an Order dated February 14, 2006.

Hence, the present recourse, with petitioners now raising the sole issue that public respondent judge, the Honorable Perla V. Cabrera-Faller, committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing the controverted Orders of January 23, 2005 and February 14, 2006.

The petition is untenable.

The general rule is that the denial of a motion to dismiss, which is an interlocutory order, cannot be challenged or assailed in a special civil action for certiorari, which is a remedy designed to correct errors of jurisdiction, and not errors of judgment.[14] In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[15]

And, grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, which must be so patent and gross, as to amount to an invasion of positive duty or to a virtual

refusal to perform the duty enjoined or to act at all in contemplation of law --- Mere abuse of discretion is not enough.[16]

In the case at bench, we are not prepared to declare that grave abuse of discretion, amounting to lack or excess of jurisdiction, indeed taints or vitiates the aforestated impugned issuances of public respondent judge.

A "cause of action" is the act or omission by which a party violates the right of another[17]. Its elements are: (1) the existence of a legal right in the plaintiff; (2) a correlative obligation on the part of the defendant; and (3) an act or omission of the defendant in violation of said legal right for which the plaintiff may maintain an action for recovery of damages or other appropriate reliefs.[18]

Under the Rules of Court, a party may not institute more than one suit for a single cause of action.[19] A single cause of action or entire claim or demand cannot be split up or divided so as to be made the subject of two or more different actions.[20] A violation of this rule is a ground for the dismissal of the other action/s.[21]

Upon the other hand, forum shopping exists where the elements of *litis pendentia* are present, namely: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[22]

A juxtaposition of the petition for preliminary mandatory injunction filed with the RTC of Parañaque City, Branch 274, in Civil Case No. 05-0336 vis-a-vis the complaint for damages filed with the RTC of Dasmariñas, Cavite, Branch 90, in Civil Case No. 0587-05, would show that they contained substantially the same allegations. However, the rights asserted and the reliefs prayed for are not entirely or exactly the same in the two cases. One seeks to compel the petitioner to re-enroll the private respondents, the minors Geraldine Belvisi and Angelique Belvisi, while the other one pleads for damages for the alleged harassment and discrimination done by petitioners, in violation of the said minors' right to education. In other words, the elements of *litis pendentia* are not present in the two cases. Hence, there can be no forum shopping.

As to whether there is a splitting of a cause of action, we have to admit that a very thin line exists between the causes of action in the two cases. The cause of action in the petition in Civil Case No. 05-0336 of the RTC of Parañaque City, Branch 274, is the refusal of the petitioner-school to re-enroll the two minor children; while the cause of action in the complaint in Civil Case No. 0587-05 of the RTC of Dasmariñas (Cavite), Branch 90, is the alleged harassment and discrimination inflicted by petitioner-school on the minor children, after it was ordered by that court to re-enroll them.

It is for this reason, thus, that we deem it both necessary and expedient for the parties to proceed to trial, where public respondent judge would be in a better position to determine whether or not private respondents indeed do have a cause of action, separate and distinct, from their earlier petition. For, the remedy of the aggrieved party in situations such as this, ought to be, as indeed, it is to file an answer and to interpose as defenses the objections raised in his motion to dismiss, proceed to trial, and in the event of an adverse decision, to elevate the entire case by appeal in due course.[23]

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition is hereby DENIED DUE COURSE and consequently DISMISSED. Without costs in this instance.

SO ORDERED.

Carandang, and Perlas-Bernabe, JJ., concur.

[1] Rollo, p. 52.

[2] Id., p. 54.

[3] Id., pp. 84 – 95.

[4] Id., pp. 96 – 99.

[5] Id., pp. 101 – 107.

[6] Id., pp. 108 – 119.

[7] Id., pp. 120 – 134.

[8] Id., pp. 56 – 66.

[9] Id., pp. 157 – 162.

[10] Id., pp. 164 – 175.

[11] Id., pp. 176 – 186.

[12] Id., p. 163.

[13] Id., pp. 67 – 80.

[14] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650.

[15] *Lu Ym v. Nabua*, G.R. No. 161309, February 23, 2005, 452 SCRA 298.

[16] *Santos v. Commission on Election*, G.R. No. 155618, March 26, 2003, 399 SCRA 611.

[17] Rule 2, Section 2 of the Revised Rules of Court.

[18] *San Pedro v. Binalay*, G.R. No. 126207, August 25, 2005, 468 SCRA 47.

[19] *Ibid.*, Section 3.

[20] *Perez v. Court of Appeals*, G.R. No. 157616, July 22, 2005, 464 SCRA 89.

[21] *Ibid.*, Section 4.

[22] *NBI-Microsoft Corporation v. Hwang*, G.R. No. 147043, June 21, 2005, 460 SCRA 428 .

[23] *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers*, G.R. No. 142666, September 26, 2005, 471 SCRA 45.

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