

**NATIONAL STEEL CORPORATION, REPRESENTED BY ITS DULY
APPOINTED LIQUIDATOR, ATTY. DANILO L. CONCEPCION,
PLAINTIFF-APPELLEE, VS. CITY OF ILIGAN, HON. LAWRENCE LL.
CRUZ, IN HIS CAPA...**

Ponente: BARZA, J.

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BARZA, J.:

Before this Court is plaintiff-appellee's Motion for Reconsideration[1] of this Court's Decision, dated March 7, 2014, which granted defendants-appellants' appeal by setting aside the Decision of the Regional Trial Court of Makati, Branch 57 (hereinafter referred to as "RTC"), dated October 7, 2011 in Civil Case No. 10-639 and declaring all the proceedings conducted therein null and void for lack of jurisdiction.

To recall, NSC availed of the City of Iligan's City Ordinance No. 04-4611[2] which granted to real property taxpayers a one hundred percent (100%) relief on interests and penalties for delinquent real properties. Previously, there was a default on the part of the NSC in paying the real property tax of its Iligan Plant and all the equipment located therein used for plant operations (collectively referred to as "Plant Assets"). Thus, the Tax Amnesty Agreement (TAA) was signed by NSC and the City of Iligan wherein it was provided that the total real property tax liability amounting to P177,527,351.99 shall be paid by NSC in (8) annual installments of P22,190,918.99 from 2004 to 2012, except the year 2005. The TAA also provided that the aforesaid scheme of payment must be religiously complied with by NSC while also paying its current real estate taxes, otherwise all penalties and interests that have been waived by virtue of City Ordinance No. 04-4611 shall be restored and become immediately due and demandable.

The City of Iligan, however, sent letters to NSC threatening to revoke the TAA when the latter defaulted in paying its current real property taxes for the year 2005. Despite the said threats, however, NSC still paid the City of Iligan the amount of P22,190,918.00, which represented its installment payment for the year 2006 under the TAA. Thereafter, PNB-Trust tendered in behalf of NSC two (2) Manager's Checks,[3] one amounting to P133,145,514.01, representing the third to eight accelerated installment payments of NSC under the TAA and another check amounting to P1,398,813.64, representing the real property tax liability of NSC's Plant Assets, including those sold to Global Steel for the period of October 1-14, 2004.

In response to the said payment, the City Council of Iligan enacted Resolution No. 08-924[4] authorizing the City Treasurer to (a) receive and issue an Official Receipt for the PNB-Trust's tender of the amount of P133,145,514.01, based on the October 13, 2004 schedule of payments contained in the letter of retired City Treasurer, Mr. Balat, without further elaboration or qualification in the Official Receipt and (b) issue an Official Receipt for PNB-Trust's tender of P1,398,813.64 subject to verification of the basis and amount being paid. The City Treasurer then issued Official Receipt Nos. 9781501[5] (for the P133,145,514.01) and 9781502[6] (for the P1,398,813.64) to acknowledge receipt of payments tendered by PNB-Trust. Thereafter, two Certifications dated December 18, 2008[7] and February 23, 2009,[8] respectively, were issued acknowledging receipt of the payment tendered by PNB-Trust in full compliance with the schedule of payments as contained in the October 13, 2004

letter of the previous city treasurer, Mr. Balat.

Despite NSC's payment, however, the City of Iligan still demanded payment of real estate taxes on its Plant Assets thereby prompting NSC to file a Complaint for Specific Performance^[9] against defendants-appellants wherein it prayed that by virtue of the unqualified acceptance of NSC's payments by the City of Iligan, the latter be ordered to comply with its obligations under the TAA by clearing NSC of all its real property tax liabilities until October 14, 2004 and afford them relief from the payment of interests and penalties pursuant to the amnesty.

In its Decision^[10] dated October 7, 2011, the RTC declared NSC has fully complied with its obligations under the TAA and ordered defendants-appellants to comply with its own obligation therein by clearing plaintiff of all its real property tax liabilities up to October 14, 2004. Defendants-appellants sought for a reconsideration of the said decision but the same was denied by the RTC in its Order^[11] dated February 6, 2012.

