

**PAMPANGA BUS COMPANY, INC., PLAINTIFF-APPELLANT, VS.
REMEDIOS OCFEMIA AND SOFRONIAS FLORES,
DEFENDANTS-APPELLEES.**

G. R. No. L-21793. October 20, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On March 26, 1962, in Pinagpanaan, Talavera, Nueva Ecija, a cargo truck, driven by Sofronias Flores and owned by Remedios Ocfemia, collided with a La Mallorca Pambusco bus, one of the buses operated by Pampanga Bus Company, driven by Antonio Fermin.

Remedios Ocfemia and Sofronias Flores, on November 2, 1962, filed on this basis a complaint for damages in the Court of First Instance of Nueva Ecija against Pampanga Bus Company and Antonio Fermin, docketed as Civil Case No. 4021.

Almost a month later, on December 5, 1962, Pampanga Bus Company filed the present suit against Remedios Ocfemia and Sofronias Flores in the Court of First Instance of Pampanga (Civil Case No. 2237), alleging the same collision of March 26, 1962 and claiming that Sofronias Flores, driver of the cargo truck, carelessly and recklessly rammed with his truck the left side of the La Mallorca Bus causing actual damages to the extent of P1, 354.10; and further resulting in P2,052.60 as unearned income due to 30 days inaction on the part of the bus. Plaintiff company prayed for P2,000 exemplary damages and P1,000 attorney's fees.

Remedios Ocfemia and Sofronias Flores filed on December 17, 1962 a motion to dismiss Civil Case No. 2237 on the ground of *lis pendens*, stating that there is another action pending between the same parties for the same cause,^{[[1]]} and in support thereof called to the court's attention Civil Case No. 4021 which they had filed in the Court of First Instance of Nueva Ecija based on the same collision of March 26, 1962. Attached to the motion was a copy of the complaint and amended complaint in Civil Case No. 4021 afore-stated.

Plaintiff alleged, on January 4, 1963, in its opposition to the dismissal of the case, that Civil Case No. 4021 was filed by the defendants only after the company had demanded damages due to the collision and in anticipation of a probable suit against them. It was further asserted that the company received the summons and a copy of the complaint in Civil Case No. 4021 only after it filed the present case, so that it cannot be accused of filing the present case despite its knowledge of the pendency of Civil Case No. 4021. The company also asked that the motion to dismiss, the copies of which it allegedly received unsigned, be stricken out as sham and false under Section 5, Rule 15, of the Rules of Court.^{[[2]]}

At the hearing of the motion to dismiss held on January 4, 1963, counsel for defendants orally presented in open court copies of the answer with counterclaim and answer to the counterclaim in Civil Case No. 4021, as annexes C and D to the motion to dismiss in Civil Case No. 2237.

On January 31, 1961, the Court of First Instance of Pampanga dismissed Civil Case No. 2237 on the ground of

pendency of another action between the same parties for the same cause.

Pampanga Bus Company appealed therefrom to this Court. Appellant here contends that *lis pendens* does not obtain, or if it does, the other case, not the present one, should be dismissed.

The requisites for *lis pendens* as a ground for dismissal of a complaint are: (1) Identity of parties or at least such as representing the same interests in both actions; (2) identity of rights asserted and prayed for, the relief being founded on the same facts; and (3) the identity in both cases is such that the judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. [[3]]

These requisites are present herein.

Firstly, in Civil Case No. 4021 and Civil Case No. 2237, the parties are the same, for they are merely suing each other. Although in Civil Case No. 2237 Antonio Fermin is not a party, there is still Identity of interest as he was merely an employee of Pampanga Bus Company.

Secondly, both parties claim that the other's driver is at fault and the reliefs prayed are for damages resulting from the alleged wrong based on the same incident occurring in the same place on the same day. This definitely establishes the identity of rights asserted and prayed for as based on the same facts.

And, thirdly, whatever the Court of First Instance of Nueva Ecija would decide, its judgment would be determinative of the rights of the parties concerned, and of who was at fault. Thus, it would be *res judicata* to the present case.

Appellant also contends that the prior filing in court of Case No. 4021 in Nueva Ecija is no reason to dismiss Case No. 2237 filed in Pampanga. It is argued that, for this matter, it was Pampanga Bus Company that took the first proper steps towards, the filing of a complaint against defendants-appellees. Thus it is pointed out that as early as October 9, 1962, said company wrote Remedios Ocfemia a letter - received by her on October 30, 1962 - demanding P3,406.70 as damages on account of the collision. Appellant forgets that the rule of *lis pendens* refers to another pending "action". An action starts only upon the filing of a complaint in court, [[4]] not upon extra-judicial demand.

As to the question of which of the two suits in court ought to be dismissed in view of the pendency of the other, We find no reason to disagree with the court *a quo*. Case No. 2237 in Pampanga should yield to Case No. 4021. For the latter, in contrast to Case No. 2237, is already much in progress: a complaint, an answer with counterclaim, and an answer to the counterclaim have been filed therein, fully joining the issues. We do not deem it proper to allow defendants therein to bring said issues to another court, or to withdraw them from a forum before which they had already placed them for resolution.

As regards appellant's claim that when it brought this case on December 5, 1962, it did not know of the filing of Civil Case No. 4021, as it received the summons and a copy of the complaint on December 19, 1962, suffice it to state that the fact is, at the time it brought the present case, there was already another pending action between the same parties, seeking to assert identical rights with identical prayers for relief based on the same facts, the decision in which would be *res judicata* herein. The Pampanga Bus Company properly alleged its claims in Civil Case No. 4021 as a counterclaim. This allows the full presentation of the case of both parties in the same proceedings. We cannot see any reason for Pampanga Bus Company to insist in bringing this separate case and appealing from its dismissal. Plaintiffs' actuation is frivolous and, if encouraged, would leave nothing to prevent adverse litigants from filing complaints in different courts against each other in the hope that should they lose in one, they may still win in the other, thereby wasting the precious time of the courts and further clogging their dockets, needlessly.

WHEREFORE, the order of dismissal is hereby affirmed, with treble costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Sec. 1(e), Rule 8, now Rule 16, of the Rules of Court.

[2] Now Rule 7, Sec. 5.

[3] Del Rosario v. Jacinto, G.R. No. L-20340, September 10, 1965.

[4] Sec. 6, formerly Sec. 2, Rule 2, Rules of Court.

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