On appeal before this Court, We agreed with the contention of defendants-appellants and held, in our Decision^[12] dated March 7, 2014, that what NSC essentially seeks in filing its complaint for specific performance before the RTC is to settle the claim for taxes against it by the City of Iligan. Ruling that the settlement of claims against a distressed corporation is a liquidation function which properly falls under the jurisdiction of the SEC, We set aside the Decision of the RTC and declared all proceedings conducted therein to be null and void on the ground of lack of jurisdiction.

Hence, the present motion for reconsideration filed by NSC.

In the present motion, NSC alleged that this Court committed reversible error in holding that the RTC had no jurisdiction over Civil Case No. 10-639 and that its action to compel herein defendant-appellant City of Iligan's to comply with its contractual obligations under the TAA entails the performance of a liquidation function which falls under the jurisdiction of the Securities and Exchange Commission (SEC). NSC likewise claims that the RTC acted correctly in deciding Civil Case No. 10-639 in its favor as the unqualified receipt by the City of Iligan of the payments made by NSC under the TAA had the legal effect of vesting in it the benefits and privileges contained under the TAA and resulted in the settlement of all its tax liabilities to the City of Iligan as of October 14, 2004, pursuant to the provisions of the TAA.

The Court finds merit in the present motion for reconsideration and hereby amends its Decision declaring that the RTC had no jurisdiction over Civil Case No. 10-639.

Aside from claiming that the City of Iligan can no longer belatedly question the RTC's jurisdiction after actively participating in the proceedings conducted before the court a quo, the main argument of NSC in contending that the RTC has jurisdiction over Civil Case No. 10-639 is that it was merely seeking to compel the City of Iligan in its complaint for specific performance to comply with its contractual obligations under the TAA by recognizing that the NSC has fully settled its tax liabilities up to October 14 2004. NSC argues that the compliance by the City of Iligan of the said obligation does not entail the performance of a liquidation function which falls under the jurisdiction of the SEC but rather an action incapable of pecuniary estimation which is under the jurisdiction of regional trial courts.

Initially, this Court ruled that what NSC was in effect asking in its complaint for specific performance is for the lower court to perform a liquidation function considering that it was seeking a settlement of the claim for unpaid real property taxes against it by the City of Iligan, a function which We held properly falls under the jurisdiction of the SEC. Upon closer perusal, however, of NSC's complaint for specific performance, We find the latter was merely trying to enforce the obligations of the City of Iligan under the TAA and that any settlement of its real property tax liabilities that may be obtained therein is purely incidental to, or a mere consequence of, the

enforcement of Iligan's obligations under the TAA. Under Section 19[13] of B.P. 129, as amended by R.A. 7691, Regional Trial Courts exercise exclusive original jurisdiction over all civil actions in which the subject of the litigation is incapable of pecuniary estimation. Since it is settled jurisprudence that an action for specific performance is incapable of pecuniary estimation,[14] the RTC acted properly in exercising jurisdiction over the complaint for specific performance filed by NSC and in resolving the issues raised therein during the proceedings in Civil Case No. 10-639.

Furthermore, even assuming *arguendo* that NSC was in effect asking the RTC to perform a liquidation function by asking the latter to settle the City of Iligan's claims for unpaid real property taxes against it, said issue no longer falls under the jurisdiction of the SEC.

In the case of *Consuelo Metal Corporation v. Planters Developmental Bank*,[15] the Supreme Court held that while the SEC has jurisdiction to order the dissolution of a corporation, its jurisdiction does not extend to the liquidation of the corporation as the same falls under the jurisdiction of the Regional Trial Courts, viz:

"However, the SEC's jurisdiction does not extend to the liquidation of a corporation. While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that 'the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred.' This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences." (emphasis supplied)

While this Court, citing the case of *Union Bank of the Philippines v. Concepcion*,[16] previously held in its presently assailed Decision that the jurisdiction acquired by the SEC over a petition for suspension of payments extends to the liquidation and dissolution process of a distressed corporation, We find the pronouncement made by the High Court in the above-mentioned case of *Consuelo Metal Corporation* is more applicable to the case at bar since in the *Union Bank* case, the petition for suspension of payment filed by the corporation therein likewise contained an alternative prayer for liquidation/ dissolution in the event the SEC found the same to be warranted. Since jurisdiction is determined by the allegations and the character of the relief sought in the complaint, the Supreme Court ruled in the *Union Bank* case that the jurisdiction acquired by the SEC over the corporation's petition for suspension of payment/petition for liquidation extended even after it has declared the said corporation to be insolvent. Furthermore, the SEC also initially issued in the *Union Bank* case a suspension order after it found the petition for suspension of payment therein to be sufficient in form and substance. In the instant case, the SEC denied NSC's petition for suspension of payment in its Order[17] dated October 3, 2000 and ordered the liquidation of NSC.

Consequently, assuming the complaint of NSC required the RTC to perform a liquidation function by asking the same to settle the City of Iligan's claim for unpaid real property taxes, the RTC nevertheless still has jurisdiction to grant the reliefs prayed for in the complaint of NSC since jurisdiction over the liquidation of the corporation now properly pertains to the regional trial courts.

Having threshed out the procedural issue of this case, We now resolve the substantive issues raised by defendants-appellants in their appeal.

The main issue to be resolved in the present case is whether the City of Iligan can be compelled by NSC to clear it of all its real property tax liabilities up to October 14, 2004 and afford NSC full relief from payment of interests and penalties of the said tax liabilities pursuant to the provisions of the TAA. This issue in turn is dependent on whether the acceptance made by the City of Iligan of the payment made by NSC representing its remaining

installments under the TAA can amount to an unqualified acceptance on its part so as to make the said payment equivalent to a full satisfaction of the obligations of NSC under the TAA.

As mentioned above, two conditions were imposed on NSC under the TAA in order for the penalties and interests on its unpaid real property taxes may be waived: (1) the stipulated scheme of installment payments under the TAA must be religiously complied with, and (2) the current real estate taxes of the Plant Assets must be paid on time even while payment is being made on the TAA installment payments. NSC was not able to comply with the second condition when it failed to pay the current real property tax of its Plant Assets for the year 2005. While this allegation is not denied by NSC, it however argues that despite such failure, it was still able to fully settle its tax obligations under the TAA when defendants-appellants accepted the accelerated payments made by PNB-Trust in its behalf which was intended to be in full satisfaction of NSC's real property tax liability for its Plant Assets up to October 14, 2004. NSC argues that the acceptance of the said payment by defendants-appellants, despite their knowledge of NSC's previous default in the payment of current real property taxes, necessarily translates to an unqualified acceptance on their part which has the effect of compliance by NSC of its obligations under the TAA.

The RTC agreed with NSC's contention and held that while repeated threats were made by defendants-appellants on NSC regarding the revocation of the TAA, the said agreement was never really revoked and that based on the actions of defendants-appellants in December 2008, it would appear that they were treating the TAA as though it was still subsisting and in effect. To support its finding, the RTC made reference to Resolution No. 08-924[18] which was enacted by the City Council of Iligan to authorize the City Treasurer to receive and issue a receipt for the two checks tendered by PNB-Trust as payment for the tax liabilities of NSC. According to the RTC, the words used in the said resolution consistently made reference to the schedule of payments stated under the TAA which indicates that the said agreement has not been revoked or that even if it has been revoked, its legal effects has been reinstated by defendants-appellants. Furthermore, the RTC also explained that while Resolution No. 08-924 may not have the effect of repealing City Ordinance No. 04-4611 since it is a mere declaration of the sentiment or opinion of a lawmaking body, the sentiment or opinion contained in the said resolution was nevertheless sufficient to vest NSC the benefits and privileges of the TAA by application of Art. 1235 of the Civil Code. Consequently, the RTC concluded that NSC can be considered to have complied with its obligations under the TAA.

We agree with the RTC.

The resolution by the City Council of Iligan being cited by the RTC as a basis for the application of Art. 1235 of the Civil Code provides, as follows:

RESOLUTION NO. 08-924

RESOLUTION AUTHORIZING THE CITY TREASURER TO RECEIVE AND ISSUE AN OFFICIAL RECEIPT FOR THE PHILIPPINE NATIONAL BANK TENDER OF PAYMENT BASED ON THE OCTOBER 13, 2004 SCHEDULE OF PAYMENTS CONTAINED IN THE LETTER OF RETIRED CITY TREASURER ERNESTO BALAT WITHOUT ANY FURTHER ELABORATION OR QUALIFICATION.

WHEREAS, on October 13, 2004, then City Treasurer Ernesto Balat devised a payment scheme through a schedule of payments which National Steel Corporation (NSC), one of the distressed companies availing of the tax amnesty under City Ordinance No. 04-4611 s. of 2004, may pay in installments its tax obligations up to the end year 2004;

x x x

WHEREAS, in accordance with the said schedule, NSC paid the amount of P22,190,198.99 (sic) on December 8, 2004 and another amount of P22,190,198.99 (sic) on December 30, 2006, leaving a balance of

P133,145,514.01;

x x x

BE IT RESOLVED, AS IT HEREBY RESOLVED, By the Sangguniang Panlungsod of Iligan to AUTHORIZE, as it hereby AUTHORIZES, the City Treasurer to receive and issue an Official Receipt for the Philippine National Bank (PNB) tender of P133,145,514.01 based on the October 13, 2004 schedule of payments contained in the letter of retired City Treasurer Ernesto Balat without any further elaboration or qualification in the Official Receipt, and to receive and issue an Official Receipt for the PNB tender of P1,398,813.64 subject to the verification of the basis and amount being paid." [19] (emphasis supplied)

Based on the words used by the city council in the said resolution, it clearly appears that the amount paid by PNB-Trust representing the 3rd to 8th installments of NSC under the TAA was received by the City of Iligan WITHOUT any qualification whatsoever despite the previous violation of the TAA by NSC of the said agreement when it defaulted in the payment of its current real property tax liabilities for the year 2005. It would thus appear that while there were indeed threats from the City of Iligan that the TAA shall be revoked because of NSC's previous default, the wordings used by the City Council of Iligan in Resolution No. 08-924 show that the said threats were never carried out and that the latter continued to recognize the validity and subsistence of the TAA.

Defendants-appellants' recognition of the subsistence of the TAA can also be seen in the wordings used in the Certification issued by the City Treasurer of Iligan dated December 18, 2008, which stated that the accelerated payments received from PNB-Trust in behalf of NSC was received in full compliance to the schedule of payments previously made by Mr. Balat in connection with the TAA, viz:

"This is to certify and acknowledge the payment tendered by the Philippine National Bank-Trust Banking Group (Facility Agent and Collateral Trustee of the NSC Secured Creditors), through Check No. TBG-0000021383 dated 29 October 2008 in the amount of P133,145,514.01 as payment of the real property tax obligation of the National Steel Corporation, under Official Receipt No. 9781501 dated December 18, 2008, in full compliance to the schedule of payments as contained in the October 13, 2004 letter of the retired City Treasurer Ernesto Balat.

x x x

Issued this 18th day December, 2008." [20] (emphasis supplied.)

Since the TAA was still in effect, the receipt by defendants-appellants of the accelerated payments by NSC was sufficient to vest the latter of the benefits provided under the said agreement. Accordingly, since NSC has complied with its obligations to the City of Iligan under the TAA, it can now in turn compel the latter to perform its own prestation in the said agreement by clearing NSC of all its real property tax liabilities until October 14, 2004.

Furthermore, the tenor in the wordings of defendants- appellants' aforementioned December 18, 2008 Certification and Resolution No. 08-924 likewise shows that there was unqualified acceptance made by the City of Iligan of the accelerated payments of NSC. Such acceptance estops the City of Iligan from claiming that the TAA has already been revoked on account of NSC's previous default in paying its taxes.

Article 1235 of the Civil Code enunciates the doctrine of estoppel by acceptance which is based upon the premise that "receipt" of partial payment is necessarily an "acceptance" thereof. The said article provides:

"Art. 1235. When the obligee accepts the performance, knowing its incompleteness and irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with."

The said provision was explained by the Supreme Court in the case of Hanjin Heavy Industries and Construction

Co., Ltd. vs. Dynamic Planners and Construction Corp.,[21] as follows:

"Under Art. 1235 of the Civil Code, the obligation is deemed fully complied with when an obligee accepts the performance thereof knowing its incompleteness or irregularity, and without expressing any protest or objection. An obligee is deemed to have waived strict compliance by an obligor with an obligation when the following elements are present: (1) an intentional acceptance of the defective or incomplete performance; (2) with actual knowledge of the incompleteness or defect; and (3) under circumstances that would indicate an intention to consider the performance as complete and renounce any claim arising from the defect. (emphasis supplied)"

All of the requisites mentioned above are present in this case.

As mentioned above, the intentional and unqualified acceptance by defendants-appellants of the accelerated payments by NSC under the TAA can be clearly gleaned from the wordings used in the City Council's Resolution No. 08-924 and the City Treasurer's December 18, 2008 Certification. In addition to these documents, the language in Official Receipt Nos. 9781501[22] and 9781502,[23] the official receipts issued pursuant to Resolution 08-924 to acknowledge receipt of the payments tendered by PNB-Trust, also did not mention any qualification on the receipt of the payments of NSC despite the latter's previous violation of the TAA.

Also, since there were previous threats made on NSC by defendants-appellants to revoke the TAA prior to receiving the former's accelerated payments, the City of Iligan cannot deny that it had actual knowledge of the defect in the said payments.

Although the general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents,[24] this is also subject to exception as explained by the Supreme Court in *Republic v. Mendoza*,[25] viz:

"The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exception, viz:

Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . . , the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.

In *Republic v. Sandiganbayan*, the government, in its effort to recover ill-gotten wealth, tried to skirt the application of estoppel against it by invoking a specific constitutional provision. The Court countered:

We agree with the statement that the State is immune from estoppel, but this concept is understood to refer to acts and mistakes of its officials especially those which are irregular (*Sharp International Marketing vs. Court of Appeals*, 201 SCRA 299; 306 [1991]; *Republic v. Aquino*, 120 SCRA 186 [1983]), which peculiar circumstances are absent in this case at bar. Although the State's right of action to recover ill-gotten wealth is not vulnerable to estoppel[;] it is non sequitur to suggest that a contract, freely and in good faith executed between the parties thereto is susceptible to disturbance ad infinitum. A different interpretation will lead to the absurd scenario of permitting a party to unilaterally jettison a compromise agreement which is supposed to have the authority of *res judicata* (Article 2037, New Civil Code), and like any other contract, has the force of law between parties thereto (Article 1159, New Civil Code; *Hernaez vs. Kao*, 17 SCRA 296 [1996]; 6 Padilla, Civil Code Annotated, 7th ed., 1987, p. 711; 3 Aquino, Civil Code, 1990 ed., p. 463)"

Consequently, since despite NSC's violation of the TAA, defendants-appellants did not revoke the said agreement and instead accepted NSC's payment without any qualification whatsoever, the City of Iligan cannot now renege

on its obligation under the compromise agreement it has entered with NSC and must now clear NSC of all its real property tax liabilities up to October 14, 2004.

On the other issues raised by defendants-appellants, the Court rules, as follows:

On whether the complaint of NSC should be dismissed on the ground of lack of cause of action against defendants-appellants for allegedly failing to exhaust administrative remedies, We find the said issue can no longer be raised by defendants-appellants here on appeal since they failed to plead the said defense in their answer or motion to dismiss during the proceedings before the court a quo. Under Rule 9, Section 1[26] of the Rules of Court, defenses and objections that were not pleaded in a motion to dismiss or in an answer are deemed waived. Thus, while the non-observance of the doctrine of exhaustion of administrative remedies results in lack of a cause of action, the said defect is not jurisdictional and may be waived as explained by the Supreme Court in the case of *Sunville Timber Products, Inc. v. Abad*,[27] the High Court explained that, viz:

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. Non-observance of the doctrine results in lack of a cause of action, which is one of the grounds allowed in the Rules of Court for the dismissal of the complaint. The deficiency is not jurisdictional. Failure to invoke it operates as a waiver of the objection as a ground for a motion to dismiss and the court may then proceed with the case as if the doctrine had been observed. (emphasis supplied)

For the same reason mentioned above, defendants-appellants also can no longer ask for the dismissal of the complaint of NSC on the ground of forum shopping. Just like its allegation for non-exhaustion of administrative remedies, defendants-appellants had ample opportunity to raise the said issue at the trial court level but failed to do so. The same, therefore, can no longer be raised by defendants-appellants here on appeal for the first time. Thus, in *Young v. Keng Seng*, the Supreme Court also held:

"Applying these principles to the instant case, we hold that petitioner is barred from raising the ground of forum shopping in the Court of Appeals and in this Court. If only for his failure to invoke such ground at the first opportunity in his Motion to Dismiss filed in the trial court, his appeal should have been given short shrift and denied outright." (emphasis supplied)

Defendants-appellants next argue that RTC rendered its decision despite the fact that the case cannot yet be deemed to have been submitted for decision allegedly because the period during which they can file their memorandum has not yet expired thereby in effect depriving them of their right to due process. Defendants-appellants explained that the RTC gave the parties 15 days within which to file their respective memoranda from the date of receipt of the Amended Pre-Trial Order, which defendants-appellants received on September 15, 2011. They, therefore, had until September 30, 2011 to file their memorandum. Defendants-appellants, however, claim that the said 15-day period was effectively interrupted when they filed their Omnibus Motion for Reconsideration on September 19, 2011 and only started to run again on October 25, 2011, the day after defendants-appellants received the Order of the RTC denying the said omnibus motion. Defendants-appellants thus argue that they had until November 7, 2011 to file their memorandum but the RTC already rendered its Decision on October 7, 2011.

We are not persuaded.

The Amended Pre Trial Order[28] of the RTC mentioned above by defendants-appellants expressly stated, as follows:

"In the meantime, there being no factual issues left, there is no need to set this case for trial. The parties are instead directed to file their simultaneous memoranda on the above issues of law within an inextendible period

of fifteen (15) days from receipt of this Amended Pre-Trial Order and the Order resolving the issue on re-raffle. This case shall be deemed submitted for resolution upon the expiration of said period, with or without the parties' respective memoranda." [29] (emphasis supplied)

Based on the said order, it is clear that the inextendible period to file their memoranda was expressly made known by the RTC to defendants-appellants. It was thus incumbent on the part of defendants-appellants to comply with the said order. Furthermore, upon perusal of defendants-appellants' Omnibus Motion for Reconsideration, We also failed to find any prayer or request therein from defendants-appellants to have the filing of their memorandum deferred or suspended until their receipt of the RTC's resolution of the issues raised in the said omnibus motion. We, therefore, find it absurd how defendants-appellants thought the filing by them of their Omnibus Motion for Reconsideration had the effect of interrupting the filing of their memorandum. Since every opportunity was given to defendants-appellants to submit their memorandum, they only have themselves to blame for their failure to submit the said document. Lastly, assuming there was a violation defendants-appellants' rights, the essence of due process lies in being given a reasonable opportunity to be heard. [30] Thus, whatever defect in the proceedings in the RTC has been rectified here on appeal when We fully threshed out the issues raised by defendants-appellants and gave them full opportunity to present their side.

With respect to the contention of defendants-appellants that the RTC erred in refusing to re-raffle the case as mandated by A.M. No.11-1-6-SC-Philja after the parties failed to reach a settlement at the judicial dispute resolution proceedings, We again find the said claim to be unmeritorious as defendants-appellants are already estopped from raising the said issue since, as shown in the original Pre-Trial [31] Order of the RTC, there was a previous agreement by the parties to forego with the judicial dispute resolution (JDR) process. As aptly pointed out by NSC, the necessary consequence of foregoing with the process of JDR is the non-application of the rules governing such process. Having entered into an agreement with NSC for the non-application of the JDR process, defendants-appellants are now bound by its decision to dispense with the JDR and is therefore estopped in the present appeal from claiming that the RTC erred in not applying the said rules.

Finally, defendants-appellants also contend that the RTC erred in ruling that their counterclaim against NSC for the payment by the latter of its unpaid real estate taxes amounting to P3,219,568,613.34 was a mere permissive counterclaim and thus dismissible for their failure to attach in their Answer with Counterclaim a certification of non-forum shopping. [32]

As explained by the Supreme Court in *Caliber Traders Inc., v. Bayer Philippines Inc.*, [33] a counterclaim is compulsory and is considered where the following circumstances are present: 1) that it arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim, 2) that it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, and 3) that the court has jurisdiction to entertain the claim.

In the present case, this Court agrees with the RTC that the counterclaim of defendants-appellants does not arise or is necessarily connected with the subject matter of the Amended Complaint of NSC. To recall, NSC sought to obtain in its amended complaint a judicial declaration that it has complied with its obligations under the TAA and by virtue thereof, that it be cleared by the City of Iligan of all its real property tax liabilities until October 14, 2004. The defendants-appellants, on the other hand, prayed in its counterclaim that NSC be ordered to pay real estate taxes in the amount of P3,219,568,613.34. This amount represented not only the penalties and interest of NSC for its unpaid real estate taxes from 1999 to 2004 but likewise included its current real estate taxes from 2005 up to 2011. Since defendants-appellants is seeking in its counterclaim to recover taxes accruing after October 14, 2004, it is clear that the said claim does not arise or necessarily connected with the subject matter of NSC's amended complaint, which as explained above, only concerns the tax liabilities of NSC until October 14,

2004. Consequently, the counterclaim of defendants-appellants can only be classified as a permissive counterclaim which was rightfully dismissed by the court a quo for their failure to attach a certification of non-forum shopping in their Answer.

WHEREFORE, the foregoing considered, the Motion for Reconsideration is hereby GRANTED. The Decision of this Court dated March 7, 2014, is SET ASIDE and a new one is hereby entered DENYING the appeal of herein defendants-appellants. The Decision of the Regional Trial Court of Makati, dated October 7, 2011, in Civil Case No. 10-639, is hereby AFFIRMED.

SO ORDERED.

Abdulwahid, (Chairperson), and Cruz, JJ., concur.

[1] Rollo, pp. 213-239.

[2] Records, Vol. I, pp. 226-227.

[3] Records, Vol. I, p. 254.

[4] Records, Vol. I, pp. 255-256.

[5] Records, Vol. I, p. 258.

[6] Records, Vol. I, p. 259.

[7] Records, Vol. I, p. 260

[8] Records, Vol. I, p. 261.

[9] Records, Vol. I, pp. 1-17.

[10] Rollo, pp. 6-20.

[11] Records, Vol. II, pp. 862-863.

[12] Rollo, pp.191-209.

[13] Section 19. Jurisdiction in civil cases. – Regional Trial Courts shall exercise exclusive original jurisdiction.

"(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

[14] *Surviving Heirs of Alfredo Bautista v. Lindo*, G.R. No. 208232, March 10, 2014.

[15] G.R. No. 152580, June 26, 2008.

[16] G.R. No. 160727, June 26, 2007.

[17] Records, Vol. I, pp. 13-17.

[18] Records, Vol. I, pp. 255-256.

[19] *id.*

[20] *Supra* note 7.

[21] G.R. Nos. 169408 & 170144, April 30, 2008.

[22] *supra* note 5.

[23] *supra* note 6.

[24] Philippine National Oil Company v. Court of Appeals, G.R. No. 109976, April 26, 2005.

[25] G.R. No. 153726, March 28, 2007.

[26] Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[27] G.R. No. 85502, February 24, 1992.

[28] Records, Vol. II, pp. 543-559.

[29] Records, Vol II, pp. 558-559.

[30] Ocampo v. Abando, G.R. No. 176830, February 11, 2014.

[31] Records, Vol. II, pp. 492-507.

[32] G.R. No. 139018, April 11, 2005.

[33] G.R. No. 161431, October 13, 2010.

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